RECORDS OF THE INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM

(1967)

VOLUME I

GENEVA 1971

WORLD INTELLECTUAL PROPERTY
ORGANIZATION
(WIPO)

RECORDS OF THE INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM

JUNE 11 to JULY 14, 1967

VOLUME I

GENEVA

1971

EDITOR'S NOTE

These *Records* of the Intellectual Property Conference of Stockholm, 1967, contain all the official documents in relation to the Conference which were issued before and during the Conference. By "official documents" is meant documents which were published by the United International Bureaux for the Protection of Intellectual Property (BIRPI), either in their capacity of organizer of the Conference —in some cases jointly with the Swedish Government—or in their capacity of secretariat of the Conference.

In addition to the official documents issued for the Conference, the present *Records* contain, under the heading "Situation at the Time of the Opening of the Conference (June 11, 1967)," some background material facilitating the understanding of the preparatory documents distributed before the opening of the Conference (also included under the same heading). Such background material consists of the texts of the two Conventions (Paris and Berne) and the five Agreements (Madrid (Trademarks), Madrid (False Indications), The Hague, Nice and Lisbon) whose revision was one of the tasks of the Conference, as well as the lists of those States which were party to the said Conventions and Agreements at the time the Conference started, that is, on June 11, 1967. Three points should be noted in connection with the texts reprinted under the said heading. The first is that they are reproduced in English only although the authentic version is the French version, the latter being reproduced in the French edition of the present *Records*. The second is that on June 11, 1967, some States were bound, as they still are early in 1970 at the time of writing these lines, by older versions ("Acts") of the Paris or Berne Conventions, or of the two Madrid Agreements or the Hague Agreement, than the version reproduced here. These older versions are not reproduced here because (subject to what is said below about the Hague Agreement) the basis of the Stockholm revision was only the most recent Acts. Consequently, it is the Acts which were most recent at the time the Conference opened that are reproduced here. The third point to be noted is that one of the Acts reproduced here was not then in force, and still is not in force at the time of publication of the present *Records*. That Act is the 1960 (Hague) Act of the Hague Agreement. The reason for which it is included is that the Complementary Act of Stockholm to the Hague Agreement refers not only to those Acts of that Agreement which are in force (namely, the 1934 Act and the 1961 Additional Act) but also to the 1960 Act.

Among the papers which were issued before the Conference, the present *Records* distinguish between "Preparatory Documents" and "Invitations."

The number of Preparatory Documents is twelve. They contain proposals submitted to the Conference concerning the action it might wish to take. Two of the documents deal with the Berne Convention, two with the Paris Convention, five with each of the five Agreements, one with what has become the Convention Establishing the World Intellectual Property Organization, one with proposals for resolutions on transitional matters, and one with proposals concerning the ceilings of contributions in the Paris and Berne Unions. In connection with these documents—numbered S/1 to S/12 ("S" standing for *Stockholm*)—the following three points deserve special mention. *First*, two of the documents (those dealing with the substantive provisions of the Berne and Paris Conventions, S/1 and S/2) were prepared by the Government of Sweden with the assistance of BIRPI, whereas the other ten were prepared by BIRPI. *Second*, the reason for which there are two documents for the revision of the Berne Convention and two for the revision of the Paris Convention is that one of each pair deals with the provisions relating to substantive law (copyright and indus-

trial property, respectively), whereas the other deals with the administrative provisions and the final clauses. *Third*, the World Intellectual Property Organization is referred to in most of the documents issued during the Conference, as well as in these Preparatory Documents, as "the Intellectual Property Organization (IPO)" since the adjective "World" was adopted by the Conference only in the course of its proceedings.

The items published under "Invitations to the Conference" consist of sample circulars and lists of invited States and organizations to which the circulars were sent.

The documents other than the Preparatory Documents are grouped in these *Records* under the title "Conference Documents" since most of them were issued during the Conference. They fall into three subgroups: the "Main Series" (over 300 documents), the "Information Series" and the "Miscellaneous Series" (over 30 and 20 documents, respectively).

These *Records* reproduce the Conference Documents in their numerical order. Each document, as reproduced, is identified first by its number (in bold type), then by its author or originator (in small capitals), and finally by its subject matter (in Roman letters). For example, "S/59 UNITED STATES. Paris Convention" means that the document's number is S/59, that it contains a proposal or comment made by the Government (if filed before the Conference) or the Delegation to the Conference (if filed during the Conference) of the United States of America, and that the proposal or comment relates to the Paris Convention. The date and the original language of each document is not indicated in the place where the document is reprinted but in a separate table appearing on pages 779 to 783. Most documents are reproduced without any omission. However, in cases where the original document repeated long passages of another document, such passages are merely referred to in the version reproduced in these *Records* in the interests of a more economical presentation. Finally, the various lists of participants distributed during the Conference are not reproduced but are all consolidated in a correct and final version appearing under the heading "Participants in the Conference."

The foregoing constitutes Volume I of the *Records*.

Volume II contains the summary minutes, the edited texts of the reports of the five Main Committees of the Conference, and the texts signed or otherwise adopted at the end of the Conference.

The summary minutes were prepared during the Conference, so that the interventions made in English were summarized in English and those made in French were summarized in French. Interventions made in Russian or Spanish were summarized, at the minute writer's convenience, in English or in French. During the Conference —generally two days after each meeting—the minutes were distributed to the participants, who were able to file corrections with the Secretariat. Thus, the minutes reproduced here differ in two respects from the minutes distributed during the Conference: they incorporate any corrections suggested by any participant in his or her own intervention; all passages which, in the original minutes, appeared in French appear here in English translation. These translations were prepared after the Conference under the responsibility of BIRPI.

A report on the work of each of the five Main Committees was prepared during the Conference by a member of one of the Delegations. Each of the five reports was discussed in and by the competent Main Committee, which then decided on the changes it wished to make. Those changes, as well as some minor purely editorial changes which each Rapporteur was authorized to make by the Main Committee for which he worked, are reflected in the final texts of the Reports as reproduced in these *Records*.

Under the heading "Signed Texts," these *Records* reproduce the instruments that were signed at Stockholm on July 14, 1967, that is, on the last day of the Conference,

which started on June 11, 1967. These texts are: the Convention Establishing the World Intellectual Property Organization, the Stockholm Acts of the Paris and Berne Conventions, the Stockholm Acts (either entire or additional or complementary) of the five Special Agreements under the Paris Convention, and the "Final Act" of the Conference.

The Convention Establishing the World Intellectual Property Organization was signed in four languages: the English and the Russian texts are reproduced here; the French and the Spanish texts are reproduced in the French edition of the present *Records*.

The Stockholm Act of the Berne Convention was signed in English and in French. The English text is reproduced in the present *Records*, whereas the French text is reproduced in the French edition of the present Records.

The Acts relating to the Paris Convention and the five Agreements thereunder were signed in French only. These *Records* contain both the French texts and the English translations. The latter were prepared by BIRPI after the Conference in consultation with the Governments of those Member States (if any) whose official language is, or whose official languages include, the English language. It is to be noted that there are some differences between the English translations of the pre-Stockholm versions published in Volume I of these *Records* and the English translations of the Stockholm texts published in Volume II, even in connection with passages the French version of which was not changed by the Stockholm Conference. The differences are due to an effort to render the French original more faithfully than did the English translations in use before the Stockholm Conference.

Thus, it is to be noted that the texts published under the heading "Signed Texts" contain, as far as the Paris Convention and the Agreements thereunder are concerned, not only the signed (French) texts but also their English translations, which were not signed.

As far as all signed texts are concerned, it is to be noted that in the present *Records* obvious mistakes of transcription were corrected. These mistakes are specified or appear in the certified copies which were sent to the Governments of all States invited to the Stockholm Conference and which may be ordered from the World Intellectual Property Organization.

Finally, the *Records* contain the two Decisions and the four Recommendations which the competent organs of the Stockholm Conference adopted in addition to the texts signed.

It is to be noted that the present *Records* are published also in French.

Geneva, 1971.

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CONTRACTING STATES AT THE TIME OF THE OPENING OF THE CONFERENCE (JUNE 11, 1967)

BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

Australia
Argentina
Austria
Belgium
Brazil
Bulgaria
Cameroon
Canada
Ceylon
Congo (Brazzaville)
Congo (Kinshasa)
Cyprus
Czechoslovakia
Dahomey
Denmark
Finland
France
Gabon
Germany (Federal Republic)
Greece
Holy See
Hungary
Iceland
India
Ireland
Israel
Italy
Ivory Coast
Japan
Lebanon
Liechtenstein
Luxembourg
Madagascar
Mali
Mexico
Monaco
Morocco
Netherlands
New Zealand
Niger
Norway
Pakistan
Philippines
Poland
Portugal
Rumania
Senegal
South Africa
Spain
Sweden
Switzerland
Thailand
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland
Upper Volta
Uruguay*
Yugoslavia

* Uruguay became bound by the Berne Convention *during* the Conference (on July 10, 1967).

PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

Algeria
Argentina
Australia
Austria
Belgium
Brazil
Bulgaria
Cameroon
Canada
Central African Republic
Ceylon
Chad
Congo (Brazzaville)
Cuba
Cyprus
Czechoslovakia
Dahomey
Denmark
Dominican Republic
Finland
France
Gabon
Germany (Federal Republic)
Greece
Haiti
Holy See
Hungary
Iceland
Indonesia
Iran
Ireland
Israel
Italy
Ivory Coast
Japan
Kenya
Laos
Lebanon
Liechtenstein
Luxembourg
Madagascar
Malawi
Mauritania
Mexico
Monaco
Morocco
Netherlands
New Zealand
Niger
Nigeria
Norway
Philippines
Poland
Portugal
Rhodesia
Rumania
San Marino
Senegal
South Africa
Spain
Sweden
Switzerland
Syrian Arab Republic
Tanzania
Trinidad and Tobago
Tunisia
Turkey
Uganda
Union of Soviet Socialist Republics
United Arab Republic
United Kingdom of Great Britain and Northern Ireland
United States of America
Upper Volta
Uruguay
Viet Nam
Yugoslavia
Zambia

MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF TRADE MARKS

Austria
Belgium
Czechoslovakia
France
Germany (Federal Republic)
Hungary
Italy
Liechtenstein
Luxembourg
Monaco
Morocco
Netherlands
Portugal
Rumania
San Marino
Spain
Switzerland
Tunisia
United Arab Republic
Viet Nam
Yugoslavia

MADRID AGREEMENT FOR THE REPRESSION OF FALSE OR DECEPTIVE INDICATIONS OF SOURCE

Brazil
Ceylon
Cuba
Czechoslovakia
Dominican Republic
France
Germany (Federal Republic)
Hungary
Ireland
Israel
Italy
Japan
Lebanon
Liechtenstein
Monaco
Morocco
New Zealand
Poland
Portugal
San Marino
Spain
Sweden
Switzerland
Syrian Arab Republic
Tunisia
Turkey
United Arab Republic
United Kingdom of Great Britain and Northern Ireland
Viet Nam

THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS

Belgium
France
Germany (Federal Republic)
Holy See
Indonesia
Liechtenstein
Monaco
Morocco
Netherlands
Spain
Switzerland
Tunisia
United Arab Republic
Viet Nam

NICE AGREEMENT CONCERNING THE INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES TO WHICH TRADEMARKS ARE APPLIED

Australia
Belgium
Czechoslovakia
Denmark
France
Germany (Federal Republic)
Hungary
Ireland
Israel
Italy
Lebanon
Liechtenstein
Monaco
Morocco
Netherlands
Norway
Poland
Portugal
Spain
Sweden
Switzerland
Tunisia
United Kingdom of Great Britain and Northern Ireland
Yugoslavia

LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

Cuba
Czechoslovakia
France
Haiti
Hungary
Israel
Mexico
Portugal

TEXTS IN FORCE AT THE TIME OF THE OPENING OF THE CONFERENCE (JUNE 11, 1967)

TEXTS IN FORCE AT THE TIME OF THE OPENING OF THE CONFERENCE (JUNE 11, 1967)

BERNE CONVENTION

for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Brussels on June 26, 1948

Articles 1 to 20

See pages 148, 150, 152, 154, 156, 158, 160 and 162, below, where these Articles are reprinted.

Article 21

(1) The International Office established under the name of the "Office of the International Union for the Protection of Literary and Artistic Works" shall be maintained.

(2) That Office shall be placed under the high authority of the Government of the Swiss Confederation, which shall regulate its organisation and supervise its working.

(3) The official language of the Office shall be the French language.

Article 22

(1) The International Office shall collect information of every kind relating to the protection of the rights of authors over their literary and artistic works. It shall co-ordinate and publish such information. It shall undertake the study of questions of general interest to the Union and, by the aid of documents placed at its disposal by the different Administrations, it shall edit a periodical publication in the French language on questions which concern the purpose of the Union. The Governments of the countries of the Union reserve to themselves the power to authorise by agreement the publication by the Office of an edition in one or more other languages if, by experience, this should be shown to be necessary.

(2) The International Office shall always place itself at the disposal of members of the Union in order to provide them with any special information which they may require relating to the protection of literary and artistic works.

(3) The Director of the International Office shall make an annual report on his administration, which shall be communicated to all the members of the Union.

Article 23

(1) The expenses of the Office of the International Union shall be shared by the countries of the Union. Until a fresh arrangement is made, they shall not exceed the amount of one hundred and

twenty thousand gold francs a year. This amount may be increased, if necessary, by unanimous decision of the countries of the Union or of one of the Conferences provided for in Article 24.

(2) The share of the total expense to be paid by each country shall be determined by the division of the countries of the Union and those subsequently acceding to the Union into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:

1st class	25 units
2nd "	20 "
3rd "	15 "
4th "	10 "
5th "	5 "
6th "	3 "

(3) These coefficients shall be multiplied by the number of countries of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unit of expense.

(4) Each country shall declare, at the time of its accession, in which of the said classes it desires to be placed, but it may subsequently declare that it wishes to be placed in another class.

(5) The Swiss Administration shall prepare the budget of the Office, supervise its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

Article 24

(1) This Convention may be submitted to revision for the purpose of introducing improvements intended to perfect the system of the Union.

(2) Questions of this kind, as well as those which in other respects concern the development of the Union, shall be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries. The Administration of the country where a Conference is to meet shall, with the assistance of the International Office, prepare the programme of the Conference. The Director of the Office shall attend the sessions of the Conferences, and may take part in the discussions, but without the right to vote.

(3) No alteration in this Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

Article 25

(1) Countries outside the Union which make provision for the legal protection of the rights forming the object of this Convention may accede thereto upon request.

(2) Such accession shall be notified in writing to the Government of the Swiss Confederation, who shall communicate it to all the other countries of the Union.

(3) Such accession shall imply full acceptance of all the clauses and admission to all the advantages provided by this Convention, and shall take effect one month after the date of the notification made by the Government of the Swiss Confederation to the other countries of the Union, unless some later date has been indicated by the acceding country. It may, nevertheless, contain an indication that the acceding country wishes to substitute, provisionally at least, for Article 8, which relates to translations, the provisions of Article 5 of the Convention of 1886 revised at Paris in 1896, on the understanding that those provisions shall apply only to translations into the language or languages of that country.

Article 26

(1) Any country of the Union may at any time in writing notify the Swiss Government that this Convention shall apply to its overseas territories, colonies, protectorates, territories under its trusteeship, or to any other territory for the international relations of which it is responsible, and the Convention shall thereupon apply to all the territories named in such notification, as from a date determined in accordance with Article 25, paragraph (3). In the absence of such notification, the Convention shall not apply to such territories.

(2) Any country of the Union may at any time in writing notify the Government of the Swiss Confederation that this Convention shall cease to apply to all or any of the territories which have been made the subject of a notification under the preceding paragraph, and the Convention shall cease to apply in the territories named in such notification twelve months after its receipt by the Government of the Swiss Confederation.

(3) All notifications given to the Government of the Swiss Confederation in accordance with the provisions of paragraphs (1) and (2) of this Article shall be communicated by that Government to all the countries of the Union.

Article 27

(1) This Convention shall replace, in relations between the countries of the Union, the Convention of Berne of the 9th September 1886, and the subsequent revisions thereof. The Instruments previously in force shall continue to be applicable in relations with countries which do not ratify this Convention.

(2) The countries on whose behalf this Convention is signed may retain the benefit of the reservations which they have previously formulated, on condition that they make declaration to that effect at the time of the deposit of their ratifications.

(3) Countries which are at present members of the Union, but on whose behalf this Convention is not signed, may accede to it at any time, in the manner provided for in Article 25. In that event they shall enjoy the benefit of the provisions of the preceding paragraph.

Article 27*bis*

A dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, shall be brought before the International Court of Justice for determination by it, unless the countries concerned agree on some other method of settlement. The country requesting that the dispute should be brought before the Court shall inform the International Office; the Office shall bring the matter to the attention of the other countries of the Union.

Article 28

(1) This Convention shall be ratified, and the ratifications deposited at Brussels, not later than the 1st July 1951. The ratifications, with the dates thereof and all declarations which may accompany them, shall be communicated by the Belgian Government to the Government of the Swiss Confederation, which shall notify the other countries of the Union thereof.

(2) This Convention shall come into force, between the countries which have ratified it, one month after the 1st July 1951. Nevertheless, if before that date it has been ratified by at least six countries of the Union, it shall come into force between those countries one month after the notification to them by the Government of the Swiss Confederation of the deposit of the sixth ratification and, in the case of countries which ratify thereafter, one month after the notification of each of such ratifications.

(3) Until the 1st July 1951, countries outside the Union may join it by acceding either to the Convention signed at Rome on the 2nd June 1928, or to this Convention. On or after the 1st July 1951, they may

accede only to this Convention. The countries of the Union which shall not have ratified this Convention by the 1st July 1951, may accede thereto in accordance with the procedure provided by Article 25. In this event they shall be entitled to the benefit of the provisions of Article 27, paragraph (2).

Article 29

(1) This Convention shall remain in force for an indefinite period. Nevertheless, each country of the Union shall be entitled to denounce it at any time, by means of a notification in writing addressed to the Government of the Swiss Confederation.

(2) This denunciation, which shall be communicated by the Government of the Swiss Confederation to all the other countries of the Union, shall take effect only in respect of the country making it, and twelve months after the receipt of the notification of denunciation addressed to the Government of the Swiss Confederation. The Convention shall remain in full force and effect for the other countries of the Union.

(3) The right of denunciation provided by this Article shall not be exercised by any country before the expiry of five years from the date of its ratification or accession.

Article 30

(1) Countries which introduce into their legislation the term of protection of fifty years provided by Article 7, paragraph (1), of this Convention shall give notice thereof in writing to the Government of the Swiss Confederation, which shall immediately communicate it to all the other countries of the Union.

(2) The same procedure shall be followed in the case of countries abandoning the reservations made or maintained by them in accordance with Articles 25 and 27.

Article 31

The official Acts of the Conferences shall be established in French. An equivalent text shall be established in English. In case of dispute as to the interpretation of the Acts, the French text shall always prevail. Any country or group of countries of the Union shall be entitled to have established by the International Office an authoritative text of the said Acts in the language of its choice, and by arrangement with the Office. These texts shall be published in the Acts of the Conferences, annexed to the French and English texts.

PARIS CONVENTION

for the Protection of Industrial Property of March 20, 1883, as revised at Lisbon on October 31, 1958

Article 1

(1) The countries to which the present Convention applies constitute themselves into a Union for the protection of industrial property.

(2) The protection of industrial property is concerned with patents, utility models, industrial designs, trademarks, service marks, trade names, and indications of source or appellations of origin, and the repression of unfair competition.

(3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products; for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers and flour.

(4) The term "patents" shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc.

Article 2

(1) Nationals of each of the countries of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals, without prejudice to the rights specially provided by the present Convention. Consequently, they have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the conditions and formalities imposed upon nationals.

(2) However, no condition as to the possession of a domicile or establishment in the country where protection is claimed may be required of persons entitled to the benefits of the Union for the enjoyment of any industrial property rights.

(3) The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the election of domicile or the designation of an agent, which may be required by the laws on industrial property, are expressly reserved.

Article 3

Nationals of countries not forming part of the Union, who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union, are treated in the same manner as nationals of the countries of the Union.

Article 4

See pages 183 and 184, below, where this Article is reprinted.

Article 4*bis*

(1) Patents applied for in the various countries of the Union by persons entitled to the benefits of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not.

(2) This provision is to be understood in an unrestricted sense, in particular, in the sense that patents applied for during the period of priority are independent, both as regards the grounds for invalidation and for forfeiture, and as regards their normal duration.

(3) The provision shall apply to all patents existing at the time when it comes into effect.

(4) Similarly, it shall apply, in the case of the accession of new countries, to patents in existence on either side at the time of accession.

(5) Patents obtained with the benefit of priority shall have in the various countries of the Union a duration equal to that which they would have had if they had been applied for or granted without the benefit of priority.

Article 4*ter*

The inventor shall have the right to be mentioned as such in the patent.

Article 4*quater*

The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of the patented process is subject to restrictions or limitations resulting from the domestic law.

Article 5

A. — (1) The importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail forfeiture of the patent.

(2) Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exclusive rights conferred by the patent, for example, failure to work.

(3) Forfeiture of the patent shall not be prescribed except in cases where the grant of compulsory licenses would not have been sufficient to prevent such abuses. No proceeding for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license.

(4) An application for a compulsory license may not be made on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period last expires; it shall be refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory license shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill using such license.

(5) The foregoing provisions shall be applicable, *mutatis mutandis*, to utility models.

B. — The protection of industrial designs shall not, under any circumstance, be liable to any forfeiture either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected.

C. — (1) If, in any country, the use of a registered trademark is compulsory, the registration shall not be cancelled until after a reasonable period, and then only if the person concerned cannot justify his inaction.

(2) The use of a trademark by the proprietor in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered in one of the countries of the Union shall not entail invalidation of the registration and shall not diminish the protection granted to the mark.

(3) The concurrent use of the same mark on identical or similar goods by industrial or commercial establishments considered as co-proprietors of the mark according to the provisions of the national law of the country where protection is claimed shall not prevent the registration or diminish in any way the protection granted to the mark in any country of the Union, provided the use does not result in misleading the public and is not contrary to the public interest.

D. — No indication or mention of the patent, of the utility model, of the registration of the trademark, or of the deposit of the industrial design, shall be required upon the product as a condition of recognition of the right to protection.

Article 5*bis*

(1) A period of grace of not less than six months shall be allowed for the payment of the prescribed fees for the maintenance of industrial property rights, subject to the payment of a surcharge, if the domestic law so provides.

(2) The countries of the Union shall have the right to provide for the restoration of patents which have lapsed by reason of non-payment of fees.

Article 5*ter*

In each of the countries of the Union the following shall not be considered as infringements of the rights of a patentee:

1. the use on board vessels of other countries of the Union of devices forming the subject of his patent in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of a country, provided that such devices are used there exclusively for the needs of the vessel;
2. the use of devices forming the subject of the patent in the construction or operation of aircraft or land vehicles of other countries of the Union, or of accessories to such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter the country.

Article 5*quater*

When a product is imported into a country of the Union where there exists a patent protecting a process of manufacture of the said product, the patentee shall have all the rights, with regard to the imported product, as are accorded to him by the domestic law of the country of importation, on the basis of the process patent, with respect to products manufactured in that country.

Article 5*quinquies*

Industrial designs shall be protected in all the countries of the Union.

Article 6

(1) The conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic law.

(2) However, an application for the registration of a trademark filed by a national of a country of the Union in any country of the Union may not be refused nor may a registration be cancelled on the ground that filing, registration or renewal has not been effected in the country of origin.

(3) A mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union, including the country of origin.

Article 6*bis*

(1) The countries of the Union undertake, either administratively if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration and to prohibit the use of a trademark which constitutes a reproduction, imitation or translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well-known in that country as being already the mark of a person entitled to the benefits of the present Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.

(2) A period of at least five years from the date of registration shall be allowed for seeking the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be sought.

(3) No time limit shall be fixed for seeking the cancellation or the prohibition of the use of marks registered or used in bad faith.

Article 6*ter*

(1) *(a)* The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags and other State emblems of the countries of the Union, official signs and hall-marks indicating control and warranty adopted by them and all imitations thereof from a heraldic point of view.

(b) The provisions of sub-paragraph *(a)* above apply equally to armorial bearings, flags and other emblems, abbreviations or titles of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags and other emblems, abbreviations or titles that are already the subject of existing international agreements intended to ensure their protection.

(c) No country of the Union shall be required to apply the provisions of sub-paragraph *(b)* above to the prejudice of the owners of rights acquired in good faith before the entry into force, in that country, of the present Convention. The countries of the Union shall not be required to apply the said provisions when the use or registration covered by sub-paragraph *(a)* above is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the armorial bearings, flags, emblems, abbreviations or titles, or if such use or registration is clearly not of a nature to mislead the public as to the existence of a connection between the user and the organization.

(2) The prohibition of the use of official signs and hall-marks indicating control and warranty shall apply solely in cases where the marks which contain them are intended to be used on goods of the same or a similar kind.

(3) *(a)* For the application of these provisions the countries of the Union agree to communicate reciprocally, through the International Bureau, the list of State emblems and official signs and hall-marks

indicating control and warranty which they desire, or may thereafter desire, to place wholly or within certain limits under the protection of the present Article and all subsequent modifications of this list. Each country of the Union shall in due course make available to the public the lists so communicated. Nevertheless, this communication is not obligatory so far as the flags of States are concerned.

(b) The provisions of sub-paragraph *(b)* of paragraph (1) of this Article shall only apply to armorial bearings, flags and other emblems, abbreviations or titles of international intergovernmental organizations that the latter have communicated to the countries of the Union through the International Bureau.

(4) Any country of the Union may, within a period of twelve months from the receipt of the communication, transmit through the International Bureau its objections, if any, to the country or international intergovernmental organization concerned.

(5) In the case of State flags, the measures prescribed by paragraph (1) above shall apply solely to marks registered after November 6, 1925.

(6) In the case of State emblems other than flags, and of official signs and hall-marks of the countries of the Union, and in the case or armorial bearings, flags and other emblems, abbreviations or titles of international intergovernmental organisations, these provisions shall be applicable only to marks registered more than two months after the receipt of the communication provided for in paragraph (3) above.

(7) In cases of bad faith the countries shall have the right to cancel the registration of marks that contain State emblems, signs or hall-marks even though registered before November 6, 1925.

(8) Nationals of each country, who are authorized to make use of State emblems, signs or hall-marks of their country, may use them even though they are similar to those of another country.

(9) The countries of the Union undertake to prohibit the unauthorized use in trade of the State armorial bearings of the other countries of the Union, when the use is of such a nature as to be misleading as to the origin of the goods.

(10) The above provisions shall not prevent the countries from exercising the power given in paragraph (3) of Article 6*quinquies* B to refuse or to cancel the registration of marks containing, without authorization, the armorial bearings, flags and other State emblems or official signs or hall-marks adopted by a country of the Union as well as the distinctive signs of international intergovernmental organizations mentioned in paragraph (1) of this Article.

Article 6*quater*

(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 this validity that the portion of the business or goodwill situated in that country be transferred to the assignee, together with the exclusive right to manufacture or sell there the goods bearing the mark assigned.

(2) This 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 material qualities of the goods to which the mark is applied.

Article 6*quinquies*

A. — (1) Every trademark duly registered in the country of origin shall be accepted for filing and protected in its original form in the other countries of the Union, subject to the reservations indicated in the present Article. These countries may, before proceeding to final registration, require the production of a certificate of registration in the country of origin, issued by the competent authority. No authentication shall be required for this certificate.

(2) The country of the Union where the applicant has a real and effective industrial or commercial establishment, or, if he has not such an establishment within the Union, the Union country where he has his domicile, or if he has no domicile in the Union, the country of his nationality if he is a national of a Union country, shall be considered his country of origin.

B. — Trademarks under the present Article may not be denied registration or invalidated except in the following cases:

1. when they are of such a nature as to infringe rights acquired by third parties in the country where protection is claimed;
2. when they are devoid of any distinctive character, or consist exclusively of signs or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, value, place of origin of the goods or time of production, or have become customary in the current language or in the bona fide and established practices of the trade of the country where protection is claimed;
3. when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of the law relating to trademarks, except where such provision itself relates to public order.

The above is, however, subject to Article 10*bis*.

C. — (1) To determine whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use.

(2) Trademarks shall not be refused in the other countries of the Union for the sole reason that they differ from the marks protected in the country of origin only by elements that do not alter the distinctive character and do not affect the identity of the marks in the form in which these have been registered in the said country of origin.

D. — No person may benefit from the provisions of the present Article if the mark for which he claims protection is not registered in the country of origin.

E. — However, in no case shall the renewal of the registration of a mark in the country of origin involve the obligation to renew the registration in the other Union countries where the mark has been registered.

F. — The benefit of priority shall be accorded to applications for the registration of marks filed within the period fixed by Article 4, even when registration in the country of origin does not occur until after the expiration of such period.

Article 6*sexies*

The countries of the Union undertake to protect service marks. They shall not be required to provide for the registration of such marks.

Article 6*septies*

(1) If the agent or representative of the person who is the proprietor of a mark in one of the countries of the Union applies, without such proprietor's authorization, for the registration of the mark in his own name in one or more Union countries, the proprietor shall be entitled to oppose the registration applied for or demand its cancellation or, if the law of the country so allows, the assignment in his favour of the said registration, unless such agent or representative justifies his action.

(2) The proprietor of the mark shall, subject to the reservations of paragraph (1) above, be entitled to oppose the use of his mark by his agent or representative if he has not authorized such use.

(3) Domestic laws may provide an equitable time limit within which the proprietor of a mark must assert the rights provided for in the present Article.

Article 7

The nature of the goods to which the trademark is to be applied shall in no case form an obstacle to the registration of the mark.

Article 7*bis*

(1) The countries of the Union undertake to accept for filing and to protect collective marks belonging to associations the existence of which is not contrary to the law of the country of origin, even if such associations do not possess an industrial or commercial establishment.

(2) Each country shall be the judge of the particular conditions under which a collective mark shall be protected and may refuse protection if the mark is contrary to the public interest.

(3) Nevertheless, the protection of these marks shall not be refused to any association the existence of which is not contrary to the law of the country of origin, on the ground that such association is not established in the country where protection is sought or is not constituted according to the law of the latter country.

Article 8

A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark.

Article 9

(1) All goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or name has a right to legal protection.

(2) Seizure shall likewise be effected in the country where the unlawful application occurred or in the country into which the goods have been imported.

(3) Seizure shall take place at the request either of the public prosecutor or of any other competent authority or of any interested party, whether a natural or a juridical person, in conformity with the domestic law of each country.

(4) The authorities shall not be bound to effect seizure in transit.

(5) If the law of a country does not permit seizure on importation, such seizure shall be replaced by prohibition of importation or by seizure within such country.

(6) If the law of a country permits neither seizure on importation nor prohibition of importation nor seizure within the country, then, until such time as the law is modified accordingly, these measures shall be replaced by the actions and remedies available in such cases to nationals under the law of such country.

Article 10

(1) The provisions of the preceding Article shall apply in cases of direct or indirect use of a false indication of the source of the product or the identity of the producer, manufacturer or trader.

(2) Any producer, manufacturer or trader, whether a natural or juridical person, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source or in the district where this locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party.

Article 10*bis*

(1) The countries of the Union are bound to assure to persons entitled to the benefits of the Union effective protection against unfair competition.

(2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

(3) The following in particular shall be prohibited:

1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities of a competitor;
2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities of a competitor;
3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of the goods.

Article 10*ter*

(1) The countries of the Union undertake to assure to nationals of the other countries of the Union appropriate legal remedies to repress effectively all the acts referred to in Articles 9, 10 and 10*bis*.

(2) They undertake, further, to provide measures to permit syndicates and associations which represent the industrialists, producers or traders concerned, and the existence of which is not contrary to the laws of their countries, to take action in the Courts or before the administrative authorities, with a view to the repression of the acts referred to in Articles 9, 10 and 10 *bis*, in so far as the law of the country in which protection is claimed allows such action by the syndicates and associations of that country.

Article 11

(1) The countries of the Union shall, in conformity with their domestic law, grant temporary protection to patentable inventions, utility models, industrial designs and trademarks, in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of one of them.

(2) This temporary protection shall not extend the periods provided by Article 4. If later the right o priority is invoked, each country may provide that the period shall start from the date of introduction of the goods into the exhibition.

(3) Each country may require, as proof of the identity of the article exhibited and of the date of its introduction, such evidence as it considers necessary.

Article 12

(1) Each of the countries of the Union undertakes to establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial designs and trademarks.

(2) This service shall publish an official periodical journal. It shall publish regularly:

(a) the names of the proprietors of patents granted, with a brief description of the inventions patented;

(b) reproductions of trademarks registered.

Article 13

(1) The international office established under the name International Bureau for the Protection of Industrial Property is placed under the high authority of the Government of the Swiss Confederation, which regulates its organization and supervises its operation.

(2) *(a)* The French and English languages shall be used by the International Bureau in performing the tasks provided for in paragraphs (3) and (5) of this Article.

(b) The conferences and meetings referred to in Article 14 shall be held in the French, English and Spanish languages.

(3) The International Bureau centralizes information of every kind relating to the protection of industrial property and compiles and publishes it. It undertakes studies of general utility concerning the Union and edits, with the help of documents supplied to it by the various Administrations, a periodical journal dealing with questions relating to the objects of the Union.

(4) The issues of this journal, as well as all the documents published by the International Bureau, shall be distributed to the Administrations of the countries of the Union in proportion to the number of contributing units mentioned below. Additional copies as may be requested, either by the said Administrations or by companies or private persons, shall be paid for separately.

(5) The International Bureau shall at all times hold itself at the disposition of the countries of the Union, to supply them with any special information they may need on questions relating to the international industrial property service. The Director of the International Bureau shall make an annual report on his administration, which shall be communicated to all the countries of the Union.

(6) The ordinary expenditure of the International Bureau shall be borne by the countries of the Union in common. Until further authorization, it shall not exceed the sum of 120,000 Swiss francs per annum. This sum may be increased, when necessary, by a unanimous decision of one of the conferences provided for in Article 14.

(7) Ordinary expenditure does not include expenses relating to the work of conferences of plenipotentiaries or administrative conferences nor the expenses caused by special work or publications effected in conformity with the decisions of a conference. Such expenses, the annual total of which may not exceed 20,000 Swiss francs, shall be divided among the countries of the Union in proportion to their contributions towards the operation of the International Bureau in accordance with the provisions of paragraph (8) below.

(8) To determine the contribution of each country to this total expenditure, the countries of the Union and those which may afterwards join the Union are divided into six classes, each contributing in the proportion of a certain number of units, namely:

1st class	25 units
2nd "	20 "
3rd "	15 "
4th "	10 "
5th "	5 "
6th "	3 "

These coefficients are multiplied by the number of countries in each class, and the sum of the products thus obtained gives the number of units by which the total expenditure is to be divided. The quotient gives the amount of the unit of expense.

(9) Each of the countries of the Union shall, at the time it becomes a member, designate the class in which it wishes to be placed. However, any country of the Union may declare later that it desires to be placed in another class.

(10) The Government of the Swiss Confederation will supervise the expenditure of the International Bureau and its accounts, and will make the necessary advances.

(11) The annual account rendered by the International Bureau shall be communicated to all the other Administrations.

Article 14

(1) The present Convention shall be submitted to periodical revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For this purpose conferences shall be held successively in one of the countries of the Union between the delegates of the said countries.

(3) The Administration of the country in which the conference is to be held shall make preparations for the work of the conference, with the assistance of the International Bureau.

(4) The Director of the International Bureau shall be present at the meetings of the conferences, and take part in the discussions, but without the right of voting.

(5) *(a)* During the interval between the Diplomatic Conferences of revision, Conferences of Representatives of all the countries of the Union shall meet every three years in order to draw up a report on the foreseeable expenditure of the International Bureau for each three-year period to come and to consider questions relating to the protection and development of the Union.

(b) Furthermore, they may modify, by unanimous decision, the maximum annual amount of the expenditure of the International Bureau, provided they meet as Conferences of Plenipotentiaries of all the countries of the Union, convened by the Government of the Swiss Confederation.

(c) Moreover, the Conferences provided for in paragraph *(a)* above may be convened between their triennial meetings by either the Director of the International Bureau or the Government of the Swiss Confederation.

Article 15

It is understood that the countries of the Union reserve the right to make separately between themselves special arrangements for the protection of industrial property, in so far as these arrangements do not contravene the provisions of the present Convention.

Article 16

(1) Countries which are not parties to the present Convention shall be permitted to accede to it at their request.

(2) Any such accession shall be notified through diplomatic channels to the Government of the Swiss Confederation, and by it to all the other Governments.

(3) Accession shall automatically entail acceptance of all the clauses and admission to all the advantages of the present Convention and shall take effect one month after the dispatch of the notification by the Government of the Swiss Confederation to the other countries of the Union, unless a subsequent date is indicated in the request for accession.

Article 16*bis*

(1) Any country of the Union may at any time notify in writing the Government of the Swiss Confederation that the present Convention is applicable to all or part or its colonies, protectorates, territories under mandate or any other territories subject to its authority, or any territories under its sovereignty, and the Convention shall apply to all the territories named in the notification one month after the dispatch of the communication by the Government of the Swiss Confederation to the other countries of the Union unless a subsequent date is indicated in the notification. Failing such a notification, the Convention shall not apply to such territories.

(2) Any country of the Union may at any time notify in writing the Government of the Swiss Confederation that the present Convention ceases to be applicable to all or part of the territories that were the subject of the notification under the preceding paragraph, and the Convention shall cease to apply in the

territories named in the notification twelve months after the receipt of the notification addressed to the Government of the Swiss Confederation.

(3) All notifications sent to the Government of the Swiss Confederation in accordance with the provisions of paragraphs (1) and (2) of the present Article shall be communicated by that Government to all the countries of the Union.

Article 17

Every country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

It is understood that at the time an instrument of ratification or accession is deposited on behalf of a country, such country will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 17*bis*

(1) The Convention shall remain in force for an indefinite time, until the expiration of one year from the date of its denunciation.

(2) Such denunciation shall be addressed to the Government of the Swiss Confederation. It shall affect only the country in whose name it is made, the Convention remaining in operation as regards the other countries of the Union.

Article 18

(1) The present Act shall be ratified and the instruments of ratification deposited in Bern not later than May 1, 1963. It shall come into force, between the countries in whose names it has been ratified, one month after that date. However, if before that date it is ratified in the name of at least six countries, it shall come into force between those countries one month after the deposit of the sixth ratification has been notified to them by the Government of the Swiss Confederation, and for countries in whose names it is ratified at a later date, one month after the notification of each such ratification.

(2) Countries in whose names no instrument of ratification has been deposited within the period referred to in the preceding paragraph shall be permitted to accede under the terms of Article 16.

(3) The present Act shall, as regards the relations between the countries to which it applies, replace the Convention of Paris of 1883 and the subsequent acts of revision.

(4) As regards the countries to which the present Act does not apply, but to which the Convention of Paris revised at London in 1934 applies, the latter shall remain in force.

(5) Similarly, as regards countries to which neither the present Act not the Convention of Paris revised at London applies, the Convention of Paris revised at The Hague in 1925 shall remain in force.

(6) Similarly, as regards countries to which neither the present Act nor the Convention of Paris revised at London nor the Convention of Paris revised at The Hague applies, the Convention of Paris revised at Washington in 1911 shall remain in force.

Article 19

(1) The present Act shall be signed in a single copy in the French language, which shall be deposited in the archives of the Government of the Swiss Confederation. A certified copy shall be forwarded by the latter to each of the Governments of the countries of the Union.

(2) The present Act shall remain open for signature by the countries of the Union until April 30, 1959.

(3) Official translations of the present Act shall be established in the English, German, Italian, Portuguese and Spanish languages.

MADRID AGREEMENT

concerning the International Registration of Trademarks of April 14, 1891, as revised at Nice on June 15, 1957

Article 1

(1) The countries to which this Agreement applies form a Special Union concerning the international registration of marks.

(2) *Reproduced on page 261 and footnotes 1 to 4.*

(3) Shall be considered as the country of origin the country of the Special Union where the applicant has a real and effective industrial or commercial establishment; if he has no such establishment in a country of the Special Union, the country of the Special Union where he is domiciled; if he has no domicile in the Special Union, the country of his nationality, if he is a national of one of the countries of the Special Union.

Article 2

Nationals of countries which have not acceded to this Agreement, who, within the territory of the Special Union constituted by this Agreement, satisfy the conditions of Article 3 of the Paris Convention for the Protection of Industrial Property, shall be treated in the same manner as nationals of contracting countries.

Article 3

(1) Every application for international registration must be presented on the form prescribed by the Regulations; the Administration of the country of origin of the mark shall certify that the particulars appearing in the application are in accordance with the particulars in the national register, and shall indicate the dates and numbers of the application and registration of the mark in the country of origin and also the date of the application for international registration.

(2) The applicant shall indicate the goods or services in respect of which the 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 to which Trademarks are Applied. If the applicant does not give this indication, the International Bureau shall classify the goods or services in the appropriate classes of the said classification. The indication of the classes given by the applicant shall be subject to control by the International Bureau, which will exercise it in association with the national Administration. In the event of disagreement between the national Administration 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 obliged:

1. to mention this fact, and to accompany his application with a statement indicating the color or the combination of colors claimed;
2. to append to his application copies in color of the said mark, which shall be attached to the notifications made by the International Bureau. The number of such copies shall be fixed by the Regulations.

(4) The International Bureau shall register immediately the marks filed in accordance with Article 1. The registration shall bear the date of the application for international registration in the country of origin provided that the application has been received by the International Bureau within a period of

two months from that date. If the application has not been received within that period, the International Bureau shall register it with the date on which the International Bureau received the application. The International Bureau shall notify the registration without delay to the Administrations concerned. The marks registered shall be published in a periodical journal issued by the International Bureau, utilizing the particulars contained in the application for registration. With regard to marks comprising a figurative element or a special form of writing, the Regulations shall determine whether a printing block must be supplied by the applicant.

(5) *Reproduced on page 263 and footnote 6.*

Article 3*bis*

Reproduced on page 263 and footnotes 7, 8, 9.

Article 3*ter*

(1) Any request for the extension of the protection resulting from an international registration to a country which has availed itself of the faculty provided for in Article 3*bis* must be specially mentioned in the application referred to in Article 3 (1).

(2) Any request for territorial extension made subsequently to the international registration must be presented through the intermediary of the Administration of the country of origin on a form prescribed by the Regulations. It shall be immediately registered by the International Bureau, which shall notify it without delay to the Administration or Administrations concerned. It shall be published in the periodical journal issued by the International Bureau. This territorial extension shall be effective from the date on which it is recorded in the International Register; it shall cease to be valid on the expiration of the international registration of the mark to which it relates.

Article 4

(1) From the date of the registration thus effected at the International Bureau in accordance with the provisions of Articles 3 and 3*ter*, the protection of the mark in each of the contracting countries concerned shall be the same as if the mark had been directly filed there. The indication of the classes of the goods or services provided for in Article 3 shall not bind the contracting countries with regard to the determination of the scope of the protection of the mark.

(2) Every mark which has been the subject of an international registration shall enjoy the right of priority provided by Article 4 of the Paris Convention for the Protection of Industrial Property, without requiring compliance with the formalities provided for in section D of that Article.

Article 4*bis*

(1) When a mark already filed in one or more contracting countries is subsequently registered by the International Bureau in the name of the same proprietor or his successor in title, the international registration shall be considered as replacing the earlier national registrations, without prejudice to any rights acquired by such earlier registrations.

(2) The national Administration shall, upon request, be required to take note in its registers of the international registration.

Article 5

(1) In countries where the legislation so authorizes, the Administrations notified by the International Bureau of the registration of a mark or a request for extension of protection made in accordance with Article 3*ter* shall have the faculty to declare that protection cannot be granted to such mark in their territory. Any such refusal can be based only on grounds which would apply, by virtue of the Paris Convention for the Protection of Industrial Property, in the case of marks filed for national registration. However, protection may not be refused, even partially, for the sole reason that national legislation would not permit registration except in a limited number of classes or for a limited number of goods or services.

(2) The Administration exercising this faculty must notify its refusal to the International Bureau, with an indication of all grounds, within the period prescribed by its domestic law and, at the latest, before the expiration of one year calculated from the international registration of the mark or from the request for extension of protection made in accordance with Article 3*ter*.

(3) The International Bureau shall, without delay, transmit to the Administration of the country of origin and to the proprietor of the mark, or to his agent, if an agent has been indicated to the Bureau by the said Administration, one of the copies of the declaration of refusal thus notified. The interested party shall have the same remedies as if the mark had been filed by him directly in the country where protection is refused.

(4) The grounds for refusing a mark shall be communicated by the International Bureau to any interested party requesting them.

(5) Administrations which, within the above-mentioned maximum period of one year, have not communicated to the International Bureau any provisional or final decision of refusal with regard to the registration of a mark or a request for extension of protection shall lose the benefit of the faculty provided in paragraph (1) of this Article with respect to the mark in question.

(6) The invalidation of an international mark may not be pronounced by the competent authorities without the proprietor of the mark having, in good time, been afforded the opportunity of proving his rights. Invalidation shall be notified to the International Bureau.

Article 5*bis*

Documents showing the legitimacy of the use of certain elements included in a mark, such as armorial bearings, escutcheons, portraits, honorary distinctions, titles, trade names, or names of persons other than the name of the applicant, or other like inscriptions which might be required by the Administrations of contracting countries, shall be exempt from any authentication or certification other than that of the Administration of the country of origin.

Article 5*ter*

(1) The International Bureau shall issue to any person making application therefor, subject to a fee fixed by the Regulations, a copy of the entries in the Register in connection with a specific mark.

(2) The International Bureau may also, upon payment, undertake searches for anticipation among international marks.

(3) Extracts from the International Register requested with a view to their production in one of the contracting countries shall be exempt from all authentication.

Article 6

(1) Registration of a mark at the International Bureau is effected for twenty years (subject to the provisions of Article 8 concerning cases where the applicant has paid only part of the international fee), with the possibility of renewal according to the conditions set out in Article 7.

(2) On the expiration of a period of five years from the international registration, such registration shall become independent of the national mark previously registered in the country of origin, subject to the following provisions.

(3) The protection resulting from the international registration, whether or not it was the subject of a transfer, may no longer be invoked, in whole or in part, if, within five years from the date of the international registration, the national mark, previously registered in the country of origin in accordance with Article 1, no longer enjoys, in whole or in part, legal protection in that country. The same applies if this legal protection has subsequently ceased as the result of an action begun before the expiration of the period of five years.

(4) In the case of voluntary or ex officio cancellation, the Administration of the country of origin shall request the cancellation of the mark at the International Bureau, and the latter shall effect this operation. In the case of judicial action, the said Administration shall send to the International Bureau, ex officio or at the request of the plaintiff, a copy of the complaint or other document showing that an action has been started and also of the final decision of the court; the Bureau shall note them in the International Register.

Article 7

(1) Any registration may be renewed for a period of twenty years, to be counted from the expiration of the preceding period, simply by the payment of the basic fee and, where necessary, of the supplementary and complementary fees provided for in Article 8 (2).

(2) The renewal may not include any change in relation to the previous registration in its latest form.

(3) *Reproduced on page 265 and footnote 10.*

(4) Six months before the expiration of the term of protection, the International Bureau shall, by sending an unofficial notice, remind the proprietor of the mark and his agent of the exact date of expiration.

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

Article 8

(1) The Administration of the country of origin may fix, at its own discretion, and collect, for its own benefit, a national fee which it may require from the proprietor of the mark in respect of which international registration or renewal is applied for.

(2) *Reproduced on page 267 and footnotes 11, 12, 13.*

(3) However, the supplementary fee referred to in paragraph (2)*(b)* may, without prejudice to the date of registration, be paid within a period fixed by the Regulations if the number of classes of goods or services has been fixed or disputed by the International Bureau. If, upon expiration of the said period, the supplementary fee has not been paid or the list of goods or services has not been reduced to the required extent by the applicant, the application for the international registration shall be deemed to have been abandoned.

(4) *Reproduced on page 267 and footnotes 14, 15, 16.*

(5) *Reproduced on page 267 and footnote 17.*

(6) The amounts derived from the complementary fees provided for in paragraph (2)(*c*) shall be divided according to the provisions of paragraph 5 among the countries availing themselves of the faculty provided for in Article 3*bis*.

(7) With regard to the basic fee, the applicant shall be entitled to pay, at the time of the application for international registration, a basic sum of only 125 Swiss francs for the first mark, and only 100 Swiss francs for each additional mark filed at the same time as the first.

(8) If the applicant avails himself of this faculty, he shall, before the expiration of a period of ten years, counted from the international registration, pay to the International Bureau, as the balance of the basic fee, 100 Swiss francs for the first mark, and 75 Swiss francs for each additional mark filed at the same time as the first, failing which, at the expiration of this period, he shall lose the benefit of his registration. Six months before such expiration, the International Bureau shall, by sending an unofficial notice, remind the applicant and his agent of the exact date of expiration. If the balance of the basic fee is not paid to the International Bureau before the expiration of this period, the Bureau shall cancel the mark, shall notify this operation to the national Administrations, and shall publish it in its journal. If the balance due for marks filed at the same time is not paid at one and the same time, the applicant shall specify the marks for which he intends to pay the balance and pay 100 Swiss francs for the first mark of each series.

(9) With regard to the above-mentioned period of ten years, the provisions of Article 7(5) shall apply by analogy.

Article 8*bis*

The person in whose name the international registration stands may at any time renounce protection in one or more contracting countries by means of a declaration filed with the Administration of his own country, for communication to the International Bureau, which shall notify the countries for which renunciation has been made. Renunciation shall not be subject to any fee.

Article 9

(1) The Administration of the country of the person in whose name the international registration stands shall likewise notify to the International Bureau all annulments, cancellations, renunciations, transfers and other changes made in the entry of the mark in the national register, if such changes also affect the international registration.

(2) The Bureau shall enter these changes in the International Register, shall notify them in turn to the Administrations of the contracting countries, and shall publish them in its journal.

(3) A similar procedure shall be followed when the person in whose name the international registration stands requests that the list of goods or services to which the mark is applied be reduced.

(4) These operations may be subject to a fee, which shall be fixed by the Regulations.

(5) The subsequent addition of new goods or services to the said list can be obtained only by filing a new application in accordance with the provisions of Article 3.

(6) The substitution of one of the goods or services for another shall be treated as an addition.

Article 9*bis*

(1) When a mark entered in the International Register is transferred to a person established in a contracting country other than the country of the person in whose name the international registration stands, the transfer shall be notified to the International Bureau by the Administration of the latter country. The International Bureau shall record the transfer, shall notify it to the other Administrations, and shall publish it in its journal. If the transfer has been effected before the expiration of a period of five years from the international registration, the International Bureau shall seek the consent of the Administration of the country of the new proprietor, and shall publish, if possible, the date and registration number of the mark in the country of the new proprietor.

(2) No transfer of a mark recorded in the International Register for the benefit of a person who is not entitled to file an international mark shall be recorded.

(3) When it has not been possible to record a transfer in the International Register, either because the country of the new proprietor has refused its consent or because it has been made for the benefit of a person who is not entitled to apply for international registration, the Administration of the country of the former proprietor shall have the right to demand that the International Bureau cancel the mark in its Register.

Article 9*ter*

(1) If the assignment of an international mark for part only of the registered goods or services is notified to the International Bureau, the Bureau shall record it in its Register. Each of the contracting countries shall have the right to refuse to recognize the validity of the assignment if the goods or services included in the part thus assigned are similar to those in respect of which the mark remains registered for the benefit of the assignor.

(2) Similarly, the International Bureau shall record an assignment of the international mark for only one or several of the contracting countries.

(3) If, in the above cases, a change in the country of the proprietor takes place, the Administration of the country to which the new proprietor belongs shall, if the international mark has been transferred before the expiration of a period of five years from the international registration, give the consent required by Article 9*bis*.

(4) The provisions of the preceding paragraphs are applicable subject to Article 6*quater* of the Paris Convention for the Protection of Industrial Property.

Article 9*quater*

Reproduced on page 269 and footnotes 18, 19.

Article 10

Reproduced on page 271, footnote 20.

Article 11

(1) The countries of the Union for the Protection of Industrial Property which have not participated in this Agreement shall be permitted to accede to it at their request and in the form prescribed by Article 16 of the Paris Convention for the Protection of Industrial Property. This accession shall be valid only for the Act of the Agreement as last revised.

(2) As soon as the International Bureau is informed that a country, or the whole or part of the countries or territories for the external relations of which it is responsible, has acceded to this Agreement, it shall address to the Administration of that country, in accordance with Article 3, a collective notification of the marks which, at that moment, enjoy international protection.

(3) This notification, of itself, shall assure to the said marks the benefits of the foregoing provisions in the territory of the acceding country, and shall mark the commencement of the period of one year during which the Administration concerned may make the declaration referred to in Article 5.

(4) However, any country when acceding to this Agreement may declare that, except in the case of international marks which have already been the subject in that country of an earlier identical national registration still in force, and which shall be immediately recognized upon the request of the interested parties, the application of this Act shall be limited to marks registered from the date when its accession has entered into force.

(5) Such a declaration shall dispense the International Bureau from making the collective notification referred to above. The International Bureau shall notify only the marks in respect of which it receives, within a period of one year from the accession of the new country, a request, with the necessary particulars, for the admission of the exception referred to in the preceding paragraph.

The International Bureau shall not make the collective notification to countries which, in acceding to the Madrid Agreement, declare that they are availing themselves of the faculty provided for in Article 3*bis*. These countries may also declare at the same time that the application of this Act shall be limited to marks registered from the day on which their accessions enter into force; however, this limitation shall not affect international marks which have already been the subject of an earlier identical national registration in these countries, and which could give rise to requests for extension made and notified in conformity with Article 3*ter* and Article 8(2)*(c)*.

(6) Registrations of marks which have been the subject of one of the notifications provided for in this Article shall be regarded as replacing registrations directly effected in the new contracting country before the date of entry into force of its accession.

(7) The provisions of Article 16*bis* of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

Article 11*bis*

In the event of denunciation of this Agreement, the provisions of Article 17*bis* of the Paris Convention for the Protection of Industrial Property shall apply. International marks registered up to the date on which denunciation becomes effective, and not refused within the period of one year referred to in Article 5, shall continue, throughout the period of international protection, to enjoy the same protection as if they had been directly filed in the denouncing country.

Article 12

(1) This Agreement shall be ratified and the ratifications shall be deposited at Paris as soon as possible.

(2) It shall come into force between the countries by which it has been ratified or acceded to in accordance with Article 11(1), when twelve countries at least have ratified or acceded to it, two years after the deposit of the twelfth instrument of ratification or accession has been notified to them by the Government of the Swiss Confederation, and it shall have the same force and duration as the Paris Convention for the Protection of Industrial Property.

(3) In the case of countries which deposit their instrument of ratification or accession after the deposit of the twelfth instrument of ratification or accession, it shall enter into force in accordance with the provisions of Article 16 of the Paris Convention. However, this entry into force shall be subject in all cases to the expiration of the period provided for in the preceding paragraph.

(4) This Act shall, in all the relations among the countries by which it has been ratified or acceded to, replace, as from the day on which it enters into force with respect to them, the Madrid Agreement of 1891, in its texts earlier than this Act. However, any country which has ratified this Act or has acceded to it shall remain bound by the earlier texts in its relations with countries which have not ratified or acceded to it, unless that country has expressly declared that it no longer wishes to be bound by those texts. This declaration shall be notified to the Government of the Swiss Confederation. It shall not be effective until twelve months after its receipt by the said Government.

(5) The International Bureau shall, in agreement with the countries concerned, provide for the administrative measures of adaptation which will be called for with a view to carrying out the provisions of this Agreement.

MADRID AGREEMENT

for the Repression of False or Deceptive Indications of Source of April 14, 1891, as revised at Lisbon on October 31, 1958

Article 1

(1) All goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin, shall be seized on importation into any of the said countries.

(2) Seizure shall also be effected in the country where the false or deceptive indication of source has been applied, or into which the goods bearing the false or deceptive indication have been imported.

(3) If the laws of a country do not permit seizure upon importation, such seizure shall be replaced by prohibition of importation.

(4) If the laws of a country permit neither seizure upon importation, nor prohibition of importation, nor seizure within the country, then, until such time as the laws are modified accordingly, these measures shall be replaced by the actions and means available in such cases to nationals under the laws of such country.

(5) In the absence of any special sanctions ensuring the repression of false or deceptive indications of source, the sanctions provided by the corresponding provisions of the laws relating to marks or trade names shall be applicable.

Article 2

(1) Seizure shall take place at the instance of the customs authorities, who shall immediately inform the interested party, whether an individual person or a legal entity, in order that such party may, if he so desires, take appropriate steps in connection with the seizure effected as a conservatory measure. However, the public prosecutor or any other competent authority may demand seizure either at the request of the injured party or ex officio; the procedure shall then follow its normal course.

(2) The authorities shall not be bound to effect seizure in the case of transit.

Article 3

These provisions shall not prevent the vendor from indicating his name or address upon goods coming from a country other than that in which the sale takes place; but in such case the address or the name must be accompanied by an exact indication in clear characters of the country of place of manufacture or production, or by some other indication sufficient to avoid any error as to the true source of the wares.

Article 3*bis*

The countries to which this Agreement applies also undertake to prohibit the use, in connection with the sale or display or offering for sale of any goods, of all indications in the nature of publicity capable of deceiving the public as to the source of the goods, and appearing on signs, advertisements, invoices, wine lists, business letters or papers, or any other commercial communication.

Article 4

The courts of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of this Agreement, regional appellations concerning the source of products of the vine being, however, excluded from the reservation specified by this Article.

Article 5

(1) Countries of the Union for the Protection of Industrial Property which have not acceded to this Agreement may accede at their request in the manner prescribed by Article 16 of the General Convention.

(2) The provisions of Articles 16*bis* and 17*bis* of the General Convention shall apply to this Agreement.

Article 6

(1) This Act shall be ratified and the instruments of ratification deposited at Berne not later than May 1, 1963. It shall come into force, between the countries in whose names it has been ratified, one month after that date. However, if before that date it has been ratified in the name of at least six countries, it shall come into force, between those countries, one month after the deposit of the sixth ratification has been notified to them by the Government of the Swiss Confederation, and, in the countries in whose names it has been ratified at a later date, one month after the notification of each of such ratifications.

(2) Countries in whose names the instrument of ratification has not been deposited within the period provided for in the preceding paragraph may accede under the terms of Article 16 of the General Convention.

(3) This Act shall, as regards the relations between the countries to which it applies, replace the Agreement concluded at Madrid on April 14, 1891, and the Acts resulting from subsequent revisions.

(4) As regards countries to which this Act does not apply, but to which the Madrid Agreement revised at London in 1934 applies, the latter shall remain in force.

(5) Similarly, as regards countries to which neither this Act nor the Madrid Agreement revised at London applies, the Madrid Agreement revised at The Hague in 1925 shall remain in force.

(6) Similarly, as regards countries to which neither this Act nor the Madrid Agreement revised at London nor the Madrid Agreement revised at The Hagues applies, the Madrid Agreement revised at Washington in 1911 shall remain in force.

THE HAGUE AGREEMENT

concerning the International Deposit of Industrial Designs of November 6, 1925

I. London Act 1934. — II. The Hague Act 1960.
III. Additional Act of Monaco 1961

I.— London Act of June 2, 1934

Article 1

Nationals of any of the contracting countries, as well as persons who, upon the territory of the restricted Union, have satisfied the conditions of Article 3 of the General Convention, may, in all the other contracting countries, secure protection for their industrial designs by means of an international deposit made at the International Bureau of Industrial Property at Berne.

Article 2

(1) The international deposit shall include designs, either in the form of the industrial product for which they are intended, or in the form of a drawing, a photograph, or any other adequate graphic representation of the said design.

(2) The articles submitted shall be accompanied by an application for international deposit, in duplicate, containing, in French, the particulars specified in the Regulations.

Article 3

(1) As soon as the International Bureau receives an application for international deposit it shall record the application in a special Register and shall publish it, sending free of charge to each Office the desired number of copies of the periodical journal in which it publishes such records.

(2) Deposits shall be kept in the archives of the International Bureau.

Article 4

(1) Any person making an international deposit of an industrial design shall, in the absence of proof to the contrary, be deemed to be the owner of the work.

(2) International deposit is purely declaratory. The deposit, as such, shall have in the contracting countries the same effect as if the designs had been deposited there direct on the date of the international deposit, subject however to the special rules established by this Agreement.

(3) The publicity mentioned in the foregoing Article shall be deemed in all the contracting countries to be sufficient, and no other publicity may be required of the depositor, apart from any formalities to be complied with for the exercise of rights in accordance with the domestic law.

(4) The right of priority established by Article 4 of the General Convention shall be guaranteed to every design which has been the subject of an international deposit, without requiring compliance with any of the formalities prescribed in the said Article.

Article 5

The contracting countries agree not to require designs which have been the subject of an international deposit to bear any compulsory marking. They shall not cause the designs to lapse either by reason of non-exploitation or as a result of the introduction of articles similar to those protected.

Article 6

(1) The international deposit may consist of either a single design or several, the number thereof being stated in the application.

(2) Such deposit may be made under open cover or under sealed cover. In particular, there shall be accepted as a means of deposit under sealed cover double envelopes having a perforated control number (Soleau system) or any other system for ensuring identification.

(3) The maximum dimensions of covers or packets eligible for deposit shall be fixed by the Regulations.

Article 7

The duration of international protection is fixed at fifteen years from the date of deposit at the International Bureau at Berne; this term is divided into two periods, namely, one period of five years and one period of ten years.

Article 8

During the first period of protection, deposits shall be accepted either under open cover or under sealed cover; during the second period of protection, they shall be accepted only under open cover.

Article 9

During the first period, deposits under sealed cover may be opened at the request of the depositor or of a competent court; upon expiration of the first period, they shall, with a view to transition to the second period, be opened upon application for prolongation.

Article 10

In the course of the first six months of the fifth year of the first period, the International Bureau shall give unofficial notice of expiration to the depositor of the design.

Article 11

(1) When the depositor desires to secure extension of the protection by transition to the second period he shall, before the expiration of the first period, file with the International Bureau an application for prolongation.

(2) The International Bureau shall open the package, if sealed, shall publish in its journal notice of the prolongation granted, and shall notify all Offices thereof by sending to each the desired number of copies of the said journal.

Article 12

Designs forming the subject of deposits which have not been prolonged, as well as those in respect of which protection has expired, shall, upon the request of the proprietors and at their expense, be returned to them as they stand. If unclaimed, they shall be destroyed at the end of two years.

Article 13

(1) Depositors may, at any time, renounce their deposit, either wholly or in part, by means of a declaration addressed to the International Bureau; the Bureau shall give such declaration the publicity referred to in Article 3.

(2) Renunciation shall entail the return of the deposit to the depositor, at his expense.

Article 14

If a court or any other competent authority orders the communication to it of a secret design, the International Bureau, when duly required, shall open the deposited package, shall extract therefrom the requested design, and shall remit it to the authority so requiring. Similar communication shall take place on request in the case of an unsealed design. The article thus communicated shall be returned in the shortest possible time and reincorporated in the sealed package or in the envelope, as the case may be. Such transactions may be subject to a fee, which shall be fixed by the Regulations.

Article 15

The fees for an international deposit and for the prolongation thereof, which shall be paid before registration of the deposit or of the prolongation can be proceeded with, shall be as follows:

1. for a single design, and in respect of the first period of five years: 5 francs;
2. for a single design, upon expiration of the first period and in respect of the duration of the second period of ten years: 10 francs;
3. for a multiple deposit, and in respect of the first period of five years: 10 francs;
4. for a multiple deposit, upon expiration of the first period and in respect of the duration of the second period of ten years: 50 francs.

Article 16

The net annual proceeds from fees shall be divided, as provided in Article 8 of the Regulations, among the contracting countries by the International Bureau, after deduction of the common expenses necessitated by the implementation of this Agreement.

Article 17

(1) The International Bureau shall record in its Registers all changes affecting the proprietorship of designs which are notified to it by the parties concerned; it shall publish them in its journal and shall announce them to all Offices by sending to each the desired number of copies of the said journal.

(2) These transactions may be subject to a fee, which shall be fixed by the Regulations.

(3) The proprietor of an international deposit may assign the rights in respect of part only of the designs included in a multiple deposit or in respect of one or several of the contracting countries only;

but, in such cases, if the deposit has been made under sealed cover, the International Bureau shall open he package before recording the transfer in its Registers.

Article 18

(1) The International Bureau shall deliver to any person, upon application, and on payment of a fee fixed by the Regulations, an abstract of the entries in the Register in connection with any given design.

(2) Such abstract may, if the design lends itself thereto, be accompanied by a copy or a reproduction of the design, which has been supplied to the International Bureau and which the latter shall certify as being in conformity with the article deposited under open cover. If the Bureau is not in possession of such copies or reproductions, it shall have them made, on the request of interested parties and at their expense.

Article 19

The archives of the International Bureau, in so far as they contain unsealed deposits, shall be accessible to the public. Any person may inspect them, in the presence of an official, or may obtain from the Bureau written information on the contents of the Register, subject to payment of fees to be fixed by the Regulations.

Article 20

The details of the application of this Agreement shall be determined by Regulations the provisions of which may, at any time, be amended with the common consent of the Offices of the contracting countries.

Article 21

The provisions of this Agreement offer only a minimum of protection; they shall not preclude the claiming of the application of wider provisions that may be enacted by the domestic legislation of a contracting country, nor shall they prejudice the application of the provisions of the Berne Convention, as revised in 1928, relating to the protection of artistic works and works of art applied to industry.

Article 22

(1) Countries members of the Union which are not party to this Agreement may accede thereto at their request and in the manner prescribed by Articles 16 and 16*bis* of the General Convention.

(2) Notification of accession shall, of itself, ensure, upon the territory of the acceding country, the benefits of the foregoing provisions to industrial designs which, at the time of accession, are the subject of international deposit.

(3) However, any country may, in acceding to this Agreement, declare that application of this Act shall be limited to designs deposited from the date on which its accession becomes effective.

(4) In the case of denunciation of this Agreement, Article 17*bis* of the General Convention shall apply. International designs deposited up to the date on which denunciation becomes effective shall continue, throughout the period of international protection, to enjoy in the denouncing country, as well as in all other countries of the restricted Union, the same protection as if they had been deposited direct in such countries.

Article 23

(1) This Agreement shall be ratified and ratifications shall be deposited at London not later than July 1, 1938.

(2) It shall enter into force, between the countries which have ratified it, one month after that date, and shall have the same force and duration as the General Convention.

(3) This Act shall, as regards the relations between the countries which have ratified it, replace the Hague Agreement of 1925. However, the latter shall remain in force as regards the relations with countries which have not ratified this Act.

II. — The Hague Act of November 28, 1960 [1]

Article 1

(1) The contracting States constitute a Special Union for the international deposit of industrial designs.

(2) Only States members of the International Union for the Protection of Industrial Property may become party to this Agreement.

Article 2

For the purposes of this Agreement:

"1925 Agreement" shall mean the Hague Agreement concerning the International Deposit of Industrial Designs of November 6, 1925;

"1934 Agreement" shall mean the Hague Agreement concerning the International Deposit of Industrial Designs of November 6, 1925, as revised at London on June 2, 1934;

"this Agreement" or "the present Agreement" shall mean the Hague Agreement concerning the International Deposit of Industrial Designs as established by the present Act;

"Regulations" shall mean the Regulations for carrying out this Agreement;

"International Bureau" shall mean the Bureau of the International Union for the Protection of Industrial Property;

"international deposit" shall mean a deposit made at the International Bureau;

"national deposit" shall mean a deposit made at the national Office of a contracting State;

"multiple deposit" shall mean a deposit including several designs;

"State of origin of an international deposit" shall mean the contracting State in which the applicant has a real and effective industrial or commercial establishment or, if the applicant has such establishments in several contracting States, the contracting State which he has indicated in his application; if the applicant has no such establishment in any contracting State, the contracting State in which he has his domicile; if he has no domicile in a contracting State, the contracting State of which he is a national;

"State having a novelty examination" shall mean a contracting State the domestic law of which provides for a system which involves a preliminary ex officio search and examination by its national Office as to the novelty of each deposited design.

[1] This Act was not in force on June 11, 1967.

Article 3

Nationals of contracting States and persons who, without being nationals of any contracting State, are domiciled or have a real and effective industrial or commercial establishment in the territory of a contracting State may deposit designs at the International Bureau.

Article 4

(1) International deposit may be made at the International Bureau:

1. direct, or
2. through the intermediary of the national Office of a contracting State if the law of that State so permits.

(2) The domestic law of any contracting State may require that international deposits of which it is deemed to be the State of origin shall be made through its national Office. Non-compliance with this requirement shall not prejudice the effects of the international deposit in the other contracting States.

Article 5

(1) The international deposit shall consist of an application and one or more photographs or other graphic representations of the design, and shall involve payment of the fees prescribed by the Regulations.

(2) The application shall contain:

1. a list of the contracting States in which the applicant requests that the international deposit shall have effect;
2. the designation of the article or articles in which it is intended to incorporate the design;
3. if the applicant wishes to claim the priority provided for in Article 9, an indication of the date, the State, and the number of the deposit giving rise to the right of priority;
4. such other particulars as the Regulations may prescribe.

(3) *(a)* In addition, the application may contain:

1. a short description of characteristic features of the design;
2. a declaration as to who is the true creator of the design;
3. a request for deferment of publication as provided in Article 6(4).

(b) The application may be accompanied also by samples or models of the article or articles incorporating the design.

(4) A multiple deposit may include several designs intended to be incorporated in articles included in the same class of the International Design Classification referred to in Article 21(2), item 4.

Article 6

(1) The International Bureau shall maintain the International Design Register and shall register international deposits therein.

(2) The international deposit shall be deemed to have been made on the date on which the International Bureau received the application in due form, the fees payable with the application, and the photograph or photographs or other graphic representations of the design, or, if the International Bureau received them on different dates, on the last of these dates. The registration shall bear the same date.

(3) *(a)* For each international deposit, the International Bureau shall publish in a periodical bulletin:

1. reproductions in black and white or, at the request of the applicant, in color of the deposited photographs or other graphic representations;
2. the date of the international deposit;
3. the particulars prescribed by the Regulations.

(b) The International Bureau shall send the periodical bulletin to the national Offices as soon as possible.

(4) *(a)* The publication referred to in paragraph (3)*(a)* shall, at the request of the applicant, be deferred for such period as he may request. The said period may not exceed twelve months from the date of the international deposit. However, if priority is claimed, the starting date of such period shall be the priority date.

(b) At any time during the period referred to in subparagraph *(a)*, the applicant may request immediate publication or may withdraw his deposit. Withdrawal of the deposit may be limited to one or a few only of the contracting States and, in the case of a multiple deposit, to some only of the designs included therein.

(c) If the applicant fails to pay within the proper time the fees payable before the expiration of the period referred to in subparagraph *(a)*, the International Bureau shall cancel the deposit and shall not effect the publication referred to in paragraph (3)*(a)*.

(d) Until the expiration of the period referred to in subparagraph *(a)*, the International Bureau shall keep in confidence the registration of deposits made subject to deferred publication, and the public shall have no access to any documents or articles concerning such deposits. These provisions shall apply without limitation as to time if the applicant has withdrawn his deposit before the expiration of the said period.

(5) Except as provided in paragraph (4), the Register and all documents and articles filed with the International Bureau shall be open to inspection by the public.

Article 7

(1) *(a)* A deposit registered at the International Bureau shall have the same effect in each of the contracting States designated by the applicant in his application as if all the formalities required by the domestic law for the grant of protection had been complied with by the applicant and as if all administrative acts required to that end had been accomplished by the Office of such State.

(b) Subject to the provisions of Article 11, the protection of designs the deposit of which has been registered at the International Bureau is governed in each contracting State by those provisions of the domestic law which are applicable in that State to designs for which protection has been claimed on the basis of a national deposit and in respect of which all formalities and administrative acts have been complied with and accomplished.

(2) An international deposit shall have no effect in the State of origin if the laws of that State so provide.

Article 8

(1) Notwithstanding the provisions of Article 7, the national Office of a contracting State whose domestic law provides that the national Office may, on the basis of an administrative ex officio examination or pursuant to an opposition by a third party, refuse protection shall, in case of refusal, notify the International Bureau within six months that the design does not meet the requirements of its domestic law other than the formalities and administrative acts referred to in Article 7(1). If no such refusal is notified within a period of six months the international deposit shall become effective in that State as from the date of that deposit. However, in a contracting State having a novelty examination, the international deposit, while retaining its priority, shall, if no refusal is notified within a period of six months, become effective from the expiration of the said period unless the domestic law provides for an earlier date for deposits made with its national Office.

(2) The period of six months referred to in paragraph (1) shall be computed from the date on which the national Office receives the issue of the periodical bulletin in which the registration of the international deposit has been published. The national Office shall communicate that date to any person so requesting.

(3) The applicant shall have the same remedies against the refusal of the national Office referred to in paragraph (1) as if he had deposited his design in that Office; in any case, the refusal shall be subject to a request for re-examination or appeal. Notification of such refusal shall indicate:

1. the reasons for which it has been found that the design does not meet the requirements of the domestic law;
2. the date referred to in paragraph (2);
3. the time allowed for a request for re-examination or appeal;
4. the authority to which such request or appeal may be addressed.

(4) *(a)* The national Office of a contracting State whose domestic law contains provisions of the kind referred to in paragraph (1) requiring a declaration as to who is the true creator of the design or a description of the design may provide that, upon request and within a period of not less than sixty days from the dispatch of such a request by the said Office, the applicant shall file in the language of the application filed with the International Bureau:

1. a declaration as to who is the true creator of the design;
2. a short description emphasizing the essential charateristic features of the design as shown by the photographs or other graphic representations.

(b) No fees shall be charged by a national Office in connection with the filing of such declarations or descriptions, or for their possible publication by that national Office.

(5) *(a)* Any contracting State whose domestic law contains provisions of the kind referred to in paragraph (1) shall notify the International Bureau accordingly.

(b) If, under its legislation, a contracting State has several systems for the protection of designs one of which provides for novelty examination, the provisions of this Agreement concerning States having a novelty examination shall apply only to the said system.

Article 9

If the international deposit of a design is made within six months of the first deposit of the same design in a State member of the International Union for the Protection of Industrial Property, and if priority is claimed for the international deposit, the priority date shall be that of the first deposit.

Article 10

(1) An international deposit may be renewed every five years by payment only, during the last year of each period of five years, of the renewal fees prescribed by the Regulations.

(2) 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 deposit.

(3) At the time of paying the renewal fees, the international deposit number must be indicated and also, if renewal is not to be effected for all the contracting States for which the deposit is about to expire, those of the contracting States for which the renewal is to be effected.

(4) Renewal may be limited to some only of the designs included in a multiple deposit.

(5) The International Bureau shall record and publish renewals.

Article 11

(1) *(a)* The term of protection granted by a contracting State to designs which have been the subject of an international deposit shall not be less than:

1. ten years from the date of the international deposit if the deposit has been renewed;
2. five years from the date of the international deposit in the absence of renewal.

(b) However, if, under the provisions of the domestic law of a contracting State having a novelty examination, protection commences at a date later than that of the international deposit, the minimum terms provided for in subparagraph *(a)* shall be computed from the date at which protection commences in that State. The fact that the international deposit is not renewed or is renewed only once shall in no way affect the minimum terms of protection thus defined.

(2) If the domestic law of a contracting State provides, in respect of designs which have been the subject of a national deposit, for protection whose duration, with or without renewal, is longer than ten years, protection of the same duration shall, on the basis of the international deposit and its renewals, be granted in that State to designs which have been the subject of an international deposit.

(3) A contracting State may, under its domestic law, limit the term of protection of designs which have been the subject of an international deposit to the terms provided for in paragraph (1).

(4) Subject to the provisions of paragraph (1)*(b)*, protection in a contracting State shall terminate at the date of expiration of the international deposit, unless the domestic law of that State provides that protection shall continue after the date of expiration of the international deposit.

Article 12

(1) The International Bureau shall record and publish changes affecting ownership of a design which is the subject of an international deposit in force. It is understood that transfer of ownership may be limited to the rights arising from the international deposit in one or a few only of the contracting States and, in the case of a multiple deposit, to some only of the designs included therein.

(2) The recording referred to in paragraph (1) shall have the same effect as if it had been made in the national Offices of the contracting States.

Article 13

(1) The owner of an international deposit may, by means of a declaration addressed to the International Bureau, renounce his rights in respect of all or some only of the contracting States and, in the case of a multiple deposit, in respect of some only of the designs included therein.

(2) The International Bureau shall record and publish such declaration.

Article 14

(1) No contracting State may, as a condition of recognition of the right to protection, require that the article incorporating the design bear a sign or notice concerning the deposit of the design.

(2) If the domestic law of a contracting State provides for a notice on the article for any other purpose, such State shall regard such requirement as satisfied if all the articles offered to the public with the authorization of the owner of the rights in the design, or the tags attached to such articles, bear the international design notice.

(3) The international design notice shall consist of the symbol Ⓓ (a capital D in a circle) accompanied by:

1. the year of the international deposit and the name, or the usual abbreviation of the name, of the depositor, or
2. the number of the international deposit.

(4) The mere appearance of the international design notice on the article or the tags shall in no case be interpreted as implying a waiver of protection by virtue of copyright or on any other grounds, whenever, in the absence of such notice, such protection may be claimed.

Article 15

(1) The fees prescribed by the Regulations shall consist of:

1. fees for the International Bureau;
2. fees for the contracting States designated by the applicant, namely:
   (a) a fee for each contracting State;
   (b) a fee for each contracting State having a novelty examination and requiring the payment of a fee for such examination.

(2) Any fees paid in respect of one and the same deposit for a contracting State under paragraph (1), item 2*(a)*, shall be deducted from the amount of the fee referred to in paragraph (1), item 2*(b)*, if the latter fee becomes payable for the same State.

Article 16

(1) The fees for contracting States referred to in Article 15(1), item 2, shall be collected by the International Bureau and paid over annually to the contracting States designated by the applicant.

(2) *(a)* Any contracting State may notify the International Bureau that it waives its right to the supplementary fees referred to in Article 15(1), item 2*(a)*, in respect of international deposits of which any other contracting State making a similar waiver is deemed to be the State of origin.

(b) Such State may make a similar waiver in respect of international deposits of which it is itself deemed to be the State of origin.

Article 17

The Regulations shall govern the details concerning the implementation of this Agreement and in particular:

1. the languages and the number of copies in which the application for deposit must be filed, and the data to be supplied in the application;
2. the amounts and the dates and method of payment of the fees for the International Bureau and for the States, including the limits imposed on the fee for contracting States having a novelty examination;
3. the number, size, and other characteristics, of the photographs or other graphic representations of each design deposited;
4. the length of the description of characteristic features of the design;
5. the limits within which and conditions under which samples or models of the articles incorporating the design may accompany the application;
6. the number of designs that may be included in a multiple deposit and other conditions governing multiple deposits;
7. all matters relating to the publication and distribution of the periodical bulletin referred to in Article 6(3)*(a)*, including the number of copies of the bulletin which shall be given free of charge to the national Offices and the number of copies which may be sold at a reduced price to such Offices;

8. the procedure for notification by contracting States of any refusal provided for under Article 8(1), and the procedure for communication and publication of such refusals by the International Bureau;
9. the conditions for recording and publication by the International Bureau of the changes affecting the ownership of a design referred to in Article 12(1), and for the renunciations referred to in Article 13;
10. the disposal of documents and articles concerning deposits for which the possibility of renewal has ceased to exist.

Article 18

The provisions of this Agreement shall not preclude the making of a claim to the benefit of any greater protection which may be granted by domestic legislation in a contracting State, nor shall they affect in any way the protection accorded to works of art and works of applied art by international copyright treaties and conventions.

Article 19

The fees of the International Bureau for services provided for by this Agreement shall be fixed in such a manner:

(a) that the proceeds therefrom cover all the expenses of the International Design Service and all those necessitated by the preparation and holding of meetings of the International Design Committee or conferences for the revision of this Agreement;

(b) that they allow for the maintenance of the reserve fund referred to in Article 20.

Article 20

(1) There shall be a reserve fund of 250,000 Swiss francs. The amount of the reserve fund may be modified by the International Design Committee referred to in Article 21.

(2) The reserve fund shall be replenished by the surplus receipts of the International Design Service.

(3) *(a)* However, at the time of the entry into force of this Agreement, the reserve fund shall be constituted by a single contribution paid by each contracting State and computed in proportion to the number of units corresponding to the class to which it belongs by virtue of Article 13(8) of the Paris Convention for the Protection of Industrial Property.

(b) States which become party to this Agreement after it enters into force shall also pay a single contribution. The contribution shall be computed according to the principles formulated in the preceding subparagraph, so that all States, whatever the date of their becoming party to the Agreement, shall pay the same contribution per unit.

(4) When the amount of the reserve fund exceeds the fixed ceiling, the surplus shall be periodically distributed among the contracting States, in proportion to the single contribution paid by each, up to the maximum amount of that contribution.

(5) When the single contributions have been fully reimbursed, the International Design Committee may decide that States subsequently becoming party to the Agreement shall not be required to pay the single contribution.

Article 21

(1) There shall be an International Design Committee consisting of representatives of all the contracting States.

(2) The Committee shall have the following duties and powers:

1. to draw up its own rules of procedure;
2. to amend the Regulations;
3. to modify the ceiling of the reserve fund referred to in Article 20;
4. to establish the International Design Classification;
5. to study matters concerning the application and possible revision of this Agreement;
6. to study all other matters concerning the international protection of designs;
7. to approve the yearly management reports of the International Bureau and to give general instructions to the International Bureau concerning the discharge of the duties assigned to it under this Agreement;
8. to draw up a report on the foreseeable expenditure of the International Bureau for each triennial period to come.

(3) The decisions of the Committee shall require four-fifths of the votes of its members present or represented and voting in the case of paragraph (2), items 1, 2, 3, and 4, and a simple majority in all other cases. Abstentions shall not be considered as votes.

(4) The Committee shall be convened by the Director of the International Bureau:

1. at least once every three years;
2. at any time at the request of one-third of the contracting States, or, if deemed necessary, upon the initiative of the Director of the International Bureau or the Government of the Swiss Confederation.

(5) The travel expenses and subsistence allowances of members of the Committee shall be borne by their respective Governments.

Article 22

(1) The Regulations may be amended either by the Committee as prescribed in Article 21(2), item 2, or in accordance with the written procedure provided for in paragraph (2), below.

(2) In the case of written procedure, amendments shall be proposed by the Director of the International Bureau in a circular letter addressed to the Government of each contracting State. The amendments shall be regarded as adopted if, within one year from their communication, no contracting State has raised an objection.

Article 23

(1) This Agreement shall remain open for signature until December 31, 1961.

(2) It shall be ratified and the instruments of ratification shall be deposited with the Government of the Netherlands.

Article 24

(1) States members of the International Union for the Protection of Industrial Property which have not signed this Agreement may accede thereto.

(2) Such accessions shall be notified through diplomatic channels to the Government of the Swiss Confederation, and by the latter to the Governments of all contracting States.

Article 25

(1) Each contracting State undertakes to provide for the protection of industrial designs and to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Agreement.

(2) At the time a contracting State deposits its instrument of ratification or accession, it must be in a position under its domestic law to give effect to the provisions of this Agreement.

Article 26

(1) This Agreement shall enter into force one month after the date on which the Government of the Swiss Confederation has dispatched a notification to the contracting States of the deposit of ten instruments of ratification or accession, at least four of which are those of States which, at the date of the present Agreement, are not party either to the 1925 Agreement or to the 1934 Agreement.

(2) Thereafter, the deposit of instruments of ratification and accession shall be notified to the contracting States by the Government of the Swiss Confederation. Such ratifications and accessions shall become effective one month after the date of the dispatch of such notification unless, in the case of accession, a later date is indicated in the instrument of accession.

Article 27

Any contracting State may at any time notify the Government of the Swiss Confederation that this Agreement shall also apply to all or part of those territories for the external relations of which it is responsible. Thereupon, the Government of the Swiss Confederation shall communicate such notification to the contracting States and the Agreement shall apply also to the said territories one month after the dispatch of the communication by the Government of the Swiss Confederation to the contracting States unless a later date is indicated in the notification.

Article 28

(1) Any contracting State may, by notification addressed to the Government of the Swiss Confederation, denounce this Agreement in its own name and on behalf of all or part of the territories designated in the notification under Article 27. Such notification shall take effect one year after its receipt by the Government of the Swiss Confederation.

(2) Denunciation shall not relieve any contracting State of its obligations under this Agreement in respect of designs deposited at the International Bureau prior to the date on which the denunciation takes effect.

Article 29

(1) This Agreement shall be submitted to periodical revision with a view to the introduction of amendments designed to improve the protection resulting from the international deposit of designs.

(2) Revision conferences shall be called at the request of the International Design Committee or of not less than one-half of the contracting States.

Article 30

(1) Two or more contracting States may at any time notify the Government of the Swiss Confederation that, subject to the conditions indicated in the notification:

1. a common Office shall be substituted for the national Office of each of them;
2. they shall be deemed to be a single State for the purposes of the application of Articles 2 to 17 of this Agreement.

(2) Such notification shall not take effect until six months after the date of dispatch of the communication thereof by the Government of the Swiss Confederation to the other contracting States.

Article 31

(1) This Agreement alone shall be applicable as regards the mutual relations of States party to both the present Agreement and the 1925 Agreement or the 1934 Agreement. However, such States shall, in their mutual relations, apply the 1925 Agreement or the 1934 Agreement, as the case may be, to designs deposited at the International Bureau prior to the date on which the present Agreement becomes applicable as regards their mutual relations.

(2) *(a)* Any State party to both the present Agreement and the 1925 Agreement shall continue to apply the 1925 Agreement in its relations with States party only to the 1925 Agreement, unless the said State has denounced the 1925 Agreement.

(b) Any State party to both the present Agreement and the 1934 Agreement shall continue to apply the 1934 Agreement in its relations with States party only to the 1934 Agreement, unless the said State has denounced the 1934 Agreement.

(3) States party to the present Agreement only shall not be bound to States which, without being party to the present Agreement, are party to the 1925 Agreement or the 1934 Agreement.

Article 32

(1) Signature and ratification of, or accession to, the present Agreement by a State party, at the date of this Agreement, to the 1925 Agreement or the 1934 Agreement shall be deemed to include signature and ratification of, or accession to, the Protocol annexed to the present Agreement, unless such State makes an express declaration to the contrary at the time of signing or depositing its instrument of accession.

(2) Any contracting State having made the declaration referred to in paragraph (1), or any other contracting State not party to the 1925 Agreement or the 1934 Agreement, may sign or accede to the Protocol annexed to this Agreement. At the time of signing or depositing its instrument of accession, it may declare that it does not consider itself bound by the provisions of paragraphs (2)*(a)* or (2)*(b)* of the Protocol; in such case, the other States party to the Protocol shall be under no obligation to apply, in their relations with that State, the provisions mentioned in such declaration. The provisions of Articles 23 to 28 inclusive shall apply by analogy.

Article 33

This Act shall be signed in a single copy which shall be deposited in the archives of the Government of the Netherlands. A certified copy shall be transmitted by the latter to the Government of each State which has signed or acceded to this Agreement.

PROTOCOL

States party to this Protocol have agreed as follows:

(1) The provisions of this Protocol shall apply to designs which have been the subject of an international deposit and of which one of the States party to this Protocol is deemed to be the State of origin.

(2) In respect of designs referred to in paragraph (1), above:

(a) the term of protection granted by States party to this Protocol to the designs referred to in paragraph (1) shall not be less than fifteen years from the date provided for in paragraphs (1)*(a)* or (1)*(b)*, as the case may be, of Article 11;

(b) the appearance of a notice on the articles incorporating the designs or on the tags attached thereto shall in no case be required by the States party to this Protocol, either for the exercise in their territories of rights arising from the international deposit, or for any other purpose.

III.— Additional Act of Monaco of November 18, 1961

Article 1

(1) Over and above the fees established in Article 15 of the Hague Agreement as revised at London, the following additional fees shall be payable in respect of the transactions hereinafter specified, that is to say:

1. for the deposit of a single design and in respect of the first period of five years: 20 Swiss francs;
2. for the deposit of a single design, upon expiration of the first period and in respect of the duration of the second period of ten years: 40 Swiss francs;
3. for a multiple deposit and in respect of the first period of five years: 50 Swiss francs;
4. for a multiple deposit, upon expiration of the first period and in respect of the duration of the second period of ten years: 200 Swiss francs.

(2) If the fees prescribed in items 2 and 4 of Article 15 of the Hague Agreement as revised at London have been paid after the date of this Act but before its entry into force—the latter being determined for each State in accordance with the provisions of paragraphs (2) and (3) of Article 7—where the first period of protection expires after such entry into force, the person making the deposit must pay the additional prolongation fee specified in items 2 and 4 of paragraph (1) of this Article. Upon entry into force of this Act, the International Bureau shall advise the depositors concerned that they must pay the additional fee within a period of six months from the receipt of such notice. If payment is not effected within such period the prolongation shall be deemed to be null and the reference thereto shall be deleted from the Register. In such case, the fee for prolongation already paid shall be refunded.

Article 2

Additional fees of 20 Swiss francs or 10 Swiss francs shall likewise be payable in respect of every other transaction provided for by the Hague Agreement as revised at London and for which the Regulations of the said Agreement prescribe a fee of 5 Swiss francs or 2.50 Swiss francs.

Article 3

(1) The fees prescribed in Articles 1 and 2 of this Act may be modified on the proposal of the International Bureau or of the Swiss Government, in accordance with the procedure hereinafter defined.

(2) Such proposals shall be communicated to the Offices of States party to this Act, which shall communicate their views to the International Bureau within a period of six months. If after that period, a modification of a fee is adopted by a majority of the said Offices without giving rise to any opposition, such modification shall enter into force on the first day of the month following the date of dispatch of the notification thereof by the International Bureau to the aforesaid Offices.

Article 4

(1) There shall be established from the excess receipts derived from the application of the additional fees a reserve fund not exceeding 50,000 Swiss francs.

(2) When the reserve fund has reached this amount, any further excess receipts shall be distributed among the States party to this Act in proportion to the number of designs deposited by their nationals, or by the other persons referred to in Article 1 of the Hague Agreement as revised at London.

Article 5

For such time as all countries members of the Union created by the Hague Agreement as revised at London are not party to this Act or to the Hague Agreement of November 28, 1960, the International Bureau shall draw up separate accounts for countries which are party to this Act and for those which are party only to the Hague Agreement as revised at London.

Article 6

(1) This Act shall remain open for signature until March 31, 1962.

(2) States party to the Hague Agreement as revised at London which have not signed this Act may accede thereto. In such cases, the provisions of Articles 16 and 16*bis* of the Paris Convention for the Protection of Industrial Property shall be applicable.

Article 7

(1) This Act shall be ratified and the instruments of ratification shall be deposited with the Government of the Principality of Monaco. Such deposits shall be notified by the latter Government to the Government of the Swiss Confederation, which shall notify them to the contracting States.

(2) This Act shall come into force at the expiration of a period of one month from the date of dispatch by the Government of the Swiss Confederation to the contracting States of the notification of the deposit of the second instrument of ratification.

(3) As regards States which deposit their instruments of ratification subsequently to the deposit of the second such instrument of ratification as is mentioned in the preceding paragraph, this Act shall enter into force upon expiration of a period of one month from the date of dispatch by the Government of the Swiss Confederation to the contracting States of the notification of the deposit of the instrument of ratification concerned.

Article 8

This Act shall be signed in a single copy and shall be deposited in the archives of the Government of the Principality of Monaco. A certified copy thereof shall be sent by the latter to each of the Governments of the countries of the Hague Union.

NICE AGREEMENT

concerning the International Classification of Goods and Services to which Trademarks are Applied of June 15, 1957 [1]

Article 1

(1) The countries to which this Agreement applies form a Special Union.

(2) They adopt, for the purpose of the registration of marks, a single classification of goods and services.

(3) This classification consists of:

(a) a list of classes;

(b) an alphabetical list of goods and services with an indication of the classes into which they fall.

(4) The list of classes and the alphabetical list of goods are those which were published in 1935 by the International Bureau for the Protection of Industrial Property.

(5) The list of classes and the alphabetical list of goods and services may be modified or supplemented by the Committee of Experts set up under Article 3 of this Agreement, in accordance with the procedure laid down in that Article.

(6) The classification shall be established in the French language and, at the request of any contracting country, an official translation into the language of that country may be published by the International Bureau in agreement with the national Administration concerned. Each translation of the list of goods and services shall mention against each of the goods or services, in addition to its number according to the alphabetical listing in the language concerned, the number which it bears in the list established in the French language.

Article 2

(1) Subject to the requirements prescribed by this Agreement, the effect of the international classification shall be that attributed to it by each contracting country. In particular, the international classification shall not bind the contracting countries in respect of either the evaluation of the extent of the protection afforded to any given mark, or the recognition of service marks.

(2) Each of the contracting countries reserves the right to apply the international classification of goods and services as a principal or as a subsidiary system.

(3) The Administrations of the contracting countries shall include in the official documents and publications concerning the registrations of marks the numbers of the classes of the international classification to which the goods or services for which the mark is registered belong.

(4) The fact that a term is included in the alphabetical list of goods and services in no way affects any rights which might exist in such a term.

Article 3

(1) A Committee of Experts charged with deciding all modifications and additions to be made in the international classification of goods and services shall be set up at the International Bureau. Each of

[1] See page 357, footnote 1.

the contracting countries shall be represented on the Committee of Experts, which shall be organized according to Regulations adopted by a majority of the countries represented. The International Bureau shall be represented on the Committee.

(2) Proposals for modification or addition shall be addressed by the Administrations of the contracting countries to the International Bureau, which shall transmit them to the members of the Committee of Experts not later than two months before that session of the Committee at which the said proposals are to be considered.

(3) Decisions of the Committee concerning modifications in the classification shall be made with the unanimous consent of the contracting countries. "Modification" means any transfer of goods from one class to another or the creation of any new class entailing such transfer.

(4) Decisions of the Committee concerning additions to the classification shall be made by a simple majority of the contracting countries.

(5) Each expert shall have the right to submit his opinion in writing or to delegate his powers to the expert of another country.

(6) If a country does not appoint an expert to represent it, or if the expert appointed does not submit his opinion within a period to be prescribed by the Regulations, the country concerned shall be considered to have accepted the decision of the Committee.

Article 4

(1) Every modification and addition decided by the Committee of Experts shall be notified to the Administrations of the contracting countries by the International Bureau. The decisions shall come into force, in so far as additions are concerned, as soon as the notification is received, and, as far as modifications are concerned, within a period of six months to be reckoned from the date of dispatch of the notification.

(2) The International Bureau, as the depositary of the classification of goods and services, shall incorporate therein the modifications and additions which have entered into force. Announcements of these modifications and additions shall be published in the two periodicals *La Propriété industrielle* and *Les Marques internationales.*

Article 5

Reproduced on page 359, footnote 2.

Article 6

Reproduced on page 371, footnote 3.

Article 7

This Agreement shall come into force between those countries which have ratified or acceded to it one month from the date on which the instruments of ratification have been deposited or the accessions notified by not less than ten countries. The Agreement shall have the same force and duration as the Paris Convention for the Protection of Industrial Property.

Article 8

(1) This Agreement shall be submitted to periodical revisions with a view to the introduction of desired improvements.

(2) Every revision shall be considered at a conference which shall be held in one of the contracting countries, between the delegates of the said countries.

(3) The Administration of the country in which the conference is to be held shall prepare the work of the conference, with the assistance of the International Bureau.

(4) The Director of the International Bureau shall attend the meetings of the conferences and take part in the discussions, but without the right to vote.

Article 9

(1) Each contracting country shall be entitled to denounce this Agreement by means of a written notification addressed to the Government of the Swiss Confederation.

(2) This denunciation, which shall be communicated by the Government of the Swiss Confederation to all other contracting countries, shall have effect only in respect of the denouncing country and only twelve months after receipt of the notification addressed to the Government of the Swiss Confederation, the Agreement remaining in force for the other contracting countries.

Article 10

The provisions of Article 16*bis* of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

Article 11

(1) This Agreement shall be signed in a single copy, which shall be deposited in the archives of the Ministry of Foreign Affairs of the French Republic. A certified copy shall be transmitted through diplomatic channels to each of the Governments of the contracting countries.

(2) This Agreement shall remain open for signature by the member countries of the Union for the Protection of Industrial Property until December 31, 1958, or until it comes into force, whichever date is the earlier.

LISBON AGREEMENT

for the Protection of Appellations of Origin and Their International Registration of October 31, 1958

Article 1

The countries to which this Agreement applies form a Special Union within the framework of the Union for the Protection of Industrial Property.

They undertake to protect on their territories, in accordance with the terms of this Agreement, the appellations of origin of products of the other countries of the Special Union, recognized and protected as such in the country of origin and registered at the Bureau of the Union for the Protection of Industrial Property.

Article 2

(1) In this Agreement "appellation of origin" means the geographical name of a country, region or locality which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

(2) The country of origin is the country whose name, or the country in which is situated the region or locality whose name, constitutes the appellation of origin which has given the product its reputation.

Article 3

Protection shall be ensured against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as "kind", "type", "make", "imitation", or the like.

Article 4

The provisions of this Agreement shall in no way exclude the protection already granted to appellations of origin in each of the countries of the Special Union by virtue of other international instruments, such as the Paris Convention of March 20, 1883, for the Protection of Industrial Property and the Madrid Agreement of April 14, 1891, for the Repression of False or Deceptive Indications of Source, last revised at Lisbon on October 31, 1958, or by virtue of national legislation or judicial decisions.

Article 5

(1) The registration of appellations of origin shall be effected at the International Bureau for the Protection of Industrial Property, at the request of the Administrations of the countries of the Special Union, in the name of any individual person or legal entity, public or private, having, according to their national legislation, a right to use such appellations.

(2) The International Bureau shall, without delay, notify the Administrations of the various countries of the Special Union of such registrations, and shall publish them in a periodical.

(3) The Administration of any country may declare that it cannot ensure the protection of an appellation of origin whose registration has been notified to it, but only in so far as its declaration is notified to the International Bureau, together with an indication of the reasons therefor, within a period of one year from the receipt of the notification of the registration, and provided that this declaration is not detrimental, in the country concerned, to the other forms of protection of the appellation which the owner thereof may be entitled to claim under Article 4, above.

(4) This declaration may not be opposed by the Administrations of the countries of the Union after the expiry of the period of one year provided for in the preceding paragraph.

(5) The International Bureau shall, as soon as possible, notify the Administration of the country of origin of any declaration made under the terms of paragraph (3) by the Administration of another country. The interested party, when informed by his national Administration of the declaration made by another country, may resort, in that other country, to all the judicial and administrative remedies open to the nationals of that country.

(6) If an appellation which has been granted protection in a given country pursuant to the notification of its international registration has already been used by third parties in that country from a date prior to that notification, the competent Administration of the said country shall have the right to grant to such third parties a period not exceeding two years to terminate such use, on condition that it advise the International Bureau accordingly during the three months following the expiration of the period of one year provided for in paragraph (3), above.

Article 6

An appellation which has been granted protection in one of the countries of the Special Union, pursuant to the procedure provided for in Article 5, cannot, in that country, be considered as having become generic, as long as it is protected as an appellation of origin in the country of origin.

Article 7

(1) Registration effected at the International Bureau in conformity with Article 5 shall ensure, without renewal, protection for the whole of the period referred to in the preceding Article.

(2) A single fee shall be paid for the registration of each appellation of origin.

The amount of the fee to be collected shall be fixed unanimously by the Council established under Article 9, below.

The receipts from the fees collected by the International Bureau shall be used to meet the expenses of the international registration service of appellations of origin, subject to the application, to the countries of the Special Union, of Article 13(8) of the Paris Convention.

Article 8

The legal action required for ensuring the protection of appellations of origin may be taken in each of the countries of the Special Union under the provisions of the national legislation:

1. at the instance of the competent Administration or at the request of the public prosecutor;
2. by any interested party, whether an individual person or a legal entity, whether public or private.

Article 9

(1) A Council composed of representatives of all the countries members of the Special Union shall be established, at the International Bureau, for the implementation of this Agreement.

(2) This Council shall draw up its own statutes and rules of procedure and coordinate them with the organs of the Union for the Protection of Industrial Property and with those of international organizations which have concluded agreements for cooperation with the International Bureau.

Article 10

(1) The details for carrying out this Agreement are fixed in the Regulations which shall be signed at the same time as the Agreement.

(2) This Agreement, and the Regulations for carrying it out, may be revised in accordance with Article 14 of the General Convention.

Article 11

(1) Member countries of the Union for the Protection of Industrial Property which are not parties to this Agreement may accede to it at their request and in the manner prescribed in Article 16 and 16*bis* of the Paris Convention.

(2) Notification of accession shall, in itself, ensure, on the territory of the acceding country, the benefit of the above provisions for appellations of origin which, at the time of the accession, are the subject of international registration.

(3) However, any country acceding to this Agreement may, within a period of one year, declare in regard to which appellations of origin, already registered at the International Bureau, it wishes to exercise the right provided for in Article 5(3).

(4) In the event of denunciation of this Agreement, Article 17*bis* of the Paris Convention shall apply.

Article 12

This Agreement shall remain in force as long as five countries at least are parties to it.

Article 13

This agreement shall be ratified and the instruments of ratification deposited with the Government of the Swiss Confederation.

It shall come into force upon ratification by five countries, one month after the deposit of the fifth ratification has been notified by the Government of the Swiss Confederation, and, in the countries in whose name it is ratified at a later date, one month after the notification of each of such ratifications.

Article 14

(1) This Agreement shall be signed in a single copy in the French language, which shall be deposited in the archives of the Government of the Swiss Confederation. A certified copy shall be transmitted by the latter to each of the Governments of the countries of the Special Union.

(2) This Agreement shall remain open for signature by the countries of the Union for the Protection of Industrial Property until December 31, 1959.

(3) Official translations of this Agreement shall be established in English, German, Italian, Portuguese and Spanish.

PREPARATORY DOCUMENTS DISTRIBUTED BEFORE THE OPENING OF THE CONFERENCE

(Documents S/1 to S/12)

DOCUMENT S/1

BERNE CONVENTION FOR THE PROTECTION
OF LITERARY AND ARTISTIC WORKS

(BERNE CONVENTION)

Proposals for Revising the Substantive Copyright Provisions (Articles 1 to 20)

(Prepared by the Government of Sweden with the Assistance of BIRPI)

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ABBREVIATIONS

Study Group: Swedish/BIRPI Study Group, composed of representatives of the Swedish Government and BIRPI, set up in accordance with Article 24, paragraph (2), of the Berne Convention, to prepare for the Revision Conference at Stockholm in 1967.

Permanent Committee: Intergovernmental Committee set up in accordance with a Resolution of the last Revision Conference at Brussels in 1948, for the purpose of assisting the Bureau of the Union with the task entrusted to it under Article 24, paragraph (2), of the Convention, and composed at present of the following twelve countries: Belgium, Brazil, Denmark, France, Federal Republic of Germany, India, Italy, Portugal, Rumania, Spain, Switzerland and the United Kingdom.

Committee of Film Experts: International Study Group meeting in accordance with a Resolution of the Permanent Committee at its 9th session in London in 1960, composed of experts acting in a personal capacity without binding their respective Governments, and charged with the task of preparing a report with a view to a possible revision of the rules of the Convention concerning the international protection of cinematographic works.

1963 Report: Report drawn up by the Swedish/BIRPI Study Group as at June 1, 1963, and submitted to the 1963 Committee of Experts for an opinion.

1963 Committee of Experts: Committee of an advisory nature, convened by the Director of BIRPI in November 1963, in accordance with a Resolution of the Permanent Committee at its 10th session in Madrid in 1961, and composed of experts acting in a personal capacity without binding their respective Governments.

1964 Report: Report drawn up by the Swedish/BIRPI Study Group as at July 1, 1964, and submitted to the 1965 Committee of Governmental Experts.

1965 Committee of Governmental Experts: Committee of a governmental nature, convened by the Director of BIRPI in July 1965 in accordance with a Resolution of the Permanent Committee at its 11th session in New Delhi in 1963, open to all countries of the Union and composed of experts instructed to express the views of their respective Governments on the proposals for the revision of the Berne Convention drafted by the Swedish/BIRPI Study Group.

INTRODUCTION

The Diplomatic Conference which met at Brussels from June 5 to 26, 1948, to revise the Berne Convention for the Protection of Literary and Artistic Works, unanimously agreed that the next Revision Conference of the Berne Convention should be held at Stockholm [1]. The Swedish Government subsequently decided that this Conference would take place in 1967 [2].

In accordance with the provisions of Article 24, paragraph (2), of the Convention, the Swedish Government prepared, with the assistance of BIRPI, the Programme of the Conference.

This Programme is based on the preliminary drafts prepared by a Study Group composed of representatives of the Swedish Government and BIRPI [3]. In drawing up these drafts, the Swedish members of the Study Group were in constant touch with a Committee of Experts appointed by the Swedish Government to assist them in the preparation of the revision and composed of representatives of the competent authorities, of legal doctrine, and of the professional bodies concerned. The deliberations of this Committee were attended by observers appointed by the Danish, Finnish and Norwegian Governments.

The Study Group drew up its first report on June 1, 1963, together with the preliminary drafts of the texts, which were examined by an international Committee of Experts of an advisory nature, meeting in Geneva from November 18 to 23, 1963 [4]. The experts who participated in the work of this Committee were acting in a personal capacity without binding their Governments.

In the light of the deliberations of this Committee of Experts, the Study Group drew up a second report and draft texts, on July 1, 1964, which were examined by a Committee of Governmental Experts meeting in Geneva from July 5 to 14, 1965 [5]. These experts expressed the views of their respective Governments, without finally binding the latter.

The 1965 Committee asked the Study Group to make a further examination of some questions which had not yet been settled. After considering these questions, the Study Group made certain additions to the text adopted by the Committee. It also felt it to be necessary to suggest a number of changes of substance on several points, and it further proposed some alterations to the wording.

The text proposed by the Study Group has been considered by the Swedish Government, in consultation with BIRPI, as being suitable for presentation as the official Programme of the Stockholm Conference.

In accordance with its Rules of Procedure (Rule 5), the Permanent Committee of the Berne Union was duly informed of the progress of the preparations for the revision of the Convention, notably at its ordinary sessions in Madrid (1961), New Delhi (1963), and Paris (1965), and it gave its advice on the procedure to be followed.

In this document, mention will be made:
under the heading "Preparatory Work," of the report drawn up by the 1963 Study Group, the discussions

[1] See the *Documents of the Brussels Conference*, pp. 83 and 87.

[2] See *Le Droit d'Auteur (Copyright)*, 1963, p. 68.

[3] On behalf of the Swedish Government, Mr. Torwald Hesser, Justice of the Supreme Court, and Professor Svante Bergström, of the University of Uppsala; on behalf of BIRPI, Professor G.H.C. Bodenhausen, Director, and Mr. Claude Masouyé, Counsellor, Head of the Copyright Division.

[4] This Committee was composed of experts from the following member countries of the Berne Union: Belgium, Czechoslovakia, France, Federal Republic of Germany, India, Italy, Poland, Spain, Sweden, Switzerland, Tunisia and the United Kingdom. The United States of America was represented by observers, as were a large number of interested international intergovernmental or non-governmental organizations. The Chairman of the Committee was Professor Eugen Ulmer (Federal Republic of Germany). See *Le Droit d'Auteur (Copyright)*, 1964, pp. 21 *et seq.*

[5] Experts from the following member countries of the Union participated in the work of this Committee of Governmental Experts: Austria, Belgium, Brazil, Bulgaria, Congo (Léopoldville), Czechoslovakia, Denmark, Finland, France, Federal Republic of Germany, Greece, Hungary, India, Ireland, Israel, Italy, Japan, Lebanon, Luxembourg, Monaco, Morocco, Netherlands, Norway, Poland, Portugal, Senegal, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom, Yugoslavia.
The United States of America was represented by observers at this Committee also, as were a great many interested international intergovernmental and non-governmental organizations. The Chairman of the Committee was Mr. Hans Morf (Switzerland). See *Copyright*, 1965, pp. 194 *et seq.*

within the 1963 Committee of Experts, the report drawn up by the 1964 Study Group, and the discussions within the 1965 Committee of Governmental Experts;

under the heading "Programme of the Conference," of the official proposals submitted to the Conference.

A number of abbreviations are used throughout this document, and an explanation of the significance of these abbreviations is given in the preface to the document.

Finally, all the revision proposals are reproduced in an Annex to the document, with the Brussels text of the Convention on the opposite left-hand pages.

For a number of reasons, particularly with a view to a closer agreement between the authentic French text and the English text, and also in the event that the latter may hereafter become equally authentic, it was considered advisable to entrust a small working party [1] with the task of revising the wording of the English version prepared at Brussels. As in the French document, the Brussels version is reproduced in the English document on the left-hand pages of the Annex, but the revision proposals as a whole are presented on the right-hand pages in the new English version drafted by the above-mentioned working party.

[1] This working party was composed of: Professor Svante Bergström, of the University of Uppsala; Mr. Claude Masouyé, Counsellor, BIRPI; Professor Melville B. Nimmer, of the University of California, Los Angeles; Mr. William Wallace, Assistant-Comptroller, Board of Trade, London.

I. EARLIER STUDIES RELATING TO CERTAIN QUESTIONS

In some fields, it was possible to make use of previous studies, undertaken on the initiative of the Permanent Committee of the Berne Union. This was the case, for example, as regards the problems concerning the protection of cinematographic works, the question whether news and other means of information should be protected, and whether the normal term of protection should be extended.

(a) All the problems relating to the protection of cinematographic works were discussed by the Permanent Committee at its fourth session held at Neuchâtel in July 1952 [1]. On instructions from the Committee, research in this field was undertaken by Professor Eugen Ulmer in 1953 [2], and by Professor Gérard Lyon-Caen in 1959 [3]. In accordance with a Resolution adopted by the Permanent Committee in the course of its 9th session held at London in October and November, 1960 [4], an international Study Group, hereinafter called the "Committee of Film Experts," was set up the following year to examine these problems [5]. This Group was presided over by Professor Eugen Ulmer, and Professor Henri Desbois acted as its Rapporteur. The report [6] which was adopted was subsequently addressed to Governments and to certain international professional bodies, for comments [7].

(b) The question whether it is desirable to protect news and other means of information was raised by the Permanent Committee in the course of its 7th session at Geneva in August, 1958 [8]. Referring, among other sources, to a report drawn up by Mr. William Wallace, the Permanent Committee expressed the wish that the question should be examined as to whether, and if so in what form, improvement or clarification of the protection of the forms of expression of news and other press information by means of copyright could be included in the programme of the Stockholm Conference.

(c) The question of an extension of the normal term of protection was discussed by the Permanent Committee at its sessions held at Munich (1959), London (1960), and Madrid (1961) [9]. On the basis of resolutions adopted on this subject, the problem was studied by two Committees of Experts which met at Geneva on January 9 to 11,1961, and at Rome on May 14 to 16, 1962 [10]. The experts pronounced in favour of a solution within the framework of a special arrangement between the interested countries and they outlined certain basic principles for a treaty of this kind.

[1] See *Le Droit d'Auteur*, 1952, pp. 100 *et seq.*

[2] See *ibid.*, 1953, pp. 97 *et seq.*

[3] See *ibid.*, 1959, pp. 217 *et seq.*

[4] See *ibid.*, 1960, p. 335.

[5] See *ibid.*, 1961, p. 214 and pp. 318 *et seq.*

[6] See *Le Droit d'Auteur (Copyright)*, 1962, pp. 24 *et seq.*

[7] The researches of the Study Group on the international protection of cinematographic works applied equally to the protection of these works by the Universal Copyright Convention.

[8] See *Le Droit d'Auteur*, 1959, pp. 188 *et seq.*

[9] See *ibid.*, 1959, pp. 206 *et seq.*; 1960, pp. 324 *et seq.*; and 1961, pp. 318 *et seq.*

[10] See *ibid.*, 1961, pp. 56 *et seq.*; and *Le Droit d'Auteur (Copyright)*, 1962, pp. 113 *et seq.*

II. PRINCIPAL FEATURES OF THE PROGRAMME OF THE CONFERENCE

1. The preparations for the revision of the Convention and the proposals for the Programme of the Conference have been inspired by the general principle expressed in paragraph (1) of Article 24 of the Convention. According to that provision, Revision Conferences have as their object the introduction into the Convention of "improvements intended to perfect the system of the Union." The Programme of the Conference is based on the conception that improvements of this nature should include not only the enlargement of the protection granted to authors by the creation of new rights or by the extension of rights which are already recognized, but also the general development of copyright by reforms intended to make the rules relating to it easier to apply and to adapt them to the social, technical and economic conditions of contemporary society.

It should be stressed, within this context, that care must be taken to prevent the proposed rules from creating, for no valid reason, difficulties that might hinder access to the Union by countries at present outside it.

2. After being completed twice and revised three times, the Convention, in its present version, i.e. in the form adopted by the Brussels Conference in 1948, grants very extensive protection to authors. Nevertheless, it has been felt that it was still possible to consolidate this protection in various respects and the proposals submitted contain several improvements of this kind. The Programme further proposes, in accordance with the principles expressed above, to examine certain other problems whose solution, without involving any extension of the protection granted to authors, could contribute in a general manner to its favourable development by making the rules easier to apply than has hitherto been the case. Among these problems, the complicated questions relating to cinematographic works and their exploitation occupy a particularly important place. In this connection, the Programme, adopting to a large extent the conclusions reached by earlier research and by the "Committee of Film Experts," proposes some new rules. In addition, some attention has been paid to the requirements of the developing countries. Finally, the Programme deals with a number of provisions in the Convention whose practical application has proved to be difficult, and in several of these cases new wordings are proposed which are regarded as being easier to understand. In other cases, clarifications of the meanings of some of the clauses of the Convention have simply been given in the statement of reasons, acting upon the hypothesis that such declarations in the documents of the Conference would be sufficient to attain the objective sought by these clarifications.

3. In so far as the drafting of the Convention is concerned, the Programme retains, in general, the present arrangement of the text. It should be recalled that this order was left unchanged, without essential modifications, by the last Revision Conferences. It had been proposed by the United Kingdom of Great Britain and Northern Ireland that a complete recasting of the Convention should be undertaken. Although such action might be desirable from a systematic point of view, the prevailing opinion was that for the time being it would be very difficult to achieve this without creating further problems.

4. The main proposals of the Programme may be summed up as follows.

The existing provisions of Article 2 on what constitutes the subject of copyright would be modified to a certain extent. Thus, the existing requirement for the protection of choreographic works and entertainments in dumb show — that the acting form of the work should be fixed in writing or otherwise — would be deleted. The provisions concerning the protection of works "produced by a process analogous to cinematography" would be the subject of a special provision to the effect that, for the purpose of the Convention, works expressed by a process producing visual effects analogous to those of cinematography and which are fixed on some material support would be considered to be cinematographic works.

In so far as concerns Articles 4, 5, and 6, dealing with the eligibility criteria for the protection granted to authors, the field of application of the principle of nationality would be enlarged. According to the present text, for a published work to secure protection, it is necessary that it should have been published

in a country of the Union. The Programme adopts the principle accepted by the majority of national legislations and by the Universal Copyright Convention, that protection shall also be granted if the author is a national of one of the countries of the Union. It is further proposed that the same protection should be given to authors who, without being nationals of a country of the Union, are domiciled in such a country. Finally, the Programme provides for protection under the Convention for stateless persons and refugees having their habitual residence in a country belonging to the Union. The provisions in this connection would not, however, be compulsory but would be applied only by countries of the Union which had acceded to an Additional Protocol. Any country acceding to such Protocol would have the right to apply the provisions of the Protocol to stateless persons only or to refugees only.

The Programme introduces new criteria of secondary eligibility for some categories of works. In the case of cinematographic works, protection would be granted to them under the Convention if the maker of the work was a national of a country of the Union, or if he had his domicile or headquarters in such country.

In the case of works of architecture or graphic and three-dimensional works affixed to land or to a building, protection would be granted to them if the work of architecture is erected in, or the graphic or three-dimensional works are affixed to land or to a building located in, a country of the Union.

As a result of the extension of the scope of the eligibility criteria in the Programme, corresponding additions are proposed in the provisions relating to the definition of the country of origin. There is a further proposal for a modification of the definition of "published works," and a special definition of the term "maker" which is important for the system of protection of cinematographic works under the Programme.

The protection of moral rights in Article 6*bis* would be strengthened by deleting the existing provision limiting the validity of the right to the life of the author. In this connection, the provisions relating to the exercise of the rights granted to the author under Article 6*bis* (1), which are at present optional after the author's death, would become compulsory for the term of copyright.

In view of the majority of national laws, it did not seem advisable to propose an extension of the general term of protection stipulated in Article 7. On the other hand, some clarifications are given in connection with several rules of minor importance. Furthermore, in order to improve the text from a systematic point of view, some changes are proposed in the present order of the provisions.

In so far as cinematographic works are concerned, which are at present exempt from the provision establishing a term of protection of at least fifty years after the death of the author, it is proposed that the same term should also be adopted for such works. However, the proposals imply that, in the case of cinematographic works, countries of the Union would be able to provide (i) that the term of protection would expire fifty years after the first publication or first public performance or broadcast, or (ii) that, failing such event within fifty years from the making of such works, the term of protection would expire fifty years after the making of the work.

For photographic works and works of applied art, protected as artistic works, a minimum term of twenty-five years from the making of the work is proposed.

The provisions of Article 7*bis* on the term of protection for works of joint authorship would be clarified on some points.

In Article 9, it is proposed to introduce a general provision establishing the right of reproduction *jure conventionis*, a provision which would make it superfluous to retain the existing paragraph (1) of this Article. However, this principle would be fitted with a formula allowing countries of the Union the possibility of permitting reproduction in certain cases (private use, for judicial or administrative purposes, in certain particular cases where the reproduction is not contrary to the legitimate interests of the author and does not conflict with a normal exploitation of the work). This formula would indicate the limits within which national legislation could provide for exceptions.

Further, the special provisions of Article 9, paragraph (2), on the right of free reproduction by the press would be deleted. Finally, the present paragraph (3) of this Article would be transferred to Article 2 *in fine*.

The Programme submits a more general drafting of Article 10 relating to the right of quotation.

The provisions of Article 10*bis* on the right of free utilization of a protected work in reports of current events have been clarified in certain respects.

In Article 13, governing the so-called mechanical rights of composers, the provisions of paragraph (1) concerning the exclusive right of authors of musical works to authorize the recording of such works would become superfluous in view of the new Article 9. It is therefore proposed to delete them. The provisions of this paragraph concerning the exclusive right of authorizing the public performance of the work by means of recordings would also be superfluous, since they are covered by the general provisions of Article 11 relating to public performance.

On the other hand, the provisions of paragraph (2) concerning the compulsory licence would be maintained, but would be limited to recording. Finally, as it would seem that in principle some transitional provisions in paragraph (3), now out of date, could be repealed, it is proposed to delete them; but, for practical reasons, it is further proposed that parts of these provisions should remain in force for a limited period.

As regards the regulation in Article 14 relating to copyright in cinematographic works, the Programme provides, independently of certain amendments of minor importance in relation to the existing rules, a number of important innovations. By way of a compromise between the systems known as "film copyright" and "legal assignment," under which the rights in the cinematographic work belong to the maker of the film, and the method which recognizes the original right as belonging to the intellectual creators of the film, it is proposed to introduce rules of interpretation, according to which authors having authorized the cinematographic adaptation and reproduction of their works, or undertaken to bring literary or artistic contributions to the making of the cinematographic work fixed on a material support, would not be able to oppose the exploitation of the cinematographic work, provided that no contrary stipulation had been made. Any country of the Union would be able to provide that such authorization or such undertaking should be given in the form of a written agreement or an equivalent act. The countries of the Union could make a special declaration limiting the rules of interpretation in such a way as to exclude the literary, scientific or artistic works from which the cinematographic work is derived. Countries of the Union would also be able to provide for the participation of the authors of cinematographic works in the receipts resulting from the exploitation of such works. Unless national legislation provides otherwise, the rules of interpretation would not apply to the use of musical works, with or without words.

No modifications are proposed for Articles 14*bis* to 20.

As member countries of the Union are aware, the Stockholm Conference may also be called upon to consider the question of an administrative and structural reform of the Union (and of the Paris Union for the Protection of Industrial Property). Any such reform would involve amendments to the administrative provisions (Articles 21 to 24) and to the final clauses (Articles 25 to 31) of the Convention. The proposals in this connection would be the subject of a separate document, to be presented at a later date.

In a Protocol annexed to the Convention, a number of provisions are proposed for the benefit of the developing countries. Reference will be made to this in the final clauses of the Convention. This Protocol provides such countries with the right to make certain reservations, within stipulated time-limits, with respect to the right of translation, the term of protection, reproduction by the press of articles on current topics, the right of radiodiffusion, and the right to restrict, for exclusively educational, scientific or scholastic purposes, the protection of literary and artistic works. As it is linked up with the final clauses of the Convention, the question of applying the Protocol as speedily as possible will be studied in the separate document on these clauses.

Finally, it is proposed to add to the Convention — in addition to the afore-mentioned Protocol — two Additional Protocols. The first would concern the protection of the works of stateless persons and refugees (as mentioned above); the second would relate to the application of the Convention to the works of certain international organizations.

III. EXAMINATION OF THE CONVENTION ARTICLE BY ARTICLE

ARTICLE 1

According to this Article, the countries to which the Convention applies constitute a Union for the protection of the rights of authors over their literary and artistic works.

Programme of the Conference. No change is proposed here.

Article 1

BRUSSELS TEXT	PROPOSED TEXT
The countries to which this Convention applies constitute a Union for the protection of the rights of authors over their literary and artistic works.	The countries to which this Convention applies constitute a Union for the protection of authors' copyright in their literary and artistic works.

ARTICLE 2

Some amendments are proposed to paragraph (1), as well as a new paragraph (2) — thus altering the numbering of the subsequent paragraphs — and a paragraph (7) which takes over the provision appearing at present under paragraph (3) of Article 9.

Paragraph (1) and new paragraph (2)

Paragraph (1) states that the expression "literary and artistic works" comprises all productions in the literary, scientific or artistic domain, whatever the mode or form of expression. It proceeds to enumerate examples of the subjects of protection envisaged[1]*.*

The proposals of the Programme of the Conference refer to the three categories of works enumerated below: (1) choreographic works and entertainments in dumb show; (2) cinematographic works; (3) photographic works.

(1) *Choreographic works and entertainments in dumb show*

Preparatory Work. In its *1963 Report*, the Study Group stressed that the principle whereby the protection granted to an intellectual production is independent of the mode or form of expression is of fundamental importance in the matter of copyright. However, among the examples enumerated in Article 2, a derogation from this principle has been made with respect to the category of choreographic works and entertainments in dumb show: these works are only protected if their "acting form is fixed in writing or otherwise." At the Brussels Conference, it was requested that this exception should be deleted and, in support of the request, reasons based on the fundamental principles of copyright were invoked[2]. However, the Conference refused to meet this request, contending that a fixation of a choreographic work or entertainment in dumb show was essential in order to prove the existence of the work in proceedings for infringement or other offences against copyright.

[1] At the *1963 Committee of Experts*, one expert observed that, since scientific works are included in the general definition of the term "literary and artistic works" in Article 2, it seemed superfluous to refer expressly to such works by the addition of the adjective "scientific" in several of the provisions of the Convention (Articles 9, 12, 14, paragraphs (1) and (3)). In the Programme of the Conference, it was felt advisable to leave it to the Revision Conference to solve this problem concerning the wording.

[2] See the *Documents of the Brussels Conference*, p. 155.

In its report, the Study Group proposed the abolition of the rule which makes the fixation of choreographic works and entertainments in dumb show a condition of the protection of these works. In addition to the reasons advanced at Brussels it pointed to the fact that this question had assumed importance with the development of television. It was evident that a choreographic work or an entertainment in dumb show which was transmitted by television must be protected, for example, against the recording of the performance by means of film. Furthermore, it seemed remarkable that the question whether a work included in a television programme was or was not protected should be decided by mere chance: whether the work had been previously recorded upon film or transmitted direct ("live" broadcast), except, of course, when the acting form had been previously fixed in writing. Certainly, it would sometimes be difficult to prove after the performance what were the contents of an unfixed work of this kind, but this difficulty should not exclude protection in cases where proof was possible. Besides, the Study Group observed that the same problem could arise in connection with other types of unfixed works; for example, musical improvisations.

At the *1963 Committee of Experts*, some experts expressed doubts as to the advisability and grounds of the proposed deletion; it might, on the one hand, create confusion in certain cases between the protection of the author and that of the performers and, on the other hand, it could lead to difficulties regarding the identification of the author of the choreographic work or entertainment in dumb show.

It was observed, however, that the practical difficulties did not dispose of the essential question in the field of television, which is the fixing of the work as a condition of protection. After a discussion, the Committee expressed itself in favour of the deletion by a small majority, but recommended that the question should be further studied.

After reconsidering the matter, the Study Group came to the conclusion, in its *1964 Report*, that the original proposal for the deletion of the above condition should be retained, in accordance with the wish expressed by the majority of the 1963 Committee of Experts. The Study Group was of the opinion that this condition was not in keeping with the basic principle of the Convention, which extends protection to literary and artistic works, whatever the mode or form of expression.

At the *1965 Committee of Governmental Experts*, the proposal to delete the condition of fixation was supported by a number of delegations, which pointed out, *inter alia:*

that it was illogical to provide in the Convention that fixation was necessary for choreographic works only;

that gestures could not always be clearly indicated by words;

that the fact of asking performers to fix the acting form in writing could be a source of difficulties;

that a distinction had to be made between the question of substance and the question of proof, as the latter might be settled differently according to the country;

and, finally, that the arguments in favour of deleting the words in question were convincing.

Other delegations considered, however, that it was preferable to maintain the existing text of the Convention, for the following reasons:

a certain material form, a certain fixation which sometimes need not be effected by the creator of the work, is necessary for identification of the author of the choreographic work or entertainment in dumb show, and also to avoid any confusion between the protection of the author and that granted to the performer;

proof is important in order to determine the nature of the work;

fixation is not a formality and Article 4, paragraph (3), refers only to the basic administrative formalities of copyright;

there is a real danger of confusing the artist's performance with the choreographic work;

practical reasons militate in favour of the requirement of a fixation in order to show, *inter alia*, that the work has assumed some sort of form;

and, finally, the amendment proposed to the text of the Convention is of a minor order, because domestic legislation remains free to protect solely what it considers to be the components of the intellectual creation.

By a very small majority, the Committee expressed its preference for the existing text of the Convention.

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Programme of the Conference. The question whether it is necessary, in the case of the protection of choreographic works and entertainments in dumb show, to delete the existing provision which requires that the acting form should be fixed in writing or otherwise must still be regarded as doubtful, in spite of the lengthy discussions devoted to it throughout the preparatory work. However, when drawing up the Programme of the Conference, it was felt that there were good reasons for deleting this condition. From the point of view of principles, it would seem to be an anomaly to maintain, for this special category of works, a requirement which is not necessary for any other kind of work [1], although the basic motives in themselves can be invoked for other categories too, e.g., musical works which are not written down but performed direct by the composer/performer. Nor is it possible to ignore the fact that the practical need for protection of choreographic works which are not fixed on some material support is greater now than ever before, in the light of the technical progress made by the cinema and television. It is therefore proposed to delete the requirement that the acting form of choreographic works and entertainments in dumb show should be fixed in writing.

With this proposal, however, no definite position has been adopted in the text of the Convention itself concerning the question whether the countries of the Union may provide in their national legislation for the requirement of fixation with regard, for example, to the method of proof. It is common knowledge that this requirement exists in some countries, not only in the case of choreographic works but in the case of many other categories of works as well. Various opinions have been expressed on this subject. There is good reason to believe, however, that provisions of this sort are not contrary to the Convention.

(2) *Cinematographic works*

This category was introduced into the Convention at the Brussels Conference; the subjects of protection are not only cinematographic works, in the strict sense of the term, but also "works produced by a process analogous to cinematography."

Preparatory Work. In its *1963 Report*, the Study Group discussed the question whether an exact definition of the term "cinematographic work" should be written into the text of the Convention [2]. The two main questions examined in the course of this discussion were:

(a) whether television works should or should not be considered to be cinematographic works, and

(b) whether fixation should be considered as a condition of protection.

As regards question *(a)*, the Study Group came to the conclusion that television works should be protected by the same provisions as those applying to cinematographic works in the normal sense of the term. In order to give clear expression to this principle in the Convention, the Study Group proposed that the Brussels text should be amended to include a new paragraph stating that works expressed by a process analogous to cinematography should be considered to be cinematographic works.

As for question *(b)*, whether fixation should be considered as a condition of protection, the Study Group expressed the opinion that fixation ought not in principle to be necessary but that it was advisable not to settle this question in the text of the Convention. In this connection, the Study Group recalled that, according to one school of thought, the protection granted by the Convention to "cinematographic works" only extends to works fixed by means of a film in the traditional sense or, in any case, expressed with the aid of some material support such as an electromagnetic tape. The advocates of another school of thought claim that a cinematographic work can exist even without being fixed. The most common examples are certain televised broadcasts. Broadcasts of current events, for example, give the same visual effect whether they are made with the aid of a film previously recorded on the spot, or transmitted direct by television apparatus installed in the place where the events occur. It is contended that what is visible on the screen should be protected in the same manner in each case.

The Study Group further recalled that these two opinions had been represented on the "Committee of Film Experts." However, both sides agreed to the principle that the Convention authorize national

[1] The provision in the new paragraph (2) proposed below is somewhat different from the text in question, as it is not directly concerned with the protection of a certain category of works, but rather with the assimilation of that category to another, namely, that of cinematographic works.

[2] The Study Group referred here to the work of the "Committee of Film Experts."

legislation and national tribunals to take their choice between these two solutions, and that the idea of giving an answer to this question in the Convention must, therefore, be rejected. In general, this point of view has been adopted or, in any case, no objections have been expressed in the opinions given on the report of that Committee.

For its part, the Study Group considered that fixation was not necessary. It has been shown, in the case of choreographic works, that the maintenance of the condition that the works should be fixed is incompatible with the principle set forth in Article 2, namely, that protection is granted whatever the mode or form of expression of a work. In the Study Group's view this is no less true in relation to cinematographic works. It seems evident that protection must also be given to an "unfixed film" — for instance, a series of images of cinematographic value reproduced upon the screen of a television set — against recordings of this series made surreptitiously by a third party.

The Study Group pointed out that the validity of the reasons set out above was in no way diminished by the fact that television broadcasts could be protected by so-called "neighbouring rights," for such protection was not accorded to authors, but to television organizations. Furthermore, protection of this kind has so far only been recognized in a small number of countries.

It was observed in the course of the discussion of these problems that, in a sense, fixation is always necessary: it is necessary for the work to be manifested in a manner that makes it available to observation, say, on the screen of a television receiver. The fact is not disputed, but it is an evident condition of all protection and it arises in respect of every category of works. Normally, it is not necessary to say, in respect of these cases, that a "fixation" in the strict sense of the term is involved, for what is meant, when one says that "fixation" of the work is not required for protection, is the use of a material object which serves as a support for the work in a more or less permanent fashion.

For the reasons set out above, the Study Group was of the opinion that the Convention must not be interpreted as if it made fixation a necessary condition for the protection of cinematographic works. It would, however, appear preferable not to impose such an interpretation upon national legislation. The question should accordingly be left open in the Convention.

The *1963 Committee of Experts* adopted, in principle, the Study Group's proposal to insert a provision in the Convention whereby works produced by a process analogous to cinematography would be considered to be cinematographic works (see, *supra*, under point *(a)*). However, some experts observed that the analogy applied more to the effects of the process employed than to the process itself, and it was further stated that these were visual effects, whereupon most of the experts expressed themselves in favour of the following formula: "For the purposes of this Convention, works expressed by a process producing visual effects analogous to cinematography shall be considered to be cinematographic works."

Although the provision refers essentially to visual effects, it was pointed out that it covered sound as well as visual effects.

The Committee also shared, in principle, the Study Group's view that fixation should not be regarded as a necessary condition for protection (see, *supra*, under *(b)*) and it reaffirmed that this principle did appear in the final version of the text proposed by the Committee in connection with question *(a)*. However, one of the experts suggested that the following sentence should be added to this text: "There shall however be no obligation to protect, as a cinematographic work, a series of visual images which is not recorded on some material support."

This proposal was accepted by the Committee of Experts, and, in its *1964 Report*, the Study Group adopted it, subject to certain changes in the wording, together with the first sentence mentioned above.

At the *1965 Committee of Governmental Experts*, the proposals as a whole were supported by several delegations, but it was suggested at the same time that the recommendation stating that "works expressed by a process producing visual effects analogous to those of cinematography" should be considered to be cinematographic works ought to be restricted to works which are fixed on some material support. On the other hand, one delegation expressed its preference for a general wording, such as that appearing in the existing text of the Convention, leaving all questions of interpretation to the national legislation.

In a general way, however, it was felt advisable that the provisions of the Convention should be clarified in the text itself and the Committee therefore decided in favour of the following compromise:

"(2) For the purpose of this Convention, works expressed by a process producing visual effects analogous to those of cinematography shall be considered to be cinematographic works, on condition that those works are fixed on some material support. However, the countries of the Union shall have the right to protect, as cinematographic works, such works which are not fixed on some material support."

Programme of the Conference. It was felt necessary to include in the Programme of the Conference the suggestion of the 1965 Committee of Governmental Experts, that "televisual and assimilated works" ought compulsorily to be subject to the same régime as cinematographic works, provided that they are fixed on some material support. The second sentence of the proposed provision, however, whereby the countries of the Union shall have the right to protect such works as cinematographic works, even if they are not fixed on some material support, was held to be superfluous. Indeed, it is generally accepted that, by indicating in their national legislation the different categories of works protected by copyright, countries may include categories other than those given in the list of protected works appearing in the Convention, and they may also classify these works under a different system than that used in the Convention.

In view of the fact that only the first part of the text resulting from the work of the 1965 Committee of Governmental Experts has been retained in the Programme of the Conference, a slight change has had to be made to the wording.

(3) *Photographic works*

In the present text, in so far as photographic productions are concerned, "photographic works and those produced by a process analogous to photography" are regarded as subjects of protection.

Preparatory Work. In its *1963 Report*, the Study Group proposed that the provision relating to works considered to be photographic works should be incorporated in a separate sentence, worded as follows: "Works expressed by a process analogous to photography shall be considered to be photographic works."

In its *1964 Report*, the Study Group added that it should be pointed out that the definition of the works referred to above cannot be formulated on the basis of the same principle as that applying to works considered as cinematographic works, because protection of photographic works covering at the same time works "producing visual effects analogous to those of photography" would include designs, engravings, etc. Thus, the definition would apply only to works produced by the chemical and technical processes characterizing photography.

This proposal by the Study Group met with no objections either on the part of the *1963 Committee of Experts*, or on the part of the *1965 Committee of Governmental Experts.*

Programme of the Conference. The Study Group's proposal, thus approved by the Committees of Experts, has been retained in the Programme of the Conference.

Article 2, paragraph 1 and new paragraph 2

BRUSSELS TEXT	PROPOSED TEXT
(1) The term "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; cinematographic works and works produced by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works and works produced by a process analogous to photography; works of applied art; illustrations, geographical charts, plans, sketches and plastic works relative to geography, topography, architecture or science.	(1) The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show (......); musical compositions with or without words; cinematographic works (......); works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works (......); works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science. **(2) For the purpose of this Convention, works expressed by a process producing visual effects analogous to those**

[Article 14. — (5)] The provisions of this Article shall apply to reproduction or production effected by any other process analogous to cinematography.

of cinematography and fixed in some material form shall be considered to be cinematographic works.

For the purpose of this Convention, works expressed by a process analogous to photography shall be considered to be photographic works.

Article 2, paragraphs 3, 4 and 5

BRUSSELS TEXT

(2) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the rights of the author of the original work. It shall, however, be a matter for legislation in the countries of the Union to determine the protection to be granted to translations of official texts of a legislative, administrative and legal nature.

(3) Collections of literary or artistic works such as encyclopaedias and anthologies which by reason of the selection and arrangement of their contents constitute intellectual creations shall be protected as such without prejudice to the rights of the authors in respect of each of the works forming part of such collections.

(4) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his legal representatives and assignees.

PROPOSED TEXT

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work. It shall, however, be a matter for legislation in the countries of the Union to determine the protection to be granted to translations of official texts of a legislative, administrative and legal nature.

(4) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such without prejudice to the copyright in each of the works forming part of such collections.

(5) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.

Paragraph (6)

Programme of the Conference. In the Brussels text of the Convention, this is paragraph (5). The first sentence stipulates that it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected.

According to the Programme of the Conference, this freedom would be restricted by providing that the term of protection for works of applied art which are protected as artistic works cannot be less than twenty-five years from the making of such work (see Article 7, paragraph (4), as proposed).

It is therefore necessary to refer in the first sentence of paragraph (6) of this Article to the provision provided for in paragraph (4) of Article 7.

Article 2, paragraph 6

BRUSSELS TEXT

(5) It shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in other countries of the Union only to such protection as shall be accorded to designs and models in such countries.

PROPOSED TEXT

(6) Subject to the provisions of Article 7, paragraph (4), of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in other countries of the Union only to such protection as shall be granted to designs and models in such countries.

Paragraph (7)

Programme of the Conference. In accordance with the Study Group's proposal, which was not disputed by the 1963 Committee of Experts or the 1965 Committee of Governmental Experts, it is proposed to place in this paragraph the provision now in paragraph (3) of Article 9, stipulating that the protection of the Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of information.

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The reasons for this change are given in connection with Article 9, as well as the commentaries on the interpretation to be given to this provision.

Article 2, paragraph 7

BRUSSELS TEXT	PROPOSED TEXT
[Article 9. — (3)] The protection of this Convention shall not apply to news of the day nor to miscellaneous information having the character of mere items of news.	(7) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of information.

ARTICLE 2bis

Paragraph (1) *of this Article gives countries of the Union the right to exclude from the protection provided under Article 2 political speeches and speeches delivered in the course of legal proceedings. No change is proposed here.*

Paragraph (2) *stipulates that countries of the Union shall have the right to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press.*

Preparatory Work. The Study Group had not submitted any proposals in its *1963 and 1964 Reports* for the amendment of this Article.

At the *1965 Committee of Governmental Experts,* it was suggested that the exceptions provided in paragraph (2) for the benefit of the press should be extended to radiodiffusion and wire diffusion. This suggestion was supported by a number of delegations, but others raised objections, and the Committee decided to refer the question back to the Study Group.

Programme of the Conference. The suggestion put forward at the 1965 Committee of Governmental Experts concerning the widening of the scope of paragraph (2) of Article 2*bis* is based on the desire to facilitate radio's task of disseminating news and other information. However, the discussions held on this subject while the Programme of the Conference was being drawn up led to the conclusion that there was no need for an amendment of the text of the Convention on this point.

The Convention already includes a number of provisions which were inserted in order to satisfy the interests in question, and it might be argued that these seem to be sufficient. In a general way, it is worth pointing out that the compulsory licences provided for the benefit of broadcasting in Article 11*bis* offer, *inter alia,* the means of facilitating the dissemination of broadcast news. In addition, other provisions in the Convention provide radio with fairly wide facilities for broadcasting information on the public events generally concerned. Under paragraph (1) of Article 2*bis,* national legislation may allow political speeches and speeches delivered in the course of legal proceedings to be freely broadcast. Again, under Article 10*bis,* national legislation may permit, for the purpose of reporting current events, the broadcasting of short extracts from the speeches delivered on the occasion of such events. During news and other information broadcasts, it is always permissible to make summaries of any speeches and, in the course of such summaries, to make direct quotations to the extent determined by Article 10. In general, the possibilities for dissemination mentioned above ought to satisfy the practical needs of the broadcasting organizations.

At the same time, arguments could be advanced against the widening of the sphere of application of paragraph (2). Speeches are usually addressed to relatively small audiences, or to audiences of a purely private nature. It would not be desirable to introduce a ruling whereby it would be possible to broadcast such speeches direct, against the will of the author, thus exposing the person of the speaker to the enormous publicity of sound and television broadcasting. Furthermore, such speeches have a wide range and may also, for example, be scientific works, which in view of their quality should only be broadcast by radio subject to the exclusive right of the author. One might even argue that the existing provision on this point goes too far with respect to reproduction by the press.

For the above reasons, this provision could only be made applicable to broadcasting if it were recast on a fairly wide basis as regards the different categories of works mentioned therein. This would be

a delicate operation, in view of the fact that some countries of the Union have already established their national legislation on the basis of the existing text of the Convention.

After these considerations, it was decided, when drawing up the Programme of the Conference, to propose that Article 2*bis* should be left as it stands.

Article 2*bis*

BRUSSELS TEXT	PROPOSED TEXT
(1) It shall be a matter for legislation in the countries of the Union to exclude wholly or in part from the protection afforded by the preceding Article political speeches and speeches delivered in the course of legal proceedings.	(1) It shall be a matter for legislation in the countries of the Union to exclude, partially or wholly, from the protection provided by the preceding Article political discourse and discourse as a part of legal proceedings.
(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press.	(2) (No change.)
(3) Nevertheless, the author alone shall have the right of making a collection of his works mentioned in the above paragraphs.	(3) (No change.)

ARTICLE 3

In the Rome text (1928), this Article dealt with the protection of photographic works. At the Brussels Conference, the provisions on this subject were placed, without any changes of substance, in Article 2, paragraph (1), and Article 3 was deleted[1]. *If no change is made in the order of the Articles, the Stockholm Conference may consider it desirable to number the present Article* 2bis *Article 3.*

ARTICLE 4

Paragraph (1)

The provisions of Articles 4, 5 and 6 circumscribe, inter alia, *the field of application of the Convention with regard to the origin of works for which protection is claimed; in other words, the provisions indicate the criteria of eligibility for protection*[2].

The general rule of the Convention is to apply different principles in cases where the work has not been published and in those in which publication has taken place. In the case of the first category, the principle of nationality is applied: for protection to be granted, the author must be a national of a country of the Union (criterion of nationality). In the case of the second category, with respect to published works, the principle of territoriality is adopted: it is a condition of protection that the work should have been first published in a country of the Union (criterion of publication). Expression is given to the principle of nationality in Article 4, paragraph (1). As regards works created by an author who is a national of one of the countries of the Union, the principle of territoriality is set forth in Article 4, paragraph (1), and in Article 5. As regards the works of authors who are not nationals of countries of the Union, expression is given to this principle in Article 6, paragraph (1).

The principle of territoriality thus applicable to published works implies that the Convention does not protect works if their first publication occurred outside the territory of countries of the Union. This rule applies even if the author is a national of a country of the Union. An author who is a national of such country enjoys protection for his works so long as they are not published; he loses that protection as soon as he proceeds to publish them outside the Union.

[1] According to a proposal submitted by Professor Ulmer (see below, p. 32), Article 3 would contain provisions designed, in the terms of the proposal, to take the place of the rules relating to the eligibility criteria of protection, etc., at present expressed in Articles 4 to 6.

[2] These provisions deal also with the principles of material protection; in some cases, authors have the right of assimilation to national authors; in others, they can claim the further protection of *jus conventionis*, or merely this latter protection. No modification of these principles is proposed in the Programme of the Conference.

In the majority of cases, the countries of the Union do not include this severe rule in their domestic legislation. On the contrary, application of the principle of nationality to all intellectual works, whether published or not, is the general rule. Countries protect their own authors irrespective of the place where they cause their works to be published.

In the Universal Copyright Convention, the principle of nationality has likewise been adopted as a general rule. Nationals of member countries are protected according to the provisions of the Convention, the place where they cause their works to be first published being of little importance.

Preparatory Work. In its *1963 Report*, the Study Group considered that the principle of nationality should be raised to the level of a general principle in the Berne Convention as elsewhere. A modification of this nature would constitute an enlargement of protection, which appears highly justified and which has in fact already been achieved, as stated, in the majority of the countries of the Union. The fact that at the same time the importance of the principle of territoriality is reduced will have the added result of making the Convention easier to apply.

The *1963 Committee of Experts* and the *1965 Committee of Governmental Experts* expressed themselves in favour of enlarging the protection in the Convention as proposed.

Programme of the Conference. The proposal to make the nationality of the author a general criterion of eligibility for protection under the Convention, which was subscribed to by the Committees of Experts during the preparatory work, has been taken over into the Programme of the Conference.

Article 4, paragraph 1

BRUSSELS TEXT	PROPOSED TEXT
(1) Authors who are nationals of one of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.	(1) Authors who are nationals of one of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, **whether published or not,** the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

Paragraph (2) (new provision)

Preparatory Work. In this paragraph, the Study Group proposed, in its *1963 Report*, to add a new provision regarding the protection granted to authors who are nationals of countries not belonging to the Union but are domiciled in a country of the Union, as well as authors who are stateless, or who are refugees, having their habitual residence in a country of the Union. It further proposed that the existing provisions dealing with formalities be transferred to paragraph (3).

The Study Group observed that the expression "*ressortissant*" used in Article 4, paragraph (1) [French text], was probably considered in most Union countries to be synonymous with "national." However, it is not unusual for a country to grant in its national legislation, to persons who are domiciled in its territory but do not possess the status of nationals, the same protection as it grants to its own nationals.

The Study Group was of the opinion that there were very strong reasons for adopting a corresponding rule in the Convention. It would be desirable to assimilate to citizens of countries of the Union authors who are nationals of non-Union countries but are domiciled in a country of the Union. This assimilation would involve an enlargement of protection, whose consequences could hardly be serious but which, in special cases, could be of great importance to the author himself. Thus, it would appear justifiable to ensure by such means to emigrants from a country outside the Union, who have established a permanent residence within a Union country, protection for their earlier works published in a country which has not acceded to the Convention.

In so far as copyright protection is concerned, some countries also assimilate to nationals stateless persons and refugees having their habitual residence in the country in question. Such assimilation has also been provided for in a Protocol annexed to the Universal Copyright Convention, and that Protocol has been ratified by several countries of the Union. The Study Group considered that a corresponding assimilation should be provided for within the framework of the Berne Convention.

The *1963 Committee of Experts*, having noted that domicile or habitual residence are terms which do not always have the same meaning, and having expressed the hope that Courts would give a liberal interpretation in this respect, declared itself in favour of the proposed addition. It was stressed that, if the change of domicile or habitual residence leads to a denial of assimilation to Unionist nationals, works subsequently produced will not of course enjoy the protection granted by the Convention.

During the discussion of this paragraph, the question was raised as to whether the word "author" referred exclusively to physical persons or could also cover corporate bodies. After having noted that the Convention does not give a definition of the author, the Committee expressed the opinion that this was a matter to be determined by national legislation.

In its *1964 Report*, the Study Group took over its former proposal without making any changes.

At the *1965 Committee of Governmental Experts*, one delegation observed that the criterion of habitual residence was a repetition of the criterion of domicile for which provision had already been made in this paragraph, and it therefore suggested the exclusion of the category of refugees from the new paragraph (2) and the incorporation of the rules relating thereto in an Additional Protocol. It was recalled, however, that a distinction had already been made between the two criteria in the system of the Universal Copyright Convention. One delegation observed that, domicile being a right and residence a fact, the deletion of the word "refugees" threatened to open the door to discriminations of a political nature. Some delegations suggested that it would be preferable to insert all the provisions relating to stateless persons and refugees in a Protocol, to avoid the risk that their inclusion in the text of the Convention itself might prevent some countries from ratifying the Stockholm text. Subject to the maintenance in the Convention of the provision in the said paragraph (2) concerning authors who are domiciled in one of the countries of the Union, the Committee was of the opinion that this was in fact the most suitable course to adopt. One delegation expressed the hope, however, that it would be possible for countries signing the Protocol to choose whether they would apply it to stateless persons only, to refugees only, or to both, and that it would be permissible to declare what groups of refugees would be regarded as being protected.

Programme of the Conference. It was felt that the manner in which authors who are not nationals of one of the countries of the Union but are domiciled or have their habitual residence in such a country could be assimilated to authors of Union countries should be decided, in the Programme, in accordance with the views expressed by the 1965 Committee of Governmental Experts. In principle, only authors attached by reason of their domicile to countries of the Union may be assimilated to authors of Union countries. Notwithstanding, countries of the Union which so desire should also be able to assimilate authors who are stateless or refugees and who have their habitual residence in one of the countries of the Union, by means of accession to an Additional Protocol. A proposal for the text of this Protocol has therefore been formulated separately (see p. 75).

As regards authors domiciled in a country of the Union, the Study Group's initial proposal referred only to those who were nationals of countries not belonging to the Union. It would seem more logical to delete the requirement of belonging to any nation at all and to provide for the application of the rule to all authors who are not nationals of one of the countries of the Union.

Article 4, paragraph 2

BRUSSELS TEXT	PROPOSED TEXT
—	**(2) Authors who are not nationals of one of the countries of the Union but are domiciled in one of them shall, for the purpose of this Convention, be assimilated to the nationals of that country.**

Paragraph (3)

In the proposals of the Programme of the Conference, this paragraph contains, without modification, the provisions relating to formalities appearing in paragraph (2) of the existing text of the Convention.

Article 4, paragraph 3

BRUSSELS TEXT	PROPOSED TEXT
(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such	(3) (No change.)

exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

Paragraphs (4), (5) and (6)

In the present text, Article 4 contains definitions of certain concepts: the country of origin of published works (paragraph (3)), published works (paragraph (4)), the country of origin of unpublished works (paragraph (5)).

In the Programme of the Conference, all the provisions containing definitions of the country of origin have been placed in one single paragraph (paragraph (4)); the succeeding paragraphs are concerned with the definitions of the terms "published works" (paragraph (5)) and "maker of a cinematographic work" (paragraph (6)).

It should be pointed out that the validity of these definitions extends to the entire text of the Convention, and therefore to Articles other than Article 4.

Paragraph (4)

This provision, which corresponds to paragraphs (3) and (5) of the existing text, deals with the concept of country of origin [1].

According to the Brussels text (Article 4, paragraph (3)), the country of publication will be considered as the country of origin of published works. Two subsidiary rules on "simultaneous publication" are associated with this general provision. One of them stipulates that, if the work has been published simultaneously in several countries of the Union granting different periods of protection, the country with the shortest term of protection will be deemed to be the country of origin of the work. It follows from the other subsidiary provision that, in the case of works published simultaneously in a country outside the Union and in a country of the Union, only the latter will be considered as the country of origin. The final sentence of the paragraph contains a definition of simultaneous publication: this expression relates to cases in which a work has been published in two or more countries within thirty days of its first publication.

As regards unpublished works (Article 4, paragraph (5)), the country of origin is considered to be the country to which the author belongs. However, in the case of works of architecture, or of graphic and plastic works, the country of the Union where these works have been built or incorporated in a building is considered as the country of origin.

(1) *Principal rules*

Preparatory Work. The Study Group proposed, in its *1963 Report*, that the existing rules on the country of origin should remain in principle unchanged. In view of the extension of the principle of nationality proposed in Article 4, paragraph (1), however, it was suggested that these rules should be completed to meet cases where a work has been published for the first time in a country outside the Union

[1] At the *1963 Committee of Experts*, one expert proposed the removal from the text of the Convention of the concept of country of origin, leaving only the criterion of eligibility to be taken into consideration. This proposal was taken up at the *1965 Committee of Governmental Experts*. Although some delegations were in sympathy with the proposal, most of them criticized it. It was stressed that the disadvantages of the application of the traditional concept of country of origin did not seem to be sufficiently great to warrant upsetting the system of the Convention on this point. For its part, the Study Group did not find sufficient grounds for proposing amendments on this fundamental point affecting the essential structure of the Convention. This was also the case when the Programme of the Conference was drawn up.

In this connection, it should be pointed out that, despite frequent affirmations to that effect, the country of origin has no importance in relation to protection. The question of knowing whether a work is or is not protected is decided exclusively by the application of the criteria of eligibility (first, nationality; then, publication). It is only in cases where it is possible to establish, with the aid of such criteria, that the work is protected that the question of origin is of importance in determining the scope of protection in varying circumstances. Thus, protection *jure conventionis* cannot be claimed in the country of origin of the work (see Article 4, paragraph (1), and Article 5). Further, the country of origin of the work is taken into consideration in calculating the term of protection (see Article 7).

without having been published simultaneously in a country of the Union. In such cases, the country of which the author is a national would be considered as the country of origin. These proposals were adopted by the *1963 Committee of Experts* and by the *1965 Committee of Governmental Experts.*

Programme of the Conference. Having received entire approval during the preparatory work, the above proposals were adopted in principle in the Programme of the Conference and the relevant rules incorporated, subject to some changes in the wording, in the new paragraph (4) under points *(a)*, *(b)* and *(c)*(iii).

(2) *New special rule for cinematographic works*

Preparatory Work. As regards the country of origin of a cinematographic work, the Study Group proposed, in its *1963 Report*, a third concept (in addition to that of the country of first publication and that of the country of which the author is a national), namely the country of which the maker is a national or in which he has his domicile or headquarters.

The Study Group started with the hypothesis that cinematographic works, like other works, can be the subject of publication. If a cinematographic work has been published, the country of the Union where publication took place is considered as the country of origin of the work; where necessary, the special rules on simultaneous publication come into play. Sometimes, cinematographic works are not the subject of publication; in such cases, it is the country to which the author belongs that is considered as the country of origin. It follows that, in countries where the maker is considered as the author of the work, his nationality will be decisive; if the maker is a corporate body, it seems that he will have to be considered as a national of the country where he has his headquarters. On the other hand, the country of which the "intellectual creators" of the film are nationals will be considered as the country of origin of the work in those countries where they alone are held to be the authors.

In dealing with these problems, the Study Group took account of the fact that a film can often have several authors nationals of different countries of the Union. The Brussels text provides no answer to the question of which of the countries involved should be considered as the country of origin of the work. The Study Group wondered whether it was desirable to draw up a supplementary rule for these cases. The most natural solution would appear to be the determination of the country of origin according to the nationality of the author who has made the essential contribution towards the creation of the work. However, such a solution is dictated by the very nature of things, and barely merits incorporation in the text; besides, in special cases, it is possible that other circumstances might influence the decision. For these reasons, the Study Group concluded that this question should be reserved to national legislation or to national jurisprudence, as had hitherto been the case. It should, however, be noted that the problem is also likely to arise in connection with collective works other than films.

The foregoing statements are based upon the hypothesis that a cinematographic work is protected by reason of the place of publication, or of nationality of the author. However, the Study Group proposed, in Article 6, paragraph (2), for reasons which will be developed in relation to that provision, that cinematographic works might also be protected if they satisfy a third condition: that the *maker* should be a national of a country of the Union, or have his domicile or headquarters therein. This criterion could exist simultaneously with the other two, or with one of them, but it could also operate independently. If it is associated with another criterion of protection, i.e., the criterion of the country of first publication, it should only be considered as a subsidiary element. If, on the other hand, the new condition alone is fulfilled, the Study Group took the view that the country of the Union of which the maker is a national, or in which he has his domicile or headquarters, should be considered as the country of origin of the work.

The Study Group added in this connection that it had discussed the problem of the country of origin in cases where a film has been produced by the collaboration of two or more makers belonging to different countries. This problem being similar to the question dealt with above, which arises when a film has several authors coming from different countries, the Study Group found that, as in the case of the first question, the solution with regard to makers of different nationalities should be reserved to national legislation or national jurisprudence.

The *1963 Committee of Experts* approved, in principle, the proposal to introduce a third concept, i.e., the country of origin, for cinematographic works. It pointed out, however, that practical considerations militated in favour of the successive application of the three criteria in a more suitable order,

possibly patterned on the system with respect to works of architecture. According to that order, the criterion of the country of first publication is applied first, then the criterion of the country of the maker, and finally that of the country of which the author is a national.

The same solution was proposed by the Study Group in its *1964 Report* and approved by the *1965 Committee of Governmental Experts.*

Programme of the Conference. In accordance with the proposals made during the preparatory work, a supplementary rule on the country of origin in the case of a cinematographic work has been included in the Programme of the Conference. In the case of a work whose maker is a national of a country of the Union or has his domicile or headquarters therein, such country shall, in certain cases, be considered as the country of origin. This rule has been laid down in the new paragraph (4) *(c)* (i).

In brief, the rules in paragraph (4) mean that, in the case of cinematographic works, the country of origin is in the first place the country of publication (sub-paragraphs *(a)* and *(b)*), secondly, the country of the maker (sub-paragraph *(c)* (i)) and, thirdly, the country of which the author is a national (sub-paragraph *(c)* (iii)).

(3) *Special rule for works of architecture and graphic and plastic works forming part of a building*

Programme of the Conference. In accordance with the proposals formulated during the preparatory work, the special rule concerning works of architecture and graphic and plastic works forming part of a building, appearing in paragraph (5) of Article 4 of the existing text, has been left untouched[1] but included in the Programme of the Conference under sub-paragraph *(c)* (ii) of the new paragraph (4).

Article 4, paragraph 4

BRUSSELS TEXT	PROPOSED TEXT
(3) The country of origin shall be considered to be, in the case of published works, the country of first publication, even in the case of works published simultaneously in several countries of the Union which grant the same term of protection; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country of which the legislation grants the shortest term of protection. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin. A work shall be considered as having been published simultaneously in several countries which has been published in two or more countries within thirty days of its first publication.	(4) The country of origin shall be considered to be: **(a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country of which the legislation grants the shortest term of protection;** **(b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;** **(c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union:** **(i) when these are cinematographic works the maker of which is a national of a country of the Union or has his domicile or headquarters therein, that country;**
(5) The country of origin shall be considered to be, in the case of unpublished works, the country to which the author belongs. However, in the case of works of architecture, or of graphic and plastic works forming part of a building, the country of the Union where these works have been built or incorporated in a building shall be considered as the country of origin.	**(ii) when these are works of architecture erected in a country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union, that country;** **(iii) when these are works to which the provisions referred to in (i) or (ii) above do not apply, the country of the Union of which the author is a national.** A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Paragraph (5)

This provision takes over the definition of "published works" from the Brussels text (paragraph (4)), with a few slight modifications.

[1] Note, however, the changes in terminology in the English text made by the working party referred to on p. 8.

The first sentence of the present text provides that, for the purposes of Articles 4, 5 and 6, by "published works" shall be understood works, copies of which have been issued and made available in sufficient quantities to the public, whatever may be the means of manufacture of the copies. It is prescribed, in the second sentence, that the presentation of a dramatic, dramatico-musical or cinematographic work, the performance of a musical work, the public recitation of a literary work, the transmission or the radiodiffusion of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

Preparatory Work. In its *1963 Report*, the Study Group proposed *(a)* that the words "for the purposes of Articles 4, 5 and 6" should be deleted, and *(b)* that the words "with the consent of their author" should be added after the words "works copies of which have been issued."

The Study Group based the first of these amendments, proposed under *(a)*, on the following reasons: the object of the provision in the first sentence, according to which the definition of "published works" only applies for the purposes of Articles 4, 5 and 6, is to make possible a wider interpretation of the term "publication" in the remainder of the Convention. This possibility only assumes practical importance in the case of the application of Article 7, paragraph (4). That Article relates to the term of protection of anonymous and pseudonymous works, the term being calculated from the "publication" of the works. In this instance, there is reason to suppose that the term relates to any means by which the work is made available to the public, and therefore not only by the acts envisaged in the first sentence of Article 4, paragraph (4), but also by those described in the second sentence.

In the opinion of the Study Group, it is unsatisfactory for an expression used in the Convention to have different meanings in the various provisions in which it appears. The term "publication" should be reserved for the measures envisaged in the first sentence of the provision now under discussion. In cases where a wider notion has to be expressed, use should be made of other terms, for example, "make lawfully available to the public." [1]

For these reasons, it seemed advisable to abandon the provision whereby the definition of "published works" only applies for the purposes of Articles 4, 5 and 6. It was also felt that Article 7, paragraph (4), should be modified (see below).

As regards the second amendment, proposed under *(b)*, the Study Group observed that the definition of "published works" applies to works of all kinds; consequently, it does not relate solely to publications effected by a "graphic" process, but also, for example, to the distribution of gramophone records and copies of a film. In its view, the expression "made available to the public" not only covers offers for sale and like actions, but also the making available to the public of a work by way of hire or loan. Thus, action such as the free distribution of copies falls within the scope of this provision.

The Study Group remarked that interpretation of the term "public" depended upon actual circumstances. In the book trade, for example, an edition cannot be considered as having been made available to the public before being placed on sale. The same principle would appear applicable to the record trade. As regards the cinematograph industry, account must be taken of the fact that, in general, ordinary films are not distributed to the public as regular business practice, but are hired to cinema proprietors. However, a film must be considered as published as soon as it is hired in this manner. On the other hand, so long as it is placed only at the disposal of cinemas directly controlled by the maker, it is hardly possible to consider it as published.

In the Study Group's view, the circumstances of each case in point should likewise determine the interpretation to be given to the condition expressed by the phrase "in sufficient quantities." According to the rule in the Convention, it is necessary for a certain number of copies to be made available to the public; this principle applies, for example, to books or records. As regards the scores of serious musical works, account must be taken of the form of publication, which frequently consists in making available to the public, on a hiring basis, one single copy or a very small number of copies. This procedure should be considered sufficient to satisfy the aforesaid condition. On the other hand, there is no occasion to speak of publication if two television organizations exchange television films with each other.

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[1] This distinction between publication in the narrow sense and publication in a wider sense is not unusual in national legislation. German legislation, for example, makes use of the two expressions "*Erscheinen*" and "*Veröffentlichung.*" A duality of similar terms has also been employed in the laws of the Nordic countries.

The Study Group pointed out that, if the interpretation thus proposed is adopted, it would seem desirable not to make fundamental changes in the present provision. However, one slight alteration should be made to the wording. There does in fact seem to be some justification for stipulating that the action referred to above should have been carried out with the consent of the author, if the work is to be considered as published by such means. If, for example, a stolen manuscript is published without this consent, it would not be equitable for such action to involve the legal consequences attached by the Convention to the act of publication, especially the consequence of causing the country of publication to be considered as the country of origin of the work. The above-mentioned condition is not spelled out in the Brussels text; nevertheless, it would appear to involve a sufficiently important principle for it to be made explicit.

The *1963 Committee of Experts* expressed a favourable opinion on the proposed amendments. The latter were adopted by the Study Group in its *1964 Report.*

The *1965 Committee of Governmental Experts* also approved the proposal to delete the words "for the purposes of Articles 4, 5 and 6." The proposal to insert the expression "with the consent of their author" after the words "works copies of which have been issued" was also considered to be justifiable, in principle, but it was suggested that the expression "works lawfully published" was preferable.

Programme of the Conference. Adopting the proposals formulated during the preparatory work, the Programme of the Conference proposes that the definition of "published works" should apply to the Convention as a whole, by deleting the words "for the purposes of Articles 4, 5 and 6." It also proposes that in defining "published works" a work should only be considered as published if it has been published "lawfully." [1]

Article 4, paragraph 5

BRUSSELS TEXT	PROPOSED TEXT
(4) For the purposes of Articles 4, 5 and 6, "published works" shall be understood to be works copies of which have been issued and made available in sufficient quantities to the public, whatever may be the means of manufacture of the copies. The presentation of a dramatic, dramatico-musical or cinematographic work, the performance of a musical work, the public recitation of a literary work, the transmission or the radio-diffusion of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.	(5) (......) The expression "published works" means works **lawfully** published, copies of which have been issued and made available in sufficient quantities to the public, whatever may be the means of manufacture of the copies. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

Paragraph (6) (new provision)

In this paragraph, a new provision is proposed to define the expression "maker of the cinematographic work."

Preparatory Work. The Study Group pointed out in its *1963 Report* that, in view of the fact that a number of the amendments proposed for the text of the Convention referred to the maker (moral rights, eligibility criteria, country of origin of the cinematographic work), it was necessary to define the latter by stipulating that the maker of a cinematographic work means the person or body corporate who has taken the initiative in and responsibility for the making of the work.

In its report, the "Committee of Film Experts" had pronounced in favour of a definition of this kind. This formula originates in Article 17, paragraph (1), of the French Law of 1957; it also bears a considerable resemblance to the term "maker" contained in Section 13 of the British Act of 1956. A basically similar definition will also be found in Article 2, paragraph (2), of the European Agreement of 1958 concerning programme exchanges by means of television films; however, for obvious reasons, this last definition is limited to film and television organizations.

[1] In the new English version established by the working party referred to on p. 8, the words "performance," "communication by wire" and "broadcasting" were substituted for "presentation," "transmission" and "radiodiffusion," to take account of the terminology generally in use.

The opinions expressed on the report of the "Committee of Film Experts" do not contain any objections to this proposal, and the Study Group, for its part, adopted the formula suggested.

As the Study Group observed, it clearly results from the definition envisaged that, for the purposes of the Convention, the term "maker" does not relate to the "intellectual creators" of the cinematographic work, but to the body which took the initiative in the task of making it, and which assumed responsibility for it by initiating or concluding contracts with the actors involved. It follows from the proposals presented by the Study Group that contracts with authors would be submitted to certain interpretations regarding the assignment of prerogatives pertaining to copyright. Where all the necessary measures for organizing the making of a film are undertaken by one single body — and that is normally the case — the application of the proposed definition should not give rise to difficulties. It can sometimes happen, however, that a company which proposes to produce a film employs, to a greater or lesser extent, the resources of another company for the work of production. In such a case, the question of deciding which of the two bodies should be considered to be the maker of the film will be settled according to circumstances. If it seems justifiable to conclude that the first company always bears the main responsibility for the work of production, it is this body which must be considered as the maker of the film. If, on the other hand, the relationship between the two bodies constitutes a definite commissioning contract, to such an extent that the first company has restricted itself to expressing its wishes in general terms and, further, has left the carrying out of such intentions to the other company, then such other company should be considered as the maker of the film. An example of this latter situation is the case where a town commissions a producing company to make a film on local curiosities, to be used for publicity purposes to attract tourists; in such a case, it is the company which should be considered as the maker of the film. Thus, the rights dealt with in Article 14 would belong in the first place to the film company, in a case of this kind where a commissioning contract has been concluded with the company. The Study Group pointed out, however, that such a contract implies an assignment of the rights of the maker in favour of the commissioner, to the extent necessary to enable the commissioner to make use of the film in the manner envisaged by the contract. It added that, in the case of some commissioning contracts, there may be occasion to consider as makers both the commissioner and the body with which the contract was concluded. As pointed out, in relation to Article 4, paragraph (6), it may happen, in other cases too, that a cinematographic work has several makers, but the solution of problems arising from such situations should be left to national legislation or national jurisprudence.

At the *1963 Committee of Experts*, two experts stressed the dangers they felt might arise from the introduction of the maker into the text of a convention intended to protect the author.

It was observed, however, that several domestic laws referred to the maker and, furthermore, that a similar definition already existed in international instruments. The majority of the Committee were in favour of the proposed definition, which was adopted without change by the Study Group in its *1964 Report.*

At the *1965 Committee of Governmental Experts*, this question gave rise to a number of comments. Some delegations would have preferred to delete the paragraph as proposed. It seemed to them that it would be preferable, in the interests of the general balance of the Convention, which refrains from giving precise definitions, not to give any definition for the maker of a cinematographic work. One delegation added that, if a provision had to be inserted in the Convention, it might be better to have recourse to a sort of presumption and to state that the maker would be deemed to be the person or body corporate who is indicated as such in the credit titles of the film. Two delegations proposed that the maker of a cinematographic work should mean the person or body corporate responsible for the making of the work, in the name of whom agreements with contributors to the work are made. Another delegation suggested that the Convention should stipulate that the maker of a cinematographic work is the person or body corporate who takes the initiative in the making and the responsibility for the exploitation of the work. However, all these proposals were rejected and the majority of the Committee pronounced in favour of the definition presented by the Study Group.

Programme of the Conference. The view expressed by the majority of the experts during the preparatory work, that it was necessary to have a definition for the maker of the cinematographic work in the text of the Convention, has been taken over into the Programme of the Conference. Among the various suggestions made, the one chosen is the proposal which was given most support and which

considers the maker of a cinematographic work to mean the person or body corporate who has taken the initiative in and the responsibility for the making of the work. This formula already exists in the 1958 European Agreement concerning programme exchanges by means of television films and can therefore be regarded as having been accepted in international law. It could certainly be awkward if the same concept were defined differently in two international agreements governing similar situations.

Article 4, paragraph 6

BRUSSELS TEXT	PROPOSED TEXT
—	**(6) The maker of a cinematographic work means the person or body corporate who has taken the initiative in, and responsibility for, the making of the work.**

ARTICLE 5

According to this Article, authors who are nationals of one of the countries of the Union, and who first publish their works in another country of the Union, shall have in the latter country the same rights as national authors.

Programme of the Conference. No change is proposed here, except for a small correction, i.e., the use of the word "national" instead of "native," at the end of the Article.

Article 5

BRUSSELS TEXT	PROPOSED TEXT
Authors who are nationals of one of the countries of the Union, and who first publish their works in another country of the Union, shall have in the latter country the same rights as native authors.	Authors who are nationals of one of the countries of the Union, and who first publish their works in another country of the Union, shall have in the latter country the same rights as **national** authors.

ARTICLE 6

This Article deals with the protection granted to authors who are not nationals of one of the countries of the Union. The condition for the protection of their works results from the application of the criterion of publication: in order to enjoy protection, it is necessary for the work to have been first published in a country of the Union. In the Brussels text, the principal rule on this point is contained in paragraph (1) of this Article. Paragraphs (2), (3) and (4) contain provisions on the right granted to countries of the Union to take retaliatory measures, in some cases, against countries outside the Union.

In the Programme of the Conference, the text of paragraph (1) has been made clearer on certain points. In paragraph (2), a new rule is proposed for the protection of authors affected by this provision, in so far as their cinematographic works are concerned. In paragraph (3), another new rule is proposed on the subject of the protection of the rights of the same category of authors with respect to works of architecture or of graphic and plastic arts forming part of a building.[1] *The aforesaid provisions on retaliatory measures remain unchanged in paragraphs which are now numbered (4), (5) and (6) in view of the insertion of the new paragraphs (2) and (3).*

Paragraph (1)

In the present wording, paragraph (1) stipulates that authors who are not nationals of one of the countries of the Union, and who first publish their works in one of those countries, shall enjoy, in that country, the same rights as national authors, and, in the other countries of the Union, the rights granted by the Convention.

[1] See also the changes in terminology in the English text made by the working party referred to on p. 8.

Preparatory Work. In its *1963 Report*, the Study Group pointed out that the broadening of the field of application of the principle of nationality, proposed in Article 4, paragraph (1), would necessitate a clearer drafting of Article 6, paragraph (1). It follows from this proposal that authors who are nationals of a country of the Union may claim protection for all their works. In Article 6, for obvious reasons, there is no need to introduce a similar broadening of protection in favour of authors who are nationals of countries outside the Union. The Study Group therefore proposed that the principle should be stated in Article 6 whereby the protection granted by that Article concerns only works published in a country of the Union.

The *1963 Committee of Experts* approved this addition to the text.

In its *1964 Report*, the Study Group adopted the addition and further proposed, with the object of clarifying the text, that the provision should expressly state that it also referred to cases where the work has been published simultaneously in a country outside the Union and in a member country.

The *1965 Committee of Governmental Experts* also approved this addition, and no objections were made to the amendments proposed in the 1964 Report.

Programme of the Conference. The clarification of paragraph (1) agreed upon during the preparatory work, which results from the proposal to broaden the scope of application of the principle of nationality made in Article 4, paragraph (4), has been included without change in the Programme of the Conference.

Article 6, paragraph 1

Brussels Text	Proposed Text
(1) Authors who are not nationals of one of the countries of the Union, and who first publish their works in one of those countries, shall enjoy in that country the same rights as nationals, and in the other countries of the Union the rights granted by this Convention.	(1) Authors who are not nationals of one of the countries of the Union, and who first publish their works in one of those countries **or simultaneously in a country outside the Union and in a country of the Union,** shall enjoy, **in the country of the Union where the publication took place, with respect to these works,** the same rights as national authors, and in the other countries of the Union the rights granted by this Convention.

Paragraph (2) (new provision)

Another criterion of eligibility is suggested here for cinematographic works — that of the nationality of the maker — in addition to the two criteria of the author's nationality and the country of first publication.

Preparatory Work. A proposal to that effect was presented by the Study Group in its *1963 Report*, with the object of ensuring the protection of films in all cases where the maker is a national of a country of the Union, or has his residence or headquarters in such a country.

The Study Group stressed that extensive protection of films was clearly an important condition, if authors engaged in the film industry were to be able to obtain the best possible return for their work. In the majority of cases, authors are entitled to protection by application of the criterion of (the authors') nationality, the criterion of publication, or both. However, it is possible that neither of these conditions will be fulfilled. If, for example, a French television organization makes a recording in the United States with the services of personnel engaged on the spot, and the film so produced is not published (as already stated, television films are not often published), neither the criterion of (the authors') nationality nor that of publication is applicable; the same conclusion applies if the film is finally published, but in a country outside the Union.

In order to establish the protection of the rights of the author in such cases, the Study Group adopted a proposal of the "Committee of Film Experts," a proposal which had given rise to little objection among the opinions expressed on the Committee's report. According to this proposal, it would be provided that cinematographic works would be entitled to protection, not only by virtue of the criteria of (the authors') nationality or of publication, but also in cases where the maker is a national of a country of the Union, or has his domicile or headquarters in such a country.

This provision should only apply to authors outside the Union; if they belong to a country which is a member of the Union, they are always entitled to protection in accordance with Article 4.

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At the *1963 Committee of Experts*, one expert expressed doubts as to the need for bringing the maker into the Convention; this would constitute a very important innovation. However, the majority of the Committee were in favour of the proposed text, subject to an amendment to the wording underlining the subsidiary nature of this third criterion of eligibility. The text of paragraph (2) of Article 6 would therefore read as follows: "Authors who are not nationals of one of the countries of the Union shall enjoy for their cinematographic works, which are not first published or not simultaneously published in a country of the Union, and the maker of which is a national of one of the countries of the Union, or has his domicile or headquarters in that country, the same rights in that country as nationals, and, in the other countries of the Union, the rights granted by this Convention."

The Study Group adopted this suggestion in its *1964 Report.*

At the *1965 Committee of Governmental Experts*, the proposal gave rise to considerable discussion. Disputing the very principle of this paragraph, two delegations proposed that it should be deleted purely and simply, as the inclusion of such a provision would be calculated to point the Convention in the direction of the film copyright system. It was observed, however, that it was necessary to provide for an eligibility criterion of this sort for cinematographic works, particularly with regard to the application of the provisions of Article 14, and the majority of the Committee accepted the principle of the proposed provision. As for the wording, one delegation representing a country which has adopted the film copyright system stressed its desire to avoid having one and the same provision to deal with the maker and the author at the same time, thus giving the impression that they could never be the same person. The Committee decided to leave it to the Study Group to revise the wording, bearing this point of view in mind.

Programme of the Conference. In accordance with the views expressed by the majority of the experts regarding paragraph (2) of Article 6, a new provision has been inserted, stipulating another criterion of eligibility for cinematographic works — that of the nationality of the maker — in addition to the two criteria of the author's nationality and the country of the first publication. The rule has been established on the basis of the proposal of the 1963 Committee of Experts, but with slight modifications to clarify the meaning.

According to the wording adopted, the author and the maker should not necessarily be deemed, within the meaning of the Convention, to be different persons. Such an interpretation would obviously not be possible in countries having the film copyright system; nor would it be possible in other countries, when the maker has made literary or artistic contributions to the work and is therefore considered to be an author, an intellectual creator (see also p. 58).

Article 6, paragraph 2

BRUSSELS TEXT	PROPOSED TEXT
—	**(2) Authors who are not nationals of one of the countries of the Union shall enjoy for their cinematographic works which are unpublished or which are not first or simultaneously published in a country of the Union, but the maker of which is a national of one of the countries of the Union, or has his domicile or headquarters in that country, the same rights in that country as national authors and, in the other countries of the Union, the rights granted by this Convention.**

Paragraph (3) (new provision)

A new provision is suggested in this paragraph for the protection of works of architecture or of graphic and three-dimensional works affixed to land or to a building.

Preparatory Work. In its *1963 Report*, the Study Group proposed the following wording for this provision: "Authors who are not nationals of one of the countries of the Union shall enjoy for their works of architecture or of graphic and plastic arts forming part of a building, in the country of the Union where these works have been built or incorporated in a building, the same rights as nationals and, in the other countries of the Union, the rights granted by this Convention. The second sentence of paragraph (5) of Article 4 shall be applicable."

This proposal was based on the following considerations: according to Article 6, paragraph (1), authors who are not nationals of one of the countries of the Union can only claim protection for works published in a country of the Union. In principle, unpublished works are not entitled to protection. In Article 6, paragraph (2), the Study Group proposes a modification of this principle in the case of cinematographic works. In the opinion of the Study Group, the authors in question should also enjoy protection as regards another category of unpublished works, namely, works of architecture erected in a country of the Union, and works of graphic and plastic arts forming part of a building situated in such a country. By the very fact of construction or incorporation in the building, a sufficient link has been created between the work and the country for the work to enjoy the right to protection.

The provision introduced by the Brussels Conference into Article 4, paragraph (5), is based on the same principle. It must, however, be noted that in this latter case the principle does not establish a link for protection, but merely serves as a guide in determining the country of origin in cases where works belonging to the category in question are protected by application of the criterion of nationality stipulated in Article 4, paragraph (1).

Some experts having stressed the liberal spirit of the Study Group's proposal, the *1963 Committee of Experts* expressed itself in favour of its adoption, and the Study Group took it over in its *1964 Report.*

At the *1965 Committee of Governmental Experts*, the proposed provision met with some objections. Considering that legislation in some countries does not provide for the protection of works of architecture solely by reason of the fact of their having been built in a country of the Union, some delegations proposed that this provision should start with the words: "Unless national legislation provides otherwise." Other delegations observed, however, that such a reservation would deprive the amendment proposed by the Study Group of all its value, and that the centre of gravity for works of architecture was the place where they had been built. The Committee accordingly rejected the proposal to amend the Study Group's text and expressed its preference for the text as proposed.

Programme of the Conference. As indicated in the case of Article 6, paragraph (2), it is proposed to insert, for the benefit of authors who are not nationals of one of the countries of the Union, a special criterion for the protection of cinematographic works, in addition to the criterion of publication mentioned in paragraph (1). In accordance with the recommendations of the 1965 Committee of Governmental Experts, it is further proposed to introduce a special criterion in paragraph (3), for the benefit of the said authors, in respect of another category of works — works of architecture and graphic and three-dimensional works affixed to land or to a building. Protection would be granted to these works if they have been built or affixed to land or to a building in a country of the Union. This proposal is inspired by the rule introduced at the Brussels Conference in Article 4, paragraph (5), whereby the country of origin is determined, for this category or works, according to the place where the work has been built or incorporated in a building. In view of the fact that the principle itself is already recognized to some extent in the Convention, it was felt that there was not sufficient justification for making the new rule optional[1].

Article 6, paragraph 3

Brussels Text	Proposed Text
—	**(3) Authors who are not nationals of one of the countries of the Union shall enjoy for their works of architecture or graphic and three-dimensional works affixed to land or to a building, in the country of the Union where these works have been erected or so affixed, the same rights as national authors and, in the other countries of the Union, the rights granted by this Convention.**

[1] In the course of the discussions within the *1963 Committee of Experts* on *Articles 4 to 6*, Professor Eugen Ulmer submitted a proposal, in a personal capacity, for a systematic classification regarding the normal criteria of eligibility, the exceptional criteria (works of architecture and cinematographic works), the main principles of protection, and the country of origin.

The Committee warmly congratulated Professor Ulmer on his outstanding contribution to the work of revision of the Convention and recommended that his proposals should be given further careful study.

In its *1964 Report*, the Study Group expressed the opinion that the texts proposed by Professor Ulmer had undoubted merits from the systematic point of view. However, it did not think it advisable to propose such a radical reshaping of the present text as it would constitute a complete break with the traditional system. It felt that it should be left to the Stockholm Conference to settle the question of how these different rules should be grouped.

This view was shared by those who drew up the Programme of the Conference.

Article 6, paragraphs 4, 5 and 6

BRUSSELS TEXT	PROPOSED TEXT
(2) Nevertheless, where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not effectively domiciled in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.	(4) Nevertheless, where a country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and have no bona fide domicile in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.
(3) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.	(5) No restrictions imposed in accordance with the preceding paragraph shall prejudice the rights which an author may have acquired in a work published in a country of the Union before such restrictions were put into force.
(4) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Government of the Swiss Confederation by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Government of the Swiss Confederation shall immediately communicate this declaration to all the countries of the Union.	(6) The countries of the Union which restrict copyright in accordance with this Article shall give notice thereof to the ...... * by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The ...... * shall immediately communicate this declaration to all the countries of the Union.
	* See footnote page 83 of the Annex I/A.

ARTICLE 6bis

This Article deals with the protection granted to the author's moral rights.

Preparatory Work. The Study Group had made no proposals for amending this Article, either in its *1963 Report* or in its *1964 Report.*

The *1965 Committee of Governmental Experts* was presented with a proposal from one delegation aimed *(a)* at extending the protection of moral rights at least until the expiration of the term of protection, by deleting, in paragraph (1) of this Article, the words "during his lifetime," and *(b)* at rendering the provision in paragraph (2) compulsory for the countries of the Union by deleting the words "in so far as the legislation of the countries of the Union permits," substituting the words "the legislation of the countries of the Union" for "the said legislation," and omitting the last sentence. Some delegations expressed serious misgivings as to the wisdom of and the need for adopting the provisions in question, preferring to retain the existing text. Many other delegations, however, were in favour of the proposal and it was accepted by the Committee, subject to a possible improvement of the wording.

At the same time, one other delegation proposed that Article 6*bis* should be completed by a provision stipulating that the countries of the Union should undertake to adopt all measures necessary for the protection of literary and artistic works against their use in a manner prejudicial to civilisation, in the event that the persons referred to in paragraphs (1) and (2) of Article 6*bis* no longer existed. Several delegations supported this proposal, but others, while approving its spirit, expressed doubts as to the chances of its adoption by the Revision Conference. Other delegations felt, however, that the question came within the ambit of public law rather than copyright and should be the subject of a separate convention. The Committee accordingly rejected the proposal.

Programme of the Conference. The rules on the protection of moral rights adopted by the Rome Conference (1928) in Article 6*bis* make protection compulsory only during the author's lifetime. Even at the Rome Conference, however, proposals had been put forward which were aimed at introducing rules in the Convention for the protection of moral rights during the posthumous period of the term of protection, and the Conference formulated a recommendation to that effect[1]. In the Programme for

[1] See *Acts of the Rome Conference* p. 349.

the Brussels Conference (1948), proposals were presented with a view to introducing this extension of protection into the Convention [1], but the time was not ripe for such a strengthening of copyright and the proposals were not accepted.

The discussion which took place at the 1965 Committee of Governmental Experts showed, however, the increasing interest in improving the protection of the author's moral rights, and the strong desire in some countries to render compulsory the protection of this important aspect of copyright, even during the posthumous period of the term of protection. In drawing up the Programme of the Conference, it was therefore felt to be desirable to include a proposal to that effect.

At the Brussels Conference, the debate also dealt with the question whether it should be made compulsory for countries of the Union to protect moral rights even after the extinction of the economic rights. But the objections which had been made to the proposal to institute protection of moral rights during the posthumous period of the term of protection were raised *a fortiori* to this idea. It was further maintained that moral rights under the system of the public domain were in reality an institution intended to safeguard the interests of the community and should consequently not be included in a Convention like the Berne Convention which is concerned solely with a private right. At the 1965 Committee of Governmental Experts, the wish was again expressed that moral rights should be protected after the expiration of the term of protection. However, the view expressed in 1948 and stressed again by some of the experts in 1965 — that this question came within the ambit of public law rather than copyright — still remains valid and, consequently, it has not been considered necessary to make any proposals in this connection in the Programme of the Conference.

Article 6*bis*

BRUSSELS TEXT	PROPOSED TEXT
(1) Independently of the author's copyright, and even after the transfer of the said copyright, the author shall have the right, during his lifetime, to claim authorship of the work and to object to any distortion, mutilation or other alteration thereof, or any other action in relation to the said work which would be prejudicial to his honour or reputation.	(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right (......) to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.
(2) In so far as the legislation of the countries of the Union permits, the rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the copyright, and shall be exercisable by the persons or institutions authorised by the said legislation. The determination of the conditions under which the rights mentioned in this paragraph shall be exercised shall be governed by the legislation of the countries of the Union.	(2) (......) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by **the legislation of the country where protection is claimed. (......)**
(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.	(3) (No change.)

ARTICLE 7

In the Programme of the Conference, the text of this Article, which deals with the term of protection, has been the subject of a number of amendments as to substance and the wording has been re-drafted as compared with the Brussels text.

Paragraph (1)

This paragraph contains a provision on the term of protection in general. This term was fixed at the Brussels Conference, in a mandatory manner, at a minimum of fifty years after the death of the author.

Preparatory Work. In its *1964 Report*, the Study Group pointed out that international societies of authors, as well as the national societies of authors in several countries, desired an extension of this

[1] See *Documents of the Brussels Conference*, pp. 184 *et seq.*

term. However, the decision of the Brussels Conference to raise the term of protection to a minimum of fifty years has meant a considerable extension of the term of protection for certain countries of the Union, and it seems unlikely that these countries would be disposed to accept a further extension. Besides, the enquiries made by BIRPI among the countries of the Union prior to the convening of the Committees of Experts on this matter (see p. 9) made it clear that very few of them were inclined to increase the present term of protection. For these reasons, the Study Group considered that a general agreement on extension of the period of fifty years would be very difficult to secure and consequently abandoned the idea of proposing amendments in this respect.

It ventured, however, to recall in this connection the suggestions of the aforesaid Committees of Experts for the creation of a special arrangement for the extension of the term of protection, and the possibilities offered by such an arrangement to countries desirous of obtaining an extension.

The *1963 Committee of Experts* and the *1965 Committee of Governmental Experts* did not discuss this question.

Programme of the Conference. At the Brussels Conference, the term of protection of fifty years *post mortem auctoris* was introduced as a compulsory minimum for countries of the Union. Subsequently, in certain countries and for various reasons, extensions of the normal term of protection or longer terms were established. *Inter alia,* a term of protection of seventy years *post mortem auctoris* was recently introduced in the Federal Republic of Germany.

It seems, however, that it is generally agreed that the minimum term provided in the Brussels text should not be changed for the moment. The ruling in the existing paragraph (1) of Article 7 has therefore been left unaltered.

Article 7, paragraph 1

BRUSSELS TEXT	PROPOSED TEXT
(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.	(1) (No change.)

Paragraph (2)

This paragraph contains provisions concerning the term of protection for cinematographic works. In the Brussels text, the corresponding provisions are in paragraph (3).

Preparatory Work. In its *1963 Report,* the Study Group recalled that at present there was no fixed minimum for the term of protection of cinematographic works and it proposed that these works should also be protected for at least fifty years after the death of the author, or after publication or the first public presentation or radiodiffusion of the work, according to the law of the country where protection is claimed.

Within the "Committee of Film Experts," opinions on this subject were divided. While some experts thought that it would be superfluous to fix a minimum term in the Convention, others proposed provisions to that effect. In this connection, it was recommended that the Convention should allow countries of the Union to compute the minimum term — for example, fifty years — from the death of the last surviving author or from the first public performance of the work (whether in a cinema, on television, or otherwise).

Among the opinions expressed on the Committee's report, the proposal to introduce a minimum term of fifty years was supported by several Governments and interested organizations.

For its part, the Study Group adopted the proposal. It stressed that cinematographic works were capable of sustaining a high value for fairly long periods and should be protected for as long as works in general. It was therefore necessary to establish a minimum term of fifty years. As regards the starting-point of such term, account must be taken of the fact that, in the so-called "film copyright" system, an original copyright can be granted to bodies corporate; for this reason, it is fitting to leave countries of the Union free to fix the commencement of the period, either as from the death of the author, or from publication, or first public presentation, or radiodiffusion, of the work. In the event that the first alter-

native is adopted, it follows from the provision of Article *7bis* that, if there are several authors, the commencement of the period should be fixed from the death of the last surviving author.

At the *1963 Committee of Experts*, one expert suggested deleting the reference to the death of the author, but this suggestion was not accepted by the Committee, which expressed itself in favour of the text proposed by the Study Group.

In the *1964 Report*, this text was adopted by the Study Group, with the stipulation that, if the term of protection is counted from the publication, public presentation or radiodiffusion of the cinematographic work, it must be the first time the publication, public presentation or radiodiffusion takes place.

At the *1965 Committee of Governmental Experts*, one delegation proposed that the minimum term of protection in the Convention should be fixed at twenty-five years. Another delegation proposed inserting a clause to the effect that countries were at liberty to provide that the term of protection for unpublished works should expire fifty years after the creation of the work. The Committee, however, rejected these proposals and expressed its preference for the Study Group's text.

Programme of the Conference. According to the Brussels text, cinematographic works are excluded from the compulsory minimum term of protection of fifty years *post mortem auctoris*. There is no minimum and countries have the right to fix as short a term of protection as possible. In the light of the general recommendations during the preparatory work, it is proposed in the Programme of the Conference to introduce a minimum term for cinematographic works also. As suggested by the majority of the experts, cinematographic works should be subject to the compulsory minimum of fifty years *post mortem auctoris*, and countries of the Union should be left free to provide that the fifty-year term shall be counted from the first publication, public presentation, or radiodiffusion [1] of the work. A ruling to that effect has been incorporated in paragraph (2) of the proposed Article 7 and the wording is based on what was agreed by the 1965 Committee.

However, to take account of an observation made at that Committee, the stipulation has been added that, failing publication, public presentation or radiodiffusion within fifty years from the making of the work, the term of protection shall expire fifty years after the making. Without such a provision, the term of protection for cinematographic works which have not been the subject of publication, public presentation or radiodiffusion within fifty years from the making of the work would be unduly prolonged and in some cases would be unlimited. It need hardly be stressed that a country of the Union which does not wish to apply this supplementary provision would not be obliged to include it in its domestic law. This would result in extending the term of protection beyond what is stipulated in the Convention, and any such extension of a term of protection established *jure conventionis* is always permissible. (A general provision on this subject has been introduced, in the Programme of the Conference, in Article 7, paragraph (6).)

Article 7, paragraph 2

Brussels Text	Proposed Text
(3) In the case of cinematographic .... works, as well as works produced by a process analogous to cinematography ...., the term of protection shall be governed by the law of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work.	**(2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the first publication, public performance or broadcast, or failing such an event within fifty years from the making of such a work, fifty years after the making.**

Paragraph (3)

This paragraph, which corresponds to paragraph (5) of the Brussels text, deals with the protection of anonymous and pseudonymous works. The principal rule set forth in the first sentence of the paragraph states, in the existing text, that the term of protection for these works is fixed at fifty years calculated from the date of their publication.

[1] See footnote on p. 27 concerning the use of the words "performance" and "broadcasting" instead of "presentation" and "radiodiffusion."

Preparatory Work. In its *1963 Report*, the Study Group proposed that the words "the term of protection shall be fixed at fifty years from the date of their publication" should be replaced by the words "protection shall expire fifty years after the work has been lawfully made accessible to the public."

In the view of the Study Group, the word "publication," in this context, relates to every means by which the work is lawfully made accessible to the public and consequently is not limited to publication within the meaning of the first sentence of the present Article 4, paragraph (4), but also includes radio-diffusion and the other measures envisaged in the second sentence of that paragraph. It seems desirable to express this consideration in the texts. It may further be observed that the provision, in its present wording, is capable of creating the impression that protection is only granted as from the time when the work is published and that, in consequence, the work is not protected prior to its publication. The correct meaning should be that, in this case, as in the case of works in general, protection is granted as from the creation of the work.

The Study Group further proposed that a fourth sentence should be added to paragraph (4), worded as follows: "The countries of the Union shall not be required to protect anonymous or pseudonymous works in regard to which it is reasonable to presume that their author has been dead for fifty years." The reason for proposing this addition was the fact that, if an anonymous or pseudonymous work is published after the death of the author, the special method used to fix the starting-point of the term of protection results in a longer term of protection than that obtained by applying the principal rule. In principle, the period of protection of such a work is unlimited so long as the work is not published; it is only as from publication of the work — which might take place some considerable time after the death of the author — that the term of protection starts to run. In certain cases, this fact might hamper the publication of anonymous or pseudonymous manuscripts or works of art of a certain age. In the light of these facts, it would seem advisable not to relate the term of protection to publication, provided there are strong reasons for supposing that the author of the work has been dead for fifty years.

The *1963 Committee of Experts* adopted in principle the proposals presented, subject to amendments concerning the wording. The *1965 Committee of Governmental Experts* also approved these proposals, but recommended that the texts should be adopted in the wording presented by the Study Group.

Programme of the Conference. According to the proposals adopted in principle by the experts during the preparatory work, the text suggested for paragraph (3) tends in some respects to clarify the existing provisions. The wording is based on the proposals of the Study Group as approved by the 1965 Committee[1].

Article 7, paragraph 3

BRUSSELS TEXT	PROPOSED TEXT
(4) In the case of anonymous and pseudonymous works the term of protection shall be fixed at fifty years from the date of their publication. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1).	(3) In the case of anonymous or pseudonymous works, the term of protection **granted by this Convention shall expire fifty years after the work has been lawfully made available to the public.** However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). **The countries of the Union shall not be required to protect anonymous or pseudonymous works of which it is reasonable to presume that their author has been dead for fifty years.**

Paragraph (4)

This paragraph, which corresponds to paragraph (3) of the existing text, contains provisions on the term of protection of photographic works and works of applied arts. The Brussels text provides that the term of protection in the case of these categories of works shall be governed by the law of the country where protection is claimed but may not exceed the term fixed in the country of origin of the work.

[1] See also the footnote on p. 29.

Preparatory Work. In its *1964 Report*, the Study Group proposed a provision in paragraph (6) making it a matter for legislation in the countries of the Union to determine the term of protection of photographic works and works of applied arts.

At the *1965 Committee of Governmental Experts*, it was suggested that this provision should be completed by the addition of a rule providing for minimum terms of protection in the case of photographic works and works of applied arts protected as artistic works. The Committee adopted this suggestion and recommended that the minimum term of protection should be fixed at twenty-five years.

Programme of the Conference. In accordance with the recommendation of the 1965 Committee of Governmental Experts, it was considered desirable to include in the Programme of the Conference the proposal to introduce into the Convention a minimum term of protection of twenty-five years for photographic works and works of applied arts, protected as artistic works. It seemed preferable that this twenty-five-year period should be calculated from the making of such works. The countries of the Union would remain free to calculate the term of protection from the date of publication of the work or from any other event subsequent to the making of the work because, in such cases, the term of protection would be greater than the minimum stipulated in the Convention, which is always permissible.

The provision does not concern works of applied arts which are not protected as artistic works. It follows from the provisions laid down in Article 2, paragraph (6) (paragraph (5) of the existing text), that countries of the Union are not required to observe any minimum whatever for those works.

Article 7, paragraph 4

BRUSSELS TEXT	PROPOSED TEXT
(3) In the case of .... photographic works, as well as works produced by a process analogous to .... photography, and in the case of works of applied art, the term of protection shall be governed by the law of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work.	**(4) It shall be a matter for legislation in countries of the Union to determine the term of protection of photographic works and that of works of applied arts in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work.**

Paragraph (5)

Programme of the Conference. As approved by the experts during the preparatory work it is proposed to insert in paragraph (5) the provisions now in paragraph (6) concerning the method of calculating the various terms of protection provided in paragraphs (2), (3) and (4). The proposals in the Programme of the Conference concerning the said paragraphs consequently make it necessary to adapt the wording of these provisions.

Article 7, paragraph 5

BRUSSELS TEXT	PROPOSED TEXT
(6) The term of protection subsequent to the death of the author and the terms provided by paragraphs (3), (4) and (5) shall run from the date of his death or of publication, but such terms shall always be deemed to begin on the 1st January of the year following the event which gives rise to them.	(5) The term of protection subsequent to the death of the author and the terms provided by paragraphs **(2)**, **(3)** and **(4)** shall run from the date of death or **of the event referred to in those paragraphs**, but such terms shall always be deemed to begin on the 1st January of the year following **the death or such event.**

Paragraph (6)

Programme of the Conference. As approved by the experts during the preparatory work, the Programme proposes the insertion of a provision in this paragraph allowing countries of the Union to grant a term of protection in excess of that provided in the preceding paragraphs.

It is obvious that countries of the Union already have that right and no special provision is needed to create it, but the words at the beginning of paragraph (2) of the present text might be deemed expressly to grant such right and it has therefore seemed safer to keep a corresponding provision in the new text.

Article 7, paragraph 6

BRUSSELS TEXT	PROPOSED TEXT
—	**(6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.**

Paragraph (7)

This paragraph corresponds to some of the provisions in paragraphs (2) and (3) of the Brussels text.

As worded in the present text, paragraph (2) provides that, where one or more countries of the Union grant a term of protection in excess of that provided by paragraph (1), the term shall be governed by the law of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work. The same principle is stated in paragraph (3) with regard to cinematographic and photographic works, as well as works produced by a process analogous to cinematography or photography.

Preparatory Work. In its *1963 Report*, the Study Group pointed out that the principle of "comparison of terms "thus stated had not appeared to give rise to any objections. However, it felt it desirable to clarify the text by altering the wording. The present wording gives the impression that the country where protection is claimed would not be permitted to apply a term of protection in excess of that provided in the text. It seemed more accurate to stipulate that the first country is not obliged to exceed the term in question. It should be possible for countries whose attitude towards the term of protection is generous to adopt such attitude even in their relations with the nationals of countries whose principles in this respect are more restrictive.

At the *1963 Committee of Experts*, some experts observed that the intervention of the legislator might be necessary in certain countries to ensure the application of the system of comparison of terms. The Chairman of the Committee then proposed the following text: "... the term shall be governed by the law of the country where protection is claimed; however, unless the legislation of that country should decide otherwise, the term shall not exceed the term fixed in the country of origin of the work."

This text was approved by the Committee and was adopted without change in the *1964 Report*. The Study Group also proposed, in this Report, that the provision concerned, appearing in paragraphs (2) and (3), should be withdrawn and placed in a special paragraph at the end of the Article. This, indeed, would seem to be necessary so that there would be no doubt that the general principle of "comparison of terms" applied to all the cases covered by this Article. The Study Group noted that this rearrangement of the provisions had the added advantage of clearly establishing the applicability of the principle, notwithstanding the length of the term of protection. In its present wording, paragraph (2) might give the impression that, in the cases which it covers, the principle applies only in countries granting a term of protection in excess of fifty years.

The proposed provisions gave rise to no objections on the part of the *1965 Committee of Governmental Experts*.

Programme of the Conference. As approved by the experts during the preparatory work, the provisions at present appearing in paragraphs (2) and (3) concerning the application of the principle of the "comparison of terms" have been reassembled in the proposed provision and placed at the end of Article 7. It thus becomes clear that the principle applies to all the cases covered by this Article.

Article 7, paragraph 7

BRUSSELS TEXT	PROPOSED TEXT
(2) However, where one or more countries of the Union grant a term of protection in excess of that provided by paragraph (1), the term shall be governed by the law of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work.	(7) **In any case,** the term shall be governed by the law of the country where protection is claimed; **however, unless the legislation of that country otherwise provides, the term shall not exceed** the term fixed in the country of origin of the work.

Deletion of paragraph (5) of the present text

Programme of the Conference. As approved by the experts during the preparatory work, it has been considered unnecessary to reproduce, in the new version of Article 7, paragraph (5), of the Brussels text relating to posthumous works, whose term of protection is determined by the general rule in paragraph (1), unless they fall into special categories (cinematographic works and anonymous or pseudonymous works). It seems superfluous to make express reference to them in a special paragraph, as posthumous works, like other works, are subject to all the provisions of Article 7.

Brussels Text	Proposed Text
(5) In the case of posthumous works which do not fall within the categories of works included in paragraphs (3) and (4) the term of the protection afforded to the heirs and the legal representatives and assignees of the author shall end at the expiry of fifty years after the death of the author.	—

*ARTICLE 7*bis

This Article concerns the term of protection in the case of a work of joint authorship.

Preparatory Work. The Study Group had made no proposals in its earlier drafts for the amendment of this Article.

Programme of the Conference. Adopting a suggestion made at the 1965 Committee of Governmental Experts, a new wording is proposed for this Article to make it clear that the rules provided under Article 7 are applicable in principle when the copyright belongs in common to all the collaborators in a work, and that the only departure from this principle lies in the fact that the terms of protection subsequent to the death of the author shall be calculated from the death of the last surviving author. At the 1965 Committee, the question also arose as to whether it might not be indicated that in cases where protection depends of the nationality of the author — for example, in the case of unpublished literary or musical works — the term of protection is calculated from the death of the last surviving author who is a national of a country of the Union. This fact ought, however, to be clear without having to resort to an express provision. Authors who are not nationals of a country of the Union do not enjoy any protection in such cases and the dates of their deaths cannot therefore affect the calculation of the term of protection for those authors who enjoy the benefit of such protection.

Article 7*bis*

Brussels Text	Proposed Text
In the case of a work of joint authorship the term of protection shall be calculated from the date of the death of the last surviving author.	**The provisions of the preceding Article shall also apply in the case of a work of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the last surviving author.**

ARTICLE 8

This Article contains provisions on the right of translation.

Programme of the Conference. No change is proposed here.

Article 8

Brussels Text	Proposed Text
Authors of literary and artistic works protected by this Convention shall have the exclusive right of making and of authorising the translation of their works throughout the term of protection of their rights in the original works.	(No change.)

ARTICLE 9

The present text deals with works published in newspapers or periodicals. The Programme of the Conference proposes that the provisions in paragraphs (1) and (2) relating to newspaper articles should be deleted and replaced by a general rule on protection against reproduction. It is further proposed that the provision on news of the day and miscellaneous information, which is now in paragraph (3), should be placed in paragraph (7) of Article 2.

(1) *New provisions instituting protection against reproduction*

Paragraphs (1) and (2)

Preparatory Work. It was felt, during the preparatory work, that one of the most important tasks of the Revision Conference would be to incorporate rules in the Convention on the general right of reproduction.

Article 8, and the succeeding Articles up to and including Article 14*bis*, contain the provisions constituting the *jus conventionis* (minimum of protection), as well as certain restrictions.

Prerogatives recognized *jure conventionis* are:

the right of authorizing the reproduction of works published in newspapers or periodicals (Article 9);

the right of translation (Article 8);

the right of authorizing the presentation and performance of dramatic, dramatico-musical, and musical works (Article 11);

the right of authorizing radiodiffusion (Article 11*bis*);

the right of authorizing public recitation (Article 11*ter*);

the right of authorizing adaptations (Article 12);

the "mechanical rights" in relation to musical works (Article 13);

cinematographic rights (Article 14);

the "*droit de suite*" (Article 14*bis*).

In the Study Group's view, it follows from this enumeration that the Convention does not establish a general right of reproduction (manufacture of copies).

The question whether this right should be recognized by the Convention was discussed at the Brussels Conference, but the proposals in this respect were withdrawn and the Conference did not pursue them[1].

In drawing up its *1963 Report*, the Study Group had considered that the chances of a provision on this matter being accepted were probably no better than in 1948 and had consequently not felt able at that point to submit any proposals on a subject which was not even discussed by the *1963 Committee of Experts.*

However, after further deliberation, the Study Group reached the conclusion, in its *1964 Report*, that a provision on the right of reproduction should be proposed. This prerogative has a fundamental place in the legislation of countries of the Union; the fact that it is not recognized in the Convention would therefore appear to be an anomaly. The Study Group noted, however, that if a provision on the subject was to be incorporated in the text of the Convention, a satisfactory formula would have to be found for the inevitable exceptions to this right.

In this connection, the Study Group observed that, on the one hand, it was obvious that all the forms of exploiting a work which had, or were likely to acquire, considerable economic or practical importance must in principle be reserved to the authors; exceptions that might restrict the possibilities open to authors in these respects were unacceptable. On the other hand, it should not be forgotten that domestic laws already contained a series of exceptions in favour of various public and cultural interests

[1] See *Documents of the Brussels Conference*, pp. 237 *et seq.*

and that it would be vain to suppose that countries would be ready at this stage to abolish these exceptions to any appreciable extent [1].

After examining a number of possible solutions, the Study Group suggested the following text: "Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form. However, it shall be a matter for legislation in the countries of the Union, having regard to the provisions of this Convention, to limit the recognition and the exercising of that right, for specified purposes and on the condition that these purposes should not enter into economic competition with these works."

The Study Group pointed out that this text limited, in three respects, the right of national legislation to make exceptions:

(a) Account must be taken of the other provisions in the Convention. This implies that the provisions already existing for certain special purposes (Articles 10, 10*bis* and 11*bis*, paragraph (3)) must be regarded as rules exercising limits on the questions with which they deal. Thus, the special conditions, whose presence these exceptions imply, must always be respected. Furthermore, the reservation in favour of the other provisions in the Convention implies that those established in Article 14 remain. It follows, therefore, from this reservation that the new provision places no restriction on the right granted to countries of the Union, under Article 13, to institute a compulsory licence with respect to the right to record musical works.

(b) Exceptions should only be made for clearly specified purposes, e.g., private use, the composer's need for texts, the interests of the blind. Exceptions for no specified purpose, on the other hand, are not permitted.

(c) Exceptions should not enter into economic competition with the work. By using these words, which are patterned on Italian legislation, the Study Group intended to give expression to the principle stated above: all forms of exploiting a work, which have, or are likely to acquire, considerable economic or practical importance, must be reserved to the authors.

At the same time, the formula chosen opens the way for other exceptions of lesser importance. It expresses, among other things, the idea that it is advisable to take special precautions before countenancing exceptions that may be applied without giving authors the right to claim remuneration. If this right is granted, the scope of the power to make exceptions widens to some extent [2].

The *1965 Committee of Governmental Experts* held a general discussion on the Study Group's proposal to recognize *jure conventionis* the right of reproduction. The principle of this recognition was upheld by a number of delegations, but two delegations expressed doubts as to the practical need for and desirability of inserting this right in the Convention. One delegation noted in particular that the right of reproduction was already recognized implicitly in the Convention, by reason of the existence of a number of special provisions on the subject, and that paragraph (2) of the Article proposed by the Study Group might prove dangerous to the authors' legitimate interests. While admitting that it was illogical that the Convention should not mention the recognition of the right of reproduction, the Com-

[1] The exceptions most frequently recognized in domestic laws seem to relate to the following works or methods of use: (1) public speeches; (2) quotations; (3) school books and chrestomathies; (4) newspaper articles; (5) reporting current events; (6) ephemeral recordings; (7) private use; (8) reproduction by photocopying in libraries; (9) reproduction in special characters for the use of the blind; (10) sound recordings of literary works for the use of the blind; (11) texts of songs; (12) sculptures on permanent display in public places, etc.; (13) artistic works used as a background in films and television programmes; (14) reproduction in the interests of public safety. The present text of the Convention contains provisions relating to exceptions (1) to (6) (it is proposed, below, to delete exception (4)).

[2] The Study Group remarked that another solution to the problem under discussion would be, of course, to indicate the exceptions in the text of the Convention by means of a list intended to be restrictive. However, after a lengthy discussion, the Study Group came to the conclusion that this solution should not be adopted. On the one hand, a list of this kind — even if it were to be limited to the main exceptions — would be very long and would in fact considerably restrict the authors' rights. At the present time, most countries recognize some only of the exceptions indicated above — these vary from one country to another — or else they grant remuneration to the authors for the use permitted by certain of these rules of exception, as in the case of the Nordic countries. There is every reason to fear that the introduction of a list of this kind would encourage the adoption of all the exceptions allowed and abolish the right of remuneration. On the other hand, a list, however long, would be inadequate, because it could never cover all the special cases existing in national legislation.

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mittee was of the opinion that the main difficulty was to find a formula which would allow of exceptions, bearing in mind the exceptions already existing in many domestic laws. To that end, the Committee appointed a Working Group which, after careful deliberation, suggested that paragraph (2) of the text proposed by the Study Group should be drafted as follows: "It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works: *(a)* for private use; *(b)* for judicial or administrative purposes; *(c)* in certain particular cases where the reproduction is not contrary to the legitimate interests of the author."

The Working Group's suggestion gave rise to keen discussion within the Committee, which finally gave its approval to the following draft for Article 9:

"(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works

(a) for private use;

(b) for judicial or administrative purposes;

(c) in certain particular cases where the reproduction is not contrary to the legitimate interests of the author and does not conflict with a normal exploitation of the work."

Programme of the Conference. As mentioned above, proposals for the incorporation in the Convention of rules concerning the general right of reproduction were discussed at the Brussels Conference without leading to any conclusion. The deliberations at the 1965 Committee of Governmental Experts showed, however, that there was a growing interest in widening the scope of the list, in the Convention, of the rights granted to the author, and that it was now considered desirable in many countries that this fundamental right of the author should be recognized *jure conventionis.* Doubts have frequently been expressed concerning the proposals made in this connection, but they seem to have been due primarily to the problem of defining in the Convention the exceptions that would have to be made to the general right of reproduction. This is probably associated too with the considerable difficulty of finding a formula capable of safeguarding the legitimate interests of the author while leaving a sufficient margin of freedom to the national legislation to satisfy important social or cultural needs. The suggestion which the 1965 Committee formulated on this subject seems likely, however, to offer a guarantee to all the opposing interests concerned.

In drawing up the Programme of the Conference, it was felt therefore that the time had come to propose a rule granting to the author the exclusive right of authorizing the reproduction of his work, subject to the possibilities of limiting this right provided by the formula adopted by the 1965 Committee.

Article 9, paragraphs 1 and 2

Brussels Text	Proposed Text
(1) Serial novels, short stories and all other works, whether literary, scientific or artistic, whatever their purpose, and which are published in the newspapers or periodicals of one of the countries of the Union shall not be reproduced in the other countries without the consent of the authors.	**(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.**
(2) Articles on current economic, political or religious topics may be reproduced by the press unless the reproduction thereof is expressly reserved; nevertheless, the source must always be clearly indicated. The legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.	**(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works** **(a) for private use;** **(b) for judicial or administrative purposes;** **(c) in certain particular cases where the reproduction is not contrary to the legitimate interests of the author and does not conflict with a normal exploitation of the work.**

(2) *Deletion of the provisions relating to newspaper articles*

Paragraph (1) (of the present text)

Programme of the Conference. Paragraph (1) of Article 9 provides, in its present wording, that serial novels, short stories and all other works, whether literary, scientific, or artistic, whatever their purpose, and which are published in the newspapers or periodicals of one of the countries of the Union shall not be reproduced in the other countries without the consent of the authors.

This provision may clearly be deleted if a rule on the general right of reproduction is incorporated in the Convention.

Brussels Text	Proposed Text
(1) Serial novels, short stories and all other works, whether literary, scientific or artistic, whatever their purpose, and which are published in the newspapers or periodicals of one of the countries of the Union shall not be reproduced in the other countries without the consent of the authors.	—

Paragraph (2) (of the present text)

Paragraph (2), in its present wording, grants to the press the right freely to reproduce articles on current economic, political or religious topics, unless reproduction thereof is expressly reserved.

Preparatory work. In its *1963 Report*, the Study Group proposed deleting this Article. Indeed, the International Federation of Journalists has, in recent years, adopted several resolutions recommending the abolition of this provision, and the Study Group supported this recommendation, while recognizing that, in former days, there may have been a need to reproduce entire articles of this kind, without the permission of the author, this need being experienced particularly by the smaller newspapers. In our day, however, it can hardly be compatible with the moral principles recognized by the press to reproduce an article published in another newspaper without having first obtained the author's permission. It is true that, in the interest of the discussion in the press on public affairs and other questions, there is a need to report such articles freely, and to a fairly general extent. However, it should be pointed out that there is no legal obstacle to giving reports on protected works. In cases where there is a genuine need for literal reproduction, means for so doing should be provided, but within the framework of the right of quotation. In that connection, the Study Group referred to the developments concerning Article 10.

For these reasons, it proposed that paragraph (2) of Article 9 should be deleted.

The *1963 Committee of Experts*, having heard the observer of the International Federation of Journalists express his satisfaction with regard to the work of the Study Group and the proposals submitted, expressed itself in favour of the deletion of paragraph (2) of Article 9. The same proposal was submitted in the *1964 Report* and gave rise to no objections on the part of the *1965 Committee of Governmental Experts*.

Programme of the Conference. As approved by the experts during the preparatory work, it is proposed that the provisions which at present appear in paragraph (2) of Article 9, authorizing the reproduction of certain articles in periodicals, should be deleted.

Brussels Text	Proposed Text
(2) Articles on current economic, political or religious topics may be reproduced by the press unless the reproduction thereof is expressly reserved; nevertheless, the source must always be clearly indicated. The legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.	—

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(3) *Press information*

Paragraph (3) (of the present text)

Paragraph (3) of the existing text refuses protection to news of the day or miscellaneous information having the character of mere items of news.

Preparatory Work. In its *1963 Report*, the Study Group discussed the question whether this provision should be modified. The precise meaning of the provision is far from clear. As recalled above, the Permanent Committee, at its session in Geneva in 1958, had expressed the view that the question should be examined as to whether, or in what form, improvement or clarification of the protection of modes of expression of news and other press information by means of copyright could be included in the programme of the Stockholm Conference.

The Study Group recalled that the various opinions expressed on the interpretation of this provision might be summarized as follows:

(a) The expressions "news of the day" and "miscellaneous information" used in the text refer only to facts (events) described, and not to the form given to the description of these events by the journalist who is the author of the said description. The principle expressed by this provision would therefore simply be that these facts are not protected as such.

(b) The purpose of the provision in question is to exclude from protection all informative matter which merely constitutes news of the day or miscellaneous information even if, in exceptional cases, such informative matter may be regarded as a literary or artistic work. Consequently, it constitutes a veritable exception to copyright.

(c) The correct meaning of this provision is that it excludes from protection articles containing news of the day or miscellaneous information, provided that such articles have the character of mere items of news, since news of this kind does not fulfil the conditions required for admission to the category of literary or artistic works.

For its part, the Study Group adopted the last of these interpretations. It follows that the immediate object of the provision is to recall the general principle whereby the title to protection of articles of this kind, as in the case of other intellectual works, pre-supposes the quality of literary or artistic works within the meaning of the Convention. At the same time, the provision also permits the conclusion that if the articles concerned are protected by virtue of other legal provisions — for example, by legislation against unfair competition — such protection is outside the field of the Convention. There are grounds, therefore, for drawing, *inter alia*, a second conclusion: the right to assimilation to national authors established by the Convention does not extend to the protection claimed by virtue of these other rules.

In the opinion of the Study Group, this provision could be considered, from the systematic aspect of the texts, as a superfluous element. However, it has formed part of the Convention for over fifty years and it constitutes a good expression of a principle from which legislation and jurisprudence can take their lead, as well as a reminder of the freedom of information. Besides, there should be some recognition of the practical importance of fixing, in the manner developed in relation to the interpretation of the rule discussed, the line of demarcation between copyright and other means of protection. The Study Group concluded, for these reasons, that it would be desirable to retain the provision in question.

The possibility could be considered of amending the text to make it easier to understand. The Study Group concluded, however, that it would be sufficient to discuss the question of interpretation in the documents of the Conference.

In its *1964 Report*, the Study Group still maintained that this provision should not be altered. However, since it was proposed in that report to delete the rule relating to newspaper articles, it was felt that the provision in question should not be kept in Article 9. The Study Group therefore proposed to make it the last paragraph of Article 2 (see p. 18 above).

Programme of the Conference. The question of the interpretation to be given to the provision in paragraph (3) of the present Article 9, whereby the protection of the Convention shall not apply to news of the day or to miscellaneous information having the character of mere items of news, has been discussed

on several occasions. Research undertaken during the preparatory work seems to have shown, however, that the provision only seeks to establish that the Convention does not protect mere items concerning news of the day or miscellaneous facts (and, *a fortiori*, the news or the facts themselves). Articles, on the other hand, and other journalistic works reporting the news, are protected under the usual rules, if they can be considered as works within the meaning of the Convention. It can hardly be claimed that there is any obvious need to clarify the text of the Convention on this point. The provision has therefore been retained without change[1] in the Programme of the Conference.

In conformity with the proposal accepted by the experts during the preparatory work, however, this provision has been transferred to Article 2, where it appears in the last paragraph.

BRUSSELS TEXT	PROPOSED TEXT
(3) The protection of this Convention shall not apply to news of the day nor to miscellaneous information having the character of mere items of news.	(Only changes in wording, but transferred to Article 2, paragraph 7.)

ARTICLE 10

This Article deals with "lawful quotations."

Paragraph (1)

In the existing wording, this provision specifies that it shall be permissible in all countries of the Union to make short quotations from newspaper articles and periodicals, as well as to include them in press summaries.

Preparatory Work. In its *1963 Report*, the Study Group proposed the following wording for paragraph (1): "It shall be permissible to make quotations from a work which has already been lawfully made accessible to the public, provided that they are compatible with fair practice, and to the extent justified by the purpose."

The reasons given in support of this amendment were the following: the Study Group observed, in connection with Article 9, paragraph (2), that the right to make quotations should be sufficient to satisfy the need for the press to give accounts of the contents of articles which have appeared in other newspapers and periodicals. From this point of view, the existing wording of Article 10, paragraph (1), is not particularly satisfactory, since it restricts the right to " short quotations." It is true that, normally, a quotation should be short, but this principle does not have absolutely universal validity. It is one of the chief tasks of the press to guide its readers on the subject of current problems in the fields of politics, economics, religion, culture, and other questions which may form the subject of public discussion. Sufficient direction in these various fields cannot be provided unless it is possible to reproduce, in some cases, fairly considerable portions of articles constituting the contributions of other newspapers to public discussion.

Furthermore, it can be in the author's interests if the reproduction is of a certain length, when this is necessary to ensure that his opinions are reported in a proper and accurate manner. In other cases, a fairly extensive quotation may be necessary as the point of departure for a reply. A satisfactory delimitation could be achieved by basing the text upon the rules generally accepted and developed in this field, and by emphasizing the principle that the right of quotation can only be exercised to the extent defined by its purpose.

For these reasons, the Study Group proposed that the restriction on the right to make quotations, provided in the existing text by the rule permitting " short" quotations only, should be replaced by a provision stipulating that quotations are permitted, provided that they are compatible with fair practice, and to the extent justified by the purpose.

Interpreted literally, the existing provision relates only to quotations from newspaper articles, but in actual fact it is applied, by analogy, to quotations from other works. The Study Group proposed that this field of universal application should be covered *expressis verbis*. The criteria of the right to make

[1] See footnote on p. 29.

quotations proposed by the Study Group would seem to be usable without modification, even outside the field of the press. Thus, it is generally recognized in the field of science that the right exists to quote from theses, books, etc., in conformity with certain principles, a right which must be considered as lawful from the point of view of copyright.

The Study Group pointed out that the proposed provision did not mean that any type of use should be permissible; it was essential for it to be "fair practice." This implies that the use in question can only be accepted after an objective appreciation.

The Study Group added that if the right covered by this provision were enlarged in the manner proposed, it would be desirable to establish yet another condition of the right of quotation, namely, that the work has been lawfully made accessible to the public. Manuscripts or works printed for the use of a private circle should not be the subject of a right of quotation which can be exercised with respect to works intended for the public in general. The expression "made accessible to the public" relates to every form of publication of the work, not merely to the measures envisaged in the first sentence of Article 4, paragraph (4), but also to radiodiffusion and other measures mentioned in the second sentence of that paragraph.

After an exhaustive discussion, the *1963 Committee of Experts* expressed itself in favour of a new draft for paragraph (1) of Article 10, couched in the following terms: "It shall be permissible to make quotations from a work which has already been lawfully made accessible to the public, provided that they are compatible with fair practice, and to the extent justified by the scientific, critical, informatory or educational purpose, including quotations from newspaper articles and periodicals in the form of press summaries."

In its *1964 Report*, the Study Group showed some hesitation regarding this proposal by the Committee of Experts. It could not rid itself of the impression that the list of purposes was too restricted — for instance, quotations made for an artistic purpose are not included — and that, generally speaking, it was practically impossible to indicate satisfactorily all the purposes by which quotations must be justified. For these reasons, the Study Group thought it preferable to abide by its original proposal in this connection. It was of the opinion, however, that it was advisable to adopt the view expressed by the experts, that the existing provision concerning permission to make quotations in the form of press summaries should be maintained, by way of an example.

The Study Group therefore proposed the following wording: "It shall be permissible to make quotations from a work which has already been lawfully made accessible to the public, provided that they are compatible with fair practice, and to the extent justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries."

The *1965 Committee of Governmental Experts* held lengthy discussions on this question. Some delegations expressed a preference for the text suggested by the 1963 Committee of Experts. Others, however, pointed out that the enumeration of the purposes pursued did not cover all the cases: for example, judicial purposes, political purposes, aesthetic purposes, and the purposes of entertainment. In the end, the text presented by the Study Group was approved.

Programme of the Conference. The existing provisions on the right to make quotations, provided by paragraph (1) of Article 10, are directly connected with the rule laid down in paragraph (1) of Article 9, concerning the right of reproduction granted to the author in respect of certain works which are published in newspapers or periodicals. In view of the fact that, according to the Programme of the Conference, this provision is to be replaced by a general provision on the right of reproduction, it would be advisable to provide for a similar general application of the provisions on quotations. As far as the wording is concerned, the texts proposed for quotations have been drafted in conformity with those approved by the 1965 Committee of Governmental Experts.

Article 10, paragraph 1

BRUSSELS TEXT	PROPOSED TEXT
(1) It shall be permissible in all the countries of the Union to make short quotations from newspaper articles and periodicals, as well as to include them in press summaries.	(1) **It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that they are compatible with fair practice, and to the extent justified by the purpose, including** quotations from newspaper articles and periodicals in the form of press summaries.

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Paragraph (2)

Programme of the Conference. This provision deals with the possibility open to countries of the Union to recognize the right to include excerpts from protected works in educational or scientific publications, or in chrestomathies. No changes are proposed here[1].

Article 10, paragraph 2

BRUSSELS TEXT	PROPOSED TEXT
(2) The right to include excerpts from literary or artistic works in educational or scientific publications, or in chrestomathies, in so far as this inclusion is justified by its purpose, shall be a matter for legislation in the countries of the Union, and for special Arrangements existing or to be concluded between them.	(2) It shall be a matter for legislation in the countries of the Union and for special Agreements existing or to be concluded between them, to permit, to the extent justified by the purpose, borrowings from literary or artistic works for use in publications intended for teaching or having a scientific character or in chrestomathies.

Paragraph (3)

Programme of the Conference. Even if paragraph (1) is amended in the manner proposed, it is possible to retain unchanged the provisions of paragraph (3) concerning the obligation to acknowledge the source and the name of the author in quotations and excerpts.

Article 10, paragraph 3

BRUSSELS TEXT	PROPOSED TEXT
(3) Quotations and excerpts shall be accompanied by an acknowledgment of the source and by the name of the author, if his name appears thereon.	(3) Quotations and borrowings shall be accompanied by an acknowledgment of the source and of the name of the author, if his name appears thereon.

*ARTICLE 10*bis

This Article, which was incorporated in the Convention at the Brussels Conference, deals with the right to use protected works in the reporting of current events. In the present wording, it is a matter for legislation in the countries of the Union to determine the conditions under which recording, reproduction, and public communication of short extracts from literary and artistic works may be made for the purpose of reporting current events by means of photography, cinematography or radiodiffusion.

Preparatory Work. In its *1963 Report*, the Study Group proposed the following wording for this provision: "It shall be a matter for legislation in countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography or cinematography, or by radiodiffusion, it shall be permissible to record, reproduce and communicate to the public:

(a) short extracts from literary or artistic works,

(b) works of architecture, isolated works of graphic, plastic or applied arts and isolated photographic works

which may be seen or heard in the course of the event."

The Study Group based its proposal on a number of reasons. It noted that Article 10*bis* related to the use of music, cantatas, speeches, or other works used on the occasion of public events — for example, the reception of a Head of State, military parades, or sporting displays — when such use occurred in the cinematographic or broadcast reports of those events. The rule should cover primarily the type of current events programme that transmits only a few episodes of an event, it being expressly provided that short extracts only may be used. Provided that this restriction is observed, the application of the provision to programmes of a wider scope should not be prohibited. The rule should only be applicable to works which can be seen or heard in the course of the actual event; it will not therefore extend to the

[1] In the new English version established by the working party referred to on p. 8, the word "borrowings" has been substituted for the word "excerpts" as constituting a more accurate translation of the French "emprunts."

subsequent synchronization of music for use with a current events film. The Study Group further noted that works of art, such as works of architecture or of plastic arts, could also fall within the scope of this provision. By way of an example, mention could be made of the reproduction of a statue or of several works of art which are visible when the reproduction occurs in a cinematographic or televised programme on current events, on the occasion of the inauguration of the statue or art exhibition concerned; such reproduction is therefore lawful within certain limits. Photographs are expressly mentioned in the text; according to the most probable interpretation of the provision in this respect, it is permissible to illustrate eports of current events in the press by reproductions of works of art visible at the time of the event, described.

The Study Group observed that the condition expressed by the term "short extracts" was not strictly suitable to the reproduction of works of art. Certain persons had declared that it could hardly have been the intention of the authors of the Convention to permit the reproduction of only portions of a work of art — an action which, in certain circumstances, could involve injury to the moral interests of the artist — and that it was necessary to complete the text in such a manner as to make it clear that in those cases it was permissible to reproduce entire works of art.

The Study Group shared this view and consequently proposed that the wording should be amended in such a manner that the restriction expressed by the words "short extracts" would be deleted in the case of the reproduction of works of art. If this amendment was accepted, it would become necessary to replace the restriction thus deleted by another, because reproduction, for example, of a large number of the works displayed should not be permissible in a report on an art exhibition. In the opinion of the Study Group, the solution to this problem would be to establish, in relation to works of art, the condition that, in order to be lawful, free reproduction should only apply to "isolated" works. For practical reasons, this restriction should not apply to works of architecture; if it did apply, it might, for example, render impossible the reproduction, in a report, of events occurring in town squares.

The Study Group further proposed, in this context, that the wording should be made clearer by explicitly restricting the right of free reproduction to works which can be seen or heard in the course of the event.

Finally, the Study Group considered it advisable to point out that in the course of reports of current events the reproduction of a work may be so diffuse or brief that there is no reason to consider it as a use involving copyright. Thus, to give an example, it is possible that listeners to a broadcast or televised sporting event may only be conscious of isolated notes of a military march performed on that occasion, or again that the picture of a person who has given an interview in his house may reproduce, by chance, works of art that are visible in the background. In such cases, the reproduction could be published independently of copyright.

The *1963 Committee of Experts* shared the Study Group's view that Article 10*bis* should be amended for the reasons shown above. However, the Committee recommended that, instead of specifying the limits of the freedom allowed by the expressions "short extracts" and "isolated works," the general concept of "the extent justified by the informatory purpose" should be written into the text. It then suggested the following new draft for Article 10*bis*: "It shall be a matter for legislation in countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography or cinematography, or by radiodiffusion, it shall be permissible, to the extent justified by the informatory purpose, to record, reproduce and communicate to the public literary or artistic works which may be seen or heard in the course of the event."

In its *1964 Report*, the Study Group adopted this proposal without amendment.

The *1965 Committee of Governmental Experts* also approved in principle the amendments arising from this proposal. It further proposed that the scope of the provision should be broadened to cover those enterprises which distribute programmes by wire, and to that end it suggested that the word "radiodiffusion" should be replaced by the expression "diffusion by radio or wire."

Programme of the Conference. The existing provisions concerning the right to communicate, within limits, for the purpose of reporting current events by means of radiodiffusion [1], cinematography or photo-

[1] See footnote on p. 27 concerning the use of the word "broadcasting" instead of "radiodiffusion."

graphy, works which are performed in the course of the event, are not entirely satisfactory from the practical point of view. In particular, the condition that "short extracts" only may be communicated is unsuitable for the reproduction of works of art. The new text drafted by the experts disposes of these difficulties. As it also provides sure guarantees for the protection of the author's legitimate interests, it was thought advisable to include it in the Programme of the Conference.

Radio programmes are now often distributed by wire and it therefore seemed logical to extend the application of this rule to that method of diffusion [1].

Article 10*bis*

BRUSSELS TEXT	PROPOSED TEXT
It shall be a matter for legislation in countries of the Union to determine the conditions under which recording, reproduction, and public communication of short extracts from literary and artistic works may be made for the purpose of reporting current events by means of photography or cinematography or by radio-diffusion.	It shall be a matter for legislation in countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography or cinematography, or by broadcasting **or communication to the public by wire**, it shall be permissible, **to the extent justified by the informatory purpose**, to record, reproduce and communicate to the public **literary or artistic works which are seen or heard in the course of the event.**

ARTICLE 11

This Article contains provisions on the scenic and performing rights granted to authors: the rights of presentation and performance of their dramatic, dramatico-musical and musical works.

In the present wording, paragraph (1) reserves to the authors of these works the exclusive right to authorize: i. public presentation and public performance of their works; ii. public distribution by any means of the presentation and performance.

To these rules has been added a provision reserving the application of Articles 11bis and 13. Paragraph (2) specifies that the same rights shall be accorded to the authors of dramatic or dramatico-musical works, during the full term of their rights in the original work, in so far as translations of their works are concerned. It follows from the provision in paragraph (3) that, in order to enjoy these rights, authors are not required to fulfil any conditions of a formal character.

Preparatory Work. In its *1963 and 1964 Reports*, the Study Group was of the opinion that there was no need to change these provisions. It discussed, however, a number of questions affecting the interpretation of Article 11. It noted first that the provisions of paragraph (1) of the existing text reserve the application of the provisions of Articles 11*bis* and 13, whereas paragraph (2) contains no corresponding reservation. The reservation in paragraph (1), which was adopted at the Brussels Conference, seeks to place beyond doubt the exclusive application of the rules expressed in Articles 11*bis* and 13 to the special cases covered by these provisions. In the Study Group's view, logic would seem to require that a corresponding reservation should be expressed in paragraph (2).

However, the Study Group refrained from proposing an amendment in this sense. It found that, in a general manner, it was obvious that special provisions like those expressed in Articles 11*bis* and 13 are applicable, to the exclusion of other rules, to the cases covered by these provisions, and that they necessarily involve derogations from general principles, such as the provisions of Articles 11 and 12. It follows that the explicit reservations designed to establish the predominance of the *lex specialis* are not necessary. On the contrary, these reservations are capable of creating problems of interpretation, since the provisions that are not accompanied by the reservations give rise to the question whether the omission

[1] It should be added that one of the experts at the *1963 Committee of Experts* proposed that, from a general point of view and not only for the purpose of reporting current events, it should be a matter for national legislation to determine the conditions under which artistic works can be included, incidentally and by way of a background, in photographs, cinematograph films and broadcasts. The Committee, however, rejected this proposal. It was observed that this was a minor exception to the right of reproduction which did not necessarily have to be included in the text of the Convention, and that countries were free to determine such conditions in their national legislation. According to the text of the Convention proposed in the Programme of the Conference, derogations of this kind may be made by virtue of paragraph (2) of Article 9.

is intentional and is aimed at inviting conclusions *a contrario*, or whether it is due to other reasons. The Study Group thought that these reservations should only be expressed when circumstances rendered them necessary.

The Study Group further observed that the above considerations applied in any case as soon as the question arose of deciding whether fresh references to reservations should be introduced. This problem must be distinguished from the problem arising from references already incorporated in the text, for if one of the latter were to be deleted, it would be liable to give rise to false conclusions *a contrario*. For this reason, the Study Group proposed that the reservation in paragraph (1) should be retained, although, in itself, it may be superfluous.

It also considered the question whether cinematographic works should be mentioned in this Article. Paragraph (1) refers to dramatic, dramatico-musical and musical works, whereas, in paragraph (2), only the first two categories are mentioned. The "Committee of Film Experts" proposed that cinematographic works should be added to both paragraphs. This proposal was dictated by the desirability of subjecting cinematographic works to the same system as dramatic, dramatico-musical and musical works, where payments for performing rights are concerned. The Study Group adopted this idea, in principle, but recommended, from a systematic point of view, that another method should be found for carrying it out (see Article 14, paragraph (2)).

At the *1965 Committee of Governmental Experts*, Article 11 only gave rise to the observation that the question of the agreement of the terminology in paragraph (3) with that of paragraph (1) should be examined.

Programme of the Conference. The provision in paragraph (3) prohibiting the requirement of certain formalities seems superfluous in view of the general prohibition of formalities in paragraph (2) of Article 4. Its deletion is therefore proposed.

According to the views of the experts, there seems to be no need to make any other amendments to Article 11. It is proposed, however, to delete in paragraph (1) the reference to Article 13, in view of the amendments proposed for that Article [1].

Article 11

BRUSSELS TEXT	PROPOSED TEXT
(1) The authors of dramatic, dramatico-musical or musical works shall enjoy the exclusive right of authorising: i. the public presentation and public performance of their works; ii. the public distribution by any means of the presentation and performance of their works. The application of the provisions of Articles 11*bis* and 13 is, however, reserved.	(1) Subject to the provisions of Article 11*bis* (.....), the authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing: (i) the public performance of their works; (ii) any communication to the public of the performance of their works.
(2) Authors of dramatic or dramatico-musical works, during the full term of their rights over the original works, shall enjoy the same rights with respect to translations thereof.	(2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.
(3) In order to enjoy the protection of this Article, authors shall not be bound, when publishing their works, to forbid the public presentation or performance thereof.	(.....)

*ARTICLE 11*bis

This Article contains provisions on the exclusive right of authorizing the radiodiffusion and communication to the public of works.

Preparatory Work. In its *1964 Report*, the Study Group had wondered whether it was necessary to change this Article, but reached the conclusion that it would be better to keep it as it stood.

The provisions of *paragraph (1)* concern the exclusive right of the author to authorize the radiodiffusion of his works and the communication to the public of the radiodiffusion of these works. The Study Group did not consider it necessary to change these provisions.

[1] See also the footnote on p. 29.

Paragraph (2) provides for the possibility of introducing compulsory licences or restrictions of a similar kind. It is known that this rule gives rise among authors to objections based upon general principles, and that in fact the authors desire its deletion. Nevertheless, the Study Group saw practically no possibility of arriving at a unanimous decision in this connection and, for that reason, abandoned the idea of making proposals on the subject.

At the Brussels Conference, certain rules concerning "ephemeral recordings" were added to *paragraph (3)*. The Study Group recalled that these provisions were criticized by the authors, who would like them to be more restrictive, as well as by broadcasting organizations, which would like them to be given a wider field of application. However, the Study Group considered that these rules formed an acceptable compromise between conflicting interests, and it did not see fit to propose any amendments to them.

The *1965 Committee of Governmental Experts* was also of the opinion that this Article should not be changed.

Programme of the Conference. As agreed by the experts, it is proposed to leave Article 11*bis* as it stands[1].

Article 11*bis*

BRUSSELS TEXT	PROPOSED TEXT
(1) Authors of literary and artistic works shall have the exclusive right of authorising: i. the radio-diffusion of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images; ii. any communication to the public, whether over wires or not, of the radio-diffusion of the work, when this communication is made by a body other than the original one; iii. the communication to the public by loudspeaker or any other similar instrument transmitting, by signs, sounds or images, the radio-diffusion of the work.	(1) Authors of literary and artistic works shall have the exclusive right of authorizing: (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images; (ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one; (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.
(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral right of the author, nor to his right to obtain just remuneration which, in the absence of agreement, shall be fixed by competent authority.	(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.
(3) Except where otherwise provided, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record the radio-diffused work by means of instruments recording sounds or images. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting body by means of its own facilities and used for its own emissions. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorised by such legislation.	(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

*ARTICLE 11*ter

This Article, which was incorporated in the Convention at the Brussels Conference, deals with the right of authorizing the public recitation of a protected work.

Preparatory Work. In its *1964 Report*, the Study Group considered whether it was necessary to modify this Article but came to the conclusion that it should be maintained without change. It recalled that the provision was of the same general nature as that of Article 11; like the latter, it was subject to the reservations stipulated by the special rules of the Convention: for example, Article 11*bis*. Yet it seemed

[1] See also the footnote on p. 29.

to the Study Group to be superfluous expressly to reserve the application of such rules and, for the reasons developed in connection with Article 11, it did not consider it necessary to make explicit reference to these reservations. It also seemed unnecessary to make any other amendments.

This Article gave rise to no comments on the part of the *1965 Committee of Governmental Experts.*

Programme of the Conference. As agreed by the experts, it is proposed to leave this Article in its present form.

Article 11*ter*

BRUSSELS TEXT	PROPOSED TEXT
Authors of literary works shall enjoy the exclusive right of authorising the public recitation of their works.	(No change.)

ARTICLE 12

This Article deals with the right of authorizing adaptations of protected works.

Programme of the Conference. The Article gave rise to no comments during the preparatory work and no amendments are proposed.

Article 12

BRUSSELS TEXT	PROPOSED TEXT
Authors of literary, scientific or artistic works shall enjoy the exclusive right of authorising adaptations, arrangements and other alterations of their works.	(No change.)

ARTICLE 13

This Article, which was introduced into the Convention at the time of the 1908 revision, deals with the "mechanical rights" of composers.

Deletion of paragraph (1) of the present text

According to paragraph (1) of the existing text, the author of a musical work has the exclusive right ot authorize: i. the recording of his works by instruments capable of reproducing them mechanically; ii. the public performance by means of such instruments of works thus recorded.

Preparatory Work. In its *1963 and 1964 Reports*, the Study Group proposed that this provision should not be changed. At the Brussels Conference, the possibility had been discussed of adding, as a third prerogative, the right of distributing copies of the recordings envisaged by this paragraph, but proposals to this end were rejected by several countries and could not, therefore, be carried out [1]. It is known that the authors claim that a right of distribution should be incorporated in the Convention. However, it seemed to the Study Group that some countries would always adopt a negative attitude towards such a prerogative. For this reason, the Study Group concluded that there would be no practicable possibility of introducing a right of this nature *jure conventionis* and abandoned the idea of proposing it.

At the *1965 Committee of Governmental Experts*, one delegation observed that, in view of the new wording of Article 9 on the right of reproduction, there was no longer any justification for maintaining paragraph (1) of Article 13. Another delegation proposed that the words "independently of the exclusive right of reproduction provided for in Article 9" should preferably be inserted in the present paragraph (1).

Programme of the Conference. In view of the fact that it is proposed to incorporate in the Convention the recognition of the general right of reproduction (Article 9), the provisions contained in the present Article 13, paragraph (1) (i), concerning the composer's exclusive right of authorizing the recording of his works by instruments capable of reproducing them mechanically, become superfluous

[1] See *Documents of the Brussels Conference,* pp. 320 *et seq.*, in particular p. 332.

and should be deleted, as suggested at the 1965 Committee of Governmental Experts. It would seem logical at the same time to delete paragraph (1) (ii), concerning the exclusive right of authorizing the public performance by means of such instruments of works thus recorded, as this provision is already covered by Article 11. The Programme of the Conference therefore contains proposals to that effect. This would involve the need to delete the reference to Article 13 in paragraph (1) of Article 11.

Article 13

Brussels Text	Proposed Text
(1) Authors of musical works shall have the exclusive right of authorising: i. the recording of such works by instruments capable of reproducing them mechanically; ii. the public performance by means of such instruments of works thus recorded.	—

Paragraph (1)

In its present wording, this paragraph, which corresponds to paragraph (2) of the present text, contains provisions on the right of countries of the Union freely to grant compulsory licences with respect to the rights referred to in paragraph (1) of the existing text.

Preparatory Work. In its *1963 and 1964 Reports,* the Study Group proposed that these provisions should not be changed.

The Brussels Conference had discussed the possibility of abolishing this right, but the proposals put forward in this connection were rejected by several countries. The Study Group recalled that the authors had consistently held the view that compulsory licences should be abolished. As there seems to be practically no possibility, however, of arriving at a unanimous decision at the Revision Conference, the Study Group abandoned the idea of submitting proposals on this subject.

At the *1965 Committee of Governmental Experts,* one delegation proposed that the provisions of paragraph (2) should be limited to recording and should no longer refer to public performance.

Programme of the Conference. Compulsory licences for the recording of musical works are in force in several countries of the Union and it seems difficult now to propose that they should be abolished. Besides, no proposal to that effect was submitted by the experts during the preparatory work. On the other hand, the time seems to have come for deleting the provisions concerning the compulsory licence with respect to the performance of musical works by means of discs or other recordings. It is proposed therefore that this rule should be limited to cover only the compulsory licence for the recording of musical works. In view of the proposal to delete paragraph (1) of the existing text, this rule would appear in paragraph (1) of the new text.

Article 13, paragraph 1

Brussels Text	Proposed Text
(2) Reservations and conditions relating to the application of the rights mentioned in the preceding paragraph may be determined by legislation in each country of the Union, in so far as it may be concerned; but all such reservations and conditions shall apply only in the countries which have prescribed them and shall not, in any circumstances, be prejudicial to the author's right to obtain just remuneration which, in the absence of agreement, shall be fixed by competent authority.	(1) Each country of the Union may impose for itself reservations and conditions on **the exclusive right, granted to authors of musical works, of authorizing the recording of such works by instruments capable of reproducing them mechanically,** but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

Paragraph (2)

This is paragraph (3) in the existing text. When the right of authorizing recordings, granted by paragraph (1) of the existing text, was written into the Convention in 1908, a transitional provision was also inserted in paragraph (3) of that text, whose purpose was to safeguard, in relation to works which had already been the subject of recordings, the freedom previously granted to record manufacturers and others to make recordings without the authorization of the author. The reason advanced was that the provision on the right of recording should not have retroactive effect.

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Preparatory Work. In its *1963 Report*, the Study Group proposed a new wording for this paragraph, which entails the deletion of the transitional provision sanctioning the principle of non-retroactivity applicable to recordings made before November 13, 1908. It felt that the time had come for this transitional provision to be deleted. There is no acceptable reason why certain works should be the subject of a right of free recording simply by virtue of the fact that, at some time before 1908, these works were recorded, perhaps by a body that has long ceased to exist. The deletion of this provision was therefore to be recommended from the point of view of general principles.

The Study Group observed, however, that account must be taken of the legitimate interest which record manufacturers have in the continuation of their activities for a reasonable time, to the extent that, by virtue of this provision, they have produced lawful recordings of the works concerned. For this reason, it would be advisable to prescribe that during a transitional period, for example, three years from the date of the new Convention, it would be permissible to manufacture records produced in accordance with the rules in question, without the authorization of the author.

At the *1963 Committee of Experts*, there was a proposal to make it clear that the new paragraph was not applicable to countries which would adhere to the Union at a date subsequent to the date fixed. It was observed, however, that if the new paragraph (3) were accepted by the Revision Conference, no further exceptions could be made with respect to countries which subsequently acceded to the Berne Convention, which meant that such countries could no longer claim the benefit of the former text. The Committee then expressed itself in favour of the new draft of paragraph (3) of Article 13.

In the *1964 Report*, the new wording was retained, with some amendments to make the meaning clearer, and the text thus presented was accepted by the *1965 Committee of Governmental Experts.*

Programme of the Conference. As agreed by the experts during the preparatory work, it is proposed that the transitional provisions at present contained in paragraph (3) of Article 13, whereby fairly old works may still be recorded without authorization, should be deleted. However, as recommended, some recordings already made could be reproduced without authorization for a transitional period of short duration.

Article 13, paragraph 2

BRUSSELS TEXT	PROPOSED TEXT
(3) The provisions of paragraph (1) of this Article shall not be retroactive and consequently shall not be applicable in a country of the Union to works which, in that country, may have been lawfully adapted to mechanical instruments before the coming into force of the Convention signed at Berlin on the 13th November 1908, and, in the case of a country having acceded to the Convention since that date or acceding to it in the future, before the date of its accession.	**(2) Recordings of musical works made in a country of the Union in accordance with Article 13, paragraph (3), of the Convention signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until December 31, 19...**

Article 13, paragraph 3

BRUSSELS TEXT	PROPOSED TEXT
(4) Recordings made in accordance with paragraphs (2) and (3) of this Article and imported without permission from the parties concerned into a country where they are not lawfully allowed shall be liable to seizure.	(3) Recordings made in accordance with paragraphs **(1) and (2)** of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

ARTICLE 14

This Article in the existing text of the Convention contains the main provisions on "cinematographic rights." Paragraph (1) deals essentially with the rights granted to authors of works already created (pre-existing) which serve as a basis for the production of a cinematographic work. Paragraph (2) contains a provision on copyright in so far as the cinematographic work, as such, is concerned. The situation which arises when a cinematographic work is the subject of an adaptation is governed by paragraph (3). The provisions of paragraph (4) offer some protection against compulsory licences. Finally, according to paragraph (5), the provisions of Article 14 are equally applicable to processes analogous to cinematography.

In the Programme of the Conference, the provisions of the first four paragraphs are retained without important changes of substance. However, the provision now appearing in paragraph (4) has been incorporated in paragraph (1), in the form of a new sentence. Entirely new provisions have been proposed for the following paragraphs, whereby agreements between the authors and the maker concerning the making of the cinematographic work would be subject to rules of interpretation to facilitate the exploitation of the film. Finally, it is proposed to delete paragraph (5) of the existing text, which will become superfluous if the proposal relating to Article 2, paragraph (1), is accepted. The problems concerning moral rights, which are liable to arise in connection with cinematographic works, are examined in a separate chapter.

1. Paragraphs (1), (2) and (3)

Paragraph (1)

(i) *Addition of a new right (transmission by wire to the public)*

Paragraph (1) deals with the right granted to the authors of pre-existing works which serve as a basis for the production of a cinematographic work, for example, novels and operas forming the subject of a cinematographic adaptation. In the existing text, the exclusive right is conferred upon these authors of authorizing: i. the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced; ii. the public presentation and public performance of the works thus adapted or reproduced.

Preparatory Work. In its *1963 Report*, the Study Group proposed the addition of transmission to the public to the prerogatives granted to the author by the provisions of this paragraph. The situation essentially envisaged will doubtless be the transmission of films by wire from one public place to another. The stage at present reached by the technical development of television offers the means of effecting transmissions of this kind, and in the Study Group's view the possibility must not be ignored of developments which will enhance the real and practical importance of such means.

The *1963 Committee of Experts* expressed itself in favour of this addition, but preferred to use the expression "transmission by wire to the public." The Committee made it clear that transmission by radiodiffusion was still governed by Article 11*bis*.

In its *1964 Report*, the Study Group therefore used the expression "transmission by wire to the public" and the *1965 Committee of Governmental Experts* also gave its approval to this expression.

Programme of the Conference. In the existing text, certain rights are granted to authors of literary, scientific and artistic works as regards the cinematographic exploitation of their works. As agreed by the experts during the preparatory work, it is suggested that the right of authorizing the transmission by wire to the public of works that have been the subject of cinematographic adaptation or reproduction should be added to the list of these rights.[1]

(ii) *Transfer to paragraph (1) of the provision at present appearing in paragraph (4)*

Paragraph (4) of the existing text provides that cinematographic adaptations of literary, scientific or artistic works shall not be subject to the reservations and conditions contained in Article 13, paragraph (2).

Preparatory Work. In its *1963 Report*, the Study Group proposed that the meaning of the provision should be made clearer by stipulating that the exclusive right of authorizing the cinematographic adaptation and reproduction of literary, scientific or artistic works should not be subject to reservations and conditions such as those contained in Article 13, paragraph (2).

The *1963 Committee of Experts* approved the new wording, suggesting however that the expression "such as those" should be deleted. It further observed that the provision in paragraph (4) did not nullify the provision contained in Article 11*bis*, paragraph (3), relating to ephemeral recordings.

In its *1964 Report*, the Study Group proposed the deletion of the provision in the present paragraph (4) and the substitution for it of a new sentence in paragraph (1), specifying that the provisions of Article 13, paragraph (2), shall not apply. It was felt that this expressed the meaning intended even more clearly than the previous proposals. The Study Group further observed that the remark made by

[1] See footnote on p. 27 concerning the use of the word "communication" instead of "transmission."

the 1963 Committee of Experts in connection with ephemeral recordings also applied to the addition proposed in paragraph (1).

The proposal to transfer paragraph (4) to paragraph (1) met with no objections on the part of the *1965 Committee of Governmental Experts*. In response to a suggestion within the Committee, the Study Group agreed to consider the need to refer also to Article 11*bis* in the last sentence of Article 14, paragraph (1).

Programme of the Conference. As agreed by the experts during the preparatory work, it is suggested that the reservation in paragraph (4) of Article 14, which stipulates that the provisions on the compulsory licence in Article 13, paragraph (2) (Article 13, paragraph (1), in the Programme of the Conference) shall not apply to cinematographic adaptations of literary, scientific or artistic works, should be transferred to paragraph (1) of that Article. In this connection, the meaning of the reservation, which is not absolutely clear in the existing text, will have been clarified. The wording now proposed means that countries of the Union cannot establish compulsory licences with respect to the composers' exclusive right to authorize the cinematographic reproduction of their works, that is to say, the cinematographic production of these works on film.

The existing text does not establish a corresponding reservation with regard to the provisions on the compulsory licence for the benefit of broadcasting (Article 11*bis*, paragraph (2)), nor as regards the provisions on ephemeral recordings (Article 11*bis*, paragraph (3)). For that reason, these provisions are also applicable to films.

At the 1965 Committee of Governmental Experts, the question arose as to whether a reservation should also be made in the case of Article 11*bis*. However, the Programme of the Conference does not propose this amendment, which would endanger the present balance between Articles 11*bis* and 14.

Article 14, paragraph 1

BRUSSELS TEXT	PROPOSED TEXT
(1) Authors of literary, scientific or artistic works shall have the exclusive right of authorising: i. the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced; ii. the public presentation and performance of the works thus adapted or reproduced.	(1) Authors of literary, scientific or artistic works shall have the exclusive right of authorizing: (i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced; (ii) the public performance and **communication to the public by wire** of the works thus adapted or reproduced. **The provisions of Article 13, paragraph (1), shall not apply.**
(4) Cinematographic adaptations of literary, scientific or artistic works shall not be subject to the reservations and conditions contained in Article 13, paragraph (2).	

Paragraph (2)

(i) *Specification of the rights belonging to the author of a cinematographic work*

Preparatory Work. In its *1963 Report*, the Study Group recalled that this paragraph, in its present wording, provided that a cinematographic work should be protected as an original work, but without prejudice to the rights of the author of the work which has been adapted or reproduced. In its opinion, the protection of cinematographic works also includes the rights specified in Article 14, paragraph (1), that is to say, the right of reproduction (production of copies) and distribution of the work, the right of public presentation and public performance of the work, and the right of cinematographic adaptation of the work, as well as the new right of transmission to the public. However, it did not consider it necessary to make any addition to the present text of the paragraph, specifying expressly that the protection also included the rights thus mentioned.

At the *1963 Committee of Experts*, an addition of this sort was proposed but the proposal was not accepted by the Committee.

In its *1964 Report*, however, the Study Group, which had further examined the problem, felt it necessary to adopt an express provision on the subject. The following sentence would be added to paragraph (2): "The author of a cinematographic work shall have the same rights as the author of an original work, including the rights referred to in the preceding paragraph."

The Study Group pointed out that the expression "a cinematographic work shall be protected as an original work" is sufficient to indicate that the author of the work shall enjoy all the prerogatives granted to the authors of original works. From the point of view of the wording, however, the Study Group felt that there seemed to be some advantage in mentioning explicitly the prerogatives in paragraph (2), since the system proposed in paragraph (4) and the succeeding paragraphs (see p. 60) had a direct connection with these prerogatives.

The Study Group's proposal met with no objections on the part of the *1965 Committee of Governmental Experts.*

Programme of the Conference. In accordance with the position adopted by the 1965 Committee of Governmental Experts, the insertion is proposed, in Article 14, paragraph (2), of a provision specifying that the author of a cinematographic work shall have the same rights as the author of an original work, including the rights referred to in paragraph (1). The new provision confirms the interpretation generally accepted in this connection. There is, however, a certain value in a clarification such as this, when it is considered, *inter alia,* that the rules included in the Programme of the Conference under paragraph (4) of Article 14 refer to the rights in question.

(ii) Possibility for the countries of the Union to treat the makers of cinematographic works as authors

Preparatory Work. During the deliberations of the *1963 Committee of Experts,* one expert had proposed that there should be an indication that the countries of the Union were free to treat the makers of cinematographic works as authors.

It was observed in this connection that, while it seemed preferable to indicate that in principle only the intellectual creator is the author, the fact remained that there was no definition of the author in the Convention and it remained a matter for national legislation to determine.

In its *1964 Report,* the Study Group agreed with this observation.

At the *1965 Committee of Governmental Experts,* the wish was again expressed for a definite stipulation on the subject.

Programme of the Conference. As observed during the preparatory work, the question whether countries of the Union could treat the makers of cinematographic works as authors has been left open in the text of the Convention. Countries are therefore entirely free in this respect. In drawing up the Programme of the Conference, it was felt to be unnecessary to mention the fact in an express provision.

Article 14, paragraph 2

BRUSSELS TEXT	PROPOSED TEXT
(2) Without prejudice to the rights of the author of the work adapted or reproduced, a cinematographic work shall be protected as an original work.	(2) Without prejudice to the copyright in the work adapted or reproduced, a cinematographic work shall be protected as an original work. **The author of a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding paragraph.**

Paragraph (3)

Programme of the Conference. This paragraph deals with the situation which arises when a cinematographic work which is derived from pre-existing works is the subject of an adaptation for use, say, on the stage. The authorization of the authors of pre-existing works is necessary for such an adaptation, but without prejudice to the authorization of the author of the cinematographic work. This rule is not affected by the amendments proposed in the Programme of the Conference in connection with the other provisions of Article 14; the text of this paragraph has not therefore been changed.

Article 14, paragraph 3

BRUSSELS TEXT	PROPOSED TEXT
(3) The adaptation under any other artistic form of cinematographic productions derived from literary, scientific or artistic works shall, without prejudice to the authorisation of their authors, remain subject to the authorisation of the author of the original work.	(3) The adaptation into any other artistic form of cinematographic productions derived from literary, scientific or artistic works shall, without prejudice to the authorization of their authors, remain subject to the authorization of the author of the original work.

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2. Rules of interpretation for agreements between authors and makers of cinematographic works

Paragraphs (4) to (7) [1]

Preparatory Work. In its *1963 Report*, the Study Group proposed that the system known as " presumption of assignment" should be introduced into the Convention. In Article 14, paragraph (2), it is not stated what persons may claim the title of author of a cinematographic work. In view of the divergencies of opinion existing between countries of the Union on this subject (the system granting the status of author only to the intellectual creators of the work, the system known as "film copyright" and the system of "legal assignment"), the attempts made at the Brussels Conference to arrive at a solution of this problem were doomed to failure [2].

The Study Group stressed the fact that the growing extension of international exchanges of films during recent years had brought the inconveniences of the present dualism into sharper relief. This applies, for example, to the exchange of television films. It is characteristic that a group of countries between whom this exchange is particularly intensive, namely, the members of the Council of Europe, should have considered the question sufficiently important to have concluded a special Agreement to regulate it (European Agreement, of December 15, 1958, concerning Programme Exchanges by means of Television Films) [3].

The "Committee of Film Experts" made a detailed study of the question thus raised. First, the Committee felt that there was reason to consider the two opposing systems as compatible with the Convention, and that it would scarcely be possible to impose one or the other of these systems upon all the countries. However, it thought that it would be useful if rules concerning the exploitation of economic rights were incorporated in the Convention. Two formulae could be envisaged: one providing for the legal assignment of the economic rights in favour of the maker, the other confining itself to certain presumptions of assignment. In the committee's view, the second alternative would appear to take better account of the diversity of the interests involved. It is true that this solution has given rise to the objection that the introduction of rules on agreements would be outside the scope of the Convention. However, it was observed in the course of the Committee's deliberations that a precedent existed in the provisions of Article 11*bis*, paragraph (3), relating to recordings by broadcasting organizations. For this reason, the majority of the Committee considered that no obstacle would be encountered on this point, and that it would be desirable to introduce into the Convention a system of presumptions which, in principle, would have the force of mandatory rules for all countries of the Union. It should be permissible for contracting parties to exclude the presumption by a specific provision in their individual agreements.

In general, the opinions expressed on the report of the Committee were in favour of the principle of incorporating in the Convention a presumption of assignment of the cinematographic rights in favour of the maker of the film.

For its part, the Study Group considered that this proposal was likely to satisfy the interest which authors have in the maintenance of private autonomy in agreements in this field and that, at the same time, it would guarantee security in business affairs by establishing a fixed point of departure capable of serving as a guide to the interpretation of these agreements.

In the texts proposed by the Study Group in 1963, the system of presumption was instituted, in the form of detailed rules, by the following provisions in paragraphs (5) to (7) of Article 14:

> "(5) In the absence of agreement to the contrary, the authorization to make a cinematographic adaptation and reproduction of a literary, scientific or artistic work shall imply authorization for the maker to reproduce, to distribute, to present or to perform in public, to transmit to the public, to broadcast and to translate the work thus adapted or reproduced.
>
> (6) In the absence of agreement to the contrary, literary or artistic contributions to the making of a cinematographic work shall imply authorization, for the maker of that work, to reproduce, to

[1] As indicated in connection with paragraph (1), the provision now appearing in paragraph (4) has been deleted and its place has been taken by a sentence added to paragraph (1).

[2] See *Documents of the Brussels Conference*, p. 358.

[3] Ratified by the following countries of the Union: Belgium, Denmark, France, Greece, Ireland, Luxembourg, Norway, Sweden, Turkey, United Kingdom.

distribute, to present or to perform in public, to transmit to the public, to broadcast and to translate the cinematographic work.

(7) Unless national legislation provides otherwise, the provisions of the preceding paragraphs (5) and (6) shall not apply to the rights of public presentation and performance, transmission to the public and radiodiffusion of musical works, with or without words, used in the cinematographic work."

These proposals were the subject of lengthy discussion at the *1963 Committee of Experts*, after which the Committee expressed the hope that the study of the problems raised would be pursued with a view to finding a solution which would facilitate the international circulation of films.

In its *1964 Report*, the Study Group, after further discussion of the problems of cinematographic works, again expressed its preference for the introduction of a presumption, in one form or another. It noted that the principal reason for the rejection by certain experts of the rules previously proposed on the presumption of assignment was the fact that they thought the scope of the provisions was too wide and ought to be reduced. Thus, objections were made to the effect that (i) any presumption should only apply to cinematographic works which have been fixed (with the consent of the author), to the exclusion therefore of televisual works, *inter alia*, which are capable of being considered to be cinematographic works, under Article 2, paragraph (2); (ii) the presumption should not include so-called pre-existing works; and (iii) the proposed presumption seemed to put unacceptable obstacles in the way of agreements whereby authors reserve to themselves proportional remuneration, and of national legislation aimed at rendering such remuneration compulsory.

In view of these objections, the Study Group agreed that the scope of the presumption should be reduced. After considering the various possible solutions, it presented two alternatives:

Alternative A:

"(4) In the absence of agreement to the contrary, the authorization to make a cinematographic adaptation and reproduction of a literary, scientific or artistic work shall imply authorization for the maker to reproduce, to distribute, to present or to perform in public, to transmit to the public, to broadcast and to translate the work thus adapted or reproduced.

(5) In the absence of agreement to the contrary, the undertaking to bring literary or artistic contributions to the making of a cinematographic work shall imply authorization, for the maker of that work, to reproduce, to distribute, to present or to perform in public, to transmit to the public, to broadcast and to translate the cinematographic work.

(6) Legislation of the countries of the Union may provide, to the benefit of the authors of works referred to in paragraphs (4) and (5) above, a participation in the receipts resulting from the exploitation of such a work.

(7) Unless national legislation provides otherwise, the provisions of paragraphs (4) and (5) above shall not apply

(a) to the works or contributions which are not fixed on some material support with the consent of their authors,

(b) to the rights of public presentation and performance, transmission to the public and radiodiffusion of musical works, with or without words, used in the cinematographic work."

The Study Group remarked that the only basic change which this alternative proposal made to Article 14 of the text proposed in 1963 was to exclude from the field of application of the presumption cinematographic works which are not fixed on some material support (paragraph (7)*(a)*). The exception in respect of musical works was maintained (paragraph (7)*(b)*). It was further expressly provided that countries of the Union would be able to stipulate that authors had a right to proportional remuneration (paragraph *(6)*).

Alternative B:

"(4) The agreement between the maker of a cinematographic work and persons who undertake to bring literary or artistic contributions to the making of that work shall imply, in the absence of any contrary or special stipulation, authorization for the maker to exploit the work.

By "contrary or special stipulation" is meant any restrictive condition agreed between the maker and the persons mentioned above.

(5) Unless national legislation provides otherwise, the provisions contained in paragraph (4) shall not affect

(a) the works which are not fixed on some material support with the consent of their authors,

(b) the rights of the authors of literary, scientific or artistic works from which the cinematographic work is derived, and of musical works, with or without words, used in the cinematographic work."

The Study Group pointed out that as regards the principles of the system, Alternative B, which is patterned on the regulations of the European Agreement referred to above, included the following differences as compared with the previous proposals: the presumption of assignment would be inapplicable not only to cinematographic works which are not fixed (paragraph (5) *(a)*), but also to pre-existing works (paragraph (5) *(b)*). The exception with respect to musical works would be maintained (paragraph (5) *(b)*); according to this alternative, however, the exception would be of no practical significance, save in the case of musical works which are not considered as pre-existing. In view of the limits thus set to the scope of the presumption — which would only affect producers and directors and any other persons taking a direct part in the shooting of the film — it was felt that there was no practical necessity for incorporating a provision establishing the lawfulness of proportional remuneration. It was implicitly provided, however, that even in these cases contractual or legislative provisions on proportional remuneration would be possible.

In both proposals, A and B, as well as in the 1963 Report, the presumption extended to the prerogatives necessary for the exploitation of the work. In Alternative A, the various prerogatives were listed; in Alternative B, a shorter formula was used: the maker would have the "authorization to exploit the work." No fundamental difference was envisaged, however.

At the same time, the Study Group stressed that the system of the presumption should be compulsory for countries of the Union. The aim itself of the revision of the rules of the Convention in this field should be to introduce for the whole Union a uniform system to which no exceptions ought, in principle, to be allowed. For practical reasons, however, countries which apply the system known as "film copyright" or "legal assignment" should be authorized to retain them.

To that end, the Study Group proposed some transitional provisions which were incorporated in paragraphs (8) to (10) of Alternative A and (6) to (8) of Alternative B.

In view of the discussions on this question at the 1965 Committee of Governmental Experts, it has not been considered necessary to reproduce these transitional provisions here.

At the *1965 Committee of Governmental Experts*, all these questions were discussed at considerable length. In a general way, the proposal to introduce into the Convention the system known as the "presumption of assignment" was favourably received by the delegations, as a basic principle. The debate was largely concerned with the question of deciding which of the proposed alternatives was preferable. Two delegations were of the opinion, however, that it was not the purpose of an international convention to intrude on the field of individual agreements and that it would be better to leave it to national legislation to settle the problems involved. Another delegation was opposed to the system proposed by the Study Group because of the extension of the assimilation of television works to cinematographic works provided for under the new Article 2.

In the light of these divergencies, one of the countries whose legislation grants the rights in the cinematographic work to the "intellectual creators" presented an intermediate solution designed to serve as a compromise. According to this proposal, the idea of establishing a presumption relating to the rights in the cinematographic work belonging to the authors should be abandoned in favour of the introduction of a rule of interpretation concerning the authors' right to prohibit the exploitation of the film in certain forms specified in the text. In the absence of any contrary or special stipulation, authors would not be able to oppose, on the territory of the other countries of the Union, the use by reproduction, distribution, transmission by wire, radiodiffusion, presentation, communication to the public, subtitling and dubbing of the texts, of the cinematographic work. The solution of principle contained in this proposal won the general support of the Committee.

The discussion then turned on the various aspects of the solution to be incorporated in the Convention. The main problems were as follows:

(a) According to this intermediate solution, the rule of interpretation should only apply in cases where the authors and the maker are bound by a "written agreement or equivalent act." Some delegations, however, pointed out that this condition implied for certain countries an arbitrary limitation of the scope of this rule. In the end, the Committee recommended the deletion of this condition, but asked the Study Group to examine the possibility of granting to national legislation the right to make provision for it.

(b) According to this intermediate solution, the rule of interpretation should apply to agreements concerning the cinematographic adaptation and reproduction of pre-existing works, as well as to those relating to literary or artistic contributions brought to the making of a cinematographic work. Some delegations observed, in this connection, that in view of the international character of the problems involved and the difficulty of defining the concept of "pre-existing works," it would be both wise and prudent to limit the application of the rule to the second category of agreements mentioned. The majority of the Committee, however, while being of the opinion that such a limitation should not be established in the Convention, pronounced in favour of the introduction of a provision giving countries of the Union the right to provide for it in their national legislation.

(c) According to this intermediate solution, it should be specified that the restriction prohibiting authors from opposing the use of the cinematographic work would apply only "on the territory of the other countries of the Union." Some delegations, recalling that the Convention governed international situations only, contested the need for such a restriction and recommended its deletion. The Committee shared this view.

At the close of its deliberations, the Committee expressed itself in favour of the following wording for the new paragraph (4):

> "(4) However, and on condition that an agreement exists between the maker and the authors authorizing the adaptation and the reproduction of the pre-existing work or undertaking to bring literary or artistic contributions to the making of the cinematographic work in accordance with the legislation of the country of origin, such authors may not, in the absence of any contrary or special stipulation, oppose the use by reproduction, distribution, transmission by wire, radiodiffusion, presentation, communication to the public, subtitling and dubbing of the texts, of the cinematographic work."

This text renders superfluous paragraph (5) of Alternative A as proposed by the Study Group.

The provision suggested by the Study Group for paragraph (6) (Alternative A), whereby the countries of the Union should have the right to provide, for the benefit of the authors, a participation in the receipts resulting from the exploitation of the cinematographic work, was accepted in principle by the Committee. It expressed its preference, however, for the proposal to use the words "receipts of the maker" in order to make it clear that participation in the receipts did not entail participation at any level whatsoever.

There were no objections on the part of the Committee to the substance of the provisions of paragraph (7) (Alternative A) which stipulate that the system proposed would not apply, unless national legislation provides otherwise, to works which are not fixed or to musical works. Some delegations merely asked for a revision of the wording in view of the amendments proposed for Article 2, paragraph (2).

Programme of the Conference. A question which was the subject of particularly careful study during the preparatory work was the solution of the problem of the difficulties encountered in international exchanges of films (especially in the field of television), difficulties which are caused by the fact that the countries of the Union have different systems for dealing with the copyright in cinematographic works (systems known under the various denominations of "intellectual creators," "film copyright," "legal assignment"). At the close of its deliberations, the 1965 Committee of Governmental Experts suggested a provision — partly on the basis of the proposal made by the Study Group in its 1964 Report — which offers a compromise between the solutions existing in the various domestic laws. According to this proposal, the agreements between authors and film makers would be subject to certain rules of interpretation which would facilitate and guarantee the exploitation of the completed film, to the advantage of both authors and

makers. When the Programme of the Conference was drawn up, it was decided that this proposal should be adopted for *paragraph (4)*, subject to a few minor amendments affecting mainly the form. [1]

With regard to these amendments, it should first be pointed out that in view of the new wording proposed for Article 2, paragraph (2), it was not considered necessary to draft a separate provision, as suggested by the Committee of Experts, in order to stipulate that the rules of interpretation should only apply to cinematographic works which are fixed on some material support with the consent of their author. It was considered more appropriate to give expression to this principle in paragraph (4) itself.

Furthermore, according to the national legislation of some countries, such rules can only apply if "a written agreement or an equivalent act" exists between the maker and the authors. To avoid creating too great an obstacle to the accession of these countries to the revised text, it is proposed to add to the provision suggested by the Committee of Experts a rule stating that countries may provide that the authorization or undertaking by the authors shall be given by a written agreement or an equivalent act. This formula has been inserted in the second sub-paragraph of paragraph (4).

A third sub-paragraph has been added to define the concept of "contrary or special stipulation"; it is based on the text appearing in the 1964 Report.

In addition to these amendments, some changes have been made to the wording of the text suggested by the Committee of Experts.

Paragraph (5) in the Programme of the Conference takes over the text of a provision proposed in the 1964 Report and adopted in principle by the Committee of Experts. According to this provision, the countries of the Union may provide, for the benefit of the authors of the works referred to, a participation in the receipts resulting from the exploitation of the cinematographic work. The Committee had suggested that the scope of this provision should be limited to the "receipts of the maker." This might easily be interpreted, however, as imposing a maximum of protection, that is to say, prohibiting countries of the Union from providing in their legislation for the grant to authors of a participation in the receipts of other persons engaged in the exploitation of the work. There seems to be no justification for including a prohibition of this sort in the text of the Convention. The text proposed, therefore, merely mentions "receipts" in general. It is obvious, however, that countries of the Union legislating on this matter may limit the authors' rights to a participation in the receipts of the maker.

Paragraph (6) in the Programme of the Conference takes over the text of the provisions — proposed in the 1964 Report and adopted in principle by the Committee of Experts — which stipulate that the rules of interpretation shall not apply to musical works, unless national legislation provides otherwise.

The rules of interpretation proposed apply to agreements concerning the cinematographic adaptation and reproduction of a pre-existing work, as well as to agreements relating to the literary or artistic contributions brought to the making of a cinematographic work. Some doubts were expressed within the Committee of Experts, however, as to the advisability of applying these rules without exception to pre-existing works, especially as it was a question of applying contractual stipulations at the international level.

The divergencies of opinion on this subject are due to the profound differences between the national systems in the field of contractual law, differences which it does not seem possible to eliminate by the adoption of uniform regulations within the framework of the Convention. For these reasons, it seems preferable to allow countries so desiring to exclude from the field of application of the rules of interpretation agreements concerning pre-existing works. *Paragraph (7)* in the Programme of the Conference contains, therefore, a provision which permits countries of the Union to declare that they will not apply the provisions of paragraph (4) to the literary, scientific or artistic works from which the cinematographic work is derived. These are the terms of the 1958 European Agreement concerning Programme Exchanges by means of Television Films, in which, however, pre-existing works are excluded *jure conventionis*. According to the proposed text, the declarations referred to in paragraph (7) may be made at any time, and may be subsequently withdrawn.

[1] See footnote on p. 27 concerning the use of the words "performance," "communication by wire" and "broadcasting" instead of "presentation," "transmission" and "radiodiffusion." Note, further, the use in the English version of the words "any other communication to the public" [in French: "*la communication au public*"] to distinguish from the expression "communication to the public by wire" already used to render the French expression "*transmission par fil au public.*"

It should be added that, in its 1964 Report, the Study Group had based itself on the assumption that the system of the "presumption of assignment" which it was proposing ought to be introduced in the revised text of the Convention, as a uniform and compulsory system. With this idea in mind, a number of supplementary provisions (called "transitional provisions") had been drafted with a view to limiting the right of countries of the Union to apply the so-called "film copyright" or "legal assignment" systems. As the system of the "presumption of assignment" has been replaced by rules of interpretation, and in view of the scope of the latter, there is no longer any need to keep these "transitional provisions" which, in any case, were strongly criticized at the 1965 Committee of Governmental Experts. The text proposed in the Programme of the Conference makes no detailed provision for the procedure for incorporating the rules of interpretation in national legislation. The so-called "film copyright" and "legal assignment" systems should be regarded as being compatible with the proposed system because, from the practical angle, they lead essentially to the same results in so far as the proposed system is compulsory (i.e., with respect to works which are not included under the heading of pre-existing works). Nevertheless, if the countries which apply the other two systems concerned prefer not to introduce the rules of interpretation in the case of pre-existing works, they will be required to make the reservation provided for these works, to bring their legislation into line with the new text proposed for the Convention.

Article 14, paragraphs 4, 5, 6 and 7

BRUSSELS TEXT

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PROPOSED TEXT

(4) Authors who have authorized, in the manner prescribed by the legislation of the country of origin of the cinematographic work, the cinematographic adaptation and reproduction of their works or undertaken, in such a manner, to bring literary or artistic contributions to the making of the cinematographic work fixed in some material form, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting, any other communication to the public, subtitling and dubbing of the texts, of the cinematographic work.

The countries of the Union may provide that the authorization or undertaking referred to above shall be given by a written agreement or something having the same force.

By "contrary or special stipulation" is meant any restrictive condition agreed between the maker and the persons mentioned above.

(5) The countries of the Union may provide, for the benefit of the authors of works referred to in paragraph (4) above, a participation in the receipts resulting from the exploitation of the cinematographic work.

(6) Unless national legislation provides otherwise, the provisions of paragraph (4) above shall not apply to the rights of public performance, communication to the public by wire, broadcasting, any other communication to the public, of musical works, with or without words, used in the cinematographic work.

(7) Any country of the Union, upon becoming party to this Convention, may at any time, in a notification deposited with the ...... *, declare that it will not apply the provisions of paragraph (4) above to the literary, scientific or artistic works from which the cinematographic work is derived.

Any country which has deposited such a notification may withdraw it by a further notification deposited with the ...... *.

* See footnote page 83 of the Annex I/A.

3. Moral rights

Preparatory Work. In its *1963 Report*, the Study Group observed that, in making a cinematographic work, contributions from a large number of authors are normally used and it is often necessary to modify these contributions considerably, before they can be used in the making and projection of the film. In this

connection, the question arises of the extent to which the authors are entitled to renounce their moral rights, and whether it is desirable to establish, on this point, a distinction between authors of pre-existing works and the authors of the cinematographic work, as such. Problems relating to moral rights are also liable to crop up in connection with the exploitation of a completed film: for example, the question of the extent to which it is lawful to make modifications in the film, whether in pursuance of the legal requirements of censorship or in order to satisfy the demands of public taste.

All these controversial issues were studied with great care by the "Committee of Film Experts" which discussed several methods of resolving them. However, the Committee reached the conclusion that it was not within the competence of an international convention to provide for such detailed regulations, especially in view of the great difference which exists between domestic laws. For these reasons, the Committee confined itself to proposing a provision of general tenor, which leaves the question to national legislation.

Following the pattern of most of the opinions expressed on the report of the Committee, the Study Group adopted this view and proposed a provision reserving to national legislation the right to take all suitable measures for the equitable solution of conflicts of interest which might arise in connection with cinematographic works between authors and makers regarding the exercise of the right provided for in Article 6*bis* of the Convention.

The *1963 Committee of Experts* was in favour of this formula, which some of the experts would have preferred to place in Article 6*bis*.

In its *1964 Report*, the Study Group made no changes to the provision in question and thought it wiser to express everything connected with the exploitation of the cinematographic work in one and the same Article.

At the *1965 Committee of Governmental Experts*, one delegation stressed that the text submitted by the Study Group presented the disadvantages of referring countries to their national legislation and omitting to indicate clearly the sense of the measures to be taken. This delegation proposed the following text: "When an author has authorized the cinematographic adaptation and reproduction of his work, or has contributed to the creation of a cinematographic work, he may only exercise the rights mentioned in paragraph (1) of Article 6*bis* to an extent that takes equitable account of the interests of the other authors and those of the maker of the film." This proposal was seconded by another delegation, which noted that it offered the advantage of establishing a rule *jure conventionis* (whereas the Study Group's text only gave an indication for national legislation) and that, at the same time, it provided not only for conflicts between authors and film makers but also for conflicts between authors themselves.

Another delegation observed that it could not possibly accept provisions in the Convention which would modify Article 6*bis* or limit the scope of its application. This delegation was of the opinion that no compromise was possible as regards Article 6*bis*, which establishes the right to the integrity of the work, from the angle of the protection of its author's personality. It seemed, however, that it might be possible to lay down rules, if a stand were to be made at the level of the economic rights, with a view to providing the maker with every guarantee of unhampered exploitation. This delegation proposed that a satisfactory provision should be sought in the field of cinematography, a provision which might stipulate, for example, that authors who have authorized the cinematographic adaptation and reproduction of their works or who have brought literary or artistic contributions to the making of the cinematographic work shall be deemed to have authorized the maker to make any modifications necessary for the making of the cinematographic work.

In the same context, one delegation suggested that the proposal made at the beginning of the discussion should be modified to read: "He may not, subject to the application of Article 6*bis*, oppose the modifications which are absolutely indispensable to the exploitation of the cinematographic work." However, the Committee rejected these suggestions and expressed its preference for the proposal as presented at the beginning.

Programme of the Conference. During the preparatory work, several proposals were made with a view to arriving at a satisfactory solution to the problem of the conflicts of interests likely to arise in connection with moral rights in cinematographic works. It should be noted that the provision proposed on this subject by the Study Group — adopting a suggestion made by the "Committee of Film Experts" — did not settle the fundamental issue from the point of view of the Convention: it was merely an invitation to the countries of the Union to introduce rules on the subject in their national legislation.

Furthermore, the hesitation which characterized the attitude of the 1965 Committee of Governmental Experts towards the solutions presented or suggested has provided sufficient reason for believing that none of them would be likely to solve the problem completely or to win general support.

In drawing up the Programme of the Conference, it was felt that none of these proposals could be considered as acceptable, for the above-stated reasons. After further study of the questions relating to moral rights in cinematographic works, it appeared that the settlement of this problem should not be undertaken within the framework of the Convention. It has therefore not been considered necessary to include any proposals on this point in the Programme of the Conference.

ARTICLES 21 TO 31[1]

Programme of the Conference. As indicated above (see p. 12), the Stockholm Conference might also have to consider the question of a structural and administrative reform of the Union. The adoption of any such reform would involve amendments to Articles 21 to 31 of the Convention, i.e., the administrative provisions and the final clauses.

The proposals in this connection would be the subject of a separate Programme, and reference should be made on this point to the documentation which will be submitted later. This documentation cannot be prepared, however, before consulting the Second Committee of Governmental Experts on Administration and Structure, which will meet in May 1966 to examine, in connection with the proposals for a structural and administrative reorganization of the Berne Union (and the Paris Union), proposals concerning the administrative provisions (Articles 21 to 24) and the final clauses (Articles 25 to 31) of the Convention.

[1] No amendments are proposed for Articles 14*bis* to 20.

IV. DRAFT PROTOCOL REGARDING DEVELOPING COUNTRIES

During the preparatory work, one of the most important tasks of the Revision Conference was considered to be the establishment of rules for the benefit of developing countries. In 1964, the Study Group proposed provisions to that effect in a new Article 25 bis, giving these countries the right to make reservations with respect to the provisions of the Convention on certain points. The 1965 Committee of Governmental Experts approved the substance of the provisions presented. It was suggested, however, within the Committee, that these provisions should not be inserted in the Convention itself but should be the subject of a Protocol annexed to it. Accordingly, when the Programme of the Conference was drawn up, it was considered advisable to adopt this procedure. The texts proposed for the benefit of developing countries have therefore been incorporated in this Protocol. Reference would be made in the final clauses of the Convention to the fact that this instrument forms an integral part of the Convention.

Preparatory Work. In its *1964 Report*, the Study Group pointed out that special provisions for the benefit of developing countries had been called for on several occasions, notably in the following circumstances:

(1) The African Study Meeting on Copyright, held at *Brazzaville* in August, 1963, recommended, among other things, that in the course of the preparations for the Stockholm Conference the following should be considered: *(i)* a review of Article 7 concerning the term of protection, with a view to the reduction of this term; *(ii)* the amendment of Article 20, with a view to making possible bilateral agreements promoting exchanges, in derogation of the present text of that provision; and *(iii)* the inclusion of special provisions safeguarding, on the one hand, the interests of African countries in respect of their own folklore, and permitting, on the other hand, the free use of protected works for educational and scholastic purposes.

(2) The *1963 Committee of Experts* hoped that these questions would be examined by the Study Group or by a special expert committee to be convened for that purpose.

(3) At their joint session in *New Delhi* in December 1963, the *Permanent Committee* and the Intergovernmental Copyright Committee, having heard the proposals of the Indian delegation that there should be a study of the possibility *(a)* of introducing into the Conventions the right of member countries to grant compulsory licences for the reproduction of copyright works for educational purposes, and *(b)* of introducing into the Berne Convention provisions relating to translation, similar to those in the Universal Copyright Convention, invited the Secretariats to make a study of these questions and report on them to the next joint session of the Committees.

(4) Some non-governmental international organizations also expressed the hope that the developing countries would be able to organize protection on a lower level than that provided by the Brussels text of the Berne Convention.

The Study Group was of the opinion that rules satisfying the wishes thus expressed should be inserted in the Convention and, to that end, proposed to include them in a new Article 25*bis*, worded as follows:

"(1) Any country which desires to accede to this Convention but which, with regard to its economic situation and its social needs, does not consider itself immediately in a position to make provision for the protection of all the rights forming the object of this Convention, may, by a notification deposited with the .... at the time of accession, declare that it will, for a period of ten years from the accession,

(a) substitute for Article 8 of this Convention the provisions of Article 5 of the Convention as revised in Paris in 1896, on the understanding that those provisions shall apply only to translations into the language or languages of that country;

(b) substitute for Article 7 of this Convention the provisions of Article 7 of the Convention as revised in Rome in 1928;

(c) substitute for Article 11*bis*, paragraphs (1) and (2), of this Convention the provisions of Article 11*bis* of the Convention as revised in Rome in 1928;

(d) reserve to itself to determine the regulations for the protection of works covered by this Convention when such works are used for exclusively educational or scholastic purposes;

(e) reserve the right to make arrangements in derogation of Article 20 of this Convention.

A country may avail itself of one, several or all of the reservations provided above.

(2) If a country, which has made reservations in accordance with paragraph (1), at the end of the period of ten years prescribed therein, with regard to its economic situation and social needs, still does not consider itself in a position to make provision for the protection of all the rights forming the object of this Convention, such country may, by a notification deposited with the .... before the end of the above-mentioned period, declare that it will maintain for a new period of ten years, one, several or all of the reservations made by the country.

(3) If a country, which has made reservations in accordance with paragraphs (1) or (2), in the course of a current period, would come in such a position that it does no longer need the reservations made, or one or several of them, the country shall, by a notification deposited with the .... withdraw the reservation of which it has no need.

(4) All notifications given to the .... in accordance with the provisions of paragraphs (1), (2) and (3) of this Article shall be communicated by the .... to all the countries of the Union."

The Study Group emphasized that the majority of those concerned had admitted that exceptional measures for the benefit of developing countries were in principle justified. The objection had of course been made that if those countries found themselves unable to organize protection as effective as accession to the Berne Convention would imply, they ought to become parties to the Universal Copyright Convention, instead of the Berne Convention. There was no doubt, however, that the adoption by the developing countries of copyright legislation within the framework of the Berne Convention would be of considerable advantage to the authors. Conditions in several of these countries would certainly eventually improve and one of the consequences of this development would be the increasing exploitation of literary and artistic works. In these circumstances, it would naturally be to the authors' advantage if the protection granted to them had been organized from the start on the pattern of the Berne Convention.

As for the placing and general structure of the proposed provisions, the Study Group chose to adopt a system entitling those countries to make reservations, within limits, with respect to some of the rules of the Convention. This solution owed its inspiration to the fact that the Convention already contains a provision allowing for national reservations, which was of course designed especially for the benefit of the less developed countries. The provision in question is contained in Article 25, paragraph (3), which offers the possibility of making reservations with respect to the right of translation.

The Study Group thought it desirable that the new provisions should operate only for the benefit of developing countries. It found it difficult however to establish criteria suitable for defining objectively the countries coming within this category. It consequently proposed that each country should be left free to decide whether its stage of development allowed it to take advantage of the right of reservation. It seemed possible, up to a point, to invoke, by way of a precedent, the provision in Article 23 concerning the right granted to each country of the Union to choose the contribution class in which it wishes to be placed.

The reservations would be valid for ten years and could be extended for a further period of ten years. The question whether the reservations might be extended beyond that date would have to be settled by the Revision Conference after the one held at Stockholm. Furthermore, a reservation might be withdrawn when the country availing itself of such reservation considered that it no longer had any need of it.

The Study Group made the following comments on the proposed reservations:

(a) The first of these reservations would correspond to the provision in Article 25, paragraph (3), on the *right of translation*. No alteration has been made to the wording of the Brussels text. The fact that the provision has changed its place, however, means that the right of reservation would be more restricted than hitherto, because the new Article would only operate in favour of developing countries. In this respect, the proposal submitted represents a strengthening of copyright.

(b) The second possible reservation would concern the *term of protection.* On this point, the Brussels text fixes a compulsory minimum of fifty years from the date of the author's death. This stipulation was considered to be too rigid for developing countries, and the proposal submitted would offer them the possibility of substituting for it the Rome text, which contains no compulsory provisions on the term of protection.

(c) The third reservation would concern the *right of radiodiffusion.* This prerogative was extended at the Brussels Conference, so that its scope is now very considerable. It applies, for instance, to the use of receiving sets in cafés, etc. It was considered reasonable to grant to developing countries the possibility of applying the rules of the Rome text here, instead of those of the Brussels text, that is to say, to give them the possibility of protecting this right within the limits which were considered adequate for industrialized countries between 1930 and 1940.

(d) The fourth reservation would concern the right to limit copyright in cases where a work is used *for educational or scholastic purposes.* Developing countries seem to attach great importance to the possibility of reserving to themselves the right to determine their own national regulations in such cases.

(e) The fifth reservation would relate to the right of developing countries to make between each other *regional arrangements in the field of copyright.* According to Article 20, regional arrangements can only be made on condition that they confer upon authors more extended rights than those granted by the Convention. However, the developing countries expressed the wish to be given the right to make arrangements between each other, even if the above condition were not fulfilled. The proposed text is intended to offer them this possibility.

Finally, with regard to *folklore*, the Study Group did not propose any special rules. Indeed, as pointed out by the Brazzaville Meeting, the best means of protecting the integrity of this heritage known as folklore would be the adoption by African States of appropriate legislation to prevent its exploitation to the detriment of the African communities. The Study Group shared this opinion and ventured to point out that, even although there are no special provisions on folklore in the Berne Convention, it is clear that the latter puts no obstacles in the way of national legislation on the subject. It recalled that some countries of the Union had introduced protection of classical works, without taking their stand on the Convention.

At the *1965 Committee of Governmental Experts*, the subject was opened by a general discussion during which several delegations representing developed and developing countries expressed their warm sympathy with any measures taken for the benefit of the developing countries and with the general idea which had formed the basis of the Study Group's proposals. One delegation expressed its preference for the drafting of a Protocol to be annexed to the Convention; but this suggestion was not adopted by the Committee. Two delegations pointed out that it was important, whatever the circumstances, to avoid establishing a system of protection in the Convention that was inferior to that provided at present by the Universal Copyright Convention. It was observed, in particular, with regard to the Universal Copyright Convention, that the relations governed by that international instrument, and indeed its whole future, must not be jeopardized, even indirectly. Some delegations from developing countries stressed how important it was for the future of the Berne Union that special measures should be adopted to meet the wishes and aspirations of these countries.

The Committee was then presented with a proposal from six developing countries (hereinafter called the "joint proposal"), submitting a new wording for Article 25*bis*. Although based on the text presented by the Study Group, the new wording differed from it on a number of points. It seemed to the Committee that the various questions posed by Article 25*bis* should be clearly distinguished: (1) the criterion of beneficiaries; (2) the data on which a country might base its claim to make reservations; (3) the time when countries would be able to make reservations; (4) the period during which such reservations would be valid; and (5) the nature of the reservations themselves.

(1) With regard to the *criterion of beneficiaries*, the joint proposal stipulated that "Any country of the Union may, having regard to its economic, scientific, social and cultural needs, declare at any time" that a given reservation will apply. It was emphasized that it was important not to limit the possibility of making reservations to countries which would accede in the future to the Convention. The Study Group pointed out, however, that adherence "to the present Convention," in the form of ratification or accession, meant accession to the Stockholm text.

Some delegations suggested that the opinion of the Permanent Committee should be sought, in order to determine which countries might avail themselves of the right to make reservations instituted under Article 25*bis*. Other delegations felt that this solution could not be accepted, in view of the legal and practical difficulties involved. The Committee then agreed that the text of Article 25*bis* should start with the words: "Any developing country..."

(2) In order to determine the characteristics of the *data* on which a country might base its claim to make reservations, the Committee accepted a proposal to add to the text of the Study Group the notion of cultural needs. The expression "having regard to its economic situation and its social or cultural needs" was then adopted.

(3) As for the *time* when the country concerned should avail itself of the right to make reservations, the aim of the joint proposal was to make this possible "at any time," in order to avoid the need for the countries concerned to avail themselves of all the reservations *en bloc*, at the moment of ratification or accession, without having time to make a selection. One delegation, recalling the confusion that had resulted in practice from the use of the expression "at any time" in the Rome Convention on neighbouring rights, stressed the need, especially for authors or their legal representatives and assignees, to have legal assurance as to the scope of their rights in the countries in question.

The Committee rejected the joint proposal on this point and expressed its preference for the Study Group's text which stipulated that the right to make reservations should be exercised at the time of ratification or accession.

(4) As regards the *period* during which the reservations would be valid, the joint proposal had nothing to say, whereas the Study Group's text provided for a period of ten years. The Committee expressed its preference for this text.

The Study Group had proposed that this ten-year period should be renewable once; that is to say, the maximum duration would be twenty years. The Committee adopted the proposal that the second period should extend until the entry into force of the text of the Convention to be adopted by the next Revision Conference after Stockholm.

(5) As for the *nature of the reservations* which the countries concerned could avail themselves of, the text of the Study Group provided for five categories concerning, respectively, the right of translation, the term of protection, the right of radiodiffusion, the use of works for educational or scholastic purposes, and special arrangements. The aim of the joint proposal was to add to the fourth category a provision on the right of reproduction.

(a) The reservation concerning the *right of translation*, which would also cover dramatic and dramatico-musical works, according to the joint proposal, was received favourably by the Committee. However, the Study Group was asked to examine the relationship with the Universal Copyright Convention as regards the right of translation (Article V), so that the reservation introduced into the Convention would not result in a level of protection inferior to that of the Universal Convention.

(b) Two delegations made the same remark regarding the reservation relating to the *term of protection*, in order to avoid a system that would be inferior to that of the Universal Convention (Article IV). The Committee agreed with these remarks and asked the Study Group to examine the possibility of submitting alternatives for the right of translation and the term of protection.

(c) The Committee made no comments on the reservation concerning the *right of radiodiffusion*, which also includes television.

(d) As to the reservation concerning the *use* of literary and artistic works *for educational or scholastic purposes*, the joint proposal suggested that the expression "for educational, scientific and cultural purposes" should be used. Some delegations observed that the adjective "cultural" was much too wide and indefinite in scope. The Committee therefore rejected the word "cultural" and accepted "scholastic."

The joint proposal suggested the introduction of an additional reservation: "the right to permit reproduction of literary and artistic works for exclusive use in its territory on payment of just remuneration to be fixed, failing agreement with the author, by its competent authority." Two delegations were categorically opposed to the introduction of such a reservation. Another delegation

emphasized the difficulty of verifying whether the uses were made exclusively on the territory concerned. Yet another drew attention to the reproduction of works, not only in the local languages of the country (dialects and others), but also in the language generally spoken.

Recalling the work of the Permanent Committee in New Delhi (1963), it was pointed out during the discussion that such a right with respect to reproduction ought not to be general in scope but should refer to certain works used for specific purposes. It was proposed that this reservation, as presented in the joint proposal, should be removed from Article 25*bis* and the following words should be added to the preceding reservation on the restriction of protection: "including the right to permit their reproduction on payment of just remuneration to be fixed, failing agreement with the author, by its competent authority."

However, the Committee finally expressed its preference for a general formula, couched in the following terms: "the right, for exclusively educational, scientific or scholastic purposes, to restrict the protection of literary and artistic works."

(e) With regard to *special arrangements*, the joint proposal had suggested that countries fulfilling the conditions of the proposed Article 25*bis* should have the right to make such arrangements with any other country of the Union, in derogation of Article 20 of the Convention. Some delegations observed, on the one hand, that the right to make arrangements could only operate between countries making reservations and, on the other hand, that it would be difficult, at the risk of throwing the Convention out of balance, to permit arrangements with any country whatsoever. One delegation proposed to grant to countries making reservations the right to make regional arrangements, in derogation of Article 20 of the Convention, with other countries applying the provisions of the Article in question and without prejudicing the obligations of other countries of the Union.

The delegation of one developing country proposed drafting the text as follows: "reserve the right to make arrangements with any other country of the Union in derogation of Article 20 of this Convention, on condition that the arrangement concerns solely works the country of origin of which is a country party to that arrangement and relates only to the reservations mentioned above, such condition being operative only if a developed country is party to the said arrangement." Other delegations emphasized that it was only necessary for developing countries to have the right to make bilateral agreements if these countries felt they needed such agreements to enable them to descend even further below the levels fixed by the various reservations. After a lengthy discussion, the last-mentioned text was adopted by the Committee.

The other provisions of Article 25*bis*, as presented by the Study Group, gave rise to no comments and the Committee adopted this Article in the following terms:

"(1) Any developing country which ratifies this Convention or accedes to it and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights forming the object of this Convention, may, by a notification deposited with the ..... at the time of ratification or accession, declare that it will, for a period of ten years from the ratification or accession,

(a) substitute for Article 8 of this Convention the provisions of Article 5 of the Convention as revised in Paris in 1896, in respect of translations into the language or languages of that country, and apply the same provisions to the translations referred to in paragraph (2) of Article 11;

(Alternative: text based on Article V of the Universal Copyright Convention.)

(b) substitute for Article 7 of this Convention the provisions of Article 7 of the Convention as revised in Rome in 1928;

(Alternative: text based on Article IV of the Universal Copyright Convention.)

(c) substitute for Article 11*bis*, paragraphs (1) and (2), of this Convention the provisions of Article 11*bis* of the Convention as revised in Rome in 1928;

(d) reserve the right, for exclusively educational, scientific or scholastic purposes, to restrict the protection of literary and artistic works;

(e) reserve the right to make arrangements with any other country of the Union in derogation of Article 20 of this Convention, on condition that the arrangement concerns solely works the country of origin of which is a country party to that arrangement and relates only to the reservations mentioned above, such condition being operative only if a developed country is party to the said arrangement.

Any country fulfilling the conditions referred to above may avail itself of one, several or all of the reservations provided above.

(2) If a country, which has made reservations in accordance with paragraph (1), at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to make provision for the protection of all the rights forming the object of this Convention, such country may, by a notification deposited with the ..... before the end of the above-mentioned period, declare that it will maintain, until the entry into force of the text of this Convention adopted by the next Revision Conference, one, several or all of the reservations made by the country.

(3) If a country, which has made reservations in accordance with paragraphs (1) or (2), finds itself, in the course of a current period, in such a position that it has no longer need of the reservations made, or of one or several of them, the country shall, by a notification deposited with the ....., withdraw the reservation of which it has no need.

(4) All notifications given to the ..... in accordance with the provisions of paragraphs (1), (2) and (3) of this Article shall be communicated by the ..... to all the countries of the Union."

After this decision, one delegation representing a developing country presented a declaration regretting that the text adopted for Article 25*bis* by the Committee limited the scope of arrangements to the reservations expressly mentioned. It suggested deleting this limitation and reserved the right to take up the question again at the Revision Conference. The delegation also expressed the wish that the Study Group would examine the possibility of restoring, in the form of a reservation in Article 25*bis*, the existing text of Article 9, paragraph (2), and extending it to the right of translation, in view of the interest which developing countries had in being able to have articles on current economic, political or religious topics translated and reproduced by the press.

Programme of the Conference. The desire for special rules for the benefit of developing countries, which has been expressed on many sides in recent years, is founded on the need to allow exceptions to copyright protection — at least for an interim period — to facilitate cultural, social and educational expansion in these countries. On the basis of the proposal presented by the Study Group, the 1965 Committee of Governmental Experts devoted lengthy discussions to the problem as a whole.

No great objection was made to the incorporation of rules of exception in the system of protection under the Convention. The debate was concerned rather with the manner in which these rules ought to be drafted. The questions discussed were of considerable complexity and subject to controversy. It was obvious, however, that there was a strong desire on the part of the Committee to reach compromise solutions acceptable to all. In these circumstances, it was felt that the Committee's recommendations should form the basis of the regulations now proposed in the Programme of the Conference. Amendments have been made to some points only.

First, as regards the *place* where these rules should be inserted, the Committee had proposed that they form the subject of a new Article in the Convention. When drawing up the Programme of the Conference, however, it was decided, in response to a wish expressed within the Committee, that it would be more appropriate to place these rules in a Protocol annexed to the Convention, especially as they were to be in force for an interim period only and were not intended to be incorporated permanently in the system of protection provided by the Convention. Besides, the rules are fairly extensive and, for purely stylistic reasons, it seemed advisable not to make the text of the Convention unnecessarily unwieldy. In order to provide a link with the Convention itself, however, the final clauses of the Convention would refer to the Protocol, stating that it formed an integral part of the Convention. This would be stated in an Article numbered 20*bis* in the present proposals relating to the final clauses (see, *supra*, p. 66).

With regard to the *drafting* of the special provisions, the said Committee approved the proposal for exceptions under *(a)* (translation) and *(b)* (term of protection), but recommended that developing countries

should be offered the alternative of adopting rules which corresponded to those in force for similar cases in the Universal Copyright Convention. The Committee also approved the proposal that these special provisions should not result in a level of protection inferior to that of the Universal Convention.

In the case of the exception under *(a) (translation)*, it was felt that the provisions proposed by the Study Group and approved by the Committee (provisions which corresponded to those of Article 25, paragraph (3), of the Berne Convention) would in fact offer less protection than the system provided by the Universal Copyright Convention. It was therefore considered advisable to propose the adoption of that system in the Programme of the Conference rather than the afore-mentioned provisions of the Berne Convention. The Programme therefore provides the developing countries concerned with the possibility of substituting for Article 8 of the Convention (Stockholm text) provisions identical to those relating to the right of translation in the Universal Copyright Convention (Article V).

In the case of the exception under *(b) (term of protection)*, it was also felt that the provisions proposed by the Study Group and approved by the Committee (which would offer to developing countries the possibility of substituting for Article 7 of the Convention in the Stockholm text the provisions of Article 7 in the Rome text) might offer less protection than that provided by the Universal Copyright Convention. The Programme proposes therefore to allow the developing countries concerned to adopt, in principle, the term of protection provided under that Convention. According to the provision presented, a developing country may stipulate a shorter term than that of fifty years or, in some cases, twenty-five years, referred to in Article 7 of the Convention, but these terms must not be less, respectively, than the terms of twenty-five and ten years fixed by the Universal Convention (Article IV). As for the dates from which these terms and other conditions are to be calculated, the rules provided under Article 7 of the Convention shall apply.

In the case of the exceptions under *(c)* (*radiodiffusion*, etc.) and *(d) (for exclusively educational, scientific or scholastic purposes)*, the Committee's proposal has been adopted without change in the Programme of the Conference.

The exception mentioned under *(e)* of the Committee's proposal, concerning the right of developing countries to make *special arrangements* in derogation of Article 20 of the Convention, was greeted with some reticence when the Programme of the Conference was being drawn up. The arrangements in question would be made between countries of the Union which limit the protection of copyright in various respects. From the technical angle, these arrangements may be classified in two categories: those providing for limitations on copyright protection permissible under the Convention or the proposed Protocol, and those intended to provide for wider restrictions. Arrangements such as those in the first category, which will probably be most frequent, must of course be allowed, but they need no special support other than that given by Article 20 of the Convention. Arrangements respecting the provisions of the Convention cannot, indeed, be regarded as "contrary to the Convention" within the meaning of that Article, in view of the fact that the Protocol will form an integral part of the Convention. As regards the second category — arrangements restricting protection beyond the limits of the Convention and the Protocol — it should be observed that such arrangments could lower copyright protection to any level whatsoever and might even abolish it completely in the case of those works to which they referred. In drawing up the Programme of the Conference, it was regarded as impossible to permit such arrangements.

It follows therefore that, on the one hand, exceptions concerning special arrangements are not necessary in the case of arrangements including only such restrictions as are permitted by the Convention and the Protocol and that, on the other hand, they are unacceptable in the case of arrangements including wider restrictions. For these reasons, the exception proposed under *(e)* does not figure in the Programme of the Conference.

The exceptions suggested under *(a)*, *(b)*, *(c)* and *(d)* of the Committee's proposal have therefore been adopted and it is further proposed — subject to approval by the Conference of the proposal to delete the provisions of Article 9, paragraph (2), concerning the right freely to reproduce press articles (see p. 44) — to grant to developing countries which will accede to the Stockholm text, or will ratify it, the right to continue to apply these provisions although they have been removed from the Convention. Recommendations to that effect were put forward to the 1965 Committee. In support of these recommendations, it should be pointed out that a country which is already a member of the Union (by accession to the Brussels text or an older text) is entitled to apply the provisions concerned and will continue to possess this right until it

accedes to the future Stockholm text, a state of affairs which of course might sometimes last for a long time. After the entry into force of the Stockholm text, a non-member country of the Union may not, on the other hand, adhere to the Union by any other means than by accession to that text. It seems to be an anomaly that the older countries of the Union, including several which are highly developed countries, should be able to apply the provisions concerning excerpts from press articles, long after the Stockholm Conference, while new members of the Union would be deprived of this possibility. For that reason, it was felt that it would be only fair to respond to the wishes expressed and provide, in the Programme of the Conference, for the possibility of a reservation in this respect. The right to reproduce press articles also includes the right to reproduce them in the form of translations.

In the Protocol proposed in the Programme of the Conference, the reservations have been inserted in the following order: *(a)* translation, *(b)* term of protection, *(c)* press articles, *(d)* radiodiffusion, etc., *(e)* for exclusively educational, scientific or scholastic purposes.

As regards the *time* when developing countries, so desiring, may avail themselves of the said reservations, the Programme of the Conference has adopted the Study Group's text, which had won the preference of the Committee and which stipulates that reservations should be made at the time of ratification or accession.

Lastly, as regards the *period* during which the reservations would be valid, the Programme of the Conference has also adopted the Committee's proposal, whereby, at the expiration of a first ten-year period during which the country concerned is party to the new text of the Convention (Stockholm Act), that country has the right to maintain any or all of the reservations it has made, until the entry into force of the Act adopted by the Revision Conference following that of Stockholm. If, of course, during these periods, any such country considers that it no longer requires to maintain any or all of the reservations it has made, that country may withdraw the said reservation or reservations. This is the proposal presented by the Programme of the Conference in the Protocol Regarding Developing Countries.

During the preparatory work, it was emphasized on several occasions that the developing countries were very anxious to be able to apply the special régime instituted in their favour as soon as possible after the adoption of the new revised text, irrespective of the ratification of or accession to the other provisions of the Convention. Various proposals were made in this connection but it became obvious during the deliberations of the 1965 Committee of Governmental Experts that the problem was not an easy one and the Committee asked the Study Group to examine ways and means of accelerating the implementation of the measures proposed for the benefit of the developing countries.

In drawing up the Programme of the Conference, it was felt that the solution to the problem was linked up essentially with the final clauses of the Convention and that the provisions proposed in this respect should be included in these final clauses. In view of the fact that these clauses are still to be the subject of very careful study (see, *supra*, p. 66), the Programme does not for the moment contain any proposals concerning the immediate or advance application of the Protocol Regarding Developing Countries. This question will be studied at a later date.

Protocol Regarding Developing Countries

Brussels Text	Proposed Text
—	(See Annex II, pages 95 and 96.)

V. DRAFT ADDITIONAL PROTOCOL CONCERNING THE PROTECTION OF THE WORKS OF STATELESS PERSONS AND REFUGEES

Programme of the Conference. As indicated in connection with Article 4, paragraph (2), the Study Group had proposed in its 1963 and 1964 reports that stateless persons and refugees having their habitual residence in one of the countries of the Union should be assimilated to nationals of that country, for the purposes of the Convention. The 1965 Committee of Governmental Experts recommended that the provisions on this subject should be transferred to an Additional Protocol so that their application would be optional. When the Programme of the Conference was drawn up, this was considered to be the most appropriate solution.

The proposed Additional Protocol contains, therefore, a rule in Article 1 with respect to assimilation. Article 2 stipulates, in accordance with a suggestion made to the 1965 Committee of Governmental Experts, that countries of the Union may, at the time of deposit of their instrument of ratification or accession, declare that they intend to apply the provisions of the Protocol only to stateless persons, or only to refugees. Article 3 of the Protocol will contain the provisions concerning its ratification, or accession to it, by countries of the Union, as well as other final clauses. The proposals concerning these clauses will be presented later in a separate document (see, *supra*, p. 12).

Additional Protocol Concerning the Protection of the Works of Stateless Persons and Refugees

BRUSSELS TEXT	PROPOSED TEXT
—	(See Annex III, page 97.)

VI. DRAFT ADDITIONAL PROTOCOL CONCERNING THE APPLICATION OF THE CONVENTION TO THE WORKS OF CERTAIN INTERNATIONAL ORGANIZATIONS

Programme of the Conference. Following a suggestion made at the 1965 Committee of Governmental Experts, it is proposed to provide for the protection of the works of certain international organizations in an Additional Protocol. Article 1 of this Protocol takes its inspiration from the idea which is at the basis of Protocol No. 2 annexed to the Universal Copyright Convention, and is self-explanatory. Article 2 will repeat the same provisions as the preceding Protocol in so far as ratification or accession by countries of the Union is concerned, as well as other final clauses.

Additional Protocol Concerning the Application of the Convention to the Works of Certain International Organizations

Brussels Text	Proposed Text
—	(See Annex IV, page 99.)

ANNEXES

Proposals for the Revision of the Berne Convention for the Protection of Literary and Artistic Works

ANNEX I

BERNE CONVENTION

for the Protection of Literary and Artistic Works signed on the 9th September 1886, completed at Paris on the 4th May 1896, revised at Berlin on the 13th November 1908, completed at Berne on the 20th March 1914, revised at Rome on the 2nd June 1928 and revised at Brussels on the 26th June 1948

. . . .

. . . .

Being equally animated by the desire to protect in as effective and uniform a manner as possible the rights of authors over their literary and artistic works,

Have resolved to revise and to complete the Act signed at Berne on the 9th September 1886, completed at Paris on the 4th May 1896, revised at Berlin on the 13th November 1908, completed at Berne on the 20th March 1914 and revised at Rome on the 2nd June 1928.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognised as in good and due form, have agreed as follows:

Article 1

The countries to which this Convention applies constitute a Union for the protection of the rights of authors over their literary and artistic works.

Article 2

(1) The term "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; cinematographic works and works produced by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works and works produced by a process analogous to photography; works of applied art; illustrations, geographical charts, plans, sketches and plastic works relative to geography, topography, architecture or science.

(2) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the rights of the author of the original work. It shall, however, be a matter for legislation in the countries of the Union to determine the protection to be granted to translations of official texts of a legislative, administrative and legal nature.

(3) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such without prejudice to the rights of the authors in respect of each of the works forming part of such collections.

ANNEX I/A

BERNE CONVENTION

for the Protection of Literary and Artistic Works signed on September 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, revised at Rome on June 2, 1928, revised at Brussels on June 26, 1948, and revised at Stockholm on July .., 1967

. . . .

. . . .

Being equally animated by the desire to protect in as effective and uniform a manner as possible authors' copyright in their literary and artistic works,

Have resolved to revise and to complete the Act signed at Berne on September 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, revised at Rome on June 2, 1928, *and revised at Brussels on June 26, 1948.*

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:

Article 1

The countries to which this Convention applies constitute a Union for the protection of authors' copyright in their literary and artistic works.

Article 2

(1) The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show (.....); musical compositions with or without words; cinematographic works (.....); works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works (.....); works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) For the purpose of this Convention, works expressed by a process producing visual effects analogous to those of cinematography and fixed in some material form shall be considered to be cinematographic works.

For the purpose of this Convention, works expressed by a process analogous to photography shall be considered to be photographic works.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work. It shall, however, be a matter for legislation in the countries of the Union to determine the protection to be granted to translations of official texts of a legislative, administrative and legal nature.

(4) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such without prejudice to the copyright in each of the works forming part of such collections.

(4) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his legal representatives and assignees.

(5) It shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in other countries of the Union only to such protection as shall be accorded to designs and models in such countries.

Article 2*bis*

(1) It shall be a matter for legislation in the countries of the Union to exclude wholly or in part from the protection afforded by the preceding Article political speeches and speeches delivered in the course of legal proceedings.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press.

(3) Nevertheless, the author alone shall have the right of making a collection of his works mentioned in the above paragraphs.

Article 3 (omitted)

Article 4

(1) Authors who are nationals of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) The country of origin shall be considered to be, in the case of published works, the country of first publication, even in the case of works published simultaneously in several countries of the Union which grant the same term of protection; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country of which the legislation grants the shortest term of protection. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin. A work shall be considered as having been published simultaneously in several countries which has been published in two or more countries within thirty days of its first publication.

(5) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.

(6) Subject to the provisions of Article 7, paragraph (4), of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in other countries of the Union only to such protection as shall be granted to designs and models in such countries.

(7) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of information.

Article 2*bis*

(1) It shall be a matter for legislation in the countries of the Union to exclude, partially or wholly, from the protection provided by the preceding Article political discourse and discourse as a part of legal proceedings.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press.

(3) Nevertheless, the author alone shall have the right of making a collection of his works mentioned in the above paragraphs.

Article 3 (omitted)

Article 4

(1) Authors who are nationals of one of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, *whether published or not,* the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) Authors who are not nationals of one of the countries of the Union but are domiciled in one of them shall, for the purpose of this Convention, be assimilated to the nationals of that country.

(3) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(4) The country of origin shall be considered to be:

(a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country of which the legislation grants the shortest term of protection;

(b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;

(c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union:

(i) *when these are cinematographic works the maker of which is a national of a country of the Union or has his domicile or headquarters therein, that country;*

(ii) *when these are works of architecture erected in a country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union, that country;*

(iii) *when these are works to which the provisions referred to in (i) or (ii) above do not apply, the country of the Union of which the author is a national.*

A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

(4) For the purposes of Articles 4, 5 and 6, "published works" shall be understood to be works copies of which have been issued and made available in sufficient quantities to the public, whatever may be the means of manufacture of the copies. The presentation of a dramatic, dramatico-musical or cinematographic work, the performance of a musical work, the public recitation of a literary work, the transmission or the radiodiffusion of literary or artistic works, the exhibition of a work of art and the construction of a work or architecture shall not constitute publication.

(5) The country of origin shall be considered to be, in the case of unpublished works, the country to which the author belongs. However, in the case of works of architecture, or of graphic and plastic works forming part of a building, the country of the Union where these works have been built or incorporated in a building shall be considered as the country of origin.

Article 5

Authors who are nationals of one of the countries of the Union, and who first publish their works in another country of the Union, shall have in the latter country the same rights as native authors.

Article 6

(1) Authors who are not nationals of one of the countries of the Union, and who first publish their works in one of those countries, shall enjoy in that country the same rights as native authors, and in the other countries of the Union the rights granted by this Convention.

(2) Nevertheless, where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not effectively domiciled in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(3) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(4) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Government of the Swiss Confederation by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Government of the Swiss Confederation shall immediately communicate this declaration to all the countries of the Union.

Article 6*bis*

(1) Independently of the author's copyright, and even after the transfer of the said copyright, the author shall have the right, during his lifetime, to claim authorship of the work and to object to any distortion, mutilation or other alteration thereof, or any other action in relation to the said work which would be prejudicial to his honour or reputation.

(5) (.....) The expression "published works" means works *lawfully* published, copies of which have been issued and made available in sufficient quantities to the public, whatever may be the means of manufacture of the copies. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(6) The maker of a cinematographic work means the person or body corporate who has taken the initiative in, and responsibility for, the making of the work.

Article 5

Authors who are nationals of one of the countries of the Union, and who first publish their works in another country of the Union, shall have in the latter country the same rights as *national* authors.

Article 6

(1) Authors who are not nationals of one of the countries of the Union, and who first publish their works in one of those countries *or simultaneously in a country outside the Union and in a country of the Union,* shall enjoy, *in the country of the Union where the publication took place, with respect to these works,* the same rights as national authors, and in the other countries of the Union the rights granted by this Convention.

(2) Authors who are not nationals of one of the countries of the Union shall enjoy for their cinematographic works which are unpublished or which are not first or simultaneously published in a country of the Union, but the maker of which is a national of one of the countries of the Union, or has his domicile or headquarters in that country, the same rights in that country as national authors and, in the other countries of the Union, the rights granted by this Convention.

(3) Authors who are not nationals of one of the countries of the Union shall enjoy for their works of architecture or graphic and three-dimensional works affixed to land or to a building, in the country of the Union where these works have been erected or so affixed, the same rights as national authors and, in the other countries of the Union, the rights granted by this Convention.

(4) Nevertheless, where a country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and have no bona fide domicile in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(5) No restrictions imposed in accordance with the preceding paragraph shall prejudice the rights which an author may have acquired in a work published in a country of the Union before such restrictions were put into force.

(6) The countries of the Union which restrict copyright in accordance with this Article shall give notice thereof to the ..... [1] by a written declaration specifyng the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The ..... [1] shall immediately communicate this declaration to all the countries of the Union.

Article 6*bis*

(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right (.....) to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

[1] *Either*: ..... Government of the Swiss Confederation, *or*, if the Administrative Convention establishing the International Intellectual Property Organization is adopted by the Diplomatic Conference of Stockholm: ..... *Director-General of the Organization.*

(2) In so far as the legislation of the countries of the Union permits, the rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the copyright, and shall be exercisable by the persons or institutions authorised by the said legislation. The determination of the conditions under which the rights mentioned in this paragraph shall be exercised shall be governed by the legislation of the countries of the Union.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 7

(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.

(2) However, where one or more countries of the Union grant a term of protection in excess of that provided by paragraph (1), the term shall be governed by the law of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work.

(3) In the case of cinematographic and photographic works, as well as works produced by a process analogous to cinematography or photography, and in the case of works of applied art, the term of protection shall be governed by the law of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work.

(4) In the case of anonymous and pseudonymous works, the term of protection shall be fixed at fifty years from the date of their publication. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1).

(5) In the case of posthumous works which do not fall within the categories of works included in paragraphs (3) and (4), the term of the protection afforded to the heirs and the legal representatives and assignees of the author shall end at the expiry of fifty years after the death of the author.

(6) The term of protection subsequent to the death of the author and the terms provided by paragraphs (3), (4) and (5) shall run from the date of his death or of publication, but such terms shall always be deemed to begin on the 1st January of the year following the event which gives rise to them.

Article 7*bis*

In the case of a work of joint authorship, the term of protection shall be calculated from the date of the death of the last surviving author.

Article 8

Authors of literary and artistic works protected by this Convention shall have the exclusive right of making and of authorising the translation of their works throughout the term of protection of their rights in the original works.

Article 9

(1) Serial novels, short stories and all other works, whether literary, scientific or artistic, whatever their purpose, and which are published in the newspapers or periodicals of one of the countries of the Union shall not be reproduced in the other countries without the consent of the authors.

(2) (.....) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by *the legislation of the country where protection is claimed.* (.....)

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 7

(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.

(2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the first publication, public performance or broadcast, or failing such an event within fifty years from the making of such a work, fifty years after the making.

(3) In the case of anonymous or pseudonymous works, the term of protection *granted by this Convention shall expire fifty years after the work has been lawfully made available to the public.* However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). *The countries of the Union shall not be required to protect anonymous or pseudonymous works of which it is reasonable to presume that their author has been dead for fifty years.*

(4) It shall be a matter for legislation in countries of the Union to determine the term of protection of photographic works and that of works of applied arts in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work.

(5) The term of protection subsequent to the death of the author and the terms provided by paragraphs *(2)*, *(3)* and *(4)* shall run from the date of death or *of the event referred to in those paragraphs*, but such terms shall always be deemed to begin on the 1st January of the year following *the death or such event.*

(6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.

(7) In any case, the term shall be governed by the law of the country where protection is claimed; *however, unless the legislation of that country otherwise provides, the term shall not exceed* the term fixed in the country of origin of the work.

Article 7*bis*

The provisions of the preceding Article shall also apply in the case of a work of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the last surviving author.

Article 8

Authors of literary and artistic works protected by this Convention shall have the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

Article 9

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) Articles on current economic, political or religious topics may be reproduced by the press unless the reproduction thereof is expressly reserved; nevertheless, the source must always be clearly indicated. The legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.

(3) The protection of this Convention shall not apply to news of the day nor to miscellaneous information having the character of mere items of news.

Article 10

(1) It shall be permissible in all the countries of the Union to make short quotations from newspaper articles and periodicals, as well as to include them in press summaries.

(2) The right to include excerpts from literary or artistic works in educational or scientific publications, or in chrestomathies, in so far as this inclusion is justified by its purpose, shall be a matter for legislation in the countries of the Union, and for special Arrangements existing or to be concluded between them.

(3) Quotations and excerpts shall be accompanied by an acknowledgment of the source and by the name of the author, if his name appears thereon.

Article 10*bis*

It shall be a matter for legislation in countries of the Union to determine the conditions under which recording, reproduction, and public communication of short extracts from literary and artistic works may be made for the purpose of reporting current events by means of photography or cinematography or by radiodiffusion.

Article 11

(1) The authors of dramatic, dramatico-musical or musical works shall enjoy the exclusive right of authorising: i. the public presentation and public performance of their works; ii. the public distribution by any means of the presentation and performance of their works. The application of the provisions of Articles 11*bis* and 13 is, however, reserved.

(2) Authors of dramatic or dramatico-musical works, during the full term of their rights over the original works, shall enjoy the same rights with respect to translations thereof.

(3) In order to enjoy the protection of this Article, authors shall not be bound, when publishing their works, to forbid the public presentation or performance thereof.

Article 11*bis*

(1) Authors of literary and artistic works shall have the exclusive right of authorising: i. the radiodiffusion of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images; ii. any communication to the public, whether over wires or not, of the radiodiffusion of the work, when this communication is made by a body other than the original one; iii. the communication to the public by loudspeaker or any other similar instrument transmitting, by signs, sounds or images, the radiodiffusion of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral right of the author, nor to his right to obtain just remuneration which, in the absence of agreement, shall be fixed by competent authority.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works

(a) for private use;

(b) for judicial or administrative purposes;

(c) in certain particular cases where the reproduction is not contrary to the legitimate interests of the author and does not conflict with a normal exploitation of the work.

Article 10

(1) *It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that they are compatible with fair practice, and to the extent justified by the purpose, including* quotations from newspaper articles and periodicals in the form of press summaries.

(2) It shall be a matter for legislation in the countries of the Union, and for special Agreements existing or to be concluded between them, to permit, to the extent justified by the purpose, borrowings from literary or artistic works for use in publications intended for teaching or having a scientific character or in chrestomathies.

(3) Quotations and borrowings shall be accompanied by an acknowledgement of the source and of the name of the author, if his name appears thereon.

Article 10*bis*

It shall be a matter for legislation in countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography or cinematography, or by broadcasting *or communication to the public by wire*, it shall be permissible, *to the extent justified by the informatory purpose*, to record, reproduce and communicate to the public *literary or artistic works which are seen or heard in the course of the event.*

Article 11

(1) Subject to the provisions of Article 11*bis* (.....), the authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:

(i) the public performance of their works;

(ii) any communication to the public of the performance of their works.

(2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

(.....)

Article 11*bis*

(1) Authors of literary and artistic works shall have the exclusive right of authorizing:

(i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;

(ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;

(iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

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(3) Except where otherwise provided, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record the radiodiffused work by means of instruments recording sounds or images. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting body by means of its own facilities and used for its own emissions. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorised by such legislation.

Article 11*ter*

Authors of literary works shall enjoy the exclusive right of authorising the public recitation of their works.

Article 12

Authors of literary, scientific or artistic works shall enjoy the exclusive right of authorising adaptations, arrangements and other alterations of their works.

Article 13

(1) Authors of musical works shall have the exclusive right of authorising: (i) the recording of such works by instruments capable of reproducing them mechanically; (ii) the public performance by means of such instruments of works thus recorded.

(2) Reservations and conditions relating to the application of the rights mentioned in the preceding paragraph may be determined by legislation in each country of the Union, in so far as it may be concerned; but all such reservations and conditions shall apply only in the countries which have prescribed them and shall not, in any circumstances, be prejudicial to the author's right to obtain just remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) The provisions of paragraph (1) of this Article shall not be retroactive and consequently shall not be applicable in a country of the Union to works which, in that country, may have been lawfully adapted to mechanical instruments before the coming into force of the Convention signed at Berlin on the 13th November 1908, and, in the case of a country having acceded to the Convention since that date or acceding to it in the future, before the date of its accession.

(4) Recordings made in accordance with paragraphs (2) and (3) of this Article and imported without permission from the parties concerned into a country where they are not lawfully allowed shall be liable to seizure.

Article 14

(1) Authors of literary, scientific or artistic works shall have the exclusive right of authorising: i. the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced; ii. the public presentation and performance of the works thus adapted or reproduced.

(2) Without prejudice to the rights of the author of the work adapted or reproduced, a cinematographic work shall be protected as an original work.

(3) The adaptation under any other artistic form of cinematographic productions derived from literary, scientific or artistic works shall, without prejudice to the authorisation of their authors, remain subject to the authorisation of the author of the original work.

(4) Cinematographic adaptations of literary, scientific or artistic works shall not be subject to the reservations and conditions contained in Article 13, paragraph (2).

(5) The provisions of this Article shall apply to reproduction or production effected by any other process analogous to cinematography.

(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Article 11*ter*

Authors of literary works shall enjoy the exclusive right of authorizing the public recitation of their works.

Article 12

Authors of literary, scientific or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

Article 13

(1) Each country of the Union may impose for itself reservations and conditions on *the exclusive right, granted to authors of musical works, of authorizing the recording of such works by instruments capable of reproducing them mechanically,* but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(2) Recordings of musical works made in a country of the Union in accordance with Article 13, paragraph (3), of the Convention signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until December 31, 19...

(3) Recordings made in accordance with paragraphs *(1) and (2)* of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

Article 14

(1) Authors of literary, scientific or artistic works shall have the exclusive right of authorizing:

(i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;

(ii) the public performance and *communication to the public by wire* of the works thus adapted or reproduced.

The provisions of Article 13, paragraph (1), shall not apply.

(2) Without prejudice to the copyright in the work adapted or reproduced, a cinematographic work shall be protected as an original work. *The author of a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding paragraph.*

(3) The adaptation into any other artistic form of cinematographic productions derived from literary, scientific or artistic works shall, without prejudice to the authorization of their authors, remain subject to the authorization of the author of the original work.

(4) Authors who have authorized, in the manner prescribed by the legislation of the country of origin of the cinematographic work, the cinematographic adaptation and reproduction of their works or undertaken, in such a manner, to bring literary or artistic contributions to the making of the cinematographic work fixed in some material form, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting, any other communication to the public, subtitling and dubbing of the texts, of the cinematographic work.

Article 14*bis*

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, in respect of original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first disposal of the work by the author.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the degree permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.

Article 15

(1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.

(2) In the case of anonymous and pseudonymous works, other than those referred to in the preceding paragraph, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be regarded as representing the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply if the author reveals his identity and establishes his claim to authorship of the work.

Article 16

(1) Works infringing copyright may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection.

(2) In these countries the seizure may also apply to reproductions imported from a country where the work is not protected, or has ceased to be protected.

(3) The seizure shall take place in accordance with the legislation of each country.

Article 17

The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

The countries of the Union may provide that the authorization or undertaking referred to above shall be given by a written agreement or something having the same force.

By "contrary or special stipulation" is meant any restrictive condition agreed between the maker and the persons mentioned above.

(5) The countries of the Union may provide, for the benefit of the authors of works referred to in paragraph (4) above, a participation in the receipts resulting from the exploitation of the cinematographic work.

(6) Unless national legislation provides otherwise, the provisions of paragraph (4) above shall not apply to the rights of public performance, communication to the public by wire, broadcasting, any other communication to the public, of musical works, with or without words, used in the cinematographic work.

(7) Any country of the Union, upon becoming party to this Convention, may at any time, in a notification deposited with the .... [1], declare that it will not apply the provisions of paragraph (4) above to the literary, scientific or artistic works from which the cinematographic work is derived.

Any country which has deposited such a notification may withdraw it by a further notification deposited with the ....[1]

Article 14*bis*

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.

Article 15

(1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.

(2) In the case of anonymous and pseudonymous works, other than those referred to in the preceding paragraph, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply if and when the author reveals his identity and establishes his claim to authorship of the work.

Article 16

(1) Infringing copies of works may be seized by the competent authorities of any country of the Union where the work enjoys legal protection.

(2) In these countries the seizure may also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.

(3) The seizure shall take place in accordance with the legislation of each country.

Article 17

The provisions of this Convention cannot in any way prejudice the right of the Government of each country of the Union to permit, to control, or to prohibit by legislation or regulation, the distribution, performance, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

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[1] See footnote on p. 83.

Article 18

(1) This Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.

(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.

(3) The application of this principle shall be in accordance with the provisions contained in special Conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the manner in which the said principle is to be applied.

(4) The above provisions shall apply equally in the case of new accessions to the Union, and in the event of protection being extended by the application of Article 7 or by abandonment of reservations.

Article 19

The provisions of this Convention shall not preclude the making of a claim to the benefit of any wider provisions which may be afforded by legislation in a country of the Union.

Article 20

The Governments of the countries of the Union reserve to themselves the right to enter into special Arrangements between each other, in so far as such Arrangements shall confer upon authors more extended rights than those granted by the Convention, or embody other provisions not contrary to this Convention. The provisions of existing Arrangements which satisfy these conditions shall remain applicable.

Article 18

(1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.

(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.

(3) The application of this principle shall be subject to any provisions contained in special Conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.

(4) The above provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.

Article 19

The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.

Article 20

The Governments of the countries of the Union reserve the right to enter into special Agreements among themselves, in so far as such Agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention. The provisions of existing Agreements which satisfy these conditions shall remain applicable.

ANNEX II

PROTOCOL REGARDING DEVELOPING COUNTRIES

Article 1

Any developing country which ratifies or accedes to the Act to which this Protocol is annexed and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided in the Act, may, by a notification deposited with the .... [1], at the time of ratification or accession, comprising Article 20*bis* [2] of the Act declare that it will, for a period of the first ten years during which it is a party thereto, avail itself of any or all of the following reservations:

(a) substitute for Article 8 of this Convention the following provisions: if, after the expiration of a period of seven years from the date of the first publication of a literary, scientific or artistic work, a translation of such work has not been published into the national language or languages of that country by the owner of the right of translation or with his authorization, any national of such country may obtain a non-exclusive licence from the competent authority to translate the work and publish the work so translated in any of the national languages in which it has not been published; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A licence may also be granted on the same conditions if all previous editions of a translation in such language are out of print.

If the owner of the right of translation cannot be found, then the applicant for a licence shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the government of that country. The licence shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

Due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms to international standards, to assure payment and transmittal of such compensation, and to assure a correct translation of the work.

The original title and the name of the author of the work shall be printed on all copies of the published translation. The licence shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union if one of the national languages of such other country is the same language as that into which the work has been so translated, and if the domestic law in such other country makes provision for such licences and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements. The licence shall not be transferred by the licensee.

The licence shall not be granted when the author has withdrawn from circulation all copies of the work;

(b) substitute for the term of fifty years referred to in paragraphs (1), (2) and (3) of Article 7 of this Convention a different term, provided that it shall not be less than twenty-five years; and substitute for the term of twenty-five years referred to in paragraph (4) of the said Article a different term, provided that it shall not be less than ten years;

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[1] See footnote on p. 83.
[2] See footnote on p. 72.

(c) reserve the right to apply the provisions of paragraph (2) of Article 9 of the Convention as revised at Brussels in 1948;

(d) substitute for paragraphs (1) and (2) of Article 11*bis* of this Convention the provisions of Article 11*bis* of the Convention as revised at Rome in 1928;

(e) reserve the right, for exclusively educational, scientific or scholastic purposes, to restrict the protection of literary and artistic works.

Any country fulfilling the conditions referred to above may avail itself of one, several or all of the reservations provided above.

Article 2

A country, which has made reservations in accordance with Article 1, and which at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to make provision for the protection of all the rights forming the object of the Act, may, by a notification deposited with the .... [1], before the end of the above-mentioned period, declare that it will maintain, until the entry into force of the Act adopted by the next Revision Conference, any or all of the reservations made by the country.

Article 3

A country which no longer needs to maintain any or all of the reservations made in accordance with Article 1 or 2 shall withdraw such reservation or reservations by notification deposited with the .... [1].

[1] See footnote on p. 83.

ANNEX III

ADDITIONAL PROTOCOL TO THE BERNE CONVENTION

as revised at Stockholm on July . . , 1967, concerning the protection of the works of stateless persons and refugees

The countries of the Union becoming parties to this Protocol have agreed to the following provisions:

Article 1

Stateless persons and refugees having their habitual residence in one of the countries of the Union shall, for the purposes of the Convention as revised at Stockholm on July . ., 1967, be assimilated to the nationals of that country.

Article 2

Any country may, at the time of deposit of its instrument of ratification or accession, declare that it shall apply the provisions of this Protocol only to stateless persons, or only to refugees.

Article 3 [1]

[1] This Article would contain final clauses, stipulating in particular that any country having signed this Protocol may ratify it and that any country member of the Union not having signed this Protocol, as well as any country not member of the Union but acceding to the Convention as revised at Stockholm, may accede to this Protocol. The proposals relating to these final clauses will be presented at a later date.

ANNEX IV

ADDITIONAL PROTOCOL TO THE BERNE CONVENTION

as revised at Stockholm on July . ., 1967, concerning the application of that Convention to the works of certain international organizations

The countries of the Union becoming parties to this Protocol have agreed to the following provisions:

Article 1

The provisions of Articles 4, 5 and 6 of the Convention as revised at Stockholm on July . ., 1967, shall apply to works first published by the United Nations and by the Specialized Agencies in relationship therewith.

Article 2[1]

[1] See footnote on p. 97.

DOCUMENT S/2

PARIS CONVENTION FOR THE
PROTECTION OF INDUSTRIAL PROPERTY

(PARIS CONVENTION)

Proposal for Amending Article 4 of the Convention

(Prepared by the Government of Sweden with the Assistance of BIRPI)

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INTRODUCTION

1. The Paris Convention for the Protection of Industrial Property of March 20, 1883, was last revised at the Lisbon Conference in 1958.[1] At that Conference, the Delegation of the Government of Austria invited the Member States of the Paris Union to hold the next revision conference in Vienna, and the invitation was accepted.[2]

2. That invitation and its acceptance are still valid, and it is planned that the next general revision conference of the Paris Convention will be held in Vienna, probably in the nineteen-seventies. However, since the Lisbon Conference, the idea that a *limited* revision of the Paris Convention take place *earlier*, namely, at the Intellectual Property Conference of Stockholm, scheduled for June/July 1967, has been approved by Member States of the Paris Union and agreed to by the Austrian Government.

3. This limited revision would relate to *inventors' certificates*, an institution existing in some countries, in particular the Union of Soviet Socialist Republics. That country adhered, in 1965, to the Paris Union.[3] As most inventors in the Soviet Union apply for inventors' certificates, and as some foreigners might wish to obtain inventors' certificates in the Soviet Union, the insertion in the Paris Convention of suitable provisions on inventors' certificates would increase the significance of the membership of the Soviet Union. The same holds to a certain extent for other countries granting inventors' certificates.

4. After having obtained the agreement of the Government of Austria, the Government of Sweden decided to include in the program of the Stockholm Conference a proposed addition to Article 4 of the Paris Convention, addition which would deal with inventors' certificates.

5. The present preparatory document constitutes the program of the Conference on this specific point. It has been prepared by the Government of Sweden[4] with the assistance of BIRPI[5] on the basis of the discussions of two international meetings organized by BIRPI in 1964 and 1965.[6]

[1] The Convention, as revised, was signed on October 31, 1958. All references to the Paris Convention in the present document are references to that Convention as revised at Lisbon.

[2] Union internationale pour la Protection de la Propriété industrielle: *Actes de la Conférence réunie à Lisbonne du 6 au 31 octobre 1958*, published by BIRPI, Geneva, 1963 (hereinafter referred to as *Actes de la Conférence de Lisbonne*), page 108.

[3] The accession became effective on July 1, 1965 (see *Industrial Property*, 1965, page 74).

[4] The Paris Convention provides that it " shall be submitted to periodical revision with a view to the introduction of amendments designed to improve the system of the Union, " (Article 14, paragraph (1)) and that " for this purpose conferences shall be held successively in one of the countries of the Union between the delegates of the said countries " (Article 14, paragraph (2)). Furthermore, the Convention provides that " the Administration of the country in which the conference is to be held shall make preparations [*préparera* in the French text] for the work of the conference, with the assistance [*avec le concours*] of the International Bureau " (Article 14, paragraph (3)).

[5] The United International Bureaux for the Protection of Intellectual Property, with Headquarters at Geneva, Switzerland. " BIRPI " is an abbreviation of the French name of the Bureaux.

[6] See paragraphs 20 to 24, and 27 to 30.

PRELIMINARY REMARKS ON THE NOTION OF INVENTORS' CERTIFICATES

6. The following is a general description of the typical features of inventors' certificates. This description does not necessarily correspond in every detail to the provisions of the domestic law in every country in which inventors' certificates are known.

7. In the Soviet Union and some other countries of Eastern Europe,[1] an inventor has the choice of applying either for a patent or for an inventor's certificate. The contents of the application for either are the same, and application for either must be addressed to the same Government office. The application must sufficiently describe the invention, with drawings if necessary, to enable others to carry it out. The Government office notes on the application the date on which it was received.

8. If the invention satisfies the conditions of the domestic law of the country, the Government office grants to the applicant either a patent or an inventor's certificate, depending on which of these two the applicant has applied for.

9. The legal effects of a patent are different from those of an inventor's certificate.

10. In the case of a patent, the patentee has a monopoly or proprietary right: the patented invention may be exploited only with his permission. The patentee may transfer his rights to another person or may fix by contract the conditions under which he allows other persons to exploit his patent (licenses).

11. In the case of an inventor's certificate, the right of exploitation belongs to the State. The inventor has a right to a reward from the State. The amount of the reward is based on the use made of the invention, the resultant saving to the economy, and other factors. The inventor has no rights which he could transfer to third parties, and may not license third parties to exploit the invention.

12. Roughly speaking, then, a patent confers an exclusive right of exploitation (monopoly) on the patentee, whereas an inventor's certificate creates a right to remuneration by the State.

13. It should be noted that a literal translation of the certificates in question from the Russian, or from the languages of the other countries which know such certificates, would give " *authors'* certificates " *(avtorskoè svidetelstvo)*. In view of the possibility of confusion with copyright, this document uses the expression " *inventors'* certificates, " although the French version of this document uses the expression " *certificats d'auteur d'invention.*" [2]

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[1] An analysis of the relevant laws may be found in the bilingual (English, French) Brochure published in 1964 by BIRPI under the title " Groupe d'étude sur le certificat d'auteur (Genève, 27-30 janvier 1964)—Study Group on Certificates of Authorship (Geneva, January 27 to 30, 1964) " (hereinafter referred to as " the Brochure "). BIRPI will send to Governments, on request, free of charge, copies of the Brochure.

[2] Some of the earlier documents and publications of BIRPI used the expression " authors' certificates " or " certificates of authorship." Quotations taken from such documents and publications in this document will preserve the old terminology. It should, however, be kept in mind that all these expressions, as well as the French " *certificat d'auteur d'invention,* " refer to the same thing and are interchangeable.

CONSIDERATION OF THE QUESTION OF INVENTORS' CERTIFICATES AT THE LISBON CONFERENCE OF 1958

14. In the framework of the Paris Union, the question of inventors' certificates was first discussed at the Lisbon Revision Conference of 1958, and more particularly in the Second (Patents) Commission of that Conference.

15. The basis of the discussion was a proposal of the Delegation of Rumania to introduce the notion of " certificates of authorship " in the text of the Convention. A detailed description (in French only) of the proposals and of the discussions is contained in the official records of the Lisbon Conference[1] whereas a summary of the same (both in English and French) is contained in the Brochure. [2]

16. One of the proposals presented by the Delegation of Rumania was to introduce a new paragraph into Article 4 (which deals with the right of priority) to read as follows: " Within the meaning of Article 4, applications for certificates of authorship shall be equivalent to applications for patents. "

17. The Delegations of Bulgaria, Czechoslovakia, Poland, and Yugoslavia, supported these proposals, whereas the other delegations which took part in the discussions, in particular those of Israel, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, considered that the problem called for a thorough examination and could not usefully be discussed immediately.

18. The majority of the Commission agreed that the Rumanian proposal could not be sufficiently studied for a decision to be taken on its merits in the course of the session of the Lisbon Conference and accordingly decided not to accept the Rumanian proposal because of their inadequate knowledge of the matter, it being understood, however; that this decision in no way implied the rejection of the substance of the proposal.

19. The General Commission of the Conference then took note of the fact that the Second Commission had decided not to accept this proposal and had pointed out that its decision had been taken without prejudice to the substance of the proposal, and solely on account of the lack of adequate data and knowledge at its disposal.

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[1] *Actes de la Conférence de Lisbonne*, pages 496 to 500, and 533 to 534.

[2] *Brochure*, pages 4 to 7.

CONSIDERATION OF THE SAME QUESTION SUBSEQUENT TO THE LISBON CONFERENCE

BIRPI Initiative and the 1964 BIRPI Study Group

20. The Director of BIRPI took the initiative of reopening the question of the possible introduction of the notion of inventors' certificates. After conducting a survey of comparative law on the subject in 1963 and issuing a report analyzing the problem and various possibilities for solving it,[1] he convened, under the title " Study Group on Certificates of Authorship, " a meeting composed of experts appointed by the Governments of the following ten Member States of the Paris Union: Bulgaria, Czechoslovakia, Hungary, Israel, Netherlands, Poland, Rumania, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia. The Soviet Union, at that time not yet a Member of the Paris Union, was represented by observers.[2] The Study Group met in Geneva, from January 27 to 30, 1964.

21. The general conclusions on which the Study Group of 1964 agreed were the following: " (1) it was impossible for the meeting to give an authoritative interpretation of the Convention [on the question of whether, in its present wording, it covered inventors' certificates, and if so, to what extent]; (2) it was desirable that there should be more certainty than exists at present; (3) there was no reason to consider the system of authors' certificates as contrary to the spirit and aims of the Paris Convention; (4) some countries now, in fact, accept authors' certificates for priority purposes in the granting of patents; (5) even the Experts of those countries which do not do so, and who do not believe that the Convention so requires, did not object, in principle, to consideration of the possibility of the Convention providing in clear terms for the obligation to do so." [3]

22. In other words, there was no objection in principle to studying the possibility of revising the Convention so that it should provide in clear terms for the obligation of each Member State to " accept authors' certificates for priority purposes in the granting of patents."

23. In conclusion, the Study Group " invited the Director of BIRPI to take what measures he considered appropriate (preparation of draft texts, summoning of further meetings, etc.) to this effect." [4]

24. After these conclusions had been reached by the Study Group, " the Director of BIRPI suggested that it might be advisable to aim at an amendment of the [Paris] Industrial Property Convention on this point when the countries of the Union meet in Stockholm in 1967." [5]

Tentative Agreement to Include the Question in the Program of the Stockholm Conference

25. On the basis of the foregoing conclusions, the Director of BIRPI arrived, later in 1964, at a tentative agreement with the Swedish Government that the revision of the Paris Convention on this point might be placed on the agenda of the Intellectual Property Conference of Stockholm in 1967.[6]

26. In cooperation with Experts of the Swedish Government, BIRPI then drafted a proposed amendment to the Paris Convention providing, in essence, that inventors' certificates must be recognized as a basis for priority for patents.[7]

[1] See BIRPI documents Nos. PJ/37/2, 3, 4 and 7, reprinted in the *Brochure*, pages 4 to 71.

[2] See the list of participants in the *Brochure*, pages 124 to 129.

[3] Report of the Rapporteur (Mr. William Wallace) of the Study Group; *Brochure*, page 87.

[4] *Loc. cit.*

[5] *Loc. cit.*

[6] Cf. BIRPI document PJ/37/2, paragraph 23, published in *Industrial Property*, 1965, page 83.

[7] BIRPI document PJ/37/2, paragraph 29, published in *Industrial Property*, 1965, page 83.

The 1965 BIRPI Committee of Experts and Selection of the Questions Included in the Program of the Stockholm Conference

27. The draft amendment, and an explanatory statement, were sent to the Governments of the Member States of the Paris Union late in 1964, together with an invitation from the Director of BIRPI to a meeting under the title " Committee of Experts on Inventors' Certificates."

28. That Committee met at the Geneva Headquarters of BIRPI from March 15 to 18, 1965. The following 27 Member States were represented: Australia, Austria, Brazil, Bulgaria, Canada, Czechoslovakia, Denmark, Finland, France, Germany (Fed. Rep.), Greece, Hungary, Indonesia, Iran, Israel, Italy, Japan, Lebanon, Netherlands, Poland, Rumania, Sweden, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia. Three States were represented by observers: Algeria, Pakistan, and the Union of Soviet Socialist Republics.[1] Since the meeting, two of them have adhered to the Paris Union: Algeria and the USSR. Adherence by the latter was announced in the meeting itself. The Representative of the Soviet Union, in making the announcement, said that " in joining the Paris Convention, the USSR is sure that the problem of authors' certificates will be solved appropriately and correctly." [2]

29. The International Association for the Protection of Industrial Property, the International Chamber of Commerce, and the International Federation of Patent Agents, were also represented by observers.[3]

30. Subject only to minor changes, the Committee unanimously adopted the draft text proposed by BIRPI and the Swedish Experts. This proposal, it is recalled, dealt with inventors' certificates only in the context of Article 4, that is, for the purposes of the right of priority.

31. *The text adopted by the Committee of Experts of 1965 constitutes, without change, the proposal contained in the present document* (see paragraph 43, below) *and is herewith submitted for the consideration of the Stockholm Conference.*

32. Before presenting and analyzing this text, it is necessary to point out, for the sake of completeness, that the 1965 Committee of Experts also considered the possibility of introducing into the Paris Convention the notion of inventors' certificates not only for the purposes of the right of priority but also for other purposes. Proposals to the latter effect, however, met with the hesitation of the majority of the Experts. Consequently, the 1965 meeting agreed not to draft any amendments other than those in respect of Article 4 concerning the right of priority. It was understood " that the Swedish Government and BIRPI would give consideration to what, if any, further amendments in other Articles it would be appropriate to propose for Stockholm." [4]

33. The Swedish Government and BIRPI, after careful consideration of this question, decided *not to propose any amendments in addition to the amendment unanimously proposed by the Committee of Experts.*

34. One of the reasons for this decision is that, in the light of the two preparatory meetings of 1964 and 1965, it seems to be likely that unanimous agreement at the Stockholm Conference could be reached only on the amendment unanimously proposed by the 1965 Committee. As is known, all amendments require unanimity.

35. Even if it were supposed that unanimity could be achieved on additional proposals, practical considerations militate against the making of any such proposals. As is known, the Stockholm Conference was originally planned for the revision of the Berne Convention and not of the Paris Convention which, as indicated above, is expected to undergo a general revision in the nineteen-seventies in Vienna. Furthermore, the Stockholm Conference might also deal with questions of structural reform and in such case only a strictly limited time could be allotted to the revision of the Paris Convention at that Conference.

[1] See the list of participants in *Industrial Property*, 1965, page 79.

[2] *Industrial Property*, 1965, page 77.

[3] See note 1 above.

[4] Report of the Rapporteur (Mr. William Wallace), paragraph (11), *Industrial Property*, 1965, page 76.

36. For the several reasons indicated above, it would seem to be necessary to reserve any possible additional consideration of inventors' certificates for the Vienna Conference. Such a procedure would also have the advantage that the question of additional amendments would have time to mature, thanks to continued exchanges of views and the experience to be gained in applying the proposed amendment, assuming it is adopted by the Stockholm Conference.

PROPOSAL FOR AMENDING ARTICLE 4 OF THE PARIS CONVENTION; EXPLANATION OF THE PROPOSAL

37. It is proposed that the Paris Convention be amended so as to provide, in a new Section to be added to Article 4, that applications for inventors' certificates must be recognized as a basis for priority for patents.

38. For the purposes of the priority right what is important is that the description of the invention in the first application be such that when it is described in subsequent applications it should be possible to recognize the identity of the invention. In view of the fact that applications for inventors' certificates contain the same kind of description, with drawings and charts, where necessary, as patent applications, the two types of applications may be considered equivalent from a technical viewpoint and for the purposes of determining whether the first application relates to the same invention as the subsequent applications.

39. It is also proposed that the new provision should specify that this recognition of inventors' certificates as a basis for priority for patents may be invoked when the application for the inventor's certificate is filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate. As this option exists today in all countries of the Paris Union issuing inventors' certificates, the provision merely registers the existing situation. However, at the same time, the provision is also a safeguard against the theoretical possibility that a country might offer applicants inventors' certificates only—and not patents. In view of the fact that inventors' certificates are usually, for practical purposes, of less value to foreigners than patents, the provision is intended to underline the necessity of maintaining the existing situation in which applicants may, if they so wish, apply for patents rather than inventors' certificates.

40. The new provision, recognizing inventors' certificates as a basis for priority for patents, could constitute the first paragraph of a new Section (designated by the letter "I" after Section H) of Article 4 of the Convention dealing with the right of priority. A logical parallel to this provision would be a second paragraph of the same new Section which would provide that a patent application must be recognized as a basis for priority for an inventor's certificate.

41. Furthermore, for obvious reasons, an application for an inventor's certificate, if it is the first application, would also be a sufficient basis for an application for an inventor's certificate in another country also knowing the system of inventors' certificates.

42. Finally, an application for an inventor's certificate could invoke as a basis of priority an application for a utility model, as applications for patents already can, under Article 4E(2).

43. Thus the proposed addition to Article 4 could be worded as follows:

(1) Applications for inventors' certificates,[1] *filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents.*

(2) In a country in which applicants have the above option, the right of priority provided for under this Article shall be recognized also where the applicant seeks an inventor's certificate irrespective of whether the first application (Section A, paragraph (2)) was an application for a patent or a utility model, or for an inventor's certificate.

44. The following example illustrates the effects of the proposed amendment. In this example, it is assumed that France is a country whose domestic law does not provide for inventors' certificates, and

[1] *Certificat d'auteur d'invention* in the French (authentic) text.

Rumania is a country in which inventors may obtain either patents or inventors' certificates. The effect of the first paragraph would be that France would recognize an application made in Rumania for an inventor's certificate as a basis for priority for a French patent; the main effect of the second paragraph would be that Rumania would recognize a patent application filed in France as a basis for priority for a Rumanian inventor's certificate if the applicant chooses to apply, in Rumania, for an inventor's certificate rather than a patent.

45. Treating applications for inventors' certificates in the same manner as patent applications, and giving to the former the same effects as to the latter, would apply to the whole of Article 4 and would mean in particular that:

(i) a person who has duly filed an application for an inventor's certificate in one of the countries of the Paris Union, or his successors in title, would enjoy, for the purpose of filing in other countries of the Union, a right of priority during twelve months (Sections A(1) and C(1));

(ii) the filing of an application for an inventor's certificate would have to be such that the date of the filing of the application may be clearly ascertained; otherwise the filing could not serve as a basis for the right of priority (Section A(3));

(iii) once the right of priority is acquired, it remains acquired, whatever the outcome of the application for the inventor's certificate (Section A(3));

(iv) any person desiring to take advantage of the priority of the filing of an application for an inventor's certificate would be required to make a declaration indicating the date and the number of such filing and the country in which it was made (Sections D(1) and D(5));

(v) these particulars (i.e., the date, the number, and the country, of the first filing) would have to be indicated in the publications issued by the competent authority, and in particular in the patents (or inventors' certificates) and the specifications relating thereto (Section D(2));

(vi) it would be permissible to file a utility model in a country by virtue of a right of priority based on the filing of an application for an inventor's certificate (Section E(2));

(vii) applications for inventors' certificates would be dealt with in the same way as patent applications in regard to multiple priorities (Section F), division of applications (Section G), and the contents of the first application in relation to the priority claimed (Section H).

TEXT OF ARTICLE 4 OF THE CONVENTION AS IN THE LISBON ACT AND AS PROPOSED TO BE AMENDED BY THE STOCKHOLM CONFERENCE

Present Text	Proposed Text
A. — (1) A person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successors in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter stated. (2) Every filing that is equivalent to a regular national filing under domestic law of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to a right of priority. (3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the outcome of the application.	A. (No change)
B. — Consequently, the subsequent filing in any of the other countries of the Union before the expiration of those periods shall not be invalidated through any acts accomplished in the interval, as, for instance, by another filing, by publication or exploitation of the invention, by the putting on sale of copies of the design or model, or by use of the mark, and these acts cannot give rise to any right of third parties, or of any personal possession. Rights acquired by third parties before the date of the first application which serves as the basis for the right of priority are reserved under the domestic legislation of each country of the Union.	B. (No change)
C. — (1) The above-mentioned periods of priority shall be twelve months for patents and utility models, and six months for industrial designs and for trademarks. (2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period. (3) If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day. (4) A subsequent application for the same subject as a previous first application within the meaning of paragraph (2) above, and filed in the same country of the Union, shall be considered as the first application, of which the filing date shall be the starting point of the period of priority, provided that, at the time of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.	C. (No change)
D. — (1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a	D. (No change)

PRESENT TEXT	PROPOSED TEXT
declaration indicating the date of such filing and the country in which it was made. Each country will determine the latest permissible date for making such declaration. (2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto. (3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (specification, drawings, etc.) previously filed. The copy, certified as correct by the authority which received the application, shall not require any authentication, and may in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation. (4) No other formalities may be required for the declaration of priority at the time of filing the application. Each of the countries of the Union shall decide what consequences shall follow the omission of the formalities prescribed by the present Article, but such consequences shall in no case go beyond the loss of the right of priority. (5) Subsequently, further proof may be required. A person who avails himself of the priority of a previously filed application shall be required to specify the number of that application, which shall be published under the conditions provided for by paragraph (2) above.	
E. — (1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be only that fixed for industrial designs. (2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.	E. (No change)
F. — No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even originating in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the original application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country. With respect to the elements not included in the original application or applications whose priority is claimed, the filing of the later application shall give rise to a right of priority under the usual conditions.	F. (No change)
G. — (1) If examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any. (2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.	G. (No change)
H. — Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.	H. (No change)

PRESENT TEXT	PROPOSED TEXT
	I. — (1) Applications for inventors' certificates, filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents. (2) In a country in which applicants have the above option, the right of priority provided for under this Article shall be recognized also where the applicant seeks an inventor's certificate irrespective of whether the first application (Section A, paragraph (2)) was an application for a patent or a utility model, or for an inventor's certificate.

DOCUMENT S/3

PARIS CONVENTION FOR THE
PROTECTION OF INDUSTRIAL PROPERTY

(PARIS CONVENTION)

Proposals for Revising the Administrative Provisions and the Final Clauses (Articles 13 to 20)

(Prepared by BIRPI, at the Request of the Government of Sweden)

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INTRODUCTION

THE PRESENT DOCUMENT

1. The agenda of the Intellectual Property Conference of Stockholm includes the matter of *administrative reforms* in the International Union for the Protection of Industrial Property (Paris Union), in other Unions administered by the United International Bureaux for the Protection of Intellectual Property (BIRPI), and in the common Secretariat—that is, BIRPI—serving all these Unions. The agenda of the Stockholm Conference also includes the matter of *structural reforms*, consisting principally of creating new organs for the Paris Union and the other Unions and of establishing a new intergovernmental Organization, hereinafter referred to as "the proposed new Organization". This proposed new Organization would be open to adherence by any member country of the Paris Union and would contain organs in which the member countries of the Paris Union adhering to the proposed new Organization would automatically participate (the General Assembly and the Conference) or could be elected to serve on (the Coordination Committee). The Secretariat of the proposed new Organization would be a continuation of BIRPI and would serve all Unions as well as the Organization as such.

2. Whereas all matters concerning the proposed new Organization are dealt with in a separate document (S/10), the present document (S/3) deals with all the proposed administrative and structural reforms of interest to the Paris Union, and the Paris Union alone. Proposals of the same kind relating to the Madrid (Trademarks), Madrid (False Indications), Hague, Nice, Lisbon, and Berne Conventions or Agreements are contained in documents S/4, 5, 6, 7, 8 and 9.

3. Draft resolutions are contained in document S/11, and financial questions not covered by other documents are dealt with in document S/12.

4. The present document (S/3) contains also proposals for the revision of the *final clauses* of the Paris Convention. These have relevance not only in connection with the administrative reform (dealt with in the present document and document S/10) but also with the proposed revision of Article 4 of the Paris Convention, proposed in document S/2. That revision, it is recalled, would deal with the right of priority in connection with inventors' certificates.

5. The present document, as well as documents S/4 to 12, were prepared by BIRPI at the request of the Government of Sweden, which will be the host of the Stockholm Conference scheduled to take place from June 12 to July 14, 1967.

PREPARATORY MEETINGS

6. The idea of an administrative and structural reform of the kind now proposed found its first official expression in a joint meeting of the Permanent Bureau of the Paris Union and the Permanent Committee of the Berne Union, held in October 1962.

7. The joint meeting recommended that a working party, and then a committee of governmental experts, be convened to start the preparatory work for a diplomatic conference to effectuate the reform.

8. The program of work in this respect has been reported to, and approved by, the yearly sessions of the Interunion Coordination Committee of the Paris and Berne Unions held in 1963, 1964, and 1965.

9. The Working Party met in May 1964, and the Committee of Governmental Experts met twice, first in March-April 1965, and then in May 1966, each time in Geneva. Their work results from three series of BIRPI documents, bearing the symbols AA/I, AA/II, and AA/III, respectively.

10. In the present document, the Working Party of 1964 will be referred to as "the 1964 Working Party"; the Committee of Experts of 1965, as "the 1965 Committee"; and the Committee of Experts of 1966, as "the 1966 Committee".

11. *(a)* Experts from the following ten countries, all members of the Paris Union, were invited to the 1964 Working Party, and all responded to the invitation: Czechoslovakia, France, Germany (Federal Republic), Hungary, Italy, Japan, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America.

(b) All the member countries of the Paris and Berne Unions were invited to the meetings of the Committee of Experts. In the 1965 Committee, 37 participated: *Australia, Austria, Belgium, Brazil, Canada,* Congo (Leopoldville), *Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic), Greece, Hungary,* India, *Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway,* Pakistan, *Poland, Rumania, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.* The Union of Soviet Socialist Republics, at that time not yet a member of the Paris Union, attended as an observer. In the 1966 Committee, 39 of the member countries participated: *Algeria, Australia, Austria, Belgium, Brazil, Bulgaria, Congo (Brazzaville), Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic), Greece, Hungary,* India, *Indonesia, Iran, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Norway, Poland, Portugal, Rumania, Spain, Sweden, Switzerland, Syrian Arab Republic, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.* The names of the countries members of the Paris Union are printed n italics.

12. Subject to one minor exception [1] the revisions proposed in the present document follow the views expressed by the 1966 Committee, either unanimously or by a majority.

13. On the question of what countries may accede to the Stockholm Act of the Paris Convention, the draft documents submitted to the 1966 Committee provided that any country outside the Union " which may accede to the Convention establishing the International Intellectual Property Organization " may do so. However, the Committee did not resolve the question of which countries may accede to that Convention. BIRPI now proposes that the quoted qualification be omitted in the Stockholm Act and that, on the question of accession, the same provisions be maintained as are contained in the Acts presently in force, the effect of which is that any State may adhere to the Paris Union. The maintaining of the present system was strongly supported by many Delegations which firmly believe that the cause of international protection is best served if the Union remains accessible to any State. It would seem to be most unlikely that any kind of restriction to this 83-year-old principle of the Union could achieve unanimous support at the Stockholm Conference.

14. The proposed draft differs from the previous draft also in the respect that the present draft severs the last ties which were left, in the last previous draft, between membership in the Paris Union and in the proposed new Organization.

(i) According to the last previous draft, *a Paris Union country* accepting the new administrative provisions would—unless it had made an express declaration to the contrary—automatically have become a Member of the proposed new Organization. Under the present draft, no such automatic effect exists and a country may accept the new administrative provisions with or without accepting at the same time the Convention establishing the Organization.

(ii) The draft presented to the 1966 Committee provided in effect that *a country outside the Paris Union* could adhere to it only if prior to, or concurrently with, adhering to it, it adheres also to the proposed new Organization. Under the present draft, a country outside the Paris Union could adhere to it without adhering to the proposed new Organization, and vice versa.

(iii) The draft presented to the 1966 Committee provided in effect that a country, once it became a Member of the proposed new Organization, *could leave it only if,* at the same time, it also left the Paris

[1] The 1966 Committee decided to replace, in what now is Article 13 *quater* (7) *(b)*, the words "obligation to grant advances" by "agreement concerning advances." It was, however, realized that the expression "obligation to grant advances" occurs in the preceding subparagraph and it must be maintained in order to make it clear that the same obligation—which, by the way, does not result from an agreement only but also, and primarily, from the text of the Convention itself—is meant in both places. Consequently, the original expression was maintained.

Union. Under the present draft, any country member of both the new Organization and the Paris Union could leave either (i.e., the Organization *or* the Union) and still remain a member of the other.

15. On a few questions, the 1966 Committee asked the drafters of the proposals for the Stockholm Conference to reflect further and come up with proposals. The following are the most important among these questions:

(i) *Place of the Administrative Provisions.* In the documents submitted for the consideration of the 1966 Committee, the administrative provisions were grouped in what was called a protocol. Since the protocol was an integral part of the Convention itself, governed by the same final clauses as the rest of the Convention, and not susceptible of separate signature, there seemed to be no logical or legal reasons not to consider the proposed new provisions on administrative matters as a mere substitution for the existing administrative provisions. They are so considered in the present draft. Consequently, they replace Article 13 of the Lisbon Act and are numbered 13, 13*bis*, 13*ter*, 13*quater*, and 13*quinquies*. It should be noted, however, that the possibility of excluding the administrative provisions from the effects of ratification or accession is maintained without change (Article 16(1)*(b)*.

(ii) *Continuation of BIRPI.* Article 13*ter*(1)*(a)* would expressly state that the International Bureau of the proposed new Organization "is a continuation of the Bureau of the [Paris] Union, united [since 1893] with the Bureau of the [Berne] Union..." Thus it is underlined, both in the Convention establishing the proposed new Organization (see Article 9 of the draft contained in document S/10) and in the Paris Convention, that the International Bureau would *not* be a *new* international Secretariat but the continuation of the existing Secretariat.

(iii) *Advances.* In the 1966 Committee, some Delegations were of the opinion that the Convention should not contain a provision saying outright that the country on the territory of which the Secretariat is located is obliged to grant advances—under certain conditions, and subject to the possibility of denunciation—to the Secretariat. The draft now proposed provides that such obligation shall be provided for in the Headquarters Agreement (Article 13*quater* (7)*(a)*). Thus, it would only indirectly flow from the Convention.

(iv) *Ratification and Entry into Force.* In the 1966 Committee, proposals were made to group more logically the provisions relating to ratification, accession, and entry into force. It is now proposed that these questions be dealt with in two articles, one dealing with countries members of the Union (" countries of the Union ") and the other with countries not members of the Union (" countries outside the Union "). The first one would be Article 16 (taking the place of Articles 16 and 16*bis* of the draft which was presented to the 1966 Committee), and the second, Article 16*bis* (taking the place of Article 16*ter* of the previous draft). The wording of the latter has been redrafted in order to make its intent clearer.

(v) *Parallelism with the Convention Establishing the Proposed New Organization.* The 1966 Committee asked the drafters of the proposals for the Stockholm Conference to refer, in the text of the Paris Convention, to the Convention establishing the proposed new Organization every time there seems to be a relationship between the Conventions. This has been done in the present draft. See, in particular, Articles 13(2)*(a)*(ii) (reference to the Secretariat) and 13(2)*(b)* and 13*bis*(6)*(b)* (references to the Coordination Committee.

(vi) *Application of Earlier Acts.* In the proposals submitted to the 1966 Committee, Article 18 would have provided that the relations between countries which were party to the Stockholm Act and any country not party to that Act would be governed by the most recent of the Acts to which the latter country was a party. This draft provision was criticized as establishing relations between countries not having accepted the same Act. The proposals now made for Article 18 are different and do not establish such relations.

(vii) *Languages.* In the proposals submitted to the 1966 Committee, Article 19 referred to texts in certain languages as " official translations. " After further study of the question, it is now proposed that texts in languages other than French be considered and called " authoritative. "

(viii) *Depositary Functions.* It is proposed, in agreement with the Government of Sweden, that the original copy of the Convention to be signed at Stockholm should be deposited with the Swedish Government. This solution would entail the following two consequences: signatures effected during the six months following the Stockholm Conference would have to be effected in Stockholm; the Swedish Govern-

ment would have to certify the copies of the Convention whenever certified copies are needed. All other depositary functions would be entrusted to the Director General of the proposed new Organization or, until he is appointed, to the Director of BIRPI.

(ix) *Transitional Provisions.* In the 1966 Committee, it was suggested that the question be studied whether some express provisions would not be needed to provide for the side-by-side existence of the present and future Secretariats and the " succession " between the two. These questions have been studied and yielded paragraphs (3) and (4) of Article 20.

(x) *Order and Numbering of Articles.* In the 1966 Committee, suggestions were made that the order of the articles be re-examined. No changes are proposed in the present draft since it is believed that adhering to the order of the Lisbon Act and to the previous revision drafts will facilitate examination of the present document. Admittedly, however, the order of the articles could be made more logical and the numbering could be transformed so as to avoid the repetition of the same number with Latin suffixes (*bis*, *ter*, *quater*, etc., now used in Articles 13, 16, and 17). The drafting committees of the Stockholm Conference may wish to deal with these questions.

GENERAL DESCRIPTION OF THE PROPOSED REVISIONS IN THE ADMINISTRATIVE PROVISIONS

16. The main objective of the revisions proposed in the Paris Convention is to modernize the administration, including the finances, and the structure of the Union. This would be accomplished mainly by giving to the member countries the same, full powers of policy making, decision, and control, as they customarily have in most other intergovernmental organizations and which they singularly lack in the Paris Union.

17. This great difference between what exists in the Paris Union and most other organizations can be explained, at least in part, by the fact that no organizational reform of real significance has taken place since the creation of the Union in 1883, that is, more than eighty years ago.

18. The main changes now proposed would:

- create *new organs* composed of member countries;
- transfer the *supervision of the Secretariat* from the Government of one country (Switzerland) to the Governments of the member countries;
- do the same with the *supervision of the accounts of the Secretariat*;
- do the same with the *approval of the program and the budget*;
- do the same with the *appointment of the Director General*;
- institute a more *flexible financial system*;
- make the *modification of administrative provisions* easier and simpler;
- transfer the responsibility of *preparing for revision conferences* from one Government (that of the host country) to the organs of the Union.

New Organs

19. *(a)* In the present situation, the Paris Union has no *Assembly* of member countries, at least not in the sense in which the word " Assembly " is used in other intergovernmental organizations, where an Assembly is the policy-making, supreme body of an organization or a union. Since 1962, when the Lisbon Act came into force—but only since then—the Paris Union has had a so-called " Conference of Representatives " (Article 14(5)*(a)* of the Lisbon Act) but all that this body can do is " to draw up a report on the foreseeable expenditure of the International Bureau " and " to consider " certain questions of interest to the Union. It has no powers of decision. It cannot have any, since they are delegated by the Convention to the Government of Switzerland.

(b) Under the proposed reform, there would be an Assembly and this Assembly would have the customary powers, which are real. The Assembly would, in particular: determine the program and the

budget; supervise the Executive Committee and the Secretariat; exercise the ultimate control of the accounts; play a decisive role in the election of the Director General; direct the preparations for revision conferences; amend the administrative provisions of the Convention (cf. proposed Article 13).

20. *(a)* Although the Paris Convention contains no provision for the creation of an *Executive Committee*, the Conference of Representatives did create one. Its powers are necessarily less than those of the organ of which it is an emanation, and since, as already stated, the powers of the Conference of Representatives are far less than the powers of the usual Assemblies, those of the Executive Committee are also far less than the usual powers of the customary kind of Executive Committees.

(b) Under the proposed reform, the Convention itself would provide for the creation of an Executive Committee and would entrust to it powers that such bodies usually have in comparable organizations (cf. proposed Article 13*bis*).

Supervision of the Secretariat

21. *(a)* In the present situation, the activities of the Secretariat are supervised by the Swiss Government. The Paris Convention provides that the International Bureau " is placed under the high authority of the Government of the Swiss Confederation, which regulates its organization and supervises its operation " (Article 13(1) of the Lisbon Act).

(b) Under the proposed reform, the activities of the Secretariat would be supervised not by one country but by all countries, through the Assembly (cf. proposed Article 13(2)*(a)*(vi)).

Supervision of Accounts

22. *(a)* In the present situation, the Swiss Government supervises the accounts of the Secretariat (see Article 13 (10) of the Lisbon Act).

(b) Under the proposed reform, the auditing of the accounts would be effected by auditors appointed not by one country but by all countries, through the Assembly (cf. proposed Article 13*quater*(8)).

Program and Budget

23. *(a)* In the present situation, the program and the budget of the Secretariat are approved by the Government of Switzerland (cf. Article 13(10) of the Lisbon Act).

(b) If the proposed reform is adopted, budget and program will require the approval of the Assembly of the member countries (see proposed Article 13(2)*(a)*(iii)).

Appointment of the Head of the Secretariat

24. *(a)* In the present situation, the head of the Secretariat is not elected. He is appointed by the Swiss Government under the powers given to it by the Convention (see Article 13(1) of the Lisbon Act).

(b) Under the proposed reform, the office of the Director General would become elective, and the election would be by the Assemblies of the Paris and Berne Unions and the General Assembly of the proposed new Organization (see draft Article 6(2)(ii) and (4)*(g)* of the Convention establishing the proposed new Organization).

More Flexible Financial System

25. *(a)* The present situation is that the ceiling of the yearly contributions of the member countries is written into the Convention. This ceiling is 120,000 Swiss francs per annum (approximately $28,000 per annum), an amount written into the Convention forty-one years ago, at the revision conference of 1925 at The Hague (see Article 13 (6) in the Hague, London and Lisbon Acts). There is provision in the Lisbon Act for the possibility of modifying this amount either by the unanimous decision of a revision conference

or by the unanimous decision of a so-called Conference of Plenipotentiaries which was instituted by the Lisbon Act of 1958 (see Articles 13(6) and 14(5)*(b)* of the Lisbon Act).

(b) The fact is that, in practice, the requirement of unanimity proved to be much too stiff. All proposals to raise the ceiling written into the Convention were vetoed at the Lisbon Conference, and the Swiss Government has not used its power to convene a Conference of Plenipotentiaries at which, it is repeated, the requirement of unanimity would prevail as well.

(c) Of course, BIRPI does not—and, indeed, it could not—operate within the income written into the Convention in 1925. The necessary funds are assured through voluntary contributions several times higher than the amount which countries would be obliged to pay in application of the Convention. However, not all countries have accepted all of the suggested voluntary increases, so that in the present situation the ratio between the lowest and highest contributions is, in fact, not the ratio of 1 : $8^1/_3$ which it should be according to the Convention, but a ratio of 1 : 21.

26. *(a)* Under the proposed reform, the total amount of the contributions of the member countries would be decided by the Assembly, normally once every three years, by a vote requiring a two-thirds majority if the financial obligations are increased, and a simple majority when they stay the same or are diminished (see proposed Article 13(3)*(e)*). This system would be in conformity with the systems prevailing in most of the other intergovernmental organizations.

(b) It is to be noted that the proposed change would modify only the fixing of the total amount of the contributions. It would not modify the method by which the share of each country in the total amount is determined. The share will, as it does today, depend on the free decision of each country when it first chooses its class or later changes it for the purposes of its contribution (see proposed Article 13*quater*(4)). This method is very different from the one prevailing in most of the other intergovernmental organizations in which the share of each country is fixed by the Assembly.

(c) Another aspect of the financial system is the question of securing a certain liquidity. In practically all other organizations, this is achieved through the working capital fund. BIRPI has no such fund, and the liquidity in the present situation is assured through loans made by the Government of Switzerland (see Article 13(10) of the Lisbon Act), the amounts of which, in the past few years, have constantly been above one million Swiss francs. Under the proposed reform, a working capital fund would be established and loans from Switzerland would be requested only in exceptional circumstances (see proposed Article 13*quater*(6) and (7)).

More Flexible Modification of the Administrative Provisions of the Convention

27. *(a)* In the present situation, the administrative provisions written into the Convention can only be changed by the same procedure as the provisions of substantive law, that is, the provisions relating to the international protection of industrial property. This means that the administrative provisions, even those of the most ephemeral kind or of very secondary importance, can only be changed at conferences of revision (see Article 14(1) of the Lisbon Act)—of which there has been a total of five in 83 years—and, traditionally, only by unanimous vote. This procedure is obviously most unpractical.

(b) Under the proposed reform, the amendment of administrative provisions would not have to wait for the rare conferences of revision but could be effected by the Assembly, normally meeting once every three years. Even under the proposed reform, it would be necessary that the amendments adopted by the Assembly be accepted by the member countries, but, once they have been accepted by three-quarters of the members, the rest would be bound by them as well. There would be only one exception to this rule, namely, any amendment increasing the financial obligations of the member countries. Such an amendment would become binding on a country in the remaining one-quarter of the countries only when it accepts it (see proposed Article 13*quinquies*(3)).

Direct Participation of the Member Countries in the Preparation of Revision Conferences

28. *(a)* In the present situation, the preparations for revision conferences are entrusted to the Government of the country in which the conference is to be held (Article 14(3) of the Lisbon Act). The Secretariat assists that Government in its work, but otherwise the Government is on its own. The Conven-

tion prescribes no participation by the member countries of the Union. They have nothing to say on the question of whether there should be a revision conference, what points should be revised, and what should be the proposals for revision. In actual fact, and in connection with the Stockholm Conference, the situation is different because the Swedish Government and BIRPI consulted the wishes and views of the member countries in several committees of experts. But this was purely voluntary as the Convention contains no provisions requiring that this should be done.

(b) Under the proposed reform, the host country of the revision conference would have no special role in the preparation of revisions. The directives for revision would come from the Assembly (see proposed Article 13(2)*(a)*(ii)), and the details would be carried out by the Secretariat in cooperation with the Executive Committee (see proposed Article 13*ter*(8)*(a)*).

GENERAL DESCRIPTION OF THE PROPOSED REVISIONS IN THE FINAL CLAUSES

29. Whereas the administrative revisions—whose main features are described above—would change Articles 13 and 14 of the Lisbon Act, the modification of the final clauses would affect Articles 16, 16*bis*, 17*bis*, 18, and 19, of the same Act.

30. Several of the final clauses would be modified. The three most important innovations would be:

- that countries of the Union accepting the Stockholm Act may exclude from the effects of their acceptance either the proposed new provision on inventors' certificates or the proposed new administrative provisions;
- that most of the depositary functions would be entrusted to the Director General of the new Organization rather than the Swiss Government;
- that countries outside the Union which accede to the Stockholm Act, and the Stockholm Act alone, would be obliged, subject to reciprocal protection, to extend the benefits of the Stockholm Act also to countries of the Paris Union which are bound only by earlier Acts than the Stockholm Act.

Limitation of the Effects of the Acceptance of the Stockholm Act

31. *(a)* As already indicated, acceptance of the Stockholm Act by countries of the Union would not necessarily have to extend to *both* the proposed revision of Article 4—which is an Article on substance—*and* the new administrative provisions (that is, Articles 13 to 13*quinquies*). It would, in fact, be possible for any country to accept only the new provision on inventors' certificates (together with the rest of the—unchanged—substantive clauses; see document S/2) or only the new administrative provisions (see proposed Article 16(1)*(b)*).

(b) Naturally it would be desirable that every country accept both kinds of proposed changes, and, in any case, it is to be hoped that if, initially, a country finds it possible to accept only one of them, a few years later it will be in a position to accept also the other.

(c) Since, however, it is conceivable that there will be countries which may accept only one kind of change, or accept it sooner than the other, it seems to be practical to offer them the possibility to do so. Some countries may be quite prepared to accept the administrative changes almost immediately since they do not require a revision of their industrial property laws. Such countries could accept the new Articles 13 to 13*quinquies* not only if they are not ready to accept the proposed new provision on inventors' certificates but even if they are not ready to accept changes which were decided upon at earlier revision conferences. Consequently, it would be possible, for example, for a country still bound by the London Act of 1935 to accept the administrative reform embodied in the said Articles and not to accept either the Lisbon Act of 1958 or the provision on inventors' certificates which it is proposed to introduce into the Convention through the Stockholm Act. On the other hand, a country ready to accept the new provision on inventors' certificates could do so without becoming bound by the new administrative provisions. This possibility of choice would follow from proposed Article 16(1)*(b)*.

Depositary Functions

32. Whereas at the present time ratifications, accessions, extensions to territories, and denunciations, must be notified to the Swiss Government which, in turn, notifies them to the Governments of member countries (see Articles 16(2), 16*bis*, 17*bis*, 18(1) and (2) of the Lisbon Act), it is now proposed—for reasons of obvious expediency and in order to liberate the Swiss Government and its diplomatic representatives in the various countries from a tedious task—that the receiving and communicating of such notifications become a task of the Director General (see proposed Articles 16(1)*(a), (c)*, and (3), 16*bis*(1), 16*quinquies*, 17*bis*(2), and 19(5)).

Applicability of Stockholm Act in Certain Circumstances

33. *(a)* The Acts of the Paris Convention presently in force do not attempt to resolve the question of what, if any, obligations exist for a country which has become a party to a certain Act towards another country which has become a party only to Acts other than the one to which the former country has become a party.

(b) Naturally, the Stockholm Act cannot prescribe anything as far as the obligations of countries are concerned which have not become a party to the Stockholm Act. To inscribe such obligations would violate the basic rule according to which contracts or conventions require the agreement of the contracting persons or countries.

(c) However, the Stockholm Act may prescribe obligations for countries which become a party to it. The proposed Article 18(3) would do just that by providing that countries outside the Union which accede to the Stockholm Act without also acceding to any of the earlier Acts shall, subject to reciprocal protection, apply the Stockholm Act in their relations with countries of the Union which have not become a party to the Stockholm Act or have become a party to it only subject to the permitted exclusions.

OUTLINE OF THE PROPOSED ARTICLES

34. The present document deals with seventeen articles the numbers of which—because of the use of Latin suffixes in certain cases—run, however, only from 13 to 20.

35. The first five articles, numbered 13, 13*bis*, 13*ter*, 13*quater*, and 13*quinquies*, contain the new administrative provisions, dealing respectively with the Assembly, the Executive Committee, the International Bureau, finances, and amendments to these five articles. They replace Article 13, and paragraphs (3), (4) and (5) of Article 14, of the Lisbon Act.

36. Article 14, dealing with revision, now consists only of three paragraphs, the first two of which are essentially identical with Article 14(1) and (2) of the Lisbon Act.

37. Article 15, dealing with special agreements, corresponds exactly to Article 15 of the Lisbon Act.

38. Articles 16 and 16*bis* deal with ratifications, accessions, and entry into force, in relation to the Stockholm Act. The corresponding provisions, in the Lisbon Act, are to be found in Articles 16 (except the first phrase of paragraph (3)), and 18(1) and (2).

39. Article 16*ter*, providing, in essence, that no reservations are permitted, corresponds exactly to the first phrase of Article 16(3) of the Lisbon Act.

40. Article 16*quater*, providing that, after the entry into force of the Stockholm Act in its entirety, a country may accede to earlier Acts of the Paris Convention only in conjunction with ratification of, or accession to, the Stockholm Act, is a provision which has no parallel in the Lisbon Act.

41. Article 16*quinquies* deals with the matter of the application of the Convention to territories not responsible for the conduct of their external affairs. It is a modernized version of Article 16*bis* of the Lisbon Act.

42. Article 17, providing, in essence, for the need of domestic laws to be in harmony with the stipulations of the Convention, corresponds exactly to Article 17 of the Lisbon Act.

43. Article 17*bis*, dealing with denunciation, is a slightly modified version of Article 17*bis* of the Lisbon Act.

44. Article 18 concerns the extent to which the Stockholm Act replaces earlier Acts, the extent to which these earlier Acts remain applicable, and the obligations a country acceding only to the Stockholm Act has towards countries bound only by earlier Acts. Some of the same matters are treated in Article 18(3) to (6) of the Lisbon Act.

45. Article 19 deals with signature, languages, and other such formal matters. Article 19, in the Lisbon Act, deals with some of the same questions.

46. Article 20 contains transitory provisions, particular to the Stockholm Act. In the Lisbon Act, Article 19 is the last Article.

47. As can be seen, whenever reasonable—and sometimes at the expense of a more logical presentation—the proposed draft follows the general outline of the Lisbon Act. Still, the differences are so numerous and so substantial—particularly as far as the administrative provisions are concerned—that it was believed that practically no useful purpose would be served by attempting to present, in parallel columns, the " corresponding " provisions of the Lisbon Act and the proposed Stockholm Act.

48. Instead, the following two things are done to facilitate comparison between the two texts:

- tables of corresponding provisions are reproduced at the end of the present chapter;
- a printed brochure containing, in a convenient form, the text of the Lisbon Act is annexed to the present document.

[*End of Introduction*]
[*Follow Tables*]

TABLES OF CORRESPONDING PROVISIONS

TABLE I

showing which provisions in the Lisbon Act deal with matters identical or related to topics dealt with in the provisions of the proposed Stockholm Act

PROPOSED STOCKHOLM ACT	LISBON ACT
Article 13 (1) *(a)*	Article 14 (5)
(b)	Article 14 (5) *(a)* and *(b)*
(c)	—
(2) *(a)* (i)	Article 14 (5) *(a)*
(ii)	Article 14 (3)
(iii)	Articles 13 (6), 14 (5) *(a)* and *(b)*
(iv)	—
(v)	—
(vi)	Article 13 (5), second sentence, and (11)
(vii)	—
(viii)	—
(ix)	—
(x)	Article 14 (5) *(a)*
(xi)	—
(b)	—
(3) *(a)*	—
(b)	—
(c)	—
(d)	—
(e)	Articles 13 (6) and 14 (5) *(b)*
(f)	—
(g)	—
(4) *(a)*	Article 14 (5) *(a)*
(b)	Article 14 (5) *(c)*
(5)	—
Article 13 *bis*	—
Article 13 *ter* (1) *(a)*	Article 13 (1)
(b)	—
(c)	—
(2)	Article 13 (3)
(3)	Article 13 (3)
(4)	Article 13 (4)
(5)	Article 13 (5), first sentence
(6)	Article 13 (3)
(7)	—
(8) *(a)*	Article 14 (4)
(b)	Article 14 (4)
(9)	—

[*Follows Continuation of Table I*]

[*Table I, continued*]

PROPOSED STOCKHOLM ACT	LISBON ACT
Article 13 *quater* (1) *(a)*	Article 13 (10)
(b)	—
(c)	—
(2)	—
(3) (i)	Article 13 (6)
(ii) to (v)	—
(4) *(a)*	Article 13 (8), first sentence
(b)	Article 13 (9)
(c)	Article 13 (8), second sentence
(d)	—
(e)	—
(5)	—
(6) *(a)*	—
(b)	—
(c)	—
(7) *(a)*	Article 13 (10)
(b)	—
(8)	Article 13 (10)
Article 13 *quinquies*	—
Article 14 (1)	Article 14 (1)
(2)	Article 14 (2)
(3)	—
Article 15	Article 15
Article 16 (1) *(a)*	Article 18 (1)
(b)	—
(c)	—
(2) *(a)*	Article 18 (1)
(b)	Article 18 (1)
(c)	Article 18 (1)
(3)	Article 18 (1) and (2)
Article 16 *bis* (1)	Article 16 (1)
(2) *(a)*	—
(b)	—
(3)	Article 16 (3), second phrase
Article 16 *ter*	Article 16 (3), first phrase
Article 16 *quater*	—
Article 16 *quinquies* (1)	Article 16 *bis* (1) and (3)
(2)	Article 16 *bis* (2) and (3)
(3) *(a)*	Article 16 *bis* (1) and (2)
(b)	Article 16 *bis* (1) and (2)
Article 17 (1)	Article 17
(2)	Article 17
Article 17 *bis* (1)	Article 17 *bis* (1)
(2)	Article 17 *bis* (2)
(3)	Article 17 *bis* (1)
(4)	—
Article 18 (1)	Article 18 (3)
(2) *(a)*	Article 18 (3)
(b)	Article 18 (4)
(c)	Article 18 (5)
(3)	—
Article 19 (1) *(a)*	Article 19 (1)
(b)	Article 19 (3)
(c)	—
(2)	Article 19 (2)
(3)	Article 19 (1)
(4)	—
(5)	Articles 16 (2), 16 *bis* (3) and 18 (1)
Article 20 (1)	—

[*Follows Table II*]

TABLE II

showing which provisions in the proposed Stockholm Act deal with matters identical or related to topics dealt with in the provisions of the Lisbon Act

LISBON ACT	PROPOSED STOCKHOLM ACT
Article 13 (1)	Article 13 *ter* (1) *(a)*
(2)	—
(3)	Article 13 *ter* (2), (3) and (6)
(4)	Article 13 *ter* (4)
(5), first sentence	Article 13 *ter* (5)
second sentence	Article 13 (2) *(a)* (vi)
(6)	Articles 13 (2) *(a)* (iii) and (3) *(e)*, and 13 *quater* (3) (i)
(7)	—
(8), first sentence	Article 13 *quater* (4) *(a)*
second sentence	Article 13 *quater* (4) *(c)*
(9)	Article 13 *quater* (4) *(b)*
(10)	Article 13 *quater* (1) *(a)*, (7) *(a)* and (8)
(11)	Article 13 (2) *(a)* (vi)
Article 14 (1)	Article 14 (1)
(2)	Article 14 (2)
(3)	Article 13 (2) *(a)* (ii)
(4)	Article 13 *ter* (8) *(a)* and *(b)*
(5) *(a)*	Article 13 (1) *(a)* and *(b)*, (2) *(a)* (i), (iii) and (x), and (4) *(a)*
(b)	Article 13 (1) *(b)*, (2) *(a)* (iii), and (3) *(e)*
(c)	Articles 13 (1) *(a)* and *(b)* and (4) *(b)*, and 14 (5) *(a)*, *(b)* and *(c)*
Article 15	Article 15
Article 16 (1)	Article 16 *bis* (1)
(2)	Article 19 (5)
(3), first phrase	Article 16 *ter*
second phrase	Article 16 *bis* (3)
Article 16 *bis* (1)	Article 16 *quinquies* (1) *(a)* and (3)
(2)	Article 16 *quinquies* (2) and (3) *(a)* and *(b)*
(3)	Articles 16 *quinquies* (1) and (2) and 19 (5)
Article 17	Article 17 (1) and (2)
Article 17 *bis* (1), first phrase	Article 17 *bis* (1)
(1), second phrase	Article 17 *bis* (3)
(2)	Article 17 *bis* (2)
Article 18 (1)	Articles 16 (1) *(a)*, (2) *(a)* *(b)* and *(c)*, and (3), and 19 (5)
(2)	Article 16 (3)
(3)	Article 18 (1) and (2) *(a)*
(4)	Article 18 (2) *(b)*
(5)	Article 18 (2) *(c)*
(6)	—
Article 19 (1), first sentence	Article 19 (1) *(a)*
second sentence	Article 19 (3)
(2)	Article 19 (2)
(3)	Article 19 (1) *(b)*

[*End of Tables*]

PROPOSED TEXT

AND

COMMENTARY

COMMENTARY

COMMENTARY ON ARTICLE 13: ASSEMBLY

49. *(a)* This Article deals with the Assembly of the Union.

(b) It consists of five paragraphs dealing with composition and representation (paragraph (1)), tasks (paragraph (2)), voting (paragraph (3)), sessions (paragraph (4)), and rules of procedure (paragraph (5)).

50. *Paragraph (1)(a)* establishes the Assembly and defines its composition. It results from other provisions, particularly paragraph (2), that the Assembly's powers are such that it is the highest body of the Union.

51. One of the basic objectives, and probably the most important, of the whole structural reform is to give to the member countries of the Unions the same, full powers of policy making, decision, and control, as they customarily have in most other intergovernmental organizations. In other words—in the words of the Permanent Bureau of the Paris Union, pronounced in 1962, when the reform got under way—" the supervisory functions of the Swiss Government should be transferred to the Assembly of Member States. " No such body exists today in the Paris Union. True, under the Lisbon Act (Article 14(5)), there are bodies of which all the member countries of the Union are members. But the powers of these bodies are very limited and leave the finances, and the supervision of the activities, of the Secretariat in the hands of one country, namely, Switzerland.

52. As in other intergovernmental organizations, the Assembly would consist of the member countries. However, in view of Article 16(1)*(b)*, which allows any country to declare that it does not consider itself bound by Articles 13 to 13*quinquies*, it is necessary to state, and the paragraph under consideration does just that, that if a country chooses not to be bound by the proposed new administrative provisions—that is, Articles 13 to 13*quinquies*—then, of course, it will not be a member of the Assembly established under Article 13. Even such countries, however, may fully participate, if they so desire, in the Assembly for five years after the entry into force of the Convention establishing the proposed new Organization (see Article 20(2)).

53. The reason for which this provision and all the following provisions use the term " country " rather than " State "—the latter being the term used in modern treaty language—is that the substantive provisions (Articles 1 to 12) use it too. It is, however, to be understood as an equivalent of the term " State. "

54. *Paragraphs (1)(b) and (c)* seem to be self-explanatory. They are of the customary kind.

PROPOSED TEXT

ARTICLE 13: ASSEMBLY

(1) *(a)* **The Union shall have an Assembly consisting of the countries of the Union which are bound by Articles 13 to 13*quinquies*.**

(b) **The Government of each country shall be represented by one or more delegates who may be assisted by alternate delegates, advisors, and experts.**

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

[*Follows Article 13(2)*]

55. *Paragraph (2)(a)* enumerates the powers and tasks of the Assembly and consists of eleven items.

56. *Item (i)* is based on Article 14(5) of the Lisbon Act of the Paris Convention providing that " Conferences of Representatives shall... consider questions relating to the protection and development of the Union. " In referring to the " implementation " of the Convention, the item is not intended to refer to its application by the legislature, Government, and courts, of the member country—as such application is clearly a matter outside the jurisdiction of the Assembly—but to implementation by the Secretariat and other organs as far as those provisions of the Convention are concerned which call for the performance of tasks by such organs.

57. *Item (ii)* concerns preparations for conferences of revision. Under the present system, preparations for conferences of revision are made by the host country with the assistance of BIRPI (see Lisbon Act, Article 14(3)). This method places a heavy burden on one member country. It also makes the achievement of agreement at the conference more difficult since member countries are more likely to agree when, before the conference, they have had contact with each other and discussions among themselves. This is the reason for which it is now proposed that preparations for conferences of revision be carried out collectively by the member countries. They would give directions to the Secretariat, which would work out the details, normally with the assistance of working groups or committees of experts consisting of representatives of member countries.

58. *Item (iii)* deals with one of the most important powers of member countries, the power to control the program, the budget, and the accounts. This power, so natural and so customary in intergovernmental organizations that it hardly requires justification, is, curiously, missing from the Paris Convention (and the other Conventions and Agreements) in which there is practically no legal basis for any kind of control by member countries over BIRPI. One only of the member countries, Switzerland, exercises all powers of control, since it is the Swiss Government which approves BIRPI's budget and certifies BIRPI's accounts. A beginning was made towards collective control at the 1958 Lisbon Conference, but it is limited to the drawing up, by a meeting of all member countries, of a report on foreseeable expenditure (Lisbon Act, Article 14(5)*(a)*). A body of some twenty countries, the Interunion Coordination Committee, which, however, has no legal basis in either the Paris Convention or the Berne Convention, does exercise a certain degree of *de facto* influence, through its " advice, " both over program and budget. The item under consideration would vest the power of control over these matters not only in a limited number of member countries but in all member countries, and not only as a matter of expressing advice but as a matter of sovereign decision. Furthermore, the proposed reform would not only have these effects but it would transfer jurisdiction over budget and accounts from Switzerland to all the member countries.

59. *Item (iv)* provides for the creation of an Executive Committee. Consisting of approximately one-quarter of the members of the Assembly, this restricted body would meet more frequently, and transact less important business, than the Assembly. The system is dictated by considerations of economy and expediency, and is generally followed by organizations having a certain number of members. The composition, tasks, and other matters concerning the Executive Committee are regulated by Article 13*bis*.

60. *Item (v)* provides for the control of the Executive Committee by the Assembly. This is both natural and customary since the Executive Committee is an emanation of the Assembly.

61. *Item (vi)* provides for a similar power of control by the Assembly, this time over the Director General. This power of member countries over the head of the Secretariat is generally acknowledged in other intergovernmental organizations. It is missing in the present system since neither the Paris Convention nor the Berne Convention contains at the present time any provisions which would enable the member countries (other than Switzerland) to control the activities of the Director of BIRPI.

62. *Item (vii)* allows the establishment of other committees. A committee for preparing the work of a revision conference would be an example in point.

63. *Item (viii)* deals with the admission, as observers, of non-member countries and of organizations to sessions of the Assembly. The provision is of the customary kind.

64. *Item (ix)* vests in the Assembly, rather than in the revision conferences, the power of amending the administrative provisions of the Convention, that is, Articles 13 to 13*quinquies*. The question is discussed in more detail in connection with Article 13*quinquies*, entirely devoted to the matter of amending

[*Article 13, continued*]

(2) *(a)* The Assembly shall:

(i) [1] deal with all matters concerning the maintenance and development of the Union and the implementation of its Convention;

(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as the " International Bureau ") referred to in the Convention establishing the International Intellectual Property Organization (hereinafter designated as the " Organization ");

(iii) determine the program and adopt the triennial budget of the Union and approve its final accounts;

(iv) elect the members of the Executive Committee of the Assembly;

(v) review and approve reports and activities of its Executive Committee, and give instructions to such Committee;

(vi) review and approve reports and activities of the Director General concerning the Union and give instructions to him on such matters;

(vii) establish such committees as may be considered necessary for the work of the Union;

(viii) determine which countries not members of the Assembly and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 13 to 13*quinquies*;

[*Follows Article 13(2)(a)(x)*]

[1] In speech, these numerals should be referred to as " small Roman one, small Roman two, small Roman three, etc. " They are used whenever there are several items in an enumeration. They are called " items, " and not subparagraphs. Subparagraphs always consist of one or more complete sentences and are designated by small letters (*(a)*, *(b)*, *(c)*, etc.). Paragraphs are designated by Arab numerals in parentheses. Articles are designated by Arab numerals without parentheses.

the administrative provisions. Suffice it to state here that the main reason for providing for different procedures for the revision of the administrative and the substantive clauses is that, the former generally being less important and more frequent, a simpler procedure for them seems to be justified.

65. *Item (x)* constitutes a general authorization for the Assembly to undertake programs which are designed to further the objectives of the Union, that is, better, more wide-spread, cheaper, simpler, more secure, more efficient, protection of industrial property. The difference between item (i) and the item under consideration seems to be that the former is limited to action within the framework of the Union. Examination of the desirability of revising the Convention would come under that item, whereas examination of the desirability of creating a new special agreement on some particular aspect of the protection of industrial property would come under item (x).

66. *Item (xi)* is designed to make it clear that the Assembly may have other tasks and powers, that is, tasks and powers in addition to those expressly indicated in the preceding ten items. For example, Article 13*bis*(5)*(b)* provides that the details of electing the members of the Executive Committee shall be regulated by the Assembly. Other powers are given to the Assembly in Articles 13*ter*(4), 13*quater*(4)*(e)*, (6)*(c)*, and (8). Further examples can be found in the Draft Convention establishing the proposed new Organization, which provides that the transfer of the headquarters of the Organization, the appointment of its Director General, the assumption by it of the administration of additional conventions (document S/10, Article 6(3)*(g)*) and proposals for amending the said Convention (document S/10, Article 13(2)) require also the assent of the Assembly of the Paris Union.

67. *Paragraph (2)(b)* contains a reference to the Coordination Committee. The Secretariat of the Paris Union and of the Berne Union is now and will remain in the future common. Coordination is achieved today through the Swiss Government and the advice of the existing Coordination Committee. Under the proposals, the Government of Switzerland would no longer play a special role in this respect but the Coordination Committee would. Its role would still be merely advisory since the powers of decision would be vested in the Assemblies. The provision is merely a reminder that the advice should be considered before action is taken. There is no obligation to follow the advice. The Assembly may ignore it.

68. *Paragraph (3)(a)* provides that each country shall have one vote. This is a corollary of the equality of sovereign countries, with no regard to their size, population, the class they choose for the purposes of contributions to the budget of the Union, or other criteria which otherwise distinguish them.

69. *Paragraph (3)(b)* provides that one-third of the members constitutes a quorum. Based on past experience, one-third seems to be the maximum practical.

70. *Paragraph (3)(c)*, *(d)* and *(e)* deal with the majorities required for decision in the Assembly. The majority is *two-thirds* in two cases: admission of observers (subparagraph *(d)*), and the adoption of the budget to the extent that it increases the financial obligations of the countries of the Union (subparagraph *(e)*). It is to be noted that, in the 1966 Committee, a substantial minority favored a two-thirds majority for the adoption of the budget in every respect, that is, even where the financial obligations of the member countries do not increase but remain stationary or decrease. The majority rejected this proposal, presumably on the ground that if the required majority is not obtained the Union would be left without an approved budget. The matter might deserve re-examination by the Stockholm Conference, although BIRPI would prefer the solution reflected by the vote of the majority.

71. It results from Article 6(3)*(g)* of the Draft Convention establishing the proposed new Organization that a *two-thirds* majority will have to be obtained in the General Assembly of that Organization and the Assembly of the Berne Union as well as *in the Assembly of the Paris Union* for the possible transfer of the headquarters (Articles 5 and 6(3)*(d)*(ii) of that draft), and that a *three-quarters* majority will have to be obtained in the General Assembly of that Organization and the Assembly of the Berne Union as well as *in the Assembly of the Paris Union* for the confirmation of arrangements concerning the administration by the Organization of conventions, agreements and treaties other than the Berne and Paris Conventions and the Special Agreements concluded under the latter Convention (Articles 3(2)(ii) and (iii), and 6(3)*(e)* and *(g)*).

72. It is to be noted that amendment of the administrative provisions (Articles 13 to 13*quinquies*) requires either *unanimity* or a *three-fourths majority* in the Assembly (see Article 13*quinquies*).

[*Article 13(2)(a), continued*]

(x) take any other appropriate action designed to further the objectives of the Union;

(xi) exercise such other functions as are allocated to it.

(b) **In exercising its functions with respect to matters which are of interest also to other Unions whose administrative tasks or administration is entrusted to the Organization, the Assembly shall take into consideration the advice of the Coordination Committee of the Organization.**

(3) *(a)* **Each country member of the Assembly shall have one vote in the Assembly.**

(b) **One-third of the countries members of the Assembly shall constitute a quorum.**

(c) **Subject to the provisions of subparagraphs** *(d)* **and** *(e)* **and Article 13*quinquies*(2), the Assembly shall make its decisions by a simple majority of the votes cast.**

(d) **Decisions to admit to meetings as observers countries outside the Union, as well as intergovernmental and international non-governmental organizations, shall require at least two-thirds of the votes cast.**

(e) **The adoption of the budget to the extent that it increases the financial obligations of the countries of the Union shall require at least two-thirds of the votes cast.**

(f) **Abstentions shall not be considered as votes.**

(g) **Each delegate may represent, and vote in the name of, one country only.**

[*Follows Article 13(4)*]

73. Finally, it is to be noted that the provisions under consideration do *not* deal with the question of voting on the revision of the substantive clauses of the Paris Convention, since their revision is not effected by the Assembly but by the special revision conferences dealt with in Article 14.

74. *Paragraph (3)(f)*, providing that abstentions shall not be considered as votes, follows from the preceding rules according to which the votes that are counted are the votes *cast*. For the same reason, abstentions would not count either in determining whether the required majorities are obtained.

75. *Paragraph (3)(g)* excludes voting by proxy.

76. *Paragraph (4)(a)* deals with the ordinary sessions of the Assembly, and *paragraph (4)(b)* deals with its extraordinary sessions. In view of parallel provisions in the Convention of the Berne Union and the Agreements of the various Special Unions, as well as in the Convention establishing the proposed new Organization, the ordinary sessions of the General Assembly of the Organization and the Assemblies of the Unions would take place once every three years and would normally be held during the same week or weeks and in the same place. These measures are dictated by the obvious need for keeping expenses as low as possible both for the Secretariat and for the Delegations attending the meetings.

77. *Paragraph (5)*, providing that the Assembly adopts its own rules of procedure, corresponds to established custom in comparable bodies.

COMMENTARY ON ARTICLE 13*bis*: EXECUTIVE COMMITTEE

78. *(a)* This Article deals with the Executive Committee of the Assembly.

(b) It consists of ten paragraphs dealing with establishment (paragraph (1)), composition (paragraphs (2), (3), (4), and (5)), tasks (paragraph (6)), sessions (paragraph (7)), voting (paragraph (8)), observers (paragraph (9)), and rules of procedure (paragraph (10)).

79. *(a) Paragraph (1)* provides for the constitution of an Executive Committee.

(b) It is customary in intergovernmental organizations having a certain number of members to institute a body of more restricted number to deal with matters which, because of their urgency, cannot be considered by the Assembly of all member countries or, because of their lesser importance, do not need to be considered by that higher instance that the Assembly is.

(c) Such body is variously called Governing Body, Executive Committee, Executive Board. The draft uses the name " Executive Committee. "

80. *Paragraph (2)* deals with composition and representation. The provisions are of the customary kind and do not seem to require any explanation, except perhaps the giving of an ex officio seat to the country on whose territory the Organization has its headquarters, that is, Switzerland. This provision is explained in connection with Article 13*quater*(7) (see paragraph 114, below).

81. *Paragraph (3)* establishes the general ratio of 1 to 4 between the number of the members of the Assembly and the number of the seats available in the Executive Committee. In actual fact, the ratio might be a little less because of the rule according to which remainders after division by four must be disregarded. For example, if the Assembly has 82 members, 82 divided by 4 would give 20.5, and, as the 0.5 would have to be disregarded, only 20 seats would be open for filling by election. On the other hand, the ex officio seat of Switzerland would have to be added so that, in this example, the total number of members would be 21 (twenty elected and one ex officio).

[*Article 13, continued*]

(4) *(a)* The Assembly shall meet once in every third calendar year in ordinary session, upon convocation by the Director General, preferably during the same period and at the same place as the General Assembly of the Organization.

***(b)* The Assembly shall meet in extraordinary session, upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries constituting the Assembly.**

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

ARTICLE 13*bis*: EXECUTIVE COMMITTEE

(1) The Assembly shall have an Executive Committee.

(2) *(a)* The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 13*quater*(7), have an ex officio seat.

***(b)* The Government of each country member of the Executive Committee shall be represented by one delegate who may be assisted by alternate delegates, advisors, and experts.**

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

(3) The number of the countries members of the Executive Committee shall correspond to one-fourth of the number of the countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

[*Follows Article 13*bis*(4)*]

82. *Paragraph (4)* provides that the Assembly must have due regard, in electing the members of the Executive Committee, to two requirements. One of them is that there should be a " balanced geographical representation." This requirement is customary in all intergovernmental organizations. Its meaning and application are vigilantly watched by public opinion in connection with the various organs of the many existing organizations. The other requirement is that countries members of the Special Unions established in relation with the Union be among the countries constituting the Executive Committee. No difficulty is anticipated in the application of this requirement. Even today, when there is no such provision, the principle is amply implemented in practice: out of the 19 members of the present Executive Committee of the Paris Union, 11 are members of the Madrid (Registration of Trademarks) Union, 9 are members of the Nice Union, and 6 are members of the Hague Union. Expressed in percentages, 58% of the Executive Committee members are also Madrid Union members, 47% are also Nice Union members, and 32% are also Hague Union members, although only 28%, 24%, and 19%, respectively, of all the Paris Union members are also members of these three Special Unions.

83. *(a) Paragraph (5)* deals with the term of service on the Executive Committee, and the question of re-election. The first sentence of subparagraph *(a)* means that members would generally serve not less than three years. According to the second sentence of the same subparagraph, a limited number of the members could be re-elected. The limit is to be understood as a maximum: no percentage of the members would have to be re-elected but, within the stated limit, some may be re-elected. The limit is two-thirds. In other words, every third year the minimum proportion of new members would have to be one-third. It is to be noted that any given country may be re-elected, not only once but any number of times. Thus, countries whose presence in the Committee is considered to be indispensable could serve continuously.

(b) The proposed system is similar to that provided for the renewal of the present Executive Committee of the Union. Its main feature is that it provides for a minimum rotation in the membership of the Executive Committee in order to avoid non-application of rules for renewal (as was generally the case in the Permanent Committee of the Berne Union) and to afford an opportunity for every member of the Assembly to serve on the Executive Committee.

(c) Subparagraph *(b)* leaves it to the Assembly to establish the details governing elections and possible re-elections. The draft presented to the 1966 Committee contained some provisions on these matters: " At each election, and until the limit of two-thirds may have been attained, the names of the States Members of the Executive Committee shall be called in alphabetical order and the Assembly shall vote on each separately whether to re-elect it or not. It shall be decided by lot drawn before each election whether the names of the States shall be called on the basis of the English or the French alphabetical listing of their names; furthermore, the letter of the alphabet with which the calling for possible re-election will start shall be drawn by lot. " These provisions mean that the decision as to which members should be re-elected would be taken by voting (the procedure would, of course, cease if the maximum number of " re-eligibles " is attained before the entire list is voted upon). In actual practice, the Assembly would probably set up a nomination committee which could agree on and propose a complete list, and the Assembly could adopt, by a single vote, the list as proposed. The 1966 Committee found these suggestions too detailed to be written into the Convention itself. This was the only reason for which they were not retained. They are recorded here as the Assembly may wish to refer to them when it is called upon to establish the rules it will have to establish under subparagraph *(b)*.

84. *Paragraph (6)* deals with the tasks of the Executive Committee. Subparagraph *(a)* enumerates them in the form of six items. They seem to be largely self-explanatory. Item (vi) speaks about " other " functions. An example of such a function can be found in Article 13*ter*(8)*(a)* which gives a certain role to the Executive Committee in the preparation of conferences of revision. Subparagraph *(b)* parallels a provision in the Draft Convention establishing the proposed new Organization according to which the Coordination Committee of that Organization would give advice to the organs of the various Unions—hence also to the Executive Committee of the Paris Union—particularly on certain administrative and financial matters of common interest to more than one Union (document S/10, Article 8(3)(i)). Two points should be noted in this connection: that what the Coordination Committee gives is *advice* and therefore may be disregarded by the Executive Committee; and that all the members of the Executive Committee of the Union are members of the Coordination Committee of the Organization and therefore it is highly unlikely that the Coordination Committee would advise anything contrary to the interests of the Paris Union.

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[*Article 13*bis, *continued*]

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to a balanced geographical distribution and to the need for countries members of the Special Unions established in relation with the Union to be among the countries constituting the Executive Committee.

(5) *(a)* **Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly. However, members may be re-elected, but not more than two-thirds of them.**

(b) **The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.**

(6) *(a)* **The Executive Committee shall:**

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly respecting the draft program and triennial budget of the Union, prepared by the Director General;

(iii) establish, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General;

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of that Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General;

(vi) perform such other functions as are allocated to it.

(b) **In exercising its functions with respect to matters which are of interest also to other Unions whose administrative tasks or administration are entrusted to the Organization, the Executive Committee shall take into consideration the advice of the Coordination Committee of the Organization.**

[*Follows Article 13*bis *(7)*]

85. *Paragraph (7)* deals with the sessions of the Executive Committee. There will be two kinds: ordinary (subparagraph *(a)*) and extraordinary (subparagraph *(b)*). Ordinary sessions would preferably meet during the same period and at the same place as the Coordination Committee. Since the members of the Executive Committee are also members of the Coordination Committee, the proposed measure is not only practical but will also reduce the expenses of both the Secretariat and the Delegations.

86. *Paragraph (8)* deals with voting. In view of the fact that the matters on which the Executive Committee may make decisions are of secondary importance—those of primary importance being, naturally, reserved to the Assembly—qualified majorities would only hamper the work of the Committees. This is the reason for which simple majorities would suffice (subparagraph *(c)*). Subparagraphs *(d)* and *(e)* parallel similar provisions concerning the Assembly (Article 13(3)*(f)* and *(g)*).

87. *Paragraphs (9) and (10)* appear to be self-explanatory.

[*Article 13*bis, *continued*]

(7) *(a)* The Executive Committee shall meet once a year in ordinary session, upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

***(b)* The Executive Committee shall meet in extraordinary session upon convocation by the Director General or at the request of one-fourth of the countries members of the Executive Committee.**

(8) *(a)* Each country member of the Executive Committee shall have one vote in the Executive Committee.

***(b)* One-half of the countries members of the Executive Committee shall constitute a quorum.**

***(c)* Decisions shall be made by a simple majority of the votes cast.**

***(d)* Abstentions shall not be considered as votes.**

***(e)* Each delegate may represent, and vote in the name of, one country only.**

(9) Countries of the Union not members of the Executive Committee shall be admitted to the meetings of the Executive Committee as observers.

(10) The Executive Committee shall adopt its own rules of procedure.

[*Follows Article 13*ter]

COMMENTARY ON ARTICLE 13*ter*: INTERNATIONAL BUREAU

88. *(a)* This Article deals with the International Bureau as far as the secretariat tasks for the Paris Union are concerned.

(b) The Article consists of nine paragraphs dealing with the tasks of the Secretariat in general (paragraph (1)) and with certain particular tasks: assembling and publishing information (paragraph (2)), publishing of a monthly periodical (paragraph (3)), furnishing of information to countries (paragraph (5)), carrying out of studies (paragraph (6)), preparation of conferences of revision (paragraph (8)*(a)*), other tasks assigned to the Secretariat (paragraph (9)). The participation of the Secretariat in meetings is provided for in paragraphs (7) and (8)*(b)*, whereas the distribution of free copies of publications of the Secretariat is governed by paragraph (4).

89. *Paragraph (1)(a)* refers to the International Bureau by which, as is indicated in Article 13(2) *(a)* (ii), is meant the International Bureau of Intellectual Property, that is, the Secretariat of the proposed new Organization. It follows from Article 9(1) of the Draft Convention which would establish that Organization (see document S/10) that the International Bureau would not be a new Secretariat but would be the continuation of the present Secretariat, known under the name of BIRPI, having the same tasks (and some additional tasks, namely, those relating to the Organization as such) as BIRPI. The said Article would be paralleled by that of paragraph (1)*(a)* under consideration which provides that the future Bureau is a *continuation* of the present Bureau, that is, of the Bureau established by the original (1883) Act of the Paris Convention and maintained by each of the succeeding Acts of revision, and which, since 1893, has been united with the Bureau of the Berne Union.

90. *Paragraph (1)(b)* indicates that the role which the International Bureau is intended to play in connection with the Paris Union is mainly the role of a secretariat of the various organs of the Union, that is, of the Assembly and of the Executive Committee, and if either the Assembly or the Executive Committee should decide to establish subsidiary organs, such as sub-committees and working parties, then, of such subsidiary bodies as well.

91. *Paragraph (1)(c)* is a corollary of paragraph (1)*(b)*. Since the International Bureau is the Secretariat of the Union, the Director General—head of the International Bureau—must also be the chief administrative officer of the Union, and must be able to represent the Union, as he does the proposed new Organization, as such.

92. *Paragraph (2)* is based on part of the provisions of Article 13(3) of the Lisbon Act. It provides on the one hand for the International Bureau to assemble and publish information, and on the other hand for the member countries to communicate some essential elements of this information as far as their own countries are concerned. As far as the material to be furnished to the International Bureau is concerned, the provision contains two qualifications. First, the countries would have to furnish only those of their publications which are of direct concern to the protection of industrial property; consequently, publications which do not correspond to this description—such as, for example, information furnished to domestic industries by the national Industrial Property Offices—would not have to be furnished to the International Bureau even though they are publications of such Offices. Second, the International Bureau itself may suggest to the national Industrial Property Offices not to send it certain publications which it does not need in its work. At the present time, printed patent specifications would come under this category.

93. *Paragraph (3)* provides that the International Bureau shall publish a monthly periodical. What is meant here is a continuation of the periodical, *La Propriété industrielle*, which is now in its eighty-second year, and of its English equivalent, *Industrial Property*, which is in its fifth. The provision does not refer to them by stating their titles, mainly because the possibility of publishing them in additional languages should be left open.

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ARTICLE 13 *ter*: INTERNATIONAL BUREAU

(1) *(a)* The administrative tasks with respect to the Union shall be performed by the International Bureau which is a continuation of the Bureau of the Union, united with the Bureau of the Union established by the International Convention for the Protection of Literary and Artistic Works.

***(b)* In particular, the International Bureau shall provide the secretariat of the various organs of the Union.**

***(c)* The Director General of the Organization shall be the chief administrative officer of the Union and shall represent the Union.**

(2) The International Bureau shall assemble and publish information concerning the protection of industrial property. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of industrial property, and shall furnish to the International Bureau all the publications of its industrial property service of direct concern to the protection of industrial property and which the International Bureau may find useful in its work.

(3) The International Bureau shall publish a monthly periodical.

[*Follows Article 13*ter*(4)*]

94. *Paragraph (4)*, based on Article 13(4) of the Lisbon Act, provides for the furnishing of free copies of the monthly periodical and other publications of the International Bureau to each member country of the Union. The number of free copies will be proportionate to the number of units in the class to which each country belongs. The proportion itself—whether, for example, a country contributing 5 units should receive 5 copies or a fraction, or multiple, of 5—will be determined by the Assembly.

95. *Paragraph (5)* is based on Article 13(5) of the Lisbon Act and provides for the furnishing of information to Governments.

96. *Paragraph (6)* deals with studies to be carried out by the Secretariat, and is based on Article 13 (3) of the Lisbon Act.

97. *Paragraphs (7) and (8)(b)* provide for the participation of the Director General, or his representatives, in various meetings of the Union or of its organs. It is a natural requirement flowing from the fact that the International Bureau is a secretariat. Paragraph (8)*(b)*, by the way, is based on Article 14(4) of the Lisbon Act.

98. *Paragraph (8)(a)* concerns the role of the Secretariat in the preparation of the revision conferences contemplated by Article 14. The totality of the proposed new procedure for the preparation of revision conferences is discussed in paragraph 57, above.

[*Article 13*ter, *continued*]

(4) The number of free copies of the monthly periodical and other publications of the International Bureau that each country of the Union shall be entitled to receive shall be proportionate to the number of units in the class to which the country belongs according to Article 13*quater*(4) and shall be fixed by the Assembly.

(5) The International Bureau shall, on request, furnish information to the individual countries of the Union on matters concerning the protection of industrial property.

(6) The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of industrial property.

(7) The International Bureau shall participate in the meetings of the various organs of the Union, but without the right to vote.

(8) *(a)* The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 13 to 13*quinquies*.

***(b)* The Director General or persons designated by him shall take part in discussions at these conferences, but without the right to vote.**

(9) The International Bureau shall carry out any other tasks assigned to it.

[*Follows Article 13*quater]

COMMENTARY ON ARTICLE 13*quater*: FINANCES

99. This Article deals with finances.

100. It consists of eight paragraphs dealing with: the definition of the budget (paragraph (1)), a reminder of the need of coordination with the budgets of the other Unions (paragraph (2)), the sources of income (paragraph (3)), special provisions concerning the contributions of member countries (paragraph (4)), charges due for services rendered by the Secretariat (paragraph (5)), the working capital fund of the Union (paragraph (6)), advances by the Government of the country on whose territory the Organization has its headquarters (paragraph (7)), and the auditing of accounts (paragraph (8)).

101. *Paragraph (1)(a)* provides that the Union shall have a budget, that is, a budget of its own, separate and distinct from the budget of the other Unions and from the budget of the proposed new Organization as such.

102. *Paragraph (1)(b)* implies that the budget expenses of the Union should be grouped under three main headings:

(i) the proper expenses of the Union (for example, the expenses of a meeting dealing with matters exclusively relating to the Paris Union, the salaries of employees of the Secretariat working exclusively on matters concerning the Paris Union and the Paris Union only),

(ii) the contributions of the Union to the budget of the proposed new Organization as such (since it results from the Draft Convention establishing that Organization that members of the Union would only indirectly contribute to the budget of the Organization, that is, through the allocation of a sum in the Union budget to the budget of the Organization (see document S/10, Article 10(3)*(a)*(i)),

(iii) share of the Union in the common expenses.

103. *Paragraph (1)(c)* defines the notion of " common expenses. " These are expenses which are incurred by the Secretariat not only in the sole interest of the Union but also in the interest of the other Unions administered by it, or in the interest of the Organization as such (particularly its Conference). The share of the Union in these common expenses will be in proportion to the interest of the Union in such expenses. The provision parallels similar provisions in the proposed new administrative provisions of the other Unions (see, for example, as far as the Berne Union is concerned, document S/9, Article 22(1)*(c)*) and in the Convention establishing the proposed new Organization (document S/10, Article 10(1)*(c)*). Examples of such common expenses would be the salary of the Director General and other members of the staff who serve all the Unions and the Organization as such; the expenses relating to the common financial, personnel, mailing, telephone, typing and translation services, and the maintenance of the headquarters building.

104. *Paragraph (2)* provides that the budget of the Union must be established with due regard to the requirements of coordination with the budgets of the various Unions and with the budget of the Organization as such. In view of the existence of common expenses, as defined above, the necessity of coordination is manifest.

105. *Paragraph (3)* enumerates, under five items, the sources of income of the Union. The first, and the most important, consists of the yearly contributions of the member countries: more is said about this source of income in paragraphs 106 to 111, below. The charges due for services performed by the International Bureau in relation to the Union (item (ii)) include, for example, the furnishing of copies or translations of the texts of industrial property laws. Sale of publications (item (iii)) includes the income derived from subscription fees to *La Propriété industrielle* and *Industrial Property*, to the extent that these periodicals do not deal with matters of direct concern to other Unions. Items (iv) and (v) seem to be self-explanatory.

ARTICLE 13*quater*: FINANCES

(1) *(a)* The Union shall have a budget.

***(b)* The budget of the Union shall include the proper expenses of the Union itself, its contribution to the budget of the Organization as such, and its share in the common expenses, as defined in the following subparagraph.**

***(c)* Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization, or also to the Organization as such, shall be considered as common expenses. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.**

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the various Unions administered by the Organization and with the budget of the Organization as such.

(3) The budget of the Union shall be financed from the following sources:

(i) contributions of the countries of the Union;

(ii) charges due for services performed by the International Bureau in relation to the Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

[*Follows Article 13*quater*(4)*]

106. *Paragraph (4)* deals with the yearly contributions of the member countries.

107. *Subparagraph (a)* continues the class-and-unit system presently applied in the Paris Union (see Article 13(8) of the Lisbon Act) subject to the only difference that an additional, VIIth, class would be added to the existing six classes, the share in the contributions of this VIIth class being one-third of the share of the lowest existing class (VI). The addition was made in order to take into account the fact that the relative contributive power of the richest and the least rich countries is not adequately represented by the present six classes, in that the highest contribution is only 8 ⅓ times larger than the lowest contribution. If the proposed seventh class is accepted, the highest contribution will be 25 times larger than the lowest contribution.

108. *Subparagraph (b)* maintains the complete freedom of each country to choose the class it wishes and later to modify its choice (see Article 13(9) of the Lisbon Act). Any change to a lower class will be applicable only from the beginning of the year following the year in which the ordinary session of the Assembly takes place and in which the change to the lower class is announced. This is because otherwise the other countries would be obliged to pay a higher share (since each lowering of class by a country automatically leads to an increase in the share of the other countries) than contemplated when they adopted the three-yearly budget.

109. *Subparagraph (c)* is differently worded from, but would obtain the same result as, the last two sentences of Article 13(8) of the Lisbon Act.

110. *Subparagraph (d)* would introduce an important change in the present system. In the present system, member countries pay their contributions approximately six months *after* the close of the financial year. It is now proposed that they pay their contributions *on the first day* of the financial year. The difference in time is some 18 months and would mean that, in the year of the transition from the old to the new system, Governments would be required to pay not only the contributions for the preceding year but also for the current year. In other words, in that particular year, as an exception, they would be required to pay contributions relating to *two* years. The present system is possible only because of loans to BIRPI by the Swiss Government to cover any cash need. Such need is constant because it is inherent in a system in which members are required to pay only 6 to 18 months after the expenses have been incurred by BIRPI. It is now proposed to do away with this system and adopt the system of concurrent payment. The proposed system would seem to be in conformity with the situation in all other intergovernmental organizations. It would, normally, liberate Switzerland from the obligation to grant loans, obligation partly assumed because of Switzerland's role as supervisory authority—a role which would be discontinued.

111. *Subparagraph (e)* would suspend the right to vote of any country in arrears of contributions for two years or more. Naturally, once the arrears are paid, the right to vote would automatically revive. Similar provisions may be found in the charters of many other organizations. No similar provision exists in the present system, in which the Swiss Government advances to BIRPI the overdue contributions of other countries. The proposed sanction for failure to pay was presumably proposed by the 1965 Committee because it realized that there must be some incentive for prompt payment in a situation in which non-payment could place the International Bureau in a precarious position. The 1966 Committee, however, added provisions which permit the non-application of this sanction in special circumstances. Thus, the Assembly of the Union may decide that a country in arrears with its payments may continue to exercise its vote if, and as long as, the Assembly is satisfied that the delay in payment arises from exceptional and unavoidable circumstances. Whether special circumstances exist will be determined by the Assembly, and if it is necessary to vote on the question a simple majority will be sufficient to decide the issue, since there is no provision which would call for a qualified majority or unanimity in this respect. Similar principles and similar procedures would apply in other collective bodies of the Union, in particular, in its Executive Committee.

112. *Paragraph (5)* provides that the charges due for services shall be established by the Director General. The charges in question are those referred to in paragraph (3)(ii).

[*Article 13*quater, *continued*]

(4) *(a)* **For the purpose of establishing its contribution towards the budget referred to in the preceding paragraph, each country of the Union shall belong to a class, and shall pay its annual contribution on the basis of a fixed number of units as follows:**

Class I	**25**
Class II	**20**
Class III	**15**
Class IV	**10**
Class V	**5**
Class VI	**3**
Class VII	**1**

(b) **Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If the change is to a lower class, the country must announce it to an ordinary session of the Assembly. Any such change shall take effect at the beginning of the calendar year following the session.**

(c) **The contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.**

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

(e) **A country which is in arrears in the payment of its financial contributions shall have no vote in any organ of the Union if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its vote if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances. At the middle of the second of the two full years, the Director General shall remind the Government of the country that its contributions are overdue. Omission of such a reminder shall not affect the application of the provisions of the present subparagraph.**

(5) The amount of the charges due for services rendered by the International Bureau in relation to the Union shall be established by the Director General, who shall report on them to the Assembly and the Executive Committee.

[*Follows Article 13*quater*(6)*]

113. *Paragraph (6)* provides for the constitution of the working capital fund. This would be a one-time operation, unless, later, exceptional circumstances—such as a considerable depreciation in the value of the currency in which the working capital fund is kept—require that the fund be brought up to normal level. The fund will be constituted from payments made by the member countries (subparagraph *(a)*), and the amount of the sum which each country will have to pay will be proportionate to its yearly contribution (subparagraph *(b)*). Thus, for example, a country belonging to Class I shall pay into the working capital fund a sum which is 25 times larger than the sum which a country belonging to Class VII shall have to pay. The details of the constitution of this fund shall be determined by the Assembly as to its foreseeable amount and the terms of payment (subparagraph *(c)*; see also document S/12).

114. *Paragraph (7)* deals with advances to be granted to the Secretariat by the Government of the country on whose territory the Organization has its headquarters (hereinafter referred to as " the country of the headquarters "). At the present time, both the Paris Convention (Article 13(10) of the Lisbon Act) and the Berne Convention (Article 23(5) of the Brussels Act) provide that the Government of Switzerland (which is today, and is expected to remain, the country of the headquarters) shall make the necessary advances to BIRPI. This obligation to make advances is not susceptible to denunciation. In his negotiations with the Swiss Authorities concerning the Draft Convention, the Director of BIRPI proposed that the Swiss Government continue to accept an obligation which cannot be terminated by denunciation. The Swiss Authorities have expressed the view that the justification for an irrevocable obligation is that, in the present system, the Swiss Government supervises the expenditures of BIRPI. When this function of supervision disappears, the Swiss Government should have the right—and the Organization should have the right—of denouncing the obligation to grant advances. While suggesting this possibility, the Swiss Authorities gave assurances to the Director of BIRPI that they did not intend to set limits to their obligation, but that they wanted to provide for the possibility of denunciation in view of circumstances which are as yet unforeseeable. It is logical that a country which undertakes to give advances should be permitted to participate fully in the Executive Committee of the Union, as the Executive Committee deals with budget and financial management. Such a country should not be exposed to the hazards of elections. This is the reason for proposing that the Swiss Government should have an ex officio seat on the Executive Committee of the Paris Union and, also, on the Executive Committee of the Berne Union. Membership in these Committees automatically carries with it membership in the Coordination Committee (see document S/10, Article 8(1)*(a)*).

115. *Paragraph (8)* deals with the auditing of the accounts. At the present time, it is the Swiss Government which, in conformity with the provisions of the Paris Convention (Article 13(10) of the Lisbon Act) and the Berne Convention (Article 23(5) of the Brussels Act) controls (" supervises, " " draws up ") the accounts of BIRPI. In the course of the meeting of the 1964 Working Group, the Swiss experts declared that it would be hardly justifiable to ask the Swiss Government to continue to assume this task under the new system in which the supervision of the Organization would no longer devolve upon the Swiss Government. Nevertheless, Switzerland would be prepared to continue to audit the accounts until the second ordinary session of the General Assembly of the new Organization, that is, during a period of approximately three years from the entry into force of the Convention. Thereafter, the financial control would be exercised by the Government of one or other of the member countries, or by external auditors (professional accountant firms). The designation would, of course, be made in agreement with the country or countries designated, or the professional accountant firm engaged, for this purpose. The details would be regulated by the financial regulations.

[*Article 13*quater, *continued*]

(6) *(a)* **The Union shall have a working capital fund which shall be constituted by payments made by the countries of the Union.**

(b) **The amount of the payment of each country shall be proportionate to its annual contribution.**

(c) **The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee.**

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

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

(8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

[*Follows Article 13*quinquies]

COMMENTARY ON ARTICLE 13*quinquies*: AMENDMENTS TO ARTICLES 13 TO 13*quinquies*

*Preliminary Comments on Articles 13*quinquies *and 14*

116. For the purposes of the procedure of amending the Convention one has to distinguish between two groups of provisions: (i) the so-called administrative provisions, that is, Articles 13 to 13*quinquies*, and (ii) all the other provisions of the Convention, in particular the so-called substantive provisions (Articles 1 to 12). The latter group, however, includes also Articles 14 to 20.

117. Amendments to the administrative provisions (Articles 13 to 13*quinquies*) are governed by Article 13*quinquies*. Amendments to all other provisions (Articles 1 to 12 and 14 to 20) are governed by Article 14. In order to underline the fact that two different procedures are involved, amendments to the administrative provisions will be designated by the word " amendments, " whereas amendments to all other provisions will be designated by " revisions. "

118. The main differences between the procedure of amending the administrative provisions and revising the other provisions are the following:

(i) *Amendments* are discussed in and adopted by the Assembly (Articles 13(2)(ix) and 13*quinquies*(2)), whereas *revisions* are discussed in and adopted by conferences of revision (Article 14(2)). The Assembly consists of member countries which are bound by the provisions to be amended, that is, countries which are bound by Articles 13 to 13*quinquies* (see Article 13(1)*(a)*), since they are the only interested parties. Any conference of revision consists of all the countries of the Union, even if they are only bound by Acts earlier than the one to be revised (see Article 14(2)).

(ii) The adoption of *amendments* would require a three-quarters majority, except that any amendment of Articles 13 and 13*quinquies*(2) would require unanimity. There is no provision in the Convention on this point as far as *revisions* are concerned. Up to the present time, all revisions have been regarded as requiring unanimity of the countries present and voting; in other words, revisions have been carried if no country has voted against—" vetoed "—them, the number of positive votes being irrelevant. The present draft contains no proposals, so that presumably, and as long as the countries consider it desirable, the traditional system will continue as far as revisions are concerned.

(iii) Countries will become bound by *amendments* when three-quarters of the members of the Assembly have notified their acceptance. This means that, when three-quarters have accepted an amendment, that amendment will then become binding also on the other countries members of the Assembly, except when the amendment increases the financial obligations of the members of the Union. In the latter case, each country has to expressly accept the amendment before it is bound by it. As far as *revisions* are concerned, what is the exception in the case of amendments becomes the rule here: revisions bind only those countries which have communicated their ratification or acceptance.

119. The reason for providing different procedures for amendments and revisions is that the traditional practice of requiring unanimity for revisions seems to be too stiff for amendments. Amendments deal with administrative matters not affecting private interests and only slightly affecting the interests of the Governments. Amendments may be needed urgently to render the administration, the work of the Secretariat, more efficient. Consequently, an easier way than unanimity—over which hangs, like the sword of Damocles, the power of veto by one country out of more than seventy—seems to be eminently reasonable and practical. It is true that even for amendments unanimity would be required when the amendment relates to Article 13 dealing with the Assembly. This exception does not seem to be either customary or necessary. But since the 1965 and 1966 Committees appeared to desire it, it is carried over into the drafts herewith proposed.

[*See text of Article 13*quinquies *on page 43*]

*Comments on Article 13*quinquies*proper*

120. The Article more particularly under consideration (Article 13*quinquies*) regulates the procedure of *amendments* and consists of four paragraphs dealing with proposals for amendments (paragraph (1)), adoption of amendments (paragraph (2)), entry into force of amendments (paragraph (3)), and a reminder that " revisions " are dealt with by another Article (paragraph (4)).

121. *Paragraph (1)* makes it clear that what is involved here is the amendment of the administrative provisions (Articles 13 to 13*quinquies*), and the administrative provisions only. It also provides, in essence, that members of the Assembly must receive at least six months' advance notice if a proposal for amending the administrative provisions is to be considered by the Assembly.

122. *Paragraph (2)* deals with the majorities required for the adoption, in the Assembly, of amendments to Articles 13 to 13*quinquies*. The paragraph distinguishes between, on the one hand, amendments to Article 13 (which deals with the Assembly) and to Article 13*quinquies*(2) (which deals with the very question of majorities required for amendments), and, on the other hand, amendments to the other administrative provisions (that is, Articles 13*bis*, 13*ter*, 13*quater* and, with the exception of its paragraph (2), Article 13*quinquies*). Whereas amendment to the former would require unanimity, amendment to the latter would require a three-fourths majority.

123. *Paragraph (3)* deals with the question of when countries become bound by the amendments. The question is discussed above, in paragraph 118.

124. *Paragraph (4)* is a reference to Article 14, which is the Article—and *not* Article 13 *quinquies*—that governs revisions, as distinguished from amendments.

COMMENTARY ON ARTICLE 14: REVISION OF THE PROVISIONS OF THE CONVENTION OTHER THAN ARTICLES 13 TO 13*quinquies*

125. Reference is made to paragraphs 116 to 119, above, which explain the differences between the procedures of *amending* Articles 13 to 13*quinquies*, and *revising* Articles 1 to 12 and 14 to 20. The Article under consideration—that is, Article 14—deals with the latter.

126. This Article consists of three paragraphs, the first dealing with the principle of revision, the second with conferences of revision, and the third containing a reminder that amendments are dealt with by another article.

127. *Paragraph (1)* is identical with paragraph (1) of Article 14 of the Lisbon Act, except that that Act speaks about " periodical revision " and the text here proposed does not contain the word " periodical. " In fact, the conferences of revision do not take place at stated or regular intervals. This is the reason for which the word " periodical " is omitted.

128. *Paragraph (2)* is identical with paragraph (2) of Article 14 of the Lisbon Act.

129. *Paragraph (3)* is a reference to Article 13*quinquies*, which is the Article—and *not* Article 14—that governs amendments, as distinguished from revisions.

ARTICLE 13*quinquies*: AMENDMENTS TO ARTICLES 13 TO 13*quinquies*

(1) Proposals for the amendment of Articles 13, 13*bis*, 13*ter*, 13*quater*, and the present Article, shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in the preceding paragraph shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided, however, that any amendment of Article 13, and of the present paragraph, shall require the unanimity of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force when written notifications of acceptance have been received by the Director General from three-fourths of the countries members of the Assembly at the time it has adopted the amendment. Amendments to the said Articles thus accepted shall bind all countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, except that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

(4) The revision of Articles 1 to 12, and 14 to 20, is governed by Article 14.

ARTICLE 14: REVISION OF THE PROVISIONS OF THE CONVENTION OTHER THAN ARTICLES 13 TO 13*quinquies*

(1) The present Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For this purpose conferences shall be held successively in one of the countries of the Union between the delegates of the said countries.

(3) Amendments to Articles 13 to 13*quinquies* are governed by Article 13*quinquies*.

[*Follows Article 15*]

COMMENTARY ON ARTICLE 15: SPECIAL AGREEMENTS

130. This Article is identical with the present Article 15 of the Lisbon Act except for one change affecting the official English translation only. It is proposed to translate the French word " *arrangement* " by the English word " *agreement* ", as " *arrangement* " in French, in this context, seems to have a connotation which is better rendered, in English, by the word " agreement " than by the word " arrangement. "

COMMENTARY ON ARTICLE 16: RATIFICATION AND ACCESSION BY COUNTRIES OF THE UNION; ENTRY INTO FORCE

*Preliminary Comments on Articles 16 and 16*bis

131. *(a)* The question of how a country may become a party to the Stockholm Act is dealt with in two Articles, namely, Article 16 and Article 16*bis.* The first one concerns countries *of* the Union; the second, countries *outside* the Union.

(b) The principal reasons for devoting two separate articles to these two groups of countries are the following: (i) only countries *of* the Union may sign the Stockholm Act; (ii) countries *of* the Union may ratify, or accede to, the Stockholm Act, whereas countries *outside* the Union may only accede; (iii) only countries *of* the Union may exclude certain provisions from the effects of their ratification or accession; (iv) only ratifications and accessions by countries *of* the Union will be taken into consideration in counting the minimum number of ratifications or accessions required for the initial entry into force of the Stockholm Act or a portion thereof.

(c) Each of the two Articles (16 and 16*bis*) consists of three paragraphs, the first dealing with (ratification and) accession; the second, with the initial entry into force of the Stockholm Act or a portion thereof; the third, with the entry into force of (ratifications and) accessions posterior to the said initial entry into force.

Comments on Article 16 proper

132. The Article under consideration—that is, Article 16—concerns countries *of* the Union, that is, countries which are bound by the Lisbon Act, or one or more earlier Acts, of the Paris Convention, at the time when they deposit their instruments of ratification of, or accession to, the Stockholm Act.

133. *Paragraph (1)(a)* provides that countries of the Union may sign the Stockholm Act, and if they sign it they may ratify it. Such countries may choose not to sign the Act, and, if they wish to become a party, they may do so by accession. Ratification or accession is effected by the deposit of a corresponding instrument with the Director General.

ARTICLE 15: SPECIAL AGREEMENTS

It is understood that the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of the present Convention.

ARTICLE 16: RATIFICATION AND ACCESSION BY COUNTRIES OF THE UNION; ENTRY INTO FORCE

(1) *(a)* **Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification and accession shall be deposited with the Director General.**

[*Follows Article 16(1)(b)*]

134. *Paragraph (1)(b)* permits any country of the Union to declare in its instrument of ratification or accession that its ratification or accession shall not apply to the substantive provisions (that is, Articles 1 to 12) of the Stockholm Act. A country making such a declaration will then be bound only by the new administrative and final provisions (Articles 13 to 20), whereas, as far as the substantive provisions are concerned, it will continue to be bound by Articles 1 to 12 of that earlier Act, or those earlier Acts, by which it has been bound before ratifying or acceding to—albeit subject to certain exclusions—the Stockholm Act. Such earlier Act or Acts may be the Lisbon (1958), London (1934) or Hague (1925) Acts. For example, if such a country is already bound by the Lisbon Act, the only difference will be that it is not going to be bound by the proposed new provisions on inventors' certificates (see document S/2, Article 4(I)).

135. A country of the Union may make the reverse choice. It may declare in its instrument of ratification or accession that its ratification or accession shall not apply to the new administrative provisions (that is, Articles 13 to 13 *quinquies*) of the Stockholm Act. A country making such a declaration will then be bound only by the new substantive and final provisions, that is, if it is already bound by the Lisbon Act, the only substantive difference will be that it will become bound also by the proposed new provisions on inventors' certificates (see document S/2, Article 4(I)). As far as the administrative provisions are concerned, a country making this kind of exclusion will continue to be bound by Article 13 of the Lisbon Act (1958), or of the London Act (1934), or of the Hague Act (1925), depending on which is the most recent of these Acts that it has ratified or acceded to.

136. The reasons for having adopted this possibility of excluding either the substantive or the administrative provisions from the effects of ratification or accession are indicated above, in paragraph 31.

137. *Paragraph (1)(c)* simply permits a country, at any time later, to declare that it extends its ratification or accession to provisions excluded under subparagraph *(b)*. The effect of the declaration would, of course, be that the country would then become bound by the totality of the Stockholm Act.

138. *Paragraph (2)* deals with the initial entry into force of the Stockholm Act. Simply stated, the substantive clauses of the Convention as revised at Stockholm will enter into force when five countries have accepted them; the administrative clauses of the Convention as revised at Stockholm will enter into force when ten countries have accepted them; and the final clauses of the Convention as revised at Stockholm (Articles 14 to 20) will enter into force on the earlier of the two events. Of course, some of the final clauses, because of their nature, will be applied even before any formal entry into force. If a country ratifies, or accedes to, the Stockholm Act in its entirety, its ratification or accession will be counted towards the entry into force of both the substantive clauses and the administrative clauses.

139. *Paragraph (3)* deals with the entry into force of the Act with respect to those countries which subsequently deposit ratifications or accessions. It seems to be self-explanatory.

[*Article 16(1), continued*]

(*b*) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply:

(i) to Articles 1 to 12, or

(ii) to Articles 13 to 13*quinquies*.

(*c*) Any country of the Union which, in accordance with the preceding subparagraph, has excluded from the effects of its ratification or accession one of the two groups of Articles referred to in that subparagraph may at any time later declare that it extends the effects of its ratification or accession to that group of Articles. Such declaration shall be deposited with the Director General.

(2) (*a*) Articles 1 to 12 shall enter into force, with respect to those countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by paragraph (1)(*b*)(i), one month after the deposit of the fifth such instrument of ratification or accession.

(*b*) Articles 13 to 13*quinquies* shall enter into force, with respect to those countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by paragraph (1)(*b*)(ii), one month after the deposit of the tenth such instrument of ratification or accession.

(*c*) Articles 14 to 20 shall enter into force on the earlier of the dates referred to in the preceding two subparagraphs, with respect to each country of the Union which, one month or more before such date, has deposited an instrument of ratification or accession, whether or not the instrument is limited pursuant to paragraph (1)(*b*).

(3) Subject to the initial entry into force of any group of Articles pursuant to paragraphs (2)(*a*), (*b*), or (*c*), and subject to the provisions of paragraph (1)(*b*), the present Act, or the applicable Articles of the present Act, shall, with respect to any country of the Union which has deposited an instrument of ratification or accession or a declaration pursuant to paragraph (1)(*c*), enter into force one month after the date of notification by the Director General of such deposit, unless a subsequent date has been indicated in the instrument deposited. In the latter case, the date indicated shall apply.

[*Follows Article 16*bis]

COMMENTARY ON ARTICLE 16*bis*: ACCESSION BY COUNTRIES OUTSIDE THE UNION; ENTRY INTO FORCE

140. As for the reasons for inscribing the provisions concerning accession by countries *outside* the Union into an article distinct from that dealing with countries *of* the Union, see paragraph 131, above.

141. This Article deals with countries *outside* the Union, that is, countries which are not bound by the Lisbon Act, or any other Acts earlier in date than the Lisbon Act, of the Paris Convention, at the time when they deposit their instruments of accession to the Stockholm Act.

142. *Paragraph (1)* provides that such countries may become members of the Union by acceding to the Stockholm Act. Any country may thus become a member of the Union. It has, of course, to carry out the undertaking provided for in Article 17(1) and to be in the position described in Article 17(2). It is to be noted also that once the Stockholm Act has entered into force in its entirety, a country outside the Union may become a member of the Union only of it accedes to the Stockholm Act. To clarify its situation, it may also accede to earlier Acts. Accession to an earlier Act *alone* will not be possible once the Stockholm Act has entered into force in its entirety (see Article 16*quater*).

143. *(a) Paragraph (2)* fixes the date of entry into force of accession by countries outside the Union which deposit their instruments of accession *prior* to the initial entry into force of the Stockholm Act in its entirety. Subparagraph *(a)* deals with the case where the instrument reaches the Director General one month or more before any of the provisions of the Stockholm Act have entered into force, whereas subparagraph *(b)* deals with the case where the instrument reaches the Director General after the date of entry into force (or less than one month prior to such date) of one set of provisions only.

(b) In the case of subparagraph *(a)*—that is, where a country outside the Union deposits its instrument of accession one month or more before the initial entry into force of any provisions of the Stockholm Act—it must " wait " until the initial entry into force takes place before it becomes a member of the Union pursuant to the Stockholm Act. Of course, if such country accedes *also* to earlier Acts, it will become a member of the Union one month after the dispatch of notification by the Director General. (It will be noted that accessions of countries outside the Union are *not* counted toward the number of ratifications or accessions required for the initial entry into force of the Stockholm Act.) The matter is further complicated by the fact that the date of initial entry into force of the substantive provisions may, because of Article 16(1)*(b)*, be different from the date of the initial entry into force of the administrative provisions. According to the provision under consideration (that is, Article 16*bis*(2)), if the substantive provisions enter first into effect, then, until the entry into force of the new administrative provisions, the acceding country—which, it should be recalled, is a country outside the Union—will be bound by the " old " administrative provisions, that is, those of the Lisbon Act. On the other hand, if the administrative provisions enter into force first, then, until the entry into force of the new substantive provisions, the acceding country will be bound by the " old " substantive provisions, that is, those of the Lisbon Act. Thus, in this respect, countries outside the Union would be in exactly the same position as countries of the Union bound by the Lisbon Act.

(c) In the case of subparagraph *(b)*—that is, where a country outside the Union deposits its instrument of accession at a time during which one set of provisions of the Stockholm Act is already in force (or will, in less than a month's time, enter into force) but the other set is not yet in force—such country will, without any " waiting " of the kind described above, become a member of the Union even if it does not accede also to one or more earlier Acts. However, until the initial entry into force of the other set of provisions, such country will be bound by those provisions of the Lisbon Act which correspond to the said set of provisions of the Stockholm Act.

144. *Paragraph (3)* fixes the date of entry into force of accessions by countries outside the Union which deposit their instruments of accession *after* the entry into force of the Stockholm Act in its entirety (or within the month preceding such entry into force). The provision seems to be self-explanatory.

ARTICLE 16*bis*: ACCESSION BY COUNTRIES OUTSIDE THE UNION; ENTRY INTO FORCE

(1) Any country outside the Union may accede to this Act and thereby become a member of the Union. Instruments of accession shall be deposited with the Director General.

(2) *(a)* With respect to any country outside the Union which deposits its instrument of accession one month or more before the date of entry into force of any provisions of the present Act, this Act shall enter into force on the date upon which provisions first enter into force pursuant to Article 16 (2) *(a)* or *(b)*; provided, however, that

(i) if Articles 1 to 12 do not enter into force on that date, such country shall during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 1 to 12 of the Lisbon Act,

(ii) if Articles 13 to 13*quinquies* do not enter into force on that date, such country shall during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 13 and 14(3) and (4) of the Lisbon Act.

_(b)_ With respect to any country outside the Union which deposits its instrument of accession on a date which is subsequent to, or precedes by less than one month, the entry into force of some, but not all, of the provisions of this Act, the present Act shall, subject to the proviso of subparagraph *(a)*, enter into force one month after the date on which its accession has been notified by the Director General.

(3) With respect to any country outside the Union which deposits its instrument of accession after the date of entry into force of the present Act in its entirety, or less than one month before such date, this Act shall enter into force one month after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, the present Act shall enter into force with respect to that country on the date thus indicated.

[*Follows Article 16*ter]

COMMENTARY ON ARTICLE 16*ter*: NO RESERVATIONS

145. This Article is a modified version of the first phrase of Article 16(3) of the Lisbon Act, which provides that accession by countries outside the Union " shall automatically entail acceptance of all the clauses and admission to all the advantages of the present Convention. "

146. The modifications are of two kinds.

147. First, it is proposed that this rule apply to *all* ratifications and *all* accessions. There seems to be no reason to limit it to accessions by countries *outside* the Union.

148. Second, it seems to be necessary, for the sake of clarity, to indicate that not necessarily " all " the advantages apply. If a country uses the faculty provided for in Article 16(1)*(b)*, certain of the clauses and advantages of the Stockholm Act will not apply to it. Hence the reference to Article 16(1)*(b)* at the beginning of the Article under consideration.

COMMENTARY ON ARTICLE 16*quater*: ACCESSION TO EARLIER ACTS

149. This Article means that once the Stockholm Act has entered into force in its entirety it will not be possible to accede to earlier Acts except in conjunction with ratification of, or accession to, the Stockholm Act.

150. The Lisbon Act contains no analogous provision. The Berne Convention provides that accession to earlier Acts is not possible, not even in conjunction with accession to the Act which results from the most recent revision (see Article 28(3) of the Brussels Act).

151. Notwithstanding the fact that, as stated, the existing Acts of the Paris Convention contain no provision of this kind, it is a tradition in the Union that, once a new Act enters into force, countries do not, so far as is known, attempt to accede only to earlier Acts.

152. In order to confirm this tradition and to avoid future controversies, it is proposed to insert the provision in the Stockholm Act.

153. The provision would be useful also in the respect that once the Stockholm Act has entered into force—because it has been accepted by the minimum number of countries referred to in Article 16(2)—the rest of the countries, and any new members of the Union, could not delay its general acceptance by accessions to earlier Acts only. It seems to go without saying that any accession also to earlier Acts would mean that the country is also bound by the substantive provisions of earlier Acts but *only* by such substantive provisions and *only* for the purposes of its relations with countries bound by the corresponding earlier Acts alone. The country would generally *not* be bound by any of the administrative and final clauses of earlier Acts which have nothing to do with its relations with the said other countries but merely with the Secretariat and other administrative and formal matters. As already stated, it is believed that all this is so evident that it would not be worth while burdening the text of the Convention by stating it in the text of the Stockholm Act. However, if there are doubts in this respect at the Stockholm Conference, it will be necessary to complete the text of the Stockholm Act accordingly.

154. The closing of the earlier Acts to separate accession (that is, without accession also to the Stockholm Act) would occur on the day on which the Stockholm Act enters into force.

155. By that Act is meant the *entirety* of the Act. In other words, it will be possible to accede to the Lisbon Act even after the new administrative provisions have entered into force, if the substantive revision is not yet in force; and, conversely, it will be possible to accede to the Lisbon Act even after the substantive revision has entered into force, if the new administrative provisions are not yet in force.

ARTICLE 16*ter*: NO RESERVATIONS

Subject to the possibilities of exceptions provided for in Article 16(1)*(b)*, ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

ARTICLE 16*quater*: ACCESSION TO EARLIER ACTS

After the entry into force of this Act in its entirety, a country may accede to earlier Acts of this Convention only in conjunction with ratification of, or accession to, this Act.

[*Follows Article 16*quinquies]

COMMENTARY ON ARTICLE 16*quinquies*: TERRITORIES

156. This Article concerns the application of the Convention to certain territories, namely, to territories which do not, themselves, conduct their foreign affairs.

157. The provision corresponds to Article 16*bis* of the Lisbon Act.

158. The proposed changes are intended to bring the provision into conformity with modern territorial clauses and to provide that the function of depositary would be exercised by the Director General rather than by the Swiss Government. Otherwise, the proposed changes are merely of form. (Any notification of territorial application under paragraph (1) would not, of course, take effect prior to the date upon which the country giving the notification became bound.)

COMMENTARY ON ARTICLE 17: IMPLEMENTATION BY DOMESTIC LAW

159. This Article is, word for word, the same as Article 17 of the Lisbon Act.

ARTICLE 16*quinquies*: TERRITORIES

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3) *(a)* **Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under such paragraph shall take effect one month after its notification by the Director General.**

(b) **Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.**

ARTICLE 17:
IMPLEMENTATION BY DOMESTIC LAW

(1) Every country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time an instrument of ratification or accession is deposited on behalf of a country, such country will be in a position under its domestic law to give effect to the provisions of this Convention.

[*Follows Article 17*bis]

COMMENTARY ON ARTICLE 17*bis*: DENUNCIATION

160. This Article deals with denunciation.

161. *Paragraphs (1)* to *(3)* constitute a redraft of paragraphs (1) and (2) of Article 17*bis* of the Lisbon Act, in order to make them more logical and clear. In particular, it would be specified that denunciation of the proposed Act shall constitute denunciation of all previous Acts as well. If it were not so, any country could denounce the Stockholm Act only and thereby " revive " earlier Acts.

162. *Paragraph (4)* of the proposed new text has no equivalent in the Lisbon Act. A somewhat similar provision exists in the Berne Convention (Article 29(3) of the Brussels Act). The provision has the advantage that it makes more difficult hasty decisions on behalf of countries which have not belonged to the Union for a sufficiently long time to have experience to rely on.

COMMENTARY ON ARTICLE 18: APPLICATION OF EARLIER ACTS

163. This Article deals with the question of what provisions, particularly which Acts, countries bound by the Stockholm Act must apply in their relations with other members of the Union.

164. *Paragraph (1)* is an adaptation of Article 18(3) of the Lisbon Act which reads as follows: " The present Act (i.e., the Lisbon Act) shall, as regards the relations between the countries to which it applies, replace the Convention of Paris of 1883 and the subsequent acts of revision. " The adaptation consists in the insertion, in the proposed text, of the words " and to the extent that it applies. " This addition is necessary because, by virtue of Article 16(1)*(b)*, it is possible that a country which has ratified or acceded to the Stockholm Act has limited the effects of its ratification or accession to part only of the provisions of the Stockholm Act. In relations between such a country and any other country of the Union, the Stockholm Act would replace the earlier Acts *only to the extent* that the said country accepted the Stockholm Act, in other respects the relations being governed by the provisions of paragraphs (2) and (3) of the Article under consideration (that is, Article 18).

165. *Paragraph (2)* is an adaptation of paragraphs (4) and (5) of Article 18 of the Lisbon Act. The adaptation consists of inserting the words " or does not apply in its entirety " in subparagraph *(a)*, and " in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1) " in all three subparagraphs. The reason for these additions is the same as that given in the preceding paragraph: the former Acts may be applicable either in toto or only in part. They will be applicable in toto between countries which are not bound by the Stockholm Act or are bound by portions of it, these portions not being the same for each country. If, however, these portions are the same for each country, the earlier Acts will govern in part, that is, only to the extent that their provisions are not superseded by the corresponding provisions of the Stockholm Act.

166. *Paragraph (3)* deals with the situation in which a country outside the Union accedes to the Stockholm Act, and thereby becomes a member of the Union, but does not accede to any of the earlier Acts. The question is what are the relations, if any, between this country and a country which is already a member of the Union—because it has accepted one or more earlier Acts—but which has not acceded to the Stockholm Act (not even to some of the provisions of the Stockholm Act). Obviously, the Stockholm Act cannot establish any rules in respect to the latter country—that is, on the question of what provisions, if any, the latter country would apply vis-à-vis the former country—since the rules would be in an Act, the Stockholm Act, which that country had not accepted. On the other hand, there seems to be no obstacle to writing a rule into the Stockholm Act concerning the question of what provisions a country *accepting* the Stockholm Act must apply vis-à-vis members of the Union which are not bound by the Stockholm Act. The proposed rule is that the Stockholm Act must be applied by such a country but the obligation would exist only within the limits of reciprocal protection. In other words, if any of the other countries refuses to grant protection to the country bound by the Stockholm Act—and nothing would prevent it from refusing a protection which it is not obliged to grant—then (and to the extent of the refusal) the country bound by the Stockholm Act could also refuse protection to such other country.

ARTICLE 17*bis*: DENUNCIATION

(1) This Convention shall remain in force for an indefinite time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

ARTICLE 18: APPLICATION OF EARLIER ACTS

(1) The present Act shall, as regards the relations between the countries to which it applies, and to the extent that it applies, replace the Convention of Paris of March 20, 1883, and the subsequent Acts of revision.

(2) *(a)* **As regards the countries to which the present Act does not apply, or does not apply in its entirety, but to which the Lisbon Act of October 31, 1958, applies, the latter shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).**

(b) **Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act applies, the London Act of June 2, 1934, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).**

(c) **Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act, nor the London Act applies, the Hague Act of November 6, 1925, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).**

(3) Countries outside the Union which accede to the present Act without also acceding to any of the earlier Acts shall, subject to reciprocal protection, apply the present Act in their relations with countries of the Union which are not party to this Act or which, although party to this Act, have made a declaration as permitted by Article 16(1)*(b)***.**

[*Follows Article 19*]

COMMENTARY ON ARTICLE 19: SIGNATURE, ETC.

167. This Article deals with the signing, the safekeeping, and the languages, of the Stockholm Act (paragraphs (1) and (2)), transmittal of copies (paragraph (3)), registration with the Secretariat of the United Nations (paragraph (4)), and various notifications (paragraph (5)).

168. *Paragraph (1)* maintains the tradition according to which the signed copy is a single copy, is in French, and is deposited with the host Government of the Conference (*subparagraph (a)*). Whereas the Lisbon Act calls the texts in other languages " official translations, " the proposed text calls them " authoritative texts " (*subparagraph (b)*). This change necessitates a clarification as to which text should prevail if there are differences among the several texts and a dispute arises as to their interpretation. The clarification is contained in *subparagraph (c)* which provides that, in such a case, the French text will prevail. Both the expression " authoritative text " and the clarification as to which text prevails follow the precedent set by the Berne Convention (Article 31 of the Brussels Act). An innovation, anticipating the possible wishes of countries of Arab, Chinese, Hindi, or other languages not expressly named in subparagraph *(b)*, is constituted by the rule, now proposed, that the Assembly may order the establishment of authoritative texts in addition to the texts in the English, German, Italian, Portuguese and Spanish languages (already mentioned in the Lisbon Act), and the Russian language (whose addition has become a matter of course since the accession of the Union of Soviet Socialist Republics to the Paris Convention in 1965).

169. *Paragraph (2)* means that any country wishing to sign the Stockholm Act may do so either on the last day of the Stockholm Conference or any time thereafter during a period of six months.

170. *Paragraph (3)* provides that certified copies of the Stockholm Act will be transmitted to the Governments of the various countries. Since the transmittal will be effected by the Director of BIRPI (see Article 20(1)) or, once the first Director General of the proposed new Organization has assumed office, by the Director General of the Organization, but the original, signed copy will be entrusted to the care of the Swedish Government, the paragraph provides that the Swedish Government will certify the conformity of the copies with the original.

171. *Paragraph (4)* implements an obligation existing under Article 102(1) of the Charter of the United Nations which provides that " every treaty and every international agreement entered into by any Member of the United Nations after the present [U.N.] Charter comes into force shall as soon as possible be registered with the Secretariat [of the United Nations] and published by it. "

172. *Paragraph (5)* deals with notifications and seems to be self-explanatory. The provision should be read together with Article 20(1) according to which the tasks entrusted to the Director General will be carried out by the Director of BIRPI until the first Director General of the proposed new Organization assumes office.

ARTICLE 19: SIGNATURE, ETC.

(1) *(a)* **This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.**

(b) **Authoritative texts shall be established by the Director General, after consultation with the interested Governments, in the English, German, Italian, Portuguese, Russian and Spanish languages, and such additional languages as the Assembly may designate.**

(c) **In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.**

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

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations as soon as possible.

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments, entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 16*quinquies***.**

[*Follows Article 20*]

COMMENTARY ON ARTICLE 20: TRANSITIONAL PROVISIONS

173. This Article contains transitional provisions. It has four paragraphs. The first three paragraphs deal with three different periods: paragraph (1), with the period which will elapse until the first Director General assumes office; paragraph (2), with a period of five years after the entry into force of the Convention establishing the proposed new Organization; paragraph (3), with a period which will end when all members of the Union have become Members of the said Organization. Paragraph (4) provides for certain consequences when this last event has occurred.

174. *Paragraph (1)* provides in essence that, until the first Director General has assumed office, references, in the Stockholm Act, to the International Bureau of the proposed new Organization and its Director General must be understood as references to BIRPI and its Director. One of the examples of the application of this provision consists in the requirement of communicating copies of the Stockholm Act to Governments. This task is assigned in the proposed Stockholm Act to the Director General (Article 19(3)) but, as long as there is no Director General, the task will be carried out by the Director of BIRPI.

175. *Paragraph (2)* would—during five years after the entry into force of the Convention establishing the proposed new Organization—allow countries of the Union not bound by the administrative provisions (Articles 13 to 13*quinquies*) of the Stockholm Act to exercise the rights which these administrative provisions otherwise give only to countries which have accepted them. It follows from the Draft of the Convention establishing the Organization that it would enter into force when ten members of the Paris Union and seven members of the Berne Union have accepted both that Convention and the new administrative provisions of the Paris or Berne Conventions as revised at Stockholm. An Assembly of ten members in the Paris Union would hardly be representative. This is why it is proposed to allow even those countries of the Paris Union which are not yet bound by the new administrative provisions to vote in the Assembly, be elected as members of the Executive Committee, vote in the Executive Committee, and exercise all the other rights which would otherwise flow from acceptance of Articles 13 to 13*quinquies*. Pursuant to a similar provision in the Convention establishing the Organization, such countries could, in that Organization too, exercise during the same five years the rights which otherwise can be exercised only by States having accepted that Convention (see document S/10, Article 14(3)*(a)*). The countries which, at the expiration of the five-year period, are still not bound by Articles 13 to 13*quinquies* would lose these rights at the end of the fifth year. It is to be expected, however, that by then the number of the countries bound by the new administrative provisions would be considerably higher than ten.

176. *Paragraph (3)* means, in essence, that, as long as there are countries members of the Paris Union which have not become Members of the Organization, the Secretariat will act both as the International Bureau referred to in the earlier Acts and as the International Bureau referred to in the Convention establishing the proposed new Organization. The Draft of that Convention contains parallel provisions (see document S/10, Article 19(2)). There is no incompatibility between the functions of the present Secretariat and the future Secretariat since all that the present Secretariat is supposed to do is included among the functions of the future Secretariat. Consequently, there seems to be no practical difficulty in having the same—physically the same, because it would comprise the same staff, building, and facilities—Secretariat with a dual legal identity. It is true that, in respect to the supervision of the Secretariat, there is a difference, since the present Secretariat is supervised by the Swiss Government and the future Secretariat would be supervised by all the Member States. Still, no difficulty in practice is expected. On the one hand, the difference is more apparent than real as the Member States—since the creation of the Interunion Coordination Committee in 1962—have had a considerable *de facto* influence on the supervision of the Secretariat: the " advices " of that Committee cover almost all matters concerning the Secretariat (budget, program, appointment of the Director) and they have hitherto been generally followed by the Swiss Government as supervisory authority. On the other hand, at the 1966 Committee, the representatives of the Swiss Government declared that during this transitory period—when the Secretariat operates under two different systems of supervision—the Swiss Authorities would do their utmost to see that their decisions coincided with the decisions of the new supervisory authorities.

177. *Paragraph (4)* contains provisions which will become applicable when the transitory period referred to in paragraph (3) has ended, that is, when all the countries of the Union have become Members of the proposed new Organization. At that moment, the International Bureau, as established by the 1883 Act of the Paris Convention, will cease to exist, the rights and obligations going over to the Organization. The draft of the Convention establishing the Organization contains the required parallel provisions (see document S/10, Article 19(3)*(a)*).

[*End of Commentary.*]

Document S/3, page 58

ARTICLE 20: TRANSITIONAL PROVISIONS

(1) Until the first Director General assumes office, references in the present Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the International Bureau of the Union, united with the Bureau of the Union established by the International Convention for the Protection of Literary and Artistic Works, or its Director, respectively.

(2) Countries of the Union not bound by Articles 13 to 13 ***quinquies*** **may, until five years after the entry into force of the Convention establishing the International Intellectual Property Organization, exercise, if they so desire, the rights provided under Articles 13 to 13*****quinquies*** **of the present Act as if they were bound by those Articles.**

(3) As long as there are countries of the Union which have not become Members of the Organization, the International Bureau of the Organization and the Director General shall also function as the Bureau of the Union, united with the Bureau of the Union established by the International Convention for the Protection of Literary and Artistic Works, and its Director, respectively.

(4) Once all the countries of the Union have become Members of the Organization, the rights and obligations of the Bureau of the Union shall devolve on the Organization.

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

DONE AT STOCKHOLM, on July 14, 1967.

[Here will follow the names of the States Members of the Paris Union invited to the Stockholm Conference, each name being preceded by the words "for the Government of," and followed by a blank space reserved for the signature or signatures.]

[End of Proposed Text]

CORRIGENDUM TO DOCUMENT S/3 (1)

1. After further study and consultation, BIRPI has, at the request of the Government of Sweden, prepared the present document, containing certain changes in document S/3, concerning proposals for revising the administrative provisions and the final clauses of the Paris Convention.

Change in Proposed Article 16*quater*

2. *It is proposed that Article 16quater, as appearing in document S/3, should read as follows:*

After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.

3. Article 16*quater*, as appearing in document S/3, would have provided that after the entry into force of the Stockholm Act in its entirety, a country may accede to earlier Acts only in conjunction with ratification of, or accession to, the Stockholm Act.

4. The proposed provision as hereby modified would mean that at the time of the entry into force of the Stockholm Act earlier Acts of the Convention are "closed." Consequently, a country outside the Paris Union can, up to that time, join the Union by acceding to the Stockholm Act or to the Lisbon Act but after the entry into force of the Stockholm Act such country can join the Union only by acceding to the most recent Act, i.e., the Stockholm Act. This is in agreement with the present practice, according to which States join the Union by acceding to the most recent Act. Moreover, this proposal follows the example of Article 28(3) of the Berne Convention as carried over into the proposals for the Stockholm Act of that Convention (see Doc. S/9/Corr. 1).

Change in Proposed Article 18

5. *It is proposed to omit paragraph (3) of Article 18, as appearing in document S/3.*

6. Paragraph (3) of Article 18, as appearing in document S/3, would have dealt with the situation of countries acceding to the Stockholm Act "without also acceding to any of the earlier Acts." Since accession *also* to earlier Acts was a possibility dealt with in Article 16*quater*, as proposed in document S/3, and since it is now proposed to delete, in Article 16*quater*, the reference to accession *also* to earlier Acts, the paragraph under consideration must be deleted too as it deals with a possibility which is no longer contemplated.

7. It is to be noted that after the deletion of paragraph (3), the rules concerning the application of earlier Acts would, in their essence, remain the same as they are today, under the Lisbon Act (see paragraphs (3) to (6) of Article 18 of the Lisbon Act).

CORRIGENDUM TO DOCUMENT S/3 (2)

The last two sentences of paragraph 176 of the Commentary (page 58 of the document) should be replaced by the following text:

"The difference is more apparent than real, as the Member States—since the creation of the Interunion Coordination Committee in 1962—have had a considerable *de facto* influence on the supervision of the Secretariat: the "advices" of that Committee cover almost all matters concerning the Secretariat (budget, program, appointment of the Director) and they have hitherto been generally followed by the Swiss Government as supervisory authority. At the 1966 Committee, the Head of the Swiss Delegation made the following statement in this connection: '...It will therefore be necessary for these two supervisory authorities to agree. I think I can say that the Swiss Government will not seek to cause any difficulties; but we feel it is our duty to call this problem to the attention of the authorities responsible for preparing the final drafts for the Stockholm Conference'."

Document S/3, page 60

DOCUMENT S/4

MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF TRADEMARKS AND SERVICE MARKS

(MADRID AGREEMENT: TRADEMARKS)

Proposals for Revising the Administrative Provisions and the Final Clauses

(Prepared by BIRPI, at the Request of the Government of Sweden)

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INTRODUCTION

THE PRESENT DOCUMENT

1. The agenda of the Intellectual Property Conference of Stockholm includes the matter of *administrative and structural reforms* in the International Union for the Protection of Industrial Property (Paris Union, sometimes referred to as "the General Union") and the Special Unions established by some of the countries members of the Paris Union. One of these Special Unions was created by the Madrid Agreement of April 14, 1891, concerning the International Registration of Trademarks (hereinafter referred to as "the Madrid Union" or "the Special Union"), last revised at Nice on June 15, 1957. (The text resulting from that revision will hereinafter be referred to as "the Nice Act.") The proposed administrative and structural reforms would extend also to the International Union established by the Berne Convention for the Protection of Literary and Artistic Works ("Berne Union").

2. The administrative and structural reforms would be effected by revising, at the Stockholm Conference, the Conventions and Agreements of the various Unions and by establishing a new intergovernmental organization, hereinafter referred to as "the proposed new Organization."

3. The Draft Convention concerning the establishment of the proposed new Organization is set out and commented upon in document S/10, whereas the proposed revisions of the existing Conventions and Agreements are dealt with in documents S/3 to S/9.

4. The present document (S/4) deals with the revisions proposed to be effected in the Agreement of the Madrid Union, more precisely, in its most recent text, that is, the Nice Act.[1] These revisions would relate not only to administrative and structural matters but also to the *final clauses*. Every revision results in a new Act and requires final clauses dealing with the signing, languages and ratification of, accession to and entry into force of, the new Act, and other similar formal matters concerning the new Act.

5. The proposals made in the present document for the revision of the Madrid Agreement are, whenever the nature and the existing situation permit, the same as the proposals made in document S/3 for the Paris Union. In order to avoid too much repetition, the Commentary accompanying the present proposals will refer to the Commentary contained in document S/3 whenever this seems to be possible without endangering the easy comprehension of the proposals.

6. Draft resolutions are contained in document S/11, and financial questions not covered by other documents are dealt with in document S/12.

7. The present document was prepared by BIRPI at the request of the Government of Sweden, which will be the host of the Stockholm Conference scheduled to take place from June 12 to July 14, 1967.

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[1] The Nice *Act* is not to be confused with the Nice *Agreement* which was *drawn up*, in 1957, by the same conference which *revised* the Madrid Agreement. The Nice Act deals with the international registration of trademarks, whereas the Nice Agreement deals with classification.

It is to be noted that the 1891 Madrid Conference adopted two Agreements: one created a Union and deals with the international registration of trademarks; the other did *not* create a Union and deals with the prevention of false indications of source. Thus, there are two Madrid Agreements, but only one Madrid Union. This document is concerned only with the latter. The former is dealt with in document S/5.

PREPARATORY MEETINGS

8. The history of the preparatory meetings is related in document S/3 (particularly in paragraphs 6 to 11).

9. The present proposals are based on the views expressed by the Committee of Governmental Experts which met in May 1966 at Geneva, and in which the following member countries of the Madrid Union were represented: Austria, Belgium, Czechoslovakia, France, Germany (Federal Republic), Hungary, Italy, Luxembourg, Monaco, Morocco, Netherlands, Portugal, Rumania, Spain, Switzerland, Yugoslavia. These 16 countries represent more than three-quarters of the present membership of the Special Union.

10. On a few questions—in particular the place of the administrative provisions, the advances to be accorded by the Swiss Government, the application of earlier Acts, the depositary functions, and the transitional provisions—the 1966 Committee asked the drafters of the proposals for the Stockholm Conference to reflect further and come up with proposals. The solutions now proposed for these questions are similar to those proposed in connection with the Paris Convention and are explained in paragraph 15 of document S/3.

11. In the 1966 Committee, suggestions were made that the order of the Articles be re-examined. No changes are proposed in the present draft since it is believed that by adhering to the order of the Nice Act and of the draft presented to the 1966 Committee (see document AA/III/3, Madrid (TM) Addendum) the examination of the present document will be facilitated. Admittedly, however, the order of at least those Articles now numbered from 10 to 14 could be made more logical, and the numbering could be altered to avoid the repetition of the same number with Latin suffixes (10, 10*bis*, 10*ter*, 10*quater*; 11, 11*bis*). The drafting committees of the Stockholm Conference may wish to deal with these questions.

GENERAL DESCRIPTION OF THE PROPOSED REVISIONS IN THE ADMINISTRATIVE PROVISIONS

12. The main objective of the revisions proposed in the Madrid Agreement is similar to that of the revisions proposed in the Convention of its "parent" Union, that is, the Paris Union (see document S/3, paragraphs 16 to 28). The objective is to modernize the structure, administration, and finances, of the Special Union. This would be accomplished mainly by giving to the member countries the same, full powers of policy making, decision, and control, as they customarily have in most other intergovernmental organizations and which they lack to a great extent in the Madrid Union.

13. The main changes proposed would:

- create an *Assembly* of the member countries of the Madrid Union;
- transfer the *supervision of the activities of the International Bureau* connected with the Madrid Union from the Government of one country to the Assembly of all the member countries;
- do the same with the *supervision of the accounts* of the International Bureau concerning the Madrid Union;
- do the same with the *approval of the program and budget* of the Madrid Union;
- institute a more *flexible system for fixing the fees* payable for the international registration of trademarks;
- make the *modification of administrative provisions* easier and simpler.

Creation of an Assembly

14. (a) In the present situation, the Madrid Union has no Assembly of member countries, at least not in the sense in which the word "Assembly" is used in other intergovernmental organizations where an

Assembly is the policy-making, supreme body of an organization or union. The 1957 revision conference of the Madrid Union, held at Nice, decided on the creation of a "Committee of the Directors of the National Industrial Property Offices of the Special Union." However, the Committee's functions are mainly consultative. In two respects the Committee has also some powers of decision, namely, in modifying the fees and the Regulations. However, the former power may be exercised only "subject to the general jurisdiction of the High Supervisory Authority," that is, the Swiss Government. See Article 10 of the Nice Act.

(b) Under the proposed reform, the Committee of Directors would be replaced by an Assembly of States and the Assembly would have the customary powers. The Swiss Government would not have special powers over it. The Assembly would, in particular and as far as the Madrid Union is concerned: fix the international registration fees; determine the program and the budget; supervise the International Bureau; exercise the ultimate control of the accounts; amend the administrative provisions of the Agreement (cf. proposed Article 10).

Supervision of Certain Activities of the International Bureau

15. (a) In the present situation, the activities of the International Bureau are supervised by the Swiss Government, as the Paris Convention places the International Bureau "under the high authority of the Government of the Swiss Confederation" (see Article 13(1) of the Lisbon Act of the Paris Convention).

(b) Under the proposed reform, the activities of the International Bureau—as far as the Madrid Union is concerned—would be supervised not by one country but by all member countries, through the Assembly (cf. proposed Article 10(2)(a)(v)).

Supervision of Accounts

16. (a) In the present situation, the Swiss Government supervises the accounts of the International Bureau (see Article 13(10) of the Lisbon Act of the Paris Convention).

(b) Under the proposed reform, the auditing of the accounts would be effected by auditors appointed not by one country but by all member countries, through their Assembly (cf. proposed Article 10*ter*(8)).

Program and Budget

17. (a) In the present situation, the program and the budget of the International Bureau concerning the Madrid Union (as well as all the other Unions administered by BIRPI) are approved by the Government of Switzerland (cf. Article 13(10) of the Lisbon Act of the Paris Convention).

(b) If the proposed reform is adopted, budget and program will require the approval of the Assembly of the member countries (see proposed Article 10(2)(a)(iv)).

More Flexible System for Fixing the Fees

18. (a) In the present situation, the fees for international registration and renewal are written into the text of the Agreement itself (see Article 8(2) of the Nice Act) and the amount of the fees may be modified by the unanimous decision of the Committee of the Directors of the National Industrial Property Offices of the Special Union "subject to the general jurisdiction of the High Supervisory Authority" (see Article 10(2)(4) of the Nice Act).

(b) Under the proposed reform, the fees could be modified by a two-thirds vote of the Assembly of the member countries and the Swiss Government would have no special jurisdiction over the matter (see proposed Article 10(2)(a)(iii) and (3)(e)).

More Flexible Modification of the Administrative Provisions of the Agreement

19. (a) In the present situation, the administrative provisions written into the Agreement can only be changed by the same procedure as the provisions of a substantive nature. This means that the admi-

nistrative provisions, even those of the most ephemeral kind or of very secondary importance, can only be changed at conferences of revision—of which there has been a total of five in 75 years—and, traditionally, only by unanimous vote. This procedure is obviously most impractical.

(b) Under the proposed reform, the amendment of administrative provisions would not have to wait for the rare conferences of revision but could be effected by the Assembly of the member countries of the Madrid Union, normally meeting once every three years. Even under the proposed reform, it would be necessary that the amendments adopted by the Assembly be accepted by the member countries, but, once they have been accepted by three-quarters of the members, the rest would be bound by them as well. Amendments of the administrative provisions would be adopted by a three-fourths vote, except that amendments of the Article concerning the Assembly (proposed Article 10) and of the provision concerning the required majorities for adopting them (proposed Article 10*quater*(2)) would require unanimity.

GENERAL DESCRIPTION OF THE PROPOSED REVISIONS IN THE FINAL CLAUSES

20. By final clauses are meant the provisions contained in Articles 11, 11*bis* and 12 of the Nice Act. In the proposed Stockholm Act two additional articles—Articles 13 and 14—would also contain final clauses.

21. The new final clauses would, naturally, have to deal with the signature and ratification of, accession to, and entry into force of, the Stockholm Act. They would generally follow the same principles as were adopted by earlier Acts, particularly the Nice Act, but at the same time would try to express some of these principles in more clearly worded language.

22. Furthermore, the final clauses proposed for the Stockholm Act would follow the pattern established by the Paris Convention (cf. the proposed Stockholm Act of that Convention contained in document S/3) with respect to the depositary functions. Most of these functions would be entrusted to the Director General of the proposed new Organization rather than to the Swiss Government.

23. Finally, the proposed final clauses would contain a transitional provision, the main feature of which would be that it would allow countries which have not yet ratified or acceded to the Stockholm Act to exercise, during a limited number of years, the same rights as if they had ratified or acceded to the said new Act. Such a provision would allow, in particular, participation and voting in the Assembly of the Special Union.

ARTICLES TO BE REVISED

24. On the pages entitled "Proposed Text," the proposed revisions are indicated in the following manner: all words not appearing in the Nice Act, now proposed as replacements or additions, are printed in heavy type; all words of the Nice Act now proposed to be replaced or omitted are quoted in footnotes under the Article in which they appear in the Nice Act. The text of Articles or paragraphs in which no change is proposed is not reproduced in the present document but a note indicates, in the appropriate place, that "no change is proposed." The text of these provisions as well as of all other provisions of the Nice Act appears in a booklet distributed together with the present document.

25. The proposed Stockholm Act has 27 Articles, the numbers of which—because of the use of Latin suffixes in certain cases—run, however, only from 1 to 14.

26. No changes whatsoever are proposed in Articles 2, 3*ter*, 4, 4*bis*, 5, 5*bis*, 5*ter*, 6, 8*bis*, 9, 9*bis* and 9*ter*.

27. Only formal changes are proposed in Articles 1, 3, 3*bis*, 7, and 9*quater*.

28. The changes proposed in Article 8 are a consequence of the proposal, contained in draft Article 10(2), according to which the modification of the Regulations and of the most important fees would become a task of the Assembly of the Special Union.

29. Articles 10, 10*bis*, 10*ter*, and 10*quater*, contain the new administrative provisions, dealing respectively with the Assembly, the International Bureau, finances, and amendments to these four Articles. They replace Article 10 of the Nice Act.

30. Article 11 deals principally with ratification, accession, and entry into force, matters which, in the Nice Act, are dealt with in the first three paragraphs of Article 12, as well as in Article 11.

31. Article 11*bis* deals with denunciation, as does Article 11*bis* of the Nice Act.

32. Article 12 deals with the application of earlier Acts, a matter which, in the Nice Act, is dealt with in paragraph (4) of the Article of the same number.

33. Article 13 deals with signature, languages, and other such formal matters, whereas Article 14 contains transitory provisions. Both are articles which have no counterpart in the Nice Act.

34. As can be seen, wherever reasonable—and sometimes at the expense of a more logical presentation—the proposed text follows the outline of the Nice Act. On the following pages are reproduced tables of corresponding provisions in order to facilitate comparison of the proposed text with the Nice Act whenever their respective outlines differ.

35. A printed brochure containing the English translation of the Nice Act is annexed to the present document. The translation differs in respect of a few details from translations published earlier by BIRPI. The differences are the result of efforts to render more accurately the original French, which is the only official language of the Nice Act.

[*End of Introduction*]
[*Follow Tables*]

TABLES OF CORRESPONDING PROVISIONS

TABLE I

showing which provisions in the Nice Act deal with matters identical or related to topics dealt with in the provisions of the **proposed Stockholm Act**

PROPOSED STOCKHOLM ACT	NICE ACT
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 3*bis*	Article 3*bis*
Article 3*ter*	Article 3*ter*
Article 4	Article 4
Article 4*bis*	Article 4*bis*
Article 5	Article 5
Article 5*bis*	Article 5*bis*
Article 5*ter*	Article 5*ter*
Article 6	Article 6
Article 7	Article 7
Article 8(1)	Article 8(1)
(2)	Article 8(2)
(3)	Article 8(3)
(4)	Article 8(4)
(5)	Article 8(5)
(6)	Article 8(6)
Article 8*bis*	Article 8*bis*
Article 9	Article 9
Article 9*bis*	Article 9*bis*
Article 9*quater*	Article 9*quater*
Article 10(1)(a)	Article 10(2),first sentence
(b) and (c)	—
(2)(a)(i) and (ii)	—
(iii)	Articles 8(2),(7),(8),(9); 10(1),(4)(a)(b); and 12(5)
(iv) and (v)	—
(vi)	Article 10(2),second sentence
(vii) to (x)	—
(b)	—
(3)(a) to (d)	—
(e)	Article 10(4)(a) and (b)
(f)	—
(g)	Article 10(4)(c)
(4)(a)	Article 10(2),first sentence
(b) and (c)	—
(5)	—
Article 10*bis*	—
Article 10*ter*	—
Article 10*quater*	—

[*Follows Continuation of Table I*]

[*Table I, continued*]

PROPOSED STOCKHOLM ACT	NICE ACT
Article 11(1)	Article 12(1)
(2)(a)	Article 11(1),first sentence
(b)	Article 11(2)
(c)	Article 11(3)
(d)	Article 11(4)
(e)	Article 11(5),first subparagraph
(f)	Article 11(5),second subparagraph
(g)	Article 11(6)
(3)	Article 12(1),first sentence and (3)
(4)(a)	Article 12(2)
(b)	Article 12(3)
(5)	Article 11(1),first sentence
(6)	Article 11(1),second sentence
(7)	Article 11(7)
Article 11*bis*(1)	Article 11*bis*,first sentence
(2)	Article 11*bis*,first sentence
(3)	Article 11*bis*,first sentence
(4)	—
(5)	Article 11*bis*,second sentence
Article 12(1)	Article 12(4),first sentence
(2)	Article 12(4),second sentence, first phrase
(3)(a)	Article 12(4),second sentence, second phrase
(b)	Article 12(4),third sentence
(c)	Article 12(4),fourth sentence
Article 13	—
Article 14	—

[*Follows Table II*]

TABLE II

showing which provisions in the **proposed Stockholm Act** deal with matters identical or related to topics dealt with in the provisions of the Nice Act

NICE ACT	PROPOSED STOCKHOLM ACT
Article 1	**Article 1**
Article 2	**Article 2**
Article 3	**Article 3**
Article 3*bis*	**Article 3*bis***
Article 3*ter*	**Article 3*ter***
Article 4	**Article 4**
Article 4*bis*	**Article 4*bis***
Article 5	**Article 5**
Article 5*bis*	**Article 5*bis***
Article 5*ter*	**Article 5*ter***
Article 6	**Article 6**
Article 7	**Article 7**
Article 8(1)	**Article 8(1)**
(2)	**Articles 8(2) and 10(2)(a)(iii)**
(3)	**Article 8(3)**
(4)	**Article 8(4)**
(5)	**Article 8(5)**
(6)	**Article 8 (6)**
(7)	**Article 10(2)(a)(iii)**
(8)	**Article 10(2)(a)(iii)**
(9)	**Article 10(2)(a)(iii)**
Article 8*bis*	**Article 8*bis***
Article 9	**Article 9**
Article 9*bis*	**Article 9*bis***
Article 9*ter*	**Article 9*ter***
Article 9*quater*	**Article 9*quater***
Article 10(1)	**Article 10(2)(a)(iii)**
(2),first sentence	**Article 10(1)(a) and (4)**
second sentence	**Article 10(2)(a)(vi)**
(3)	**Article 10(2)**
(4)(a)	**Article 10(2)(a)(iii) and (3)(e)**
(b)	**Article 10(2)(a)(iii) and (3)(e)**
(c)	**Article 10(3)(g)**
Article 11(1),first sentence	**Article 11(2)(a),(3) and (5)**
second sentence	**Article 11(6)**
(2)	**Article 11(2)(b)**
(3)	**Article 11(2)(c)**
(4)	**Article 11(2)(d)**
(5),first subparagraph	**Article 11(2)(e)**
second subparagraph	**Article 11(2)(f)**
(6)	**Article 11(2)(g)**
(7)	**Article 11(7)**
Article 11*bis*, first sentence	**Article 11*bis*(1),(2) and (3)**
second sentence	**Article 11*bis*(5)**
Article 12(1)	**Article 11(1) and (3)**
(2)	**Article 11(4)(a)**
(3)	**Article 11(3) and (4)(b)**
(4),first sentence	**Article 12(1)**
second sentence,	
first phrase	**Article 12(2)**
second phrase	**Article 12(3)(a)**
third sentence	**Article 12(3)(b)**
fourth sentence	**Article 12(3)(c)**
(5)	**Article 10(2)(a)(iii)**

[*End of Tables*]

PROPOSED TEXT

AND

COMMENTARY

COMMENTARY

COMMENTARY ON THE TITLE OF THE AGREEMENT

36. The present title of the Agreement in its only official (French) version is "*Arrangement de Madrid concernant l'enregistrement international des marques de fabrique ou de commerce.*" This is the title which the Agreement had when it was originally adopted in 1891. It has not been changed since.

37. While it is recognized that, taken in its broader sense, the expression "*marques de fabrique ou de commerce*"—which is rendered in English by the single word "trademark"—may apply to service marks as well as to marks of "manufacture and commerce" (or, in English, "trademark"), the latter expression is sometimes employed in its stricter sense only, that is, in relation to signs used only on goods and not also on services. Thus, for example, the Lisbon Revision Conference of 1958 introduced into the text of the Paris Convention the expression "service marks" (see Article 1(2) of the Lisbon Act) alongside the expression "trademarks."

38. It is for this reason that it is now proposed to complete the title of the Agreement by adding the words "*et des marques de services*" in French. Since, in English, the French expression "marques de fabrique ou de commerce" is rendered by the sole word "trademark," the English title would become "Madrid Agreement concerning the International Registration of Trademarks and Service Marks."

39. An alternative solution would be to leave in the title only the word "Marks" ("*marques,*" in French). In this case, the French title would read "*Arrangement de Madrid concernant l'enregistrement international des marques,*" and the English title, "Madrid Agreement Concerning the International Registration of Marks." This title would have the advantage of being shorter. It would have the disadvantage of being less explicit. In any case, it could be justified by the wording of the first sentence of the Agreement (Article 1(1)) which uses the expression "marks," without any further specification.

COMMENTARY ON ARTICLE 1

40. No change is proposed in paragraph (1).

41. As far as *paragraph (2)* is concerned, it is proposed that the name of the International Bureau ("of *Industrial* Property," in the earlier Acts) be changed in order to reflect the change in the name of the International Bureau ("of *Intellectual* Property") when the Convention establishing the proposed new Organization comes into force.

42. No change is proposed in paragraph (3).

PROPOSED TEXT

MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF TRADEMARKS AND SERVICE MARKS[1]

ARTICLE 1

(1) [*No change is proposed.*]

(2)[2] Nationals of any of the contracting countries may, in all the other countries parties to this Agreement, secure protection for their marks applicable to goods or services, registered in the country of origin, by filing the said marks at the International Bureau **of Intellectual**[3] Property (**hereinafter designated as " the International Bureau") referred to in the Convention establishing the International Intellectual Property Organization (hereinafter designated as "the Organization")**,[4] through the intermediary of the Administration of the said country of origin.

(3) [*No change is proposed.*]

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[1] The words "**and Service Marks**" do not appear in the title of the Agreement as originally adopted or in any of its later, revised Acts.

[2] Words which do not appear in the Nice Act are printed in heavy type.

[3] The words "**of Intellectual**" used here replace the words "*for the Protection of Industrial*" used in the Nice Act.

[4] The words printed in heavy type do not appear in the Niçe Act.

COMMENTARY ON ARTICLE 2

43. No change is proposed in the text of this Article, which would thus remain the same as it is in the Nice Act.

COMMENTARY ON ARTICLE 3

44. The only change proposed in this Article is to replace the reference to Article 13(8) of the Paris Convention, in paragraph (5), by reference to Article 13*quater*(4)(a) of the same Convention, since the provisions which constitute Article 13(8) in the Lisbon Act would, in the proposed Stockholm Act, appear in Article 13*quater*(4)(a) (see document S/3).

45. The possibility of a change is referred to in paragraph (2) of the Article under consideration, the paragraph which refers to the "Nice Agreement concerning the International Classification of Goods and Services to which Trademarks are Applied." In the document containing proposals for the revision of the Nice Agreement (document S/7), it is proposed that the title of that Agreement be changed to "Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Trademarks and Service Marks." If this proposal is accepted by the Stockholm Conference, paragraph (2) would have to be changed accordingly.

COMMENTARY ON ARTICLE 3*bis*

46. As already stated (paragraph 22, above), and as will be seen in particular from Article 13, it is proposed that all the usual depositary functions—except that of safekeeping the original signed copy of the Stockholm Act—be entrusted to the Director General of the proposed new Organization rather than to the Government of Switzerland. One of these functions would be to receive and communicate the notifications concerning the adoption, by any member country, of the system provided for by Articles 3*bis* and 3*ter*. The only changes proposed in Article 3*bis* would reflect the said change in the identity of the depositary.

COMMENTARY ON ARTICLE 3*ter*

47. No change is proposed in the text of this Article, which would thus remain the same as in the Nice Act.

ARTICLE 2

[*No change is proposed.*]

ARTICLE 3

(1) [*No change is proposed.*]

(2) [*No change is proposed, except that if the title of the Nice Agreement is changed as proposed in document S/7, then the reference to that Agreement in this paragraph will have to be changed accordingly.*]

(3) [*No change is proposed.*]

(4) [*No change is proposed.*]

(5) In view of the publicity to be given in the contracting countries to registered marks, each Administration shall receive from the International Bureau a number of copies of the said publication[5] free, and a number of copies at a reduced price, in proportion to the number of units **referred to in Article 13*quater*(4)(a)**[6] of the Paris Convention for the Protection of Industrial Property, under the conditions set out in the Regulations. This publicity shall be considered in all contracting countries as fully sufficient, and no other publicity may be required of the applicant.

ARTICLE 3*bis*

(1) Any contracting country may, at any time, notify the **Director General of the International Intellectual Property Organization (hereinafter designated as "the Director General")**[7] in writing that the protection resulting from the international registration shall not extend to that country unless the proprietor of the mark expressly requests it.

(2) This notification shall not take effect until six months after the date of its communication by the **Director General**[8] to the other contracting countries.[9]

ARTICLE 3*ter*

[*No change is proposed.*]

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[5] The publication is the "periodical journal" referred to in the preceding paragraph, that is, the monthly review *Les Marques internationales* published by BIRPI.

[6] The words "**referred to in Article 13*quater*(4)(a)**" used here replace the words "*according to the provisions of Article 13(8)*" used in the Nice Act.

[7] The words "**Director General of the International Intellectual Property Organization (hereinafter designated as 'the Director General')**" used here replace the words "*Government of the Swiss Confederation*" used in the Nice Act.

[8] The words "**Director General**" used here replace the words "*Government of the Swiss Confederation*" used in the Nice Act.

[9] The text here proposed does not contain the following sentence which, in the Nice Act, constitutes the second sentence of paragraph (2) of Article 3*bis*: "*However, this period shall not apply in the case of countries which avail themselves, at the time of their ratification* [of the Nice Act] *or accession* [to the Nice Act] *of the faculty provided for in paragraph (1).*"

COMMENTARY ON ARTICLE 4

48. No change is proposed in the text of this Article, which would thus remain the same as it is in the Nice Act.

COMMENTARY ON ARTICLE 4*bis*

49. No change is proposed in the text of this Article, which would thus remain the same as it is in the Nice Act.

COMMENTARY ON ARTICLE 5

50. No change is proposed in the text of this Article, which would thus remain the same as it is in the Nice Act.

COMMENTARY ON ARTICLE 5*bis*

51. No change is proposed in the text of this Article, which would thus remain the same as it is in the Nice Act.

COMMENTARY ON ARTICLE 5*ter*

52. No change is proposed in the text of this Article, which would thus remain the same as it is in the Nice Act.

COMMENTARY ON ARTICLE 6

53. No change is proposed in the text of this Article, which would thus remain the same as it is in the Nice Act.

COMMENTARY ON ARTICLE 7

54. In the Nice Act, *paragraph (3)* of this Article deals with first renewals effected under that Act. Such renewals may take place any time during the first twenty years from the entry into force of the Nice Act (December 15, 1966), that is, any time before December 15, 1986. Since it is to be presumed that during this twenty-year period the Stockholm Act will be in force alone, or together with the Nice Act, it is necessary that the provision relate to renewals effected under either of the two Acts. This is the reason for which it is proposed that the provision speak about first renewals effected "under the provisions of the Nice Act of June 15, 1957, or of this Act," the words "this Act" referring, of course, to the proposed Stockholm Act.

ARTICLE 4

[*No change is proposed.*]

ARTICLE 4*bis*

[*No change is proposed.*]

ARTICLE 5

[*No change is proposed.*]

ARTICLE 5*bis*

[*No change is proposed.*]

ARTICLE 5*ter*

[*No change is proposed.*]

ARTICLE 6

[*No change is proposed.*]

ARTICLE 7

(1) [*No change is proposed.*]

(2) [*No change is proposed.*]

(3) The first renewal effected **under the provisions of the Nice Act of June 15, 1957, or**[10] of this Act, shall include an indication of the classes of the International Classification to which the registration relates.

(4) [*No change is proposed.*]

(5) [*No change is proposed.*]

[10] The words "**under the provisions of the Nice Act of June 15, 1957, or**" used here replace the words "*after the entry into force*" used in the Nice Act.

COMMENTARY ON ARTICLE 8

55. This Article deals with the amounts of the three kinds of international fees (basic fee, supplementary fee, complementary fee) payable for international registration: the basic fee is always payable; the supplementary fee is payable only when the registration relates to goods or services which are classified in more than three classes of the International Classification; the complementary fee is payable when the application includes a request for protection in one or more countries which have made use of the faculty provided for in Article 3*bis*.

56. In the Nice Act, the amount of each of these three kinds of fees is specified in the text itself of the Agreement (Article 8(2)(a), (b) and (c)). As will be seen in connection with Article 10, it is now proposed that the *amounts* of the said fees be fixed in the Regulations, Regulations whose modification would be one of the duties and rights of the Assembly, that is, a body consisting of all the member countries of the Special Union which have ratified or acceded to the Stockholm Act. Under the Nice Act, the amounts of the fees may be changed by a unanimous decision of the Committee of the Directors of the National Industrial Property Offices of the Special Union, a Committee which, under the Stockholm Act, would be replaced by the Assembly. The Assembly could change the amounts of the fees by a two-thirds majority (see proposed Article 10(2)(a)(iii) and (3)(e)), that is, under easier conditions than the requirement of unanimity. The easing of the conditions seems to be indicated in an era in which the value of most currencies is less stable than it was when the unanimity rule was invented, in the last decade of the last century. It is to be noted that the expenses of the Madrid Union are entirely supported from fees paid by the individual applicants and that, unlike members of the Paris Union, the member countries of the Madrid Union pay no contributions. Consequently, changes in the fees cannot cause expense to Governments. They can, of course, modify the amount of the dividends that the Government of each member country receives, if the income of the International Registration Service maintained by the International Bureau exceeds its expenditure (see *paragraph (4)* of the Article under consideration). If the trend of the last seventy-five years continues and the value of currencies diminishes while the fees are increased, then, of course, the Assembly is more likely to increase than to reduce the fees and such increases would increase the dividends of the Governments of the member countries.

57. Naturally, as long as a country is not bound by the proposed Stockholm Act, it will continue to be bound by the Nice Act or the London Act, under which fees can be changed only by unanimous consent. In the case of applications originating in such countries, therefore, only such fees could be charged as have not been objected to by any of these countries.

58. As far as the proposed change in *paragraph (2)* is concerned, it is to be noted finally that the Assembly would receive only the power of modifying the *amounts* of the fees but would not have the power to change the *system* of fees. The latter is left untouched, so that the three kinds of fees are maintained, as is the method of compulsory distribution of the entire amount of the supplementary and complementary fees and of the profits made on the basic fees.

59. Naturally, the rules of such distribution of moneys collected under the proposed Stockholm Act can apply only to the Governments of countries parties to the Stockholm Act. Distribution of moneys collected for applications originating from countries bound only by the Nice Act or only by the London Act would follow the rules of the Nice Act or the London Act, as the case may be. This principle is expressed in the Nice Act in paragraph (4) which refers to the London Act of 1934 and the Hague Act of 1925. No country is bound any longer by the Hague Act, so that it is proposed, in the Stockholm Act, to omit reference to the Hague Act and insert a reference to the Nice Act. The reference to the London Act would have to remain unless, by the time of the signature of the Stockholm Act, all of the few countries which have not yet ratified or acceded to the Nice Act have done so. The changes proposed in the second sentence of paragraph (4) are intended to produce the result outlined above.

60. *Paragraph (5)* contains a rule on the mode of distribution, among member countries, of the income derived from supplementary fees. By a reference, contained in paragraph (6), to paragraph (5), the same rule applies also to the income derived from complementary fees. Since these two kinds of fees were introduced by the Nice Act, that Act provided that the income derived from these fees was to be divided among the countries parties to "this Act," *this* Act meaning the Nice Act. Since the Stockholm

ARTICLE 8

(1) [*No change is proposed.*]

(2) Registration of a mark at the International Bureau shall be subject to the advance payment of an international fee which will include:

(a) a basic fee[11];

(b) a supplementary fee[12] for each class of the International Classification, beyond three, in which the goods or services to which the mark is applied will be placed;

(c) a complementary fee[13] for any request for extension of protection in accordance with Article 3*ter*.

(3) [*No change is proposed.*]

(4) The annual returns from the various receipts from international registration, with the exception of those provided for under (b) and (c) of paragraph (2), shall be divided equally among the countries parties to this Act by the International Bureau, after deduction of the expenses and charges necessitated by the carrying out of the said Act. If, at the time this Act enters into force, a country has not yet **ratified or acceded to this Act,**[14] it shall be entitled, until the date of entry into force of its **ratification or**[15] accession, only to a share of the excess of receipts calculated on the basis of **that earlier Act which is applicable to it.**[16]

(5) The amounts derived from the supplementary fees provided for in paragraph (2)(b) shall be divided at the expiration of each year among the countries parties to this Act **or the Nice Act of June 15, 1957,**[17] in proportion to the number of marks for which protection has been applied for in each of them during that year, this number being affected, in the case of countries which make a preliminary examination, by a coefficient which shall be determined by the Regulations.

(6) [*No change is proposed.*]

[*Follows Article 8(7)*]

[11] In the Nice Act, the words "a basic fee" are followed by the words "*of 200 Swiss francs for the first mark, and of 150 Swiss francs for each additional mark filed at the same time as the first.*" It is proposed to omit the latter words.

[12] In the Nice Act, the words "a supplementary fee" are followed by the words "*of 25 Swiss francs.*" It is proposed to omit the latter words.

[13] In the Nice Act, the words "a complementary fee" are followed by the words "*of 25 Swiss francs per country.*" It is proposed to omit the latter words.

[14] The words "**ratified or acceded to this Act**" used here replace the words "*acceded either to the Hague Act or to the London Act*" used in the Nice Act.

[15] The words "**ratification or**" do not appear in the Nice Act.

[16] The words "**that earlier Act which is applicable to it**" used here replace the words "*the earlier Acts*" used in the Nice Act.

[17] The words "**or the Nice Act of June 15, 1957**" do not appear in the Nice Act.

Act would maintain the same fees but "this Act," in the Stockholm Act, would no longer mean the Nice Act but the Stockholm Act, it is necessary to refer to the Nice Act by name. Consequently, it is proposed to insert, after the words "this Act" (meaning, now, the Stockholm Act), the words "or the Nice Act of June 15, 1957."

61. In the Nice Act, this Article has three more paragraphs ((7), (8), and (9)). It is proposed that they be omitted in the proposed Stockholm Act. These three paragraphs deal with the possibility of paying the basic fee in two instalments. The provision is considered as one concerning a procedural detail which would more appropriately find its place in the Regulations (see proposed Article 10(2)(a)(iii)).

COMMENTARY ON ARTICLE 8*bis*

62. No change is proposed in the text of this Article, which would thus remain the same as it is in the Nice Act.

COMMENTARY ON ARTICLE 9

63. No change is proposed in the text of this Article, which would thus remain the same as it is in the Nice Act.

COMMENTARY ON ARTICLE 9*bis*

64. No change is proposed in the text of this Article, which would thus remain the same as it is in the Nice Act.

COMMENTARY ON ARTICLE 9*ter*

65. No change is proposed in the text of this Article, which would thus remain the same as it is in the Nice Act.

COMMENTARY ON ARTICLE 9*quater*

66. Two changes are proposed in this Article, both for the replacement of the references to the Swiss Government by references to the Director General of the proposed new Organization. The changes are justified by the proposed transfer of the relevant depositary functions to the Director General. See, also, the commentary on Articles 3*bis* and 13.

[*Article 8, continued*]

(7) [*It is proposed that this paragraph be* **omitted.**]

(8) [*It is proposed that this paragraph be* **omitted.**]

(9) [*It is proposed that this paragraph be* **omitted.**]

ARTICLE 8*bis*

[*No change is proposed.*]

ARTICLE 9

[*No change is proposed.*]

ARTICLE 9*bis*

[*No change is proposed.*]

ARTICLE 9*ter*

[*No change is proposed.*]

ARTICLE 9*quater*

(1) If several countries of the Special Union agree to effect the unification of their domestic laws relating to marks, they may notify the **Director General**[18]:

(a) that a common Administration is substituted for the national Administration of each of them, and

(b) that the whole of their respective territories must be considered as a single country for the purposes of the application of all or part of this Agreement.

(2) This notification shall not take effect until six months after the date of its communication by the **Director General**[19] to the other contracting countries.

[18] The words "**Director General**" used here replace the words "*Government of the Swiss Confederation*" used in the Nice Act.

[19] The words "**Director General**" used here replace the words "*Government of the Swiss Confederation*" used in the Nice Act.

COMMENTARY ON ARTICLE 10

67. This Article deals with the Assembly of the Madrid Union. It follows closely the pattern which, it is proposed, Article 13 of the Stockholm Act of the Paris Convention should establish by instituting an Assembly for the Paris Union.

68. The Article consists of five paragraphs dealing with composition and representation (paragraph (1)), tasks (paragraph (2)), voting (paragraph (3)), sessions (paragraph (4)), and rules of procedure (paragraph (5)).

69. *Paragraph (1)(a)* establishes the Assembly and defines its composition.

70. The Assembly would replace the Committee of the Directors of the National Industrial Property Offices of the Madrid Union (hereinafter referred to as the "Committee of Directors"). It appears logical to have as the supreme organ of a Union consisting of countries, and not industrial property offices, a body in which the countries are represented rather than in which the Directors of the national industrial property offices sit. Any country may, of course, designate as its delegate, or as one of its delegates, the Director of its national industrial property office. Most countries would probably do just that since the nature of the tasks of the Assembly would make such a designation perfectly logical. The proposed provision would not exclude such designations. It would merely make them optional rather than compulsory.

71. Only countries which have ratified or acceded to the *Stockholm Act* would be members of the Assembly, which is natural since the Assembly would be instituted by the Stockholm Act. However, the provision should be read together with the transitional provisions, particularly the proposed Article 14(2), by virtue of which even those countries of the Special Union which will not be among the five countries whose ratifications or acceptances will bring into force the Stockholm Act will have the same right to sit and vote in the Assembly as the countries which have caused the entry into force of the Stockholm Act. And this right they will have for five years after the entry into force of the Convention establishing the proposed new Organization. It is to be expected that by the end of this period—which will probably be longer than five years from the entry into force of the Stockholm Act of the Madrid Agreement (as that entry into force requires a smaller number of acceptances than the entry into force of the Convention establishing the proposed new Organization)—all or most of the countries parties to the Madrid Agreement will have accepted the Stockholm Act of that Agreement.

72. *Paragraph (1)(b)* seems to be self-explanatory. It is of the customary kind.

73. *Paragraph (1)(c)* follows the tradition and the present situation prevailing in the meetings of the Madrid Union: whereas the travel expenses and the subsistence allowance, or per diem, of one delegate per country is borne by the Union itself, all other expenses of such delegate, as well as all expenses of any additional members of delegations, are borne by the country appointing them.

74. *Paragraph (2)(a)* deals with the powers and the tasks of the Assembly. They are somewhat broader than those of the Committee of Directors. The functions of the latter are described by the Nice Act as "consultative" (Article 10(3)) although the same Act gives power to the Committee of Directors to change the amounts of the fees provided for in Article 8 (see Article 10(4)(a)) and to establish and amend the Regulations ("*Règlement d'exécution,*" in French; see Article 10(4)(b)). The power to change the fees, however, is given only "subject to the general jurisdiction of the High Supervisory Authority" (Article 10(4)(a)), that is, the Swiss Government. The Stockholm Act would remove this limitation and vest the same powers in the Assembly (item (iii)). It would also give the Assembly the usual general powers of Assemblies, including, in particular, the power to determine the program and to adopt the budget of the Special Union, and the power to approve its final accounts (item (iv)). Furthermore, the Assembly would deal with all matters concerning the maintenance and the development of the Madrid Union and the implementation of the Madrid Agreement (item (i)). These and the powers given under items (ii) and (v) to (x) are similar to the powers given, in relation to the Paris Union, to the Assembly of the Paris Union, and are explained in detail in paragraphs 55 to 66 of the Commentary contained in document S/3.

ARTICLE 10 [ASSEMBLY][20]

(1)(a) The Special Union shall have an Assembly consisting of the countries which have ratified or acceded to this Act.

(b) The Government of each country shall be represented by one or more delegates who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each Delegation shall be borne by the Government which has appointed it, except that the cost of travel and the subsistence allowance of one delegate for each member country shall be paid from the funds of the Special Union.

(2)(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of its Agreement;

(ii) give directions to the International Bureau concerning the preparation for conferences of revision;

(iii) modify the Regulations, including the fixation of the amounts of the fees referred to in Article 8(2);

(iv) determine the program and adopt the triennial budget of the Special Union and approve its final accounts;

(v) review and approve reports and activities of the Director General concerning the Special Union, and give instructions to him on such matters;

(vi) establish such committees as may be considered necessary for the work of the Special Union;

(vii) determine which countries outside the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(viii) adopt amendments to Articles 10 to 10*quater*;

(ix) take any other appropriate action designed to further the objectives of the Special Union;

(x) exercise such other functions as are allocated to it.

[*Follows Article 10(2)(b)*]

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[20] Articles 10, 10*bis*, 10*ter*, and 10*quater*, here proposed replace Article 10 of the Nice Act, which reads as follows:

"(1) The Administrations shall by common accord regulate the details for carrying out this Agreement.

"(2) There shall be established, at the International Bureau, a Committee of the Directors of the National Industrial Property Offices of the Special Union. It shall meet upon convocation by the Director of the International Bureau or at the request of five countries, parties to the Agreement, at intervals of not more than five years. It shall appoint from among its members a limited Council to which specified tasks may be assigned and which shall meet at least once a year.

"(3) The functions of this Committee are consultative.

"(4) However:

(a) subject to the general jurisdiction of the High Supervisory Authority, it may, on the reasoned proposal of the Director of the International Bureau, and with the unanimous consent of the countries represented, change the amounts of the fees provided for in Article 8 of this Agreement;

(b) it shall establish and amend, with the unanimous consent of the countries represented, the Regulations of this Agreement;

(c) the Directors of the National Industrial Property Offices may delegate their powers to the representative of another country."

75. *Paragraph (2)(b)* contains a reference to the Coordination Committee of the proposed new Organization. The International Bureau will continue to serve not only the Madrid Union but also all the other Unions presently administered by BIRPI. In the present situation, coordination is achieved through the Swiss Government and the advice of the existing Coordination Committee. Under the proposals, the Government of Switzerland would no longer play a special role in this respect but the Coordination Committee would continue to do so. Its role would still be merely advisory since the powers of decision would be vested in the Assemblies. The proposed provision is merely a reminder that the advice should be considered before action is taken. There is no obligation for the Assembly of the Madrid Union to follow the advice. It may ignore it.

76. *Paragraph (3)(a)* provides that each country shall have one vote. This is a corollary of the equality of sovereign countries, which all members of the Special Union are.

77. *Paragraph (3)(b)* provides that one-third of the members constitutes a quorum. The same quorum is provided for the Assembly of the Paris Union (see paragraph (3)(b) of Article 13 of the proposed Stockholm Act of the Paris Convention in document S/3).

78. *Paragraph (3)(c),(d), and (e),* deals with the majorities required for decision in the Assembly. The majority is *two-thirds* in two cases: admission of observers (subparagraph (d)), and any modification of the Regulations, including the fixation of the amounts of the international registration and renewal fees (subparagraph (e)). More is said about the latter matter in paragraph 56, above. Subparagraph (c) also refers to Article 10*quater*(2) according to which amendment of the proposed new administrative provisions (Articles 10 to 10*quater*) requires either *unanimity* or a *three-fourths* majority. It is to be noted that the provision does *not* deal with the question of voting on the revision of any other provisions—particularly the substantive provisions — of the Madrid Agreement, since their revision is not effected by the Assembly but by special revision conferences.

79. *Paragraph (3)(f)* provides, as customary, that abstentions shall not be considered as votes.

80. *Paragraph (3)(g)* excludes voting by proxy. The Nice Act provides that the Director of the national industrial property office of one country may delegate his vote to the Director of the national industrial property office of another country (see Article 10(4)(c) of the Nice Act). Whereas such delegation—although unusual—may be justified on the grounds that it would be between colleagues who know each other personally, it could hardly be justified in the Assembly, which is a body consisting of countries and not of individuals occupying similar official positions in their respective countries.

81. *Paragraph (4)(a)* deals with the ordinary sessions of the Assembly, and *paragraph (4)(b)* deals with its extraordinary sessions. In view of parallel provisions in the Conventions or Agreements of the other Unions, as well as in the Convention establishing the proposed new Organization, the ordinary sessions of the General Assembly of the Organization and the Assemblies of the Unions would take place once every three years and would normally be held during the same week or weeks in the same place. These measures are dictated by the obvious need for keeping expenses as low as possible both for the International Bureau and for the delegations attending the meetings. The Nice Act provides that the Committee of the Directors should meet at intervals of not more than five years (see Article 10(2) of the Nice Act). This interval is considered to be too long. Besides, the proposed Stockholm Act does not provide for the constitution of a Council (which would presumably meet more frequently), as does the Nice Act, since it is believed that the membership of the Madrid Union is not too high to transact all business in the Assembly of all the member countries. However, should the creation of a smaller body become desirable, an Executive Committee or Council could be created by virtue of the proposed Article 10(2)(a)(vi).

82. *Paragraph (4)(c)* provides that the agenda of each session shall be prepared by the Director General.

83. *Paragraph (5),* providing that the Assembly adopts its own rules of procedure, corresponds to established custom in comparable bodies.

[*Article 10(2), continued*]

(b) In exercising its functions with respect to matters which are of interest also to other Unions whose administrative tasks or administration is entrusted to the Organization, the Assembly shall take into consideration the advice of the Coordination Committee of the Organization.

(3)(a) Each country member of the Assembly shall have one vote in the Assembly.

(b) One-third of the countries members of the Assembly shall constitute a quorum.

(c) Subject to the provisions of subparagraphs (d) and (e) and Article 10*quater*(2), the Assembly shall make its decisions by a simple majority of the votes cast.

(d) Decisions to admit to meetings as observers countries outside the Special Union, as well as intergovernmental and international non-governmental organizations, shall require at least two-thirds of the votes cast.

(e) Any modification of the Regulations, including the fixation of the amounts of the fees referred to in Article 8(2), shall require at least two-thirds of the votes cast.

(f) Abstentions shall not be considered as votes.

(g) Each delegate may represent, and vote in the name of, one country only.

(4)(a) The Assembly shall meet once in every third calendar year in ordinary session, upon convocation by the Director General, preferably during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session, upon convocation by the Director General, at the request of one-fourth of the countries constituting the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

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

COMMENTARY ON ARTICLE 10*bis*

84. This Article deals with the International Bureau as far as the secretariat tasks for the Madrid Union are concerned.

85. The Article consists of four paragraphs dealing with the tasks of the International Bureau in general (paragraph (1)), with the participation of the Bureau in the meetings of the Assembly and possible committees of the Madrid Union (paragraph (2)), with the preparation of and participation in conferences of revision (paragraph (3)), and with other tasks (paragraph (4)).

86. *Paragraph (1)(a)* refers to the International Bureau by which, as is indicated in Article 1(2) is meant the International Bureau of Intellectual Property, that is, the Secretariat of the proposed new Organization. The main tasks of the International Bureau in connection with the Madrid Agreement are the carrying out of the international registration and related duties—for example, the publication of *Les Marques internationales*, the official journal of the Madrid Union—and "all other international administrative tasks"—for example, the notification of refusals—connected with the carrying out of the Madrid Agreement. In connection with the Madrid Agreement, there are two kinds of administrative tasks, national and international. The first are carried out by the national Industrial Property Offices. The transmittal of applications for international registration is among these tasks. The international tasks are carried out by the International Bureau. The receiving and notification of refusals are among these tasks. The word "international" in the quoted passage is designed to emphasize that the International Bureau is concerned only with the latter—that is, the international—tasks.

87. *Paragraph (1)(b)* provides that the International Bureau shall act as the secretariat of the Assembly, and any committee, of the Special Union. *Paragraph (2)* expressly provides that the International Bureau shall participate, without the right to vote, in the meetings of such bodies.

88. *Paragraph (1) (c)* is a corollary of paragraph (1)(b). Since the International Bureau is the Secretariat of the Special Union, the Director General—head of the International Bureau—must also be the chief administrative officer of the Special Union, and must be able to represent the Special Union, as he does the proposed new Organization as such.

89. As to *paragraph (2)*, see the observations contained in paragraph 87, above.

90. *Paragraph (3)* concerns the role of the International Bureau in the preparation of conferences of revision (*subparagraph (a)*) and in the meetings themselves of these conferences (*subparagraph (b)*). This role would be the same as that played by the International Bureau in connection with the revision conferences of the Paris Convention (see Article 13*ter*(8) of the proposed Stockholm Act of the Paris Convention, document S/3).

91. *Paragraph (4)* is self-explanatory.

ARTICLE 10*bis* [INTERNATIONAL BUREAU][21]

(1)(a) The international registration and related duties, as well as all the other international administrative tasks with respect to the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall provide the secretariat of the Assembly and of such committees as may have been established by the Assembly.

(c) The Director General of the Organization shall be the chief administrative officer of the Special Union and shall represent the Union.

(2) The International Bureau shall participate, without the right to vote, in the meetings of the Assembly and of such committees as may have been established by the Assembly.

(3)(a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of the provisions of the Agreement other than Articles 10 to 10*quater*.

(b) The Director General or persons designated by him shall take part in the discussions at these conferences, but without the right to vote.

(4) The International Bureau shall carry out any other tasks assigned to it.

[21] See footnote 20, above. This Article is intended also to replace Article 12(5) of the Nice Act, reading as follows: "*The International Bureau shall, in agreement with the countries concerned, provide for the administrative measures of adaptation which will be called for with a view to carrying out the provisions of this Agreement.*"

COMMENTARY ON ARTICLE 10*ter*

92. This Article deals with finances.

93. It consists of eight paragraphs dealing with: the definition of the budget (paragraph (1)), a reminder of the need of coordination with the budgets of the other Unions (paragraph (2)), the sources of income (paragraph (3)), special provisions concerning the international registration fees (paragraph (4)), other fees and charges due for other services performed by the International Bureau (paragraph (5)), the working capital fund of the Special Union (paragraph (6)), advances by the Government of the country on whose territory the Organization has its headquarters (paragraph (7)), and the auditing of accounts (paragraph (8)).

94. *Paragraph (1)(a)* provides that the Special Union shall have a budget, that is, a budget of its own, separate and distinct from the budget of the other Unions and from the budget of the proposed new Organization as such.

95. *Paragraph (1)(b)* implies that the budget expenses of the Union should be grouped under two main headings: (i) the *proper* expenses of the Special Union (for example, the expenses of a meeting dealing with matters exclusively relating to the Madrid Union, the salaries of employees of the International Bureau working exclusively on matters concerning the Madrid Union and the Madrid Union only, the cost of printing of the official journal of the Madrid Union, *Les Marques internationales*), and (ii) the share of the Special Union in the *common* expenses.

96. *Paragraph (1)(c)* defines the notion of "common expenses." These are expenses which are incurred by the International Bureau not only in the sole interest of the Special Union but also in the interest of the other Unions administered by it, or in the interest of the Organization as such (particularly its Conference). The share of the Madrid Union in these common expenses will be in proportion to the interest of that Union in such expenses. The provision parallels similar provisions in the proposed new administrative provisions of the other Unions (see, for example, as far as the Paris Union is concerned, document S/3, Article 13*quater*(1)(c)) and in the Convention establishing the proposed new Organization (document S/10, Article 10(1)(c)). Examples of such common expenses would be the salary of the Director General and other members of the staff who serve all the Unions and the Organization as such; the expenses relating to the common financial, personnel, mailing, telephone, typing and translation services, and the maintenance of the headquarters building.

97. *Paragraph (2)* provides that the budget of the Special Union must be established with due regard to the requirements of coordination with the budgets of the various other Unions and with the budget of the Organization as such. In view of the existence of common expenses, as defined above, the necessity of coordination is manifest.

98. *Paragraph (3)* enumerates, under four items, the sources of income of the Union. The first, and the most important, consists of fees and other charges. The text distinguishes between two kinds of fees: international registration fees and other fees. By *international registration fees* are to be understood the fees referred to in Article 8(2) of the Nice Act—that is, the basic fee, the supplementary fee, and the complementary fee—as well as the fees payable for the renewal of the international registration. These latter fees are exactly the same as the fees payable for the first international registration (see Article 7(1) of the Nice Act). By *other fees* are meant fees which, according to the Regulations, are payable for other operations concerning the International Register. For example, the recording of assignments would fall into this category. Finally, the text speaks about *charges due for other services*—meaning other than services concerning the registration itself—performed by the International Bureau in relation to the Special Union. Charges for the reports on identical or similar marks, produced after search by the International Bureau, are an example of what is meant under "charges due for other services."

99. Sale of publications (item (ii)) includes the income derived from subscription fees to *Les Marques internationales*. Items (iii) and (iv) seem to be self-explanatory.

100. *Paragraphs (4) and (5)* deal with the procedure of establishing the amount of the fees and charges: paragraph (4) with the procedure concerning the international registration fees (that is, the fees referred to in Article 8(2)), and paragraph (5) with the procedure concerning the other fees and charges.

ARTICLE 10*ter* [FINANCES][22]

(1)(a) The Special Union shall have a budget.

(b) The budget of the Special Union shall include the proper expenses of the Special Union itself and its share in the common expenses, as defined in the following subparagraph.

(c) Expenses attributable not exclusively to the Special Union but also to one or more other Unions administered by the Organization, or also to the Organization as such, shall be considered as common expenses. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the various Unions administered by the Organization and with the budget of the Organization as such.

(3) The budget of the Special Union shall be financed from the following sources:

(i) international registration fees and other fees and charges due for other services performed by the International Bureau in relation to the Special Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;

(iii) gifts, bequests, and subventions;

(iv) rents, interests, and other miscellaneous income.

(4)(a) The amounts of the fees referred to in Article 8(2) shall be proposed by the Director General and shall be fixed by the Assembly.

(b) The amounts of such fees shall be so fixed that the revenues of the Special Union from fees and other sources shall be at least sufficient to cover the expenses of the International Bureau for maintaining the international registration service.

[*Follows Article 10*ter*(5)*]

[22] See footnote 20, above.

101. The amount of the international registration fees shall be fixed by the Assembly, on the proposal of the Director General (*subparagraph (4)(a)*). As to the voting on this question, see paragraph 78, above.

102. *Subparagraph (4)(b)* provides in effect that the amount of such fees must be fixed at a level sufficiently high to permit the Special Union to be self-supporting if all its revenue is put together. The provision is particularly important since the Madrid Union—unlike the Paris Union—is not supported by the contributions of its member countries but must rely solely on the revenues produced by the services performed by the International Bureau for the "private clients" of the Registration Service. The number of registrations is the prime factor influencing the revenue. This number is subject to considerable variations, depending primarily on the general economic situation of the member countries of the Madrid Union. In order for the Union to be able to achieve a financial balance, it is therefore necessary to act relatively rapidly and without too many procedural difficulties, to follow the variations in the number of registrations. In other words, it is necessary that the procedure for changing the amounts of the fees be relatively flexible. This is the reason for proposing that the fees be fixed by the Assembly rather than written into the Agreement, and that these fees be fixed by a two-thirds majority rather than by unanimity (see Article 10(3)(e)).

103. *Paragraph (5)* provides that the other fees and the amount of the charges due for services other than those directly concerning the international registration be fixed by the Director General. The revenues derived from these fees and charges represent only a small fraction of the income of the Special Union, whose main source of income, by far, is constituted by the international registration fees referred to in Article 8(2). Although the amounts of the other fees and charges would be a matter for the decision of the Director General, ultimate control would be in the hands of the member countries since it is provided that the Director General must report to the Assembly whenever he establishes new rates for the said other fees and charges.

104. *Paragraph (6)* deals with the question of a working capital fund. Subparagraphs (a), (b) and (c) deal with the constitution of such a working capital fund but subparagraph (d) provides, in effect, that its constitution may be delayed under certain conditions.

105. The constitution of a working capital fund would be a one-time operation, unless, later, exceptional circumstances—such as a considerable depreciation in the value of the currency in which the working capital fund is kept—require that it be brought up to normal level.

106. The working capital fund would be constituted from payments made by the member countries (*subparagraph (a)*), and the amount of the sum which each country would have to pay would be proportionate to its yearly contribution towards the budget of the Paris Union (*subparagraph (b)*). Thus, for example, a country belonging to Class I in the Paris Union would have to pay into the working capital fund of the Madrid Union a sum which is 25 times larger than the sum which a country belonging to Class VII would have to pay. The details of the constitution of this fund would be determined by the Assembly of the Madrid Union both as to the amount of the working capital fund (expressed in a fraction or multiple of the yearly contributions in the Paris Union) and the terms of payment (*subparagraph (c)*; see also document S/12).

107. At the end of 1965, the Madrid Union had a reserve fund of approximately 1,538,000 Swiss francs (US $356,000). It is conceivable that, without major prejudice to the purpose to be served by a reserve fund, part of this money could be used as a working capital fund. *Subparagraph (d)* provides for this very possibility: should the Assembly, in its wisdom, authorize the use of part of the reserve fund of the Madrid Union as a working capital fund, then—as long as such authorization would stand and the amounts thus authorized would be sufficient—the Assembly of the Madrid Union may suspend the application of the provisions concerning the constitution of a working capital fund, that is to say, it may delay, *sine die*, such constitution.

108. *Paragraphs (7) and (8)* deal with advances to be granted to the International Bureau by the Swiss Government and with the auditing of accounts. The provisions are similar to those proposed for the Paris Convention (see document S/3, Article 13*quater*(7) and (8)) and are explained in paragraphs 114 and 115 of the Commentary contained in document S/3.

[*Article 10*ter, *continued*]

(5) The amount of other fees and of charges due for other services rendered by the International Bureau in relation to the Special Union shall be established by the Director General, who shall report on them to the Assembly.

(6)(a) The Special Union shall have a working capital fund which shall be constituted by payments made by the countries of the Special Union.

(b) The amount of the payment of each country shall be proportionate to its annual contribution as a party to the Paris Convention for the Protection of Industrial Property.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee.

(d) As long as the Assembly authorizes the use of part of the reserve fund of the Special Union as a working capital fund, the Assembly may suspend the application of subparagraphs (a), (b), and (c), above.

(7)(a) In the Headquarters Agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

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

(8) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

COMMENTARY ON ARTICLE 10*quater*

109. For the purposes of the procedure of amending the Agreement one has to distinguish between two groups of provisions: (i) the so-called administrative provisions, that is, Articles 10 to 10*quater*, and (ii) all the other provisions of the Agreement, in particular the so-called substantive provisions (Articles 1 to 9*quater*). The latter group, however, includes also Articles 11 to 14.

110. Only amendments to the administrative provisions (Articles 10 to 10*quater*) are governed by Article 10*quater*. Amendments to all the other provisions are traditionally designated as "revisions," and are effected by a fundamentally different procedure.

111. The main differences between the procedure of amending the administrative provisions and revising the other provisions are the following:

(i) *Amendments* are discussed in and adopted by the Assembly (Articles 10(2)(a)(viii) and 10*quater*(2)) whereas *revisions* are discussed in and adopted by special conferences of revision. The Assembly consists of member countries which are bound by the provisions to be amended, that is, countries which are bound by the Stockholm Act (see Article 10(1)(a)), since they are the only interested parties. Any conference of revision consists of all the countries of the Special Union, even if they are bound only by Acts earlier than the one to be revised.

(ii) The adoption of *amendments* would require a three-quarters majority, except that any amendment of Articles 10 and 10*quater*(2) would require unanimity. There is no provision in the Agreement on this point as far as *revisions* are concerned. Up to the present time, all revisions have been regarded as requiring unanimity of the countries present and voting; in other words, revisions have been carried if no country has voted against—"vetoed"—them, the number of positive votes being irrelevant. The present draft contains no proposals, so that presumably, and as long as the countries consider it desirable, the traditional system will continue as far as revisions are concerned.

(iii) Countries will become bound by *amendments* when three-quarters of the members of the Assembly have notified their acceptance. This means that, when three-quarters have accepted an amendment, that amendment will then become binding also on the other countries members of the Assembly. The rule is different as far as *revisions* are concerned, as revisions bind only those countries which have communicated their ratification or acceptance.

112. The reason for providing different procedures for amendments and revisions is that the traditional practice of requiring unanimity for revisions seems to be too stiff for amendments. Amendments may be needed urgently to render the administration, the work of the International Bureau, more efficient. Consequently, an easier way than unanimity—over which hangs, like the sword of Damocles, the power of veto by one country out of more than twenty—seems to be eminently reasonable and practical. It is true that even for amendments unanimity would be required when the amendment relates to Article 10 dealing with the Assembly. This exception does not seem to be either customary or necessary. But since the 1965 and 1966 Committees appeared to desire it, it is carried over into the drafts herewith proposed.

113. The Article under consideration (Article 10*quater*) regulates the procedure of *amendments* and consists of three paragraphs dealing with proposals for amendments (paragraph (1)), adoption of amendments (paragraph (2)), and entry into force of amendments (paragraph (3)).

114. *Paragraph (1)* makes it clear that what is involved here is the amendment of the administrative provisions (Articles 10 to 10*quater*), and the administrative provisions only. It also provides, in essence, that members of the Assembly of the Special Union must receive at least six months' advance notice if a proposal for amending the administrative provisions is to be considered by the Assembly.

115. *Paragraph (2)* deals with the majorities required for the adoption, in the Assembly, of amendments to Articles 10 to 10*quater*. The paragraph distinguishes between, on the one hand, amendments to Article 10 (which deals with the Assembly) and to Article 10*quater*(2) (which deals with the very question of majorities required for amendments), and, on the other hand, amendments to the other administrative provisions (that is, Articles 10*bis*, 10*ter*, and, with the exception of its paragraph (2), Article 10*quater*). Whereas amendment to the former would require unanimity, amendment to the latter would require a three-fourths majority.

116. *Paragraph (3)* deals with the question of when countries become bound by the amendments. The question is discussed above, in paragraph 111.

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ARTICLE 10*quater*
[AMENDMENTS TO ARTICLES 10 TO 10*quater*][23]

(1) Proposals for the amendment of Articles 10, 10*bis*, 10*ter*, and the present Article, shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in the preceding paragraph shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided, however, that any amendment of Article 10, and of the present paragraph, shall require the unanimity of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force when written notifications of acceptance have been received by the Director General from three-fourths of the countries members of the Assembly at the time it has adopted the amendment. Amendments to the said Articles thus accepted shall bind all countries which are members of the Assembly at the time the amendment enters into force or which become members thereof at a subsequent date.

[23] See footnote 20, above.

COMMENTARY ON ARTICLE 11

117. This Article, as here proposed, deals with the following: ratification and accession by countries of the Special Union (paragraph (1)), accession by countries outside the Union (paragraph (2)), the deposit of instruments of ratification and accession (paragraph (3)), entry into force of the Stockholm Act (paragraph (4)), the general effects of ratification or accession (paragraph (5)), the question of accession to earlier Acts (paragraph (6)), application of the Stockholm Act to certain territories (paragraph (7)).

118. The Article bearing the same number (that is, 11) *in the Nice Act* deals only with accession by countries *outside* the Special Union. It appears, however, that certain matters dealt with in that Article are of equal interest to countries *of* the Special Union, in particular, accession to at least one of the earlier Acts (namely the Nice Act, since it is conceivable that a country of the Special Union bound only by the London Act may wish to accede both to the Nice and the Stockholm Acts) and application of the Stockholm Act to certain territories. For this reason, and because it seems to be both more practical and logical to deal in the same Article with all ratifications and acceptances—that is, also with those by countries of the Union—and with entry into force and its general effects, the proposed Article 11 deals also with these questions. By doing so it replaces also the provisions contained in the first three paragraphs of Article 12 of the Nice Act, which deal with ratifications by countries of the Union and with entry into force.

119. The Article, as proposed, adopts the same solutions as are proposed in the case of the Paris Convention, whenever applicable (see document S/3).

120. *Paragraph (1)* deals with the methods by which a country already a member of the Madrid Union may become bound by the Stockholm Act of the Madrid Agreement. There are two methods. If such a country has signed the Stockholm Act, it must deposit an instrument of "ratification" if it wants to become bound by the Stockholm Act. If it has not signed the Stockholm Act, it must deposit an instrument of "accession" if it wants to achieve the same result.

121. *Paragraph (2) (a)* deals with the method by which a country not yet a member of the Madrid Union may become bound by the Stockholm Act, and with a condition. The method is "accession." When such a country accedes to the Stockholm Act of the Madrid Agreement, it becomes a member of the Madrid ("Special") Union. The condition is that the country must already be, or must concurrently become, a member of the Paris (or the "General") Union. The same condition exists for all the Special Unions. See, in particular, the first eleven words of Article 11(1) of the Nice Act.

122. *Subparagraphs (b) to (g) of the proposed paragraph (2)* are practically identical with the provisions contained in paragraphs (2) to (6) of Article 11 of the Nice Act. The provisions are now numbered as subparagraphs (hence the insertion of the prefix "sub" in subparagraph (e)) in order to emphasize that they relate only to accessions by countries *outside* the Union (hence the proposed replacement of the word "Agreement" by the word "Act" in subparagraphs (d) and (f)). Another difference between the Nice Act and the proposed text is that whereas paragraph (2) in the former contained a reference to territories, subparagraph (b) of the latter—which corresponds to the said paragraph (2)—does not contain such a reference. It seems, in fact, that such a reference is not necessary in view of paragraph (7) which deals with territories and relates both to the "old" and the "new" members of the Special Union.

ARTICLE 11 [RATIFICATION AND ACCESSION; ENTRY INTO FORCE; ACCESSION TO EARLIER ACTS; TERRITORIES]

(1) Any country of the Special Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it.[24]

(2)(a) Any country outside the Special Union which is party to the Paris Convention for the Protection of Industrial Property may accede to this Act and thereby become a member of this Special Union.[25]

(b)[26] As soon as the International Bureau is informed that **such**[27] a country[28] has acceded to this **Act**[29] it shall address to the Administration of that country, in accordance with Article 3, a collective notification of the marks which, at that moment, enjoy international protection.

(c)[30] This notification shall, of itself, assure to the said marks the benefits of the foregoing provisions in the territory of **such**[31] country, and shall mark the commencement of the period of one year during which the Administration concerned may make the declaration referred to in Article 5.

(d)[32] However, any **such**[33] country when acceding to this **Act**[34] may declare that, except in the case of international marks which have already been the subject in that country of an earlier identical national registration still in force, and which shall be immediately recognized upon the request of the interested parties, the application of this Act shall be limited to marks registered from the date when its accession has entered into force.

(e)[35] Such a declaration shall dispense the International Bureau from making the collective notification referred to above. The International Bureau shall notify only the marks in respect of which it receives, within a period of one year from the accession of the new country, a request, with the

[*Article 11(2)(e) continues*]

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[24] In the Nice Act, paragraph (1) deals with the accession of countries outside the Union. It is quoted in footnote 25, below. In the Nice Act, ratifications are dealt with in Article 12(1) which reads as follows: "*This Agreement shall be ratified and the ratifications shall be deposited at Paris as soon as possible.*"

[25] This subparagraph replaces paragraph (1) of the Nice Act which reads as follows: "*The countries of the Union for the Protection of Industrial Property which have not participated in this Agreement shall be permitted to accede to it at their request and in the form prescribed by Article 16 of the Paris Convention for the Protection of Industrial Property. This accession shall be valid only for the text of the Agreement last revised.*"

[26] In the Nice Act, this provision constitutes paragraph (2).

[27] The word "**such**" does not appear in the Nice Act.

[28] After this word ("country"), the following words appear in the Nice Act but are omitted here: "*or the whole or part of the countries or territories for the external relations of which it is responsible.*"

[29] The word "**Act**" used here replaces the word "*Agreement*" used in the Nice Act.

[30] In the Nice Act, this provision constitutes paragraph (3).

[31] The word "**such**" used here replaces the words "*the acceding*" used in the Nice Act.

[32] In the Nice Act, this provision constitutes paragraph (4).

[33] The word "**such**" does not appear in the Nice Act.

[34] The word "**Act**" here used replaces the word "*Agreement*" used in the Nice Act.

[35] In the Nice Act, this provision constitutes the first subparagraph of paragraph (5).

123. *Paragraph (3)* is self-explanatory.

124. *Paragraph (4)(a)* deals with the initial entry into force of the Stockholm Act. Such entry into force would require five ratifications or accessions. Accessions by countries of or outside the Special Union would be given the same weight in this respect. The same principle is written into the Nice Act (see Article 12(2) of the Nice Act).

125. *Paragraph (4)(b)* deals with entry into force with respect to any country other than the first five referred to in paragraph (4)(a). The provision follows tradition (cf. Article 12(3) of the Nice Act) and seems to be self-explanatory.

[*Article 11(2)(e), continued*]

necessary particulars, for taking advantage of the exception referred to in the preceding **sub**[36]paragraph.

(f)[37] The International Bureau shall not make the collective notification to **the said**[38] countries, which, in acceding to **this Act**,[39] declare that they are availing themselves of the faculty provided for in Article 3*bis*. These countries may also declare at the same time that the application of this Act shall be limited to marks registered from the day on which their accessions enter into force; however, this limitation shall not affect international marks which have already been the subject of an earlier identical national registration in these countries, and which could give rise to requests for extension of protection made and notified in conformity with Article 3*ter* and Article 8(2)(c).

(g)[40] Registrations of marks which have been the subject of one of the notifications provided for in this **paragraph**[41] shall be regarded as replacing registrations directly effected in the new contracting country before the date of entry into force of its accession.[42]

(3) Instruments of ratification and accession shall be deposited with the Director General.[43]

(4)[44]**(a) With respect to the first five countries which have deposited their instruments of ratification or accession, this Act shall enter into force one month after the deposit of the fifth such instrument.**

(b) With respect to any other country, this Act shall enter into force one month after the date on which its ratification or accession has been notified by the Director General, unless the country has indicated a subsequent date in its instrument of ratification or accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

[*Follows Article 11(5)*]

[36] The prefix "**sub**" does not appear in the Nice Act.

[37] In the Nice Act, this provision constitutes the second subparagraph of paragraph (5).

[38] The words "**the said**" do not appear in the Nice Act.

[39] The words "**this Act**" used here replace the words "*the Madrid Agreement*" used in the Nice Act.

[40] In the Nice Act, this provision constitutes paragraph (6).

[41] The word "**paragraph**" used here replaces the word "*Article*" used in the Nice Act.

[42] Paragraph (7) of the Nice Act ("*The provisions of Article 16bis of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement*") is omitted. But see footnote 47, below.

[43] Under the Nice Act, instruments of ratification of that Act were to be deposited at Paris (see Article 12(1) of the Nice Act, quoted in footnote 25, above) whereas instruments of accession were to be deposited with the Government of Switzerland (cf. Article 11(1) of the Nice Act, quoted in footnote 24, above).

[44] This paragraph replaces Article 12(2) and (3) of the Nice Act reading as follows:

"*(2) It* [i.e., the Nice Act] *shall come into force between the countries in whose names it has been ratified or which have acceded to it in accordance with Article 11(1), when twelve countries at least have ratified it or acceded to it, two years after the deposit of the twelfth instrument of ratification or accession has been notified to them by the Government of the Swiss Confederation, and it shall have the same force and duration as the Paris Convention for the Protection of Industrial Property.*

"*(3) In the case of countries which deposit their instruments of ratification or accession after the deposit of the twelfth instrument of ratification or accession, it shall enter into force in accordance with the provisions of Article 16 of the Paris Convention. However, this entry into force shall be subject in all cases to the expiration of the period provided in the preceding paragraph.*"

126. *Paragraph (5)* expressly states a rule which in the Nice Act appeared in the form of a reference to Article 16 of the Paris Convention.

127. *Paragraph (6)* deals with the question of accession to Acts earlier than the Stockholm Act. The corresponding provision in the Nice Act is contained in the last sentence of Article 11(1). That sentence provides in effect that countries outside the Special Union may accede *only* to the Act "as last revised," that is, the Nice Act. It is now proposed that countries whether of or outside the Special Union should be allowed to ratify, or to accede to, the earlier (Nice) Act also, but only in conjunction with acceptance of the Stockholm Act.

128. *Paragraph (7)* constitutes, as it does in the Nice Act, an incorporation, by reference, of the provisions of the Paris Convention concerning territories which do not conduct their own foreign relations.

COMMENTARY ON ARTICLE 11*bis*

129. This Article, *in the Nice Act*, consists of a single paragraph containing two sentences. The first sentence provides in effect that in respect of the matter of denunciation the provisions of the Paris Convention—Article 17*bis* of that Convention—apply. The second sentence deals with the effect of denunciation on certain international registrations.

130. In the *present draft*, it is proposed to replace the *reference* to Article 17*bis* of the Paris Convention by a *repetition*, in the Stockholm Act of the Madrid Agreement, of the provision contained in Article 17*bis* of the Paris Convention. This makes the Article self-contained and thus easier to consult. It also avoids possible difficulties of interpretation if Article 17*bis* is not the same in all the different Acts of the Paris Convention or if its numbering changes.

131. *Paragraphs (1) to (4)* of the text proposed is thus a mere repetition of the four paragraphs of Article 17*bis* of the proposed Stockholm Act of the Paris Convention. For the explanation of the text see paragraphs 160 to 162 of the Commentary contained in document S/3.

132. *Paragraph (5)* of the text proposed is, subject to one minor change, the same as the second sentence of Article 11*bis* of the Nice Act. This change is merely intended to render the wording of the provision clearer.

133. The Nice Act uses the expression "marks ... directly filed ["*déposées*," in the French] in the denouncing ["*ce*" in the French] country." It is clear from the context that what is meant are marks *registered*, which is implied in the French expression "*déposées*" but less clear in the English where the word is rendered by "filed." Consequently, it is proposed that the text speak about marks filed *and registered.*

[*Article 11, continued*]

(5) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.[45]

(6) After the entry into force of this Act, a country may accede to the Nice Act of June 15, 1957, only in conjunction with ratification of, or accession to, this Act. Accession to Acts earlier than the Nice Act shall not be permitted, not even in conjunction with ratification of, or accession to, this Act.[46]

(7) The provisions of Article 16**quinquies**[47] of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

ARTICLE 11*bis* [DENUNCIATION]

(1) This Agreement shall remain in force for an indefinite time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Agreement remaining in full force and effect as regards the other countries of the Special Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Special Union.[48]

(5)[49] International marks registered up to the date on which denunciation becomes effective, and not refused within the period of one year referred to in Article 5, shall continue, throughout the period of international protection, to enjoy the same protection as if they had been directly filed **and registered**[50] **in the denouncing**[51] country.

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[45] In the Nice Act, this rule contained in the Paris Convention (Article 16(3) of the Lisbon Act) is incorporated by a reference to the Paris Convention (cf. Article 11(1) of the Nice Act, quoted in footnote 25, above).

[46] The provision here proposed replaces the second sentence of Article 11(1) of the Nice Act reading as follows: "*This accession* [i.e., any accession by a country outside the Special Union] *shall be valid only for the text of the Agreement as last revised.*"

[47] The suffix "**quinquies**" here used replaces the suffix "*bis*" used in the Nice Act.

[48] Paragraphs (1), (2), (3) and (4) replace the first sentence of Article 11*bis* of the Nice Act which reads as follows: "*In the event of denunciation of this Agreement, the provisions of Article 17bis of the Paris Convention for the Protection of Industrial Property shall apply.*"

[49] The provision which, here, constitutes paragraph (5), constitutes, in the Nice Act, the second sentence of Article 11*bis*. The differences between the two texts are indicated in the following two footnotes.

[50] The words "**and registered**" do not appear in the Nice Act.

[51] The word "*ce*" in the French text has been rendered in English by the words "the denouncing" to bring out the meaning clearly.

COMMENTARY ON ARTICLE 12

134. This Article deals with the application of earlier Acts. It constitutes a restatement of the provisions contained in paragraph (4) of Article 12 of the Nice Act. (The matters dealt with in paragraphs (1), (2) and (3) of Article 12 of the Nice Act are now dealt with in Article 11. As far as paragraph (5) of Article 12 of the Nice Act is concerned, it is proposed that it be omitted in the Stockholm Act. That paragraph deals with measures of "adaptation" necessitated by the Nice Act. Such measures, in the meantime, have been adopted in the transitional Regulations of December 15, 1966.)

135. *Paragraph (1)* is identical with the first sentence of paragraph (4) of the Nice Act.

136. *Paragraph (2)* is identical with the first phrase of the second sentence of paragraph (4) of the Nice Act.

137. *Paragraph (3)(a)* states in what is believed to be a somewhat clearer wording the rule contained in the second phrase of the second sentence of paragraph (4) of the Nice Act. It also limits the rule to countries which have *not* ratified or acceded to the Nice Act since the countries which have done so have already had an occasion to denounce the London Act (no country is bound any longer by any Act earlier than the London Act).

138. *Paragraph (3)(b) and (c)* corresponds to the third and fourth sentences of paragraph (4) of the Nice Act, taking into account the proposal that the applicable depositary functions be transferred from the Government of Switzerland to the Director General of the proposed new Organization.

COMMENTARY ON ARTICLE 13

139. This Article deals with the signing, the safekeeping, and the languages, of the Stockholm Act (paragraphs (1) and (2)), transmittal of copies (paragraph (3)), registration with the Secretariat of the United Nations (paragraph (4)), and various notifications (paragraph (5)).

140. Subject to one substantive difference in paragraph (1)(b), the proposed Article is identical with Article 19 of the proposed Stockholm Act of the Paris Convention in that it leaves the choice of the languages in which authoritative texts may be established to the decision of the Assembly. The difference is that, for the Paris Convention, it is proposed that authoritative texts be established in six specified languages *in any case*, and that the decision of the Assembly is needed only for possible *additional* languages.

ARTICLE 12 [APPLICATION OF EARLIER ACTS]

(1)[52] This Act shall, in all the relations among the countries by which it has been ratified or acceded to, replace, as from the day on which it enters into force with respect to them, the Madrid Agreement of 1891, in its texts earlier than this Act.

(2)[53] However, any country which has ratified this Act or has acceded to it shall remain bound by the earlier texts in its relations with countries which have not ratified it or acceded to it.

(3)(a) Notwithstanding the provisions of paragraph (2), any country which is a party to the London Act of June 2, 1934, and which has not ratified or acceded to the Nice Act of June 15, 1957, may, when it ratifies or accedes to the present Act, declare that it no longer wishes to be bound by the London Act.[54]

(b)[55] This declaration shall be notified to the **Director General.**[56]

(c)[57] It shall not be effective until twelve months after its receipt by the **Director General.**[58]

ARTICLE 13 [SIGNATURE, ETC.][59]

(1)(a) This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Authoritative texts may be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

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

[*Follows Article 13(3)*]

52 In the Nice Act, this provision constitutes the first sentence of paragraph (4).

53 In the Nice Act, this provision constitutes the first phrase of the second sentence of paragraph (4).

54 This provision replaces the second phrase of the second sentence of paragraph (4) of the Nice Act, reading as follows: "*unless that country has expressly declared that it no longer wishes to be bound by those texts.*"

55 In the Nice Act, this provision constitutes the third sentence of paragraph (4).

56 The words "**Director General**" used here replace the words "*Government of the Swiss Confederation*" used in the Nice Act.

57 In the Nice Act, this provision constitutes the fourth sentence of paragraph (4).

58 The words "**Director General**" used here replace the words "*said Government*" used in the Nice Act.

59 There is no Article 13 in the Nice Act.

COMMENTARY ON ARTICLE 14

141. This Article, which consists of two paragraphs, contains provisions which in their substance are identical with the provisions contained in the first two paragraphs of Article 20 of the proposed Stockholm Act of the Paris Convention (see document S/3).

142. The provisions are explained in paragraphs 173 to 175 of the Commentary contained in document S/3.

143. Paragraphs (3) and (4) of Article 20 of the proposed Stockholm Act of the Paris Convention (see document S/3) are not repeated here although they are also applicable in the case of the Madrid Union. The reason for not repeating them here is that they will be applied in any case since they deal with matters concerning the present Bureau of the Paris Union, which is also the administrative organ of the Madrid Union.

[*End of Commentary*]

[*Article 13, continued*]

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Special Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations as soon as possible.

(5) The Director General shall notify the Governments of all countries of the Special Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments, entry into force of any provisions of this Act, denunciations, and notifications pursuant to Articles 3*bis*, 9*quater*, 10*quater*, 11(7), and 12(3).

ARTICLE 14 [TRANSITIONAL PROVISIONS] [60]

(1) Until the first Director General assumes office, references in the present Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the International Bureau of the Union established by the Paris Convention for the Protection of Industrial Property, united with the International Bureau of the Union established by the Berne Convention for the Protection of Literary and Artistic Works, or its Director, respectively.

(2) Countries of the Special Union not having ratified or acceded to this Act may, until five years after the entry into force of the Convention establishing the International Intellectual Property Organization, exercise, if they so desire, the rights provided under Articles 10 to 10*quater* of the present Act as if they had ratified or acceded to this Act.

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

DONE at Stockholm, on July 14, 1967.

[Here will follow the names of the States members of the Madrid Union invited to the Stockholm Conference, each name being preceded by the words "For the Government of," and followed by a blank space reserved for the signature or signatures.]

[60] There is no Article 14 in the Nice Act.

CORRIGENDUM TO DOCUMENT S/4

1. After further study and consultation, BIRPI has, at the request of the Government of Sweden, prepared the present document, containing certain changes in document S/4, concerning proposals for revising the administrative provisions and the final clauses of the Madrid Agreement concerning the International Registration of Trademarks and Service Marks.

Change in Proposed Article 11

2. *It is proposed that paragraph (6) of Article 11, as appearing in document S/4, should read as follows:*

After the entry into force of this Act, a country may not accede to earlier Acts of this Agreement.

3. Article 11 (6), as appearing in document S/4, would have provided that "After the entry into force of this Act, a country may accede to the Nice Act of June 15, 1957, only in conjunction with ratification of, or accession to, this Act. Accession to Acts earlier than the Nice Act shall not be permitted, not even in conjunction with ratification of, or accession to, this Act."

4. The proposal now made is simply repeating the essence of the corresponding provision existing in the Nice Act, which provides that accessions "shall be valid only for the Act of the Agreement as last revised" (Nice Act, Article 11(1), the words "Act of the Agreement as last revised" meaning the Nice Act).

5. Repeating, in the Stockholm Act, the essence of this provision of the Nice Act is proposed because the provision has proved its worth in practice and no innovation seems to be needed.

DOCUMENT S/5

MADRID AGREEMENT FOR THE REPRESSION
OF FALSE OR DECEPTIVE INDICATIONS OF SOURCE

(MADRID AGREEMENT: INDICATIONS OF SOURCE)

Proposals for the Conclusion of an Additional Act

(Prepared by BIRPI, at the Request of the Government of Sweden)

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INTRODUCTION

1. It results from other documents prepared for the Intellectual Property Conference of Stockholm that it is proposed that the depositary functions which at present are carried out by the Government of Switzerland with respect to the International Union for the Protection of Literary and Artistic Works (" Berne Union "), the International Union for the Protection of Industrial Property (" Paris Union "), and the Special Agreements concluded under the Convention of the Paris Union, be entrusted to the International Bureau (see documents S/3, 4, and 6 to 9).

2. The Madrid Agreement for the Repression of False or Deceptive Indications of Source, concluded on April 14, 1891 (hereinafter referred to as " the Madrid Agreement " or " the Agreement "), last revised at the Lisbon Conference in 1958, is one of the Special Agreements concluded under the Paris Convention.[1] The text resulting from this last revision will hereinafter be referred to as " the Lisbon Act. " It is reproduced in a separate booklet, distributed together with the present document.

3. It is proposed that the Stockholm Conference, scheduled to take place from June 12 to July 14, 1967, adopt an Additional Act. It will hereinafter be referred to as " the proposed Stockholm Additional Act " or " the Additional Act. "

4. *The main purpose of the Additional Act is to provide that the depositary functions in relation to the Madrid Agreement*—both as far as the Lisbon Act and the Stockholm Additional Act are concerned—*be, in the future, entrusted to and exercised by the International Bureau*—that is, the Secretariat of the International Intellectual Property Organization whose establishment is proposed to the Stockholm Conference (see document S/10).

5. A secondary purpose of the Additional Act is to adapt certain numerical references, contained in the Lisbon Act, to the Lisbon Act of the Paris Convention, so that they apply to the proposed Stockholm Act of the same Convention.

6. The present document was prepared by BIRPI at the request of the Government of Sweden, which will be the host of the Stockholm Conference.

7. The transfer of the depositary functions to the International Bureau was discussed in preparatory meetings whose composition and history are related in other documents (see, in particular, paragraphs 6 to 15 of document S/3).

8. Among the questions that the last of these preparatory meetings, the Committee of Governmental Experts of May 1966 (Geneva), left open was the question of the proper place of the new administrative provisions. Should they be inserted in the text of the Conventions and Agreements? Or should they constitute a separate protocol? Or should some other solution be found? The drafters of the proposals for the Stockholm Conference were invited to study further the various possible solutions for this purely formal matter and recommend to the Stockholm Conference the solution which seemed to them to be the best.

9. After this further study, BIRPI now recommends that the provision on the transfer of depositary functions be given the form of an " additional act, " which could also be called an " additional protocol, " or a " protocol. " This solution is different from the one proposed in the case of the Madrid, Lisbon and Nice Unions and the Paris and Berne Conventions, where it is proposed that their latest Acts be *revised* rather than *added to* (see documents S/3, 4, and 6 to 9). The reason for proposing for the Madrid Agreement an additional act rather than a revision is that the changes proposed are so much less important than

[1] The Agreement under discussion is not to be confused with another Special Agreement also concluded in Madrid on the same date (April 14, 1891). The latter deals with the international registration of marks and is the subject-matter of document S/4.

in the case of the other Agreements and Conventions—as they practically relate exclusively to some depositary functions—that any modification of the Lisbon Act would seem to be out of proportion to the importance of the change. It would seem to be more logical and more elegant to leave the Lisbon Act as it is, since everything that is important in the field of the repression of false or deceptive indications of source, and, indeed, everything that has to do with this matter, would remain untouched by the Stockholm Conference.

10. The proposed Additional Act consists of seven Articles which fall into two groups. The first group, consisting of Articles 1 and 2, *modifies certain provisions of the Lisbon Act of the Agreement.* The second group, consisting of Articles 3 to 7, constitutes *the final clauses of the proposed Additional Act.*

11. Article 1 provides for the transfer of certain depositary functions from the Swiss Government to the Director General of the proposed new Organization. Article 2 adapts the references which, in the Lisbon Act of the Madrid Agreement, are made to the Lisbon Act of the Paris Convention, so that they fit the proposed Stockholm Act of the Paris Convention.

12. Article 3 provides for the methods by which countries which have ratified or acceded to the Lisbon Act of the Agreement may become bound by the changes effected by the Additional Act, whereas Article 4 provides for the method by which countries which have not ratified or acceded to the Lisbon Act of the Agreement will become bound by the said changes.

13. Article 5 deals with the entry into force of the Additional Act; Article 6, with its signature, and other formal matters; Article 7, with a matter of a transitional nature.

[End of Introduction]

PROPOSED TEXT

AND

COMMENTARY

COMMENTARY

COMMENTARY ON ARTICLE 1

14. This Article provides that instruments of accession to the Lisbon Act of the Madrid Agreement must be deposited with the Director General of the proposed new Organization, and that these accessions must be notified by the Director General to the countries parties to the Agreement.

15. The provision thus supersedes those portions of Articles 5(1) and 6(2) of the Lisbon Act of the Special Agreement which, by references to Article 16 of the Lisbon Act *of the Paris Convention*, provide in effect that countries parties to the Special Agreement (Article 6(2)), and countries becoming parties for the first time to the Special Agreement through accession to the Lisbon Act thereof (Article 5(1)), must deposit their instruments of accession with the Government of the Swiss Confederation. (The Article under consideration speaks only about instruments of *accession* since the time limit for depositing instruments of ratification has already expired (see Article 6(1) of the Lisbon Act)).

16. Naturally, the Swiss Government will remain the depositary of instruments of accession to the Lisbon Act until the Additional Act enters into force.

COMMENTARY ON ARTICLE 2

17. This Article provides that references, in Articles 5 and 6(2) of the Lisbon Act of the Madrid Agreement, to Articles 16, 16*bis*, and 17*bis* of the Lisbon Act of the Paris Convention must be considered as references to those provisions of the Stockholm Act of the Paris Convention which, in that Act, correspond to Articles 16, 16*bis*, and 17*bis*, of the Lisbon Act of the Paris Convention.

18. There are three references of this kind in the Lisbon Act of the Madrid Agreement.

19. *First*, Article 5(1) of the Lisbon Act of the Madrid Agreement refers to Article 16 of the Lisbon Act of the Paris Convention. The reference reads as follows: " *Countries of the Union for the Protection of Industrial Property which have not acceded to this Agreement may accede at their request in the manner prescribed by Article 16 of the General Convention.* " Article 16 of the " General Convention "—that is, the Lisbon Act of the Paris Convention—provides that countries outside the Paris Union may accede to the Paris Convention (paragraph (1)), that the depositary of these instruments of accession is the Swiss Government (paragraph (2)), that accession automatically entails acceptance of all the clauses and admission to all the advantages of the treaty (paragraph (3), first phrase), and that any acceptance enters into force one month after it has been notified to the member countries, unless a subsequent date is indicated

PROPOSED TEXT

ADDITIONAL ACT

ARTICLE 1 [TRANSFER OF DEPOSITARY FUNCTIONS IN RESPECT OF THE MADRID AGREEMENT]

Instruments of accession to the Madrid Agreement for the Repression of False or Deceptive Indications of Source, of April 14, 1891 (hereinafter designated as " the Madrid Agreement "), as revised at Lisbon on October 31, 1958 (hereinafter designated as " the Lisbon Act "), shall be deposited with the Director General of the International Intellectual Property Organization (hereinafter designated as " the Director General "), who shall notify such deposits to the countries parties to the Agreement.

ARTICLE 2 [ADAPTATION OF REFERENCES IN THE MADRID AGREEMENT TO CERTAIN PROVISIONS OF THE PARIS CONVENTION]

The reference, in Articles 5 and 6(2) of the Lisbon Act, to Articles 16, 16*bis*, and 17*bis*, of the General Convention shall be considered as references to those provisions of the Stockholm Act of that Convention which correspond to the said Articles.

(paragraph (3), second phrase). Paragraph (1) is inapplicable because it is a provision which can relate to the Paris Convention only. Paragraph (2) is expressly superseded by Article 1 of the Additional Act now proposed. The provision contained in the first phrase of paragraph (3) would, according to the proposals contained in document S/3, be repeated in Article 16*ter* of the Stockholm Act, whereas the second phrase of paragraph (3) would, according to the same proposals, constitute Article 16*bis* (2) and (3) of the Stockholm Act. Thus, the provisions referred to would be carried over into the Stockholm Act. Consequently, no material change is proposed.

20. *Second,* Article 5(2) of the Lisbon Act of the Madrid Agreement refers to Articles 16*bis* and 17*bis* of the Lisbon Act of the Paris Convention. The reference reads as follows: " *The provisions of Articles 16*bis *and 17*bis *of the General Convention shall apply to this Agreement.* " Article 16*bis* deals with territories, and Article 17*bis* with denunciation. In the proposed Stockholm Act of the Paris Convention, these topics are dealt with in Articles 16*quinquies* and 17*bis*, respectively. With the exception of paragraph (4) of Article 17*bis*, as proposed for the Stockholm Conference, these provisions are, in their essence, identical in the Lisbon Act and the proposed Stockholm Act of the Paris Convention. The said paragraph (4) provides a five-year " waiting period " for denunciation in the case of new accessions. For the explanation, see paragraph 162 of the Commentary in document S/3.

21. *Third,* Article 6(2) of the Lisbon Act of the Madrid Agreement refers—as does Article 5(1), quoted above (see paragraph 19, above)—to Article 16 of the Lisbon Act of the Paris Convention. The reference reads as follows: " *Countries in whose names the instrument of ratification has not been deposited within the period provided for in the preceding paragraph* [i.e., before the entry into force of the Lisbon Act of the Madrid Agreement] *may accede under the terms of Article 16 of the General Convention.* " The said Article 16 is analyzed under paragraph 19, above, and the observations made there also apply here.

COMMENTARY ON ARTICLE 3

22. This Article consists of two paragraphs, dealing with the signature and ratification of, and accession to, the Additional Act (paragraph (1)), and with the deposit of the instruments of ratification or accession (paragraph (2)).

23. It is to be noted that this Article and the rest of the Articles of the proposed Additional Act constitute the final clauses of the *Additional Act itself,* and thus deal with the question of accession, etc., to the Additional Act, whereas the first two Articles of the Additional Act deal, in essence, with the question of accessions to the *Lisbon Act.*

24. *Paragraph (1)* provides that the Additional Act may be ratified, or acceded to, only by countries which have ratified or acceded to the Lisbon Act of the Special Agreement. The provision is limited to these countries because, as will be seen from Article 4, countries which are not parties to the Lisbon Act will automatically—that is, without ratifying or acceding to the Additional Act—become bound by the relevant Articles of the Additional Act when they accede to the Lisbon Act.

25. *Paragraph (2)* provides that instruments of ratification or accession must be deposited with the Director General of the proposed new Organization. The provision should be read together with Article 7, which substitutes the Director of BIRPI for the Director General of the proposed new Organization until the first Director General has assumed office.

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ARTICLE 3 [SIGNATURE AND RATIFICATION OF, AND ACCESSION TO, THE ADDITIONAL ACT]

(1) The present Additional Act may be signed by any country party to the Madrid Agreement and may be ratified, or acceded to, by any country which has ratified or acceded to the Lisbon Act.

(2) Instruments of ratification or accession shall be deposited with the Director General.

COMMENTARY ON ARTICLE 4

26. This Article deals with the way in which countries *which have not ratified or acceded to the Lisbon Act of the Special Agreement* will become bound by Articles 1 and 2 of the Additional Act, that is, by the two Articles which modify the Lisbon Act.

27. Article 4 provides for a way which is automatic: such countries will become bound by Articles 1 and 2 of the Additional Act by the mere fact of acceding to the Lisbon Act of the Special Agreement. In other words, it will not be required of them, and it would be unnecessary for them, to accede also to the Additional Act. For these countries, Articles 1 and 2 of the Additional Act must be regarded as if they had been written into, or had modified, the Lisbon Act of the Special Agreement.

28. It is possible that a country will accede to the Lisbon Act after the Stockholm Conference but before the Additional Act has entered into force. The proviso to the Article under consideration provides that, in such a case, the substitutions provided by Articles 1 and 2 will become effective only when the Additional Act enters into force. This means, for example, that in such a case the instrument of accession would have to be deposited with the Swiss Government. The same country would, however, address its possible denunciation to the Director General if, between the date of its accession and the date of the denunciation, the Additional Act had entered into force.

29. It is to be noted that by " any country which has not ratified or acceded to the Lisbon Act " is meant both countries which are not parties to the Special Agreement and countries parties to any of the Acts earlier than the Lisbon Act of the Special Agreement.

COMMENTARY ON ARTICLE 5

30. This Article deals with the question on what dates the countries ratifying or acceding to the Additional Act will become bound by such Act.

31. It consists of two paragraphs, one dealing with the entry into force of the Additional Act (paragraph (1)), the other with the entry into force of ratifications or accessions after the date of the first entry into force (paragraph (2)).

32. *Paragraph (1)* means that the Additional Act shall enter into force either on the same date on which the Convention establishing the proposed new Organization enters into force, or on the date on which the second country has ratified it (i.e., the Additional Act) or acceded to it. The first will occur if, by the date of entry into force of the said Convention, two or more countries have ratified or acceded to the Additional Act. The second will occur if, by the date of entry into force of the said Convention, no —or only one—country has ratified or acceded to the Additional Act. As to the entry into force of the said Convention, see paragraphs 102 to 105 in document S/10.

33. *Paragraph (2)* deals with the date of entry into force of ratifications or accessions to the Additional Act after the first entry into force of that Act pursuant to paragraph (1). The provision is of the customary kind and seems to be self-explanatory.

34. It is to be noted that no provision is proposed as to the date on which Articles 1 and 2 of the Additional Act will start binding countries which are not bound by the Lisbon Act since it follows from Article 4 that such countries will become bound by the said two Articles on the same day as their accession to the Lisbon Act enters into force. (Until the entry into force of the Additional Act, such countries may accede to the Lisbon Act alone, or both to the Lisbon Act and the Additional Act. After the entry into force of the Additional Act, such countries, by acceding to the Lisbon Act, automatically accept also Articles 1 and 2 of the Additional Act.)

ARTICLE 4 [AUTOMATIC ACCEPTANCE OF ARTICLES 1 AND 2 BY COUNTRIES ACCEDING TO THE LISBON ACT]

Any country which has not ratified or acceded to the Lisbon Act shall become bound also by Articles 1 and 2 of the present Additional Act from the date on which its accession to the Lisbon Act enters into force, *provided, however,* that if, on the said date, the present Additional Act has not yet entered into force pursuant to Article 5(1), then such country shall become bound by Articles 1 and 2 of the present Additional Act only from the date of entry into force of the present Additional Act pursuant to Article 5(1).

ARTICLE 5 [ENTRY INTO FORCE OF THE ADDITIONAL ACT]

(1) The present Additional Act shall enter into force on the date on which the Stockholm Convention of July 14, 1967, establishing the International Intellectual Property Organization has come into force, *provided, however,* that if, by that date, at least two ratifications or accessions to the present Additional Act have not been deposited, then the present Additional Act shall enter into force on the date on which two ratifications or accessions to the present Additional Act have been deposited.

(2) With respect to any country which deposits its instrument of ratification or accession after the date on which the present Additional Act has entered into force pursuant to the preceding paragraph, the present Additional Act shall enter into force one month after the date on which its ratification or accession has been notified by the Director General.

COMMENTARY ON ARTICLE 6

35. This Article deals with the signing and the safekeeping of the Additional Act (paragraphs (1) and (2)), transmittal of copies (paragraph (3)), registration with the Secretariat of the United Nations (paragraph (4)), and various notifications (paragraph (5)).

36. The provisions are generally similar to those proposed for the Stockholm Act of the Paris Convention (see Article 19, in document S/3).

37. It is to be noted that the Additional Act contains no provision on denunciation. It would seem to be unnecessary to provide for one. As long as a country is bound by the Special Agreement, including the Additional Act, it should not be possible for it to denounce only the Additional Act because this would leave—as far as such a country is concerned—the Agreement without a depositary. And once it denounces the Agreement, the Additional Act will have no further purpose for it and will lapse even without formal denunciation.

COMMENTARY ON ARTICLE 7

38. This Article consists of a single paragraph and contains a provision of a transitional nature which is of interest only until the first Director General of the proposed new Organization assumes office. The meaning of the Article, in essence, is that until such time it will be the Director of BIRPI who will have to notify certified copies of the Additional Act and with whom instruments of ratification or accession to the Additional Act will have to be deposited.

[*End of Commentary*]

ARTICLE 6 [SIGNATURE, ETC., OF THE ADDITIONAL ACT]

(1) The present Additional Act shall be signed in a single copy and shall be deposited with the Government of Sweden.

(2) The present Additional Act shall remain open for signature at Stockholm until the date of its entry into force pursuant to Article 5(1).

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of the present Additional Act to the Governments of all countries parties to the Madrid Agreement and, on request, to the Government of any other country.

(4) The Director General shall register the present Additional Act with the Secretariat of the United Nations as soon as possible.

(5) The Director General shall notify the Governments of all countries parties to the Madrid Agreement of signatures, deposits of instruments of ratification or accession, entry into force, and other relevant notifications.

ARTICLE 7 [TRANSITIONAL PROVISION]

Until the first Director General assumes office, references in the present Additional Act to him shall be deemed to be references to the Director of the United International Bureaux for the Protection of Intellectual Property.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Additional Act.

DONE at Stockholm, on July 14, 1967.

[*Here will follow the names of the States parties to the Madrid Agreement invited to the Stockholm Conference, each name being preceded by the words " For the Government of ", and followed by a blank space reserved for the signature or signatures.*]

[*End of Proposed Text*]

DOCUMENT S/6

THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS

(THE HAGUE AGREEMENT)

Proposals for the Conclusion of a Complementary Act

(Prepared by BIRPI, at the Request of the Government of Sweden)

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INTRODUCTION

THE PRESENT DOCUMENT

1. The agenda of the Intellectual Property Conference of Stockholm includes the matter of *administrative and structural reforms* in the Unions at present administered by the United International Bureaux for the Protection of Intellectual Property (BIRPI), that is, the International Union for the Protection of Literary and Artistic Works ("Berne Union"), the International Union for the Protection of Industrial Property ("Paris Union", sometimes referred to as "the General Union"), and the Special Unions established by some of the countries members of the Paris Union. One of those Special Unions was created by the Hague Agreement of November 6, 1925, concerning the International Deposit of Industrial Designs (hereinafter referred to as "the Hague Union" or "the Special Union").

2. The administrative and structural reforms would be effected by adopting separate new Acts for each of those Unions, and by establishing a new intergovernmental organization, hereinafter referred to as "the proposed new Organization."

3. The Draft Convention concerning the establishment of the proposed new Organization is set out and commented upon in document S/10, whereas the proposed revisions of the existing Conventions and Agreements are dealt with in documents S/3 to S/9.

4. The present document (S/6) contains proposals concerning the Hague Union.

5. As indicated above, the Hague Union was established by an Agreement signed in 1925. The Agreement was revised at London on June 2, 1934, and the text resulting from that revision will hereinafter be referred to as "the 1934 Act." All the countries members of the Hague Union have ratified or acceded to the 1934 Act. Consequently, the original Act of The Hague of 1925 is no longer applied by any of the countries of the Special Union.

6. In 1960, a further revision, involving a fundamental change in several of the principles adopted in the earlier Acts, was effected at The Hague. From that revision resulted the Hague Act of November 28, 1960 (hereinafter referred to as "the 1960 Act"), as well as a Protocol and Regulations of the same date.

7. The 1960 Act sets conditions for its entry into force whose fulfilment might require a great number of years. There have been only three ratifications of the Act since it was signed six years ago. But, as it was urgent that certain financial questions concerning the Special Union should be settled, a special Conference was convened in Monaco in 1961. That Conference established the Additional Act of Monaco of November 18, 1961, which will be referred to hereinafter as "the 1961 Additional Act." That Act constitutes an amendment to the 1934 Act. The member countries of the Hague Union may ratify or accede to it without ratifying or acceding to the 1960 Act. They are supposed to ratify or accede to the 1961 Additional Act pending the entry into force of the 1960 Act. Once the 1960 Act has been ratified or acceded to by all the countries of the Special Union—and only then—the 1934 Act and the 1961 Additional Act will lapse.

8. The administrative and structural reform proposed for the Hague Union takes account of this situation, which has no parallel in the other Unions, namely, that at the time of the Stockholm Conference, and very probably also at the time when the texts adopted by that Conference enter into force, one of the Acts of the Hague Union Agreement will not have entered into force. In view of this situation, it is proposed in this document that an Act should be adopted which will be complementary *both* to the 1934 Act and the 1961 Act additional to that Act *and* to the 1960 Act.

9. Apart from the special circumstances described above, the proposals for an administrative and structural reform of the Hague Union are, whenever their nature permits, the same as the proposals

made for the Paris Union (see document S/3). In order to avoid too much repetition, the Commentary accompanying the present proposals will refer to the Commentary contained in document S/3 whenever this seems to be possible without endangering the easy comprehension of the proposals.

10. Document S/11, which contains draft resolutions, and document S/12, which deals with financial questions not covered by the other preparatory documents, include proposals some of which are also of interest to the Hague Union.

11. The present document was prepared by BIRPI at the request of the Government of Sweden, which will be the host of the Stockholm Conference scheduled to take place from June 12 to July 14, 1967.

PREPARATORY MEETINGS

12. The history of the preparatory meetings is related in document S/3 (particularly in paragraphs 6 to 11).

13. The present proposals are based essentially on the views expressed by the Committee of Governmental Experts which met in May 1966 at Geneva. Of the 39 countries which were represented at that meeting, the following are members of the Hague Union: Belgium, France, Germany (Federal Republic), Indonesia, Monaco, Morocco, Netherlands, Spain, Switzerland. Those nine countries represent approximately two-thirds of the present membership of the Special Union.

14. On a few questions—in particular, the place of the administrative provisions, the need to take account of the existence of the 1960 Act which had not yet entered into force, and the depositary functions—the 1966 Committee asked the drafters of the proposals for the Stockholm Conference to reflect further and come up with proposals. The study of the first two questions led to the idea of a complementary Act (see paragraph 8, above); the study of the third question led to the idea of sharing the depositary tasks between the Government of the host country of the Stockholm Conference and the proposed new Organization (see proposed Articles 6 to 8, and 10 to 12).

GENERAL DESCRIPTION OF THE PROPOSED ADMINISTRATIVE AND STRUCTURAL REFORM

15. The main objective of the proposed administrative reform of the Hague Union is similar to that of the revisions proposed for its "parent" Union, that is, the Paris Union (see document S/3, paragraphs 16 to 28). The objective is to modernize the structure, administration, and finances, of the Special Union. This would be accomplished mainly by giving to the member countries the same, full powers of policy making, decision, and control, as they customarily have in most other intergovernmental organizations and which they lack to a great extent under the 1934 Act, and to a much smaller extent under the 1960 Act. It must of course be remembered that the 1960 Act is not yet in force and that, consequently, the administrative reforms incorporated in that Act are not applied.

16. The main changes, compared with the present situation, would:

- create an *Assembly* of the member countries of the Hague Union;
- transfer the *supervision of the activities of the International Bureau* connected with the Hague Union from the Government of one country to the Governments of all the member countries;
- do the same with the *supervision of the accounts* of the International Bureau concerning the Hague Union;
- do the same with the *approval of the program and budget* of the Hague Union;
- institute a more *flexible system for fixing the fees* payable for the international deposit of industrial designs;
- make the *modification of administrative provisions* easier and simpler.

Creation of an Assembly

17. In the present situation, the Hague Union has no *Assembly* of member countries, at least not in the sense in which the word "Assembly" is used in other intergovernmental organizations where an Assembly is the policy-making, supreme body of an organization or union. The 1960 Act provides for the creation of an "International Design Committee" having tasks of which some are the customary tasks of assemblies. However, as already stated several times, the said Committee exists only on paper as the 1960 Act is not yet in force.

18. Under the proposed reform, the Hague Union would have an Assembly (which, *de facto*, would replace the Committee *in spe* referred to in the preceding paragraph), and the Assembly would have the customary powers of supreme bodies. The Assembly would, in particular: fix the international deposit fees; determine the program and budget of the Special Union; exercise the control of the accounts; amend the administrative provisions of the Agreement (cf. proposed Article 2).

Supervision of Certain Activities of the International Bureau

19. In the present situation, the activities of the International Bureau are supervised by the Swiss Government, as the Paris Convention places the International Bureau—which also administers the Hague Agreement—"under the high authority of the Government of the Swiss Confederation" (see Article 13(1) of the Lisbon Act of the Paris Convention).

20. Under the proposed reform, the activities of the International Bureau—as far as the Hague Union is concerned—would be supervised not by one country but by all member countries, through the Assembly (cf. proposed Article 2(2)(a)(v)).

Supervision of Accounts

21. In the present situation, the Swiss Government supervises the accounts of the International Bureau (see Article 13(10) of the Lisbon Act of the Paris Convention).

22. Under the proposed reform, the auditing of the accounts would be effected by auditors appointed not by one country but by all member countries, through the Assembly (cf. proposed Article 4(8)).

Program and Budget

23. In the present situation, the program and the budget of the International Bureau concerning the Hague Union (as well as all the other Unions administered by BIRPI) are approved by the Government of Switzerland (cf. Article 13(10) of the Lisbon Act of the Paris Convention).

24. If the proposed reform is adopted, budget and program will require the approval of the Assembly of the member countries (see proposed Article 2(2)(a)(iv)).

More Flexible System for Fixing the Fees

25. In the present situation, the amounts of the fees are written into the text of the 1934 Regulations and the 1961 Additional Act. Opposition by one single country can prevent any modification, according to the 1934 Regulations (see Article 10). Silence on the part of the majority of the member countries, or the express opposition of only one of the member countries, can prevent any modification, according to the 1961 Additional Act (see Article 3(2)). The introduction of modifications would be easier under the 1960 Act (see Article 21(2), item 2, and (3) and Article 22(2)), but that Act has not yet entered into force.

26. Under the proposed reform, the amount of the fees could be modified by a two-thirds vote of the Assembly of the member countries (cf. proposed Article 2(2)(a)(iii) and (3)(e)).

27. Similar considerations apply in the case of modifications of the Regulations.

More Flexible Modification of the Administrative Provisions of the Agreement

28. In the present situation, the administrative provisions written into the Agreement can only be changed by the same procedure as the provisions of a substantive nature. This means that the administrative provisions can only be changed at conferences of revision (which are, of necessity, rare) and, traditionally, only by a unanimous vote. This procedure is obviously most impractical.

29. Under the proposed reform, the amendment of administrative provisions would not have to wait for the rare conferences of revision but could be effected by the Assembly of the member countries of the Hague Union, normally meeting once every three years. Even under the proposed reform, it would be necessary that the amendments adopted by the Assembly be accepted (through ratification or accession); but, once they have been accepted by three-quarters of the members, the rest would be bound by them as well. (In the Assembly, amendments of the administrative provisions would be adopted by a three-fourths vote, except that amendments of the Article concerning the Assembly (proposed Article 2) and of the provision concerning the required majorities for adopting them (proposed Article 5(2)) would require unanimity.)

GENERAL DESCRIPTION OF THE OTHER PROPOSALS

Depositary Functions

30. As in the case of the other Special Agreements and the Paris Convention itself (see document S/3), it is proposed that most of the depositary functions be entrusted to the Director General of the proposed new Organization rather than to the Swiss Government (see, in particular, proposed Articles 6, 7, 8, and 11).

Application of the Reforms Introduced by the Complementary Act to Different Categories of Countries

31. Only those countries which, at the expiration of the time limit for signing the Complementary Act (January 13, 1968), would already have accepted (by means of ratification or accession) the 1934 Act, or the 1960 Act, or both Acts, would be able to sign and ratify or accede to the Complementary Act (see proposed Article 8(1)(a)).

32. Countries which would have accepted the 1934 Act or the 1960 Act after July 14, 1967, would not need to accept the Complementary Act as a separate instrument. (Countries which would have accepted neither of those Acts *could not even* accept the Complementary Act as a separate instrument.) For such countries, it is proposed that their acceptance of the 1934 Act or the 1960 Act, or both Acts, should automatically entail acceptance of those provisions of the Complementary Act which complete or modify the (1934 or 1960) Act or (1934 and 1960) Acts which they accept (see Article 10(1) and (2)). In other words, as from July 14, 1967, the 1934 and 1960 Acts could be accepted only with the additions and modifications resulting from the Complementary Act, in order to prevent new countries from acceding to texts partially out of date as a result of the Stockholm Conference. For the same reason, and to accelerate the removal of an anomaly residing in the fact that certain persons making an international deposit of industrial designs continue to benefit—merely because their countries are slow in accepting the 1961 Additional Act—from the former fees, it is also proposed that acceptance of the Complementary Act of Stockholm should automatically entail acceptance of the 1961 Additional Act (see Article 8(1)(b)). For similar reasons, it is also proposed that accession, in the future, to the 1934 Act should automatically entail acceptance of the 1961 Act, which is, in fact, additional to the 1934 Act (see Article 10(1)).

33. The automatic effect of the Complementary Act on acceptances of the 1934 Act or the 1960 Act (but not the 1961 Additional Act) may, however, be subject to an exception or, more precisely, a delay; because if, at the time a country accepts those Acts, the Complementary Act has not yet entered into force, such country must necessarily, until the date of entry into force of the said Complementary Act, be bound by the Act it has accepted *without* the changes introduced by the Complementary Act. In such cases, the automatic effect will not begin until the Complementary Act enters into force (see proposed Article 10(1) and (2)).

Transitional Provisions

34. The final clauses would also contain transitional provisions. One of these provisions would allow even those countries which had not yet accepted the proposed Complementary Act to exercise, for a limited number of years, the same rights as they would have had if they had accepted it. Such a provision would allow, in particular, participation and voting in the Assembly of the Special Union (see proposed Article 12(2)).

OUTLINE OF THE PROPOSED ARTICLES

35. The proposed Complementary Act has twelve Articles.

36. Article 1 contains definitions.

37. The other eleven Articles may be divided into two groups: Articles 2 to 7 are substantive provisions, whereas Articles 8 to 12 are final clauses.

38. Article 2 deals with the establishment and functioning of the Assembly of the Special Union; Article 3 deals with the role of the International Bureau with regard to the said Union, and Article 4 regulates the finances of the Special Union. Article 5 provides the procedure according to which the administrative provisions (that is, Articles 2 to 5) may be amended. Articles 6 and 7 deal with the consequences arising from the new administrative provisions, for the 1934 Act (and the 1961 Act additional thereto) and for the 1960 Act.

39. Article 8 governs ratification and accession as far as the Complementary Act is concerned. Article 9 deals with entry into force. Article 10 provides for the automatic acceptance of certain provisions by certain countries. Article 11 deals with signature and other formal matters. Article 12 contains transitional provisions.

40. A printed brochure containing the English translation of the texts of the 1934 Act, the 1960 Act [1], and the 1961 Additional Act, is annexed to the present document.

[End of Introduction]

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[1] This brochure does not contain the text of the Protocol of the 1960 Act. The text of that Protocol is reproduced in full below:

"States party to this Protocol have agreed as follows:

(1) The provisions of this Protocol shall apply to designs which have been the subject of an international deposit and of which one of the States party to this Protocol is deemed to be the State of origin.

(2) In respect of designs referred to in paragraph (1), above:

(a) the term of protection granted by States party to this Protocol to the designs referred to in paragraph (1) shall not be less than fifteen years from the date provided for in paragraphs (1)(a) or (1)(b), as the case may be, of Article 11;

(b) the appearance of a notice on the articles incorporating the designs or on the tags attached thereto shall in no case be required by the States party to this Protocol, either for the exercise in their territories of rights arising from the international deposit, or for any other purpose."

PROPOSED TEXT

AND

COMMENTARY

COMMENTARY

COMMENTARY ON ARTICLE 1

41. This Article contains definitions, or more precisely, the key to certain expressions used in the other Articles but which, in view of their length, are used in the said Articles only in abbreviated form.

42. The different Acts are referred to by the date on which they were signed, rather than by the name of the place at which they were signed, to avoid confusion owing to the fact that two Acts of the Hague Agreement were signed in the same place: the original Act establishing the Special Union in 1925, and the 1960 Act, both of which were signed at The Hague.

43. In other respects, the terms of this Article seem to be self-explanatory.

COMMENTARY ON ARTICLE 2

44. This Article deals with the Assembly of the the Hague Union. It follows closely the pattern which, it is proposed, Article 13 of the Stockholm Act of the Paris Convention should establish by instituting an Assembly for the Paris Union (see document S/3).

45. The Article consists of five paragraphs dealing with composition and representation (paragraph (1)), tasks (paragraph (2)), voting (paragraph (3)), sessions (paragraph (4)), and rules of procedure (paragraph (5)).

46. *Paragraph (1)(a)* establishes the Assembly and defines its composition.

PROPOSED TEXT

COMPLEMENTARY ACT

ARTICLE 1 [DEFINITIONS]

For the purposes of this Complementary Act:

"1934 Act" shall mean the Act signed at London on June 2, 1934, of the Hague Agreement concerning the International Deposit of Industrial Designs;

"1960 Act" shall mean the Act signed at The Hague on November 28, 1960, of the Hague Agreement concerning the International Deposit of Industrial Designs;

"1961 Additional Act" shall mean the Act signed at Monaco on November 18, 1961, additional to the 1934 Act;

"Organization" shall mean the World Intellectual Property Organization;

"International Bureau" shall mean the International Bureau of Intellectual Property;

"Director General" shall mean the Director General of the Organization;

"Special Union" shall mean the Hague Union established by the Hague Agreement of November 6, 1925, concerning the International Deposit of Industrial Designs, and maintained by the 1934 and 1960 Acts, by the 1961 Additional Act, and by this Complementary Act.

ARTICLE 2 [ASSEMBLY]

(1)(a) The Special Union shall have an Assembly consisting of those countries which have ratified or acceded to this Complementary Act.

[Follows Article 2(1)(b)]

47. The Assembly would replace the International Design Committee provided for under the 1960 Act but still non-existent (see paragraphs 17 and 18 of the Introduction to the present document).

48. Only countries which have ratified or acceded to the *Stockholm Act* would be members of the Assembly, which is natural since the Assembly would be instituted by the Stockholm Act. However, the provision should be read together with the transitional provisions, particularly the proposed Article 12(2), by virtue of which even those countries of the Special Union which will not be among the five countries whose ratifications or acceptances will bring into force the Complementary Act will have the same right to sit and vote in the Assembly as the countries which have caused the entry into force of the said Complementary Act. And this right they will have for five years after the entry into force of the Convention establishing the proposed new Organization. It is to be expected that by the end of this period—which will probably be longer than five years from the entry into force of the Complementary Act of Stockholm (as that entry into force requires a smaller number of acceptances than the entry into force of the Convention establishing the proposed new Organization)—all or most of the countries members of the Hague Union will have accepted the Complementary Act of Stockholm of that Union.

49. *Paragraph (1)(b) and (c)* seems to be self-explanatory. It is of the customary kind.

50. *Paragraph (2)(a)* lists the powers of the Assembly and contains ten items.

51. *Items (i), (ii), and (iv) to (x)* also appear among the functions proposed for the Assembly of the Paris Union. Paragraphs 55 to 66 of document S/3 contain explanations which also apply, *mutatis mutandis*, to similar proposals concerning the Hague Union.

52. *Item (iii)* gives the Assembly the power to modify the Regulations and the amounts of the fees relating to the international deposit. "Regulations" should be understood as including both the Regulations attached to the 1934 Act and the Regulations attached to the 1960 Act. "Fees" means the fees referred to not only in the 1934 Act and the 1960 Act and their respective Regulations, but also the 1961 Additional Act. It follows from paragraph (3)(e) that any modification of the Regulations or fixation of the amounts of fees requires at least two-thirds of the votes cast in the Assembly.

53. It should be noted that the establishment of an international design classification is not mentioned among the functions proposed for the Assembly, in spite of the fact that the 1960 Act includes this function among the duties of the International Design Committee. It seemed preferable to reserve the question of the classification for a separate Agreement (as in the case of marks), because, on the one hand, a classification may also interest countries which are not party to the Hague Agreement and, on the other hand, because entry into force of the 1960 Act is uncertain.

54. *Paragraph (2)(b)* includes a reference to the Coordination Committee of the proposed new Organization. The International Bureau would continue to serve not only the Hague Union, but also all the Unions at present administered by BIRPI. At present the necessary coordination is ensured by the Swiss Government with the advice of the existing Coordination Committee. Under the proposals, the Government of Switzerland would no longer play a special role in this respect but the Coordination Committee would continue to do so. Its role would still be merely advisory since the powers of decision would be vested in the Assemblies. The proposed provision is merely a reminder that the advice should be considered before action is taken. There is no obligation, however, for the Assembly of the Hague Union to follow the advice. It may ignore it.

55. *Paragraph (3)(a)* provides that each country shall have one vote. This is a corollary of the equality of sovereign countries, which all members of the Special Union are.

56. *Paragraph (3)(b)* provides that one-third of the members constitutes a quorum. The same quorum is provided for the Assembly of the Paris Union (see paragraph (3)(b) of Article 13 of the proposed Stockholm Act of the Paris Convention in document S/3).

[*Article 2, continued*]

(b) The Government of each country shall be represented by one or more delegates, who may be assisted by alternate delegates, advisors, and experts.

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

(2)(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of its Agreement;

(ii) give directions to the International Bureau concerning the preparation for conferences of revision;

(iii) modify the Regulations, including the fixation of the amounts of the fees for the international deposit of industrial designs;

(iv) determine the program and adopt the triennial budget of the Special Union and approve its final accounts;

(v) review and approve reports and activities of the Director General concerning the Special Union, and give instructions to him on such matters;

(vi) establish such committees as may be considered necessary for the work of the Special Union;

(vii) determine which countries outside the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(viii) adopt amendments to Articles 2 to 5;

(ix) take any other appropriate action designed to further the objectives of the Special Union;

(x) exercise such other functions as are allocated to it.

(b) In exercising its functions with respect to matters which are of interest also to other Unions whose administrative tasks or administration is entrusted to the Organization, the Assembly shall take into consideration the advice of the Coordination Committee of the Organization.

(3)(a) Each country member of the Assembly shall have one vote in the Assembly.

(b) One-third of the countries members of the Assembly shall constitute a quorum.

[*Follows Article 2(3)(c)*]

57. *Paragraph (3)(c), (d), and (e)* deals with the majorities required for decision in the Assembly. The majority is two-thirds in the following cases: admission of observers (subparagraph (d)), and any modification of the Regulations, including the fixation of the amount of the international deposit fees (sub-paragraph (e)). Paragraph 52, above, deals with this matter in greater detail. Sub-paragraph (c) also refers to Article 5(2) according to which amendment of the proposed new administrative provisions (Articles 2 to 5) requires either *unanimity* or a *three-fourths* majority. It is to be noted that the provision does *not* deal with the question of voting on the revision of any other provisions—particularly the substantive provisions—of the Hague Agreement, since their revision is not effected by the Assembly but by special revision conferences.

58. *Paragraph (3)(f)* provides, as is customary, that abstentions shall not be considered as votes.

59. *Paragraph (3)(g)* excludes voting by proxy.

60. *Paragraph (4)(a)* deals with the ordinary sessions of the Assembly, and *paragraph (4)(b)* deals with its extraordinary sessions. In view of parallel provisions in the Conventions or Agreements of the other Unions, as well as in the Convention establishing the proposed new Organization, the ordinary sessions of the General Assembly of the Organization and the Assemblies of the Unions would take place once every three years and would normally be held during the same week or weeks in the same place. These measures are dictated by the obvious need for keeping expenses as low as possible both for the International Bureau and for the delegations attending the meetings.

61. *Paragraph (4)(c)* provides that the agenda of each session shall be prepared by the Director General.

62. *Paragraph (5)*, providing that the Assembly adopts its own rules of procedure, corresponds to established custom in comparable bodies.

COMMENTARY ON ARTICLE 3

63. This Article deals with the International Bureau as far as the secretariat tasks for the Hague Union are concerned.

64. The Article consists of four paragraphs dealing with the tasks of the International Bureau in general (paragraph (1)), with the participation of the Bureau in the meetings of the Assembly and possible committees of the Hague Union (paragraph (2)), with the preparation of and participation in conferences of revision (paragraph (3)), and with other tasks (paragraph (4)).

65. *Paragraph (1)(a)* refers to the International Bureau, by which, as is indicated in Article 1, is meant the International Bureau of Intellectual Property, that is, the Secretariat of the proposed new Organization. The main tasks of the International Bureau in connection with the Hague Agreement are concerned with the international deposit of industrial designs and related duties—for example, the publication of *Les dessins et modèles internationaux*, the official journal of the Hague Union.

66. *Paragraph (1)(b)* provides that the International Bureau will act as the secretariat of the Assembly, and of any committee, of the Special Union. *Paragraph (2)* expressly provides that the International Bureau will participate, without the right to vote, in the meetings of such bodies.

67. *Paragraph (1)(c)* is a corollary of paragraph (1)(b). Since the International Bureau is the Secretariat of the Special Union, the Director General—head of the International Bureau—must also be the chief administrative officer of the Special Union, and must be able to represent the Special Union, as he does the proposed new Organization as such.

68. As to *paragraph (2)*, see the observations contained in paragraph 66, above.

69. *Paragraph (3)* concerns the role of the International Bureau in the preparation of conferences of revision *(subparagraph (a))* and in the meetings themselves of these conferences *(subparagraph (b))*. This role would be the same as that played by the International Bureau in connection with the revision conferences of the Paris Convention (see Article 13*ter*(8) of the proposed Stockholm Act of the Paris Convention, document S/3).

70. *Paragraph (4)* seems to be self-explanatory.

[*Article 2 continued*]

(c) Subject to the provisions of subparagraphs (d) and (e) and Article 5(2), the Assembly shall make its decisions by a simple majority of the votes cast.

(d) Decisions to admit to meetings as observers countries outside the Special Union, as well as intergovernmental and international non-governmental organizations, shall require at least two-thirds of the votes cast.

(e) Any modification of the Regulations, including the fixation of the amounts of the fees for the international deposit of industrial designs, shall require at least two-thirds of the votes cast.

(f) Abstentions shall not be considered as votes.

(g) Each delegate may represent, and vote in the name of, one country only.

(4)(a) The Assembly shall meet once in every third calendar year in ordinary session, upon convocation by the Director General, preferably during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session, upon convocation by the Director General, at the request of one-fourth of the countries constituting the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

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

ARTICLE 3 [INTERNATIONAL BUREAU]

(1)(a) The international deposit of industrial designs and related duties, as well as all the other administrative tasks with respect to the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall provide the secretariat of the Assembly and of such committees as may have been established by the Assembly.

(c) The Director General shall be the chief administrative officer of the Special Union and shall represent the Special Union.

(2) The International Bureau shall participate, without the right to vote, in the meetings of the Assembly and of such committees as may have been established by the Assembly.

(3)(a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of the provisions of the Agreement other than Articles 2 to 5.

(b) The Director General or persons designated by him shall take part in the discussions at these conferences, but without the right to vote.

(4) The International Bureau shall carry out any other tasks assigned to it.

[*Follows Article 4*]

COMMENTARY ON ARTICLE 4

71. This Article deals with finances.

72. It consists of eight paragraphs dealing with: the definition of the budget (paragraph (1)), a reminder of the need for coordination with the budgets of the other Unions (paragraph (2)), the sources of income (paragraph (3)), special provisions concerning the international deposit fees (paragraph (4)), charges due for other services performed by the International Bureau (paragraph (5)), the working capital fund of the Special Union (paragraph (6)), advances by the Government of the country on whose territory the Organization has its headquarters (paragraph (7)), and the auditing of accounts (paragraph (8)).

73. *Paragraph (1)(a)* provides that the Special Union shall have a budget, that is, a budget of its own, separate and distinct from the budgets of the other Unions and from the budget of the proposed new Organization as such.

74. *Paragraph (1)(b)* implies that the budget expenses of the Special Union should be grouped under two main headings: (i) the *proper* expenses of the Special Union (for example, the expenses of a meeting dealing with matters exclusively relating to the Hague Union, the cost of printing the official journal of the Hague Union, *Les dessins et modèles internationaux*), and (ii) the share of the Special Union in the *common* expenses.

75. *Paragraph (1)(c)* defines the notion of "common expenses." These are expenses which are incurred by the International Bureau not only in the sole interest of the Special Union but also in the interest of the other Unions administered by it, or in the interest of the Organization as such (particularly its Conference). The share of the Special Union in these common expenses will be in proportion to the interest of that Union in such expenses. The provision parallels similar provisions in the proposed new administrative provisions of the other Unions (see, for example, as far as the Paris Union is concerned, document S/3, Article 13*quater*(1)(c)) and in the Convention establishing the proposed new Organization (document S/10, Article 10(1)(c)). Examples of common expenses would be the salary of the Director General and other members of the staff who serve all the Unions and the Organization as such; the expenses relating to the common financial, personnel, mailing, telephone, typing and translation services, and the maintenance of the headquarters building.

76. *Paragraph (2)* provides that the budget of the Special Union must be established with due regard to the requirements of coordination with the budgets of the various other Unions and with the budget of the Organization as such. In view of the existence of common expenses as defined above, the necessity of coordination is manifest.

77. *Paragraph (3)* enumerates, under four items, the sources of income of the Special Union. The first, and most important, source consists of the international deposit fees and other fees and charges collected for other services concerning the Special Union.

78. The sale of publications (item ii) includes the income derived from subscription fees to *Les dessins et modèles internationaux*. Items (iii) and (iv) seem to be self-explanatory.

79. *Paragraphs (4) and (5)* deal with the procedure for establishing the amount of the fees and other charges: paragraph (4) with the procedure concerning the fees and paragraph (5) with the procedure concerning the charges due for services other than registration of international deposits.

80. The amounts of the fees would be proposed by the Director General and fixed by the Assembly *(subparagraph* (4)(a)). For voting in this connection, see paragraph 57, above.

ARTICLE 4 [FINANCES]

(1)(a) The Special Union shall have a budget.

(b) The budget of the Special Union shall include the proper expenses of the Special Union itself and its share in the common expenses, as defined in the following subparagraph.

(c) Expenses attributable not exclusively to the Special Union but also to one or more other Unions administered by the Organization, or also to the Organization as such, shall be considered as common expenses. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the various Unions administered by the Organization and with the budget of the Organization as such.

(3) The budget of the Special Union shall be financed from the following sources:

(i) international deposit fees and other fees and charges due for other services performed by the International Bureau in relation to the Special Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;

(iii) gifts, bequests, and subventions;

(iv) rents, interests, and other miscellaneous income.

(4)(a) The amounts of the fees shall be proposed by the Director General and shall be fixed by the Assembly.

[*Follows Article 4(4)b*]

81. *Subparagraph (4)(b)* provides in effect that the amount of such fees must be fixed at a level sufficiently high to permit the Special Union to be self-supporting if all its revenue is put together. The provision is particularly important since the Hague Union—unlike the Paris Union—is not supported by the contributions of its member countries but must rely solely on the revenues produced by the services performed by the International Bureau for the "private clients" of the Registration Service. The number of registrations is the prime factor influencing the revenue. This number is subject to considerable variations depending primarily on the general economic situation of the member countries of the Hague Union. In order for the Union to be able to achieve a financial balance, it is therefore necessary to act relatively rapidly and without too many procedural difficulties, to follow the variations in the number of registrations. In other words, it is necessary that the procedure for changing the amounts of the fees be relatively flexible. This is the reason for proposing that the fees be fixed by the Assembly rather than written into the Agreement, and that those fees be fixed by a two-thirds majority rather than by unanimity (see Article (3)(e)).

82. *Paragraph (5)* provides that the amount of the charges due for services other than those directly concerning the registration of international deposits be fixed by the Director General. The revenues derived from these charges represent only a small fraction of the income of the Special Union, whose main source of income, by far, is constituted by the fees collected for the registration of deposits. Although the amounts of those other fees and charges would be a matter for the decision of the Director General, ultimate control would be in the hands of the member countries since it is provided that the Director General must report to the Assembly whenever he establishes new rates for the said other fees and charges.

83. *Paragraph (6)* deals with the question of a working capital fund. Such a working capital fund would be substituted for the reserve funds provided for by the 1960 Act (Article 20) and the 1961 Additional Act (Article 4), but which have never been constituted.

84. The constitution of a working capital fund would be a one-time operation, unless, later, exceptional circumstances—such as a considerable depreciation in the value of the currency in which the working capital fund is kept—require that it be brought up to a normal level.

85. The working capital fund would be constituted by the transfer of the excess receipts of the Hague Union. If such excess were non-existent or did not suffice—but only in such cases—the countries of the Special Union would have to make payments towards the constitution of the fund. That is the meaning of *subparagraph (a)*. The amount of the sum which each country would have to pay in such case would be proportionate to its yearly contribution towards the budget of the Paris Union *(subparagraph (b))*. Thus, for example, a country belonging to Class I in the Paris Union would have to pay into the working capital fund of the Hague Union a sum which is 25 times larger than the sum which a country belonging to Class VII would have to pay. The details of the constitution of this fund would be determined by the Assembly of the Hague Union both as to the amount of the working capital fund (expressed in a fraction or multiple of the yearly contributions in the Paris Union) and the terms of payment *(subparagraph (c);* see also document S/12).

86. *Paragraphs (7) and (8)* deal with advances to be granted to the International Bureau by the Swiss Government and with the auditing of accounts. The provisions are similar to those proposed for the Paris Convention (see document S/3, Article 13*quater*(7) and (8)) and are explained in paragraphs 114 and 115 of the Commentary contained in document S/3.

[*Article 4, continued*]

(b) The amounts of such fees shall be so fixed that the revenues of the Special Union from fees and other sources shall be at least sufficient to cover the expenses of the International Bureau in relation to the Special Union.

(5) The amount of charges due for other services rendered by the International Bureau in relation to the Special Union shall be established by the Director General, who shall report on them to the Assembly.

(6)(a) The Special Union shall have a working capital fund which shall be constituted by the excess receipts and, if such excess does not suffice, by payments made by the countries of the Special Union.

(b) The amount of the payment of each country shall be proportionate to its annual contribution as a member of the Paris Union for the Protection of Industrial Property to the budget of that Union.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee.

(7)(a) In the Headquarters Agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

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

(8) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

[*Follows Article 5*]

COMMENTARY ON ARTICLE 5

87. For the purposes of the procedure of amending the Agreement one has to distinguish between two groups of provisions: (i) the so-called administrative provisions, that is, Articles 2 to 5, and (ii) all the other provisions of the proposed Complementary Act, as well as the 1934 Act, the 1960 Act, and the 1961 Additional Act.

88. Only amendments to the administrative provisions (Articles 2 to 5) of the proposed Complementary Act are governed by Article 5. Amendments to all the other provisions are traditionally designated as "revisions," and are effected by a fundamentally different procedure.

89. The main differences between the procedure of amending the administrative provisions and that of revising the other provisions are the following:

(i) *Amendments* are discussed in and adopted by the Assembly (Articles 2(2)(a)(viii) and 5(2)), whereas *revisions* are discussed in and adopted by special conferences of revision. The Assembly consists of member countries which are bound by the provisions to be amended, that is, countries which are bound by the Stockholm Act (see Article 2(1)(a)), since they are the only interested parties. Any conference of revision consists of all the countries of the Special Union, even if they are bound only by Acts earlier than the one to be revised.

(ii) The adoption of *amendments* would require a three-quarters majority, except that any amendment of Articles 2 and 5(2) would require unanimity. There is no provision in those other Acts on this point as far as *revisions* are concerned. Up to the present time, all revisions have been regarded as requiring unanimity of the countries present and voting; in other words, revisions have been carried if no country has voted against—"vetoed"—them, the number of positive votes being irrelevant. The present draft contains no proposals on this subject, so that presumably, and as long as the countries consider it desirable, the traditional system will continue as far as revisions are concerned.

(iii) Countries will become bound by *amendments* when three-quarters of the members of the Assembly have notified their acceptance. This means that, when three-quarters have accepted an amendment, that amendment will then become binding also on the other countries members of the Assembly. The rule is different as far as *revisions* are concerned, as revisions bind only those countries which have communicated their ratification or acceptance.

90. The reason for providing different procedures for amendments and revisions is that the traditional practice of requiring unanimity for revisions seems to be too stiff for amendments. Amendments may be needed urgently to render the administration, the work of the International Bureau, more efficient. Consequently, an easier way than unanimity—over which hangs, like the sword of Damocles, the power of veto by one country out of more than a dozen—seems to be eminently reasonable and practical. It is true that even for amendments unanimity would be required when the amendment relates to Article 2 dealing with the Assembly. This exception does not seem to be either customary or necessary. But since the 1965 and 1966 Committees appeared to desire it, it is carried over into the drafts proposed herewith.

91. Article 5 regulates the procedure of *amendments* and consists of three paragraphs dealing with proposals for amendments (paragraph (1)), adoption of amendments (paragraph (2)), and entry into force of amendments (paragraph (3)).

92. *Paragraph (1)* makes it clear that what is involved here is the amendment of the administrative provisions (Articles 2 to 5), and the administrative provisions only. It also provides, in essence, that members of the Assembly of the Special Union must receive at least six months' advance notice if a proposal for amending the administrative provisions is to be considered by the Assembly.

93. *Paragraph (2)* deals with the majorities required for the adoption, in the Assembly, of amendments to Articles 2 to 5. The paragraph distinguishes between, on the one hand, amendments to Article 2 (which deals with the Assembly) and to Article 5(2) (which deals with the very question of majorities required for amendments), and, on the other hand, amendments to the other administrative provisions (that is, Articles 3, 4, and, with the exception of paragraph (2) thereof, Article 5). Whereas amendment to the former would require unanimity, amendment to the latter would require a three-fourths majority.

94. *Paragraph (3)* deals with the question when countries become bound by amendments. The question is discussed above, in paragraph 89.

ARTICLE 5
[AMENDMENTS TO ARTICLES 2 TO 5]

(1) Proposals for the amendment of Articles 2 to 4, and the present Article, shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in the preceding paragraph shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided, however, that any amendment of Article 2, and of the present paragraph, shall require the unanimity of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force when written notifications of acceptance have been received by the Director General from three-fourths of the countries members of the Assembly at the time it has adopted the amendment. Amendments to the said Articles thus accepted shall bind all countries which are members of the Assembly at the time the amendment enters into force or which become members thereof at a subsequent date.

[*Follows Article 6*]

COMMENTARY ON ARTICLE 6

95. As shown above (see paragraph 8 of the Introduction to this document), the Complementary Act must take into account, on the one hand, the 1934 Act and its Additional Act of 1961, and, on the other hand, the 1960 Act, and must amend them. The Article under consideration (Article 6) amends the first two; Article 7 amends the last mentioned.

96. Article 6 contains two paragraphs: the first concerns amendment of the 1934 Act; the second deals with amendments to the 1961 Additional Act.

97. *Paragraph (1)* contains five subparagraphs.

98. *Subparagraph (a)* provides that references in the 1934 Act to the International Bureau of the Paris Union are to be construed as references to the International Bureau of the proposed new Organization. This provision is necessary because of the proposal in the Draft Convention establishing the new Organization that BIRPI (of which the Bureau of the Paris Union forms part) should continue as the International Bureau of the said Organization (see Article 9(1); document S/10).

99. *Subparagraph (b)* cancels Article 15 of the 1934 Act. That Article fixes the fees for the registration and prolongation of international deposits. Those amounts are superseded by the amounts written into the 1961 Additional Act, which will probably be superseded in turn, before the Stockholm Conference, by other fees whose fixation has been requested in accordance with the procedure laid down in Article 3(2) of the said Additional Act. In any case, under the procedure provided for in Article 2(2)(a)(iii) and (3)(e) of the Complementary Act, the fees would not be written into the Agreement itself but would be fixed by the Assembly of the member countries.

100. *Subparagraph (c)* provides that any amendment of the Regulations will be effected not in accordance with the provisions of Article 20 of the 1934 Act, but in accordance with the proposed new provisions, that is, Article 2(2)(a)(iii) and (3)(e) of the Complementary Act. It is not proposed purely and simply to delete Article 20 of the 1934 Act because that Article also contains elements which are still valid, namely, the fact that there are Regulations and that the provisions of those Regulations may be amended at any time.

101. The purpose of *subparagraph (d)* is to bring up to date a reference made in Article 21 of the 1934 Act to the Berne Convention, a reference which deals, in that Act, with "the Berne Convention, as revised in 1928". It is proposed to substitute for the words quoted the expression: "the Berne Convention for the Protection of Literary and Artistic Works". Thus, the reference would not relate only to the 1928 Act (Rome) but also to the 1948 Act (Brussels) and to future Acts (in particular, Stockholm).

102. *Subparagraph (e)* provides that references in Article 22 of the 1934 Act to Articles 16, 16*bis*, and 17*bis*, of the Paris Convention are to be construed as references to those provisions of the *Stockholm Act* of the Paris Convention which, *in the said Act*, correspond to Articles 16, 16*bis*, and 17*bis*, of the earlier Acts. The Articles referred to deal with accessions, territories, and denunciations. In the proposed Stockholm Act, such matters are dealt with in Articles 16*bis*, 16 *quinquies*, and 17*bis*. For further details, see the Commentary on those Articles in document S/3.

103. *Paragraph (2)* deals with amendments to the 1961 Additional Act. It contains four subparagraphs.

104. *Subparagraph (a)* provides that any modification of the fees will be effected not according to the provisions of Article 3 of the 1961 Additional Act, but in accordance with the proposed new provisions, that is, Article 2(2)(a)(iii) and 3(e) of the Complementary Act. See paragraph 100, above.

ARTICLE 6 [AMENDMENT OF THE 1934 ACT AND THE 1961 ADDITIONAL ACT]

(1)(a) References in the 1934 Act to "the International Bureau of Industrial Property at Berne", to "the Berne International Bureau", or to "the International Bureau", shall be construed as references to the International Bureau as defined in Article 1 of this Complementary Act.

(b) Article 15 of the 1934 Act is repealed.

(c) Any amendment of the Regulations (Article 20 of the 1934 Act) shall be effected in accordance with the procedure prescribed under this Complementary Act (see Article 2(2)(a)(iii) and (3)(e)).

(d) In Article 21 of the 1934 Act, for the words "revised in 1928" there shall be substituted the words "for the Protection of Literary and Artistic Works".

(e) References in Article 22 of the 1934 Act to Articles 16, 16*bis*, and 17*bis*, of the "General Convention" shall be construed as references to those provisions of the Stockholm Act of the Paris Convention for the Protection of Industrial Property which, in the said Stockholm Act, correspond to Articles 16, 16*bis*, and 17*bis*, of the earlier Acts of the Paris Convention.

(2)(a) Any modification of the fees referred to in Article 3 of the 1961 Additional Act shall be effected in accordance with (he procedure prescribed under this Complementary Act tsee Article 2(2)(a)(iii) and (3)(e)).

[Follows Article 6(2)(b)]

105. *Subparagraph (b)* cancels those provisions of Article 4 of the 1961 Additional Act which deal with the constitution of a reserve fund by means of the excess receipts. No such fund exists at the present time as the Hague Union has no excess receipts. Article 4(6) of the proposed Complementary Act provides for the creation of a working capital fund which would be constituted by the excess receipts (in so far as they would be obtained to the extent required), or, if such excess did not exist or did not suffice, by payments made by the countries of the Special Union. Once the existence of the working capital fund was assured, of course, nothing would prevent the creation of a reserve fund as well.

106. *Subparagraph (c)* provides that the references in Article 6(2) of the 1961 Additional Act to Articles 16 and 16*bis* of the Paris Convention are to be construed as references to those provisions of the *Stockholm Act* of the Paris Convention which, *in the said Act*, correspond to Articles 16 and 16*bis* of the earlier Acts. The Articles referred to deal with accessions and territories, respectively. In the proposed Stockholm Act such matters are dealt with in Articles 16*bis* and 16*quinquies*, respectively. For further details, see the Commentary on those Articles in document S/3.

107. *Subparagraph (d)* provides that the references in paragraphs (1) and (3) of Article 7 of the 1961 Additional Act to the Government of the Swiss Confederation are to be construed as references to the Director General of the proposed new Organization. Those provisions entrust certain depositary tasks to the Swiss Government. In view of the fact that, under the proposed reform (see document S/10), the depositary tasks will, for the greater part, be transferred to the Director General, *subparagraph (d)* merely applies this transfer with regard to ratifications of the 1961 Additional Act.

COMMENTARY ON ARTICLE 7

108. This Article amends the 1960 Act (see paragraph 95, above).

109. It is composed of four paragraphs.

110. *Paragraph (1)* provides that the references in the 1960 Act to the International Bureau of the Paris Union are to be construed as references to the International Bureau of the proposed new Organization. Such a provision is necessary in view of the proposal in the Draft Convention establishing the new Organization that BIRPI (of which the Bureau of the Paris Union forms part) should continue as the International Bureau of the said Organization (see Article 9(1); document S/10).

111*(a)* *Paragraph (2)* cancels the following four Articles of the 1960 Act: Article 19, 20, 21, and 22.

(b) Article 19 of the 1960 Act contains an indication as to the level of the fees (subparagraph (a)) and a reference to the reserve fund (subparagraph (b)): the former would be covered by Article 4(4)(b) of the proposed Complementary Act, whereas the latter would become superfluous as the Complementary Act would no longer speak about a reserve fund (see paragraph 105, above).

(c) Article 20 of the 1960 Act deals with the reserve fund: it would become superfluous for the reasons indicated in the foregoing sentence with regard to subparagraph (b) of Article 19.

(d) Article 21 of the 1960 Act deals with the International Design Committee; this Article would become superfluous because the Assembly of the Special Union would take the place of the said Committee (see Article 2 of the Complementary Act and paragraph 17 of the Introduction to the present document).

(e) Finally, Article 22 of the 1960 Act deals with the procedure for amending the Regulations. This Article should disappear in view of the fact that the Complementary Act provides in Article 2(2)(a)(iii) and (3)(e) for a different procedure for the amendment of the Regulations.

[*Article 6(2), continued*]

(b) Paragraph (1) of Article 4 of the 1961 Additional Act, and the words "When the reserve fund has reached this amount" in paragraph (2), are repealed.

(c) References in Article 6(2) of the 1961 Additional Act to Articles 16 and 16*bis* of the Paris Convention for the Protection of Industrial Property shall be construed as references to those provisions of the Stockholm Act of the said Convention which, in the Stockholm Act, correspond to Articles 16 and 16*bis* of the earlier Acts of the Paris Convention.

(d) References in paragraphs (1) and (3) of Article 7 of the 1961 Additional Act to the Government of the Swiss Confederation shall be construed as references to the Director General.

ARTICLE 7 [AMENDMENT OF THE 1960 ACT]

(1) References in the 1960 Act to "the Bureau of the International Union for the Protection of Industrial Property" or to "the International Bureau" shall be construed as references to the International Bureau as defined in Article 1 of this Complementary Act.

(2) Articles 19, 20, 21, and 22, of the 1960 Act are repealed.

[*Follows Article 7(3)*]

112. *Paragraph 3* provides that the references in the 1960 Act to the Government of the Swiss Confederation are to be construed as references to the Director General of the proposed new Organization. The references to the Swiss Government are to be found in Articles 24(2) (accessions), 26 (entry into force), 27 (territories), 28(1) (denunciations), and 30 (common Offices), and relate to depositary tasks. In view of the fact that, under the proposed reform (see document S/10), the depositary tasks will, for the greater part, be transferred to the Director General, the paragraph under consideration merely applies this transfer with regard to the 1961 Act.

113. *Paragraph (4)* provides for the deletion of the word "periodical" in Article 29 of the 1960 Act, the Article which deals with conferences of revision. This deletion is proposed because, in fact, such conferences are held at irregular intervals rather than regularly or periodically. Paragraph (4) also provides for the deletion of the reference in Article 29 of the 1960 Act to the role of the International Design Committee, as that Committee would no longer exist (see paragraph 17 of the Introduction to the present document).

COMMENTARY ON ARTICLE 8

114. Article 8 deals with ratification of, and accession to, the Complementary Act (paragraph (1)). It also provides that instruments of ratification or accession should be deposited with the Director General (paragraph (2)).

115. It follows from *paragraph (1)(a)* that only those countries which have accepted (by means of ratification or accession) the 1934 Act or the 1960 Act may sign and accept the Complementary Act. For any other country, acceptance of the Complementary Act will be automatic: it will be understood that, when the country accepts the 1934 Act or the 1960 Act, its acceptance will also entail acceptance of the Complementary Act (see Article 10).

116. At the present time, some Hague Union countries have not yet accepted the 1961 Additional Act. This fact singularly complicates the finances of the Special Union (because the fees and the distribution criteria applicable under the 1961 Additional Act are different from those deriving from the 1960 Act). Indeed, as a result of this situation, the rates of the fees applied in respect of international deposits to nationals of countries which have not yet accepted the 1961 Additional Act are unreasonably low. It seemed advisable, therefore, to take the opportunity now offered, on the occasion of the conclusion of the Complementary Act, to accelerate acceptance of the 1961 Additional Act by providing that, if a country bound by the 1934 Act but not yet bound by the 1961 Additional Act accepts the Complementary Act, such acceptance will also entail acceptance of the 1961 Additional Act.

COMMENTARY ON ARTICLE 9

117. This Article deals with the entry into force of the Complementary Act and contains two paragraphs.

118. It follows from *paragraph (1)* that acceptance (that is, ratification or accession) by five countries would be required for the initial entry into force of the Complementary Act.

119. *Paragraph (2)* deals with the entry into force of the Complementary Act as regards countries other than the first five referred to in paragraph (1). The provision follows tradition and seems to be self-explanatory.

[*Article 7, continued*]

(3) References in the 1960 Act to the Government of the Swiss Confederation shall be construed as references to the Director General.

(4) In Article 29 of the 1960 Act, the words "periodical" (paragraph (1)) and "of the International Design Committee or" (paragraph (2)) are deleted.

ARTICLE 8 [RATIFICATION OF, AND ACCESSION TO, THE COMPLEMENTARY ACT]

(1)(a) Countries which, before January 13, 1968, have ratified the 1934 Act or the 1960 Act, and countries which have acceded to at least one of those Acts, may sign this Complementary Act and ratify it, or may accede to it.

(b) Ratification of, or accession to, this Complementary Act by a country which is bound by the 1934 Act without being bound also by the 1961 Additional Act shall automatically entail ratification of, or accession to, the 1961 Additional Act.

(2) Instruments of ratification and accession shall be deposited with the Director General.

ARTICLE 9 [ENTRY INTO FORCE OF THE COMPLEMENTARY ACT]

(1) With respect to the first five countries which have deposited their instruments of ratification or accession, this Complementary Act shall enter into force one month after the deposit of the fifth such instrument of ratification or accession.

(2) With respect to any other country, this Complementary Act shall enter into force one month after the date on which its ratification or accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument deposited. In the latter case, the date thus indicated shall apply.

[*Follows Article 10*]

COMMENTARY ON ARTICLE 10

120. This Article provides that certain provisions are accepted by the mere fact of accepting the 1934 Act (paragraph (1)) or the 1960 Act (paragraph (2)). As acceptance is automatic, countries within the ambit of Article 10 cannot ratify—and, indeed, do not need to ratify—the Complementary Act. Nor can such countries accede to—or, indeed, do they need to accede to—the Complementary Act.

121. Paragraphs 32 and 33 of the Introduction to the present document explain the reasons for proposing this method of automatic acceptance.

122. *Paragraph (1)* applies to countries which are not bound by the 1934 Act. In the present situation—where all the countries which have accepted the 1960 Act are bound by the 1934 Act and where the 1960 Act has not yet entered into force—and so long as this situation does not change, the countries referred to in paragraph (1) are simply countries which are not members of the Hague Union. Consequently, if such a country, outside the Special Union, wishes to become a member of that Union—and so long as the 1960 Act has not entered into force the only way to become a member of the Special Union is by acceding to the 1934 Act—it will have to accede to the 1934 Act. Such accession will entail—as provided under paragraph (1)—accession to the 1961 Additional Act and to Articles 1 to 6 of the Complementary Act. Paragraph (1) begins with the words, "Subject to the provisions of Article 8 and the following paragraph," for the following reasons: any country which has not accepted the 1934 Act but has accepted the 1960 Act (at the present time, such cases do not exist but the situation could change) may, pursuant to Article 8, accept the Complementary Act and, if it has done so, is *already* bound by Articles 1 to 6; any country which has accepted the 1960 Act after the Stockholm Conference will, pursuant to paragraph (2) of Article 10, *already* be bound by Articles 1 to 6. In the case of the latter country, the automatic effect will be restricted to the 1961 Additional Act.

123. *Paragraph (2)* applies to countries which have not accepted the 1960 Act. Acceptance of that Act—as provided under paragraph (2)—will also entail acceptance of Articles 1 to 7 of the Complementary Act. Paragraph (2) begins with the words, "Subject to the provisions of Article 8 and the foregoing paragraph," for the following reasons: any country which has not accepted the 1960 Act but has accepted the 1934 Act (that is to say, the majority of the countries of the Union) may, pursuant to Article 8, accept the Complementary Act and, if it has done so, is *already* bound by Articles 1 to 7; any country which has accepted the 1934 Act after the Stockholm Conference will, pursuant to paragraph (1) of Article 10, *already* be bound by Articles 1 to 6. In the case of the latter country, the automatic effect will be restricted to Article 7.

ARTICLE 10 [AUTOMATIC ACCEPTANCE OF CERTAIN PROVISIONS BY CERTAIN COUNTRIES]

(1) Subject to the provisions of Article 8 and the following paragraph, any country which has not ratified or acceded to the 1934 Act shall become bound by the 1961 Additional Act and by Articles 1 to 6 of this Complementary Act from the date on which its accession to the 1934 Act enters into force, provided that, if on the said date this Complementary Act has not yet entered into force pursuant to Article 9(1), then, such country shall become bound by the said Articles of this Complementary Act only from the date of entry into force of the Complementary Act pursuant to Article 9(1).

(2) Subject to the provisions of Article 8 and the foregoing paragraph, any country which has not ratified or acceded to the 1960 Act shall become bound by Articles 1 to 7 of this Complementary Act from the date on which its ratification of, or accession to, the 1960 Act enters into force, provided that, if on the said date this Complementary Act has not yet entered into force pursuant to Article 9(1), then, such country shall become bound by the said Articles of this Complementary Act only from the date of entry into force of the Complementary Act pursuant to Article 9(1).

[*Follows Article 11*]

COMMENTARY ON ARTICLE 11

124. This Article deals with the signing, the safekeeping, and the languages, of the Complementary Act (paragraphs (1) and (2)), transmittal of copies (paragraph (3)), registration with the Secretariat of the United Nations (paragraph (4)), and various notifications (paragraph (5)).

125. Subject to one substantive difference in paragraph (1)(b), the proposed Article is identical with Article 19 of the proposed Stockholm Act of the Paris Convention (see document S/3) in that it leaves the choice of the languages in which authoritative texts may be established to the decision of the Assembly. The difference is that, for the Paris Convention, it is proposed that authoritative texts be established in six specified languages *in any case*, and that the decision of the Assembly is needed only for possible *additional* languages.

COMMENTARY ON ARTICLE 12

126. This Article, which consists of two paragraphs, contains provisions which in their substance are identical with the provisions contained in the first two paragraphs of Article 20 of the proposed Stockholm Act of the Paris Convention (see document S/3).

127. The provisions are explained in paragraphs 173 to 175 of the Commentary contained in document S/3.

128. Paragraphs (3) and (4) of Article 20 of the proposed Stockholm Act of the Paris Convention (see document S/3) are not repeated here although they are also applicable in the case of the Hague Union. The reason for not repeating them here is that they will be applied in any case since they deal with matters concerning the present Bureau of the Paris Union, which is also the administrative organ of the Hague Union.

[*End of Commentary*]

ARTICLE 11 [SIGNATURE, ETC., OF THE COMPLEMENTARY ACT]

(1)(a) This Complementary Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Authoritative texts may be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

(2) This Complementary Act shall remain open for signature at Stockholm until January 13, 1968.

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Complementary Act to the Governments of all countries of the Special Union and, on request, to the Government of any other country.

(4) The Director General shall register this Complementary Act with the Secretariat of the United Nations as soon as possible.

(5) The Director General shall notify the Governments of all countries of the Special Union of signatures, deposits of instruments of ratification or accession, entry into force, and all other relevant notifications.

ARTICLE 12 (TRANSITIONAL PROVISIONS]

(1) Until the first Director General assumes office, reference in this Complementary Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the United International Bureaux for the Protection of Intellectual Property, or its Director, respectively.

(2) Countries of the Special Union not being bound by this Complementary Act may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided under this Complementary Act as if they were bound by the present Complementary Act.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Complementary Act.

DONE AT STOCKHOLM, on July 14, 1967.

[*Here will follow the names of the States members of the Hague Union invited to the Stockholm Conference, each name being preceded by the words "For the Government of" and followed by a blank space reserved for the signature or signatures.*]

[*End of Proposed Text*]

Document S/6, page 33

DOCUMENT S/7

NICE AGREEMENT CONCERNING THE INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES FOR THE PURPOSES OF THE REGISTRATION OF TRADEMARKS AND SERVICE MARKS

(NICE AGREEMENT)

Proposals for Revising the Administrative Provisions and the Final Clauses (Articles 5 to 12)

(Prepared by BIRPI, at the Request of the Government of Sweden)

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INTRODUCTION

THE PRESENT DOCUMENT

1. The agenda of the Intellectual Property Conference of Stockholm includes the matter of *administrative and structural reforms* in the International Union for the Protection of Industrial Property (" Paris Union, " sometimes referred to as " the General Union ") and the Special Unions established by some of the countries members of the Paris Union. One of these Special Unions was created by the Nice Agreement of June 15, 1957, concerning the International Classification of Goods and Services to which Trademarks are Applied. This Agreement will hereinafter be referred to as " the original Act of 1957," and the Union created by it, as " the Nice Union " or " the Special Union." The proposed administrative and structural reforms would extend also to the International Union established by the Berne Convention for the Protection of Literary and Artistic Works (" Berne Union ").

2. The administrative and structural reforms would be effected by revising, at the Stockholm Conference, the Conventions and Agreements of the various Unions and by establishing a new intergovernmental organization, hereinafter referred to as " the proposed new Organization."

3. The Draft Convention concerning the establishment of the proposed new Organization is set out and commented upon in document S/10, whereas the proposed revisions of the existing Conventions and Agreements are dealt with in documents S/3 to S/9.

4. The present document (S/7) deals with the revisions proposed to be effected in the Agreement of the Nice Union, that is, in the original Act of 1957.[1] These revisions would relate not only to administrative and structural matters but also to the *final clauses*. Every revision results in a new Act and requires final clauses dealing with the signing, languages and ratification of, accession to and entry into force of, the new Act, and other similar formal matters concerning the new Act.

5. The proposals made in the present document for the revision of the Nice Agreement are, whenever the nature and the existing situation permit, the same as the proposals made in document S/3 for the Paris Union. In order to avoid too much repetition, the Commentary accompanying the present proposals will in several cases refer to the Commentary contained in document S/3 whenever this seems possible without endangering the easy comprehension of the proposals.

6. Draft resolutions are contained in document S/11, and financial questions not covered by other documents are dealt with in document S/12.

7. The present document was prepared by BIRPI at the request of the Government of Sweden, which will be the host of the Stockholm Conference scheduled to take place from June 12 to July 14, 1967.

[1] The Nice *Agreement* is not to be confused with the Nice *Act* of the Madrid Agreement. The original, and so far only, Act of the Nice Agreement (classification) and the Nice Act of the Madrid Agreement (international registration of marks) were drawn up by the same Conference held in 1957.

PREPARATORY MEETINGS

8. The history of the preparatory meetings is related in document S/3 (particularly in paragraphs 6 to 11).

9. The present proposals are based on the views expressed by the Committee of Governmental Experts which met in May 1966 at Geneva, and in which the following member countries of the Nice Union were represented: Australia, Belgium, Czechoslovakia, Denmark, France, Germany (Federal Republic), Israel, Italy, Monaco, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom, Yugoslavia. These 18 countries represent more than four-fifths of the present membership of the Special Union.

10. On a few questions—in particular, the place of the administrative provisions, the advances to be accorded by the Swiss Government, the application of earlier Acts, the depositary functions, and the transitional provisions—the 1966 Committee asked the drafters of the proposals for the Stockholm Conference to reflect further and come up with proposals. The solutions now proposed for these questions are similar to those proposed in connection with the Paris Convention and are explained in paragraph 15 of document S/3.

GENERAL DESCRIPTION OF THE PROPOSED REVISIONS IN THE ADMINISTRATIVE PROVISIONS

11. The main objective of the revisions proposed in the Nice Agreement is similar to that of the revisions proposed in the Convention of its " parent " Union, that is, the Paris Union (see document S/3, paragraphs 16 to 28). The objective is to modernize the structure, administration, and finances, of the Special Union. This would be accomplished mainly by giving to the member countries the same, full powers of policy making, decision, and control, as they customarily have in most other intergovernmental organizations and which they lack to a great extent in the Nice Union.

12. The main changes proposed would:

- create an *Assembly* of the member countries of the Nice Union;
- transfer the *supervision of the activities of the International Bureau* connected with the Nice Union from the Government of one country to the Assembly of all the member countries;
- do the same with the *supervision of the accounts* of the International Bureau concerning the Nice Union;
- do the same with the *approval of the program and budget* of the Nice Union;
- institute a more *flexible financial system;*
- make the *modification of administrative provisions* easier and simpler;
- transfer the responsibility of *preparing for revision conferences* from one Government (that of the host country) to the organs of the Union.

Creation of an Assembly

13. In the present situation, the Nice Union has no *Assembly* of member countries, at least not in the sense in which the word " Assembly " is used in other intergovernmental organizations where an Assembly is the policy-making, supreme body of an organization or union. The Committee of Experts established in the original Act of 1957 merely deals with the task of improving the classification of goods and services. It has no powers in any other fields, particularly not in the fields of administration and finances.

14. Under the proposed reform, there would be an Assembly and this Assembly would have the customary powers. The Assembly would, in particular and as far as the Nice Union is concerned: determine the program and the budget; supervise the International Bureau; exercise the ultimate control of the accounts; direct the preparations for revision conferences; amend the administrative provisions of the Agreement (see proposed Article 5).

Supervision of Certain Activities of the International Bureau

15. In the present situation, the activities of the International Bureau are supervised by the Swiss Government, as the Paris Convention places the International Bureau " under the high authority of the Government of the Swiss Confederation" (see Article 13(1) of the Lisbon Act of the Paris Convention).

16. Under the proposed reform, the activities of the International Bureau—as far as the Nice Union is concerned—would be supervised not by one country but by all member countries, through the Assembly (cf. proposed Article 5(2)(a)(iv)).

Supervision of Accounts

17. In the present situation, the Swiss Government supervises the accounts of the International Bureau (see Article 13(10) of the Lisbon Act of the Paris Convention).

18. Under the proposed reform, the auditing of the accounts would be effected by auditors appointed not by one country but by all member countries, through their Assembly (see proposed Article 5*ter*(8)).

Program and Budget

19. In the present situation, the program and the budget of the International Bureau concerning the Nice Union (as well as all the other Unions administered by BIRPI) are approved by the Government of Switzerland (cf. Article 13(10) of the Lisbon Act of the Paris Convention).

20. If the proposed reform is adopted, budget and program will require the approval of the Assembly of the member countries (see proposed Article 5(2)(a)(iii)).

More Flexible Financial System

21. The present situation is that the ceiling of the yearly contributions of the member countries is written into the text of the Agreement itself (see Article 5(1) and (2)). Its amount may be modified by a decision of four-fifths of the member countries. The latter provision has not been put to the test but it might be interpreted as meaning that what is required is that four-fifths of the member countries express themselves affirmatively and that absences or abstentions would be considered as negative expressions.

22. Under the proposed reform, the total amount of the contributions of the member countries would be decided by the Assembly, normally once every three years, by a vote requiring a two-thirds majority if the financial obligations are increased, and a single majority when they stay the same or are diminished. Abstentions shall not be considered as votes. See proposed Article 5(3). This system would be in conformity with the systems prevailing in most of the other intergovernmental organizations as well as that proposed for the Paris and Berne Unions.

23. It is to be noted that the proposed change would modify only the procedure for fixing the total amount of the contributions. It would not modify the method by which the share of each country in the total amount is determined. This share will continue to depend on what class the country chose to belong to in the Paris Union as a member of that Union. See proposed Article 5*ter*(4).

24. Another question concerning finances is the question of securing a certain liquidity. In practically all other organizations this is achieved through the working capital fund. The Nice Union has no such fund. It is proposed to establish one for the Nice Union as well as the other Unions. See proposed Article 5*ter*(6).

More Flexible Modification of the Administrative Provisions of the Agreement

25. In the present situation, the administrative provisions written into the Agreement can only be changed by the same procedure as the provisions of a substantive nature. This means that the administrative provisions, even those of the most ephemeral kind or of very secondary importance, can be changed only at conferences of revision and, if the tradition of the Paris Union is applied, only by unanimous vote. This procedure is obviously most impractical.

26. Under the proposed reform, the amendment of administrative provisions would not have to wait for the rare conferences of revision but could be effected by the Assembly of the member countries of the Nice Union, normally meeting once every three years. Some amendments would require adoption by unanimous votes; for others a qualified majority would suffice. Even under the proposed reform, it would be necessary that the amendments adopted by the Assembly be accepted by the member countries, but, once they have been accepted by three-quarters of the members, the rest would be bound by them as well. There would be one exception to this rule, namely, any amendment increasing the financial obligations of the member countries. Such an amendment would become binding on a country in the remaining one-quarter only when it accepts it (see proposed Article 5*quater*(3)).

Direct Participation of the Member Countries in the Preparation of Revision Conferences

27. In the present situation, the preparations for revision conferences are entrusted to the Government of the country in which the conference is to be held (Article 8(3) of the original Act of 1957). The International Bureau assists that Government in its work, but otherwise the Government is on its own. The Agreement prescribes no participation by the member countries of the Special Union. They have nothing to say on the question of whether there should be a revision conference, what points should be revised, and what should be the proposals for revision. In actual fact, and in connection with the Stockholm Conference, the situation is different because the Swedish Government and BIRPI consulted the wishes and views of the member countries in several committees of experts. But this was purely voluntary as the Agreement contains no provisions requiring that this should be done.

28. Under the proposed reform, the host country of the revision conference would have no special role in the preparation of revisions. The directives for revision would come from the Assembly (see proposed Article 5(2)(a)(ii)), and the details would be carried out by the International Bureau (see proposed Article 5*bis*(3)(a)).

GENERAL DESCRIPTION OF THE PROPOSED REVISIONS IN THE FINAL CLAUSES

29. By "final clauses" are meant the provisions contained in Articles 6 to 11. Article 12 would contain transitional provisions.

30. The new final clauses would, naturally, have to deal with the signature and ratification of, accession to, and entry into force of, the Stockholm Act. They would generally follow the same principles as were adopted by the original Act of 1957, but at the same time would try to express some of these principles in more clearly worded language.

31. Furthermore, the final clauses proposed for the Stockholm Act would follow the pattern established by the Paris Convention (cf. the proposed Stockholm Act of that Convention contained in document S/3) with respect to the depositary functions. Most of these functions would be entrusted to the Director General of the proposed new Organization rather than to the Swiss Government.

32. Finally, the proposed final clauses would contain transitional provisions, the main feature of which would be that they would allow countries which have not yet ratified or acceded to the Stockholm Act to exercise, during a limited number of years, the same rights as if they had ratified or acceded to the said new Act. Such a provision would allow, in particular, participation and voting in the Assembly of the Special Union.

ARTICLES TO BE REVISED

33. The text of the original Act of 1957 appears in a booklet distributed together with the present document.

34. The proposed Stockholm Act has sixteen Articles, the numbers of which—because of the use of Latin suffixes in the case of Articles 5*bis*, 5*ter*, 5*quater* and 8*bis*—run, however, only from 1 to 12.

35. No changes whatsoever are proposed in Articles 1, 2, 3, and 4, that is, the Articles containing the substantive provisions, dealing with the classification.

36. Articles 5, 5*bis*, 5*ter*, and 5*quater*, contain the new administrative provisions, dealing respectively with the Assembly, the International Bureau, finances, and amendments to these four Articles. They replace Article 5 of the original Act of 1957.

37. Article 6 deals principally with ratification, accession, and entry into force, matters which, in the original Act of 1957, are dealt with in the first sentence of Article 7, as well as in Article 6.

38. Article 7 deals with the force and duration of the Agreement, as does the second sentence of Article 7 of the original Act of 1957.

39. Article 8 deals with revision, as does the Article of the same number in the original Act of 1957.

40. Article 8*bis* deals with the continued application, in certain circumstances, of the original Act of 1957.

41. Article 9 deals with denunciation, as does the Article of the same number in the original Act of 1957.

42. Article 10 deals with territories, as does the Article of the same number in the original Act of 1957.

43. Article 11 deals with signature, languages, and other such formal matters, whereas Article 12 contains transitory provisions. The first corresponds in part to Article 11 of the original Act of 1957, whereas the second has no counterpart in the original Act of 1957.

44. As can be seen, wherever reasonable—and sometimes at the expense of a more logical presentation—the proposed text follows the outline of the original Act of 1957. (The drafting committees of the Stockholm Conference may wish to deal with the question of a more logical order and numbering for the Articles.) On the following pages are reproduced tables of corresponding provisions in order to facilitate comparison of the proposed text with the original Act of 1957 whenever their respective outlines differ.

45. A printed brochure containing the English translation of the original Act of 1957 is annexed to the present document. The translation differs in respect of a few details from translations published earlier by BIRPI. The differences are the result of efforts to render more accurately the original French, which is the only official language of the original Act of 1957.

[*End of Introduction*]

[*Follow Tables*]

TABLES OF CORRESPONDING PROVISIONS

TABLE I

showing which provisions in the Original Act of June 15, 1957, deal with matters identical or related to topics dealt with in the provisions of the **proposed Stockholm Act**

PROPOSED STOCKHOLM ACT	ORIGINAL ACT OF 1957
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5(1)	—
(2)(a)(i)	—
(ii)	Article 8(3)
(iii)	Article 5(1),second sentence
(iv) to (ix)	—
(b)	—
(3)(a) to (d)	—
(e)	Article 5(1),second sentence, (3)
(f) and (g)	—
(4)	—
(5)	—
Article 5*bis*(1)	—
(2)	—
(3)(a)	Article 8(3)
(b)	Article 8(4)
(4)	—
Article 5*ter*(1)	—
(2)	—
(3)(i)	Article 5(1),first sentence
(ii) to (iv)	—
(4)(a) to (c)	Article 5(1),first sentence
(d)	—
(5)	—
(6)	—
(7)	—
(8)	Article 5(1),first sentence
Article 5*quater*	—
Article 6(1)	Article 6(1),first sentence, (3)
(2)	Article 6(2)
(3)	Article 6(1),first sentence
(4)	Article 7,first sentence
(5)	Article 6(3)
(6)	—
Article 7	Article 7,second sentence
Article 8(1)	Article 8(1)
(2)	Article 8(2)

[*Follows Continuation of Table I*]

[*Table I, continued*]

PROPOSED STOCKHOLM ACT	ORIGINAL ACT OF 1957
Article 9(1)	—
(2),first sentence	Article 9(1)
second sentence	Article 9(2)
(3)	Article 9(2)
(4)	—
Article 10	Article 10
Article 11(1)(a)	Article 11(1),first sentence
(b)	—
(c)	—
(2)	Article 11(2)
(3)	Article 11(1),second sentence
(4)	—
(5)	Article 6(1),second sentence, (3), and Article 9(2)
Article 12	—

TABLE II

showing which provisions in the **proposed Stockholm Act** deal with matters identical or related to topics dealt with in the provisions of the Original Act of June 15, 1957

ORIGINAL ACT OF 1957	PROPOSED STOCKHOLM ACT
Article 1	**Article 1**
Article 2	**Article 2**
Article 3	**Article 3**
Article 4	**Article 4**
Article 5(1),first sentence	**Article 5*ter*(3)(i); (4)(a),(b),(c); (8)**
second sentence	**Article 5(2)(a)(iii), (3)(e)**
(2)	—
(3)	**Article 5(3)(e)**
Article 6(1),first sentence	**Article 6(1), (3)**
second sentence	**Article 11(5)**
(2)	**Article 6(2)**
(3)	**Article 6(1), (5), and Article 11(5)**
Article 7,first sentence	**Article 6(4)**
second sentence	**Article 7**
Article 8(1)	**Article 8(1)**
(2)	**Article 8(2)**
(3)	**Article 5(2)(a)(ii) and Article 5*bis*(3)(a)**
(4)	**Article 5*bis*(3)(b)**
Article 9(1)	**Article 9(2),first sentence**
(2)	**Article 9(2),second sentence, (3), and Article 11(5)**
Article 10	**Article 10**
Article 11(1),first sentence	**Article 11(1)(a)**
second sentence	**Article 11(3)**
(2)	**Article 11(2)**

[*End of Tables*]

PROPOSED TEXT

AND

COMMENTARY

COMMENTARY

COMMENTARY ON THE TITLE OF THE AGREEMENT

46. The present title of the Agreement is " Nice Agreement concerning the International Classification of Goods and Services *to which Trademarks are Applied*." It is believed that the words printed here in italics may give a false impression and that the title fails to express the aim of the classification. The said words may give the impression that the classification contains only goods and services to which trademarks have been applied. The classification is not so limited: it contains goods and services irrespective of whether in actual fact marks have been applied to them or not. Now, as far as the aim of the classification is concerned, the title fails to contain the key word, which is, of course, " registration." The text itself of the Agreement clearly states the aim when it provides that the contracting countries adopt the classification " for the purpose of the registration of marks " (Article 1(2)). It is for these reasons that it is proposed that the title of the Agreement be changed to read as follows: " Nice Agreement concerning the International Classification of Goods and Services *for the Purposes of the Registration of Trademarks and Service Marks* " (italics supplied).

47. An alternative solution would be to speak simply about " Marks, " instead of " Trademarks and Service Marks." In this case, the title would read " Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks." This wording would make the title shorter. It could be justified by the text of the Agreement itself, which nowhere uses the expression " trademarks " but throughout employs exclusively the term " marks."

COMMENTARY ON ARTICLE 1

48. No change is proposed in the text of this Article, which would thus remain the same as it is in the original Act of 1957.

COMMENTARY ON ARTICLE 2

49. No change is proposed in the text of this Article, which would thus remain the same as it is in the original Act of 1957.

COMMENTARY ON ARTICLE 3

50. No change is proposed in the text of this Article, which would thus remain the same as it is in the original Act of 1957.

PROPOSED TEXT

NICE AGREEMENT CONCERNING THE INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES FOR THE PURPOSES OF THE REGISTRATION OF TRADEMARKS AND SERVICE MARKS[1]

ARTICLE 1
[ESTABLISHMENT OF THE CLASSIFICATION]

[*No change is proposed.*]

ARTICLE 2
[USE AND EFFECTS OF THE CLASSIFICATION]

[*No change is proposed.*]

ARTICLE 3
[AMENDING THE CLASSIFICATION]

[*No change is proposed.*]

[*Follows Article 4*]

[1] The words "**for the purposes of the registration of trademarks and service marks**" used here replace the words "*to which trademarks are applied*" used in the Nice Act.

COMMENTARY ON ARTICLE 4

51. No change is proposed in the text of this Article, which would thus remain the same as it is in the original Act of 1957.

COMMENTARY ON ARTICLE 5

52. This Article deals with the Assembly of the Nice Union. It follows closely the pattern which it is proposed Article 13 of the Stockholm Act of the Paris Convention should establish by instituting an Assembly for the Paris Union.

53. The Article consists of five paragraphs dealing with composition and representation (paragraph (1)), tasks (paragraph (2)), voting (paragraph (3)), sessions (paragraph (4)), and rules of procedure (paragraph (5)).

54. *Paragraph (1)(a)* establishes the Assembly and defines its composition.

55. Only countries which have ratified or acceded to the *Stockholm Act* would be members of the Assembly, which is natural since the Assembly would be instituted by the Stockholm Act. However, the provision should be read together with the transitional provisions, particularly the proposed Article 12(2), by virtue of which even those countries of the Special Union which will not be among the five countries whose ratifications or acceptances will bring the Stockholm Act into force will have the same right to sit and vote in the Assembly as the countries which have caused the entry into force of the Stockholm Act. And this right they will have for five years after the entry into force of the Convention establishing the proposed new Organization. It is to be expected that by the end of this period—which will probably be longer than five years from the entry into force of the Stockholm Act of the Nice Agreement (as that entry into force requires a smaller number of acceptances than the entry into force of the Convention establishing the proposed new Organization)—all or most of the countries parties to the Nice Agreement will have accepted the Stockholm Act of that Agreement.

56. *Paragraph (1)(b) and (c)* seems to be self-explanatory. These provisions are of the customary kind.

57. *Paragraph (2)(a)* deals with the powers and the tasks of the Assembly.

58. Its powers do not include the power of changing the classification as that power is vested in the " Committee of Experts" which is established in Article 3 and whose procedure is fixed in Articles 3 and 4. No modifications are proposed in those Articles, and the introductory phrase of the subparagraph under consideration (Article 5(2)(a)) expressly maintains the powers of the Committee of Experts.

59. The powers and tasks of the Assembly are enumerated in a list of nine items. The Assembly would deal with all matters concerning the maintenance and the development of the Nice Union and the implementation of the Nice Agreement *(item* (*i*)), but the latter, of course, only to the extent that it does not come under the jurisdiction of the Committee of Experts. The other items deal with preparations for conferences of revision (*item* (*ii*)), the adoption of the program and the budget of the Special Union (*item* (*iii*)), the supervision of the Director General's activities as far as they relate to the Special Union (*item* (*iv*)), the possibility of establishing committees (*item* (*v*)), the admission of observers (*item* (*vi*)), the adoption of amendments to the administrative provisions, that is, Articles 5 to 5*quater* (*item* (*vii*)), and miscellaneous matters (*items* (*viii*) and (*ix*)). All these powers are similar to the powers given, in relation to the Paris Union, to the Assembly of that Union, and are explained in detail in paragraphs 55 to 66 of the Commentary contained in document S/3.

ARTICLE 4
[COMMUNICATION AND ENTRY INTO FORCE OF AMENDMENTS MADE IN THE CLASSIFICATION]

[*No change is proposed.*]

ARTICLE 5 [ASSEMBLY][2]

(1)(a) The Special Union shall have an Assembly consisting of the countries which have ratified or acceded to this Act.

(b) The Government of each country shall be represented by one or more delegates who may be assisted by alternate delegates, advisors, and experts.

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

(2)(a) Subject to the provisions of Articles 3 and 4, the Assembly shall:

- **(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of its Agreement;**
- **(ii) give directions to the International Bureau concerning the preparation for conferences of revision;**
- **(iii) determine the program and adopt the triennial budget of the Special Union and approve its final accounts;**
- **(iv) review and approve reports and activities of the Director General of the Organization concerning the Special Union, and give instructions to him on such matters;**
- **(v) establish, in addition to the Committee of Experts referred to in Article 3, such committees as may be considered necessary for the work of the Special Union;**
- **(vi) determine which countries outside the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;**
- **(vii) adopt amendments to Articles 5 to 5*quater*;**
- **(viii) take any other appropriate action designed to further the objectives of the Special Union;**
- **(ix) exercise such other functions as are allocated to it.**

[*Follows Article 5(2)(b)*]

[2] Articles 5, 5*bis*, 5*ter*, and 5*quater*, here proposed, replace Article 5 of the original Act of 1957 which reads as follows:

"*(1) The expenses which the International Bureau incurs in carrying out this Agreement shall be borne in common by the contracting countries in accordance with the provisions of Article 13(8), (9), and (10), of the Paris Convention for the Protection of Industrial Property. Until a further decision is made, these expenses may not exceed the sum of 40,000 gold francs per annum.*

"*(2) The expenses referred to in paragraph (1) of Article 5 shall not include expenses relating to the work of diplomatic conferences, or those due to special work or publications carried out in accordance with the decisions of a conference. These expenses, the annual total of which may not exceed 10,000 gold francs, shall be borne in common by the contracting countries as provided by the terms of paragraph (1) above.*

"*(3) The totals of the expenses provided for in paragraphs (1) and (2) above may, if necessary, be increased by decision of the contracting countries or of one of the Conferences referred to in Article 8; such decisions shall be deemed valid if they are supported by four-fifths of the contracting countries.*"

60. *Paragraph (2)(b)* contains a reference to the Coordination Committee of the proposed new Organization. The International Bureau will continue to serve not only the Nice Union but also all the other Unions presently administered by BIRPI. In the present situation, coordination is achieved through the Swiss Government and the advice of the existing Coordination Committee. Under the proposals, the Government of Switzerland would no longer play a special role in this respect but the Coordination Committee would continue to do so. Its role would still be merely advisory since the powers of decision would be vested in the Assemblies. The proposed provision is merely a reminder that the advice should be considered before action is taken. There is no obligation for the Assembly of the Nice Union to follow the advice. It may ignore it.

61. *Paragraph (3)(a)* provides that each country shall have one vote. This is a corollary of the equality of sovereign countries, which all members of the Special Union are.

62. *Paragraph (3)(b)* provides that one-third of the members constitutes a quorum. The same quorum is provided for the Assembly of the Paris Union (see paragraph (3)(b) of Article 13 of the proposed Stockholm Act of the Paris Convention in document S/3).

63. *Paragraph (3)(c),(d), and (e)*, deals with the majorities required for decision in the Assembly. The majority is *two-thirds* in two cases: admission of observers (subparagraph (d)), and adoption of the budget to the extent that it increases the financial obligations of the countries of the Union (subparagraph (e)). The provisions follow the proposals made in respect to the Paris Union. There, too, the same qualified majority is proposed in these two cases (see document S/3, Article 13(3)(d) and (e)). Subparagraph (c) also refers to Article 5*quater*(2) according to which amendment of the proposed new administrative provisions (Articles 5 to 5*quater*) requires either *unanimity* or a *three-fourths* majority. This, too, is identical with the proposals made for the Paris Union (see document S/3, Article 13*quinquies*(2)). It is to be noted that the provision does *not* deal with the question of voting on the revision of any other provisions—particularly the substantive provisions—of the Nice Agreement, since their revision is not effected by the Assembly but by special revision conferences.

64. *Paragraph (3)(f)* provides, as does the proposed Stockholm Act of the Paris Convention, that abstentions shall not be considered as votes (see document S/3, Article 13(3)(f)).

65. *Paragraph (3)(g)* excludes voting by proxy. An identical provision is proposed for the Paris Convention (see document S/3, Article 13(3)(g)).

66. *Paragraph (4)(a)* deals with the ordinary sessions of the Assembly, and *paragraph (4)(b)* deals with its extraordinary sessions. In view of parallel provisions in the Conventions or Agreements of the other Unions, as well as in the Convention establishing the proposed new Organization, the ordinary sessions of the General Assembly of the Organization and the Assemblies of the Unions would take place once every three years and would normally be held during the same week or weeks in the same place. These measures are dictated by the obvious need for keeping expenses as low as possible both for the International Bureau and for the delegations attending the meetings.

67. *Paragraph (4)(c)* provides that the agenda of each session shall be prepared by the Director General.

68. *Paragraph (5)*, providing that the Assembly adopts its own rules of procedure, corresponds to established custom in comparable bodies.

[*Article 5(2), continued*]

(b) In exercising its functions with respect to matters which are of interest also to other Unions whose administrative tasks or administration is entrusted to the International Intellectual Property Organization (designated in this Act as "the Organization"), the Assembly shall take into consideration the advice of the Coordination Committee of the Organization.

(3)(a) Each country member of the Assembly shall have one vote in the Assembly.

(b) One-third of the countries members of the Assembly shall constitute a quorum.

(c) Subject to the provisions of subparagraphs (d) and (e), and Article 5*quater*(2), the Assembly shall make its decisions by a simple majority of the votes cast.

(d) Decisions to admit to meetings as observers countries outside the Special Union, as well as intergovernmental and international non-governmental organizations, shall require at least two-thirds of the votes cast.

(e) The adoption of the budget to the extent that it increases the financial obligations of the countries of the Union shall require at least two-thirds of the votes cast.

(f) Abstentions shall not be considered as votes.

(g) Each delegate may represent, and vote in the name of, one country only.

(4)(a) The Assembly shall meet once in every third calendar year in ordinary session, upon convocation by the Director General of the Organization, preferably during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session, upon convocation by the Director General, at the request of one-fourth of the countries constituting the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

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

[*Follows Article 5*bis]

COMMENTARY ON ARTICLE 5*bis*

69. This Article deals with the International Bureau as far as the secretariat tasks for the Nice Union are concerned.

70. The Article consists of four paragraphs dealing with the tasks of the International Bureau in general (paragraph (1)), with the participation of the Bureau in the meetings of the Assembly, of the Committee of Experts and of possible other committees of the Nice Union (paragraph (2)), with the preparation of and participation in conferences of revision (paragraph (3)), and with other tasks (paragraph (4)).

71. *Paragraph (1)(a)* refers to the International Bureau of the Organization, that is, the International Bureau of Intellectual Property (see document S/10, Article 9(1)). In addition to the special tasks referred to in paragraphs (1)(b), (2), and (3), one of the main administrative tasks of the International Bureau consists in the publication and notification of changes in the classification. Another task consists of the preparation, in cooperation with the interested national Administrations, of translations of the classification in languages other than French.

72. *Paragraph (1)(b)* provides that the International Bureau shall act as the secretariat of the Assembly, of the Committee of Experts, and of any other committee, of the Special Union. *Paragraph (2)* expressly provides that the International Bureau shall participate, without the right to vote, in the meetings of such bodies.

73. *Paragraph (1)(c)* is a corollary of paragraph (1)(b). Since the International Bureau is the Secretariat of the Special Union, the Director General—head of the International Bureau—must also be the chief administrative officer of the Special Union, and must be able to represent the Special Union, as he does the proposed new Organization as such.

74. As to *paragraph (2)*, see the observations contained in paragraph 72, above.

75. *Paragraph (3)* concerns the role of the International Bureau in the preparation of conferences of revision *(subparagraph (a))* and in the meetings themselves of these conferences *(subparagraph (b))*. This role would be the same as that played by the International Bureau in connection with the revision conferences of the Paris Convention (see Article 13*ter*(8) of the proposed Stockholm Act of the Paris Convention, document S/3).

76. *Paragraph (4)* constitutes a reference to other tasks, for example, those spelled out in Article 4(1) and (2).

COMMENTARY ON ARTICLE 5*ter*

77. This Article deals with finances.

78. It consists of eight paragraphs dealing with: the definition of the budget (paragraph (1)), a reminder of the need of coordination with the budgets of the other Unions (paragraph (2)), the sources of income (paragraph (3)), special provisions concerning the contributions of member countries (paragraph (4)), charges due for services performed by the International Bureau (paragraph (5)), the working capital fund of the Special Union (paragraph (6)), advances by the Government of the country on whose territory the Organization has its headquarters (paragraph (7)), and the auditing of accounts (paragraph (8)).

79. *Paragraph (1)(a)* provides that the Special Union shall have a budget, that is, a budget of its own, separate and distinct from the budget of the other Unions and from the budget of the proposed new Organization as such.

80. *Paragraph (1)(b)* implies that the budget expenses of the Union should be grouped under two main headings: (i) the *proper* expenses of the Special Union (for example, the expenses of a meeting dealing with matters exclusively relating to the Nice Union, the salaries of employees of the International Bureau working exclusively on matters concerning the Nice Union and the Nice Union only, the cost of printing of the *Classification*), and (ii) the share of the Special Union in the *common* expenses.

ARTICLE 5*bis* [INTERNATIONAL BUREAU] [2]

(1)(a) The administrative tasks with respect to the Special Union shall be performed by the International Bureau of the Organization (designated in this Act as "the International Bureau").

(b) In particular, the International Bureau shall make preparations for the meetings and provide the secretariat of the Assembly, of the Committee of Experts, and of such other committees as may have been established by the Assembly or the Committee of Experts.

(c) The Director General of the Organization shall be the chief administrative officer of the Special Union and shall represent the Union.

(2) The International Bureau shall participate, without the right to vote, in the meetings of the Assembly, of the Committee of Experts, and of such other committees as may have been established by the Assembly or the Committee of Experts.

(3)(a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of the provisions of the Agreement other than Articles 5 to 5*quater*.

(b) The Director General or persons designated by him shall take part in the discussions at these conferences, but without the right to vote.

(4) The International Bureau shall carry out any other tasks assigned to it.

ARTICLE 5*ter* [FINANCES] [2]

(1)(a) The Special Union shall have a budget.

(b) The budget of the Special Union shall include the proper expenses of the Special Union itself and its share in the common expenses, as defined in the following subparagraph.

[*Follows Article* 5ter*(1)(c)*]

[2] See above, page 17.

81. *Paragraph (1)(c)* defines the notion of "common expenses." These are expenses which are incurred by the International Bureau not only in the sole interest of the Special Union but also in the interest of the other Unions administered by it, or in the interest of the Organization as such (particularly its Conference). The share of the Nice Union in these common expenses will be in proportion to the interest of that Union in such expenses. The provision parallels similar provisions in the proposed new administrative provisions of the other Unions (see, for example, as far as the Paris Union is concerned, document S/3, Article 13*quater*(1)(c)) and in the Convention establishing the proposed new Organization (document S/10, Article 10(1)(c)). Examples of such common expenses would be the salary of the Director General and other members of the staff who serve all the Unions and the Organization as such; the expenses relating to the common financial, personnel, mailing, telephone, typing and translation services, and the maintenance of the headquarters building.

82. *Paragraph (2)* provides that the budget of the Special Union must be established with due regard to the requirements of coordination with the budgets of the various other Unions and with the budget of the Organization as such. In view of the existence of common expenses, as defined above, the necessity of coordination is manifest.

83. *Paragraph (3)* enumerates, under five items, the sources of income of the Union. The first, and the most important, consists of the yearly contributions of the member countries: more is said about this source of income in connection with paragraph (4) (see paragraphs 84 to 86 of the present Commentary, below). The other four items appear to be self-explanatory.

84. *Paragraph (4)* deals with the yearly contributions of the member countries.

85. *Subparagraph (a)* maintains the class-and-unit system and the principle according to which there is the same number of classes in the Nice Union as in the Paris Union, and the number of units is the same in each class of the Nice Union as it is in the Paris Union. It also maintains the principle according to which each country belongs to the same class in the Nice Union as it chooses to belong to in the Paris Union. In the original Act of 1957, these rules are expressed by references to the article and paragraph numbers of the corresponding provisions of the Paris Convention. Those numbers would change under the proposals made for the Stockholm Act of the Paris Convention. But, even independently of this difficulty, the clarity of the text seems to be improved if the said principles are stated in precise terms. This is just what subparagraph (a) would do.

86. *Subparagraphs (b), (c), and (d)*, for similar reasons, repeat the provisions which the proposed Stockholm Act of the Paris Convention contains with respect to the computation of the share of each country (subparagraph (b)), the date on which the contributions are due (subparagraph (c)), and the consequences of possible arrears in payments (subparagraph (d)). The corresponding provisions, for the Paris Union, are contained in proposed Article 13*quater*(4)(c), (d) and (e), in document S/3. The commentary on these provisions is contained in paragraphs 109 to 111 of document S/3.

87. *Paragraph (5)*, dealing with the fixing of certain charges, is identical with Article 13*quater*(5) of the proposed Stockholm Act of the Paris Union (except that no reference is made to an Executive Committee since no proposal is made for the establishment of an Executive Committee for the Nice Union). See document S/3, paragraph 112.

[*Article* 5ter, *continued*]

(c) Expenses attributable not exclusively to the Special Union but also to one or more other Unions administered by the Organization, or also to the Organization as such, shall be considered as common expenses. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the various Unions administered by the Organization and with the budget of the Organization as such.

(3) The budget of the Special Union shall be financed from the following sources:

(i) contributions of the countries of the Special Union;

(ii) charges due for services performed by the International Bureau in relation to the Special Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

(4)(a) For the purpose of establishing its contribution referred to in paragraph (3)(i), each country of the Special Union shall belong to the same class as it belongs to in the International (Paris) Union for the Protection of Industrial Property, and shall pay its annual contribution on the basis of the same number of units as is fixed for that class in that Union.

(b) The contribution of each country of the Special Union shall be an amount in the same proportion to the total sum to be contributed by all countries of the Special Union as the number of its units is to the total of the units of all contributing countries.

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

(d) A country which is in arrears in the payment of its financial contributions shall have no vote in any organ of the Special Union if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Special Union may allow such a country to continue to exercise its vote if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances. At the middle of the second of the two full years, the Director General shall remind the Government of the country that its contributions are overdue. Omission of such a reminder shall not affect the application of the provisions of the present subparagraph.

(5) The amount of the charges due for services rendered by the International Bureau in relation to the Special Union shall be established by the Director General, who shall report on them to the Assembly.

[*Follows Article* 5ter*(6)(a)*]

88. *Paragraph (6)*, dealing with the working capital fund, is identical with Article 13*quater*(6) of the proposed Stockholm Act of the Paris Union. For explanations, see document S/3, paragraph 113.

89. *Paragraph (7)*, dealing with advances by the Government of the country on whose territory the proposed Organization has its headquarters, is identical with Article 13*quater*(7) of the proposed Stockholm Act of the Paris Union. For explanations, see document S/3, paragraph 114.

90. *Paragraph (8)*, dealing with the auditing of the accounts, is identical with Article 13*quater*(8) of the proposed Stockholm Act of the Paris Union. For explanations, see document S/3, paragraph 115.

COMMENTARY ON ARTICLE 5*quater*

Preliminary Comments on Articles 5quater *and 8*

91. For the purposes of the procedure of amending the Agreement, one has to distinguish between two groups of provisions: (i) the so-called administrative provisions, that is, Articles 5 to 5*quater*, and (ii) all the other provisions of the Agreement, in particular the so-called substantive provisions (Articles 1 to 4). The latter group, however, includes also Articles 6 to 12.

92. Only amendments to the administrative provisions (Articles 5 to 5*quater*) are governed by Article 5*quater*. Amendments to all the other provisions (Articles 1 to 4, and 6 to 12) are governed by Article 8. In order to emphasize the fact that two different procedures are involved, amendments to the administrative provisions will be designated as "amendments," whereas amendments to all other provisions will be designated as "revisions."

93. The main differences between the procedure of amending the administrative provisions and revising the other provisions are the following:

(i) *Amendments* are discussed in and adopted by the Assembly (Articles 5(2)(a)(vii) and 5*quater*(2)) whereas *revisions* are discussed in and adopted by special "conferences" of revision (Article 8(2)). The Assembly consists of member countries which are bound by the provisions to be amended, that is, countries which are bound by the Stockholm Act (see Article 5(1)(a)), since they are the only interested parties. Any conference of revision consists of all the countries of the Special Union (see Article 8(2)), even if they are bound only by Acts earlier than the one to be revised.

[*Article 5*ter, *continued*]

(6)(a) The Special Union shall have a working capital fund which shall be constituted by payments made by the countries of the Special Union.

(b) The amount of the payment of each country shall be proportionate to its annual contribution.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee.

(7)(a) In the Headquarters Agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

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

(8) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

ARTICLE 5*quater* [AMENDMENTS TO ARTICLES 5 TO 5*quater*] [2]

[*See text of the Article on page 27*]

[2] See above, page 17.

(ii) The adoption of *amendments* would require a three-quarters majority, except that any amendment of Articles 5 and 5*quater*(2) would require unanimity. There is no provision in the Agreement on this point as far as *revisions* are concerned. Up to the present time, in the other Special Unions and the Paris Union itself, all revisions have been regarded as requiring unanimity of the countries present and voting; in other words, revisions have been carried if no country has voted against—"vetoed"—them, the number of positive votes being irrelevant. The present draft contains no proposals, so that presumably, and as long as the countries consider it desirable, the traditional system will apply as far as revisions in the Nice Agreement are concerned.

(iii) Countries will become bound by *amendments* when three-quarters of the members of the Assembly have notified their acceptance. This means that, when three-quarters have accepted an amendment, that amendment will then become binding also on the other countries members of the Assembly, except when the amendment increases the financial obligations of the members of the Special Union. In the latter case, each country has to expressly accept the amendment before it is bound by it. As far as *revisions* are concerned, what is the exception in the case of amendments becomes the rule here: revisions bind only those countries which have communicated their ratification or acceptance.

94. The reason for providing different procedures for amendments and revisions is that the traditional practice of requiring unanimity for revisions seems to be too stiff for amendments. Amendments may be needed urgently to render the administration, the work of the International Bureau, more efficient. Consequently, an easier way than unanimity—over which hangs, like the sword of Damocles, the power of veto by one country out of some twenty—seems to be eminently reasonable and practical. It is true that even for amendments unanimity would be required when the amendment relates to Article 5 dealing with the Assembly. This exception does not seem to be either customary or necessary. But since the 1965 and 1966 Committees appeared to desire it, it is carried over into the drafts herewith proposed.

Comments on Article 5quater *proper*

95. The Article under consideration (Article 5*quater*) regulates the procedure of *amendments* and consists of three paragraphs which are identical with the corresponding provisions proposed for the Stockholm Act of the Paris Convention (see document S/3, Article 13*quinquies*(1), (2), (3)). The three paragraphs deal with *proposals for* amendments (paragraph (1)), *adoption of* amendments (paragraph (2)), and *entry into force of* amendments (paragraph (3)).

96. *Paragraph (1)* makes it clear that what is involved here is the amendment of the administrative provisions (Articles 5 to 5*quater*), and the administrative provisions only. It also provides, in essence, that members of the Assembly of the Special Union must receive at least six months' advance notice if a proposal for amending the administrative provisions is to be considered by the Assembly.

97. *Paragraph (2)* deals with the majorities required for the adoption, in the Assembly, of amendments to Articles 5 to 5*quater*. The paragraph distinguishes between, on the one hand, amendments to Article 10 (which deals with the Assembly) and to Article 5*quater*(2) (which deals with the very question of majorities required for amendments), and, on the other hand, amendments to the other administrative provisions (that is, Articles 5*bis*, 5*ter*, and, with the exception of its paragraph (2), Article 5*quater*). Whereas amendment to the former would require unanimity, amendment to the latter would require a three-fourths majority.

98. *Paragraph (3)* deals with the question of when countries become bound by the amendments. The question is discussed above, in paragraph 93.

[*Article* 5quater]

(1) Proposals for the amendment of Articles 5, 5*bis*, 5*ter*, and the present Article, shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in the preceding paragraph shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided, however, that any amendment of Article 5, and of the present paragraph, shall require the unanimity of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force when written notifications of acceptance have been received by the Director General from three-fourths of the countries members of the Assembly at the time it has adopted the amendment. Amendments to the said Articles thus accepted shall bind all countries which are members of the Assembly at the time the amendment enters into force or which become members thereof at a subsequent date, except that any amendment increasing the financial obligations of countries of the Special Union shall bind only those countries which have notified their acceptance of such amendment.

[*Follows Article 6*]

COMMENTARY ON ARTICLE 6

99. This Article, as here proposed, deals with the following topics: ratification and accession by countries of the Special Union (paragraph (1)), accession by countries outside the Union (paragraph (2)), the deposit of instruments of ratification and accession (paragraph (3)), entry into force of the Stockholm Act (paragraph (4)), the general effects of ratification or accession (paragraph (5)), the question of accession to the original Act of 1957, which is the only earlier Act of the Nice Agreement (paragraph (6)).

100. The Article bearing the same number (that is, 6) *in the original Act of 1957* deals with the first three of these topics. The question of entry into force is regulated there by the first sentence of Article 7. The provision on the general effects of ratification or accession might be regarded as implied in Article 6(2) of the original Act of 1957 because of a reference to Article 16 of the Paris Convention, which includes such a provision. Naturally, the provision on accession to the original Act does not appear in the 1957 Act since that Act *was* the original Act.

101. The Article, as proposed, adopts the same solutions as are proposed in the case of the Paris Convention, whenever applicable (see document S/3).

102. *Paragraph (1)* deals with the methods by which a country already a member of the Nice Union may become bound by the Stockholm Act of the Nice Agreement. There are two methods. If such a country has signed the Stockholm Act, it must deposit an instrument of "ratification" if it wants to become bound by that Act. If it has not signed the Stockholm Act, it must deposit an instrument of "accession" if it wants to achieve the same result.

103. *Paragraph (2)* deals with the method by which a country not yet a member of the Nice Union may become bound by the Stockholm Act, and with a condition. The method is "accession." When such a country accedes to the Stockholm Act of the Nice Agreement, it becomes a member of the Nice ("Special") Union. The condition is that the country must already be, or must concurrently become, a member of the Paris (or the "General") Union. The same condition exists for all the Special Unions. See, in particular, the first eleven words of Article 6(2) of the original Act of 1957 of the Nice Agreement.

104. *Paragraph (3)* seems to be self-explanatory.

105. *Paragraph (4)(a)* deals with the initial entry into force of the Stockholm Act. Such entry into force would require five ratifications or accessions. Accessions by countries of or outside the Special Union would be given the same weight in this respect. The same principle is written into the original Act of 1957 (see the first sentence of Article 7 of that Act).

106. *Paragraph (4)(b)* deals with entry into force with respect to any country other than the first five referred to in paragraph (4)(a). The provision follows tradition (cf. Article 6(2) of the original Act of 1957, referring to Article 16 of the Paris Convention) and seems to be self-explanatory.

107. *Paragraph (5)* expressly states a rule which in the original Act of 1957 appears in the form of a reference to Article 16 of the Paris Convention.

108. *Paragraph (6)* deals with the question of accession to the original Act of 1957, once the Stockholm Act has entered into force. It provides that such accession will be possible only in conjunction with becoming party to the Stockholm Act. The solution follows the pattern established by Article 16*quater* of the proposed Stockholm Act of the Paris Convention (see document S/3). For explanations, see paragraphs 149 to 155 of document S/3.

ARTICLE 6 [RATIFICATION AND ACCESSION; ENTRY INTO FORCE; ACCESSION TO EARLIER ACTS] [3]

(1) Any country of the Special Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it.

(2) Any country outside the Special Union which is party to the Paris Convention for the Protection of Industrial Property may accede to this Act and thereby become a member of this Special Union.

(3) Instruments of ratification and accession shall be deposited with the Director General.

(4)(a) With respect to the first five countries which have deposited their instruments of ratification or accession, this Act shall enter into force one month after the deposit of the fifth such instrument.

(b) With respect to any other country, this Act shall enter into force one month after the date on which its ratification or accession has been notified by the Director General unless the country has indicated a subsequent date in its instrument of ratification or accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(5) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

(6) After the entry into force of this Act, a country may accede to the original Act of June 15, 1957, of this Agreement, only in conjunction with ratification of, or accession to, this Act.

[*Follows Article 7*]

[3] Article 6 here proposed replaces Article 6 and the first sentence of Article 7 of the original Act of 1957, which read as follows:

"[Article 6]:

"(1) This Agreement shall be ratified and the instruments of ratification deposited in Paris not later than December 31, 1961. The ratifications, with their dates and any statements accompanying them, shall be notified by the French Republic to the Governments of the other contracting countries.

"(2) Member countries of the Union for the Protection of Industrial Property which have not signed this Agreement in accordance with Article 11(2) shall be allowed to accede to it, at their request, in accordance with the provisions of Article 16 of the Paris Convention for the Protection of Industrial Property.

"(3) Countries which have not deposited an instrument of ratification within the period prescribed by paragraph (1) of this Article shall be allowed to accede to the Agreement in accordance with Article 16 of the Paris Convention for the Protection of Industrial Property."

"[Article 7]:

"This Agreement shall come into force between those countries which have ratified it or acceded to it one month from the date on which the instruments of ratification have been deposited or the accession notified by not less than ten countries . . ."

COMMENTARY ON ARTICLE 7

109. This Article contains, without change, the provision which, in the original Act of 1957, constitutes the second of the two sentences of this Article. As to the first sentence in that Act, see paragraph 100, above.

COMMENTARY ON ARTICLE 8

110. This Article deals with the procedure for revising all of the provisions of the Agreement except the administrative clauses contained in Articles 5 to 5*quater*.

111. Reference is made to paragraphs 91 to 94, above, which explain the differences between the procedures for *amending* Articles 5 to 5*quater*, and *revising* Articles 1 to 4, and 6 to 12. The Article under consideration—that is, Article 8—deals with the latter.

112. It consists of two paragraphs which are essentially identical with the corresponding provisions of the proposed Stockholm Act of the Paris Convention (see document S/3, Article 14(1), (2)). The first paragraph deals with the principle of revision; the second with conferences of revision.

113. *Paragraph (1)* is identical with paragraph (1) of the original Act of 1957, except that that Act speaks about "periodical revisions," whereas the text here proposed does not contain the word "periodical." The reason for the omission is that conferences of revision are not expected to take place at regular intervals.

114. *Paragraph (2)* is identical with paragraph (2) of the original Act of 1957, except that that Act also provides that the conferences shall be held in one of the contracting countries. Since the Paris Union has almost four times as many members as the Nice Union and since it is generally practical to revise the Special Agreements (of which the Nice Agreement is one) at the same time and place as the General Convention (that is, the Paris Convention), the provision seems to limit unnecessarily the choice of countries on whose territories the conference could be held, and it is proposed to omit the limitation under discussion.

COMMENTARY ON ARTICLE 8*bis*

115. This Article deals with the application of the original Act of 1957, once the Stockholm Act has entered into force. Since the Stockholm Act will be the first revision of the Nice Agreement, there is, of course, no corresponding provision in the original Act of 1957.

116. The proposed Article consists of two paragraphs. *Paragraph (1)* provides, in effect, that the original Act of 1957 will cease to become applicable between countries which are bound by the Stockholm Act. *Paragraph (2)* provides, in effect, that any country which has accepted the Stockholm Act will be bound by the original Act of 1957 in its relations with countries which have accepted the original Act of 1957 but have not yet also accepted the Stockholm Act.

ARTICLE 7 [FORCE AND DURATION]

This Agreement shall have the same force and duration as the Paris Convention for the Protection of Industrial Property.[4]

ARTICLE 8 [REVISION OF THE PROVISIONS OF THE AGREEMENT OTHER THAN ARTICLES 5 TO *5quater*]

(1) This Agreement shall be submitted to revisions [5] with a view to the introduction of desired improvements.

(2) Every revision shall be considered at a conference which shall be held between the delegates of the countries of the Special Union.[6]

ARTICLE *8bis* [APPLICATION OF THE ORIGINAL ACT OF 1957][7]

(1) This Act shall, as regards the relations between the countries by which it has been ratified or acceded to, replace the original Act of June 15, 1957.

(2) However, any country which has ratified this Act or has acceded to it shall be bound by the original Act of June 15, 1957, in its relations with countries of the Special Union which have not ratified, or acceded to, this Act.

[*Follows Article 9*]

[4] In the original Act of 1957, this provision constitutes the second sentence of Article 7. As to the first sentence, see footnote 3, above.

[5] In the original Act of 1957, the word "revisions" is preceded by the word "*periodical*," which is omitted here.

[6] In the original Act of 1957, this paragraph reads as follows: "*Every revision shall be considered at a Conference which shall be held in one of the contracting countries between the delegates of the said countries.*" It is proposed to omit paragraphs (3) and (4) appearing in the original Act of 1957; they read as follows: "*(3) The Administration of the country in which the conference is to be held shall prepare the work of the conference with the assistance of the International Bureau.*" (see proposed Articles 5(2)(a)(ii) and 5*bis*(3)(a)) and "*(4) The Director of the International Bureau shall attend the meetings of the Conferences and take part in the discussions, but without the right to vote.*" (see proposed Article 5*bis*(3)(b)).

[7] This Article does not appear in the original Act of 1957.

COMMENTARY ON ARTICLE 9

117. This Article, dealing with denunciation, consists, *in the original Act of 1957*, of two paragraphs: the first establishing the right of denunciation, and the method of effecting it; the second, the effects of the denunciation, in particular, its effective date.

118. *In the present proposals*, these matters are dealt with in *paragraphs (2) and (3)* of the same Article (that is, Article 9), whereas paragraphs (1) and (4) contain provisions not included in the original Act of 1957. They are included here to establish uniformity with the provisions of the other Special Agreements as well as the Paris Convention. *Paragraph (1)* would provide that the Agreement remain in force for an indefinite time. The provision may be regarded as an introduction to the topic of denunciation because if the duration of the treaty were limited in time, there would be no need, or less need, for a provision on denunciation. *Paragraph (4)* would provide for a "waiting period" for new members during which they could not denounce the Agreement.

119. All four paragraphs are a mere repetition of the four paragraphs of Article 17*bis* of the proposed Stockholm Act of the Paris Convention. For the explanations, see paragraphs 160 to 162 of the Commentary contained in document S/3.

COMMENTARY ON ARTICLE 10

120. This Article constitutes, as it does in the original Act of 1957, an incorporation, by reference, of the provisions of the Paris Convention concerning territories which do not conduct their own foreign relations.

COMMENTARY ON ARTICLE 11

121. This Article deals with the signing, the safekeeping, and the languages, of the Stockholm Act (paragraphs (1) and (2)), transmittal of copies (paragraph (3)), registration with the Secretariat of the United Nations (paragraph (4)), and various notifications (paragraph (5)).

122. Subject to one substantive difference in paragraph (1)(b), the proposed Article is identical with Article 19 of the proposed Stockholm Act of the Paris Convention in that it leaves the choice of the languages in which authoritative texts may be established to the decision of the Assembly. The difference is that, for the Paris Convention, it is proposed that authoritative texts be established in six specified languages *in any case*, and that the decision of the Assembly is needed only for possible *additional* languages.

ARTICLE 9 [DENUNCIATION]

(1) This Agreement shall remain in force for an indefinite time.[8]

(2) Any country may denounce this Act by notification addressed to the Director General.[9] Such denunciation shall constitute also denunciation of the original Act of June 15, 1957, of this Agreement and shall affect only the country making it, the Agreement remaining in full force and effect as regards the other countries of the Special Union.[10]

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.[11]

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Special Union.[11]

ARTICLE 10 [TERRITORIES]

The provisions of Article 16*quinquies*[12] of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

ARTICLE 11 [SIGNATURE, ETC.][13]

(1)(a) This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Authoritative texts may be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

[*Follows Article 11(2)*]

[8] The provision contained in this paragraph does not appear in the original Act of 1957.

[9] This sentence corresponds to the provision constituting Article 9(1) in the original Act of 1957: "*Each contracting country shall be entitled to denounce this Agreement by means of a written notification addressed to the Government of the Swiss Confederation.*"

[10] The second sentence of paragraph (2), and paragraph (3), here proposed correspond to the provision constituting Article 9(2) in the original Act of 1957: "*(2) This denunciation, which shall be communicated by the Government of the Swiss Confederation to all other contracting countries, shall have effect only in respect of the denouncing country and only twelve months after receipt of the notification by the Government of the Swiss Confederation; the Agreement shall remain in force for the other contracting countries.*"

[11] The provision contained in this paragraph does not appear in the original Act of 1957.

[12] The suffix **"quinquies"** used here replaces the suffix "*bis*" used in the original Act of 1957.

[13] In the original Act of 1957, Article 11 has two paragraphs and reads as follows:

"*(1) This Agreement shall be signed in a single copy, which shall be deposited in the archives of the Ministry of Foreign Affairs of the French Republic. A certified copy shall be transmitted through diplomatic channels to each of the Governments of the contracting countries.*

"*(2) This Agreement shall remain open for signature by the member countries of the Union for the Protection of Industrial Property until December 31, 1958, or until it comes into force, whichever date is the earlier.*"

COMMENTARY ON ARTICLE 12

123. This Article, which consists of two paragraphs, contains provisions which, in their substance, are identical with the provisions contained in the first two paragraphs of Article 20 of the proposed Stockholm Act of the Paris Convention (see document S/3).

124. The provisions are explained in paragraphs 173 to 175 of the Commentary contained in document S/3.

125. Paragraphs (3) and (4) of Article 20 of the proposed Stockholm Act of the Paris Convention (see document S/3) are not repeated here although they are also applicable in the case of the Nice Union. The reason for not repeating them here is that they will be applied in any case since they deal with matters concerning the present Bureau of the Paris Union, which is also the administrative organ of the Nice Union.

[*End of Commentary*]

[*Article 11, continued*]

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

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Special Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations as soon as possible.

(5) The Director General shall notify the Governments of all countries of the Special Union of signatures, deposits of instruments of ratification or accession, entry into force of any provisions of this Act, and notifications of denunciation.

ARTICLE 12 [TRANSITIONAL PROVISIONS][14]

(1) Until the first Director General assumes office, references in the present Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the International Bureau of the Union established by the Paris Convention for the Protection of Industrial Property, united with the International Bureau of the Union established by the Berne Convention for the Protection of Literary and Artistic Works, or its Director, respectively.

(2) Countries of the Special Union not having ratified or acceded to this Act may, until five years after the entry into force of the Convention establishing the International Intellectual Property Organization, exercise, if they so desire, the rights provided under Articles 5 to 5*quater* of the present Act as if they had ratified or acceded to this Act.

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

DONE at Stockholm, on July 14, 1967.

[*Here will follow the names of the States members of the Nice Union invited to the Stockholm Conference, each name being preceded by the words "For the Government of," and followed by a blank space reserved for the signature or signatures.*]

[*End of Proposed Text*]

[14] There is no Article 12 in the original Act of 1957.

CORRIGENDUM TO DOCUMENT S/7

1. After further study and consultation, BIRPI has, at the request of the Government of Sweden, prepared the present document, containing certain changes in document S/7, concerning proposals for revising the administrative provisions and the final clauses of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Trademarks and Service Marks.

Change in Proposed Article 6

2. *It is proposed that paragraph (6) of Article 6, as appearing in document S/7, should read as follows:*

After the entry into force of this Act, a country may not accede to the original Act of June 15, 1957, of this Agreement.

3. Article 6(6), as appearing in document S/7, would have provided that after the entry into force of the Stockholm Act, a country may accede to the original Act of June 15, 1957, of this Agreement, only in conjunction with ratification of, or accession to, the Stockholm Act.

4. The proposed provision, as hereby modified, would follow a similar provision proposed for the Stockholm Act of the Paris Convention (see document S/3/Corr. 1, paragraphs 2 to 4).

DOCUMENT S/8

LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

(LISBON AGREEMENT)

Proposals for Revising the Administrative Provisions and the Final Clauses

(Prepared by BIRPI, at the Request of the Government of Sweden)

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Article 5	Substantive Clauses	**16/17**
Article 6	Substantive Clauses	**16/17**
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INTRODUCTION

THE PRESENT DOCUMENT

1. The agenda of the Intellectual Property Conference of Stockholm includes the matter of *administrative and structural reforms* in the International Union for the Protection of Industrial Property ("Paris Union," sometimes referred to as "the General Union") and the Special Unions established by some of the countries members of the Paris Union. One of these Special Unions was created by the Lisbon Agreement of October 31, 1958, for the Protection of Appellations of Origin and their International Registration. This Agreement will hereinafter be referred to as " the original Act of 1958," and the Union created by it as "the Lisbon Union" or "the Special Union." The proposed administrative and structural reforms would extend also to the International Union established by the Berne Convention for the Protection of Literary and Artistic Works ("Berne Union").

2. The administrative and structural reforms would be effected by revising, at the Stockholm Conference, the Conventions and Agreements of the various Unions and by establishing a new intergovernmental organization, hereinafter referred to as "the proposed new Organization."

3. The Draft Convention concerning the establishment of the proposed new Organization is set out and commented upon in document S/10, whereas the proposed revisions of the existing Conventions and Agreements are dealt with in documents S/3 to S/9.

4. The present document (S/8) deals with the revisions proposed to be effected in the Agreement of the Lisbon Union, that is, in the original Act of 1958. These revisions would relate not only to administrative and structural matters but also to the *final clauses*. Every revision results in a new Act and requires final clauses dealing with the signing, languages and ratification of, accession to, and entry into force of, the new Act, and other similar formal matters concerning the new Act.

5. The proposals made in the present document for the revision of the Lisbon Agreement are, whenever the nature and the existing situation permit, the same as the proposals made in document S/3 for the Paris Union. In order to avoid too much repetition, the Commentary accompanying the present proposals will refer to the Commentary contained in document S/3 whenever this seems to be possible without endangering the easy comprehension of the proposals.

6. Draft resolutions are contained in document S/11, and financial questions not covered by other documents are dealt with in document S/12.

7. The present document was prepared by BIRPI at the request of the Government of Sweden, which will be the host of the Stockholm Conference scheduled to take place from June 12 to July 14, 1967.

GENERAL DESCRIPTION OF THE PROPOSED REVISIONS IN THE ADMINISTRATIVE PROVISIONS

8. The main objective of the revisions proposed in the Lisbon Agreement is similar to that of the revisions proposed in the Convention of its "parent" Union, that is, the Paris Union (see document S/3, paragraphs 16 to 28). The objective is to modernize the structure, administration, and finances, of the Special Union. This would be accomplished mainly by giving to the member countries the same full powers of policy making, decision, and control, as they customarily have in most other intergovernmental organizations and which they lack to a great extent in the Lisbon Union.

9. The main changes proposed would:

- create an *Assembly* of the member countries of the Lisbon Union;
- transfer the *supervision of the activities of the International Bureau* connected with the Lisbon Union from the Government of one country to the Assembly of all the member countries;
- do the same with the *supervision of the accounts* of the International Bureau concerning the Lisbon Union;
- do the same with the *approval of the program and budget* of the Lisbon Union;
- institute a more *flexible financial system;*
- make the *modification of administrative provisions* easier and simpler;
- transfer the responsibility of *preparing for revision conferences* from one Government (that of the host country) to the organs of the Special Union.

Creation of an Assembly

10. In the present situation, the Lisbon Union has no *Assembly* of member countries, at least not in the sense in which the word "Assembly" is used in other intergovernmental organizations where an Assembly is the policy-making, supreme body of an organization or union. The original Act of 1958 did establish a Council (Article 9) but—except in one case—is most vague about the tasks and attributions of the Council as it merely states that the Council is established "at the International Bureau for the implementation of this Agreement" (Article 9(1)). The exception is that Article 7(2), second sentence, provides that the amount of the registration fee shall be fixed by the Council.

11. Under the proposed reform, the Council would be replaced by an Assembly of States and the Assembly would have the customary powers. The Assembly would, in particular and as far as the Lisbon Union is concerned: fix the amount of possible financial contributions of member countries; fix the amount of the international registration fee; determine the program and the budget; supervise the International Bureau; exercise the ultimate control of the accounts; direct the preparations for revision conferences; amend the administrative provisions of the Agreement (cf. proposed Article 9).

Supervision of Certain Activities of the International Bureau

12. In the present situation, the activities of the International Bureau are supervised by the Swiss Government, as the Paris Convention places the International Bureau "under the high authority of the Government of the Swiss Confederation" (see Article 13(1) of the Lisbon Act of the Paris Convention).

13. Under the proposed reform, the activities of the International Bureau—as far as the Lisbon Union is concerned—would be supervised not by one country but by all member countries, through the Assembly (cf. proposed Article 9(2)(a)(v)).

Supervision of Accounts

14. In the present situation, the Swiss Government supervises the accounts of the International Bureau (see Article 13(10) of the Lisbon Act of the Paris Convention).

15. Under the proposed reform, the auditing of the accounts would be effected by auditors appointed not by one country but by all member countries, through their Assembly (cf. proposed Article 9*ter*(9)).

Program and Budget

16. In the present situation, the program and the budget of the International Bureau concerning the Lisbon Union (as well as all the other Unions administered by BIRPI) are approved by the Government of Switzerland (cf. Article 13(10) of the Lisbon Act of the Paris Convention).

17. If the proposed reform is adopted, the budget and program will require the approval of the Assembly of the member countries (see proposed Article 9(2)(a)(iv)).

Clearer and More Flexible Financial System

18. (a) In the present situation, the fee for international registration is written into the text of the Regulations adopted together with the Agreement and the amount of the fee may be modified by the unanimous decision of the Council (see Article 7(2), second sentence, of the original Act of 1958).

(b) Under the proposed reform, the amount of the fee could be modified by a two-thirds vote of the Assembly.

19. (a) The present financial system is not entirely clear on the question of contributions of member countries. The only provision in the original Act of 1958 reads as follows: "The receipts from the fees collected by the International Bureau shall be used to meet the expenses of the international registration service of appellations of origin, *subject to the application, to the countries of the Special Union, of Article 13 (8) of the Paris Convention*" (italics supplied). Article 13(8) of the Paris Convention merely describes the class-and-unit system of the Paris Union.[1] In other words, it provides for the method whereby a certain amount has to be divided so as to arrive at the sum each country owes. This amount, in the Paris Union, is the total expenditure of the Paris Union with a ceiling written into the Lisbon Act of the Paris Convention, modifiable according to a certain procedure. No precise indication, however, is contained in the original Act of 1958 of the Lisbon Union as to the determination of the amount to be divided among the member countries. It is presumed that the intent was that this amount should be the difference between the expenses of the Lisbon Union and its receipts from the international registration fees.

(b) It is now proposed to state this presumed intent in clear language (see Article 9*ter*(3)(v)), and bring out that normally the receipts from the fees should cover the expenses of the Special Union and that only if they fail to do so will the member countries have to contribute (see Articles 9(3)(e), 9*ter*(3)(v) and (4)(b)).

20. (a) Another question concerning finances is the question of securing a certain liquidity. In practically all other organizations this is achieved through the working capital fund. The Lisbon Union has no such fund.

(b) It is now proposed to establish one for the Lisbon Union as well as the other Unions (see proposed Article 9*ter*(7)).

[1] Article 13(8) of the Lisbon Act of the Paris Convention reads as follows:

"(8) To determine the contribution of each country to this total expenditure, the countries of the Union and those which may afterwards join the Union are divided into six classes, each contributing in the proportion of a certain number of units, namely:

1st class	25 units
2nd „	20 „
3rd „	15 „
4th „	10 „
5th „	5 „
6th „	3 „

These coefficients are multiplied by the number of countries in each class, and the sum of the products thus obtained gives the number of units by which the total expenditure is to be divided. The quotient gives the amount of the unit of expense."

More Flexible Modification of the Administrative Provisions of the Agreement

21. In the present situation, the administrative provisions written into the Agreement can only be changed by the same procedure as the provisions of a substantive nature. This means that the administrative provisions, even those of the most ephemeral kind or of very secondary importance, can be changed only at conferences of revision, and, if the tradition of the Paris Union is applied, only by unanimous vote. This procedure is obviously most impractical.

22. Under the proposed reform, the amendment of administrative provisions would not have to wait for the rare conferences of revision but could be effected by the Assembly of the member countries of the Lisbon Union, normally meeting once every three years. Some amendments would require adoption by unanimous vote; for others, a qualified majority would suffice. Even under the proposed reform, it would be necessary that the amendments adopted by the Assembly be accepted by the member countries, but, once they have been accepted by three-quarters of the members, the rest would be bound by them as well. There would be one exception to this rule, namely, the amendment increasing the financial obligations of the member countries. Such an amendment would become binding on a country in the remaining one-quarter only when it accepts it (see proposed Article 9*quater*(3)).

Direct Participation of the Member Countries in the Preparation of Revision Conferences

23. In the present situation, the preparations for revision conferences are governed by the same rules as those for revision conferences of the Paris Union, namely, they are entrusted to the Government of the country in which the conference is to be held (see the reference to Article 14 of the Paris Convention, in Article 10(2) of the original Act of 1958 of the Lisbon Agreement). The International Bureau assists that Government in its work, but otherwise the Government is on its own. Participation by the member countries is not prescribed and they have nothing to say on the question whether there should be a revision conference, what points should be revised, and what should be the proposals for revision.

24. Under the proposed reform, the host country of the revision conference would have no special role in the preparations for revision. The directives for revision would come from the Assembly (see proposed Article 9(2)(a)(ii)), and the details would be carried out by the International Bureau (see proposed Article 9*bis*(3)(a)).

GENERAL DESCRIPTION OF THE PROPOSED REVISIONS IN THE FINAL CLAUSES

25. By "final clauses" are meant the provisions contained in Articles 11 to 14 of the original Act of 1958. Articles with the same numbers would contain the final clauses in the proposed Stockholm Act. In the latter, an additional Article—Article 15—would contain transitional provisions.

26. The new final clauses would, naturally, have to deal with the signature and ratification of, accession to, and entry into force of, the Stockholm Act. They would generally follow the same principles as were adopted by the original Act of 1958, but at the same time would try to express some of these principles in more clearly worded language.

27. Furthermore, the final clauses proposed for the Stockholm Act would follow the pattern established by the Paris Convention (cf. the proposed Stockholm Act of that Convention contained in document S/3) with respect to the depositary functions. Most of these functions would be entrusted to the Director General of the proposed new Organization rather than to the Swiss Government.

28. Finally, the proposed final clauses would contain transitional provisions, the main feature of which would be that they would allow countries which have not yet ratified or acceded to the Stockholm Act to exercise, during a limited number of years, the same rights as if they had ratified or acceded to the said new Act. Such a provision would allow, in particular, participation and voting in the Assembly of the Special Union.

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ARTICLES TO BE REVISED

29. On the pages entitled "Proposed Text," the proposed revisions are indicated in the following manner: all words not appearing in the original Act of 1958, now proposed as replacements or additions, are printed in heavy type; texts in the original Act of 1958, which it is now proposed to replace or omit, are quoted in footnotes under the Article in which they appear in the original Act of 1958. The text of Articles or paragraphs in which no change is proposed is not reproduced in the present document but a note indicates, in the appropriate place, that "no change is proposed." The text of these provisions as well as of all other provisions of the original Act of 1958 appears in a booklet distributed together with the present document.

30. The proposed Stockholm Act has 18 Articles the numbers of which—because of the use of Latin suffixes in the case of Articles 9*bis*, 9*ter*, and 9*quater*—run, however, only from 1 to 15.

31. No changes whatsoever are proposed in Articles 2, 3, 6, and 8.

32. Only formal changes are proposed in Articles 4 and 5.

33. The omissions proposed in Article 7 are mainly a consequence of the proposal contained in draft Article 9(2) according to which the modification of the Regulations and of the amount of the registration fee would become a task of the Assembly of the Special Union.

34. Articles 9, 9*bis*, 9*ter*, and 9*quater*, contain the new administrative provisions dealing respectively with the Assembly, the International Bureau, finances, and amendments to these four Articles. They replace the last two sentences of Article 7(2), and the totality of Article 9, of the original Act of 1958.

35. The omissions proposed in Article 10 are mainly a consequence of the proposal contained in draft Article 9(2) to entrust to the Assembly the task of amending the Regulations and directing the preparations for conferences of revision.

36. Article 11 deals principally with ratification, accession, and entry into force, matters which, in the original Act of 1958, are dealt with in the first three paragraphs of Article 11, as well as in Article 13.

37. Article 12 deals with the duration of the Agreement, as does Article 12 of the original Act of 1958, and with denunciation. The latter question, in the original Act of 1958, is dealt with in Article 11(4).

38. Article 13 deals with the application of the original Act of 1958, a matter which is naturally not dealt with in that Act because there are no earlier Acts than the Act of 1958.

39. Article 14 deals with signature, languages, and other such formal matters, whereas Article 15 contains transitory provisions. The first corresponds in part to Article 14 of the original Act of 1958, whereas the second has no counterpart in that Act.

40. As can be seen, wherever reasonable—and sometimes at the expense of a more logical presentation—the proposed text follows the outline of the original Act of 1958. On the following pages are reproduced tables of corresponding provisions in order to facilitate comparison of the proposed text with the original Act of 1958 whenever their respective outlines differ.

41. A printed brochure containing the English translation of the original Act of 1958 is annexed to the present document. The translation differs in respect of a few details from translations published earlier by BIRPI. The differences are the result of efforts to render more accurately the original French, which is the only official language of the original Act of 1958.

[*End of Introduction*]
[*Follow Tables*]

TABLES OF CORRESPONDING PROVISIONS

TABLE I

showing which provisions in the Original Act of 1958 deal with matters identical or related to topics dealt with in the provisions of **the proposed Stockholm Act**

PROPOSED STOCKHOLM ACT	ORIGINAL ACT OF 1958
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9(1)(a)	Article 9(1)
(b) and (c)	—
(2)(a)(i) and (ii)	—
(iii)	Article 7(2),second sentence
(iv) to (x)	—
(b)	Article 9(2)
(3)(a) to (d)	—
(e)	Article 7(2),second and third sentences
(f) and (g)	—
(4)	—
(5)	Article 9(2)
Article 9*bis*	—
Article 9*ter*(1)	—
(2)	—
(3)(i) and (ii)	Article 7(2),second and third sentences
(iii) to (v)	—
(4)	Article 7(2),second and third sentences
(5)	Article 7(2),third sentence
(6)	—
(7)	—
(8)	—
(9)	—
Article 9*quater*	—
Article 10(1)	Article 10(1)
(2)	Article 10(2)
Article 11(1)	Article 13,first sentence
(2)(a)	Article 11(1)
(b)	Article 11(2)
(c)	Article 11(3)
(3)	Article 11(1)
(4)	Article 11(1)
(5)(a)	Article 13,second sentence
(b)	Articles 11(1) and 13,second sentence
(6)	Article 11(1)
(7)	—

[*Follows Continuation of Table I*]

[*Table I, continued*]

PROPOSED STOCKHOLM ACT	ORIGINAL ACT OF 1958
Article 12(1)	Article 12
(2)	Article 11(4)
(3)	Article 11(4)
(4)	Article 11(4)
Article 13(1)	—
(2)	—
Article 14(1)(a)	Article 14(1),first sentence
(b)	Article 14(3)
(c)	—
(2)	Article 14(2)
(3)	Article 14(1),second sentence
(4)	—
(5)	Articles 11(1),(3),(4);13,second sentence;14(1)
Article 15	—

[*Follows Table II*]

TABLE II

showing which provisions in **the proposed Stockholm Act** deal with matters identical or related to topics dealt with in the provisions of the Original Act of 1958

ORIGINAL ACT OF 1958	**PROPOSED STOCKHOLM ACT**
Article 1	**Article 1**
Article 2	**Article 2**
Article 3	**Article 3**
Article 4	**Article 4**
Article 5	**Article 5**
Article 6	**Article 6**
Article 7(1)	**Article 7(1)**
(2), first sentence	**Article 7(2)**
second sentence	**Articles 9(2)(a)(iii), (3)(e); 9*ter*(3)(i) and (ii), (4)**
third sentence	**Articles 9(3)(e); 9*ter*(3)(i) and (ii), (4), (5)**
Article 8	**Article 8**
Article 9(1)	**Article 9(1)(a)**
(2)	**Article 9(2)(b), (5)**
Article 10(1)	**Article 10(1)**
(2)	**Article 10(2)**
Article 11(1)	**Articles 11(2)(a), (3), (4), (5)(b), (6); 14(5)**
(2)	**Article 11(2)(b)**
(3)	**Articles 11(2)(c); 14(5)**
(4)	**Articles 12(2), (3), (4); 14(5)**
Article 12	**Article 12(1)**
Article 13, first sentence	**Article 11(1)**
second sentence	**Articles 11(5); 14(5)**
Article 14(1), first sentence	**Article 14(1)(a)**
second sentence	**Article 14(3), (5)**
(2)	**Article 14(2)**
(3)	**Article 14(1)(b)**

[*End of Tables*]

PROPOSED TEXT

AND

COMMENTARY

COMMENTARY

COMMENTARY ON ARTICLE 1

42. The only change proposed in the wording of this Article is designed to reflect the change in the name of the International Bureau which would occur when the Convention establishing the proposed new Organization enters into force.

COMMENTARY ON ARTICLE 2

43. No change is proposed in the text of this Article, which would thus remain the same as it is in the original Act of 1958.

COMMENTARY ON ARTICLE 3

44. No change is proposed in the text of this Article, which would thus remain the same as it is in the original Act of 1958.

COMMENTARY ON ARTICLE 4

45. In the original Act of 1958, this Article refers to the Paris Convention and the Madrid Agreement (False or Deceptive Indications of Source) as "last revised at Lisbon on October 31, 1958." It is proposed to replace the quoted words by "and its subsequent revisions," which would also cover the Stockholm revisions of the said Convention and Agreement and make it clear that, in countries still bound only by earlier revisions than the Stockholm or Lisbon revisions, the Article under consideration did not exclude their application either.

PROPOSED TEXT

LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

ARTICLE 1

(1)[1] The countries to which this Agreement applies form a Special Union within the framework of the Union for the Protection of Industrial Property.

(2)[2] They undertake to protect on their territories, in accordance with the terms of this Agreement, the appellations of origin of products of the other countries of the Special Union, recognized and protected as such in the country of origin and registered at the **International Bureau of Intellectual Property (hereinafter designated as " the International Bureau " or " the Bureau ") referred to in the Convention establishing the International Intellectual Property Organization (hereinafter designated as " the Organization").**[3]

ARTICLE 2

[*No change is proposed.*]

ARTICLE 3

[*No change is proposed.*]

ARTICLE 4

The provisions of this Agreement shall in no way exclude the protection already granted to appellations of origin in each of the countries of the Special Union by virtue of other international instruments, such as the Paris Convention of March 20, 1883, for the Protection of Industrial Property **and its subsequent revisions,**[4] and the Madrid Agreement of April 14, 1891, for the Repression of False or Deceptive Indications of Source **and its subsequent revisions,**[5] or by virtue of national legislation or judicial decisions.

[*Follows Article 5*]

[1] In the original Act of 1958, this paragraph is unnumbered.

[2] *Idem.*

[3] The words printed here in heavy type replace the words "*Bureau of the Union for the Protection of Industrial Property*" used in the original Act of 1958.

[4] The words "**and its subsequent revisions**" used here replace the words "*last revised at Lisbon on October 31, 1958.*"

[5] *Idem.*

COMMENTARY ON ARTICLE 5

46. The proposed change merely reflects the change in the name of the International Bureau (see paragraph 42, above).

COMMENTARY ON ARTICLE 6

47. No change is proposed in the text of this Article, which would thus remain the same as it is in the original Act of 1958.

COMMENTARY ON ARTICLE 7

48. This Article, in the original Act of 1958, consists of two paragraphs. No change is proposed in paragraph (1) and the first sentence of paragraph (2). The second and third sentences of paragraph (2) deal with the fixation of the amount of the international registration fee and with the finances of the Union. It is proposed to omit these two sentences since these matters are now dealt with, somewhat differently, and in more detail, in other provisions of the proposed Stockholm Act (see Articles 9(2)(a)(iii), (3)(e); 9*ter*(3)(i), (v), (4), (5)).

COMMENTARY ON ARTICLE 8

49. No change is proposed in the text of this Article, which would thus remain the same as it is in the original Act of 1958.

ARTICLE 5

(1) The registration of appellations of origin shall be effected at the International Bureau,[6] at the request of the Administrations of the countries of the Special Union, in the name of any individual person or legal entity, public or private, having, according to their national legislation, a right to use such appellations.

(2) [*No change is proposed.*]

(3) [*No change is proposed.*]

(4) [*No change is proposed.*]

(5) [*No change is proposed.*]

(6) [*No change is proposed.*]

ARTICLE 6

[*No change is proposed.*]

ARTICLE 7

(1) [*No change is proposed.*]

(2) A single fee shall be paid for the registration of each appellation of origin.[7]

ARTICLE 8

[*No change is proposed.*]

[*Follows Article 9*]

[6] The words "*for the Protection of Industrial Property,*" appearing at this place in the original Act of 1958, are omitted here.

[7] In the original Act of 1958, paragraph (2) contains two more sentences. The second sentence reads as follows: "*The amount of the fee to be collected shall be fixed unanimously by the Council established under Article 9, below.*" The third sentence reads as follows: "*The receipts from the fees collected by the International Bureau shall be used to meet the expenses of the international registration service of appellations of origin, subject to the application, to the countries of the Special Union, of Article 13(8) of the Paris Convention.*" Both these sentences are omitted here. See, however, proposed Article 9(2)(a)(iii) and (3)(e), and Article 9*ter*(3)(i), (v), (4), and (5).

COMMENTARY ON ARTICLE 9

50. This Article deals with the Assembly of the Lisbon Union. It follows closely the pattern which it is proposed that Article 13 of the Stockholm Act of the Paris Convention should establish by instituting an Assembly for the Paris Union.

51. The Article consists of five paragraphs dealing with composition and representation (paragraph (1)), tasks (paragraph (2)), voting (paragraph (3)), sessions (paragraph (4)), and rules of procedure (paragraph (5)).

52. *Paragraph (1)(a)* establishes the Assembly and defines its composition.

53. The Assembly would replace the Council established by Article 9 of the original Act of 1958.

54. Only countries which have ratified or acceded to the *Stockholm Act* would be members of the Assembly, which is natural since the Assembly would be instituted by the Stockholm Act. However, the provision should be read together with the transitional provision contained in proposed Article 15(2), by virtue of which even those countries of the Special Union which will not be among the five countries whose ratifications or acceptances will bring the Stockholm Act into force will have the same right to sit and vote in the Assembly as the countries which have caused the entry into force of the Stockholm Act. And this right they will have for five years after the entry into force of the Convention establishing the proposed new Organization. It is to be expected that by the end of this period—which will probably be longer than five years from the entry into force of the Stockholm Act of the Lisbon Agreement (as that entry into force requires a smaller number of acceptances than the entry into force of the Convention establishing the proposed new Organization)—all or most of the countries parties to the Lisbon Agreement will have accepted the Stockholm Act of that Agreement.

55. *Paragraph (1)(b) and (c)* appears to be self-explanatory. These provisions are of the customary kind.

56. *Paragraph (2)(a)* deals with the powers and the tasks of the Assembly. They are enumerated in a list of ten items. The Assembly would deal with all matters concerning the maintenance and development of the Special Union and the implementation of its Agreement *(item (i))*. It would give directives for the preparations of conferences of revision *(item (ii))*. It would modify the Regulations, including the fixation of the amount of the international registration fee *(item (iii))*. The powers given under *items (iv) to (x)* are similar to the powers given, in relation to the Paris Union, to the Assembly of that Union, and are explained in detail in paragraphs 55 to 66 of the Commentary contained in document S/3.

ARTICLE 9 [ASSEMBLY][8]

(1)(a) The Special Union shall have an Assembly consisting of the countries which have ratified or acceded to this Act.

(b) The Government of each country shall be represented by one or more delegates who may be assisted by alternate delegates, advisors, and experts.

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

(2)(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of its Agreement;

(ii) give directions to the International Bureau concerning the preparation for conferences of revision;

(iii) modify the Regulations, including the fixation of the amount of the fee referred to in Article 7(2);

(iv) determine the program and adopt the triennial budget of the Special Union and approve its final accounts;

(v) review and approve reports and activities of the Director General of the Organization (hereinafter designated as "the Director General") concerning the Special Union, and give instructions to him on such matters;

(vi) establish such committees as may be considered necessary for the work of the Special Union;

(vii) determine which countries outside the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(viii) adopt amendments to Articles 9 to 9*quater*;

(ix) take any other appropriate action designed to further the objectives of the Special Union;

(x) exercise such other functions as are allocated to it.

[*Follows Article 9(2)(b)*]

[8] Articles 9, 9*bis*, 9*ter*, and 9*quater*, here proposed replace Article 9 of the original Act of 1958 which reads as follows:
"*(1) A Council composed of representatives of all the countries members of the Special Union shall be established, at the International Bureau, for the implementation of this Agreement.*
"*(2) This Council shall draw up its own statutes and rules of procedure and coordinate them with the organs of the Union for the Protection of Industrial Property and with those of international organizations which have concluded agreements for cooperation with the International Bureau.*"

57. *Paragraph (2)(b)* contains a reference to the Coordination Committee of the proposed new Organization. The International Bureau will continue to serve not only the Lisbon Union but also all the other Unions presently administered by BIRPI. In the present situation, coordination is achieved through the Swiss Government and the advice of the existing Coordination Committee. Under the proposals, the Government of Switzerland would no longer play a special role in this respect but the Coordination Committee would continue to do so. Its role would still be merely advisory since the powers of decision would be vested in the Assemblies. The proposed provision is merely a reminder that the advice should be considered before action is taken. There is no obligation for the Assembly of the Lisbon Union to follow the advice. It may ignore it.

58. *Paragraph (3)(a)* provides that each country shall have one vote. This is a corollary of the equality of sovereign countries, which all members of the Special Union are.

59. *Paragraph (3)(b)* provides that one-third of the members constitutes a quorum. The same quorum is provided for the Assembly of the Paris Union (see paragraph (3)(b) of Article 13 of the proposed Stockholm Act of the Paris Convention in document S/3).

60. *Paragraph (3)(c), (d), and (e)*, deals with the majorities required for decision in the Assembly. The majority is *two-thirds* in the following cases: admission of observers (subparagraph (d)), and any modification of the Regulations, including the fixation of the amount of the international registration fee (subparagraph (e)): any decision as to the amount of possible financial contributions by member countries to the budget of the Special Union. Subparagraph (c) also refers to Article 9*quater*(2) according to which amendment of the proposed new administrative provisions (Articles 9 to 9*quater*) requires either *unanimity* or a *three-fourths* majority. It is to be noted that the provision does *not* deal with the question of voting on the revision of any other provisions—particularly the substantive provisions—of the Lisbon Agreement, since their revision is not effected by the Assembly but by special revision conferences.

61. *Paragraph (3)(f)* provides, as does the proposed Stockholm Act of the Paris Convention, that abstentions shall not be considered as votes (see document S/3, Article 13(3)(f)).

62. *Paragraph (3)(g)* excludes voting by proxy. An identical provision is proposed for the Paris Convention (see document S/3, Article 13(3)(g)).

63. *Paragraph (4)(a)* deals with the ordinary sessions of the Assembly, and *paragraph (4)(b)* deals with its extraordinary sessions. In view of parallel provisions in the Conventions or Agreements of the other Unions, as well as in the Convention establishing the proposed new Organization, the ordinary sessions of the General Assembly of the Organization and the Assemblies of the Unions would take place once every three years and would normally be held during the same week or weeks in the same place. These measures are dictated by the obvious need for keeping expenses as low as possible both for the International Bureau and for the delegations attending the meetings.

64. *Paragraph (4)(c)* provides that the agenda of each session shall be prepared by the Director General.

65. *Paragraph (5)*, providing that the Assembly adopts its own rules of procedure, corresponds to established custom in comparable bodies.

[*Article 9(2), continued*]

(b) In exercising its functions with respect to matters which are of interest also to other Unions whose administrative tasks or administration is entrusted to the Organization, the Assembly shall take into consideration the advice of the Coordination Committee of the Organization.

(3)(a) Each country member of the Assembly shall have one vote in the Assembly.

(b) One-third of the countries members of the Assembly shall constitute a quorum.

(c) Subject to the provisions of subparagraphs (d) and (e) and Article 9*quater*(2), the Assembly shall make its decisions by a simple majority of the votes cast.

(d) Decisions to admit to meetings as observers countries outside the Special Union, as well as intergovernmental and international non-governmental organizations, shall require at least two-thirds of the votes cast.

(e) Any modification of the Regulations, including the fixation of the amount of the fee referred to in Article 7(2), and any decision as to the amount of possible financial contributions by countries of the Special Union to the budget of the Special Union, shall require at least two-thirds of the votes cast.

(f) Abstentions shall not be considered as votes.

(g) Each delegate may represent, and vote in the name of, one country only.

(4)(a) The Assembly shall meet once in every third calendar year in ordinary session, upon convocation by the Director General, preferably during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session, upon convocation by the Director General, at the request of one-fourth of the countries constituting the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

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

[*Follows Article 9*bis]

COMMENTARY ON ARTICLE 9*bis*

66. This Article deals with the International Bureau as far as the secretariat tasks for the Lisbon Union are concerned.

67. The Article consists of four paragraphs dealing with the tasks of the International Bureau in general (paragraph (1)), with the participation of the Bureau in the meetings of the Assembly and possible committees of the Lisbon Union (paragraph (2)), with the preparation of and participation in conferences of revision (paragraph (3)), and with other tasks (paragraph (4)).

68. *Paragraph (1)(a)* refers to the International Bureau, by which, as is indicated in Article 1(2), is meant the International Bureau of Intellectual Property, that is, the Secretariat of the proposed new Organization. The main tasks of the International Bureau in connection with the Lisbon Agreement are the carrying out of the international registration and related duties—for example, the publication of *Les Appellations d'origine*, the official journal of the Lisbon Union—and "all other international administrative tasks"—for example, the notification of declarations of refusal (Article 5(5))—connected with the carrying out of the Lisbon Agreement.

69. *Paragraph (1)(b)* provides that the International Bureau shall act as the secretariat of the Assembly, and of any committee, of the Special Union. *Paragraph (2)* expressly provides that the International Bureau shall participate, without the right to vote, in the meetings of such bodies.

70. *Paragraph (1)(c)* is a corollary of paragraph (1)(b). Since the International Bureau is the Secretariat of the Special Union, the Director General—head of the International Bureau—must also be the chief administrative officer of the Special Union, and must be able to represent the Special Union, as he does the proposed new Organization as such.

71. As to *paragraph (2)*, see the observations contained in paragraph 69, above.

72. *Paragraph (3)* concerns the role of the International Bureau in the preparation of conferences of revision (subparagraph (a)) and in the meetings themselves of these conferences (subparagraph (b)). This role would be the same as that played by the International Bureau in connection with the revision conferences of the Paris Convention (see Article 13*ter*(8) of the proposed Stockholm Act of the Paris Convention, document S/3).

73. *Paragraph (4)* seems to be self-explanatory.

ARTICLE *9bis* [INTERNATIONAL BUREAU][8]

(1)(a) The international registration and related duties, as well as all the other international administrative tasks with respect to the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall make preparations for the meetings and provide the secretariat of the Assembly and of such committees as may have been established by the Assembly.

(c) The Director General of the Organization shall be the chief administrative officer of the Special Union and shall represent the Special Union.

(2) The International Bureau shall participate, without the right to vote, in the meetings of the Assembly and of such committees as may have been established by the Assembly.

(3)(a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of the provisions of the Agreement other than Articles 9 to *9quater*.

(b) The Director General or persons designated by him shall take part in the discussions at these conferences, but without the right to vote.

(4) The International Bureau shall carry out any other tasks assigned to it.

[*Follows Article 9*ter]

[8] See footnote 8, above, page 19.

COMMENTARY ON ARTICLE 9*ter*

74. This Article deals with finances.

75. It consists of nine paragraphs dealing with: the definition of the budget (paragraph (1)), a reminder of the need of coordination with the budgets of the other Unions (paragraph (2)), the sources of income (paragraph (3)), special provisions concerning the international registration fee (paragraph (4)), the possible contributions of member countries (paragraph (5)), charges due for other services performed by the International Bureau (paragraph (6)), the working capital fund of the Special Union (paragraph (7)), advances by the Government of the country on whose territory the Organization has its headquarters (paragraph (8)), and the auditing of accounts (paragraph (9)).

76. *Paragraph (1)(a)* provides that the Special Union shall have a budget, that is, a budget of its own, separate and distinct from the budget of the other Unions and from the budget of the proposed new Organization as such.

77. *Paragraph (1)(b)* implies that the budget expenses of the Special Union should be grouped under two main headings: (i) the *proper* expenses of the Special Union (for example, the expenses of a meeting dealing with matters exclusively relating to the Lisbon Union, the salaries of employees of the International Bureau working exclusively on matters concerning the Lisbon Union and the Lisbon Union only, the cost of printing of the official journal of the Lisbon Union, *Les Appellations d'origine*), and (ii) the share of the Special Union in the common expenses.

78. *Paragraph (1)(c)* defines the notion of "common expenses." These are expenses which are incurred by the International Bureau not only in the sole interest of the Special Union but also in the interest of the other Unions administered by it, or in the interest of the Organization as such (particularly its Conference). The share of the Lisbon Union in these common expenses will be in proportion to the interest of that Union in such expenses. The provision parallels similar provisions in the proposed new administrative provisions of the other Unions (see, for example, as far as the Paris Union is concerned, document S/3, Article 13*quater*(1)(c)) and in the Convention establishing the proposed new Organization (document S/10, Article 10(1)(c)).

79. *Paragraph (2)* provides that the budget of the Special Union must be established with due regard to the requirements of coordination with the budgets of the various other Unions and with the budget of the Organization as such. In view of the existence of common expenses, as defined above, the necessity of coordination is manifest.

80. *Paragraph (3)* enumerates, under five items, the sources of income of the Union. The first source consists of the international registration fees and other charges *(item (i))*. The next three *(items (ii) to (iv))* are self-explanatory. The last source *(item (v))* consists of the contributions of the countries of the Special Union. Such contributions will have to be paid only if the international registration fees and other sources of income do not suffice to cover the expenses of the Special Union. The total amount of the contributions should be sufficient to cover the expenses not covered by the sources of income referred to in items (i) to (iv).

81. *Paragraph (4)* deals with the amount of the international registration fee. The amount of the fee would be proposed by the Director General and fixed by the Assembly by a qualified majority vote of two-thirds (cf. Article 9(3)(e)). The proposed text would provide a guide as to the desirable amount of the fee. It should, under normal circumstances, be sufficient to cover the expenses of the Lisbon Union. In other words, the fee should be fixed at such a level that, if the number of registrations which can reasonably be expected takes place, then the product of this number and the fee should be enough to cover the expenses. If the estimate of the number of expected registrations proves to be too low, if the cost of the service becomes unexpectedly high (for example, because of inflation or devaluation), or if the number of registrations in any given period is so minimal that only an inordinately high fee would produce the needed income, then a deficit may occur. It would be in such a case, and in such a case only, that the member countries would have to cover the deficit.

ARTICLE 9*ter* [FINANCES][8]

(1)(a) The Special Union shall have a budget.

(b) The budget of the Special Union shall include the proper expenses of the Special Union itself and its share in the common expenses, as defined in the following subparagraph.

(c) Expenses attributable not exclusively to the Special Union but also to one or more other Unions administered by the Organization, or also to the Organization as such, shall be considered as common expenses. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the various Unions administered by the Organization and with the budget of the Organization as such.

(3) The budget of the Special Union shall be financed from the following sources:

(i) international registration fees collected under Article 7(2) and charges due for other services performed by the International Bureau in relation to the Special Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;

(iii) gifts, bequests, and subventions;

(iv) rents, interests, and other miscellaneous income;

(v) contributions of the countries of the Special Union, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses of the Special Union.

(4)(a) The amount of the fee referred to in Article 7(2) shall be proposed by the Director General and shall be fixed by the Assembly.

(b) The amount of the said fee shall be so fixed that the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service, without requiring the payment of contributions referred to in paragraph (3)(v), above.

[*Follows Article* 9ter *(5)*]

[8] See footnote 8, above, page 19.

82. *Paragraph (5)* provides the rules according to which such a deficit would have to be distributed among the member countries, to be borne by them. The rules are the same as in the Paris and Nice Unions, that is, they are based on the class-and-unit system. The same is provided, albeit merely by a reference to Article 13(8) of the Paris Convention, in the third sentence of Article 7(2) of the original Act of 1958 of the Lisbon Agreement.

83. *Paragraph (6)* seems to be self-explanatory.

84. *Paragraph (7)* dealing with the question of a working capital fund is identical with Article 13*quater*(6) of the proposed Stockholm Act of the Paris Convention. For explanations, see document S/3, paragraph 113.

85. *Paragraphs (8)* and *(9)* deal with advances to be granted to the International Bureau by the Swiss Government and with the auditing of accounts. The provisions are similar to those proposed for the Paris Convention (see document S/3, Article 13*quater*(7) and (8)) and are explained in paragraphs 114 and 115 of the Commentary contained in document S/3.

[*Article 9*ter, *continued*]

(5)(a) For the purpose of establishing its contribution referred to in paragraph (3)(v), each country of the Special Union shall belong to the same class as it belongs to in the International (Paris) Union for the Protection of Industrial Property, and shall pay its contribution on the basis of the same number of units as is fixed for that class in that Union.

(b) The contribution of each country of the Special Union shall be an amount in the same proportion to the total sum to be contributed by all countries of the Special Union as the number of its units is to the total of the units of all contributing countries.

(c) The date on which contributions are to be paid shall be fixed by the Assembly.

(d) A country which has not paid its financial contribution before the expiration of two years from the date referred to in the preceding subparagraph shall have no vote in any organ of the Special Union. However, any organ of the Special Union may allow a country to continue to exercise its vote in that organ if, and as long as, it is satisfied that the delay in payment arises from exceptional circumstances. At the expiration of one year from the date referred to in the preceding subparagraph, the Director General shall remind the Government of the country that its contribution is overdue. Omission of such a reminder shall not affect the application of the provisions of the present subparagraph.

(6) The amount of the charges due for services other than registration proper rendered by the International Bureau in relation to the Special Union shall be established by the Director General, who shall report on them to the Assembly.

(7)(a) The Special Union shall have a working capital fund which shall be constituted by payments made by the countries of the Special Union.

(b) The amount of the payment of each country shall be proportionate to its annual contribution as a party to the Paris Convention for the Protection of Industrial Property.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee.

(8)(a) In the Headquarters Agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

[*Follows Article 9*ter *(8)(b)*]

COMMENTARY ON ARTICLE 9*quater*

Preliminary Comments on Articles 9quater *and 10(2)*

86. For the purposes of the procedure for amending the Agreement one has to distinguish between two groups of provisions: (i) the so-called administrative provisions, that is, Articles 9 to 9*quater*, and (ii) all the other provisions of the Agreement, in particular the so-called substantive provisions (Articles 1 to 8). The latter group, however, includes also Articles 10 to 15.

87. Only amendments to the administrative provisions (Articles 9 to 9*quater*) are governed by Article 9*quater*. Amendments to all the other provisions (Articles 1 to 8, and 10 to 15) are governed by Article 10(2). In order to underline the fact that two different procedures are involved, amendments to the administrative provisions will be designated by the word "amendments," whereas amendments to all other provisions will be designated by the word "revisions."

88. The main differences between the procedures for amending the administrative provisions and revising the other provisions are the following:

(i) *Amendments* are discussed in and adopted by the Assembly (Articles 9(2)(a)(viii) and 9*quater*(2)) whereas *revisions* are discussed in and adopted by special conferences of revision (Article 10(2)). The Assembly consists of member countries which are bound by the provisions to be amended, that is, countries which are bound by the Stockholm Act (see Article 9(1)(a)), since they are the only interested parties. Any conference of revision consists of all the countries of the Special Union (see Article 10(2)), even if they are bound only by Acts earlier than the one to be revised.

(ii) The adoption of *amendments* would require a three-quarters majority, except that any amendment of Articles 9 and 9*quater*(2) would require unanimity. There is no provision in the Agreement on this point as far as *revisions* are concerned. Up to the present time, in the other Special Unions and the Paris Union itself, all revisions have been regarded as requiring unanimity of the countries present and voting; in other words, revisions have been carried if no country has voted against—"vetoed"—them, the number of positive votes being irrelevant. The present draft contains no proposals, so that presumably, and as long as the countries consider it desirable, the traditional system will apply as far as revisions in the Lisbon Agreement are concerned.

(iii) Countries will become bound by *amendments* when three-quarters of the members of the Assembly have notified their acceptance. This means that when three-quarters have accepted an amendment, that amendment will then become binding also on the other countries members of the Assembly,

[*Article 9*ter *(8), continued*]

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

(9) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

ARTICLE 9*quater*
[AMENDMENTS TO ARTICLES 9 TO 9*quater*][8]

[*See text of the Article on page 31*]

[8] See footnote 8, above, page 19.

except when the amendment increases the financial obligations of the member countries of the Special Union. In the latter case, each country has to expressly accept the amendment before it is bound by it. As far as *revisions* are concerned, what is the exception in the case of amendments becomes the rule here: revisions bind only those countries which have communicated their ratification or acceptance.

89. The reason for providing different procedures for amendments and revisions is that the traditional practice of requiring unanimity for revisions seems to be too stiff for amendments. Amendments may be needed urgently to render the administration, the work of the International Bureau, more efficient. Consequently, an easier way than unanimity—over which hangs, like the sword of Damocles, the power of veto by any single country—seems to be eminently reasonable and practical. It is true that even for amendments unanimity would be required when the amendment relates to Article 9 dealing with the Assembly. This exception does not seem to be either customary or necessary. But since the 1965 and 1966 Committees appeared to desire it in connection with other Unions, it is carried over into the drafts herewith proposed.

Comments on Article 9quater *proper*

90. The Article under consideration (Article 9*quater*) regulates the procedure of *amendments* and consists of three paragraphs dealing with *proposals for* amendments (paragraph (1)), *adoption of* amendments (paragraph (2)), and *entry into force of* amendments (paragraph (3)).

91. *Paragraph (1)* makes it clear that what is involved here is the amendment of the administrative provisions (Articles 9 to 9*quater*), and the administrative provisions only. It also provides, in essence, that members of the Assembly of the Special Union must receive at least six months' advance notice if a proposal for amending the administrative provisions is to be considered by the Assembly.

92. *Paragraph (2)* deals with the majorities required for the adoption, in the Assembly, of amendments to Articles 9 to 9*quater*. The paragraph distinguishes between, on the one hand, amendments to Article 9 (which deals with the Assembly) and to Article 9*quater*(2) (which deals with the very question of majorities required for amendments), and, on the other hand, amendments to the other administrative provisions (that is, Articles 9*bis*, 9*ter*, and, with the exception of its paragraph (2), Article 9*quater*). Whereas amendment to the former would require unanimity, amendment to the latter would require a three-fourths majority.

93. *Paragraph (3)* deals with the question of when countries become bound by the amendments. The question is discussed above in paragraph 88.

COMMENTARY ON ARTICLE 10

94. This Article consists of two paragraphs dealing with the Regulations and revisions, respectively. It is perhaps not very logical to deal with these two rather different matters in one and the same Article but since this is the case in the original Act of 1958, and since the present document tries to maintain the outline of that Act as far as is practicable, the two matters continue to appear in the same Article.

95. *Paragraph (1)* provides that the details for carrying out the Agreement are fixed in the Regulations. The Regulations were adopted by the Lisbon Conference of 1958 and will remain in force until they are modified. Such modification, under the original Act of 1958, requires a decision by a conference of revision and ratification or accession (see Article 10(2) of the original Act of 1958), whereas, under the proposed Stockholm Act, the Regulations—including the Regulations of 1958—could be modified by a much simpler procedure, namely a two-thirds majority decision in the Assembly (see proposed Article 9(2)(a)(iii) and (3)(e)). Because of the subordinate nature of the Regulations the proposed simpler procedure seems to be fully justified. In any case, there seems to be no reason to subject, as the original Act of 1958

[*Article 9*quater]

(1) Proposals for the amendment of Articles 9, 9*bis*, 9*ter*, and the present Article, shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in the preceding paragraph shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided, however, that any amendment of Article 9, and of the present paragraph, shall require the unanimity of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force when written notifications of acceptance have been received by the Director General from three-fourths of the countries members of the Assembly at the time it has adopted the amendment. Amendments to the said Articles thus accepted shall bind all countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, except that any amendment increasing the financial obligations of countries of the Special Union shall bind only those countries which have notified their acceptance of such amendment.

ARTICLE 10 [REGULATIONS; AMENDMENTS]

(1) The details for carrying out this Agreement are fixed in the Regulations.[9]

[*Follows Article 10(2)*]

[9] In the original Act of 1958, the provision continues with the following words which are omitted here: "... *which shall be signed at the same time as the Agreement.*"

does, the modification of the Regulations to the same procedure as the modification of the Agreement. It is difficult to see why, if there is no difference in procedure in the two cases, the Lisbon Conference bothered to place part of the provisions in a document entitled "Agreement," and part of the provisions in a document entitled "Regulations."

96. *Paragraph (2)* provides, in effect, that the Agreement may be revised, that revisions will be effected in conferences, and that in such conferences the decisions will be taken by the countries which, at the time of the conference, are members of the Special Union. As to the preparation of the conferences of revision, see proposed Articles 9(2)(a)(ii) and 9*bis*(3)(a).

COMMENTARY ON ARTICLE 11

97. This Article, as here proposed, deals with the following: ratification and accession by countries of the Special Union (paragraph (1)), accession by countries outside the Union (paragraph (2)), the deposit of instruments of ratification and accession (paragraph (3)), application of the Stockholm Act to certain territories (paragraph (4)), entry into force of the Stockholm Act (paragraph (5)), the general effects of ratification or accession (paragraph (6)), the question of accession to the original Act of 1958, which is the only earlier Act of the Lisbon Agreement (paragraph (7)).

98. The Article, as proposed, adopts the same solutions as are proposed in the case of the Paris Convention, whenever applicable (see document S/3).

99. *Paragraph (1)* deals with the methods by which a country already a member of the Lisbon Union may become bound by the Stockholm Act of the Lisbon Agreement. There are two methods. If such a country has signed the Stockholm Act, it must deposit an instrument of "ratification" if it wants to become bound by that Act. If it has not signed the Stockholm Act, it must deposit an instrument of "accession" if it wants to achieve the same result.

100. *Paragraph (2)(a)* deals with the method by which a country not yet a member of the Lisbon Union may become bound by the Stockholm Act, and with a condition. The method is "accession." When such a country accedes to the Stockholm Act of the Lisbon Agreement, it becomes a member of the Lisbon ("Special") Union. The condition is that the country must already be, or must concurrently become, a member of the Paris (or the "General") Union. The same condition exists for all the Special Unions. See, in particular, the first eleven words of Article 11(1) of the original Act of 1958 of the Lisbon Agreement.

101. *Subparagraphs (b) and (c) of the proposed paragraph (2)* are identical with the provisions contained in paragraphs (2) and (3) of Article 11 of the original Act of 1958. The provisions are now marked as subparagraphs in order to emphasize that they relate only to accessions by countries *outside* the Lisbon Union.

[*Article 10, continued*]

(2) This Agreement[10] may be revised **by conferences held between the delegates of the Special Union.**[11]

ARTICLE 11 [RATIFICATION AND ACCESSION; TERRITORIES; ENTRY INTO FORCE; ACCESSION TO THE ORIGINAL ACT OF 1958][12]

(1) Any country of the Special Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it.

(2)(a) Any country outside the Special Union which is party to the Paris Convention for the Protection of Industrial Property may accede to this Act and thereby become a member of this Special Union.

(b)[13] Notification of accession shall, in itself, ensure, on the territory of the acceding country, the benefit of the above provisions for appellations of origin which, at the time of the accession, are the subject of international registration.

(c)[14] However, any country acceding to this Agreement may, within a period of one year, declare in regard to which appellations of origin, already registered at the International Bureau, it wishes to exercise the right provided in Article 5(3).

[*Follows Article 11(3)*]

[10] In the original Act of 1958, the words "This Agreement" are followed by the words "*and the Regulations for carrying it out.*" These words are omitted here.

[11] The words "**by conferences held between the delegates of the Special Union,**" used here replace the words "*in accordance with Article 14 of the General Convention,*" used in the original Act of 1958.

[12] This Article replaces the first three paragraphs of Article 11, and the whole of Article 13, of the original Act of 1958, which read as follows:

"[Article 11]

"*(1) Member countries of the Union for the Protection of Industrial Property which are not parties to this Agreement may accede to it at their request and in the manner prescribed in Articles 16 and 16*bis *of the Paris Convention.*

"*(2) Notification of accession shall, in itself, ensure, on the territory of the acceding country, the benefit of the above provisions for appellations of origin which, at the time of the accession, are the subject of international registration.*

"*(3) However, any country acceding to this Agreement may, within a period of one year, declare in regard to which appellations of origin, already registered at the International Bureau, it wishes to exercise the right provided for in Article 5(3).*"

"[Article 13]

"*This Agreement shall be ratified and the instruments of ratification deposited with the Government of the Swiss Confederation.*

"*It shall come into force upon ratification by five countries, one month after the deposit of the fifth ratification has been notified by the Government of the Swiss Confederation, and, in the countries in whose name it is ratified at a later date, one month after the notification of each of such ratifications.*"

[13] In the original Act of 1958, this provision appears as Article 11(2).

[14] In the original Act of 1958, this provision appears as Article 11(3).

102. *Paragraph (3)* seems to be self-explanatory.

103. *Paragraph (4)* contains, as did Article 11(1) of the original Act of 1958, a reference to that provision of the Paris Convention which deals with territories.

104. *Paragraph (5)(a)* deals with the initial entry into force of the Stockholm Act. Such entry into force would require five ratifications or accessions.

105. *Paragraph (5)(b)* deals with entry into force with respect to any country other than the first five referred to in paragraph (5)(a). The provision follows tradition and seems to be self-explanatory.

106. *Paragraph (6)* expressly states a rule which in the original Act of 1958 appears in the form of a reference to Article 16 of the Paris Convention.

107. *Paragraph (7)* deals with the question of accession to the original Act of 1958, once the Stockholm Act has entered into force. It provides that such accession will be possible only in conjunction with becoming party to the Stockholm Act. The solution follows the pattern established by Article 16*quater* of the proposed Stockholm Act of the Paris Convention (see document S/3). For explanations, see paragraphs 149 to 155 of document S/3.

COMMENTARY ON ARTICLE 12

108. This Article consists of four paragraphs.

109. *Paragraph (1)* is identical with Article 12 of the original Act of 1958.

110. *Paragraphs (2), (3), and (4)*, deal with denunciation. In the original Act of 1958, this matter is regulated by a reference (in Article 11(4)) to the provisions of the Paris Convention on denunciation (Article 17*bis*). Here, these provisions are repeated, in order to make consultation of the text easier. The proposed solution also avoids possible difficulties of interpretation if Article 17*bis* is not the same in all the different Acts of the Paris Convention or if its number changes.

[Article 11, continued]

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

(4) The provisions of Article 16*quinquies* of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

(5)(a) With respect to the first five countries which have deposited their instruments of ratification or accession, this Act shall enter into force one month after the deposit of the fifth such instrument.

(b) With respect to any other country, this Act shall enter into force one month after the date on which its ratification or accession has been notified by the Director General, unless the country has indicated a subsequent date in its instrument of ratification or accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(6) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

(7) After the entry into force of this Act, a country may accede to the original Act of October 31, 1958, of this Agreement only in conjunction with ratification of, or accession to, this Act.

ARTICLE 12 [DENUNCIATION]

(1)[15] This Agreement shall remain in force as long as five countries at least are parties to it.

(2)[16] Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of the original Act of October 31, 1958, of this Agreement and shall affect only the country making it, the Agreement remaining in full force and effect as regards the other countries of the Special Union.

(3)[16] Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4)[16] The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Special Union.

[Follows Article 13]

[15] In the original Act of 1958, Article 12 consists of the one sentence which now constitutes paragraph (1). Consequently, in the original Act of 1958, the paragraph is not numbered. The number is added here.

[16] Paragraphs (2), (3), and (4), of proposed Article 12 replace Article 11(4) of the original Act of 1958 reading as follows: "(4) *In the event of denunciation of this Agreement, Article 17*bis *of the Paris Convention shall apply.*"

COMMENTARY ON ARTICLE 13

111. This Article, *in the original Act of 1958*, deals with ratification and entry into force of that Act. Since those matters are covered by the proposed Article 11(1) and (5), the Article bearing the number 13 becomes "free." It is proposed to use this number for an entirely new provision, namely, a provision dealing with the application of the only earlier Act of the Lisbon Agreement, that is, the original Act of 1958.

112. The Article, *as here proposed*, would provide, in effect, that in relations between countries which have accepted the Stockholm Act the original Act of 1958 will cease to become applicable (*paragraph (1)*), whereas any country which has accepted the Stockholm Act will be bound by the original Act of 1958 in its relations with countries which have accepted the original Act of 1958 but have not yet also accepted the Stockholm Act (*paragraph (2)*).

COMMENTARY ON ARTICLE 14

113. This Article deals with the signing, the safekeeping, and the languages, of the Stockholm Act (paragraphs (1) and (2)), transmittal of copies (paragraph (3)), registration with the Secretariat of the United Nations (paragraph (4)), and various notifications (paragraph (5)).

114. It is practically identical with Article 19 of the proposed Stockholm Act of the Paris Convention. See, for explanations, paragraphs 167 to 172 in document S/3.

ARTICLE 13
[APPLICATION OF THE ORIGINAL ACT OF 1958][17]

(1) This Act shall, as regards the relations between the countries by which it has been ratified or acceded to, replace the original Act of October 31, 1958.

(2) However, any country which has ratified this Act or has acceded to it shall be bound by the original Act of October 31, 1958, in its relations with countries of the Special Union which have not ratified, or acceded to, this Act.

ARTICLE 14 [SIGNATURE, ETC.] [18]

(1)(a) This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Authoritative texts shall be established by the Director General, after consultation with the interested Governments, in the English, German, Italian, Portuguese, Russian and Spanish languages, and such additional languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

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

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Special Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations as soon as possible.

(5) The Director General shall notify the Governments of all countries of the Special Union of signatures, deposits of instruments of ratification or accession, entry into force of any provisions of this Act, denunciations, and declarations pursuant to Article 11(2)(c) and (4).

[Follows Article 15]

[17] This Article replaces Article 13 of the original Act of 1958, whose text is quoted in footnote (12), above.

[18] This Article replaces Article 14 of the original Act of 1958, which reads as follows:

"*(1) This Agreement shall be signed in a single copy in the French language, which shall be deposited in the archives of the Government of the Swiss Confederation. A certified copy shall be transmitted by the latter to each of the Governments of the countries of the Special Union.*

"*(2) This Agreement shall remain open for signature by the countries of the Union for the Protection of Industrial Property until December 31, 1959.*

"*(3) Official translations of this Agreement shall be established in English, German, Italian, Portuguese and Spanish.*"

COMMENTARY ON ARTICLE 15

115. This Article, which consists of two paragraphs, contains provisions which, in their substance, are identical with the provisions contained in the first two paragraphs of Article 20 of the proposed Stockholm Act of the Paris Convention (see document S/3).

116. The provisions are explained in paragraphs 173 to 175 of the Commentary contained in document S/3.

117. Paragraphs (3) and (4) of Article 20 of the proposed Stockholm Act of the Paris Convention (see document S/3) are not repeated here although they are also applicable in the case of the Lisbon Union. The reason for not repeating them here is that they will be applied in any case since they deal with matters concerning the present Bureau of the Paris Union, which is also the administrative organ of the Lisbon Union.

[*End of Commentary*]

ARTICLE 15 [TRANSITIONAL PROVISIONS][19]

(1) Until the first Director General assumes office, references in the present Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the International Bureau of the Union established by the Paris Convention for the Protection of Industrial Property, united with the International Bureau of the Union established by the Berne Convention for the Protection of Literary and Artistic Works, or its Director, respectively.

(2) Countries of the Special Union not having ratified or acceded to this Act may, until five years after the entry into force of the Convention establishing the International Intellectual Property Organization, exercise, if they so desire, the rights provided under Articles 9 to 9*quater* of the present Act as if they had ratified or acceded to this Act.

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

DONE at Stockholm, on July 14, 1967.

[Here will follow the names of the States members of the Lisbon Union invited to the Stockholm Conference, each name being preceded by the words "For the Government of," and followed by a blank space reserved for the signature or signatures.]

[End of Proposed Text]

[19] There is no Article 15 in the original Act of 1958.

CORRIGENDUM TO DOCUMENT S/8

1. After further study and consultation, BIRPI has, at the request of the Government of Sweden, prepared the present document, containing certain changes in document S/8, concerning proposals for revising the administrative provisions and the final clauses of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

Change in Proposed Article 11

2. *It is proposed that paragraph (7) of Article 11, as appearing in document S/8, should read as follows:*

After the entry into force of this Act, a country may not accede to the original Act of October 31, 1958, of this Agreement.

3. Article 11(7), as appearing in document S/8, would have provided that after the entry into force of the Stockholm Act, a country may accede to the original Act of October 31, 1958, of this Agreement, only in conjunction with ratification of, or accession to, the Stockholm Act.

4. The proposed provision, as hereby modified, would follow a similar provision proposed for the Stockholm Act of the Paris Convention (see document S/3/Corr. 1, paragraphs 2 to 4),

DOCUMENT S/9

BERNE CONVENTION FOR THE
PROTECTION OF LITERARY AND ARTISTIC WORKS

(BERNE CONVENTION)

Proposals for Revising the Administrative Provisions and the Final Clauses (Articles 20*bis* to 32)

(Prepared by BIRPI, at the Request of the Government of Sweden)

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INTRODUCTION

THE PRESENT DOCUMENT

1. The agenda of the Intellectual Property Conference of Stockholm includes the matter of *administrative reforms* in the International Union for the Protection of Literary and Artistic Works (Berne Union), in other Unions administered by the United International Bureaux for the Protection of Intellectual Property (BIRPI), and in the common Secretariat—that is, BIRPI—serving all these Unions. The agenda of the Stockholm Conference also includes the matter of *structural reforms*, consisting principally of creating new organs for the Berne Union and the other Unions and of establishing a new intergovernmental Organization, hereinafter referred to as " the proposed new Organization." This proposed new Organization would be open to adherence by any member country of the Berne Union and would contain organs in which the member countries of the Berne Union adhering to the proposed new Organization would automatically participate (the General Assembly, and the Conference) or could be elected to serve on (the Coordination Committee). The Secretariat of the proposed new Organization would be a continuation of BIRPI and would serve all Unions as well as the Organization as such.

2. Whereas all matters concerning the proposed new Organization are dealt with in a separate document (S/10), the present document (S/9) deals with all the proposed administrative and structural reforms of interest to the Berne Union, and the Berne Union alone. Proposals of the same kind relating to the Paris Convention and the Madrid (Trademarks), Madrid (False Indications), Hague, Nice, and Lisbon Agreements are contained in documents S/3, 4, 5, 6, 7, and 8.

3. Draft resolutions are contained in document S/11, and financial questions not covered by other documents are dealt with in document S/12.

4. The present document (S/9) contains also proposals for the revision of the *final clauses* of the Berne Convention. These have relevance not only in connection with the administrative reform (dealt with in the present document and document S/10) but also with the proposed revision of Articles 1 to 20 of the Berne Convention, proposed in document S/1. That revision, it is recalled, would deal with the provisions concerning the substantive rules of the Berne Convention, that is, rules concerning the law of copyright proper.

5. The present document, as well as documents S/3 to S/8 and S/10 to S/12, were prepared by BIRPI at the request of the Government of Sweden, which will be the host of the Stockholm Conference scheduled to take place from June 12 to July 14, 1967.

PREPARATORY MEETINGS

6. The idea of an administrative and structural reform of the kind now proposed found its first official expression in a joint meeting of the Permanent Committee of the Berne Union and the Permanent Bureau of the Paris Union, held in October 1962.

7. The joint meeting recommended that a working party, and then a committee of governmental experts, be convened to start the preparatory work for a diplomatic conference to effectuate the reform.

8. The program of work in this respect has been reported to, and approved by, the yearly sessions of the Interunion Coordination Committee of the Berne and Paris Unions held in 1963, 1964, and 1965.

9. The Working Party met in May 1964, and the Committee of Governmental Experts met twice, first in March/April 1965, and then in May 1966, each time in Geneva. Their work results from three series of BIRPI documents, bearing the symbols AA/I, AA/II, and AA/III, respectively.

10. In the present document, the Working Party of 1964 will be referred to as " the 1964 Working Party "; the Committee of Experts of 1965, as " the 1965 Committee "; and the Committee of Experts of 1966, as " the 1966 Committee ".

11. *(a)* Experts from the following ten countries were invited to the 1964 Working Party, and all responded to the invitation: *Czechoslovakia, France, Germany (Federal Republic), Hungary, Italy, Japan, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland,* United States of America. The names of the countries members of the Berne Union are printed in italics.

(b) All the member countries of the Berne and Paris Unions were invited to the meetings of the Committee of Experts. In the 1965 Committee, 37 participated: *Australia, Austria, Belgium, Brazil, Canada, Congo (Leopoldville), Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic), Greece, Hungary, India,* Indonesia, Iran, *Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway, Pakistan, Poland, Rumania, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland,* United States of America, *Yugoslavia.* The Union of Soviet Socialist Republics, at that time not yet a member of the Paris Union, attended as an observer. In the 1966 Committee, 39 of the member countries participated: Algeria, *Australia, Austria, Belgium, Brazil, Bulgaria,* Congo (Brazzaville), *Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic), Greece, Hungary, India,* Indonesia, Iran, *Ireland, Israel, Italy, Japan, Luxembourg,* Mexico, *Monaco, Morocco, Netherlands, Norway, Poland, Portugal, Rumania, Spain, Sweden, Switzerland,* Syrian Arab Republic, Uganda, Union of Soviet Socialist Republics, *United Kingdom of Great Britain and Northern Ireland,* United States of America, *Yugoslavia.* The names of the countries members of the Berne Union are printed in italics.

12. Subject to one minor exception[1], the revisions proposed in the present document follow the views expressed by the 1966 Committee, either unanimously or by a majority.

13. On the question of what countries may accede to the Stockholm Act of the Berne Convention, the draft documents submitted to the 1966 Committee provided that any country outside the Union " which may accede to the Convention establishing the International Intellectual Property Organization " may do so. However, the Committee did not resolve the question of which countries may accede to that Convention. BIRPI now proposes that the quoted qualification be omitted in the Stockholm Act and that, on the question of accession, the same provisions be maintained as are contained in the Acts presently in force, the effect of which is that any State may adhere to the Berne Union. The maintaining of the present system was strongly supported by many Delegations which firmly believe that the cause of international protection is best served if the Union remains accessible to any State. It would seem to be most unlikely that any kind of restriction to this 80-year-old principle of the Union could achieve unanimous support at the Stockholm Conference.

14. The proposed draft differs from the previous draft also in the respect that the present draft severs the last ties which were left in the last previous draft, between membership in the Berne Union and in the proposed new Organization.

(i) According to the last previous draft, *a Berne Union country* accepting the new administrative provisions would—unless it had made an express declaration to the contrary—automatically have become a Member of the proposed new Organization. Under the present draft, no such automatic effect exists and a country may accept the new administrative provisions with or without acceding at the same time to the Convention establishing the Organization.

(ii) The draft presented to the 1966 Committee provided in effect that *a country outside the Berne Union* could adhere to it only if prior to, or concurrently with, adhering to it, it adheres also to the proposed new Organization. Under the present draft, a country outside the Berne Union could adhere to it without adhering to the proposed new Organization, and vice versa.

(iii) The draft presented to the 1966 Committee provided in effect that a country, once it became a Member of the proposed new Organization, *could leave it only if,* at the same time, it also left the Berne Union. Under the present draft, any country member of both the new Organization and the Berne Union could leave either (i.e., the Organization *or* the Union) and still remain a member of the other.

[1] The 1966 Committee decided to replace in what is now Article 22(7)*(b)*, the words " obligation to grant advances " by " agreement concerning advances. " It was, however, realized that the expression " obligation to grant advances " occurs in the preceding subparagraph and it must be maintained in order to make it clear that the same obligation—which, by the way, does not result from an agreement only but also, and primarily, from the text of the Convention itself—is meant in both places. Consequently, the original expression was maintained.

15. The proposed draft differs from the previous draft also in what is mainly a matter of form: the idea of the need for domestic copyright legislation to be in harmony with the requirements of the Convention is now expressed in a separate Article (Article 30) rather than in passing, as it is in Article 25(1) of the Brussels Act.

16. Finally, the proposed draft differs from the previous draft in that it contains new provisions on the tie-in of reservations, primarily in connection with the Protocol Regarding Developing Countries. The question of the tie-in was not discussed either by the 1965 Committee or the 1966 Committee since it was regarded as being so intimately linked to the substantive question of permitted reservations that it was regarded as a matter of final clauses in a subsidiary way only. However, even the tie-in aspect of the reservations had to be resolved and the corresponding proposals are now contained in draft Articles 20*bis*, 25(1)*(b)*(i) and *(c)*, 25*ter*(2), and 25*quater*.

17. On a few questions, the 1966 Committee asked the drafters of the proposals for the Stockholm Conference to reflect further and come up with proposals. The following are the most important among these questions:

(i) *Place of the Administrative Provisions.* In the documents submitted for the consideration of the 1966 Committee, the administrative provisions were grouped in what was called a protocol. Since the protocol was an integral part of the Convention itself, governed by the same final clauses as the rest of the Convention, and not susceptible of separate signature, there seemed to be no logical or legal reasons not to consider the proposed new provisions on administrative matters as a mere substitution for the existing administrative provisions. They are so considered in the present draft. Consequently, they replace Articles 21, 22, and 23 of the Brussels Act and are numbered 21, 21*bis*, 21*ter*, 22, and 23. It should be noted, however, that the possibility of excluding the administrative provisions from the effects of ratification or accession is maintained without change (Article 25*(b)*).

(ii) *Continuation of BIRPI.* Article 21*ter*(1)*(a)* would expressly state that the International Bureau of the proposed new Organization " is a continuation of the Bureau of the [Berne] Union, united [since 1893] with the Bureau of the [Paris] Union...". Thus it is underlined, both in the Convention establishing the proposed new Organization (see Article 9 of the draft contained in document S/10) and in the Berne Convention, that the International Bureau would *not* be a *new* international Secretariat but the continuation of the existing Secretariat.

(iii) *Advances.* In the 1966 Committee, some Delegations were of the opinion that the Convention should not contain a provision saying outright that the country on the territory of which the Secretariat is located is obliged to grant advances—under certain conditions, and subject to the possibility of denunciation—to the Secretariat. The draft now proposed provides that such obligation shall be provided for in the Headquarters Agreement (Article 22(7)*(a)*). Thus, it would only indirectly flow from the Convention.

(iv) *Settlement of Disputes.* In the 1966 Committee serious objections were raised by some Delegations to the continuation of the provision—Article 27*bis* of the Brussels Act—on settlement of disputes. The proposals now contain several alternatives for the possible substitution of the said Article or even its complete elimination.

(v) *Ratification and Entry into Force.* In the 1966 Committee, proposals were made to group more logically the provisions relating to ratification, accession, and entry into force. It is now proposed that these questions be dealt with in two articles, one dealing with countries members of the Union (" countries of the Union ") and the other with countries not members of the Union (" countries outside the Union "). The first one would be Article 25 (taking the place of Articles 25 and 25*bis* of the draft which was presented to the 1966 Committee), and the second, Article 25*bis* (taking the place of Article 25*ter* of the previous draft). The wording of the latter has been redrafted in order to make its intent clearer.

(vi) *Parallelism with the Convention Establishing the Proposed New Organization.* The 1966 Committee asked the drafters of the proposals for the Stockholm Conference to refer, in the text of the Berne Convention, to the Convention establishing the proposed new Organization every time there seems to be a relationship between the Conventions. This has been done in the present draft. See, in particular, Articles 21(2)*(a)*(ii) (reference to the Secretariat) and 21(2)*(b)* and 21*bis*(6)*(b)* (references to the Coordination Committee).

(vii) *Application of Earlier Acts.* In the proposals submitted to the 1966 Committee, Article 27 would have provided that the relations between countries which were party to the Stockholm Act and any country not party to that Act would be governed by the most recent of the Acts to which the latter country was a party. This draft provision was criticized as establishing relations between countries not having accepted the same Act. The proposals now made for Article 27 are different and do not establish such relations.

(viii) *Languages.* In the proposals submitted to the 1966 Committee, Article 31 referred to texts in certain languages as " official translations." After further study of the question, it is now proposed that texts in languages other than French and English be considered and called " authoritative," as they are in Article 31 of the Brussels Act.

(ix) *Depositary Functions.* It is proposed, in agreement with the Government of Sweden, that the original copy of the Convention to be signed at Stockholm should be deposited with the Swedish Government. This solution would entail the following two consequences: signatures effected during the six months following the Stockholm Conference would have to be effected in Stockholm; the Swedish Government would have to certify the copies of the Convention whenever certified copies are needed. All other depositary functions would be entrusted to the Director General of the proposed new Organization, or, until he is appointed, to the Director of BIRPI.

(x) *Transitional Provisions.* In the 1966 Committee, it was suggested that the question be studied whether some express provisions would not be needed to provide for the side-by-side existence of the present and future Secretariats and the " succession " between the two. These questions have been studied and yielded paragraphs (3) and (4) of Article 32.

(xi) *Order and Numbering of Articles.* In the 1966 Committee, suggestions were made as to re-examining the order of the articles. No changes are proposed in the present draft since it is believed that adhering to the order of the Brussels Act and to the previous revision drafts will facilitate examination of the present document. Admittedly, however, the order of the articles could be made more logical and the numbering could be transformed so as to avoid the repetition of the same number with Latin suffixes (*bis*, *ter*, *quater*, now used in Articles 20, 21, 25, and 27). The drafting committees of the Stockholm Conference may wish to deal with these questions.

GENERAL DESCRIPTION OF THE PROPOSED REVISIONS IN THE ADMINISTRATIVE PROVISIONS

18. The main objective of the revisions proposed in the Berne Convention is to modernize the administration, including the finances, and the structure of the Union. This would be accomplished mainly by giving to the member countries the same, full powers of policy making, decision, and control, which they customarily have in most other intergovernmental organizations and which they singularly lack in the Berne Union.

19. This great difference between what exists in the Berne Union and most other organizations can be explained, at least in part, by the fact that no organizational reform of real significance has taken place since the creation of the Union in 1886, that is, more than eighty years ago.

20. The main changes now proposed would:

- create *new organs* composed of member countries;
- transfer the *supervision of the Secretariat* from the Government of one country (Switzerland) to the Governments of the member countries;
- do the same with the *supervision of the accounts of the Secretariat*;
- do the same with the *approval of the program and the budget*;
- do the same with the *appointment of the Director General*;
- institute a more *flexible financial system*;
- make the *modification of administrative provisions* easier and simpler;
- transfer the *preparation of revision conferences* from one Government (that of the host country) to the organs of the Union.

New Organs

21. *(a)* In the present situation, the Berne Union has no *Assembly* of member countries.

(b) Under the proposed reform, there would be an Assembly and this Assembly would have the customary powers of assemblies of other organizations. The Assembly would, in particular: determine the program and the budget; supervise the Executive Committee and the Secretariat; exercise the ultimate control of the accounts; play a decisive role in the election of the Director General; direct the preparations for revision conferences; amend the administrative provisions of the Convention (cf. proposed Article 21).

22. *(a)* Although the Berne Convention contains no provision for the creation of an Executive Committee, the Brussels Revision Conference of 1948 created, by resolution, a twelve-member Committee which has later come to be known under the name of " Permanent Committee." The sole task of the Committee, according to the Resolution, is to assist the Bureau of the Union in the preparations of conferences of revision. It has none of the usual powers of Executive Committees of intergovernmental organizations.

(b) Under the proposed reform, the Convention would provide for the creation of an Executive Committee and would entrust to it powers that such bodies usually have in comparable organizations (cf. proposed Article 21*bis*).

Supervision of the Secretariat

23. *(a)* In the present situation, the activities of the Secretariat are supervised by the Swiss Government. The Berne Convention provides that the International Bureau " shall be placed under the high authority of the Government of the Swiss Confederation, which shall regulate its organization and supervise its working " (Article 21(2) of the Brussels Act).

(b) Under the proposed reform, the activities of the Secretariat would be supervised not by one country but by all countries, through the Assembly (cf. proposed Article 21(2)*(a)*(vi)).

Supervision of Accounts

24. *(a)* In the present situation, the Swiss Government supervises the accounts of the Secretariat (see Article 23(5) of the Brussels Act).

(b) Under the proposed reform, the auditing of the accounts would be effected by auditors appointed not by one country but by all countries, through the Assembly (cf. proposed Article 22(8)).

Program and Budget

25. *(a)* In the present situation, the program and the budget of the Secretariat are approved by the Government of Switzerland (cf. Article 23(5) of the Brussels Act).

(b) If the proposed reform is adopted, budget and program will require the approval of the Assembly of the member countries (see proposed Article 21(2)*(a)*(iii)).

Appointment of the Head of the Secretariat

26. *(a)* In the present situation, the head of the Secretariat is not elected. He is appointed by the Swiss Government under the powers given to it by the Convention (see Article 21(2) of the Brussels Act).

(b) Under the proposed reform, the office of the Director General would become elective, and the election would be made by the Assemblies of the Berne and Paris Unions and the General Assembly of the proposed new Organization (see draft Article 6(2)(ii) and (3)*(g)* of the Convention establishing the proposed new Organization).

More Flexible Financial System

27. *(a)* The present situation is that the ceiling of the yearly contributions of the member countries is written into the Convention. This ceiling is 120,000 gold francs per annum (approximately 171,000 Swiss francs or 39,000 U.S. dollars per annum), an amount written into the Convention eighteen years ago, at the revision conference of 1948 at Brussels (see Article 23(1) of the Brussels Act). There is provision in the Brussels Act for the possibility of modifying this amount either by the unanimous decision of a revision conference or by the unanimous decision of the member countries outside a revision conference. Consultation by diplomatic notes of the Swiss Government as supervisory authority would be a means falling into the second category of decisions (see Article 23(1) of the Brussels Act).

(b) The fact is that, in practice, the requirement of unanimity proved to be much too stiff and the Swiss Government has not used its power to proceed to a consultation subject to the requirement of unanimity.

(c) Of course, BIRPI does not—and, indeed, it could not—operate within the income written into the Convention in 1948. The necessary funds are assured through voluntary contributions several times higher than the amount which countries would be obliged to pay in application of the Convention. However, not all countries have accepted all of the suggested voluntary increases, so that in the present situation the ratio between the lowest and highest contributions is, in fact, not the ratio of 1 : $8^1/_3$ which it should be according to the Convention, but a ratio of 1 : 27.

28. *(a)* Under the proposed reform, the total amount of the contributions of the member countries would be decided by the Assembly, normally once every three years, by a vote requiring a two-thirds majority if the financial obligations are increased, and a simple majority when they stay the same or are diminished (see proposed Article 21(3)*(e)*). This system would be in conformity with the systems prevailing in most of the other intergovernmental organizations.

(b) It is to be noted that the proposed change would modify only the fixing of the total amount of the contributions. It would not modify the method by which the share of each country in the total amount is determined. The share will, as it does today, depend on the free decision of each country when it chooses, or chooses to change, its class for the purposes of its contribution (see proposed Article 22(4)). This method is very different from the one prevailing in most of the other intergovernmental organizations in which the share of each country is fixed by the Assembly.

(c) Another aspect of the financial system is the question of securing a certain liquidity. In practically all other organizations, this is achieved through the working capital fund. BIRPI has no such fund, and the liquidity in the present situation is assured through loans made by the Government of Switzerland (see Article 23(5) of the Brussels Act), the amounts of which, in the past few years, have constantly been above one million Swiss francs. Under the proposed reform, a working capital fund would be established and loans from Switzerland would be requested only in exceptional circumstances (see proposed Article 22(6) and (7)).

More Flexible Modification of the Administrative Provisions of the Convention

29. *(a)* In the present situation, the administrative provisions written into the Convention can only be changed by the same procedure as the provisions of substantive law, that is, the provisions relating to the international protection of copyright. This means that the administrative provisions, even those of the most ephemeral kind or of very secondary importance, can be changed only at Conferences of revision (see Article 24(1) of the Brussels Act)—of which there has been a total of four in 80 years—and only by unanimous vote (see Article 24(3) of the Brussels Act). This procedure is obviously most unpractical.

(b) Under the proposed reform, the amendment of administrative provisions would not have to wait for the rare conferences of revision but could be effected by the Assembly, normally meeting once every three years. Even under the proposed reform, it would be necessary that the amendments so decided by the Assembly be ratified by the member countries, but, once they have been ratified by three-quarters of the members, the rest would be bound by them as well. There would be only one exception to this rule, namely, any amendment increasing the financial obligations of the member countries. Such an amendment would become binding on the remaining one-quarter of the countries also, only when individually accepted. (See proposed Article 23(3).)

Direct Participation of the Member Countries in the Preparation of Revision Conferences

30. *(a)* In the present situation, the preparations for revision conferences are entrusted to the Government of the country in which the conference is to be held (Article 24(2) of the Brussels Act). The Secretariat assists that Government in its work—and the Permanent Committee, in turn, may assist the Secretariat—but otherwise the Government is on its own. The Convention prescribes no participation by the member countries of the Union. Only some of them and only indirectly—that is, the members of the Permanent Committee, through advice to BIRPI—have something to say on the question of whether there should be a revision conference, what points should be revised, and what should be the proposals for revison. In actual fact, and in connection with the Stockholm Conference, the situation is different because the Swedish Government and BIRPI consulted the wishes and views of the member countries in several committees of experts. But this was purely voluntary as the Convention contains no prescriptions stipulating that it should be done.

(b) Under the proposed reform, the host country of the revision conference would have no special role in the preparation of revisions. The directives for revision would come from the Assembly (see proposed Article 21(2)*(a)*(ii)), and the details would be carried out by the Secretariat in cooperation with the Executive Committee (see proposed Article 21*ter*(8)*(a)*).

GENERAL DESCRIPTION OF THE PROPOSED REVISIONS IN THE FINAL CLAUSES

31. Whereas the administrative revisions—whose main features are described above—would change Articles 21 to 24 of the Brussels Act, the modification of the final clauses would affect Articles 25 to 31 of the same Act.

32. Several of the final clauses would be modified. The three most important innovations would be:

- that countries of the Union accepting the Stockholm Act may exclude from the effects of their acceptance either the proposed new provisions on substance (i.e., Articles 1 to 20*bis* as revised at Stockholm and the Protocol Regarding Developing Countries)or the proposed new administrative provisions;
- that most of the depositary functions would be entrusted to the Director General of the new Organization rather than to the Swiss Government;
- that countries outside the Union which accede to the Stockholm Act, and the Stockholm Act alone, would be obliged, subject to reciprocal protection, to extend the benefits of the Stockholm Act also to countries of the Berne Union which are bound only by earlier Acts than the Stockholm Act.

Limitation of the Effects of the Acceptance of the Stockholm Act

33. *(a)* As already indicated, acceptance of the Stockholm Act by countries of the Union would not necessarily have to extend to *both* the proposed new provisions on substance (that is, Articles 1 to 20*bis* and the Protocol Regarding Developing Countries) *and* the new administrative provisions (that is, Articles 21 to 23). It would, in fact, be possible for any country to accept only the new provisions on substance (including the Protocol Regarding Developing Countries; see document S/1) or only the new administrative provisions (see proposed Article 25(1)*(b)*).

(b) Naturally it would be desirable that every country accept both kinds of proposed changes, and, in any case, it is to be hoped that if, initially, a country finds it possible to accept only one of them, a few years later it will be in a position to accept also the other.

(c) Since, however, it is conceivable that there will be countries which may accept only one kind of change, or accept it sooner than the other, it seems to be practical to offer them the possibility to do so. Some countries may be quite prepared to accept the administrative changes almost immediately since they do not require a revision of their copyright laws. Such countries could accept the new Articles 21 to 23 not only if they are not ready to accept the proposed new substantive provisions but even if they are not ready to accept changes which were decided upon at earlier revision conferences. Consequently, it would be possible, for example, for a country still bound by the Rome Act of 1928 to accept the administrative reform embodied in the said Articles and not to accept either the Brussels Act of 1948 or the new substantive provisions which it is proposed to introduce into the Convention through the Stockholm Act. On the other hand, a country ready to accept the new substantive provisions could do so without becoming bound by the new administrative provisions. This possibility of choice would follow from proposed Article 25(1)*(b)*.

Depositary Functions

34. Whereas at the present time accessions, extensions to territories, and denunciations, must be announced to the Swiss Government which, in turn, announces them to the Governments of member countries (see Articles 25(2), 26, 28(3), and 29, of the Brussels Act), it is now proposed—for reasons of obvious expediency and in order to liberate the Swiss Government and its diplomatic representatives in the various countries from a tedious task—that the receiving and communicating of such notifications become a task of the Director General (see proposed Articles (25(1)*(a)*, *(c)* and (3), 25*bis*(1), 26, 29(2), and 31(5)).

Applicability of Stockholm Act in Certain Circumstances

35. *(a)* The Acts of the Berne Convention presently in force do not attempt to resolve the question of what, if any, obligations exist for a country which has accepted a certain Act towards another country which has accepted only Acts other than the one accepted by the former country.

(b) Naturally, the Stockholm Act cannot prescribe anything as far as the obligations of countries are concerned which have not accepted the Stockholm Act. To inscribe such obligations would violate the basic rule according to which contracts or conventions require the agreement of the contracting persons or countries.

(c) However, the Stockholm Act may prescribe obligations for countries which accept it. The proposed Article 27(3) would do just that by providing that countries outside the Union which accede to the Stockholm Act without also acceding to any of the previous Acts shall, subject to reciprocal protection, apply the Stockholm Act in their relations with countries of the Union which have not accepted the Stockholm Act or have accepted it only subject to the permitted exclusions.

OUTLINE OF THE PROPOSED ARTICLES

36. The present document deals with nineteen articles the numbers of which—because of the use of Latin suffixes in certain cases—run, however, only from 20*bis* to 32.

37. Article 20*bis* is a reference to the Protocol Regarding Developing Countries.

38. The following five articles, numbered 21, 21*bis*, 21*ter*, 22, and 23, contain the new administrative provisions, dealing respectively with the Assembly, the Executive Committee, the International Bureau, finances, and amendments to these five articles. They replace Articles 21, 22, and 23, of the Brussels Act.

39. Article 24 deals with revision, as does Article 24 of the Brussels Act.

40. Articles 25 and 25*bis* deal with ratifications, accessions, and entry into force, in relation to the Stockholm Act. The corresponding provisions, in the Brussels Act, are to be found in Articles 25, 27(3), and 28.

41. Article 25*ter* and the Protocol Regarding Developing Countries deal with reservations. In the Brussels Act, reservations are dealt with in Articles 25(3), 27(2)(3), 28(3), and 30(2).

42. Article 25*quater* is a new provision concerning the Protocol Regarding Developing Countries, itself an element in the Stockholm Act which has no corresponding provision in the Brussels Act.

43. Article 26 deals with the matter of the application of the Convention to territories not responsible for the conduct of their external affairs. It is a modernized version of Article 26 of the Brussels Act.

44. Article 27 deals with the questions of to what extent the Stockholm Act replaces earlier Acts, to what extent these earlier Acts remain applicable, and what obligations a country acceding only to the Stockholm Act has towards countries bound only by earlier Acts. Some of the same questions are treated in Article 27(1) of the Brussels Act.

45. Article 27*bis* has four alternatives. The first one is identical with Article 27*bis* of the Brussels Act. The other three are different.

46. Article 28 deals with the question of accession to earlier Acts and in essence parallels Article 28(3) of the Brussels Act.

47. Article 29, dealing with denunciation, is a slightly modified version of Article 29 of the Brussels Act.

48. Article 30, providing in essence for the need of domestic laws to be in harmony with the stipulations of the Convention, is a new provision as far as the Berne Convention is concerned. It parallels Article 17 of the Lisbon Act of the Paris Convention. The basic idea is already contained in Article 25(1) of the Brussels Act.

49. Article 31 deals with signature, languages, and other such formal matters. Article 31, in the Brussels Act, deals with some of the same questions.

50. Article 32 contains transitory provisions, particular to the Stockholm Act. In the Brussels Act, Article 31 is the last Article.

51. As can be seen, whenever reasonable—and sometimes at the expense of a more logical presentation—the proposed draft follows the general outline of the Brussels Act. Still, the differences are so numerous and so substantial—particularly as far as the administrative provisions are concerned—that it was believed that practically no useful purpose would be served by attempting to present, in parallel coulmns, the " corresponding " provisions of the Brussels Act and the proposed Stockholm Act.

52. Instead, the following two things are done to facilitate comparison between the two texts:

- two tables of corresponding provisions are reproduced at the end of the present chapter;
- a printed brochure containing, in a convenient form, the text of the Brussels Act is annexed to the present document.

[End of Introduction]
[Follow Tables]

TABLES OF CORRESPONDING PROVISIONS

TABLE I

showing which provisions in the Brussels Act deal with matters identical or related to topics dealt with in the provisions of the proposed Stockholm Act

Proposed Stockholm Act		Brussels Act
Article 20 *bis*	(1)	—
	(2)	—
Article 21	(1) *(a)*	—
	(b)	—
	(c)	—
	(2) *(a)* (i)	Article 24 (2), first sentence
	(ii)	Article 24 (2), second sentence
	(iii) to (v)	—
	(vi)	Article 22 (3)
	(vii) to (xi)	—
	(b)	—
	(3) *(a)*	—
	(b)	—
	(c)	—
	(d)	—
	(e)	Article 23 (1)
	(f)	—
	(g)	—
	(4) *(a)*	—
	(b)	—
	(5)	—
Article 21 *bis*		—
Article 21 *ter*	(1) *(a)*	Article 21 (1)
	(b)	—
	(c)	—
	(2)	Article 22 (1), first two sentences
	(3)	Article 22 (1), third sentence, second phrase
	(4)	—
	(5)	Article 22 (2)
	(6)	Article 22 (1), third sentence, first phrase
	(7)	—
	(8) *(a)*	Article 24 (2), second sentence
	(b)	Article 24 (2), third sentence
	(9)	—
Article 22	(1) *(a)*	Article 23 (5)
	(b)	—
	(c)	—
	(2)	—
	(3) (i)	Article 23 (1)
	(ii) to (v)	—
	(4) *(a)*	Article 23 (2)
	(b)	Article 23 (4)
	(c)	Article 23 (3)
	(d)	—
	(e)	—
	(5)	—
	(6) *(a)*	—
	(b)	—
	(c)	—
	(7) *(a)*	Article 23 (5)
	(b)	—
	(8)	Article 23 (5)

[*Follows continuation of Table I*]

[*Table I, continued*]

PROPOSED STOCKHOLM ACT		BRUSSELS ACT
Article 23		—
Article 24	(1)	Article 24 (1)
	(2)	Article 24 (2), first sentence
	(3)	Article 24 (3)
Article 25	(1) *(a)*	Articles 27 (3), first sentence, and 28 (1)
	(b)	—
	(c)	—
	(d)	—
	(2) *(a)*	Article 28 (2)
	(b)	Article 28 (2)
	(c)	Article 28 (2)
	(3)	Article 28 (2)
Article 25 *bis*	(1)	Article 25 (1)
	(2) *(a)*	—
	(b)	—
	(3)	Article 25 (2) and (3), second phrase
Article 25 *ter*	(1)	Article 25 (3), first phrase
	(2) *(a)*	Articles 27 (2), 27 (3) second sentence, and 28 (3), last sentence
	(b)	Article 30 (2)
Article 25 *quater*		—
Article 26	(1)	Article 26 (1), first phrase
	(2)	Article 26 (2), first phrase
	(3) *(a)*	Article 26 (1), second phrase
	(b)	Article 26 (2), second phrase
Article 27	(1)	Article 27 (1), first sentence
	(2) *(a)*	Article 27 (1), second sentence
	(b)	Article 27 (2), second sentence
	(c)	Article 27 (2), second sentence
	(3)	—
Article 27 *bis*		Article 27 *bis*
Article 28		Article 28 (3), first two sentences
Article 29	(1)	Article 29 (1), first sentence
	(2), first sentence	Article 29 (1), second sentence
	second sentence	Article 29 (2)
	(3)	Article 29 (2)
	(4)	Article 29 (3)
Article 30	(1)	—
	(2)	Article 25 (1)
Article 31	(1) *(a)*	Articles 28 (1) and 31
	(b)	Article 31
	(c)	Article 31
	(2)	—
	(3)	—
	(4)	—
	(5)	Articles 25 (2), 26 (3), and 28 (1)
Article 32		—
Protocol		Articles 25 (3), second sentence; 28 (3), last sentence; and 30 (2)

[*Follows Table II*]

TABLE II

showing which provisions in the proposed Stockholm Act deal with matters identical or related to topics dealt with in the provisions of the Brussels Act

Brussels Act	Proposed Stockholm Act
Article 21 (1)	Article 21 *ter* (1) *(a)*
(2)	—
(3)	—
Article 22 (1), first two sentences	Article 21 *ter* (2)
third sentence, first phrase	Article 21 *ter* (6)
second phrase	Article 21 *ter* (3)
fourth sentence	—
(2)	Article 21 *ter* (5)
(3)	Article 21 (2) *(a)* (vi)
Article 23 (1)	Article 21 (3) *(e)* and 22 (3) *(i)*
(2)	Article 22 (4) *(a)*
(3)	Article 22 (4) *(c)*
(4)	Article 22 (4) *(b)*
(5)	Articles 22 (1) *(a)*, (7) *(a)* and (8)
Article 24 (1)	Article 24 (1)
(2), first sentence	Articles 21 (2) *(a)* (i) and 24 (2)
second sentence	Articles 21 (2) *(a)* (ii) and 21 *ter* (8) *(a)*
third sentence	Article 21 *ter* (8) *(b)*
(3)	Article 24 (3)
Article 25 (1)	Articles 25 *bis* (1) and 30 (2)
(2)	Articles 25 *bis* (3) and 31 (5)
(3), first phrase	Article 25 *ter* (1)
second phrase	Article 25 *bis* (3)
second sentence	Protocol
Article 26 (1), first phrase	Article 26 (1)
second phrase	Article 26 (3) *(a)*
second sentence	—
(2), first phrase	Article 26 (2)
second phrase	Article 26 (3) *(b)*
(3)	Article 31 (5)
Article 27 (1), first sentence	Article 27 (1)
second sentence	Article 27 (2) *(a)*, *(b)* and *(c)*
(2)	Article 25 *ter* (2) *(a)*
(3), first sentence	Article 25 (1) *(a)*
second sentence	Article 25 *ter* (2)
Article 27 *bis*	Article 27 *bis*
Article 28 (1)	Articles 25 (1) *(a)* and 31 (1) *(a)* and (5)
(2)	Article 25 (2) *(a)*, *(b)*, *(c)* and (3)
(3), first two sentences	Article 28
last sentence	Article 25 *ter* (2) *(a)* and Protocol
Article 29 (1), first sentence	Article 29 (1)
second sentence	Article 29 (2), first sentence
(2)	Article 29 (2), second sentence, and (3)
(3)	Article 29 (4)
Article 30 (1)	—
(2)	Article 25 *ter* (2) *(b)* and Protocol
Article 31	Article 31 (1)

[*End of Tables*]

PROPOSED TEXT

AND

COMMENTARY

COMMENTARY

COMMENTARY ON ARTICLE 20*bis*: PROTOCOL REGARDING DEVELOPING COUNTRIES

53. This Article deals with the Protocol Regarding Developing Countries. It will hereinafter be referred to as " the Protocol ".

54. Briefly stated, the Protocol provides that developing countries may make certain reservations and, by virtue of the reservations they choose to make, they may give less protection to works originating in other countries of the Union than the protection that is normally required under the Convention. Less protection may relate to one or more of the following five subjects: the right of translation; the duration of the protection; the rights in articles on certain current events; the rights relating to the broadcasting of works; the use of protected works for exclusively educational, scientific or scholastic purposes.

55. The full text of the Protocol, the reasons for proposing it, and the analysis of its contents, are contained in document S/1.

56. The present document deals only with those aspects of the Protocol which concern its relationship to the Stockholm Act.

57. The provisions concerning this relationship are inscribed in the Article under consideration (that is, Article 20*bis*) and in Article 25 (ratification of and accession to the Stockholm Act by countries of the Union) and Article 25*quater* (admission of the application of reservations made under the Protocol).

58. *(a)* The Article under consideration, that is, Article 20*bis*, refers to the existence of the Protocol (*paragraph (1)*) and provides that, subject to the provisions of Article 25(1)*(b)*(i) and *(c)*, and Article 25*quater*, the Protocol forms an integral part of the Stockholm Act.

(b) Being an " integral part " of the Stockholm Act means that any country accepting the Stockholm Act is bound by the Protocol too. The effect of being bound by the Protocol is different according to whether the country accepting the Stockholm Act is or is not a developing country. If it is a developing country, the effect of the Protocol is that the country may make all or some of the five kinds of reservations provided by the Protocol and that the country would have to admit the application of reservations made by other developing countries to works of which the former country is the country of origin, if and to the extent that such countries themselves make reservations. On the other hand, as far as any developed country is concerned—which, being a developed country, cannot make any reservations—the effect of the Protocol is that such developed country would have to admit the application of the reservations which the developing countries choose to make as permitted by the Protocol.

PROPOSED TEXT

ARTICLE 20*bis*: PROTOCOL REGARDING DEVELOPING COUNTRIES

(1) Special provisions regarding developing countries are included in a protocol entitled " Protocol Regarding Developing Countries. "

(2) Subject to the provisions of Article 25(1)*(b)*(i) and *(c)*, and Article 25*quater*, the Protocol Regarding Developing Countries forms an integral part of the present Act.

[*Follows Article 21*]

59. *(a)* This general rule, however, has to be read together with provisions referred to in *paragraph (2)* of the Article under consideration, provisions which qualify the rule. There are two of these qualifications.

(b) First, the rule must be read in conjunction with the Article on ratification of, or accession to, the Stockholm Act by countries of the Union (Articie 25). This Article provides that a country of the Union accepting the Stockholm Act may exclude, from the effects of its acceptance, all the provisions of substantive revisions (see Article 25(1)*(b)*(i)). Since the Protocol is one of these revisions, such a country accepts, in effect, only the new administrative provisions written into the Stockholm Act. Thus, such a country would *not* be bound by Article 20*bis* and the Protocol. Consequently, it would *not* recognize any reservations made by other countries under the Protocol. In other words, as long as a country is bound only by the proposed new administrative provisions, it could require the full application of the Brussels (or Rome or Berlin) Act by countries bound *both* by the Brussels (or Rome or Berlin) Act *and* the Stockholm Act. Of course, such a country would have to admit the continued application of any reservations made by a country of the Union under the Brussels, Rome or Berlin Acts (see Article 25*ter*(2)*(a)*). But if a country making reservations under the Stockholm Act has accepted only the Stockholm Act—because it joined the Union by acceding to the Stockholm Act or because it denounced all Acts which preceded the Stockholm Act—then there would be no substantive copyright relations between such a country and a country not bound by Articles 1 to 20*bis* of the Stockholm Act.

(c) Second, *Article 25quater* provides that a country of the Union may, even before becoming bound by the Stockholm revision of the substantive provisions, declare that it will admit the application of the provisions of the Protocol to works of which it is the country of origin. If it makes such a declaration, then, naturally, it cannot, when it accepts the Stockholm Act, exclude the application of the reservations to works of which it is the country of origin. This consequence is expressly stated in proposed *Article 25*(1)*(c)*.

COMMENTARY ON ARTICLE 21: ASSEMBLY

60. *(a)* This Article deals with the Assembly of the Union.

(b) It consists of five paragraphs dealing with composition and representation (paragraph (1)), tasks (paragraph (2)), voting (paragraph (3)), sessions (paragraph (4)), and rules of procedure (paragraph (5)).

61. *Paragraph (1)(a)* establishes the Assembly and defines its composition. It results from other provisions, particularly paragraph (2), that the Assembly's powers are such that it is the highest body of the Union.

62. One of the basic objectives, and probably the most important, of the whole structural reform is to give to the member countries of the Unions the same, full powers of policy making, decision, and control, which they customarily have in most other intergovernmental organizations. In other words—in the words of the Permanent Committee of the Berne Union, pronounced in 1962, when the reform got under way—" the supervisory functions of the Swiss Government should be transferred to the Assembly of Member States. " No such body exists today in the Berne Union,

ARTICLE 21: ASSEMBLY

(1) *(a)* **The Union shall have an Assembly consisting of the countries of the Union which are bound by Articles 21 to 23.**

(b) **The Government of each country shall be represented by one or more delegates who may be assisted by alternate delegates, advisors, and experts.**

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

[Follows Article 21 (2)]

63. As in other intergovernmental organizations, the Assembly would consist of the member countries. However, in view of Article 25(1)*(b)* which allows any country to declare that it does not consider itself bound by Articles 21 to 23, it is necessary to state, and the paragraph under consideration does just that, that if a country chooses not to be bound by the proposed new administrative provisions—that is, Articles 21 to 23—then, of course, it will not be a member of the Assembly established under Article 21. Even such countries, however, may fully participate, if they so desire, in the Assembly for five years after the entry into force of the Convention establishing the proposed new Organization (see Article 32(2)).

64. The reason for which this provision and all the following provisions use the term " country " rather than " State "—the latter being the term used in modern treaty language—is that the substantive provisions (Articles 1 to 20*bis*) use it too. It is, however, to be understood as an equivalent of the term " State. "

65. *Paragraphs (1)(b)* and *(c)* seem to be self-explanatory. They are of the customary kind.

66. *Paragraph (2)(a)* enumerates the powers and tasks of the Assembly and consists of eleven items.

67. *Item (i)* is based on the words " questions . . . which . . . concern the development of the Union " of Article 24(2) of the Brussels Act. In referring to the " implementation " of the Convention, the item is not intended to refer to its application by the legislatures, Governments, and courts, of the member countries—as such application is clearly a matter outside the jurisdiction of the Assembly—but to implementation by the Secretariat and other organs as far as those provisions of the Convention are concerned which call for the performance of tasks by such organs.

68. *Item (ii)* concerns preparations for conferences of revision. Under the present system, preparations for conferences of revision are made by the host country with the assistance of BIRPI (see Brussels Act, Article 24(2)). This method places a heavy burden on one member country. It also makes the achievement of agreement at the conference more difficult since member countries are more likely to agree when, before the conference, they have had contact with each other and discussions among themselves. This is the reason for which it is now proposed that preparations for conferences of revisions be carried out collectively by the member countries. They would give directions to the Secretariat, which would work out the details, normally with the assistance of working groups or committees of experts consisting of representatives of member countries.

69. *Item (iii)* deals with one of the most important powers of member countries, the power to control the program, the budget, and the accounts. This power, so natural and so customary in intergovernmental organizations that it hardly requires justification, is, curiously, missing from the Berne Convention (and the other Conventions and Agreements) in which there is practically no legal basis for any kind of control by member countries over BIRPI. One only of the member countries, Switzerland, exercises all powers of control, since it is the Swiss Government which approves BIRPI's budget and certifies BIRPI's accounts. In actual fact, a beginning towards collective control exists in that a body of some twenty countries, the Interunion Coordination Committee, which, however, has no legal basis in either the Berne Convention or the Paris Convention, does exercise a certain degree of *de facto* influence, through its " advice, " both over program and budget. The item under consideration would vest the power of control over these matters not only in a limited number of member countries but in all member countries, and not only as a matter of expressing advice but as a matter of sovereign decision. Furthermore, the proposed reform would not only have these effects but it would transfer jurisdiction over budget and accounts from Switzerland to all the member countries.

70. *Item (iv)* provides for the creation of an Executive Committee. Consisting of approximately one-quarter of the members of the Assembly, this restricted body would meet more frequently, and transact less important business, than the Assembly. The system is dictated by considerations of economy and expediency, and is generally followed by organizations having a certain number of members. The composition, tasks, and other matters concerning the Executive Committee are regulated by Article 21*bis*.

71. *Item (v)* provides for the control of the Executive Committee by the Assembly. This is both natural and customary since the Executive Committee is an emanation of the Assembly.

[*Article 21, continued*]

(2) *(a)* **The Assembly shall:**

(i)[1] **deal with all matters concerning the maintenance and development of the Union and the implementation of its Convention;**

(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as the " International Bureau ") referred to in the Convention establishing the International Intellectual Property Organization (hereinafter designated as the " Organization ");

(iii) determine the program and adopt the triennial budget of the Union and approve its final accounts;

(iv) elect the members of the Executive Committee of the Assembly;

(v) review and approve reports and activities of its Executive Committee, and give instructions to such Committee;

[*Follows Article 21(2)(a)(vi)*]

[1] In speech, these numerals should be referred to as " small Roman one, small Roman two, small Roman three, etc. " They are used whenever there are several items in an enumeration. They are called " items, " and not subparagraphs. Subparagraphs always consist of one or more complete sentences and are designated by small letters (*(a)*, *(b)*, *(c)*, etc.). Paragraphs are designated by Arabic numerals in parentheses. Articles are designated by Arabic numerals without parentheses.

72. *Item (vi)* provides for a similar power of control by the Assembly, this time over the Director General. This power of member countries over the head of the Secretariat is generally acknowledged in other intergovernmental organizations. It is missing in the present system since neither the Berne Convention nor the Paris Convention contains at the present time any provisions which would enable the member countries (other than Switzerland) to control the activities of the Director of BIRPI.

73. *Item (vii)* allows the establishment of other committees. A committee for preparing the work of a revision conference would be an example in point.

74. *Item (viii)* deals with the admission, as observers, of non-member countries and of organizations to sessions of the Assembly. The provision is of the customary kind.

75. *Item (ix)* vests in the Assembly, rather than in the revision conferences, the power of amending the administrative provisions of the Convention, that is, Articles 21 to 23. The question is discussed in more detail in connection with Article 23, entirely devoted to the matter of amending the administrative provisions. Suffice it to state here that the main reason for providing for different procedures for the revision of the administrative and the substantive clauses is that, the former generally being less important and more frequent, a simpler procedure for them seems to be justified.

76. *Item (x)* constitutes a general authorization for the Assembly to undertake programs which are designed to further the objectives of the Union, that is, better, more widespread, cheaper, simpler, more efficient, protection of copyright. The difference between item (i) and the item under consideration seems to be that the former is limited to action within the framework of the Union. Examination of the desirability of revising the Convention would come under that item, whereas examination of the desirability of creating special agreements on some particular aspect of the protection of copyright would come under item (x).

77. *Item (xi)* is designed to make it clear that the Assembly may have other tasks and powers, that is, tasks and powers in addition to those expressly indicated in the preceding ten items. For example, Article 21*bis*(5)*(b)* provides that the details of electing the members of the Executive Committee shall be regulated by the Assembly. Other powers are given to the Assembly in Articles 21*ter*(4), 22(4)*(e)*, (6)*(c)*, and (8). Further examples can be found in the draft Convention establishing the proposed new Organization, which provides that the transfer of the headquarters of the Organization, the appointment of its Director General, the assumption by it of the administration of additional conventions (document S/10, Article 6(3)*(g)*) and proposals for amending the said Convention (document S/10, Article 13(2)) require also the assent of the Assembly of the Berne Union.

78. *Paragraph (2)(b)* contains a reference to the Coordination Committee. The Secretariat of the Berne Union and of the Paris Union is now, and will remain in the future, common. Coordination is achieved today through the Swiss Government and the advice of the existing Coordination Committee. Under the proposals, the Government of Switzerland would no longer play a special role in this respect but the Coordination Committee would. Its role would still be merely advisory since the powers of decision would be vested in the Assemblies. The provision is merely a reminder that the advice be considered before action is taken. There is no obligation to follow the advice. The Assembly may ignore it.

79. *Paragraph (3)(a)* provides that each country shall have one vote. This is a corollary of the equality of sovereign countries, with no regard to their size, population, the class they choose for the purposes of contributions to the budget of the Union, or other criteria which otherwise distinguish them.

80. *Paragraph (3)(b)* provides that one-third of the members constitutes a quorum. Based on past experience, one-third seems to be the maximum practical.

81. *Paragraph (3)(c), (d) and (e)* deal with the majorities required for decision in the Assembly. The majority is *two-thirds* in two cases: admission of observers (subparagraph *(d)*), and the adoption of the budget to the extent that it increases the financial obligations of the countries of the Union (subparagraph *(e)*). It is to be noted that, in the 1966 Committee, a substantial minority favored a two-thirds majority for the adoption of the budget in every respect, that is, even where the financial obligations of the member countries do not increase but remain stationary or decrease. The majority rejected this proposal, presumably on the ground that if the required majority is not obtained the Union would be left without an approved budget. The matter might deserve reexamination by the Stockholm Conference, although BIRPI would prefer the solution reflected by the vote of the majority.

[*Article 21, continued*]

(vi) review and approve reports and activities of the Director General concerning the Union and give instructions to him on such matters;

(vii) establish such committees as may be considered necessary for the work of the Union;

(viii) determine which countries not members of the Assembly and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 21 to 23;

(x) take any other appropriate action designed to further the objectives of the Union;

(xi) exercise such other functions as are allocated to it.

(b) In exercising its functions with respect to matters which are of interest also to other Unions whose administrative tasks or administration are entrusted to the Organization, the Assembly shall take into consideration the advice of the Coordination Committee of the Organization.

(3) *(a)* Each country member of the Assembly shall have one vote in the Assembly.

(b) One-third of the countries members of the Assembly shall constitute a quorum.

(c) Subject to the provisions of subparagraphs *(d)* and *(e)* and Article 23(2), the Assembly shall make its decisions by a simple majority of the votes cast.

(d) Decisions to admit to meetings as observers countries outside the Union, as well as intergovernmental and international non-governmental organizations, shall require at least two-thirds of the votes cast.

(e) The adoption of the budget to the extent that it increases the financial obligations of the countries of the Union shall require at least two-thirds of the votes cast.

[*Follows Article 21(3)(f)*]

82. It results from Article 6(3)*(g)* of the Draft Convention establishing the proposed new Organization that a *two-thirds* majority will have to be obtained in the General Assembly of that Organization and the Assembly of the Paris Union as well as *in the Assembly of the Berne Union* for the possible transfer of the headquarters (Articles 5 and 6(3)*(d)*(ii) of that Draft), and that a *three-quarters* majority will have to be obtained in the General Assembly of that Organization and the Assembly of the Paris Union as well as *in the Assembly of the Berne Union* for the confirmation of arrangements concerning the administration by the Organization of conventions, agreements and treaties other than the Berne and Paris Conventions and the Special Agreements concluded under the latter Convention (Articles 3(2)(ii) and (iii), and 6(3)*(e)* and *(g)*).

83. It is to be noted that amendment of the administrative provisions (Articles 21 to 23) requires either *unanimity* or a *three-fourths majority* in the Assembly (see Article 23).

84. Finally, it is to be noted that the provisions under consideration do *not* deal with the question of voting on the revision of the substantive clauses of the Berne Convention, since their revision is not effected by the Assembly but by the special revision conferences dealt with in Article 24.

85. *Paragraph (3)(f)*, providing that abstentions shall not be considered as votes, follows from the preceding rules according to which the votes that are counted are the votes *cast*. For the same reason, abstentions would not count either in determining whether the required majorities are obtained.

86. *Paragraph (3)(g)* excludes voting by proxy.

87. *Paragraph (4)(a)* deals with the ordinary sessions of the Assembly, and *paragraph* (4)*(b)* deals with its extraordinary sessions. In view of parallel provisions in the Convention of the Paris Union and the Agreements of the various Special Unions, as well as in the Convention establishing the proposed new Organization, the ordinary sessions of the General Assembly of the Organization and the Assemblies of the Unions would take place once every three years and would normally be held during the same week or weeks and in the same place. These measures are dictated by the obvious need for keeping expenses as low as possible both for the Secretariat and for the Delegations attending the meetings.

88. *Paragraph (5)* providing that the Assembly adopts its own rules of procedure, corresponds to established custom in comparable bodies.

[*Article 21, continued*]

(f) **Abstentions shall not be considered as votes.**

(g) **Each delegate may represent, and vote in the name of, one country only.**

(4) *(a)* **The Assembly shall meet once in every third calendar year in ordinary session, upon convocation by the Director General, preferably during the same period and at the same place as the General Assembly of the Organization.**

(b) **The Assembly shall meet in extraordinary session, upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the States constituting the Assembly.**

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

[*Follows Article 21*bis]

COMMENTARY ON ARTICLE 21*bis*: EXECUTIVE COMMITTEE

89. *(a)* This Article deals with the Executive Committee of the Assembly.

(b) It consists of ten paragraphs dealing with establishment (paragraph (1)), composition (paragraphs (2), (3), (4), and (5)), tasks (paragraph (6)), sessions (paragraph (7)), voting (paragraph (8)), observers (paragraph (9)), and rules of procedure (paragraph (10)).

90. *(a) Paragraph (1)* provides for the constitution of an Executive Committee.

(b) It is customary in intergovernmental organizations having a certain number of members to institute a body of more restricted number to deal with matters which, because of their urgency, cannot be considered by the Assembly of all member countries or, because of their lesser importance, do not need to be considered by that higher instance that the Assembly is.

(c) Such body is variously called Governing Body, Executive Committee, Executive Board. The draft uses the name " Executive Committee. "

91. *Paragraph (2)* deals with composition and representation. The provisions are of the customary kind and do not seem to require any explanation, except perhaps the giving of an ex officio seat to the country on whose territory the Organization has its headquarters, that is, Switzerland. This provision is explained in connection with Article 22(7) (see paragraph 125 below).

92. *Paragraph (3)* establishes the general ratio of 1 to 4 between the number of the members of the Assembly and the number of seats available in the Executive Committee. In actual fact, the ratio might be a little less because of the rule according to which remainders after division by four must be disregarded. For example, if the Assembly has 82 members, 82 divided by four would give 20.5, and, as the 0.5 would have to be disregarded, only 20 seats would be open for filling by election. On the other hand, the ex officio seat of Switzerland would have to be added so that, in this example, the total number of members would be 21: twenty elected and one ex officio.

93. *Paragraph (4)* provides that the Assembly must have due regard, in electing the members of the Executive Committee, to two requirements. One of them is that there should be a " balanced geographical representation. " This requirement is customary in all intergovernmental organizations. Its meaning and application are vigilantly watched by public opinion in connection with the various organs of the many existing organizations. The other requirement is that countries members of the Special Unions which might be established in relation with the Union be among the countries constituting the Executive Committee. No Special Unions have thus far been established under the Berne Union although they could be, under Article 20 of the Brussels Act, an article which it is proposed be maintained without change by the Stockholm Conference (see document S/1, page 66, footnote).

94. *(a) Paragraph (5)* deals with the term of service on the Executive Committee, and the question of re-election. The first sentence of *subparagraph (a)* means that members would generally serve not less than three years. According to the second sentence of the same subparagraph, a limited number of the members could be re-elected. The limit is to be understood as a maximum: no percentage of the members would have to be re-elected but, within the stated limit, some may be re-elected. The limit is two-thirds. In other words, every third year the minimum proportion of new members would have to be one-third. It is to be noted that any given country may be re-elected, not only once but any number of times. Thus, countries whose presence in the Committee is considered to be indispensable could serve continuously.

(b) The main feature of the proposed system of renewal is that it provides for a minimum rotation in the membership of the Executive Committee in order to avoid non-application of rules for renewal (as was generally the case in the present Permanent Committee of the Union) and to afford an opportunity for every member of the Assembly to serve on the Executive Committee.

(c) Subparagraph (b) leaves it to the Assembly to establish the details governing elections and possible re-elections. The draft presented to the 1966 Committee contained some provisions on these matters: " At each election, and until the limit of two-thirds may have been attained, the names of the States Members of the Executive Committee shall be called in alphabetical order and the Assembly shall vote on each separately whether to re-elect it or not. It shall be decided by lot drawn before each election whether the names of the States shall be called on the basis of the English or the French alphabetical listing of

ARTICLE 21*bis*: EXECUTIVE COMMITTEE

(1) The Assembly shall have an Executive Committee.

(2) *(a)* The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its Headquarters shall, subject to the provisions of Article 22(7), have an ex officio seat.

***(b)* The Government of each country member of the Executive Committee shall be represented by one delegate who may be assisted by alternate delegates, advisors, and experts.**

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

(3) The number of the countries members of the Executive Committee shall correspond to one-fourth of the number of the countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to a balanced geographical distribution and to the need for countries members of any Special Unions which might be established in relation with the Union to be among the countries constituting the Executive Committee.

(5) *(a)* Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly. However, members may be re-elected, but not more than two-thirds of them.

***(b)* The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.**

[*Follows Article 21*bis*(6)*]

their names; furthermore, the letter of the alphabet with which the calling for possible re-election will start shall be drawn by lot. " These provisions mean that the decision as to which members should be re-elected would be taken by voting (the procedure would, of course, cease if the maximum number of " re-eligibles " is attained before the entire list is voted upon). In actual practice, the Assembly would probably set up a nomination committee which could agree on and propose a complete list, and the Assembly could adopt, by a single vote, the list as proposed. The 1966 Committee found these suggestions too detailed to be written into the Convention itself. This was the only reason for which they were not retained. They are recorded here as the Assembly may wish to refer to them when it is called upon to establish the rules it will have to establish under subparagraph *(b)*.

95. *Paragraph (6)* deals with the tasks of the Executive Committee. Subparagraph *(a)* enumerates them in the form of six items. They seem to be largely self-explanatory. Item (vi) speaks about " other " functions. An example of such a function can be found in Article 21*ter*(8)*(a)* which gives a certain role to the Executive Committee in the preparation of conferences of revision. Subparagraph *(b)* parallels a provision in the draft Convention establishing the proposed new Organization according to which the Coordination Committee of that Organization would give advice to the organs of the various Unions—hence also to the Executive Committee of the Berne Union—particularly on certain administrative and financial matters of common interest to more than one Union (document S/10, Article 8(3)(i)). Two points should be noted in this connection: that what the Coordination Committee gives is *advice* and therefore may be disregarded by the Executive Committee; and that all the members of the Executive Committee of the Union are members of the Coordination Committee of the Organization and therefore it is highly unlikely that the Coordination Committee would advise anything contrary to the interests of the Berne Union.

96. *Paragraph (7)* deals with the sessions of the Executive Committee. There will be two kinds: ordinary (subparagraph *(a)*) and extraordinary (subparagraph *(b)*). Ordinary sessions would preferably meet during the same period and at the same place as the Coordination Committee. Since the members of the Executive Committee are also members of the Coordination Committee, the proposed measure is not only practical but will also reduce the expenses of both the Secretariat and the Delegations.

97. *Paragraph (8)* deals with voting. In view of the fact that the matters on which the Executive Committee may make decisions are of secondary importance—those of primary importance being, naturally, reserved to the Assembly—qualified majorities would only hamper the work of the Committees. This is the reason for which simple majorities would suffice (subparagraph *(c)*). Subparagraphs *(d)* and *(e)* parallel similar provisions concerning the Assembly (Article 21(3)*(f)* and *(g)*).

98. *Paragraphs (9) and (10)* appear to be self-explanatory.

[*Article 21*bis, *continued*]

(6) *(a)* The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly respecting the draft program and triennial budget of the Union, prepared by the Director General;

(iii) establish, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General;

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of that Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General;

(vi) perform such other functions as are allocated to it.

***(b)* In exercising its functions with respect to matters which are of interest also to other Unions whose administrative tasks or administration are entrusted to the Organization, the Executive Committee shall take into consideration the advice of the Coordination Committee of the Organization.**

(7) *(a)* The Executive Committee shall meet once a year in ordinary session, upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

***(b)* The Executive Committee shall meet in extraordinary session upon convocation of the Director General or at the request of one-fourth of the countries members of the Executive Committee.**

(8) *(a)* Each country member of the Executive Committee shall have one vote in the Executive Committee.

***(b)* One-half of the countries members of the Executive Committee shall constitute a quorum.**

***(c)* Decisions shall be made by a simple majority of the votes cast.**

***(d)* Abstentions shall not be considered as votes.**

***(e)* Each delegate may represent, and vote in the name of, one country only.**

(9) Countries of the Union not members of the Executive Committee shall be admitted to the meetings of the Executive Committee as observers.

(10) The Executive Committee shall adopt its own rules of procedure.

[*Follows Article 21*ter]

COMMENTARY ON ARTICLE 21*ter*: INTERNATIONAL BUREAU

99. *(a)* This Article deals with the International Bureau as far as the secretariat tasks for the Berne Union are concerned.

(b) The Article consists of nine paragraphs dealing with the tasks of the Secretariat in general (paragraph (1)) and with certain particular tasks: assembling and publishing information (paragraph (2)), publishing of a monthly periodical (paragraph (3)), furnishing of information to countries (paragraph (5)), carrying out of studies (paragraph (6)), preparation of conferences of revision (paragraph (8)*(a)*), other tasks assigned to the Secretariat (paragraph (9)). The participation of the Secretariat in meetings is provided for in paragraphs (7) and (8)*(b)*, whereas the distribution of free copies of publications of the Secretariat is governed by paragraph (4).

100. *Paragraph (1)(a)* refers to the International Bureau by which, as is indicated in Article 21 (2)*(a)*(ii), is meant the International Bureau of Intellectual Property, that is, the Secretariat of the proposed new Organization. It follows from Article 9(1) of the Draft Convention which would establish that Organization (see document S/10) that the International Bureau would not be a new Secretariat but would be the continuation of the present Secretariat, known under the name of BIRPI, having the same tasks (and some additional tasks, namely, those relating to the Organization as such) as BIRPI. The said Article would be paralleled by that part of paragraph (1)*(a)* under consideration which provides that the future Bureau is a *continuation* of the present Bureau, that is, of the Bureau established by the original (1886) Act of the Berne Convention and maintained by each of the succeeding Acts of revision, and which, since 1893, has been united with the Bureau of the Paris Union.

101. *Paragraph (1)(b)* indicates that the role which the International Bureau is intended to play in connection with the Berne Union is mainly the role of a secretariat of the various organs of the Union, that is, of the Assembly and of the Executive Committee, and if either the Assembly or the Executive Committee should decide to establish subsidiary organs, such as sub-committees and working parties, then, of such subsidiary bodies as well.

102. *Paragraph (1)(c)* is a corollary of Paragraph (1)*(b)*. Since the International Bureau is the Secretariat of the Union, the Director General—head of the International Bureau—must also be the chief administrative officer of the Union, and must be able to represent the Union, as he does the proposed new Organization, as such.

103. *Paragraph (2)* is based on part of the provisions of Article 22(1) of the Brussels Act. It provides on the one hand for the International Bureau to assemble and publish information, and on the other hand for the member countries to communicate some essential elements of this information as far as their own countries are concerned.

104. *Paragraph (3)* provides that the International Bureau shall publish a monthly periodical. What is meant here is a continuation of the periodical *Le Droit d'Auteur*, which is now in its seventy-ninth year, and of its English equivalent, *Copyright*, which is in its second. The provision does not refer to them by stating their titles, mainly because the possibility of publishing them in additional languages should be left open.

105. *Paragraph (4)* provides for the furnishing of free copies of the monthly periodical and other publications of the International Bureau to each member country of the Union. The number of free copies will be proportionate to the number of units in the class to which each country belongs. The proportion itself—whether, for example, a country contributing 5 units should receive 5 copies or a fraction, or multiple, of 5—will be determined by the Assembly.

106. *Paragraph (5)* is based on Article 22(2) of the Brussels Act and provides for the furnishing of information to Governments.

107. *Paragraph (6)* deals with studies to be carried out by the Secretariat, and is based on Article 22(1) of the Brussels Act.

ARTICLE 21*ter*: INTERNATIONAL BUREAU

(1) *(a)* The administrative tasks with respect to the Union shall be performed by the International Bureau which is a continuation of the Bureau of the Union, united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property.

***(b)* In particular, the International Bureau shall provide the secretariat of the various organs of the Union.**

***(c)* The Director General of the Organization shall be the chief administrative officer of the Union and shall represent the Union.**

(2) The International Bureau shall assemble and publish information concerning the protection of copyright. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright.

(3) The International Bureau shall publish a monthly periodical.

(4) The number of free copies of the monthly periodical and other publications of the International Bureau that each country of the Union shall be entitled to receive shall be proportionate to the number of units in the class to which the country belongs according to Article 22(4) and shall be fixed by the Assembly.

(5) The International Bureau shall, on request, furnish information to the individual countries of the Union on matters concerning the protection of copyright.

(6) The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright.

[*Follows Article 21*ter*(7)*]

108. *Paragraphs (7) and (8)(b)* provide for the participation of the Director General, or his representatives, in various meetings of the Union or of its organs. It is a natural requirement flowing from the fact that the International Bureau is a secretariat. Paragraph (8)*(b)*, by the way, is based on the last sentence of Article 24(2) of the Brussels Act.

109. *Paragraph (8)(a)* concerns the role of the Secretariat in the preparation of the revision conferences contemplated by Article 24. The proposed new procedure for the preparation of revision conferences is discussed in paragraph 68, above.

COMMENTARY ON ARTICLE 22: FINANCES

110. This Article deals with finances.

111. It consists of eight paragraphs dealing with: the definition of the budget (paragraph (1)), a reminder of the need of coordination with the budgets of the other Unions (paragraph (2)), the sources of income (paragraph (3)), special provisions concerning the contributions of member countries (paragraph (4)), charges due for services rendered by the Secretariat (paragraph (5)), the working capital fund of the Union (paragraph (6)), advances by the Government of the country on whose territory the Organization has its headquarters (paragraph (7)), and the auditing of accounts (paragraph (8)).

112. *Paragraph (1)(a)* provides that the Union shall have a budget—that is, a budget of its own—separate and distinct from the budget of the other Unions and from the budget of the proposed new Organization as such.

113. *Paragraph (1)(b)* implies that the budget expenses of the Union should be grouped under three main headings:

(i) the proper expenses of the Union (for example, the expenses of a meeting dealing with matters exclusively relating to the Berne Union, the salaries of employees of the Secretariat working exclusively on matters concerning the Berne Union and the Berne Union only);

(ii) the contributions of the Union to the budget of the proposed new Organization as such (since it results from the Draft Convention establishing that Organization that members of the Union would only indirectly contribute to the budget of the Organization, that is, through the allocation of a sum in the Union budget to the budget of the Organization (see document S/10, Article 10(3)*(a)*(i));

(iii) share of the Union in the common expenses.

114. *Paragraph (1)(c)* defines the notion of "common expenses." These are expenses which are incurred by the Secretariat not only in the sole interest of the Union but also in the interest of the other Unions administered by it, or in the interest of the Organization as such (particularly its Conference). The share of the Union in these common expenses will be in proportion to the interest of the Union in such expenses. The provision parallels similar provisions in the proposed new administrative provisions of the other Unions (see, for example, as far as the Paris Union is concerned, document S/3, Article 13*quater* (1)*(c)*) and in the Convention establishing the proposed new Organization (document S/10, Article 10 (1)*(c)*). Examples of such common expenses would be the salary of the Director General and other members of the staff who serve all the Unions and the Organization as such; the expenses relating to the common financial, personnel, mailing, telephone, typing and translation services, and the maintenance of the headquarters building.

[*Article 21*ter, *continued*]

(7) The International Bureau shall participate in the meetings of the various organs of the Union, but without the right to vote.

(8) *(a)* **The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 21 to 23.**

(b) **The Director General or persons designated by him shall take part in the discussions at these conferences, but without the right to vote.**

(9) The International Bureau shall carry out any other tasks assigned to it.

ARTICLE 22: FINANCES

(1) *(a)* **The Union shall have a budget.**

(b) **The budget of the Union shall include the proper expenses of the Union itself, its contribution to the budget of the Organization as such, and its share in the common expenses, as defined in the following subparagraph.**

(c) **Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization, or also to the Organization as such, shall be considered as common expenses. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.**

[*Follows Article 22(2)*]

115. *Paragraph (2)* provides that the budget of the Union must be established with due regard to the requirements of coordination with the budgets of the various Unions and with the budget of the Organization as such. In view of the existence of common expenses, as defined above, the necessity of coordination is manifest.

116. *Paragraph (3)* enumerates, under five items, the sources of income of the Union. The first, and the most important, consists of the yearly contributions of the member countries: more is said about this source of income in paragraphs 117 to 122 below. The charges due for services performed by the International Bureau in relation to the Union (item (ii)) include, for example, the furnishing of copies or translations of the texts of copyright laws. Sale of publications (item (iii)) includes the income derived from subscription fees to *Le Droit d'Auteur* and *Copyright*, to the extent that these periodicals do not deal with matters of direct concern to other Unions. Items (iv) and (v) seem to be self-explanatory.

117. *Paragraph (4)* deals with the yearly contributions of the member countries.

118. *Subparagraph (a)* continues the class-and-unit system presently applied in the Berne Union (see Article 23(2) and (3) of the Brussels Act) subject to the only difference that an additional, VIIth, class would be added to the existing six classes, the share in the contributions of this VIIth class being one-third of the share of the lowest existing class (VI). The addition was made in order to take into account the fact that the relative contributive power of the richest and the least rich countries is not adequately represented by the present six classes, in that the highest contribution is only 8⅓ times larger than the lowest contribution. If the proposed seventh class is accepted, the highest contribution will be 25 times larger than the lowest contribution.

119. *Subparagraph (b)* maintains the complete freedom of each country to choose the class it wishes and later to modify its choice (see Article 23(4) of the Brussels Act). Any change to a lower class will be applicable only from the beginning of the year following the year in which the ordinary session of the Assembly takes place and in which the change to the lower class is announced. This is because otherwise the other countries would be obliged to pay a higher share (since each lowering of class by a country automatically leads to an increase in the share of the other countries) than contemplated when they adopted the three-yearly budget.

120. *Subparagraph (c)* is differently worded from, but would obtain the same result as, the last two sentences of Article 23(3) of the Brussels Act.

121. *Subparagraph (d)* would introduce an important change in the present system. In the present system, member countries pay their contributions approximately six months *after* the close of the financial year. It is now proposed that they pay their contributions *on the first day* of the financial year. The difference in time is some 18 months and would mean that, in the year of the transition from the old to the new system, Governments would be required to pay not only the contributions for the preceding year but also for the current year. In other words, in that particular year, as an exception, they would be required to pay contributions relating to *two* years. The present system is possible only because of loans to BIRPI by the Swiss Government to cover any cash need. Such need is constant because it is inherent in a system in which members are required to pay only 6 to 18 months after the expenses have been incurred by BIRPI. It is now proposed to do away with this system and adopt the system of concurrent payment. The proposed system would seem to be in conformity with the situation in all other intergovernmental organizations. It would, normally, liberate Switzerland from the obligation to grant loans, obligation partly assumed because of Switzerland's role as supervisory authority—a role which would be discontinued.

122. *Subparagraph (e)* would suspend the right to vote of any country in arrears of contributions for two years or more. Naturally, once the arrears are paid, the right to vote would automatically revive. Similar provisions may be found in the charters of many other organizations. No similar provision exists in the present system in which the Swiss Government advances to BIRPI the overdue contributions of other countries. The proposed sanction for failure to pay was presumably proposed by the 1965 Committee because it realized that there must be some incentive for prompt payment in a situation in which non-payment could place the International Bureau in a precarious position. The 1966 Committee, however, added provisions which permit the non-application of this sanction in special circumstances. Thus, the Assembly of the Union may decide that a country in arrears with its payments may continue to exercise

[*Article 22, continued*]

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the various Unions administered by the Organization and with the budget of the Organization as such.

(3) The budget of the Union shall be financed from the following sources:

(i) contributions of the countries of the Union;

(ii) charges due for services performed by the International Bureau in relation to the Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

(4) *(a)* **For the purpose of establishing its contribution towards the budget referred to in the preceding paragraph, each country of the Union shall belong to a class, and shall pay its annual contribution on the basis of a fixed number of units as follows:**

Class I: 25
Class II: 20
Class III: 15
Class IV: 10
Class V: 5
Class VI: 3
Class VII: 1

(b) **Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If the change is to a lower class, the country must announce it to an ordinary session of the Assembly. Any such change shall take effect at the beginning of the calendar year following the session.**

(c) **The contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.**

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

(e) **A country which is in arrears in the payment of its financial contributions shall have no vote in any organ of the Union if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its vote if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances. At the middle of the second of the two full years, the Director General shall remind the Government of the country that its contributions are overdue. Omission of such a reminder shall not affect the application of the provisions of the present subparagraph.**

[*Follows Article 22(5)*]

its vote if, and as long as, the Assembly is satisfied that the delay in payment arises from exceptional and unavoidable circumstances. Whether special circumstances exist will be determined by the Assembly, and if it is necessary to vote on the question a simple majority will be sufficient to decide the issue, since there is no provision which would call for a qualified majority or unanimity in this respect. Similar principles and similar procedures would apply in other collective bodies of the Union, in particular, in its Executive Committee.

123. *Paragraph (5)* provides that the charges due for services shall be established by the Director General. The charges in question are those referred to in paragraph (3)(ii).

124. *Paragraph (6)* provides for the constitution of the working capital fund. This would be a one-time operation, unless, later, exceptional circumstances—such as a considerable depreciation in the value of the currency in which the working capital fund is kept—require that the fund be brought up to normal level. The fund will be constituted from payments made by the member countries (subparagraph *(a)*), and the amount of the sum which each country will have to pay will be proportionate to its yearly contribution (subparagraph *(b)*). Thus, for example, a country belonging to Class I shall pay into the working capital fund a sum which is 25 times larger than the sum which a country belonging to Class VII shall have to pay. The details of the constitution of this fund shall be determined by the Assembly as to its foreseeable amount and the terms of payment (subparagraph *(c)*) (see also document S/12).

125. *Paragraph (7)* deals with advances to be granted to the Secretariat by the Government of the country on whose territory the Organization has its headquarters (hereinafter referred to as " the country of the headquarters "). At the present time, both the Berne Convention (Article 23(5) of the Brussels Act) and the Paris Convention (Article 13(10) of the Lisbon Act) provide that the Government of Switzerland (which is today, and is expected to remain, the country of the headquarters) shall make the necessary advances to BIRPI. This obligation to make advances is not susceptible to renunciation. In his negotiations with the Swiss Authorities concerning the Draft Convention, the Director of BIRPI proposed that the Swiss Government continue to accept an obligation which cannot be terminated by denunciation. The Swiss Authorities have expressed the view that the justification for an irrevocable obligation is that, in the present system, the Swiss Government supervises the expenditures of BIRPI. When this function of supervision disappears, the Swiss Government should have the right—and the Organization should have the right—of denouncing the obligation to grant advances. While suggesting this possibility, the Swiss Authorities gave assurances to the Director of BIRPI that they did not intend to set limits to their obligation, but that they wanted to provide for the possibility of denunciation in view of circumstances which are as yet unforeseeable. It is logical that a country which undertakes to give advances should be permitted to participate fully in the Executive Committee of the Union, as the Executive Committee deals with budget and financial management. Such a country should not be exposed to the hazards of elections. This is the reason for proposing that the Swiss Government should have an ex officio seat on the Executive Committee of the Berne Union and, also, on the Executive Committee of the Paris Union. Membership in these Committees automatically carries with it membership in the Coordination Committee (see document S/10, Article 8(1)*(a)*).

126. *Paragraph (8)* deals with the auditing of the accounts. At the present time, it is the Swiss Government which, in conformity with the provisions of the Berne Convention (Article 23(5) of the Brussels Act) and the Paris Convention (Article 13(10) of the Lisbon Act) controls (" supervises," " draws up ") the accounts of BIRPI. In the course of the meeting of the 1964 Working Group, the Swiss experts declared that it would be hardly justifiable to ask the Swiss Government to continue to assume this task under the new system in which the supervision of the Organization would no longer devolve upon the Swiss Government. Nevertheless, Switzerland would be prepared to continue to audit the accounts until the second ordinary session of the General Assembly of the new Organization, that is, during a period of approximately three years from the entry into force of the Convention. Thereafter, the financial control would be exercised by the Government of one or other of the member countries, or by external auditors (professional accountant firms). The designation would, of course, be made in agreement with the country or countries designated, or the professional accountant firm engaged, for this purpose. The details would be regulated by the financial regulations.

[*Article 22, continued*]

(5) The amount of the charges due for services performed by the International Bureau in relation to the Union shall be established by the Director General, who shall report on them to the Assembly and the Executive Committee.

(6) *(a)* **The Union shall have a working capital fund which shall be constituted by payments made by the countries of the Union.**

(b) **The amount of the payment of each country shall be proportionate to its annual contribution.**

(c) **The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee.**

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

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

(8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

[*Follows Article 23*]

COMMENTARY ON ARTICLE 23: AMENDMENTS TO ARTICLES 21 TO 23

Preliminary Comments on Articles 23 and 24

127. For the purposes of the procedure of amending the Convention one has to distinguish between two groups of provisions: (i) the so-called administrative provisions, that is, Articles 21 to 23, and (ii) all the other provisions of the Convention, in particular the so-called substantive provisions (Articles 1 to 20*bis*). The latter group, however, includes also Articles 24 to 32.

128. Amendments to the administrative provisions (Articles 21 to 23) are governed by Article 23. Amendments to all other provisions (Articles 1 to 20*bis*, the Protocol, and 24 to 32) are governed by Article 24. In order to underline the fact that two different procedures are involved, amendments to the administrative provisions will be designated by the word " amendments, " whereas amendments to all other provisions will be designated by " revisions. "

129. The main differences between the procedure of amending the administrative provisions and revising the other provisions are the following:

(i) *Amendments* are discussed in and adopted by the Assembly (Articles 21(2)(ix) and 23(2)), whereas *revisions* are discussed in and adopted by conferences of revision (Article 24(2)). The Assembly consists of member countries which are bound by the provisions to be amended, that is, countries which are bound by Articles 21 to 23 (see Article 21(1)*(a)*), since they are the only interested parties. Any conference of revision consists of all the countries of the Union, even if they are bound only by Acts earlier than the one to be revised (see Article 24 (2)).

(ii) The adoption of *amendments* would require a three-quarters majority, except that any amendment of Articles 21 and 23(2) would require unanimity. As far as *revisions* are concerned, the Convention requires unanimity (see Article 24(3) of the Brussels Act). The requirement for unanimity would be maintained by the Stockholm Act.

(iii) Countries will become bound by *amendments* when three-quarters of the members of the Assembly have notified their acceptance. This means that when three-quarters have accepted an amendment, that amendment will then become binding also on the other countries members of the Assembly, except when the amendment increases the financial obligations of the members of the Union. In the latter case, each country has to expressly accept the amendment before it is bound by it. As far as *revisions* are concerned, what is the exception in the case of amendments becomes the rule here: revisions bind only those countries which have communicated their ratification or acceptance.

130. The reason for providing different procedures for amendments and revisions is that the traditional practice of requiring unanimity for revisions seems to be too stiff for amendments. Amendments deal with administrative matters not affecting private interests and only slightly affecting the interests of the Governments. Amendments may be needed urgently to render the administration, the work of the Secretariat, more efficient. Consequently, an easier way than unanimity—over which hangs, like the sword of Damocles, the power of veto by one country out of more than fifty—seems to be eminently reasonable and practical. It is true that even for amendments unanimity would be required when the amendment relates to Article 21 dealing with the Assembly. This exception does not seem to be either customary or necessary. But since the 1965 and 1966 Committees appeared to desire it, it is carried over into the Drafts herewith proposed.

Comments on Article 23 proper

131. The Article more particularly under consideration (Article 23) regulates the procedure of *amendments* and consists of four paragraphs dealing with proposals for amendments (paragraph (1)), adoption of amendments (paragraph (2)), entry into force of amendments (paragraph (3)), and a reminder that " revisions " are dealt with by another Article (paragraph (4)).

132. *Paragraph (1)* makes it clear that what is involved here is the amendment of the administrative provisions (Articles 21 to 23), and the administrative provisions only. It also provides, in essence, that members of the Assembly must receive at least six months' advance notice if a proposal for amending the administrative provisions is to be considered by the Assembly.

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ARTICLE 23: AMENDMENTS TO ARTICLES 21 TO 23

(1) Proposals for the amendment of Articles 21, 21*bis*, 21*ter*, 22 and the present Article, shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

[*Follows Article 23(2)*]

133. *Paragraph (2)* deals with the majorities required for the adoption, in the Assembly, of amendments to Articles 21 to 23. The paragraph distinguishes between, on the one hand, amendments to Article 21 (which deals with the Assembly) and to Article 23(2) (which deals with the very question of majorities required for amendments), and, on the other hand, amendments to the other administrative provisions (that is, Articles 21*bis*, 21*ter*, 22 and, with the exception of its paragraph (2), Article 23). Whereas amendment to the former would require unanimity, amendment to the latter would require a three-fourths majority.

134. *Paragraph (3)* deals with the question of when countries become bound by the amendments. The question is discussed above, in paragraph 129.

135. *Paragraph (4)* is a reference to Article 24, which is the Article—and not Article 23—that governs revisions, as distinguished from amendments.

COMMENTARY ON ARTICLE 24: REVISION OF THE PROVISIONS OF THE CONVENTION OTHER THAN ARTICLES 21 TO 23

136. Reference is made to paragraphs 127 to 130, above, which explain the differences between the procedures of *amending* Articles 21 to 23, and *revising* Articles 1 to 20*bis* and 24 to 32. The Article under consideration—that is, Article 24—deals with the latter.

137. This Article consists of three paragraphs, the first dealing with the principle of revision, the second with conferences of revision, and the third with the requirement of unanimity.

138. *Paragraph (1)* is identical in intent and effect, and almost identical in wording, with paragraph (1) of Article 24 of the Brussels Act. The slight change in wording is intended as a stylistic improvement.

139. *Paragraph (2)* restates one of the two ideas contained in the first sentence of paragraph (2) of Article 24 of the Brussels Act, namely, that there will be revision conferences between the countries of the Union in one of these countries. The other idea contained in that sentence of the Brussels Act—namely that member countries should also consider questions concerning the " development of the Union "—now finds expression in another place, namely, among the tasks of the Assembly (proposed Article 21(2)*(a)*(i)). The second sentence of the said paragraph of the Brussels Act deals with the preparation of the conference of revision by the host country. This sentence would be omitted since the matter is regulated differently in proposed Articles 21(2)*(a)*(ii) and 21*ter*(8)*(a)*. Finally, the third and last sentence of the said paragraph of the Brussels Act deals with the participation of the Secretariat in the revision conferences. This sentence would also be omitted since the matter is dealt with in proposed Article 21*ter* (8)*(b)*.

140. *Paragraph (3)* restates the unanimity rule contained in paragraph (3) of Article 24 of the Brussels Act and it contains a reminder that amendments of the administrative provisions are dealt with by another Article, namely, Article 23.

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[*Article 23, continued*]

(2) Amendments to the Articles referred to in the preceding paragraph shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided, however, that any amendment of Article 21, and of the present paragraph, shall require the unanimity of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force when written notifications of acceptance have been received by the Director General from three-fourths of the countries members of the Assembly at the time it has adopted the amendment. Amendments to the said Articles thus accepted shall bind all countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, except that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

(4) The revision of Articles 1 to 20, and 24 to 32, is governed by Article 24.

ARTICLE 24: REVISION OF THE PROVISIONS OF THE CONVENTION OTHER THAN ARTICLES 21 TO 23

(1) The present Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For this purpose conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.

(3) Subject to the provisions of Article 23 which apply to the amendment of Articles 21 to 23, any amendment of this Convention, including the Protocol Regarding Developing Countries, shall require the unanimity of the votes cast.

[*Follows Article 25*]

COMMENTARY ON ARTICLE 25: RATIFICATION AND ACCESSION BY COUNTRIES OF THE UNION: ENTRY INTO FORCE

*Preliminary Comments on Articles 25 and 25*bis

141. *(a)* The question of how a country may become a party to the Stockholm Act is dealt with in two Articles, namely, Article 25 and Article 25*bis*. The first one concerns countries *of* the Union; the second, countries *outside* the Union.

(b) The principal reasons for devoting two separate articles to these two groups of countries are the following: (i) only countries *of* the Union may sign the Stockholm Act; (ii) countries *of* the Union may ratify, or accede to, the Stockholm Act, whereas countries *outside* the Union may only accede; (iii) only countries *of* the Union may exclude certain provisions from the effects of their ratification or accession; (iv) only ratifications and accessions by countries *of* the Union will be taken into consideration in counting the minimum number of ratifications or accessions required for the initial entry into force of the Stockholm Act or a portion thereof.

(c) Each of the two Articles (25 and 25*bis*) consists of three paragraphs, the first dealing with (ratification and) accession; the second, with the initial entry into force of the Stockholm Act or a portion thereof; the third, with the entry into force of (ratifications and) accessions posterior to the said initial entry into force.

Comments on Article 25 proper

142. The Article under consideration—that is, Article 25—concerns countries *of* the Union, that is, countries which are bound by the Brussels Act, or one or more earlier Acts of the Berne Convention, at the time when they deposit their instruments of ratification of, or accession to, the Stockholm Act.

143. *Paragraph (1)(a)* implies that countries of the Union may sign the Stockholm Act and if they sign it their acceptance will be called " ratification." Such countries may choose not to sign the Act, and, if they accept it, their acceptance will be called " accession." Ratification or accession is effected by the deposit of a corresponding instrument with the Director General.

144. *Paragraph (1)(b)* permits any country of the Union to declare in its instrument of ratification or accession that its ratification or accession shall not apply to the substantive provisions (that is, Articles 1 to 20*bis* and the Protocol Regarding Developing Countries) of the Stockholm Act. A country making such a declaration will then only be bound by the new administrative and final provisions (Articles 21 to 32), whereas, as far as the substantive provisions are concerned it will continue to be bound by Articles 1 to 20 of that earlier Act, or those earlier Acts, by which it has been bound before ratifying or acceding to—albeit subject to certain exclusions—the Stockholm Act. For example, if such a country is already bound by the Brussels Act, the difference will be that it is going to be bound neither by the proposed revisions of Articles 1 to 20*bis* nor by the proposed Protocol Regarding Developing Countries (see document S/1).

145. A country of the Union may make the reverse choice. It may declare in its instrument of ratification or accession that its ratification or accession shall not apply to the new administrative provisions (that is, Articles 21 to 23) of the Stockholm Act. A country making such a declaration will then be bound only by the new substantive and final provisions, that is, the new Articles 1 to 20*bis* and the Protocol Regarding Developing Countries (see document S/1) as well as the final clauses (new Articles 24 to 32). As far as the administrative provisions are concerned, a country making this kind of exclusion will continue to be bound by Articles 21 to 23 of the Brussels Act (1948), or of the Rome Act (1928), or of the Berlin Act (1908), depending on which is the most recent of these Acts that it has ratified or acceded to.

146. The reasons for having adopted this possibility of excluding either the substantive or the administrative provisions from the effects of ratification or accession are indicated above, in paragraph 33.

ARTICLE 25: RATIFICATION AND ACCESSION BY COUNTRIES OF THE UNION; ENTRY INTO FORCE

(1) *(a)* **Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification and accession shall be deposited with the Director General.**

(b) **Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply:**

(i) to Articles 1 to 20*bis* and the Protocol Regarding Developing Countries, or

(ii) to Articles 21 to 23.

[*Follows Article 25(1)(c)*]

147. *Paragraph (1)(c)* states something which might be regarded as so natural that it is perhaps needless. Article 25*quater* provides that countries of the Union may declare *even before they accept the revisions of the substantive provisions* of the Stockholm Act—and thus also the Protocol Regarding Developing Countries—that they will admit the application of that Protocol, or rather the application of the reservations permitted by that Protocol, by any countries making such reservations, to works of which they are the countries of origin. Now, all that the provision under consideration—that is, Article 25(1)*(c)*—says is that once a country effects such an acceptance of the Protocol, its non-inclusion, in its acceptance of the Stockholm Act, of the substantive revisions can relate only to Articles 1 to 20 and not also to Article 20*bis* and the Protocol since it has already accepted the latter.

148. *Paragraph (1)(d)* simply permits the removal, any time later, of the effects of the exclusion referred to in subparagraph *(b)*. The effect of the removal would, of course, be that the country would then become bound by the totality of the Stockholm Act.

149. *Paragraph (2)* deals with the initial entry into force of the Stockholm Act. Simply stated: the substantive clauses of the Convention as revised at Stockholm will come into force after five countries have accepted them; the administrative clauses of the Convention as revised at Stockholm will come into effect after seven countries have accepted them; and the final clauses of the Convention as revised at Stockholm (Articles 24 to 32) will come into force on the earlier of the two events. Of course, some of the final clauses, because of their nature, will be applied even before any formal entry into force. If a country ratifies, or accedes to, the Stockholm Act in its entirety, its ratification or accession will be counted towards the entry into force of both the substantive clauses and the administrative clauses.

150. *Paragraph (3)* deals with the entry into force of subsequent ratifications or accessions. It seems to be self-explanatory.

[*Article 25, continued*]

(*c*) If a country of the Union has already separately accepted the Protocol Regarding Developing Countries in accordance with Article 25 *quater*, its declaration under item (i) of the preceding subparagraph may relate only to Articles 1 to 20.

(*d*) Any country of the Union which, in accordance with the preceding two subparagraphs, has excluded from the effects of its ratification or accession one of the two groups of provisions referred to in those subparagraphs may at any time later declare that it extends the effects of its ratification or accession to that group of provisions. Such declaration shall be deposited with the Director General.

(2) (*a*) Articles 1 to 20*bis* and the Protocol shall enter into force, with respect to those countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by paragraph (1)(*b*)(i), one month after the deposit of the fifth such instrument of ratification or accession.

(*b*) Articles 21 to 23 shall enter into force, with respect to those countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by paragraph (1)(*b*)(ii), one month after the deposit of the seventh such instrument of ratification or accession.

(*c*) Articles 24 to 32 shall enter into force on the earlier or the dates referred to in the preceding two subparagraphs with respect to each country of the Union which, one month or more before such date, has deposited an instrument of ratification or accession, whether or not the instrument is limited pursuant to paragraph (1)(*b*).

(3) Subject to the initial entry into force of any group of provisions pursuant to paragraphs (2)(*a*), (*b*), or (*c*), and subject to the provisions of paragraph (1)(*b*), the present Act, or the applicable provisions of the present Act, shall, with respect to any country of the Union which has deposited an instrument of ratification or accession or a declaration pursuant to paragraph (1)(*d*), enter into force one month after the date of notification by the Director General of such deposit, unless a subsequent date has been indicated in the instrument deposited. In the latter case, the date indicated shall apply.

[*Follows Article 25*bis]

COMMENTARY ON ARTICLE 25*bis*: ACCESSION BY COUNTRIES OUTSIDE THE UNION; ENTRY INTO FORCE

151. As for the reasons for inscribing the provisions concerning accession by countries *outside* the Union into an article distinct from that dealing with countries *of* the Union, see paragraph 141 above.

152. This Article deals with countries *outside* the Union, that is, countries which are not bound by the Brussels Act, or any other Acts earlier in date than the Brussels Act, of the Berne Convention, at the time when they deposit their instruments of accession to the Stockholm Act.

153. *Paragraph (1)* provides that such countries may become members of the Union by acceding to the Stockholm Act. Any country may thus become a member of the Union. It has, of course, to carry out the undertaking provided for in Article 30(1) and to be in the position described in Article 30(2). (These provisions of Article 30 express—it is believed with greater precision—the idea underlying the words " countries... which make provision for the legal protection of the rights forming the object of this Convention " in Article 25(1) of the Brussels Act.) It is to be noted also that once the Stockholm Act has entered into force in its entirety, a country outside the Union may become a member of the Union only if it accedes to the Stockholm Act. To clarify its situation, it may also accede to earlier Acts. Accession to an earlier Act *alone* will not be possible once the Stockholm Act has entered into force in its entirety (see Article 28).

154. *Paragraph (2)* fixes the date of entry into force of accession by countries outside the Union which deposit their instruments of accession *prior* to the initial entry into force of the Stockholm Act in its entirety. Subparagraph *(a)* deals with the case where the instrument reaches the Director General one month or more before any of the provisions of the Stockholm Act have entered into force, whereas subparagraph *(b)* deals with the case where the instrument reaches the Director General after the date of entry into force (or less than one month prior to such date) of one set of provisions only.

155. In the case of *subparagraph (a)*—that is, where a country outside the Union deposits its instrument of accession one month or more before the initial entry into force of *any* provisions of the Stockholm Act—it must " wait " until the initial entry into force takes place before it becomes a member of the Union pursuant to the Stockholm Act. Of course, if such a country accedes *also* to earlier Acts, it will become a member of the Union one month after the dispatch of notification by the Director General. (It will be noted that accessions of countries outside the Union are *not* counted towards the number of notifications or accessions required for the initial entry into force of the Stockholm Act.) The matter is further complicated by the fact that the date of initial entry into force of the substantive provisions may, because of Article 25(1)*(b)*, be different from the date of the initial entry into force of the administrative provisions. According to the provision under consideration (that is, Article 25*bis*(2)), if the substantive provisions enter first into effect, then, until the entry into force of the new administrative provisions, the acceding country—which, it should be recalled, is a country outside the Union—will be bound by the " old " administrative provisions, that is, those of the Brussels Act. On the other hand, if the administrative provisions enter into force first, then, until the entry into force of the new substantive provisions, the acceding country will be bound by the " old " substantive provisions, that is, those of the Brussels Act. However, a country may wish to avoid being bound, even for a transitional period, by any of the " old " provisions. If this is its wish, it may satisfy it by making use of the last sentence of subparagraph *(a)*: it may appoint a later date for entry into force as far as it is concerned; for example, it may appoint the date on which the entirety of the Stockholm Act will enter into force.

156. In the case of *subparagraph (b)*—that is, where a country outside the Union deposits its instrument of accession at a time during which one set of provisions of the Stockholm Act is already in force (or will, in less than a month's time, enter into force) but the other set is not yet in force—such a country will, without any " waiting " of the kind described above, become a member of the Union even if it does not accede also to one or more previous Acts. However, until the initial entry into force of the other set of provisions such country will be bound by those provisions of the Brussels Act which correspond to the said set of provisions of the Stockholm Act. Here too, however, the indication of a subsequent date would be permitted.

157. *Paragraph (3)* fixes the date of entry into force of accessions by countries outside the Union which deposit their instruments of accession *after* the entry into force of the Stockholm Act (or within the month preceding such entry into force). The provision seems to be self-explanatory.

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ARTICLE 25*bis*: ACCESSION BY COUNTRIES OUTSIDE THE UNION; ENTRY INTO FORCE

(1) Any country outside the Union may accede to this Act and thereby become a member of the Union. Instruments of accession shall be deposited with the Director General.

(2) *(a)* With respect to any country outside the Union which deposits its instrument of accession one month or more before the date of entry into force of any provisions of the present Act, this Act shall enter into force—unless a subsequent date has been indicated in the instrument of accession—on the date upon which provisions first enter into force pursuant to Article 25(2)*(a)* or *(b)*; provided, however, that

(i) if Articles 1 to 20*bis* do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 1 to 20 of the Brussels Act,

(ii) if Articles 21 to 23 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 21 to 24 of the Brussels Act.

If a country indicates a subsequent date in its intrument of accession, the present Act shall enter into force with respect to that country on the date thus indicated.

(b) With respect to any country outside the Union which deposits its instrument of accession on a date which is subsequent to, or precedes by less than one month, the entry into force of some, but not all, of the provisions of this Act, the present Act shall, subject to the proviso of subparagraph *(a)*, enter into force one month after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, the present Act shall enter into force with respect to that country on the date thus indicated.

(3) With respect to any country outside the Union which deposits its instrument of accession after the date of entry into force of the present Act in its entirety, or less than one month before such date, this Act shall enter into force one month after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, the present Act shall enter into force with respect to that country on the date thus indicated.

[*Follows Article 25*ter]

COMMENTARY ON ARTICLE 25*ter*: RESERVATIONS

158. This Article deals with reservations.

159. It consists of two paragraphs. Paragraph (1) provides, in effect, that the Stockholm Act must be applied in its entirety subject to the exceptions permitted by the Stockholm Act itself, including the Protocol. Paragraph (2) provides mainly that reservations made under earlier Acts may, in certain circumstances, be continued.

160. *Paragraph (1)* is a somewhat modified restatement of the rule contained in the first phrase of Article 25(3) of the Brussels Act according to which accession implies the acceptance of all the clauses—particularly the obligations—and admission to all the advantages—particularly the right to protection—of the Convention. The modification proposed for the Stockholm Conference consists of stating this rule as applicable not only to countries outside the Union which join the Union but also to countries of the Union, that is, countries which became members of the Union through acceptance of Acts earlier than the Stockholm Act. Paragraph (1), as proposed, refers also to the possible exceptions to this rule. The exceptions are constituted by reservations—whether based on the continuance of reservations made under earlier Acts (see paragraph (2)*(a)*) or on the Protocol—or by the non-application of the substantive revisions *or* of the administrative revisions effected by the Stockholm Act. Such non-applications are called " declarations " by Article 25(1)*(b)* but, since their nature and effect are quite similar to those of reservations, it seems to be proper to include a reference to them too in the Article under consideration.

161. *Subparagraph (2)(a)* permits the continuance of reservations made under earlier Acts (that is the Brussels, Rome and Berlin Acts) by countries which do not accept the substantive revisions of the Stockholm Act. Non-acceptance of the substantive revisions excludes reliance on the Protocol and thus such countries cannot base reservations on the Protocol. But they must be allowed—as they have been by all earlier Acts (see, for example, Articles 27(2), 27(3), second sentence, and 28(3), last sentence, of the Brussels Act)—to continue reservations made under such earlier Acts. Of course, countries which accept the Stockholm Act in its entirety or as far as the substantive revisions (Articles 1 to 20*bis* and the Protocol) are concerned could make reservations under the Protocol only and could not also continue the reservations made under earlier Acts.

162. *Subparagraph (2)(b)* provides for the withdrawal of reservations made under earlier Acts. The subparagraph is a restatement of the provision contained in Article 30(2) of the Brussels Act. The withdrawal or other cessation of reservations made under the Protocol is provided for in the Protocol itself.

COMMENTARY ON ARTICLE 25*quater*: ADMISSION OF THE APPLICATION OF RESERVATIONS MADE UNDER THE PROTOCOL REGARDING DEVELOPING COUNTRIES

163. The explanations of this Article are given in paragraphs 53 to 59, above, of the present Commentary.

ARTICLE 25*ter*: RESERVATIONS

(1) Subject to the possibilities of exceptions provided for in the following paragraph and in Article 25(1)*(b)* and the Protocol Regarding Developing Countries, ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

(2) *(a)* Any country of the Union making the declaration permitted by Article 25(1)*(b)*(i) may retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession.

***(b)* Any country may withdraw such reservations any time by a notification addressed to the Director General.**

ARTICLE 25*quater*: ADMISSION OF THE APPLICATION OF RESERVATIONS MADE UNDER THE PROTOCOL REGARDING DEVELOPING COUNTRIES

(1) Any country of the Union may declare, at any time before becoming bound by Articles 1 to 20*bis* and the Protocol Regarding Developing Countries, that it admits the application of the provisions of the Protocol to works of which it is the country of origin by countries which have made reservations permitted under the Protocol.

(2) The declaration shall be made in writing and shall be deposited with the Director General. The declaration shall become effective from the date it is deposited.

(3) Rights acquired prior to such date shall not be affected by the declaration.

Alternative: *Give to this provision the form of a Resolution of the Stockholm Conference.*

[Follows Article 26]

COMMENTARY ON ARTICLE 26: TERRITORIES

164. This Article concerns the application of the Convention to certain territories, namely, to territories which do not, themselves, conduct their foreign affairs.

165. The provision corresponds to Article 26 of the Brussels Act.

166. The proposed changes are intended to bring the provision into conformity with modern territorial clauses and to provide that the function of depositary would be exercised by the Director General rather than by the Swiss Government. Otherwise, the proposed changes are merely of form. (Any notification of territorial application under paragraph (1) would not, of course, take effect prior to the date upon which the country giving the notification became bound.)

COMMENTARY ON ARTICLE 27: APPLICATION OF EARLIER ACTS

167. This Article deals with the question of what provisions, particularly which Acts, countries bound by the Stockholm Act must apply in their relations with other members of the Union.

168. *Paragraph (1)* is an adaptation of the first sentence of Article 27(1) of the Brussels Act, which reads as follows: " This Convention [i.e., the Brussels Act] shall replace, in relations between the countries of the Union, the Convention of Berne of the 9th September 1886, and the subsequent revisions thereof. " The adaptation mainly consists in the insertion, in the proposed text, of the words " and to the extent that it applies. " This addition is necessary because, by virtue of Article 25(1)*(b)*, it is possible that a country which has ratified or acceded to the Stockholm Act has limited the effects of its ratification or accession to part only of the provisions of the Stockholm Act. In relations between such a country and any other country of the Union, the Stockholm Act would replace the earlier Acts only to the extent that the said country accepted the Stockholm Act, in other respects the relations being governed by the provisions of paragraphs (2) and (3) of the Article under consideration (that is, Article 27).

169. *(a) Paragraph (2)* is an adaptation and a clarification of the second sentence of Article 27(1) of the Brussels Act which provides that " the Instruments previously in force shall continue to be applicable in relations with countries which do not ratify this Convention. "

(b) The adaptation would consist in taking into consideration the possibility of excluding from the effects of acceptance of the Stockholm Act either the substantive revisions or the administrative revisions (see the words " or does not apply in its entirety " and " or to the extent that the present Act does not replace it by virtue of paragraph (1) " in each of the three subparagraphs of paragraph (2)). The reason for inscribing these words is the same as that given in the preceding paragraph: the earlier Acts may be applicable either in toto or only in part. They will be applicable in toto between countries which are not bound by the Stockholm Act or are bound by portions of it, these portions not being the same for each country. If, however, these portions are the same for each country, the earlier Acts will govern only in part, that is, only to the extent that their provisions are not superseded by the corresponding provisions of the Stockholm Act.

ARTICLE 26: TERRITORIES

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3) ***(a)*** **Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under such paragraph shall take effect one month after its notification by the Director General.**

(b) **Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.**

ARTICLE 27: APPLICATION OF EARLIER ACTS

(1) The present Act shall, as regards the relations between the countries to which it applies, and to the extent that it applies, replace the Convention of Berne of September 9, 1886, and the subsequent Acts of revision.

(2) ***(a)*** **As regards the countries to which the present Act does not apply, or does not apply in its entirety, but to which the Brussels Act of June 26, 1948, applies, the latter shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).**

(b) **Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Brussels Act applies, the Rome Act of June 2, 1928, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).**

[Follows Article 27(2)(c)]

(c) The clarification would consist in dealing—one by one in separate subparagraphs—with each of the three earlier Acts which, for one or more countries of the Union, are still the most recent which they have accepted. The clarification would also consist of not using the word " ratify " since, obviously, the provisions apply not only to countries which ratify the Stockholm Act but also to countries which accede to the Stockholm Act.

170. *Paragraph (3)* deals with the situation in which a country outside the Union accedes to the Stockholm Act and thereby becomes a member of the Union, but does not accede to any of the earlier Acts. The question is what are the relations, if any, between this country and a country which is already a member of the Union—because it has accepted one or more earlier Acts—but which has not accepted the Stockholm Act (not even some of the provisions of the Stockholm Act). Obviously, the Stockholm Act cannot establish any rules in respect to the latter country—that is, on the question of what provisions, if any, the latter country would apply vis-à-vis the former country—since the rules would be in an Act, the Stockholm Act, which that country had not accepted. On the other hand, there seems to be no obstacle to writing a rule into the Stockholm Act concerning the question of what provisions a country *accepting* the Stockholm Act must apply vis-à-vis members of the Union which are not bound by the Stockholm Act. The proposed rule is that the Stockholm Act must be applied by such a country but the obligation would exist only within the limits of reciprocal protection. In other words, if any of the other countries refuses to grant protection to the country bound by the Stockholm Act—and nothing would prevent it from refusing a protection which it is not obliged to grant—then (and to the extent of the refusal) the country bound by the Stockholm Act could also refuse protection to such other country.

COMMENTARY ON ARTICLE 27*bis*: SETTLEMENT OF DISPUTES

171. This Article deals with the question of settlement of disputes.

172. No provision on this question existed until the Brussels Conference of 1948. That Conference adopted a provision—constituting Article 27*bis*—which stipulates the compulsory jurisdiction of the International Court of Justice. It is reproduced as *Alternative A* for the Stockholm Conference.

173. The provision, together with the rest of the Brussels Act, entered into effect in 1951. It binds those 39 countries which, out of the 55 members of the Berne Union, have ratified or accepted the Brussels Act.

174. Several Delegations at the 1966 Committee indicated that the reason, or one of the main reasons, for which some of the countries had not ratified or accepted the Brussels Act, and were therefore—eighteen years after the Brussels Conference—still bound by earlier Acts, was that, owing to basic policy consideration they did not wish to or, under their constitution, they could not accept a text which would allow other countries to compel them to submit their controversies for determination by the International Court. These Delegations indicated that, if the jurisdictional clause inscribed at the Brussels Conference were to be maintained by the Stockholm Conference, it would be quite likely that the Stockholm Act would also be unacceptable to the same countries.

175. It was also remarked in the 1966 Committee that the clause had never been invoked during its 15 years of existence and that neither the Paris Convention nor the draft Convention establishing the proposed new Organization contained any clause on settlement of disputes.

176. In view of these considerations, it is suggested, as *Alternative B* for the Stockholm Conference, simply to omit Article 27*bis*, that is, not to have any provision on settlement of disputes.

177. Two further possibilities are proposed for consideration by the Stockholm Conference. One would be to amend Article 27*bis* so that the jurisdiction of the International Court would become optional rather than compulsory (see *Alternative C*). The other would be to maintain the text of the provision as it is but to transfer it to a separate protocol. This possibility constitutes *Alternative D*. It would mean that the jurisdiction of the International Court of Justice would be compulsory but only for countries which accept the separate protocol incorporating the rule. Thus, countries which cannot or do not wish to accept the provision could still accept the Stockholm Act since that Act would not include a provision on settlement of disputes.

[*Article 27, continued*]

(c) **Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Brussels Act, nor the Rome Act applies, the Berlin Act of November 13, 1908, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).**

(3) Countries outside the Union which accede to the present Act without also acceding to any of the earlier Acts shall, subject to reciprocal protection, apply the present Act in their relations with countries of the Union which are not party to this Act or which, although party to this Act, have made a declaration as permitted by Article 25(1)*(b)*.

ARTICLE 27*bis*: SETTLEMENT OF DISPUTES

Alternative **A:**

Maintain the present provision: **"A dispute between two or more countries of the Union concerning the application of this Convention, not settled by negotiation, shall be brought before the International Court of Justice for determination by it, unless the countries concerned agree on some other method of settlement. The country requesting that the dispute should be brought before the Court shall inform the International Bureau; the Bureau shall bring the matter to the attention of the other countries of the Union."**

Alternative **B:**

*Omit Article 27*bis.

Alternative **C:**

Make the jurisdiction of the International Court of Justice optional by inserting the words **" provided all the countries between which the dispute exists have agreed to bring it before the Court and "** *after the words* **" for determination by it "** *in Alternative A.*

Alternative **D:**

Make the acceptance of the present provision optional by transferring it from the Convention to a separate Protocol requiring separate signature and ratification, or separate accession.

[*Follows Article 28*]

178. At the 1966 Committee, one of the Delegations suggested that the possibility of replacing the present jurisdictional clause by a clause on arbitration be examined as well. An example of such a clause is furnished by Article 38 of the Convention for the Protection of New Varieties of Plants, of December 2, 1961, the text of which is reproduced below[1]. The " Council " could be replaced by " Executive Committee. "

[1] " (1) Any dispute between two or more Member States of the Union concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Council, which shall endeavour to bring about agreement between the Member States concerned.

(2) If such agreement is not reached within six months from the date when the Council was seized of the dispute, the dispute shall be submitted to an arbitral tribunal at the request of one of the parties concerned.

(3) The tribunal shall consist of three arbitrators.

When two Member States are parties to a dispute, each State shall appoint an arbitrator.

Where more than two Member States are parties to a dispute, two of the arbitrators shall be appointed by agreement among the States concerned. If the States concerned have not appointed the arbitrator within a period of two months from the date on which the request for convening the tribunal was notified to them by the Office of the Union, any of the Member States concerned may ask the President of the International Court of Justice to make the necessary appointments.

In all cases the third arbitrator shall be appointed by the President of the International Court of Justice.

If the President is a national of one of the Member States parties to the dispute, the Vice-President shall make the appointments referred to above, unless he is himself also a national of one of the Member States parties to the dispute. In this last case, the appointments shall be made by the member of the Court who is not a national of one of the Member States parties to the dispute and who is selected by the President to make the appointments.

(4) The arbitral decision shall be final and binding on the Member States concerned.

(5) The tribunal shall determine its own procedure, unless the Member States concerned agree otherwise.

(6) Each of the Member States parties to the dispute shall bear its own costs of representation before the arbitral tribunal; other costs shall be borne in equal parts by each of the States. "

COMMENTARY ON ARTICLE 28: ACCESSION TO EARLIER ACTS

179. This Article means that once the Stockholm Act has entered into force in its entirety it will not be possible to accede to earlier Acts except in conjunction with ratification of, or accession to, the Stockholm Act.

180. It is to be noted that according to the second sentence of Article 28 (3) of the Brussels Act no country is allowed to accede to Acts earlier than the Brussels Act. It is believed that the Brussels Act went further than what is desirable. What is desirable—for the reasons stated below—is that countries should not be allowed to accede *only* to Acts earlier than the Act resulting from the most recent revision. But they should be allowed to accede to earlier Acts if they do so at the same time as, and *together with*, their accession to the most recent Act. They should be allowed to do so because otherwise there might be no substantive copyright link between a country acceding only to the Stockholm Act and a country which is still bound only by one or more Acts earlier than the Stockholm Act. The lack of substantive copyright link would mean, of course, that there is no guarantee, flowing from membership in the Berne Union, that works of which one of these countries was the country of origin would receive copyright protection in the other country.

181. The reasons for which accession to earlier Acts *only* should not be permitted are the following:

(i) First, once a revision is decided by unanimous consent of the members of the Union, this revision reflects their latest thinking and it would be anomalous to allow countries outside the Union to accede only to an Act or Acts which, being earlier than the latest revision, does not or do not any longer reflect the latest views of the member countries on the rules which should govern international copyright relations.

(ii) Second, the provision would be useful because it would mean that once the Stockholm Act has entered into force—because it has been accepted by the minimum number of countries referred to in Article 25(2)—the rest of the countries, and any new members of the Union, could not delay its general acceptance by accessions to earlier Acts only.

182. It seems to go without saying that any accession also to earlier Acts would mean that the country is also bound by the substantive provisions of earlier Acts, but *only* by such substantive provisions and *only* for the purposes of its relations with countries bound only by the corresponding earlier Acts. The country would generally *not* be bound by any of the administrative and final clauses of earlier Acts which have nothing to do with its relations with the said other countries but merely with the Secretariat and other administrative and formal matters. As already stated, it is believed that all this is so evident that it would not be worth while burdening the text of the Convention by stating it in the text of the Stockholm Act. However, if there are doubts in this respect at the Stockholm Conference, it will be necessary to complete the text of the Stockholm Act accordingly.

183. The closing of the earlier Acts to separate accession (that is, without accession also to the Stockholm Act) would occur on the day on which the Stockholm Act enters into force.

184. By that Act is meant the *entirety* of the Act. In other words, it will be possible to accede to the Brussels Act even after the new administrative provisions have entered into force, if the substantive revision is not yet in force; and, conversely, it will be possible to accede to the Brussels Act even after the substantive revision has entered into force, if the new administrative provisions are not yet in force.

ARTICLE 28: ACCESSION TO EARLIER ACTS

After the entry into force of this Act in its entirety, a country may accede to earlier Acts of this Convention only in conjunction with ratification of, or accession to, this Act.

[*Follows Article 29*]

COMMENTARY ON ARTICLE 29: DENUNCIATION

185. This Article deals with denunciation.

186. *Paragraphs (1) to (3)* constitute a redraft of paragraphs (1) and (2) of Article 29 of the Brussels Act, in order to make them more logical and clear. In particular, it would be specified that denunciation of the proposed Act shall constitute denunciation of all previous Acts as well. If it were not so, any country could denounce the Stockholm Act only and thereby " revive " earlier Acts. The undesirability of such revivals is discussed above, in paragraphs 180 and 181.

187. *Paragraph (4)* differs from paragraph (3) of the Brussels Act in one respect. The Brussels Act provides that no country may denounce it before five years have elapsed from the date of ratification of or accession to, presumably, the Brussels Act. The proposed provision would count the five-year period from the date of joining the Union. The purpose of instituting a period during which denunciation is not possible is to make hasty decisions more difficult. The risk of such decisions being greater in the case of countries which have not belonged to the Union for a sufficiently long time to have experience to rely on, it would seem to suffice to limit the five-year rule to new members. The proposed text would do just that.

COMMENTARY ON ARTICLE 30: IMPLEMENTATION BY DOMESTIC LAW

188. *(a)* This Article has no exact equivalent in the Brussels Act. However, in that Act, the Article dealing with accession by countries *outside* the Union contains an idea similar to the one expressed by the proposed new provision. The Brussels Act provides that " countries outside the Union *which make provision for the legal protection of the rights forming the object of this Convention* " may join the Union (see Article 25(1) of the Brussels Act).

(b) It would seem that the provision could be improved in at least three respects. First, it should be more precise: it should clearly state that a member country must have a law which conforms with the requirements of the Convention rather than state somewhat too generally that protection must exist. Second, there seems to be no reason for limiting the provision—as does the Brussels Act—to countries joining the Union in the future. Conformity with the requirements of the Convention is a continuing obligation and must exist also when a country of the Union ratifies or accedes to a new Act. Third, the requirement seems to be important enough to constitute the subject of a separate Article and not merely of an adjectival dependent clause as it does in the Brussels Act.

189. For these reasons, the introduction of a new Article is proposed. Its text would be the same as that of Article 17 of the Lisbon Act of the Paris Convention. Its number would be 30 as the present Article 30 in the Brussels Act contains provisions no longer needed. Consequently, the number 30 is available, in the Stockholm Act, for a new provision.

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ARTICLE 29: DENUNCIATION

(1) This Convention shall remain in force for an indefinite time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

ARTICLE 30: IMPLEMENTATION BY DOMESTIC LAW

(1) Every country party to this Convention undertakes to adopt, in accordance with its Constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time an instrument of ratification or accession is deposited on behalf of a country, such country will be in a position under its domestic law to give effect to the provisions of this Convention.

[Follows Article 31

COMMENTARY ON ARTICLE 31: SIGNATURE, ETC.

190. This Article deals with the signing, the safekeeping, and the languages, of the Stockholm Act (paragraphs (1) and (2)), transmittal of copies (paragraph (3)), registration with the Secretariat of the United Nations (paragraph (4)), and various notifications (paragraph (5)).

191. *Paragraph (1)(a)* provides, as was the case at the last revision conference at Brussels, that the Act is to be signed in a single copy, in two languages (French and English), and that the original signed copy will be kept by the Government of the host country.

192. *Paragraph (1)(b)* provides for texts in other languages. The Brussels text does not name any specific languages. It is proposed to name those in which the Brussels Act has been officially published, that is, German, Italian, Portuguese and Spanish (see *Le Droit d'Auteur*, 1952, page 73; 1954, page 21; 1949, page 49; 1949, page 37, respectively). Authoritative texts in additional languages could also be established by the Director General, after consultation with the interested Governments. Such languages would be designated by the Assembly when the need for texts in those languages arises.

193. *Paragraph (1)(c)* would constitute an innovation as it would give the same weight to the English and French texts when there is a difference of opinion on the interpretation of the various texts. According to the Brussels Act, in such cases the French text alone prevails (see the third sentence of Article 31 of the Brussels Act). The present proposal is based on a recommendation of the Committee of Governmental Experts which, in July 1965, examined the proposals for the revision of the substantive provisions of the Berne Convention. In actual fact, it is quite customary in the case of modern treaties to have more than one text of equal force. In order, however, to call the attention of the Stockholm Conference also to the tradition of the Berne Union, *an alternative proposal* is placed before it according to which, in case of differences of opinion on the interpretation of the various texts, the French text alone shall prevail.

194. *Paragraph (2)* means that any country wishing to sign the Stockholm Act may do so either on the last day of the Stockholm Conference or any time thereafter during a period of six months.

195. *Paragraph (3)* provides that certified copies of the Stockholm Act will be transmitted to the Governments of the various countries. Since the transmittal will be effected by the Director of BIRPI (see Article 32(1)) or, once the first Director General of the proposed new Organization has assumed office, by the Director General of the Organization, but the original, signed copy will be entrusted to the care of the Swedish Government, the paragraph provides that the Swedish Government will certify the conformity of the copies with the original.

196. *Paragraph (4)* implements an obligation existing under Article 102(1) of the Charter of the United Nations, which provides that " every treaty and every international agreement entered into by any Member of the United Nations after the present [U.N.] Charter comes into force shall as soon as possible be registered with the Secretariat [of the United Nations] and published by it."

197. *Paragraph (5)* deals with notifications and seems to be self-explanatory. The provision should be read together with Article 32(1) according to which the tasks entrusted to the Director General will be carried out by the Director of BIRPI until the first Director General of the proposed new Organization assumes office.

COMMENTARY ON ARTICLE 32: TRANSITIONAL PROVISIONS

198. This Article contains transitional provisions. It has four paragraphs. The first three paragraphs deal with three different periods: paragraph (1), with the period which will elapse until the first Director General assumes office; paragraph (2), with a period of five years after the entry into force of the Convention establishing the proposed new Organization; paragraph (3), with a period which will end when all members of the Union have become Members of the said Organization. Paragraph (4) provides for certain consequences when this last event has occurred.

ARTICLE 31: SIGNATURE, ETC.

(1) *(a)* This Act shall be signed in a single copy in the French and English languages and shall be deposited with the Government of Sweden.

(b) Authoritative texts shall be established by the Director General, after consultation with the interested Governments, in the German, Italian, Portuguese, and Spanish languages, and such additional languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French and English texts shall prevail.[1]

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

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations as soon as possible.

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments, entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Article 26.

ARTICLE 32: TRANSITIONAL PROVISIONS

(1) Until the first Director General assumes office, references in the present Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the International Bureau of the Union, united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property, or its Director, respectively.

[1] Alternative: Replace the words "the French and English texts shall prevail" by the words "the French text shall prevail."

[Follows Article 32(2)]

199. *Paragraph (1)* provides in essence that, until the first Director General has assumed office, references, in the Stockholm Act, to the International Bureau of the proposed new Organization and its Director General must be understood as references to BIRPI and its Director. One of the examples of the application of this provision consists in the requirement of communicating copies of the Stockholm Act to Governments. This task is assigned in the proposed Stockholm Act to the Director General (Article 31(3)) but, as long as there is no Director General, the tasks will be carried out by the Director of BIRPI.

200. *Paragraph (2)* would—during five years after the entry into force of the Convention establishing the proposed new Organization—allow countries of the Union not bound by the administrative provisions (Articles 21 to 23) of the Stockholm Act to exercise the rights which these administrative provisions otherwise give only to countries which have accepted them. It follows from the Draft of the Convention establishing the Organization that it would enter into force when seven members of the Berne Union and ten members of the Paris Union have accepted both that Convention and the new administrative provisions of the Berne or Paris Conventions as revised at Stockholm. An Assembly of seven members in the Berne Union would hardly be representative. This is why it is proposed to allow even those countries of the Berne Union which are not yet bound by the new administrative provisions to vote in the Assembly, be elected as members of the Executive Committee, vote in the Executive Committee, and exercise all the other rights which would otherwise flow from acceptance of Articles 21 to 23. Pursuant to a similar provision in the Convention establishing the Organization, such countries could, in that Organization too, exercise during the same five years the rights which otherwise can be exercised only by States having accepted that Convention (see document S/10, Article 14(3)*(a)*). The countries which, at the expiration of the five-year period, are still not bound by Articles 21 to 23 would lose these rights at the end of the fifth year. It is to be expected, however, that by then the number of the countries bound by the new administrative provisions would be considerably higher than seven.

201. *Paragraph (3)* means, in essence, that, as long as there are countries members of the Berne Union which have not become members of the Organization, the Secretariat will act both as the International Bureau referred to in the earlier Acts and as the International Bureau referred to in the Convention establishing the proposed new Organization. The Draft of that Convention contains parallel provisions (see document S/10, Articles 19(2)). There is no incompatibility between the functions of the present Secretariat and the future Secretariat since all that the present Secretariat is supposed to do is included among the functions of the future Secretariat. Consequently, there seems to be no practical difficulty in having the same—physically the same, because it would comprise the same staff, building, and facilities—Secretariat with a dual legal identity. It is true that, in respect to the supervision of the Secretariat, there is a difference, since the present Secretariat is supervised by the Swiss Government and the future Secretariat would be supervised by all the Member States. Still, no difficulty in practice is expected. On the one hand, the difference is more apparent than real as the Member States—since the creation of the Interunion Coordination Committee in 1962—have had a considerable *de facto* influence on the supervision of the Secretariat: the " advices " of that Committee cover almost all facets of the Secretariat (budget, program, appointment of the Director) and they have hitherto been generally followed by the Swiss Government as supervisory authority. On the other hand, at the 1966 Committee, the representatives of the Swiss Government declared that during this transitory period—when the Secretariat operates under two different systems of supervision—the Swiss authorities would do their utmost to see that their decisions coincided with the decisions of the new supervisory authorities.

202. *Paragraph (4)* contains provisions which will become applicable when the transitory period referred to in paragraph (3) has ended, that is, when all the countries of the Union have become Members of the proposed new Organization. At that moment, the International Bureau, as established by the 1886 Act of the Berne Convention, will cease to exist, the rights and obligations going over to the Organization. The draft of the Convention establishing the Organization contains the required parallel provisions (see document S/10, Article 19(3)*(a)*).

[*End of Commentary*]

[*Article 32, continued*]

(2) Countries of the Union not bound by Articles 21 to 23 may, until five years after the entry into force of the Convention establishing the International Intellectual Property Organization, exercise, if they so desire, the rights provided under Articles 21 to 23 of the present Act as if they were bound by those Articles.

(3) As long as there are countries of the Union which have not become Members of the Organization, the International Bureau of the Organization and the Director General shall also function as the Bureau of the Union, united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property and its Director, respectively.

(4) Once all the countries of the Union have become Members of the Organization, the rights and obligations of the Bureau of the Union shall devolve on the International Bureau.

[*Follows Protocol*]

PROTOCOL REGARDING DEVELOPING COUNTRIES

ARTICLE 1

Any developing country which ratifies or accedes to the Act to which this Protocol is annexed and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided in the Act, may, by a notification deposited with the Director General, at the time of ratification or accession, comprising Article 20*bis* of the Act, declare that it will, for a period of the first ten years during which it is a party thereto, avail itself of any or all of the following reservations:

(a) **substitute for Article 8 of this Convention the following provisions . . .;**

(b) **substitute for the term of fifty years referred to in paragraphs (1), (2) and (3) of Article 7 of this Convention a different term, provided that it shall not be less than twenty-five years; and substitute for the term of twenty-five years referred to in paragraph (4) of the said Article a different term, provided that it shall not be less than ten years;**

(c) **reserve the right to apply the provisions of paragraph (2) of Article 9 of the Convention as revised at Brussels in 1948;**

(d) **substitute for paragraphs (1) and (2) of Article 11*bis* of this Convention the provisions of Article 11*bis* of the Convention as revised at Rome in 1928;**

(e) **reserve the right, for exclusively educational, scientific or scholastic purposes, to restrict the protection of literary and artistic works.**

Any country fulfilling the conditions referred to above may avail itself of one, several or all of the reservations provided above.

ARTICLE 2

A country which has made reservations in accordance with Article 1, and which at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to make provision for the protection of all the rights forming the object of the Act, may, by a notification deposited with the Director General, before the end of the above-mentioned period, declare that it will maintain, until the entry into force of the Act adopted by the next Revision Conference, any or all of the reservations made by the country.

ARTICLE 3

A country which no longer needs to maintain any or all of the reservations made in accordance with Article 1 or 2 shall withdraw such reservation or reservations by notification deposited with the Director General.

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

DONE AT STOCKHOLM, on July 14, 1967.

[Here will follow the names of the States Members of the Berne Union invited to the Stockholm Conference, each name being preceded by the words " For the Government of" and followed by a blank space reserved for the signature or signatures.]

[End of Proposed Text]

CORRIGENDUM TO DOCUMENT S/9 (1)

1. After further study and consultation, BIRPI has, at the request of the Government of Sweden, prepared the present document, containing certain changes in document S/9, concerning the proposals for revising the administrative provisions and the final clauses of the Berne Convention.

Omission of Proposed Article 25quater

2. *It is proposed that Article 25*quater, *appearing in document S/9, be omitted.*

3. Concerning the reasons for this proposal, see paragraph 8, below.

Change in Proposed Article 27

4. *It is proposed that Article 27(1), appearing in document S/9, be completed by the following sentence:*

The Acts previously in force shall continue to be applicable, in their entirety or to the extent that the present Act does not replace them by virtue of the preceding sentence, in relations with countries which do not ratify or accede to this Act.

5. *Furthermore, it is proposed that paragraphs (2) and (3) of Article 27, appearing in document S/9, be omitted.*

6. Article 27, as proposed in document S/9, omitted the second sentence of Article 27(1) of the Brussels Act, reading as follows: "The Instruments previously in force shall continue to be applicable in relations with countries which do not ratify this Convention." The proposal under paragraph 4, above, tends to repeat, in the Stockholm Act, the essence of the said sentence of the Brussels Act, the only differences being that the words "Acts" and "Act" are used instead of "Instruments" and "Convention," that accessions as well as ratifications are referred to, and that the possibility of partial replacement (see proposed Article 25(1)(b)) is mentioned. These differences follow from the proposed terminology and construction of the final clauses. The retention of the sentence in question makes it necessary that paragraphs (2) and (3) of Article 27, as proposed in document S/9, be omitted.

7. The repetition in the Stockholm Act of the rule laid down in the second sentence of Article 27(1) of the Brussels Act is proposed, since there seems to be no need to depart from the present text which has proved its worth ever since it came into existence. It is believed that the retention of this rule has the advantage of not weakening the generally accepted interpretation according to which:

(i) works originating in one country of the Union shall be protected under the Convention in any other country of the Union; and

(ii) each country of the Union grants protection to works originating in any country of the Union according to the provisions of the most recent Act which the former country has accepted.

8. It follows from this last consideration that any country having accepted the Stockholm Act in its entirety or Articles 1 to 20*bis* thereof is entitled—subject to the entry into force with respect to that country of the said Articles—to apply reservations made under the Protocol Regarding Developing Countries (since that Protocol forms an integral part of the Stockholm Act) even to works originating in countries which have not yet accepted the Stockholm Act in its entirety or, at least, Articles 1 to 20*bis* thereof. Consequently, there is no need for a provision such as Article 25*quater*, as proposed in document S/9, that is, an article which would have provided that countries not bound by Articles 1 to 20*bis* of the Stockholm Act and the Protocol Regarding Developing Countries could have declared that they *admitted* the application of the Protocol to works of which they were the countries of origin. Under the corrigendum now made, a country making reservations under the Protocol would not need declarations admitting the application of such reservations to works originating in countries not accepting the Protocol since the

applicability of the Protocol to such works would flow from the understanding that a country making reservations under the Protocol may apply such reservations to the works originating in *any* country of the Union.

Consequential Changes in Articles 20*bis* and 25

9. *It is proposed that in Article* 20bis*(2) the words "and Article 25*quater" *be deleted.*

10. *It is proposed that subparagraph (1)(c) of Article 25 be deleted.*

11. *It is proposed that the number of subparagraph (1)(d) of Article 25 be replaced by number (1)(c).*

12. *It is proposed that the reference, in Article 25(3), to subparagraph (1)(d) be replaced by a reference to subparagraph (1)(c).*

13. The above proposals are necessary in view of the proposed deletion of Article 25*quater* and the proposed change in Article 27.

Change in Proposed Article 28

14. *It is proposed that Article 28, as appearing in document S/9, should read as follows:*

After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.

15. Article 28, as appearing in document S/9, would have provided that after the entry into force of the Stockholm Act in its entirety, a country may accede to earlier Acts only in conjunction with ratification of, or accession to, the Stockholm Act.

16. Article 28(3) of the Brussels Act provides that a country outside the Union could until the 1st July, 1951, become a member of the Union by acceding to either the Rome Act of 1928 or the Brussels Act, but that after such date it could join the Union only be acceding to the most recent Act, i.e., the Brussels Act. The proposal now made simply tends to repeat the essence of this provision. According to this proposal, a country outside the Union can join the Union by acceding, before the Stockholm Act has entered into force in its entirety, either to the Brussels Act or to the Stockholm Act or to both, but after the latter Act has come into force only to the most recent Act, i.e., the Stockholm Act.

17. The repetition, in the Stockholm Act, of the essence of this provision of the Brussels Act is proposed because the provision has proved its worth in practice and no innovation seems to be needed.

CORRIGENDUM TO DOCUMENT S/9 (2)

N.B. This document (S/9/Corr. 2) has not been translated into English as, in its French version, it merely deals with a clerical error in document S/9, in French only.

CORRIGENDUM TO DOCUMENT S/9 (3)

The last two sentences of paragraph 201 of the Commentary (page 64 of the document) should be replaced by the following text:

"The difference is more apparent than real, as the Member States—since the creation of the Interunion Coordination Committee in 1962—have had a considerable *de facto* influence on the supervision of the Secretariat: the "advices" of that Committee cover almost all matters concerning the Secretariat

Document S/9, page 69

(budget, program, appointment of the Director) and they have hitherto been generally followed by the Swiss Government as supervisory authority. At the 1966 Committee, the Head of the Swiss Delegation made the following statement in this connection: '...It will therefore be necessary for these two supervisory authorities to agree. I think I can say that the Swiss Government will not seek to cause any difficulties; but we feel it is our duty to call this problem to the attention of the authorities responsible for preparing the final drafts for the Stockholm Conference.'"

DOCUMENT S/10

CONVENTION ESTABLISHING THE INTERNATIONAL INTELLECTUAL PROPERTY ORGANIZATION

("IPO" CONVENTION)

Proposals for Establishing the Organization

(Prepared by BIRPI, at the Request of the Government of Sweden)

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INTRODUCTION

THE PRESENT DOCUMENT

1. The agenda of the Intellectual Property Conference of Stockholm includes the matter of *administrative reforms* in the International Union for the Protection of Industrial Property (Paris Union), in the Special Unions existing under the Paris Union, in the International Union for the Protection of Literary and Artistic Works (Berne Union), and in the common Secretariat serving all these Unions, usually referred to as the United International Bureaux for the Protection of Intellectual Property (BIRPI). The agenda of the Stockholm Conference also includes the matter of *structural reforms*, consisting principally of creating new organs for these Unions and of establishing a new intergovernmental organization, tentatively called " International Intellectual Property Organization, " hereinafter referred to as " the proposed new Organization. "

2. All structural and administrative, including financial, matters of concern *to any given Union*, and to it only, are dealt with as proposals for amending the Convention or Agreement of that Union. These proposals are contained in documents S/3, 4, 5, 6, 7, 8, and 9, dealing respectively with the Paris, Madrid (Trademarks), Madrid (False Indications), Hague, Nice, Lisbon, and Berne Conventions or Agreements.

3. Administrative and structural matters of *common* interest to two or more Unions, as well as the establishment of the proposed new Organization—itself largely an instrumentality of administrative cooperation among the various Unions—are dealt with in the present (S/10) document.

4. Draft resolutions are contained in document S/11, and financial questions not covered by other documents are dealt with in document S/12.

5. The present document contains, after a brief review of the preparatory work from which it results (paragraphs 7 to 14) and a general description of the proposed new Organization and the proposed Draft Convention establishing it (paragraphs 15 to 26), the text of what is intended to become the charter of the proposed new Organization (" Convention Establishing the International Intellectual Property Organization "), accompanied by explanatory notes (" Commentary ": paragraphs 27 to 118).

6. The present document, as well as documents S/3 to 9, 11 and 12, were prepared by BIRPI at the request of the Government of Sweden which will be the host of the Stockholm Conference scheduled to take place from June 12 to July 14, 1967.

PREPARATORY MEETINGS

7. The idea of an administrative and structural reform of the kind now proposed found its first official expression in a joint meeting of the Permanent Bureau of the Paris Union and the Permanent Committee of the Berne Union, held in October 1962.

8. The joint meeting recommended that a working party, and then a committee of governmental experts, be convened to start the preparatory work for a diplomatic conference to effectuate the reform.

9. The program of work in this respect has been reported to, and approved by, the yearly sessions of the Interunion Coordination Committee of the Paris and Berne Unions held in 1963, 1964, and 1965.

10. The Working Party met in May 1964, and the Committee of Governmental Experts met twice, first in March/April 1965, and then in May 1966, each time in Geneva. Their work results from three series of BIRPI documents, bearing the symbols AA/1, AA/II, and AA/III, respectively.

11. In the present document, the Working Party of 1964 will be referred to as " the 1964 Working Party "; the Committee of Governmental Experts of 1965, as " the 1965 Committee "; and the Committee of Governmental Experts of 1966, as " the 1966 Committee. "

12. *(a)* Experts from the following ten countries were invited to the 1964 Working Party, and all responded to the invitation: Czechoslovakia, France, Germany (Federal Republic), Hungary, Italy, Japan, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America.

(b) All the member States of the Paris and Berne Unions were invited to the meetings of the Committee of Experts. In the 1965 Committee, 37 participated: Australia, Austria, Belgium, Brazil, Canada, Congo (Leopoldville), Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic), Greece, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway, Pakistan, Poland, Rumania, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia. The Union of Soviet Socialist Republics, at that time not yet member of the Paris Union, attended as an observer. In the 1966 Committee, 39 of the member States participated: Algeria, Australia, Austria, Belgium, Brazil, Bulgaria, Congo (Brazzaville), Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic), Greece, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Norway, Poland, Portugal, Rumania, Spain, Sweden, Switzerland, Syrian Arab Republic, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

13. *(a)* Subject to some exceptions, the Draft Convention (hereinafter referred to as " the Draft ") follows the views expressed by the 1966 Committee, either unanimously or by a majority.

(b) On a few secondary points, the Draft differs from these views since, upon reflection, they did not seem to fit into the context of the whole. They are listed in the footnote below. [1]

(c) On the important question of membership, the 1966 Committee arrived at no solutions. BIRPI now proposes one: there would be two categories of Members, " Full " and " Associate "; the former would be members of the Unions, the latter would be countries which are not members of the Unions, provided they are Members of the United Nations or any of the UN Specialized Agencies, or are admitted to the proposed new Organization by a qualified vote of the General Assembly. Only Full Members would be members of the General Assembly. Both the Full and the Associate Members would be members of the " Conference. "

(d) In respect to the Conference of the Organization, there was some discussion in the 1966 Committee whether it should not be indicated in the Convention that industrial property and copyright were not the same and that, when only one of them was discussed, the name itself of the Conference should so indicate. Although no proposal of this kind was accepted by the Committee, BIRPI now proposes, in order to satisfy the wishes of the Delegations which promoted this idea, that the provisions dealing with the activities of the Conference contain an additional clause stating that whenever the agenda of the Conference consists of matters which concern exclusively industrial property, or exclusively copyright, it shall meet as " Industrial Property Conference, " or " Copyright Conference, " respectively.

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[1] *Preamble:* The word "modernize" is maintained as it seems to be particularly appropriate where the reform relates to an Organization which has undergone practically no change for more than 80 years.

Article 5: The words " as provided in Article 6 " were not inserted as they seem to be superfluous. Articles 5 and 6, read together, make it clear what procedure is required for the transfer of the headquarters.

Article 7: The explanatory phrases in paragraph (2)(ii) were omitted since they were redundant with provisions appearing in Article 10.

Article 8: Paragraph (3) provides that the Coordination Committee shall give advice on all administrative, financial and *other* matters of common interest. The word " other " was maintained since it seems that matters of common interest are not necessarily administrative and financial. In the same paragraph, the words " with a view particularly to securing uniform administrative practices as much as possible among the various Unions " were omitted since the word " practices " seemed to be somewhat vague.

(e) On the question of what a country is required to do to become a Member of the proposed new Organization, the draft proposed to the 1966 Committee provided that, as far as any country member of the Paris Union or of the Berne Union was concerned, such a country would become *automatically* a Member of the Organization if it accepted the new administrative provisions to be written into the Paris and Berne Conventions by the Stockholm Conference, unless it expressly declared, at the time of acceptance, that it did not wish to become a Member of the Organization. In other words, under that proposal, no separate act (signature, ratification, or acceptance) would have been required of a country member of the Paris Union, or of the Berne Union, for it to become a Member of the Organization. The proposal was approved by the 1966 Committee, even though some objections were made by some Delegations. BIRPI did not include the provision in the present Draft. Although it still believes that the provision would be logical—as a State accepting the new administrative provisions in the Paris or Berne Unions could hardly gain anything by not becoming a Member of the proposed new Organization in which its rights would only increase—BIRPI dropped the provision in order to satisfy those Delegations which are of the opinion that there should be no connection, not even an apparent one, between acceptance of the new administrative provisions *in the Paris and Berne Conventions* and acceptance of the Convention establishing the proposed new Organization. It should be emphasized that the dropped provision would have created more the appearance of such a connection than a real connection as, even under the provision, it would have been perfectly possible for any State to make a declaration refusing the automatic effect and such a declaration would have sufficed to exclude such automatic effect.

(f) Moved by similar considerations, BIRPI has dropped from the present Draft another provision which was presented to the 1966 Committee, namely, the provision according to which a country which is a Member of the Organization and of one or more of the Unions may leave the Organization only if it has already left, or concurrently leaves, all the Unions of which it is a member. More is said about this under paragraph 107, below.

14. On a few questions, the 1966 Committee asked the drafters of the proposals for the Stockholm Conference to reflect further and come up with proposals. The following two are the most important ones among these questions:

(i) Depositary functions. It is proposed, in agreement with the Government of Sweden, that the original copy of the Convention to be signed at Stockholm should be deposited with the Swedish Government. This solution would entail the following two consequences: signatures effected during the six months following the Stockholm Conference would have to be effected in Stockholm; the Swedish Government would have to certify the copies of the Convention whenever certified copies are needed. All other depositary functions would be entrusted to the Director General of the proposed new Organization, or, until he is appointed, to the Director of BIRPI.

(ii) Continuation of BIRPI. Article 9 would expressly state that the International Bureaus established by the Paris and Berne Conventions in 1883 and 1886 — united in 1893, and for the last ten years or so generally referred to as BIRPI — shall continue as the International Bureau of the proposed new Organization. In other words, the latter would not be a *new* international Secretariat but the continuation of the existing Secretariat under a slightly different name.

GENERAL DESCRIPTION OF THE PROPOSED NEW ORGANIZATION AND OF THE PROPOSED DRAFT CONVENTION

The Twofold Purpose of the Organization

15. The proposed new Organization would serve two main purposes:

(i) to constitute the framework of a coordinated administration for the various intellectual property Unions, and, through such administration, it is hoped, to constitute an economical and efficient service to the Member States and the interests protected by the Unions,

(ii) to constitute the framework for the general promotion of the protection of intellectual property, on a world-wide basis, that is, also for and in the States which are not yet members of any of the existing intellectual property Unions.

16. This duality of the objectives would be reflected throughout the structure of the Organization:

(i) As a framework for administrative coordination and cooperation among the Unions, the Organization would mainly act through its General Assembly and its Coordination Committee, two organs which would be constituted by members of the Unions only (the " Full " Members). [1]

(ii) As a framework for spreading the protection of intellectual property rights throughout the world, the Organization would act through its Conference, an organ constituted both by States members of the Unions and States not yet members of any of the Unions (the " Associate " Members).

(iii) The very reason for proposing to distinguish between Full and Associate Members resides in the fact that Associate Members are not admitted into certain of the organs, or are admitted only under certain restrictions.

The Independence of the Unions

17. As far as the Unions are concerned, the Organization would have a role only in matters of common interest to two or more Unions and even in such matters its role would essentially be advisory.

18. The organs which, for each Union, would have the power of decision and policy making—that is, its Assembly and, for the Paris and Berne Unions, the Executive Committee of each—would not be organs of the Organization but separate organs of each Union.

19. The program and budget of each Union would be independent and voted by its own Assembly.

The Structure of the Organization

20. *(a)* As already indicated, the proposed new Organization would have two kinds of Members (" Full " and " Associate ") and three organs constituted by some or all of such Members: the General Assembly, the Coordination Committee, and the Conference.

(b) Furthermore, it would have a Secretariat, whose name would be " International Bureau for the Protection of Intellectual Property. " It would be headed by a person (the Director General), elected by the General Assembly, but subject to what amounts to a possibility of veto by either the Assembly of the Paris Union or the Assembly of the Berne Union.

21. The General Assembly and the Conference would normally meet once every three years; the Coordination Committee, once a year.

Outline of the Draft Convention

22. The Draft consists of nineteen Articles.

23. Article 1 enounces the establishment of the Organization and enumerates its organs. Article 2 contains definitions of certain abbreviated expressions used in other Articles of the Draft. Article 3 enumerates the objectives and the functions of the Organization.

24. Article 4 deals with membership; Article 5 with the location of the headquarters.

25. Articles 6 to 9 deal with the four organs of the Organization: the General Assembly, the Conference, the Coordination Committee, and the Secretariat. Article 10 deals with finances. Article 11 regulates the legal capacity of the Organization and privileges and immunities. Article 12 concerns relations between the Organization and other organizations.

26. Article 13 provides for the procedure for amending the Convention, whereas Articles 14 to 18 are the typical final clauses: entry into force, denunciation, notifications, reservations, final provisions. Finally, Article 19 contains transitional provisions.

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[1] However, some of the Associate Members would participate in the Coordination Committee when their interests are directly involved.

COMMENTARY

Commentary on the Preamble

27. The Preamble is a brief expression of the two main objectives behind the establishment of the International Intellectual Property Organization, namely, to modernize and render more efficient the administration of the Intellectual Property Unions, and to promote the protection of intellectual property throughout the world.

28. The principal means for attaining the first objective is the creation of organs in part common to the Unions, namely, the General Assembly, the Coordination Committee, and the Secretariat.

29. The principal means for attaining the second objective is the creation of the " Conference " and the offer of legal-technical assistance to developing countries.

30. *(a)* The General Assembly would comprise only the " full " Members of the Organization, that is countries which are members of one or more of the Unions (see Article 4(2)). The term " Union " is defined in Article 2(vii). On the other hand, the Conference would comprise both the " full " Members and the " associate " Members of the Organization, the latter being States which have acceded to the present Convention without being members of any of the Unions (see Article 4(3)). In earlier BIRPI documents such States were sometimes referred to as " Third States. "

(b) The Coordination Committee would consist of the members of the Executive Committee of the Paris Union and of the Executive Committee of the Berne Union (see Article 8(1)*(a)*). Exceptionally, that is, when the Coordination Committee considers matters of direct interest to the Conference, as such, one-fourth of the Associate Members would also participate in the Coordination Committee (see Article 8(1)*(c)*).

(c) The name of the Secretariat would be International Bureau of Intellectual Property (see Article 2(ii)) and would be a continuation of the international secretariat presently known as BIRPI (see Article 9(1)).

31. It should be noted that the Preamble emphasizes that the common organs fully respect the autonomy of each of the various Unions.

PROPOSED TEXT

The Contracting Parties,

Desiring to modernize and render more efficient the administration of the Intellectual Property Unions through the establishment of administrative organs which, although in part common, fully respect the autonomy of each of the various Unions, and to promote the protection of intellectual property throughout the world, in particular through the creation of a Conference and the offer of legal-technical assistance to developing countries,

Agree as follows:

Commentary on Article 1: Establishment and Organs

32. This Article declares the establishment of the Organization and enumerates its main organs.

33. The first sentence contains the name of the proposed new Organization: " International Intellectual Property Organization. "

34. " Intellectual Property " is, of course, to be understood as embracing both industrial property (patents, trademarks, etc.) and copyright (literary and artistic property). It cannot be said that " intellectual property " is a term in general usage in all countries and languages. Neither can it be said that in all countries and all languages it has the same meaning as in the Draft; this meaning will be acquired only by usage. Notwithstanding this disadvantage, the proposed expression was the best that could be found. It is short, but nevertheless encompasses all the subject matter within the competence of the Organization.

35. *(a)* Earlier drafts proposed the use of the adjective " World " in the name of the Organization in order to underline its universal vocation, as it does in the names of the World Health Organization or the World Meteorological Organization. By a narrow vote, the 1965 Committee replaced the word " World " by " International. " The 1966 Committee did not discuss the question.

(b) It is suggested, as an alternative, that the matter be reconsidered by the Stockholm Conference. " International " may denote an organization of any number of States, however small this number may be. " World " would better express the universal vocation of the Organization. It is shorter: one syllable instead of five. It is more dynamic. It is not over-used like " international. " Finally, it would yield a better abbreviation: " WIPO. " " IIPO " is difficult to pronounce, and " IPO " is incomplete since one of the words (either " International " or " Intellectual ") would not be covered.

(c) It should be noted that no alternative proposal is made as to the name of the Secretariat. This would be " International "—and *not* " World "—Bureau, even if the Organization were named " World Intellectual Property Organization. "

36. The second sentence enumerates the four main organs of the Organization, namely, the General Assembly, the Coordination Committee, the Conference, and the International Bureau of Intellectual Property (the Secretariat). See the comments under paragraph 30, above.

ARTICLE 1: ESTABLISHMENT AND ORGANS

The International[1] Intellectual Property Organization is hereby established. It comprises a General Assembly, a Coordination Committee, a Conference, and an " International Bureau of Intellectual Property. "

[1] *Alternative:* Replace "**International**" by "**World**."

Commentary on Article 2: Definitions

37. This Article contains definitions of abbreviated expressions.

38. The provisions are self-explanatory.

39. In the fall of 1966, the following five " Special Agreements " established in relation with the Paris Union were in force: (i) the Madrid Agreement concerning the International Registration of Trademarks, (ii) the Madrid Agreement for the Prevention of False or Misleading Indications of Source on Goods, (iii) the Hague Agreement concerning the International Deposit of Industrial Designs, (iv) the Nice Agreement concerning the International Classification of Goods and Services to which Trademarks Are Applied, (v) the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

ARTICLE 2: DEFINITIONS

For the purposes of this Convention:

(i) [1] **" Organization " shall mean the International Intellectual Property Organization (I.P.O.);**

(ii) " International Bureau " shall mean the International Bureau of Intellectual Property, that is, the Secretariat of the Organization;

(iii) " Paris Convention " shall mean the Convention for the Protection of Industrial Property signed on March 20, 1883, and any of its revisions;

(iv) " Berne Convention " shall mean the Convention for the Protection of Literary and Artistic Works signed on September 9, 1886, and any of its revisions;

(v) " Paris Union " shall mean the International Union established by the Paris Convention;

(vi) " Berne Union " shall mean the International Union established by the Berne Convention;

(vii) " Unions " shall mean the Paris Union, the Special Unions and Agreements established in relation with that Union, the Berne Union, and any other convention, agreement or treaty whose administration is assumed by the Organization according to Article 3(2)(ii) or (iii).

[1] In speech, these numerals should be referred to as " small Roman one, small Roman two, small Roman three, etc.". They are used whenever there are several items in an enumeration. They are called " items, " and not subparagraphs. Subparagraphs always consist of one or more complete sentences and are designated by small letters (*(a)*, *(b)*, *(c)*, etc.). Paragraphs are designated by Arab numerals in parentheses. Articles are designated by Arab numerals without parentheses.

Commentary on Article 3: Objective and Functions

40. This Article concerns the objectives of the Organization (paragraph (1)), and its functions tending towards the attainment of such objectives (paragraph (2)).

41. *(a)* The key words, of course, are " cooperation among States " in the opening phrase. The fields in which this cooperation is desired are enumerated in the six items of paragraph (1).

(b) Item (i) is a reference to copyright.

(c) Item (ii) refers to inventions. The use of the word " agriculture " is not necessarily a reference to new varieties of plants. It echoes Article 1(3) of the Paris Convention which provides that " industrial property... shall apply [also]... to agricultural... industries. " Should, however, in the future some administrative role be entrusted to BIRPI—and later to the new Organization—in connection with the 1961 Convention for the Protection of New Varieties of Plants, then this item might be considered as applying to it as well.

(d) Item (iii) is a reference to scientific discoveries. Most patent laws do not provide for their protection, and neither does the Paris Convention. However, several countries do consider discoveries as a field germane to inventions. Reference to the former, then, can only be an advantage.

(e) Item (iv) deals with the classical subjects of industrial property outside patents: industrial designs, trademarks and service marks, and other commercial designations. Trade names, indications of source, and appellations of origin, are examples of such other commercial designations.

(f) Item (v) refers to the category of rights commonly called " neighboring rights. " The Rome Convention of 1961 dealing with these rights is under the joint administration of BIRPI, the International Labour Office, and UNESCO. It is to be noted in this connection that that type of joint administration could also continue under the new Organization, as paragraph (2)(ii) provides that the Organization may "*participate* [emphasis added] in the administration of other [that is, other than the Paris Union, the Special Unions established in relation with the Paris Union, and the Berne Union, referred to in paragraph (2)(i)] existing intellectual property conventions. "

(g) Finally, item (vi) deals with unfair competition. The term should primarily be understood as defined in Article 10*bis* of the Paris Convention.

42. *(a)* Paragraph (2), in its introductory phrase, emphasizes that the Organization will function " subject to the competence of each of the various Unions. "

(b) Among the items specifying the functions of the General Assembly, the first three items refer to the administration of treaties. Item (i) refers to the Paris and Berne Unions and the Special Unions established in relation with the former. The expression here is " administrative tasks " rather than " administration " since the Paris and Berne Conventions do not require any administration *stricto sensu.* Item (ii) refers to the possibility of the new Organization assuming or participating in the administration of *existing* treaties. The 1961 Convention for the Protection of New Varieties of Plants and the 1961 Convention on so-called neighboring rights might be examples in point. Item (iii) speaks about treaties *not yet in existence.* The new Organization may promote the conclusion of such treaties and it may assume or participate in their administration.

(c) Item (iv) refers to studies; item (v), principally to the registration services maintained under the Madrid, The Hague and Lisbon Agreements; item (vi), to improving legislations; and item (vii), to assistance, mainly to developing countries.

ARTICLE 3: OBJECTIVE AND FUNCTIONS

(1) The objective of the Organization is to promote cooperation among States in the field of protection for:

(i) authors of scientific, literary and artistic works, and creators of works of applied art,

(ii) inventors, particularly in the field of industry and agriculture,

(iii) scientists having made discoveries,

(iv) owners of industrial designs, and of trade and service marks, and other commercial designations,

(v) performing artists, producers of phonograms, and broadcasting organizations,

(vi) enterprises against unfair competition,

through administrative cooperation among the various Unions and through other appropriate means set out in the present Convention.

(2) To this end, the Organization, through its appropriate organs, and subject to the competence of each of the various Unions:

(i) is entrusted with the administrative tasks of the Paris Union, the Special Unions established in relation with that Union, and the Berne Union;

(ii) may assume or participate in the administration of other existing intellectual property conventions, agreements and treaties, on the request of and in agreement with the competent organs established by such conventions, agreements or treaties;

(iii) shall encourage the conclusion of new conventions, agreements or treaties where appropriate in the field of intellectual property, and may assume or participate in their administration;

(iv) shall assemble information concerning the protection of intellectual property, promote and carry out studies in this field, and disseminate the information assembled and the results of the studies;

(v) shall maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in the field of intellectual property and the publication of the data concerning the registrations;

(vi) shall assist in the development of measures calculated to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislations;

(vii) shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property;

(viii) generally, shall take all necessary action to attain the objectives of the Organization.

Commentary on Article 4: Membership

43. *(a) The 1965 Committee* could not agree on a single proposal concerning the question of which States should be permitted to become Members of the Organization. It agreed, however, to insert in the Draft three alternatives (A, B and C), reserving their detailed consideration as well as any decision for the Stockholm Conference.

(b) On the same occasion, it was noted that the Italian Delegation proposed that the whole Article on membership be omitted and that adequate provisions be written into the Convention to express the following two ideas: that only States members of any of the Unions could become Members of the Organization, and that countries not members of any of the Unions could only participate in the " Conference " of the Organization provided that they were Members of the United Nations or any of its Specialized Agencies (see documents AA/II/20 and 30, paragraph 46).

44. *In the preparatory documents drawn up for the 1966 Committee* by BIRPI and the experts appointed by the Swedish Government, only Alternative A of the 1965 Committee was reproduced (document AA/III/2, paragraph 35, and document AA/III/5).

45. *(a) The 1966 Committee*, however, decided not to discuss the question of membership because it was a matter partly political in nature and therefore more apt, not only for decision, but even for discussion, by a diplomatic conference than by a committee of experts. The 1966 Committee also suggested that all three alternatives reported by the 1965 Committee be reproduced in the preparatory papers for the Stockholm Conference. This suggestion is complied with under II, III, and IV of the texts reproduced under Article 4.

(b) At the 1966 Committee the Delegation of Italy urged that its proposals made at the 1965 Committee should also be put before the Stockholm Conference. This suggestion is also complied with in a note appearing under Alternative C.

(c) Finally, at the 1966 Committee, the Delegation of France, supported by the Delegation of Morocco, asked that two categories of Members be provided for: Full Members, and Associate Members.

46. *(a)* It is on the basis of this French-Moroccan suggestion that *BIRPI proposes now* a new provision on membership—new in the sense that there was no such provision before either the 1965 or the 1966 Committee.

(b) This proposal appears under I, and is designated as a BIRPI proposal.

(c) According to the BIRPI proposal, there would be two kinds of Members of the Organization: Full Members, and Associate Members.

(d) In order to qualify for full membership, a State would have to be a member of the Paris or of the Berne Union or of any of the other Unions the administration of which is assumed by the Organization alone, or is entrusted to the Organization in cooperation with other organizations. In connection with the Paris and Berne Conventions, it is recalled that the former provides that " countries which are not parties to the present [Paris] Convention shall be permitted to accede to it at their request " (Lisbon Act, Article 16 (1)), it being " understood that at the time an instrument of ratification or accession is deposited . . . [the] country will be in a position under its domestic law to give effect to the provisions of this Convention " (Lisbon Act, Article 17), and that the latter provides that " countries outside the [Berne] Union which make provision for the legal protection of the rights forming the object of this [Berne] Convention may accede thereto upon request " (Brussels Act, Article 25 (1)). According to the proposals made for the Stockholm Conference in connection with the Paris and Berne Conventions (document S/3, Article 16*bis*, and document S/9, Article 25*bis*) the principle of accessibility to the Unions by any State which undertakes to protect industrial property and copyright as prescribed by the Paris and Berne Conventions would be maintained.

(e) In order to qualify for associate membership, the country wishing to become such a Member would have to be (i) either a Member of the United Nations or any of the Specialized Agencies brought into relationship with the United Nations, (ii) or it would have to be invited by the General Assembly of the Organization to join the Organization.

ARTICLE 4: MEMBERSHIP

I. BIRPI Proposal for the Stockholm Conference

(1) The Organization shall have Full Members and Associate Members.

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

(3) Associate membership shall be open to any State not a member of any of the Unions provided that:

(i) it is a Member of the United Nations or any of the Specialized Agencies brought into relationship with the United Nations, or

(ii) it is invited by the General Assembly to become a party to the present Convention.

(4) When an Associate Member becomes a party to any of the Unions, it shall automatically become a Full Member.

II. Alternative " A " of the 1965 Committee

Membership in the Organization shall be open to any State which is:

(i) a party to the Paris Convention or the Berne Convention, or

(ii) a party to any other convention, agreement or treaty the administration of which is entrusted to the Organization, or

(iii) a Member of the United Nations or any of its Specialized Agencies, or

(iv) a State invited by the General Assembly to become a Member of the Organization.

III. Alternative " B " of the 1965 Committee

Membership in the Organization shall be open to any State which is:

(i) a Member of the United Nations or any of its Specialized Agencies, or

(ii) a State invited by the General Assembly to become a Member of the Organization.

IV. Alternative " C " of the 1965 Committee

Any State accepting the provisions of this Convention may, on its request, become a Member of the Organization. [1]

[1] In the 1965 Committee, the Italian Delegation had proposed that there be no provision on membership but that the Article on the Conference (then, Article 6) provide that " any State may become a member of the Conference if it is also a Member of the United Nations or any of its Specialized Agencies " (document AA/II/20).

47. The proposal is presented in the hope that it avoids political issues. If there is, today, any disagreement between members of any Union as to the membership of any given entity in that Union, the proposed provision would not resolve the disputed question in any manner. It is believed, in fact, that a conference of such a technical nature as the Stockholm Conference is not the appropriate forum for solving this purely political issue.

48. The proposal is also presented in the hope that, by differentiating between Full and Associate Members, it will give satisfaction to those who believe that there should be, in an Organization on intellectual property, a marked difference between countries which have assumed—notably under the Paris and Berne Conventions—certain obligations as regards the protection of intellectual property rights and countries which have not yet done so. The difference, of course, is not only a difference in name but also one concerning the rights of States. Above all, Associate Members would not be members of the General Assembly of the Organization and therefore could not participate in the exercise of the powers given to that organ of the Organization.

49. It should be noted that the three alternatives (A, B, and C) of the 1965 Committee and the new BIRPI proposal are similar to each other on an extremely important point, namely, the fact that membership in the Organization (or, according to the view advanced by the Italian experts, in the Conference) should not be limited to countries which are party to the Paris Convention or the Berne Convention.

50. This uniformity of views is due to the desire to make the Organization a truly universal forum. If it were not such a general forum, the Organization would fail to fulfil its global mission and it would be entirely possible that other organizations, not specialized in intellectual property matters, would deal with tasks which, by their nature, should be dealt with by the Organization specialized in intellectual property.

51. Furthermore, opening the Organization to countries which are not yet party to the conventions, agreements and treaties administered by it is likely to lead, ultimately, to accession by such countries to such instruments. As Associate Members of the Organization, they would have an opportunity to share in the knowledge available concerning intellectual property and could benefit from legal-technical assistance which could be useful, for example, in drawing up their domestic laws in this field or in organizing their national patent offices. Since such laws and such offices may be prerequisites for their accession to the Paris Convention, such accession may be considerably facilitated by their first becoming Members—albeit Associate Members—of the Organization. Naturally, it is expected that eventually each Associate Member of the Organization will become party to one or more, if not all, of the Unions administered by the Organization.

52. There is an additional reason for the provision contained in paragraph (3)(i) of the new BIRPI proposal which would allow any State Member of the United Nations to adhere to the Organization. The reason is that—should the Organization and the United Nations one day find it desirable for the Organization to be recognized as a Specialized Agency of the United Nations—such a provision would be *necessary*, since one of the prerequisites of recognition is that the Organization must admit to membership any Member of the United Nations which wishes to adhere to the Organization.

53. Furthermore, if any countries which are Members of the United Nations or the existing Specialized Agencies were excluded from membership—even from associate membership—in the Organization, they would have to seek another forum for their intellectual property problems, such as the United Nations or the existing Specialized Agencies.

Commentary on Article 5: Headquarters

54. This Article relates to the location of the headquarters of the Organization.

55. The headquarters of the Organization would be the same as that of BIRPI, and since BIRPI is at Geneva the headquarters of the Organization would be at the same place.

56. Transfer of headquarters would require at least a two-thirds vote in the General Assembly of the Organization (Article 6(3)(d)(ii)), as well as in the Assemblies of the Paris and Berne Unions (Article 6(3)(g)).

ARTICLE 5: HEADQUARTERS

The headquarters of the Organization shall be at Geneva. It may be transferred to another place pursuant to a decision of the General Assembly.

Commentary on Article 6: General Assembly

57. This Article relates to the following subjects concerning the General Assembly: composition (paragraph (1)), functions (paragraph (2)), voting procedures (paragraph (3)), sessions (paragraph (4)), observers (paragraph (5)), and rules of procedure (paragraph (6)).

58. *Paragraph (1)* deals with composition. As already stated, only those States Members of the Organization which are also members of one or more of the Unions—i.e., the " Full " Members—would be members of the General Assembly. Certain States, notwithstanding their membership in the Organization, would *not* be members of the General Assembly. These are the " Associate " Members, that is, States not members of any of the Unions. They would merely be invited as observers to the sessions of the General Assembly, without the right to vote in it (cf. paragraph (5)).

59. *Paragraph (2)* sets forth the functions of the General Assembly. It is to be noted that all of them relate to matters which are administrative in nature and common to the Unions. None of the functions relates to matters concerning the legal protection of intellectual property rights, and none of them deals even with administrative matters if they are of interest only to one Union. Item (i) indicates in effect that the Coordination Committee is supervised by the General Assembly. Items (ii), (iii) and (iv) concern the common Secretariat (the " International Bureau "): election of its head; decision as to the administration of treaties (other than the Paris and Berne Conventions and the Special Agreements under the former) both as to the principle—whether to accept the administration, or joint administration, of a treaty—and as to the details of the practical arrangements for the administration; decision concerning what languages should be the working languages of the Secretariat. Item (v) concerns an internal procedure matter for the General Assembly, namely, the admission of certain observers to its session.

60. *(a) Paragraph (3)* concerns voting. According to the nature of the proposal, approval will require either a nine-tenths, a three-fourths, a two-thirds, or a simple majority vote. Furthermore, in three cases, " triple voting " would be required, that is, the proposal would have to be carried not only by the General Assembly of the Organization, but also by the Assembly of the Paris Union, and the Assembly of the Berne Union.

(b) Nine-tenths majority would be required for approval of a possible agreement with the United Nations which would confer the status of specialized agency on the Organization (subparagraph (f)).

(c) Three-fourths majority would be required for the assumption of the administration of treaties other than the Paris and Berne Conventions and the special Agreements concluded under the Paris Convention (subparagraph (e)).

(d) Two-thirds majority would be required in three cases: invitation addressed to a State to become a Member of the Organization (provided it is not a member of a Union or of the United Nations or of a Specialized Agency), transfer of headquarters, admission of observers (subparagraph (d)).

(e) " Triple voting " would be required for the transfer of headquarters, the election of the Director General, and the assumption of the administration of treaties other than the Paris Convention, the Special Agreements under it, and the Berne Convention (subparagraph (g)).

61. *Paragraphs (4) to (6)* are self-explanatory.

ARTICLE 6: GENERAL ASSEMBLY

(1) (a) The General Assembly shall consist of the Full Members of the Organization, that is, the States party to this Convention which are members of any of the Unions.

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

(2) The General Assembly shall:

(i) review and approve the reports and activities of the Coordination Committee;

(ii) appoint the Director General upon nomination by the Coordination Committee;

(iii) pronounce upon the arrangements proposed by the Director General concerning the administration of the conventions, agreements and treaties referred to in Article 3(2)(ii) and (iii);

(iv) determine the languages which, in addition to English and French, shall be the working languages of the Secretariat;

(v) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(vi) exercise such other functions as are allocated to it.

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

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

(c) Subject to the provisions of the following subparagraphs and Article 13, the General Assembly shall make its decisions by a simple majority of the votes cast.

(d) The following shall require at least two-thirds of the votes cast:

(i) invitations addressed to a State to become a Member of the Organization (Article 4(3));

(ii) decisions concerning the transfer of the headquarters of the Organization (Article 5);

(iii) invitations addressed to States not Members of the Organization and to intergovernmental and international non-governmental organizations to attend meetings as observers (paragraph (2)(v)).

(e) The confirmation of arrangements concerning the administration of conventions, agreements and treaties, referred to in Article 3(2)(ii) and (iii), shall require at least three-fourths of the votes cast.

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

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(g) For the transfer of headquarters (Article 5), the appointment of the Director General (paragraph (2)(ii)), and the confirmation of arrangements concerning the administration of conventions, agreements and treaties (paragraph (2)(iii)), the required majority must be attained not only in the General Assembly but also in the Assembly of the Paris Union and the Assembly of the Berne Union.

(h) Abstentions shall not be considered as votes.

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

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

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

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

(5) Associate Members of the Organization may attend the General Assembly as observers.

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

Commentary on Article 7: Conference

62. This Article deals with the following subjects concerning the Conference: composition (paragraph (1)), functions (paragraph (2)), voting procedures (paragraph (3)), sessions (paragraph (4)), observers (paragraph (5)), and rules of procedure (paragraph (6)).

63. *Paragraph (1)* relates to composition. Unlike the General Assembly, which does not include States not party to any of the Unions, the Conference would include such States.

64. *(a) Paragraph (2)(a)* deals with the functions of the Conference.

(b) Item (i) deals with the function which could be described as that of serving as a forum for discussion.

(c) Item (ii) provides that the Conference would adopt a budget. It results from Article 10(1)(b) that this budget would provide for funds for only two, precisely defined, purposes: expenses of the Conference itself (such as the cost of interpretation, translation, printing of documents), and expenses of legal-technical assistance (such as the cost of fellowships, seminars, expert missions). The carrying out of these tasks will usually entail also the work of persons—for example, the Director General—who otherwise work for the Unions, and the use of facilities which are otherwise used for the Unions. Consequently, the budget of the Organization would have to provide (as also stated in Article 10(1)(b)) for participation by it in the so-called common expenses, that is, money spent on persons, things, and services, who or which serve both the Organization as such and the Unions as such. It is again Article 10 which specifies, in paragraph (3), the sources from which these expenses would come. In addition to possible miscellaneous income, these sources would be the voluntary contributions of the Unions, and the contributions of the Associate Member States. In other words, Full Members (members of the Unions) would contribute only indirectly to the budget of the Organization, by earmarking, if they so desire, in the Union budget certain sums for this purpose. Such States would pay no direct contributions towards the Conference budget.

(d) Item (iii) provides that the Conference is to establish a triennial program of legal-technical assistance, within, of course, the limits of the budget referred to in the preceding item.

65. *Paragraph (2)(b)* provides that whenever the agenda of the Conference consists of matters which concern exclusively industrial property, or exclusively copyright, it shall meet as "Industrial Property Conference," or "Copyright Conference," respectively. This provision is intended to emphasize the independence of the two subject matters from each other. It would be applicable in connection with the activities of the Conference referred to under subparagraph (a)(i) and, possibly, (v).

66. *Paragraph (3)* concerns voting. A two-thirds majority of the Associate Member States would be required for raising their financial obligations (subparagraph (d)). This provision is similar to those proposed for the Assemblies of the Paris, Berne, and Nice Unions. A two-thirds majority would be required also for the admission of observers (subparagraph (e)).

67. *The other provisions of this Article* seem to be self-explanatory.

ARTICLE 7: CONFERENCE

(1) (a) The Conference shall consist of the Full Members and the Associate Members of the Organization, that is, the States party to this Convention whether they are members of any of the Unions or not.

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

(2) (a) The Conference shall:

(i) discuss matters of general interest in the field of intellectual property and may adopt resolutions and recommendations relating to such matters;

(ii) adopt the triennial budget of the Organization;

(iii) within the limits of the budget of the Organization, establish the triennial program of legal-technical assistance;

(iv) adopt amendments to this Convention as provided in Article 13;

(v) exercise such other functions as are allocated to it.

(b) Whenever the agenda of the Conference consists of matters which concern exclusively industrial property, or exclusively copyright, it shall meet as " Industrial Property Conference, " or " Copyright Conference, " respectively.

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

(b) One-third of the Full Members and one-third of the Associate Members shall, together, constitute a quorum.

(c) Subject to the provisions of the following subparagraphs and Article 13, the Conference shall make its decisions by a simple majority of the votes cast.

(d) Adoption of that part of the budget of the Organization which is financed from contributions of Associate Members shall require at least two-thirds of the votes cast by such Members to the extent that the budget would increase their financial obligations.

(e) Invitations addressed to States not Members of the Organization and to intergovernmental and international nongovernmental organizations to attend meetings as observers in accordance with paragraph (5) shall require at least two-thirds of the votes cast in the Conference.

(f) Abstentions shall not be considered as votes.

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

(4) (a) The Conference shall meet in ordinary session, upon convocation by the Director General, during the same period and at the same place as the General Assembly.

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

(5) The Conference may admit, as observers, representatives of States not Members of the Organization, and representatives of intergovernmental and international non-governmental organizations, to such of its meetings or its working committees as it sees fit.

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

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Commentary on Article 8: Coordination Committee

68. This Article relates to the following subjects concerning the Coordination Committee: composition (paragraph (1)), representation of Unions other than Paris and Berne (paragraph (2)), functions (paragraph (3)), sessions (paragraph (4)), voting procedures (paragraphs (5) and (6)), observers (paragraph (7)), and rules of procedure (paragraph (8)).

69. *(a) Paragraph (1)* deals with composition.

(b) The Coordination Committee would consist of the States members of either one of the two Executive Committees, namely, the Executive Committee of the Paris Union and the Executive Committee of the Berne Union.

(c) It is proposed—in the drafts presented to the Stockholm Conference in respect to the revision of the Paris and Berne Conventions—that the Executive Committees of each consist of one-fourth of the membership of their respective Assemblies. If the Paris and Berne Unions adopt the proportion suggested and as long as they do not change that proportion, no imbalance may occur. But if one of the Unions decides, at the Stockholm Conference or later, to increase the proportion—for example from ¼ to ⅓ or ½—an imbalance would occur in the composition of the Coordination Committee. In order to prevent such possible imbalance, subparagraph (a) provides in essence that if the proportion between members of the Assembly and members of the Executive Committee, in any of the Unions, exceeds 1 : 4, then, for the purposes of participation in the Coordination Committee, such Executive Committee would designate from among its members the number of States which correspond to the 1 to 4 ratio.

(d) Associate Members would not only not be members of the General Assembly but they would not be members of the Coordination Committee either. However, whenever the Coordination Committee considers matters of direct interest to the Conference, Associate Members would participate in those meetings of the Coordination Committee which deal with such matters. The ratio of the participating Associate Members to the total number of Associate Members would be 1 : 4. The primary matter of direct interest to the Conference would be the consideration of the budget of the Organization, as distinguished from the budgets of the various Unions, since this is a matter of interest not only to the Full Members—which, through the budgets of the Unions, contribute to the expenses of the Conference and of legal-technical assistance—but also to the Associate Members which contribute directly to the budget of the Organization. Nomination of candidates for the post of Director General would not be a matter of direct interest to the Conference since the Conference plays no role either in the nomination or the election of the Director General.

70. *Paragraph (2)* provides for the representation of the interests of the other Unions in the Coordination Committee. Their representatives would have to be appointed from among representatives of States members of the Coordination Committee, that is, States which are members of the Executive Committee of the Paris Union, or of the Executive Committee of the Berne Union, or of both these Executive Committees. Since the members of Executive Committees are elected by the Assemblies of the corresponding two Unions (Paris and Berne), the drafts presented to the Stockholm Conference in respect to the revision of the Paris and Berne Conventions provide that, in electing the members of the Executive Committees, the Assemblies " shall have due regard . . . to the need for countries members of the Special Unions established in relation with the Union to be among the countries constituting the Executive Committee " (draft of Stockholm Act of Paris Convention, Article 13*bis*(4); draft of Stockholm Act of Berne Convention, Article 21*bis*(4)). It is to be noted that even today, when there is no such provision, the principle is amply implemented in practice: out of the 19 members of the Paris Union Executive Committee 11 are members of the Madrid (Registration of Trademarks) Union, 9 are members of the Nice Union, and 6 are members of the Hague Union. Expressed in percentages, 58 % of the Executive Committee members are also Madrid Union members, 47 % are also Nice Union members, and 32 % are also Hague Union members, although only 28 %, 24 %, and 19 %, respectively, of all the Paris Union members are also members of those three Special Unions.

ARTICLE 8: COORDINATION COMMITTEE

(1) (a) There shall be a Coordination Committee consisting of the States, party to this Convention, which are members of the Executive Committee of the Paris Union, or of the Executive Committee of the Berne Union, provided that if any of these Executive Committees is composed of more than one-fourth of the number of the countries members of the Assembly which elected them, then such Executive Committee shall designate from among its members the States which will be members of the Coordination Committee, it being understood that their number shall not exceed the one-fourth referred to above, and it being equally understood that the seat of the country on the territory of which the Organization has its headquarters shall not be included in the computation of the seats corresponding to the one-fourth.

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

(c) Whenever the Coordination Committee considers matters of direct interest to the Conference, one-fourth of the Associate Members shall participate in the Coordination Committee with the same rights as members of that Committee. This one-fourth shall be elected by and at each ordinary session of the Conference.

(2) If the other Unions administered by the Organization wish to be represented as such in the Coordination Committee, their representatives must be appointed from among the representatives of States members of the Coordination Committee.

(3) The Coordination Committee shall:

(i) give advice to the organs of the various Unions, the General Assembly, and the Conference, on all administrative, financial and other matters of common interest to two or more of the Unions, or to one or more of the Unions and the Conference; and in particular on the common expenses to be included in the budgets of the various Unions and in the budget of the Organization;

(ii) prepare the draft agenda of the General Assembly;

(iii) prepare the draft agenda of the Conference and the draft program and budget of the Organization;

(iv) on the basis of the triennial budget and program of the Organization, establish the annual budgets and programs of the Organization;

(v) when the term of office of the Director General is about to expire, or when there is a vacancy in the post of the Director General, nominate a candidate for appointment to such position by the General Assembly; if the General Assembly does not appoint its nominee, the Coordination Committee shall nominate another candidate; this procedure shall be repeated until the latest nominee is appointed by the General Assembly.

71. *Paragraph (3)* enumerates the functions of the Coordination Committee. Its principal function, as set forth in item (i), is to serve in an advisory capacity on matters of coordination, mainly in the field of common expenses. Items (ii) and (iii) concern preparations for the sessions of the General Assembly and the Conference. Items (iv) and (vi) relate to matters which may require action between sessions of the Conference or of the General Assembly. Item (v) deals with the role of the Coordination Committee in the election of the Director General. The Director General is nominated by the Coordination Committee and appointed by the General Assembly, or rather—because of the system of triple voting (see paragraph 60(*e*), above)—by the Assembly of the Paris Union and the Assembly of the Berne Union. These three Assemblies could vote on only one candidate at a time, the candidate nominated by the Coordination Committee. If the candidate fails to obtain the required number of votes in any one of the three Assemblies, the Coordination Committee will have to present another candidate, and this procedure will go on until a candidate (who will be the latest nominee of the Coordination Committee) obtains the required votes in all of the three Assemblies.

72. *Paragraph (4)* provides that the Coordination Committe will meet at least once every year. It would normally be convened at Geneva where the headquarters are located. It is to be noted that, according to the drafts presented to the Stockholm Conference in respect to the Paris and Berne Conventions, the Executive Committee of the Paris and Berne Unions would meet once a year in ordinary session, preferably at the same time as the Coordination Committee. Thus, the joint effect of these provisions would be that the two Executive Committees and the Coordination Committee would—all three of them—normally meet once a year, during the same week at Geneva.

73. *Paragraphs (5) and (6)* deal with voting in the Coordination Committee. Although a State member of both Executive Committees would only have one vote (paragraph (5)), in the " special recount " procedure (paragraph (6)) its vote would be inscribed both in the Paris and Berne lists. This special recount procedure is intended to allow any of the two Executive Committees to veto a decision taken by the Coordination Committee as such. The consequence of such a veto power makes it, of course, irrelevant that the number of members in one of the Executive Committees may be larger than in the other. The size of each Executive Committee depends on the number of the members of the Assembly of the Union which elected the Executive Committee. As long as the Berne Union has fewer members than the Paris Union, the Executive Committee of the former will be smaller than that of the latter. Representatives of authors' interests in the 1965 Committee expressed the fear that this might lead to a disregard of the interests of the Berne Union in the Coordination Committee. The special recount procedure makes such fear groundless.

74. *Paragraphs (7) and (8)* seem to be self-explanatory.

(vi) if the post of the Director General becomes vacant between two sessions of the General Assembly, appoint an Acting Director General, whose term of office shall last until the new Director General assumes office;

(vii) perform such other functions as are allocated to it.

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

(5)(a) Each State, whether a member of one or both of the Executive Committees referred to in paragraph (1)(a), shall have one vote in the Coordination Committee.

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

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

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

(b) Even if a simple majority is obtained, any member of the Coordination Committee may, immediately after the vote, request that the votes be the subject of a special recount in the following manner: two separate lists shall be prepared indicating, respectively, the names of the States members of the Executive Committee of the Paris Union and of the Executive Committee of the Berne Union; the vote of each State shall be inscribed opposite its name in each list in which it appears. Should this special recount indicate that a simple majority has not been obtained in each of those lists, the proposal shall not be considered as carried.

(7) Any State Member of the Organization, which is not a member of the Coordination Committee, may be represented at the meetings of the Committee by observers, having the right to take part in the debates but without the right to vote.

(8) The Coordination Committee shall establish its own rules of procedure.

Commentary on Article 9: International Bureau

75. This Article relates to the International Bureau, that is, the Secretariat.

76. The subjects covered by the various paragraphs are the following: continuity and composition of the Secretariat (paragraph (1)); term of office, legal status, duties and rights of the Director General (paragraphs (2) to (5)); staff matters (paragraphs (6) and (7)).

77. The meaning of the introductory words of *paragraph (1)* is that the Secretariat of the Organization—the " International Bureau "—is not, in fact, a new entity but a mere continuation of BIRPI under a new name. As a matter of fact, the same Secretariat would, probably for many years, operate under two names: BIRPI and the International Bureau of the new Organization. This situation would continue until all States members of the Unions would have adhered to the new Organization (see Article 19(2)). There is no incompatibility between the functions of the present Secretariat and the future Secretariat since everything the present Secretariat is supposed to do is included among the functions of the future Secretariat. Consequently, there seems to be no practical difficulty in having the same—physically the same, because comprising the same staff, building, and facilities—Secretariat having a dual legal identity. It is true that, in respect to the supervision of the Secretariat, there is a difference since the present Secretariat is supervised by the Swiss Government and the future Secretariat will be supervised by all the Member States. Still, no difficulty in practice is expected. On the one hand, the difference is more apparent than real as the Member States, since the creation of the Interunion Coordination Committee in 1962, have had a considerable *de facto* influence on the supervision of the Secretariat: the " advices " of that Committee cover almost all facets of the Secretariat (budget, program, appointment of the Director) and they have hitherto been generally followed by the Swiss Government as Supervisory Authority. On the other hand, at the 1966 Committee, the representatives of the Swiss Government declared that during this transitory period—when the Secretariat operates under two different systems of supervision—the Swiss authorities would do their utmost to see that their decisions coincided with the decisions of the new supervisory authorities.

78. *Paragraphs (2) to (7)* are of the usual kind, except perhaps that provision of paragraph (2) which, instead of fixing a rigid period, provides for a certain flexibility as to the length of the term of appointment of the Director General. This more flexible system was chosen by the 1965 Committee, and confirmed by the 1966 Committee, because it would allow certain personal circumstances of the candidate, such as his age, to be taken into consideration.

79. It might also be noted that the 1964 Working Group did not accept a suggestion that the Berne and the Paris Unions should each be quasi " represented " by a Deputy Director. The suggestion was rejected on the ground that such a separation of jurisdiction, instead of encouraging collaboration, could lead to division and rivalry within the Secretariat. The 1965 and 1966 Committees adhered to this view. Another suggestion made in the 1965 and 1966 Committees but defeated in both by a large majority was that only nationals of both the Paris and Berne Unions should be eligible for the post of Director General. The suggestion was defeated on the ground that competence, and not nationality, should guide the choice.

ARTICLE 9: INTERNATIONAL BUREAU

(1) The International Bureaus, established by the Paris and Berne Conventions and later united, shall continue as the International Bureau of the Organization which shall consist of a Director General, two or more Deputy Directors General, and other staff members as required.

(2) The Director General shall be appointed for a fixed term which shall be not less than six years. He shall be eligible for reappointment for fixed terms. The periods of the initial appointment and possible subsequent appointments, as well as all other conditions of the appointment, shall be fixed by the General Assembly.

(3) The Director General shall be the chief administrative officer of the Organization and the Unions and shall represent the Organization and the Unions.

(4) The Director General shall prepare the draft programs and budgets and periodical reports on activities. He shall transmit them to the Governments of the interested States and to the competent organs of the various Unions and the Organization.

(5) The Director General, or a staff member designated by him, shall normally participate, without the right to vote, in all meetings of the Assemblies, the General Assembly, the Conference, the Executive Committees, the Coordination Committee, and any other committee or working group. He, or a staff member designated by him, shall be ex officio Secretary of these organs.

(6) The Director General shall appoint the staff necessary for the efficient performance of the tasks of the International Bureau. He shall appoint the Deputy Directors General with the approval of the Coordination Committee. The conditions of employment shall be fixed by the staff regulations to be approved by the Coordination Committee on the proposal of the Director General. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

(7) The nature of the responsibilities of the Director General and of the staff shall be exclusively international. In the discharge of their duties they shall not seek or receive instructions from any Government or from any authority external to the Organization. They shall refrain from any action which might prejudice their position as international officials. Each Member State undertakes to respect the exclusively international character of the responsibilities of the Director General and the staff, and not to seek to influence them in the discharge of their duties.

Commentary on Article 10: Finances

80. This Article deals with the finances of the Organization, that is, mainly with the income and expenditure of the Organization as such. It does *not* deal with the finances of the various Unions which are independent and are dealt with in the administrative provisions of their respective Conventions or Agreements.

81. The various paragraphs relate to the following subjects: budget (paragraphs (1) to (3)), contributions of Associate Member States (paragraph (4)), arrears in contributions (paragraph (5)), miscellaneous income (paragraphs (6) and (7)), working capital fund (paragraphs (8) and (9)), and auditing (paragraph (10)).

82. *Paragraphs (1) to (3)* concern the budget of the Organization as distinguished from the budgets of the various Unions.

83. *The expenses* to be provided for in the budget of the Organization would be of three kinds: the expenses of the Conference (such as interpretation, translation, printing of documents), expenses of the legal-technical assistance program (such as fellowships, seminars, expert missions), and the share of the Organization budget in the common expenses (such as salaries of persons working for the Conference or the assistance program as well as for the Unions; building maintenance, telephone, postage) (see paragraph (1)(b) and (c)). Activities performed by the International Bureau for the benefit of the Unions only (that is, not also for the benefit of the Conference or the assistance program), even when coordinated by the General Assembly and the Coordination Committee, would *not* be financed from the budget of the Organization but from the individual budgets of the various Unions.

84. *The income* would come from two main and some subsidiary sources. The two main sources are the sums allocated to the budget of the Organization by the various Unions (paragraph (3)(a)(i)) and the contributions of the Associate Member States (paragraph (3)(a)(ii)). The miscellaneous sources of revenue (sale of publications, gifts, rents, etc.) are dealt with in paragraph (3)(iii) to (vi) and *paragraphs (6) and (7)*.

85. *Paragraph (4)* deals with the contributions of the Associate Member States, that is, States Members of the Organization which are not members of the Paris, Berne, or any other Union. It is important to note that this paragraph, and, for that matter, the whole Convention, does *not* deal with contributions by countries members of the Unions since such countries would *not* pay any direct contributions to the Organization as such.

86. The paragraph is, in its construction and contents, similar to the corresponding provisions in the drafts presented to the Stockholm Conference with respect to the revision of the Paris and Berne Conventions and the Nice Agreement, and is characterized, as they are, by the class-and-unit system, a system in which each State freely chooses a class for the purposes of determining the yearly amount of its contributions.

87. *Paragraph (5)*, relating to arrears in the payment of contributions, *paragraphs (8) and (9)*, concerning the working capital fund, and *paragraph (10)*, dealing with the auditing of the accounts, are also provisions paralleling the corresponding provisions proposed for the Paris, Berne and Nice Unions.

ARTICLE 10: FINANCES

(1)(a) The Organization shall have a budget. It shall be separate from the budgets of the Unions.

(b) The budget of the Organization shall include provision for the expenses of the Conference, for the cost of the legal-technical assistance program, and for appropriate participation in the common expenses as defined in the following subparagraph.

(c) Expenses not attributable exclusively to the budget of any given Union, or exclusively to the budget of the Organization, shall be apportioned among the budgets of the various Unions and the budget of the Organization in proportion to the interest each of them has in such common expenses.

(2) The budget of the Organization shall be established with due regard to the requirements of coordination and the contributions of the various Unions.

(3)(a) The budget of the Organization shall be financed from the following sources:

(i) sums allocated to such budget in the budgets of the Paris, Berne, and possibly other Unions;

(ii) contributions of Associate Members;

(iii) charges due for services performed by the International Bureau not in direct relation with any of the Unions;

(iv) sale of, or royalties on, the publications of the International Bureau not directly concerning any of the Unions;

(v) gifts, bequests, and subventions, given to the Organization as such;

(vi) rents, interests, and other miscellaneous income of the Organization as such.

(b) Income referred to in subparagraph (a)(iii) to (vi) not attributable exclusively to the Organization as such shall be credited to the budget of the Organization and the budgets of the various Unions in proportion to the interest each of them has in such income.

(4)(a) For the purpose of establishing its contributions towards the budget of the Organization, each Associate Member shall belong to a class, and shall pay its annual contributions on the basis of a fixed number of units as follows:

Class A	10
Class B	3
Class C	1

(b) Each Associate Member State shall, concurrently with taking action as provided in Article 14 (1), indicate the class to which it wishes to belong. Any such State may change class. If the change is to a lower class, the State must announce it to an ordinary session of the Conference. Any such change shall take effect at the beginning of the calendar year following the session.

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

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

(5) (a) Any Associate Member State which is in arrears in the payment of its financial contributions under the present Article, and any Full Member State which is in arrears in the payment of its contributions to any of the Unions, shall have no vote in the General Assembly, the Coordination Committee, and the Conference, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any of these bodies may allow such a State to continue to exercise its vote if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances.

(b) At the middle of the second of the two full years referred to in the preceding subparagraph, the Director General shall remind the Government of the country that its contributions are overdue. Omission of such a reminder shall not affect the application of the provisions of the said subparagraph.

(6) The amount of the charges due for services rendered by the International Bureau in the field of legal-technical assistance shall be established, and be reported to the Coordination Committee, by the Director General.

(7) The Organization, with the approval of the Coordination Committee, may receive gifts, bequests and subventions, directly from Governments, public or private institutions, associations or private persons.

(8) (a) The Organization shall have a working capital fund which shall be constituted by payments made by the Unions and by the Associate Members.

(b) The amount of the payment of each Union shall be decided by its Assembly.

(c) The amount of the payments of each Associate Member shall be proportionate to its annual contribution. The proportion and the terms of payment shall be fixed by the Conference on the proposal of the Director General and after it has heard the advice of the Coordination Committee.

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

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

Commentary on Article 11: Legal Capacity; Privileges and Immunities

88. This Article consists of four paragraphs. Paragraph (1) concerns the legal capacity of the Organization, paragraph (2) relates to Headquarters Agreements, paragraph (3) deals with privileges and immunities in other States than the country where the headquarters are located, and paragraph (4) regulates the conclusion of the relevant agreements.

89. *Paragraphs (1) and (2)* seem to be self-explanatory.

90. In connection with *paragraph (3)*, it should be noted that the Convention would place absolutely no obligation on any Member State to grant privileges or immunities. All that this paragraph and *paragraph (4)* amount to is an authorization given to the Organization to enter into individual agreements, with individual countries, on privileges and immunities. Whether such agreements will be entered into, and, if so, what their contents will be, depend entirely on the will of each individual country. No country is obliged to enter into any such agreement if it does not wish to, or under its constitution or laws is unable to.

(10) The auditing of the accounts shall be effected by one or more Member States or by external auditors as provided in the financial regulations. They shall be designated, with their agreement, by the General Assembly.

ARTICLE 11: LEGAL CAPACITY; PRIVILEGES AND IMMUNITIES

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

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

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

(4) The Director General shall be authorized to negotiate and conclude, with the approval of the Coordination Committee, the agreements referred to in paragraphs (2) and (3).

Commentary on Article 12: Relations with Other Organizations

91. This Article concerns the possible relations of the Organization with other organizations and consists of two paragraphs.

92. *Paragraph (1)* deals with relations with *intergovernmental* organizations. It speaks about " effective working relations " and " close cooperation. "

93. *Paragraph (2)* deals with relations with *non-governmental* organizations (whether international or national) and with *national governmental organizations*. It speaks about " consultation " and " cooperation. " Arrangements with national organizations (whether governmental or non-governmental) could be entered into only with the consent of the Government of the country of such a national organization.

94. General agreements with intergovernmental organizations and arrangements with any other organizations would require the approval of the Coordination Committee. Subject to such authorization, they would be signed, on behalf of the Organization, by the Director General.

Commentary on Article 13: Amendments

95. This Article sets forth the procedure for adopting, and for the entry into force of, amendments *to the text of the Convention* establishing the Organization. It does *not* concern the amendments of the Conventions and Agreements of the various Unions.

96. *Paragraphs (1) and (2)* deal with the *adoption* of amendments. The procedure consists of three steps. *First*, the proposal must be communicated by the Director General to the Member States with a minimum of six months' advance notice. *Then*, the proposal is put to a vote in the Assemblies of the Paris and Berne Unions. If the proposal for amendment is not approved in any of these Assemblies, it cannot be voted upon in the Conference. It is noted that in the Assemblies of the Paris and Berne Unions even those countries which are not Members of the Organization may vote on proposals for amending the Convention which has established the Organization. *Finally*, the proposal for amendment, if passed by the Assemblies of the two Unions, is voted upon by the Conference of the Organization.

97. *Paragraph (3)* deals with the *entry into force* of amendments and communicating of acceptances. Three-fourths of the Member States must notify their acceptance to the Director General before the amendment will enter into force. The amendment will then enter into force with respect to all Member States, except that any amendment increasing the financial obligations of Member States will not be binding on any State as long as it does not expressly notify its acceptance of it. These provisions are similar to the corresponding provisions in the drafts presented to the Stockholm Conference with respect to the amendment of the administrative provisions of the Paris and Berne Conventions (proposed Article 16*quinquies* in the former, and Article 25*quinquies* in the latter).

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ARTICLE 12: RELATIONS WITH OTHER ORGANIZATIONS

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

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

ARTICLE 13: AMENDMENTS

(1) Proposals for the amendment of this Convention shall be communicated by the Director General to the Member States of the Organization at least six months in advance of their consideration by the Conference.

(2) Amendments shall be adopted by the Conference. Adoption shall require a simple majority of the votes cast, provided that the Conference shall vote only on such proposals for amendments as have previously been adopted by the Assembly of the Paris Union and the Assembly of the Berne Union according to the rules applicable in each of them regarding the adoption of amendments to the administrative provisions of their respective Conventions.

(3) Amendments shall enter into force when written notifications of acceptance have been received by the Director General from three-fourths of the Member States. Amendments thus accepted shall bind all the Member States, except that any amendment increasing the financial obligations of Member States shall bind only those States which have notified their acceptance of such amendment.

Commentary on Article 14: Becoming Party to the Convention; Entry into Force of the Convention

98. This Article consists of three paragraphs. Paragraph (1) concerns the various ways in which a State may become a party to the Convention. Paragraph (2) concerns entry into force of the Convention. Paragraph (3) is a transitory provision.

99. *Paragraph (1)(a)* provides in effect that, in order to become a Member of the Organization, a country will have to sign the Convention without reservation as to ratification, or deposit an instrument of ratification (if it has signed the Convention with a reservation as to ratification), or deposit an instrument of accession (if it has not signed it). As already indicated above, the provision contained in the proposals presented to the 1966 Committee—according to which acceptance of the administrative provisions of the Stockholm Act would have entailed adherence to the proposed new Organization unless a contrary declaration had been made at the time of acceptance—has not been included in the present Draft.

100. *Paragraph (1)(b)* provides for a condition precedent which countries members of the Paris or Berne Unions must fulfil before or at the time they become Members of the Organization. The condition is that such countries must have ratified or acceded to either the entirety of the Stockholm Act of one or both of these Unions, or to at least the new administrative provisions to be incorporated in the Stockholm Acts. It is obvious that for a State party to the Paris or Berne Conventions which is not bound by the new administrative provisions of the Stockholm Acts it would serve no useful purpose to become a Member of the new Organization, because it is through acceptance of the new administrative provisions that such a State would become a member of the Assembly of its Union and the Executive Committee of that Assembly, and because, in turn, it is through its membership in such Assembly and such Executive Committee that it would become a member of the General Assembly of the Organization and could become a member of the Coordination Committee of the Organization.

101. *Paragraph (1)(c)* provides that instruments of ratification or accession shall be deposited with the Director General.

102. *Paragraph (2)* provides for the entry into force of the Convention.

103. *(a) Subparagraph (a)* consists of two sentences.

(b) The first sentence provides for the initial entry into force of the Convention. This initial entry into force will occur when ten States members of the Paris Union and seven States members of the Berne Union have accepted the Convention, that is, have accomplished any of the three acts (signature without reservation as to ratification, or ratification, or accession) referred to in paragraph (1)(a). The ratio 10:7 corresponds to the ratio of member States in the two Unions (74:55). It is to be noted that, because of the provisions of paragraph (1)(b), acceptances must necessarily emanate from countries which have already accepted, or concurrently accept, the new administrative provisions in the Paris Convention or in the Berne Convention, as revised at Stockholm. It should also be noted that, if a country is a member of both the Paris Union and the Berne Union, its acceptance will be counted both towards the ten acceptances needed on the Paris Union side and the seven acceptances needed on the Berne Union side. It will be irrelevant, in this respect, whether such a country is already bound by the new administrative provisions of both Unions or only one of them.

(c) The second sentence makes it clear that, when the conditions specified in the first sentence are fulfilled, the Convention will enter into force, not only in respect of those Paris and Berne Union countries which have caused its initial entry into force, but also in respect of those countries which are not members of either of these Unions but which have accepted the Convention prior to the date of initial entry into force. The latter countries, since they are not members of either of the two Unions, cannot cause the initial entry into force of the Convention, and, consequently, their acceptances cannot count towards the initial entry into force.

104. *Subparagraph (b)* provides for the entry into force for all countries not dealt with by subparagraph (a), that is, (i) Paris or Berne Union countries other than the first ten or seven, respectively, and (ii) countries not members of either Union which accept after the initial entry into force of the Convention. For both categories, the rule is that their acceptance will become effective one month after acceptance.

105. *Paragraph (3)* provides, in essence, that those countries members of the Paris, Berne, or other Unions, which have not yet become party to the Convention when it comes into force, will, for five years, have the same rights—*without any of the obligations*—as they would have if they were Members of the new Organization. The provision is analogous to the provisions dealing with transitory measures for the proposed new administrative provisions in the Stockholm Acts of the Paris and Berne Conventions.

ARTICLE 14: BECOMING PARTY TO THE CONVENTION; ENTRY INTO FORCE OF THE CONVENTION

(1) (a) States may become party to this Convention by:

signature without reservation as to ratification, or

signature subject to ratification followed by the deposit of an instrument of ratification, or

deposit of an instrument of accession.

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

either the Stockholm Act of the Paris Convention in its entirety or with only the limitation set forth in Article 16(1)(b) thereof,

or the Stockholm Act of the Berne Convention in its entirety or with only the limitation set forth in Article 25(1)(b) thereof.

(c) Instruments of ratification or accession shall be deposited with the Director General.

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

(b) In respect to any other State, this Convention shall enter into force one month after the date on which such State takes action as provided in paragraph (1)(a).

(3) (a) States which are members of any of the Unions but which have not become party to this Convention may, for five years from the date of entry into force of this Convention, exercise, if they so desire, the same rights as if they had become party to this Convention.

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

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

Commentary on Article 15: Denunciation

106. This Article deals with the possibility of denunciation of the Convention. Its provisions seem to be self-explanatory.

107. The draft presented to the 1966 Committee provided that a country which is a Member of the Organization and of one or more of the Unions may denounce the Convention, and thereby cease to be a Member of the Organization, only if it has already left, or concurrently leaves, all the Unions of which it is a member. Although such a condition would still appear to be logical, it has been omitted in the present Draft by BIRPI, in order to satisfy the wishes of those who believe that there should be no necessary connection between membership in any of the Unions and membership in the Organization, not only at the stage of joining any of the Unions or the Organization, but also at the stage of leaving the Organization or any of the Unions. Of course, any State member of any of the Unions which does not adhere to the Organization, or which leaves it, loses the advantages which membership in the General Assembly, the Conference, and the Coordination Committee, carries with it.

Commentary on Article 16: Notifications

108. This Article deals, in the usual manner, with notifications.

109. Its provisions seem to be self-explanatory.

ARTICLE 15: DENUNCIATION

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

(2) Denunciation shall take effect one year after the day on which the Director General has received the notification.

ARTICLE 16: NOTIFICATIONS

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

(i) the date of entry into force of the Convention,

(ii) signatures and deposits of instruments of ratification or accession,

(iii) acceptances of an amendment to this Convention, and the date upon which the amendment enters into force,

(iv) denunciations of this Convention.

Commentary on Article 17: Reservations

110. This Article excludes the possibility of making reservations, whether substantive or formal.

111. Its provisions seem to be self-explanatory.

Commentary on Article 18: Final Provisions

112. This Article, consisting of four paragraphs, concerns the usual matters appearing in final provisions: signature, languages of the Convention and deposit of the original signed copy with the host Government of the Conference adopting the Convention (paragraphs (1) and (2)), communication of certified copies (paragraph (3)), and registration with the Secretariat of the United Nations (paragraph (4)).

113. It is to be noted that whereas the original copy would be deposited with the Government of Sweden, the tasks of notification and other similar tasks would be entrusted to the Director General. It is believed that this division of the depositary functions is a practical one. The Convention will be signed in Stockholm and will be preserved in the archives of the host Government, as customary. On the other hand, the recurrent tasks of notification and the like would be entrusted to the head of the international Secretariat specially created to serve the Member States.

114. All the other provisions of this Article seem to be self-explanatory.

ARTICLE 17: RESERVATIONS

No reservations to this Convention are permitted.

ARTICLE 18: FINAL PROVISIONS

(1) (a) The present Convention shall be signed in a single copy in the English, French, Russian and Spanish languages, each equally authentic, and shall be deposited with the Government of Sweden.

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

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

(3) The Director General shall transmit two duly certified copies of this Convention and of each amendment adopted by the General Assembly to the Governments of the States members of the Paris or Berne Unions, to the Government of any other State when it accedes to this Convention, and, on request, to the Government of any other State. The copies of the signed text of the Convention transmitted to the Governments shall be certified by the Government of Sweden.

(4) The Director General shall register the present Convention with the Secretariat of the United Nations as soon as possible.

Commentary on Article 19: Transitional Provisions

115. This Article contains transitory provisions.

116. *Paragraph (1)* deals with the period until the first Director General assumes office. During this period certain tasks assigned to the Secretariat of the new Organization will have to be performed. For example, copies of the Convention will have to be communicated, and authoritative texts of the Convention in certain languages might have to be prepared. It is proposed that, in this transitory period, such tasks be performed by BIRPI and its Director.

117. *Paragraph (2)* contains provisions for another transitory period, namely the period during which some of the member countries of the Paris or Berne Unions will not yet have become Members of the proposed new Organization. During this period, the Secretariat will act both as the International Bureau referred to in the pre-Stockholm Acts of the Paris and Berne Conventions and as the International Bureau referred to in the present Convention. The solution is explained in detail in the comments accompanying Article 9(1) (see paragraph 77, above).

118. *Paragraph (3)* contains provisions which will become applicable when the second transitory period has ended. This period will end, for the Paris Union, when all its member States have adhered to the Organization, and for the Berne Union when all the member States of that Union have adhered to the Organization. At that moment, the Bureau, as established by the original Acts of the two Unions (that is, the Act of 1883 for the Paris Union, and the Act of 1886 for the Berne Union), will cease to exist, rights, obligations and property going over to the Organization.

ARTICLE 19: TRANSITIONAL PROVISIONS

(1) Until the first Director General assumes office, references in the present Convention to the International Bureau or to the Director General shall be deemed to be references to the United International Bureaux for the Protection of Industrial, Literary and Artistic Property (also called the United International Bureaux for the Protection of Intellectual Property (BIRPI)), or its Director, respectively.

(2)(a) As long as there are member States of the Paris or Berne Unions which have not become Members of the Organization, the International Bureau and the Director General shall also function as the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, and its Director, respectively.

(b) The staff in the employment of the said Bureaux on the date of entry into force of this Convention shall, during the transitional period referred to in the preceding subparagraph, be considered as also employed by the International Bureau.

(3)(a) Once all the States members of the Paris Union have become Members of the Organization, the Bureau of that Union shall cease to exist and its rights, obligations, and property, shall devolve on the Organization.

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

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Stockholm, on July 14, 1967.

[*Here will follow the names of the States invited to the Stockholm Conference, each name being preceded by the words* "*For the Government of,*" *and followed by a blank space reserved for the signature or signatures.*]

CORRIGENDUM TO DOCUMENT S/10

The last two sentences of paragraph 77 of the Commentary (page 30 of the document) should be replaced by the following text:

„The difference is more apparent than real, as the Member States—since the creation of the Interunion Coordination Committee in 1962—have had a considerable *de facto* influence on the supervision of the Secretariat: the „advices" of that Committee cover almost all matters concerning the Secretariat (budget, program, appointment of the Director) and they have hitherto been generally followed by the Swiss Government as supervisory authority. At the 1966 Committee, the Head of the Swiss Delegation made the following statement in this connection: ‚... It will therefore be necessary for these two supervisory authorities to agree. I think I can say that the Swiss Government will not seek to cause any difficulties; but we feel it is our duty to call this problem to the attention of the authorities responsible for preparing the final drafts for the Stockholm Conference.' "

DOCUMENT S/11

Proposals for Resolutions on Transitional Measures

(Prepared by BIRPI, at the Request of the Government of Sweden)

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INTRODUCTION

THE PRESENT DOCUMENT

1. The present document contains proposals for transitional measures in the field of the administrative reforms proposed to the Intellectual Property Conference of Stockholm (see documents S/3, 4, 6, 7, 8, 9, 10).

2(a) It is proposed that the transitional measures take the form of three resolutions, and that these resolutions be adopted at the Stockholm Conference.

(b) One of the resolutions would deal with transitional measures concerning the *Paris Union* and would be adopted by the countries' members of the Paris Union; it will be referred to hereinafter as the "proposed (or draft) Paris Resolution".

(c) Another resolution would deal with transitional measures concerning the *Berne Union* and would be adopted by the countries' members of the Berne Union; it will be referred to hereinafter as the "proposed (or draft) Berne Resolution".

(d) The third resolution would deal with the General Assembly and the Coordination Committee of the *proposed new Organization*, and with related matters. This resolution would be adopted by the countries members of the Paris and Berne Unions, or either of these two Unions, and will hereinafter be called the "proposed (or draft) Joint Resolution". It is to be noted that countries not members of either of the two Unions would not participate in the adoption of this resolution. This is because the resolution deals with the General Assembly and the Coordination Committee, which are mainly inter-Union organs, and does not deal with the "Conference" of the proposed new Organization, in which non-Union countries would also participate.

3. The draft *Paris Resolution* provides, in essence, that the Assembly and the Executive Committee of the Paris Union would function, *as advisory bodies*, between January 1, 1968, and the entry into force of the new administrative provisions of the Stockholm Act. This period will hereinafter be designated as the "interim" or "transitional" period.

4. The draft *Berne Resolution* provides likewise for the Assembly and the Executive Committee of the Berne Union.

5. The draft *Joint Resolution* provides likewise for the General Assembly and the Coordination Committee of the proposed new Organization.

6. The present document contains an Introduction (paragraphs 1 to 13), the proposed texts of the three Resolutions and a Commentary on each of them. (Paragraphs 14 to 26; 27 and 28; and 29 to 44, respectively.)

BACKGROUND

7. The Committee of Governmental Experts of May, 1966, considered a draft resolution, presented to it by BIRPI, "concerning the provisional and limited application of certain provisions adopted by the Stockholm Conference" (see document AA/III/6).

8. That resolution would have to have been adopted by the Stockholm Conference as such. It provided, in essence, that all the administrative provisions of all Unions and the entirety of the IPO Convention would be applied, from the beginning of 1968, without waiting for their entry into force through ratifications or accessions. The draft also provided that if such interim application gave rise to new obligations for any State, such State would have to fulfil these obligations only to the extent compatible with its Constitution and laws.

9. In the 1966 Committee, several Delegations declared that the draft went too far and that they could not accept a resolution of that kind. BIRPI promised to study the question again in the light of the observations made. The present proposals are the results of the new examination of the question.

THE PRESENT PROPOSALS

10. The present proposals are substantially different from the draft which was presented to the 1966 Committee.

11. The main differences are the following:

(i) Instead of one resolution for the adoption of which non-Union countries would also have voted, there would be three resolutions to be adopted by Union countries only.

(ii) Instead of dealing with all administrative provisions to be adopted in Stockholm, the resolutions would deal only with a few provisions, essentially with those relating to the Assemblies of the Paris and Berne Unions, and the General Assembly and Coordination Committee of the proposed new Organization. The resolutions would not deal with the Madrid (Trademarks), Hague, Nice, and Lisbon Unions. As far as the proposed new Organization is concerned, they would not deal with the Conference of that Organization.

(iii) The resolutions would not allow, during the interim period, the convocation of the Conference of the proposed new Organization. They would give no role to non-Union countries.

(iv) The resolutions would mean that, during the interim period, the proposed new Organization would not exist, not even on an interim basis. It would have no budget and no program.

(v) The Assemblies and Executive Committees of the Paris and Berne Unions, and the General Assembly and the Coordination Committee of the proposed new Organization, would function on an interim basis but essentially *as advisory bodies*, in order not to curtail in any way the power of decision vested in the Swiss Government as Supervisory Authority. In particular, these bodies *would not have any power of decision concerning*

- the budgets,
- the auditing of the accounts,
- the programs,
- the appointment of the Director General,
- the acceptance of the administration of new treaties.

12. The question may arise as to why such transitional measures should be adopted, if their scope is so narrow.

13. The main reasons for still proposing these measures are the following:

(i) Functioning as advisory bodies, the Assemblies and Committees could not, of course, express the *will* of the member countries, but they could express their *desire*. Such expression would be a valuable guidance for the Supervisory Authority and would doubtless be welcomed by it in its task of making decisions.

(ii) The inequality between the Paris and Berne Unions would disappear since, at the present time, only the Paris Union has organs (the Conference of Representatives and the Executive Committee) which deal with administrative questions. Under the resolutions, both Unions would have the same kind of organs, with the same powers.

(iii) The transition to the new system, which will come into effect when the Stockholm instruments enter into force, would be easier: by then, the member countries will have acquired experience —albeit on a limited (because advisory) scale—on how to use the new machinery put at their disposal for the development of intellectual property, for the expansion of the Unions, and for the guidance of the International Bureau.

PROPOSED TEXT

AND

COMMENTARY

COMMENTARY

PARIS UNION RESOLUTION

14. The draft Resolution consists of four paragraphs, the first two being introductory, the last two containing measures of legal consequence.

15. *Paragraph (1)* indicates the occasion on which the Resolution would be passed (that is, the Stockholm Conference) and the authors of the Resolution. Since the Resolution concerns the Stockholm Act of the Paris Convention, they would be the countries members of the Paris Union. Naturally, as in the past, it is not necessary that all the countries members of the Paris Union be present at the Stockholm Conference; nor is it necessary that all the countries of the Union present at the Conference be present and voting when the Resolution is voted upon.

16. *Paragraph (2)* states briefly the reason for which the Resolution would be passed. This is because transitional measures would be useful, pending the entry into force of the administrative provisions of that Act. For a justification of this usefulness see the Introduction (particularly paragraph 13) of the present document.

17. *Paragraph (3)* would record an agreement or understanding between the countries, namely that—before the Stockholm Act comes into effect—no new obligations written into that Act could be applied. This is only natural, and the statement might be regarded as superfluous. It is still proposed in order to dispel any possible fears that the Resolution might carry with it new obligations for the member countries.

18. *Paragraph (4)* states the time limits between which the Resolution would be effective, and enumerates the provisions which would be applied, together with certain exceptions.

19. The time limits would be from January 1, 1968, to the entry into force of Articles 13 to 13*quinquies* of the Stockholm Act according to Article 16(2)(b) of that Act (see document S/3). The beginning of 1968 is proposed as a starting date since it would allow the Conference of Representatives of the Paris Union and its Executive Committee to meet in December 1967, for which time they are already scheduled. Those meetings could then plan for the application of the Resolution from 1968 onwards.

20. The provisions applied during the transitional period would be the Articles dealing with the Assembly and Executive Committee of the Paris Union, the International Bureau, and finances (Articles 13 to 13*quater*), *but with important qualifications and exceptions.*

21. As far as Article 13 concerning the Assembly is concerned, *subparagraph (a)(i)* would have the effect that not only countries which are bound by the new administrative provisions (because they have ratified or acceded to them and because their ratifications or accessions have entered into force) but *any* country of the Union would be a member of the provisional Assembly.

22. *Subparagraph* (a)(ii) means, in essence, that although the Assembly may express opinions on the program, budget, and accounts, of the Union, it may not make any decisions. The power of decision is vested in the Swiss Government and must remain there until the Acts which effected this vesting are replaced by the Stockholm Act. And such replacement, of course, will have to await the entry into force of the administrative provisions of the Stockholm Act.

23. *Subparagraph (a)(iii)* means that the administrative provisions cannot be amended until they have come into force. This is natural since it would not make much sense to amend provisions which are not in force.

PROPOSED TEXT

PROPOSED RESOLUTION OF THE PARIS UNION on Transitional Measures Concerning Certain Administrative Matters

(1) The countries members of the International (Paris) Union for the Protection of Industrial Property, in Conference assembled at Stockholm from June 12 to July 14, 1967,

(2) Considering that some of the administrative measures inscribed in the Stockholm Act of the Paris Convention could be usefully applied pending the entry into force of Articles 13 to 13quinquies of that Act,

(3) Agreeing that measures which, directly or indirectly, increase the obligations, resulting from the Acts presently in force, of the member countries could not and shall not be among the measures so applied,

(4) Resolve that, from January 1, 1968, until the entry into force of Articles 13 to 13*quinquies* of the Stockholm Act, the following provisions of that Act shall, subject to the limitations set out below, be applied as transitional measures:

(a) Article 13, provided that:

(i) all countries members of the Union shall be members of the Assembly (see paragraph (1)(a));

(ii) the role of the Assembly in determining the program and adopting the triennial budget of the Union and in approving its final accounts (see paragraph (2)(a)(iii)) shall be merely advisory, the power of decision remaining with the Supervisory Authority, that is, the Government of the Swiss Confederation;

(iii) the Assembly shall have no power to amend the administrative provisions (see paragraph (2)(a)(ix));

24. *Subparagraph (b)*, dealing with the Executive Committee, contains an exception analogous with that contained in subparagraph (a)(ii), and for the same reasons.

25. *Subparagraph (c)* refers to proposed Article 13*ter*, dealing with the International Bureau. It excepts from the transitional application paragraph (8) of proposed Article 13*ter*, since that paragraph modifies the procedure of preparations for revision conferences. In the existing system the host country of such conferences has certain privileges which the Stockholm Act would discontinue. In order not to deprive host countries of such privileges, paragraph (8) is excluded from the measures to be applied before the formal entry into force of the new administrative provisions.

26. *Subparagraph (d)* refers to proposed Article 13*quater*, dealing with finances. That Article consists of eight paragraphs. The first three imply no change in the obligations of the member countries. They contain useful clarifications and confirm the system already in existence. Consequently, they may be, and it is proposed that they should be, applied in the transitory period. On the other hand, the last five paragraphs of Article 13*quater* do, or may, result in financial obligations different from those now prevailing under the Acts in force. Consequently, their application is not recommended before the formal entry into force of the proposed new administrative provisions.

(b) Article 13*bis*, provided that the role of the Executive Committee in establishing the yearly budgets and programs (see paragraph (6)(a)(iii)) shall be merely advisory, the power of decision remaining with the Supervisory Authority, that is, the Government of the Swiss Confederation;

(c) Article 13*ter*, except paragraph (8) thereof;

(d) Article 13*quater*, except paragraphs (4) to (8) thereof.

BERNE UNION RESOLUTION

27. The proposed Resolution of the Berne Union is the same as the one proposed for the Paris Union. The only difference is that where the Paris Resolution refers to Articles 13, 13*bis*, 13*ter*, and 13*quater*, the Berne Resolution refers to Articles 21, 21*bis*, 21*ter*, and 22, respectively (see document S/9).

28. Consequently, readers are requested to refer simply to the Commentary concerning the Resolution proposed for the Paris Union (see paragraphs 14 to 26, above).

PROPOSED RESOLUTION OF THE BERNE UNION on Transitional Measures Concerning Certain Administrative Matters

(1) The countries members of the International (Berne) Union for the Protection of Literary and Artistic Works, in Conference assembled at Stockholm from June 12 to July 14, 1967,

(2) Considering that some of the administrative measures inscribed in the Stockholm Act of the Berne Convention could be usefully applied pending the entry into force of Articles 21 to 23 of that Act,

(3) Agreeing that measures which, directly or indirectly, increase the obligations, resulting from the Acts presently in force, of the member countries could not and shall not be among the measures so applied,

(4) Resolve that, from January 1, 1968, until the entry into force of Articles 21 to 23 of the Stockholm Act, the following provisions of that Act shall, subject to the limitations set out below, be applied as transitional measures:

(a) Article 21, provided that:

(i) all countries members of the Union shall be members of the Assembly (see paragraph (1)(a));

(ii) the role of the Assembly in determining the program and adopting the triennial budget of the Union and in approving its final accounts (see paragraph (2)(a)(iii)) shall be merely advisory, the power of decision remaining with the Supervisory Authority, that is, the Government of the Swiss Confederation;

(iii) the Assembly shall have no power to amend the administrative provisions (see paragraph (2)(a)(ix));

(b) Article 21*bis*, provided that the role of the Executive Committee in establishing the yearly budgets and programs (see paragraph (6)(a)(iii)) shall be merely advisory, the power of decision remaining with the Supervisory Authority, that is, the Government of the Swiss Confederation;

(c) Article 21*ter*, except paragraph (8) thereof;

(d) Article 22, except paragraphs (4) to (8) thereof.

PROPOSED JOINT RESOLUTION

29. The draft Joint Resolution consists of four paragraphs, the first three being introductory, and the fourth being operative.

30. *Paragraph (1)* indicates the occasion on which the Joint Resolution would be passed (that is, the Stockholm Conference) and the authors of the Joint Resolution. They would be the countries members of the Paris and/or Berne Unions, present and voting, when the draft Joint Resolution is adopted.

31. *Paragraph (2)* refers to the Resolution which the countries members of the Paris Union would adopt as far as the transitional application of certain administrative measures is concerned, and to the Resolution of the same kind which the countries members of the Berne Union would adopt, because the existence of those Resolutions is a necessary basis for the adoption of the Joint Resolution. In fact, one of the main features of the Joint Resolution would be that it would provide for the interim functioning of the Coordination Committee. That Committee, however, cannot be constituted unless the Paris and Berne Unions constitute their Executive Committees on a provisional basis. The constitution of these Executive Committees in the interim period would be made possible under the Paris and Berne Resolutions. As a matter of fact, as soon as the interim Executive Committees are established, the establishment of the interim Coordination Committee becomes a practical necessity for otherwise there would be no organ to advise on possible problems of coordination.

32. *Paragraph (3)* states the desirability of applying, on an interim basis, some of the administrative measures provided for in the IPO Convention. More is said about this question in the Introduction to the present document (see particularly paragraph 11, above).

33. *Paragraph (4)* states the time limits between which the Joint Resolution would be effective, and specifies the transitional measures in three subparagraphs—the first one dealing with the General Assembly, the second with the Coordination Committee, and the third with certain names and titles.

34. The time limits would be from January 1, 1968, to the entry into force of the IPO Convention. January 1, 1968, is proposed because the Paris and Berne Resolutions would become effective on that day too.

35. *Subparagraph (a)* provides that the General Assembly would function on an interim basis during the said period, subject, however, to four important qualifications dealt with in items (i) to (iv).

36. *Item (i)* provides that the interim General Assembly would consist of all countries members of the Paris and/or Berne Unions, even if such members have not signed, ratified, or acceded to, the Convention establishing the new Organization.

37. *Item (ii)* deals with two matters in which the General Assembly will have the power of decision once the Convention has entered into force, but in which the *interim* General Assembly can and will have only an advisory role since under the texts presently in force, the power of decision is in the hands of the Swiss Government. The two matters are the appointment of the head of the International Bureau and the assumption of the administration of treaties by the International Bureau.

38. *Item (iii)* seems to be self-explanatory.

39. *Item (iv)* notes that Article 6(5) of the IPO Convention is inapplicable. This must be so as there will be no Associate Members during the interim period.

40. *Subparagraph (b)* provides that the Coordination Committee would function on an interim basis, subject, however, to three important qualifications dealt with in items (i) to (iii).

41. *Item (i)* notes that Article 8(i)(c) of the IPO Convention is inapplicable. This must be so as there will be neither Associate Members nor "Conference", during the interim period.

PROPOSED JOINT RESOLUTION
OF THE PARIS AND BERNE UNIONS
on Transitional Measures Concerning the International Intellectual Property Organization

(1) The countries members of the International (Paris) Union for the Protection of Industrial Property and of the International (Berne) Union for the Protection of Literary and Artistic Works, in Conference assembled at Stockholm from June 12 to July 14, 1967,

(2) Considering the separate resolutions which the countries members of the Paris Union and the countries members of the Berne Union have today adopted concerning transitional measures interesting their respective Unions,

(3) Considering that for the efficient application of those measures it is desirable to apply equally as transitional measures, certain provisions of the Convention, signed this day, establishing the International Intellectual Property Organization,

(4) Jointly resolve that, from January 1, 1968, until the entry into force of the said Convention:

(a) the General Assembly (Article 6) shall function on an interim basis, provided that:

(i) the General Assembly shall consist of all countries members of the Paris Union or of the Berne Union (see Article 6(1)(a));

(ii) the role of the General Assembly, and of the Assemblies of the Paris and Berne Unions, in the appointment of the Director General (Article 6(2)(ii) and (3)(g), and Article 9(2)), and the confirmation of arrangements concerning the administration of conventions, agreements and treaties (Article 6(2)(iii) and (3)(g)) shall be merely advisory, the power of decision remaining with the Supervisory Authority, that is, the Government of the Swiss Confederation;

(iii) the General Assembly shall not have the powers provided for in Article 5 (transfer of headquarters) and Article 6(3)(f) (agreement with the United Nations under Articles 57 and 63 of the UN Charter);

(iv) Article 6(5) shall be inapplicable.

(b) the Coordination Committee (Article 8) shall function on an interim basis, provided that:

(i) Article 8(1)(c) shall be inapplicable [participation of Associate Members in certain cases];

42. *Item (ii)* notes that any reference to the "Conference" is inapplicable as there will be no Conference during the interim period.

43. *Item (iii)* parallels subparagraph (a)(ii) (see paragraph 37, above).

44. *Subparagraph (c)* provides for the use of the name of the new Organization since, although it will not come into legal existence until later, some of its organs would start functioning, in a limited way, during the interim period. This is the reason for which it would seem desirable to be able to use its name—with a warning that it is merely an interim situation—and allow its chief officers to use their new titles.

(ii) any references in Article 8 to the Conference shall be inapplicable [since the Conference shall not function on an interim basis];

(iii) the role of the Coordination Committee in connection with the appointment of the Director General (Article 8(3)(v)) or the Acting Director General (Article 8(3)(vi)) shall be merely advisory, the power of decision remaining with the Supervisory Authority, that is, the Government of the Swiss Confederation;

(c) the International Bureau shall also use the name of the new Organization, with an indication to the effect that it is in the process of coming into legal existence, and the new titles of the chief officers of the International Bureau may be used.

[*End of the Proposed Text*]

DOCUMENT S/12

Proposals Concerning the Ceiling of Contributions in the Paris and Berne Unions

Proposals and Information Concerning Other Financial Matters

(Prepared by BIRPI)

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INTRODUCTION

THE PRESENT DOCUMENT

1. The present document deals with financial matters. It contains *information* on points on which some of the preparatory meetings asked for estimates, and *proposals* on which the Intellectual Property Conference of Stockholm is invited to take decisions.

2.(a) There are four points which require a decision; they are enumerated in paragraph 70 of the present document. The two most important points relate to the ceiling of contributions in the Paris and Berne Unions for the next three years (1968 to 1970).

(b) Among the points on which no decision is required and which, therefore, are merely a *matter of information* for the Stockholm Conference, the most important relate to the estimated expenditure of the proposed new Organization (see paragraph 7, below) and the working capital funds of the various Unions and the said Organization (see paragraphs 8 to 12, and 51 to 61, below).

GENERAL OBSERVATIONS AND SUMMARY

Contributions

Paris, Berne, and Nice Unions

3.(a) It is proposed that the Stockholm Conference of the *Paris Union* raise the present ceiling of contributions (900,000 Swiss francs) to 1,200,000 Swiss francs for the year 1968; to 1,400,000 Swiss francs for the year 1969; and to 1,600,000 Swiss francs for the year 1970.

(b) Although these raises represent an increase of 33%, 55%, and 77%, respectively, the amount which any given country would have to pay for 1968 would be approximately the *same* as it was for 1963, and it would be only 11% and 16% higher for 1969 and 1970, respectively, than it was for 1963. This is so because of the increase in the number of contributing countries.

4.(a) As far as the *Berne Union* is concerned, it is proposed that the present ceiling of contributions (700,000 Swiss francs) be raised to 800,000 Swiss francs for the year 1968; to 900,000 Swiss francs for the year 1969; and to 1,000,000 Swiss francs for the year 1970.

(b) The raises would be of the order of 14%, 29%, and 43%, respectively. For any contributing country they would mean an increased outlay of 12%, 25%, and 38%, respectively. The reason for which, in the Berne Union, the cost per country is proportionately higher than (and, in absolute figures, double) the corresponding cost in the Paris Union is that, in the estimates, fewer new accessions are anticipated in the Berne Union than in the Paris Union.

5.(a) For both Unions, the proposed increases, for any given country, in absolute figures, are very small.

(b) *In the Paris Union*, a Class VI country would have to pay 900 Swiss francs (US $210) more for 1970 (when the ceiling will be highest, that is, 1,600,000 Swiss francs) than it paid for 1963 (when the present ceiling of 900,000 Swiss francs was first applied). For a Class I country, the difference between 1963 and 1970 would be 7,500 Swiss francs (US $1,736). For countries in Classes II, III, IV, and V, the differences would be between these two figures (that is, 6,000, 4,500, 3,000, and 1,500, Swiss francs, respectively).

(c) *In the Berne Union*, a Class VI country would have to pay 1,800 Swiss francs more for 1970 (when the ceiling will be highest, that is, 1,000,000 Swiss francs) than it paid for 1965 (when the present ceiling of 700,000 Swiss francs was first applied). For a Class I country, the difference between 1965 and 1970 would be 15,000 Swiss francs. For countries in Classes II, III, IV, and V, the differences would be between these two figures, that is, 12,000, 9,000, 6,000, and 3,000, Swiss francs, respectively.

6. It is to be noted that no increase is proposed in the ceiling of contributions for the *Nice Union* since it is probable that the present ceiling (71,000 Swiss francs, or US $16,400) will suffice for at least three more years.

The Proposed New Organization

7.(a) No proposals are made as to the *budget of the International Intellectual Property Organization* (hereinafter referred to as "the proposed new Organization" or as "IPO"). Among the proposals for the transitional application of certain provisions of the IPO Convention, no proposal is made to convene the "Conference" of the proposed new Organization before the entry into force of the IPO Convention (see document S/11). Consequently, there will be no expenses connected with the Conference. The technical assistance program will continue at about the same rate as in the past years, and its cost would be included, during the transitional period, in the budgets of the Unions concerned, as has been done in the past. The cost of any meeting of the interim General Assembly and the interim Coordination Committee of the proposed new Organization would be borne by the Unions concerned, as are the costs today of the Interunion Coordination Committee.

(b) Information was requested, in previous meetings, as to the size of the budget of IPO—once its Convention comes into force. The following paragraphs are designed to give such information.

(c) The expenses of IPO are expected to be mainly covered by voluntary contributions of the Paris and Berne Unions and, to a lesser extent, by the mandatory contributions of the Associate Members (see Article 10(3)(a) of the proposed IPO Convention, in document S/10). How much the two Unions will be disposed to contribute will depend on their sovereign decision. And how much the Associate Members will be ready to contribute will depend on the decision of the IPO Conference. Consequently, all that can be stated today is how much, in both cases, the Director of BIRPI envisages suggesting.

(d) The Director of BIRPI estimates that, in the first years after the entry into force of the IPO Convention, IPO would spend the following yearly amounts:

— on the technical assistance program	300,000 Swiss francs
— on the meetings of the "Conference"	50,000 Swiss francs
— on participation in common expenses	150,000 Swiss francs
Total . . .	500,000 Swiss francs

(e) He would propose that this amount be covered from the following sources:

— voluntary contribution of the Paris Union	350,000 Swiss francs
— voluntary contribution of the Berne Union	100,000 Swiss francs
— contributions of Associate Members	50,000 Swiss francs
Total . . .	500,000 Swiss francs

(f) He estimates that the voluntary contributions of both the Paris Union and the Berne Union (450,000 Swiss francs) could be taken from their ordinary budgets, which, in 1970, would amount to a total of approximately 3,000,000 Swiss francs (of which 2,600,000 would come from contributions (see document S/11) whereas the rest would be miscellaneous income). Thus the voluntary contributions to the IPO budget would represent approximately 15% of the budgets of the two Unions, a percentage which is approximately the same as BIRPI already spends on technical assistance and the common expenses connected therewith. In other words, *there would be no need for additional income for the Paris and Berne Unions on account of the entry into force of the IPO Convention.*

(g) The remaining 50,000 francs needed for the IPO budget would be covered by the contributions of the Associate Members (that is, countries not members of any of the Unions).

Working Capital Funds

8. Another point on which information was requested in past meetings was the probable amount of the working capital funds in the various Unions and in the proposed new Organization.

9. As explained in detail in paragraphs 51 to 61, below, it is estimated that the one-time payment into the working capital fund would be:

— in the Paris Union: between 17,500 and 2,100 Swiss francs (US $4,050 to 490)
— in the Berne Union: between 17,800 and 2,300 Swiss francs (US $4,120 to 532)
— in the Hague Union: between 8,500 and 1,000 Swiss francs (US $1,967 to 231)
— in the Nice Union: between 2,500 and 300 Swiss francs (US $578 to 69)
— in the Lisbon Union: between 1,000 and 100 Swiss francs (US $231 to 23).

10. The higher figures correspond to the payment a Class I country would have to make; the lower figures correspond to the payment a Class VI country would have to make.

11. It is too early to make firm estimates as far as the working capital fund of the proposed new Organization is concerned. Present estimates would indicate that the Paris Union, as such, would probably be required to contribute 100,000 Swiss francs, and the Berne Union 50,000 Swiss francs. Both amounts could be absorbed by their ordinary budgets. Any one Associate Member would probably be required to pay a sum of between 300 and 3,000 Swiss francs.

12. It is to be noted that the constitution of any of the working capital funds would wait until after the entry into force of the Stockholm Act of the interested Union, and—in the case of the proposed new Organization—of the IPO Convention.

Frequency of Assemblies

13. Paragraphs 62 to 64, below, raise the question of whether the Assemblies of the various Unions (and the main bodies of IPO) should meet once every *three* years or once every *two* years. The preparatory documents S/3 to S/10 recommend triennial meetings, but a new fact has emerged since their publication: the United Nations recommends biennial meetings. It seems therefore desirable that the question be examined with particular care.

New Source of Revenue for the Paris Union

14. Paragraphs 66 to 69 deal with an original proposal of one of the member countries for opening a new source of revenue for the Paris Union. The Stockholm Conference is invited to express a preliminary opinion on the desirability of a further study of this proposal.

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15. The rest of the present report is an elaboration on some of the matters summarized in the preceding paragraphs.

CEILING OF CONTRIBUTIONS IN THE PARIS UNION

Background

16. In the original (1883) Act of the Paris Convention, the ceiling of the yearly contributions was defined as a sum which may not exceed an average of 2,000 Swiss francs per country (see *Protocole de Clôture*, 6°).

17. In the Washington Act (1911), the ceiling of the total of the contributions was fixed at 60,000 Swiss francs (Article 13(6)); this amount was doubled by the Hague Act (1925), thus becoming 120,000 Swiss francs per annum (Article 13(6)).

18. The London Act (1934) maintained this same ceiling of 120,000 Swiss francs (Article 13(6)) but labelled it as the ceiling of *ordinary* expenses and introduced a new category of expenses, "expenses relating to the work of conferences of plenipotentiaries or administrative conferences or the expenses caused by special work or publications effected in conformity with the decisions of a conference" (Article 13(7)). It fixed the ceiling of such extraordinary expenses at 20,000 Swiss francs.

19. On a proposal of the Swiss Government, made through diplomatic channels, the ceiling of the ordinary contributions was fixed, as of 1947, at 214,000 Swiss francs (150,000 gold francs). All countries accepted the proposal, and two countries (Bulgaria and Greece) still pay their contributions on that basis.

20. Proposals by the Lisbon Conference of 1958 for raising the ceiling of ordinary contributions to 588,000 Swiss francs (400,000 gold francs) were not adopted for political—rather than financial—reasons, through the invocation of the power of veto provided by the rule of unanimity (see *Actes de la Conférence réunie à Lisbonne*, page 190). Thus the Lisbon Act (1958) maintained the same amounts as were written into the Convention in 1925. In other words, the ceiling specified in the Convention is the same in 1967 as it was in 1925, as if prices, the value of money, and the activities of the International Bureau, were the same as they were 42 years ago.

21. However, a resolution of the Lisbon Conference invited the member countries to accept, on a voluntary basis, a ceiling of 600,000 Swiss francs (see *Actes*, etc., page 191).

22. In 1963, the Swiss Government invited the member countries to accept a ceiling of 900,000 Swiss francs. This is the ceiling under which the great majority of the member countries today pay their contributions.

23. To recapitulate, the yearly ceilings, not resulting from the text of the Convention, are the following:

— from 1947 to 1958	214,200 Swiss francs (or US $49,580)
— from 1959 to 1962	600,000 Swiss francs (or US $138,890)
— since 1963	900,000 Swiss francs (or US $208,330)

Proposal for a Raise

24. The Lisbon Act provides that the countries of the Union "may modify, by unanimous decision, the maximum annual amount of the expenditure of the International Bureau, provided they meet as Conferences of Plenipotentiaries of all the countries of the Union, convened by the Government of the Swiss Confederation." (Article 14(5)(b)).

25. Early in 1967, it was agreed between the Governments of Sweden and Switzerland that, during the Conference of Stockholm, members of the Paris Union would be convened, by the Government of the Swiss Confederation, as a Conference of Plenipotentiaries, within the meaning of Article 14(5)(b) of the Lisbon Act.

26. The present report serves as a notice of convocation, issued with the authorization and on behalf of the Government of the Swiss Confederation.

27. It is proposed that that Conference of Plenipotentiaries adopt the following decision:

"The countries members of the International (Paris) Union for the Protection of Industrial Property,

"In a Conference of Plenipotentiaries assembled at Stockholm on July 14, 1967,

"Unanimously decide:

"That the maximum total amount of the ordinary yearly contributions of the member countries shall be the following:

— for 1968: 1,200,000 Swiss francs (US $278,000),

— for 1969: 1,400,000 Swiss francs (US $324,000),

— for 1970: 1,600,000 Swiss francs (US $370,000),

unless new decisions are made, or enter into force, in the meantime."

28. It is to be noted that no raise is proposed in the extraordinary contributions. They would thus remain at the ceiling of 20,000 Swiss francs (US $4,629), which means a maximum contribution of 825 Swiss francs (US $191) per year for a Class I country, and 99 Swiss francs (US $23) for a Class VI country. Their amount is so minimal, that BIRPI would not object to the abolition of extraordinary contributions.

Commentary on the Proposal

29. The inadequacy of the present ceiling of 900,000 Swiss francs is obvious. The budget, for 1967, passed for decision by the Executive Committee of the Paris Union to the Supervisory Authority with a favorable opinion, already provides for a deficit of 131,000 Swiss francs (US $30,000). Thus, already for 1967, the ceiling should have been above 1,000,000 Swiss francs. If one adds to this amount the expected increase in prices and the cost of a very modest increase in the most desirable activities, an amount of 1,200,000 Swiss francs for 1968 appears to be the strict minimum. The proposed raises for 1969 and 1970 are of the order of 17 and 14 per cent, respectively. At least half of them will be absorbed by the increase in prices and salaries; what remains would be used for new or extended activities, some of which would be caused by the expected increase in the number of member countries.

30. The detailed budget and program for the three-year period 1968-1970 will be submitted to the December 1967 session of the Conference of Representatives of the Paris Union.

31. Should the budgets approved for 1968, 1969, and 1970, reduce the expected activities or staff, full use would not be made of the ceilings now proposed. It should, in fact, be borne in mind that the proposal concerns *ceilings* and it is always possible to adopt a budget which remains considerably under the ceiling available.

32. It is also to be noted that no proposals are made beyond 1970. If the new administrative provisions enter into force by then, there will be a machinery—the Assembly of the Paris Union—to fix the ceiling of contributions for the subsequent years. Should the new administrative provisions (see document S/3) not enter into force by 1970, the now existing procedures would have to be applied for fixing the ceilings for the years after 1970.

Financial Consequences for the Member Countries

33. In the class-and-unit system, which has existed since 1883 and which it is proposed to maintain indefinitely, the amount of the contribution of each member country depends not only on the class which it chooses and the ceiling of the total amount of the contributions, but also on the number of the member countries and the class which each of them chooses.

34. During the five years (1963-1967) of the application of the 900,000 francs ceiling, the number of contributing countries increased by an average of 6 per year (from 51 to 75) and the average number of units contributed was in the neighbourhood of 9. Taking into account the possibility of a somewhat less favorable evolution than in the past, the following projections for the years 1968, 1969, and 1970, are based on an average increase of 5 additional contributing countries each year with an average of 8 units per country.

35. On this basis, the following table shows (in round figures) the actual contribution of each country for the years 1963 to 1967 under the 900,000 Swiss francs ceiling, and the estimated contribution of each country for the years 1968 to 1970 under the proposed 1,200,000, 1,400,000, and 1,600,000, Swiss francs ceilings:

YEARLY CONTRIBUTIONS PER COUNTRY (PARIS UNION)

For the Year		1963	1964	1965	1966	1967	1968	1969	1970
Number of Member Countries		51	60	65	72	75	80	85	90
Total of Units		496	523	543	600	620	660	710	760
Ceiling of Contributions		900,000 Sw.fr. ($208,333)	900,000 Sw.fr. ($208,333)	900,000 Sw.fr. ($208,333)	900,000 Sw.fr. ($208,333)	900,000 Sw.fr. ($208,333)	1,200,000 Sw.fr. ($277,777)	1,400,000 Sw.fr. ($324,074)	1,600,000 Sw.fr. ($370,370)
Units in Class	Class	Swiss francs (US dollars)	Swiss francs (US dollars)	Swiss francs (US dollars)	Swiss francs (US dollars)	Swiss francs (US dollars)	Swiss francs (US dollars)	Swiss francs (US dollars)	Swiss francs (US dollars)
25	I	45,000 (10,415)	42,500 (9,840)	41,250 (9,545)	37,500 (8,680)	36,250 (8,390)	45,000 (10,415)	50,000 (11,575)	52,500 (12,150)
20	II	36,000 (8,332)	34,000 (7,872)	33,000 (7,636)	30,000 (6,944)	29,000 (6,712)	36,000 (8,332)	40,000 (9,260)	42,000 (9,720)
15	III	27,000 (6,249)	25,500 (5,904)	24,750 (5,727)	22,500 (5,208)	21,750 (5,034)	27,000 (6,249)	30,000 (6,945)	31,500 (7,290)
10	IV	18,000 (4,166)	17,000 (3,936)	16,500 (3,818)	15,000 (3,472)	14,500 (3,356)	18,000 (4,166)	20,000 (4,630)	21,000 (4,860)
5	V	9,000 (2,083)	8,500 (1,968)	8,250 (1,909)	7,500 (1,736)	7,250 (1,678)	9,000 (2,083)	10,000 (2,315)	10,500 (2,430)
3	VI	5,400 (1,250)	5,000 (1,157)	5,000 (1,157) Actual	4,500 (1,044)	4,300 (995)	5,400 (1,250)	6,000 (1,389) Estimated	6,300 (1,460)

36. It results from the estimates in the above table that the contributions of each member country under the 1,200,000 francs ceiling *for 1968* will be the same as it was under the 900,000 ceiling for 1963; and its contributions *for 1969 and 1970*, under the proposed ceilings of 1,400,000 and 1,600,000 francs, will be 11% and 16%, respectively, higher than its contribution was in 1963, that is, six and seven years earlier.

37. In absolute figures, the increase, as compared with the contributions for 1963, would be as follows:

		1968	1969	1970
— for a country in Class I	Swiss francs	—	5,000	7,500
	(US dollars)	—	(1,160)	(1,735)
— for a country in Class II	Swiss francs	—	4,000	6,000
	(US dollars)	—	(928)	(1,388)
— for a country in Class III	Swiss francs	—	3,000	4,500
	(US dollars)	—	(696)	(1,041)
— for a country in Class IV	Swiss francs	—	2,000	3,000
	(US dollars)	—	(464)	(694)
— for a country in Class V	Swiss francs	—	1,000	1,500
	(US dollars)	—	(232)	(347)
— for a country in Class VI	Swiss francs	—	600	900
	(US dollars)	—	(139)	(210)

CEILING OF CONTRIBUTIONS IN THE BERNE UNION

Background

38. The Brussels Act (1948) fixed the ceiling of the yearly contributions at 120,000 gold francs (approximately 171,400 Swiss francs).

39. The Swiss Government as Supervisory Authority has invited the member countries three times since that date to increase their contributions voluntarily.

40. Thus the ceilings in force during the last 16 years were the following:

from 1951 to 1956	171,000 Swiss francs
from 1957 to 1961	231,000 Swiss francs
from 1962 to 1964	400,000 Swiss francs
since 1965	700,000 Swiss francs

Proposal for a Raise

41. The Brussels Act provides that the amount of the total of the contributions (120,000 gold francs in that Act) "may be increased, if necessary, by unanimous decision of the countries of the Union or of one of the Conferences provided for in Article 24 [i.e., by a Revision Conference]" (Article 23(1)).

42. It is proposed that the Stockholm Revision Conference of the member countries of the Berne Union adopt the following decision:

"*The countries members of the International (Berne) Union for the Protection of Literary and Artistic Works,*

"*In a Revision Conference assembled at Stockholm from June 12 to July 14, 1967,*

"*Unanimously decide:*

"That the maximum total amount of the yearly contributions of the member countries shall be the following:

— for 1968: 800,000 Swiss francs

— for 1969: 900,000 Swiss francs

— for 1970: 1,000,000 Swiss francs

unless new decisions are made, or enter into force, in the meantime."

Commentary on the Proposal

43. The inadequacy of the present ceiling of 700,000 francs is obvious. The budget for 1967, passed for decision by the Interunion Coordination Committee to the Supervisory Authority with a favourable opinion, already provides for a deficit of 78,000 Swiss francs (US $18,000). Thus, already for 1967, the ceiling should have been in the neighborhood of 800,000 Swiss francs. Some of the 1967 expenses are connected with the Stockholm Conference, and, compensating those with the amount of the increase in prices and the cost of a very modest increase in the most desirable activities, an amount of 800,000 Swiss francs for 1968 appears to be the strict minimum. This represents an increase of 14% over the 1967 ceiling, whereas the proposed ceiling for 1969 (900,000 Swiss francs) would be 12½% above the 1968 ceiling, and the proposed ceiling for 1970 (1,000,000 Swiss francs) would be 11% above the 1969 ceiling. Probably more than two-thirds of these increases will be absorbed by the rise in prices and salaries; what remains would be used for new or extended activities.

44. The detailed budget and program for the three-year period 1968-1970 will be submitted to the December 1967 session of the Interunion Coordination Committee.

45. Should the budgets approved for 1968, 1969, and 1970, reduce the expected activities or staff, full use would not be made of the ceilings now proposed. It should, in fact, be borne in mind that the proposal concerns *ceilings* and it is always possible to adopt a budget which remains considerably under the ceiling available.

46. It is to be noted that no proposals are made beyond 1970. If the new administrative provisions (see document S/9) enter into force by then, there will be a machinery—the Assembly of the Berne Union—to fix the ceiling of contributions for the subsequent years. Should the new administrative provisions not enter into force by 1970 the now existing procedures would have to be applied for fixing the ceilings for the years after 1970.

Financial Consequences for the Member Countries

47. In the class-and-unit system, which exists since 1886 and which it is proposed to maintain indefinitely, the amount of the contribution of each member country depends not only on the class which it chooses and the ceiling of the total amount of the contributions, but also on the number of the member countries and the class which each of them chooses.

48. During the ten years of the application of the voluntary ceilings (1957-1966), the number of the contributing countries increased by an average of one per year (from 44 to 54). Anticipating the same rate of increase for the three years under consideration and allowing for an average increase of 5 units per country, one may estimate that the number of contributing countries and the total of units will be: 56 and 460 in 1968; 57 and 465 in 1969; 58 and 465 in 1970.

49. On that basis, estimates of the yearly contributions for each country in the various classes would give the following figures:

Year	1965	1968	1969	1970
Ceiling (Swiss francs)	700,000	800,000	900,000	1,000,000
Class I	38,900	43,500	48,500	53,750
Class II	31,000	34,800	38,800	43,000
Class III	23,300	26,100	29,100	32,250
Class IV	15,500	17,400	19,400	21,500
Class V	7,800	8,700	9,700	10,750
Class VI	4,700	5,200	5,800	6,500

(N.B.: The amounts for 1966 and 1967 are expected to be practically the same as they have been for 1965.)

50. According to these estimates, the increase for each country, in comparison with its contributions for 1965 (under a ceiling of 700,000 Swiss francs), would be the following:

— for 1968 . . . . 14% (ceiling: 800,000 Swiss francs)
— for 1969 . . . . 29% (ceiling: 900,000 Swiss francs)
— for 1970 . . . . 43% (ceiling: 1,000,000 Swiss francs),

whereas, in absolute figures, the increase, as compared with the contributions for 1965, would be as follows *(expressed in Swiss francs)*:

	1968	1969	1970
for a country in Class I	4,600	9,600	15,000
for a country in Class II	3,800	7,800	12,000
for a country in Class III	2,800	5,800	9,000
for a country in Class IV	1,900	3,900	6,000
for a country in Class V	900	1,900	3,000
for a country in Class VI	500	1,100	1,800

WORKING CAPITAL FUNDS

General Observations

51. The draft Stockholm Acts provide for the constitution of working capital funds for the Paris Union (Article 13*quater*(6)), the Madrid Union (Article 10*ter*(6)), the Hague Union (Article 4(6)), the Nice Union (Article 5*ter*(6)), the Lisbon Union (Article 9*ter*(7)), and the Berne Union (Article 22(6)).

52. The Committee of Experts of 1966 expressed the wish that information be provided for the Stockholm Conference on the amounts and constitution of these working capital funds.

53. It is to be noted that all decisions will depend on the Assemblies of the Unions, and the following are merely conjectures on the part of BIRPI as to what these Assemblies might decide. In any case, they reflect the thoughts of the Director of BIRPI on what he would probably propose if he had to make proposals to the Assemblies now.

Paris Union

54. In the Paris Union, one-third of the yearly contributions would seem to be a reasonable amount for constituting the working capital fund. This would be a one-time payment for each country, unless, later, exceptional circumstances—such as a considerable depreciation in the value of the currency in which

the working capital fund is kept—would require that the fund be brought up to the necessary level. On the supposition that the fund would be constituted in 1970, when the total of contributions is expected to be 1,600,000 Swiss francs (US $370,000), the working capital fund would amount to 533,000 Swiss francs (US $123,000), and the contribution of each country would be as follows:

— for a Class I country . . . . 17,500 Swiss francs (US $4,050)
— for a Class II country . . . . 14,000 Swiss francs (US $3,240)
— for a Class III country . . . . 10,500 Swiss francs (US $2,430)
— for a Class IV country . . . . 7,000 Swiss francs (US $1,620)
— for a Class V country . . . . 3,500 Swiss francs (US $810)
— for a Class VI country . . . . 2,100 Swiss francs (US $490).

In other words, each country would require to pay the amount corresponding, in the above table, to the Class to which such country belongs.

55. Payment would not have to be made necessarily at one and the same time. The Assembly could decide that payment be phased out into two or three instalments and could be made together with the annual contributions, at the same time as they are paid. The burden it would represent for countries would then be hardly noticeable.

56. In any case, no payment could be decided upon until the entry into force of the administrative provisions of the Stockholm Act. The resolution on interim measures (see document S/11) does not provide for the possibility of constituting the working capital fund before such entry into force.

Berne Union

57. What has been said above concerning the working capital fund of the Paris Union applies also to the working capital fund of the Berne Union, except that its amount would be 333,000 Swiss francs (US $77,000) (that is, one-third of 1,000,000 Swiss francs (US $231,000), the expected amount of contributions for 1970), and that the above table should be replaced by the following:

— for a Class I country . . . . 17,800 Swiss francs (US $4,100)
— for a Class II country . . . . 14,200 Swiss francs (US $3,280)
— for a Class III country . . . . 10,600 Swiss francs (US $2,460)
— for a Class IV country . . . . 7,100 Swiss francs (US $1,640)
— for a Class V country . . . . 3,500 Swiss francs (US $820)
— for a Class VI country . . . . 2,100 Swiss francs (US $490)

Madrid Union

58. Article 10*ter*(6)(d) of the proposed Stockholm Act (see document S/4) provides that as long as the Assembly of the Madrid Union authorizes the use of part of the reserve fund of the Madrid Union as a working capital fund, the Assembly might decide not to ask for payments by the member countries. It is very likely that there will be no need to ask for such payments. At the end of 1966, the Madrid Union had a reserve fund of approximately 2,000,000 Swiss francs, which is roughly the equivalent of its yearly budget.

The Hague Union

59. The provisions proposed for the Hague Union are the same as for the Madrid Union (see document S/6). However, the Hague Union has no reserve fund at the present time. Of course, it might have one by the time the Stockholm Act comes into force, particularly if the increase in fees, scheduled to enter

into force during 1967, produces the income expected. Should this not be the case, and anticipating a yearly budget of 250,000 Swiss francs, as well as a reserve fund of 20% (since less than 33% is needed in a Union where the fees come in daily), and no increase in the membership of the Union, the reserve fund would be 50,000 francs, and the contribution of each member State would be the following:

— for a Class I country	8,500 Swiss francs (US $1,967)
— for a Class II country	6,800 Swiss francs (US $1,574)
— for a Class III country	5,100 Swiss francs (US $1,180)
— for a Class IV country	3,400 Swiss francs (US $780)
— for a Class V country	1,700 Swiss francs (US $395)
— for a Class VI country	1,000 Swiss francs (US $231)

Nice Union

60. What has been said above concerning the working capital fund of the Paris Union applies also to the Nice Union, except that the table should be replaced by the following table which is based on a working capital fund of 25,000 Swiss francs (1/3 of a yearly budget of 75,000 Swiss francs) and no increase in membership:

— for a Class I country	2,500 Swiss francs (US $578)
— for a Class II country	2,000 Swiss francs (US $462)
— for a Class III country	1,500 Swiss francs (US $345)
— for a Class IV country	1,000 Swiss francs (US $231)
— for a Class V country	500 Swiss francs (US $116)
— for a Class VI country	300 Swiss francs (US $69)

Lisbon Union

61. It is difficult to make estimates for the Lisbon Union since the Lisbon Agreement entered into force as recently as September 1966 and it is not easy to foresee how many members that Union will have. In any case, the budget of the Lisbon Union is not expected to exceed 30,000 Swiss francs per year. Its reserve fund would be in the neighbourhood of 10,000 francs. The contribution each country would be required to make would thus be minimal, perhaps between 100 and 1,000 Swiss francs.

FREQUENCY OF ASSEMBLIES AND BUDGETS

62. The proposals concerning administrative clauses for the various Unions and the proposed new Organization provide that the Assemblies should meet in ordinary sessions, and the budgets should be voted, once every three years (see the proposed texts for the Paris Convention, Article 2(2)(iii) (document S/3); the Madrid (TM) Agreement, Article 10(2)(a)(iv) (document S/4); the Hague Agreement, Article 2(2)(a)(iv) (document S/6); the Nice Agreement, Article 5(2)(a)(iii) (document S/7); the Lisbon Agreement, Article 9(2)(a)(iv) (document S/8); the Berne Convention, Article 21(2)(a)(iii) (document S/9); the IPO Convention, Articles 6(4)(a) and 7(2)(a)(iii) (document S/10).

63. In December 1966, the United Nations General Assembly approved an expert financial report which recommends, for all Specialized Agencies, the adoption of biennial budgets. It results from the report that it is generally held that yearly budgets (or assemblies) are too frequent, and that triennial budgets (or assemblies) are too far away from each other since circumstances change over a period of three years to an extent which makes accurate planning very difficult, if not impossible. See UN document A/6343, of July 19, 1966, paragraph 53.

64. These views of the United Nations are, of course, of no direct concern to BIRPI or to the proposed new Organization. But since they reflect the considered opinion of recognized experts, they merit the attention of the Stockholm Conference.

65. *The Stockholm Conference might, therefore, wish to examine with particular attention the question of whether budgets should be triennial or biennial.*

A POSSIBLE NEW SOURCE OF REVENUE FOR THE PARIS UNION

66. In several meetings of BIRPI, the Delegation of Spain has suggested that each applicant for a patent or trademark or design, who, in his application filed in any country of the Paris Union, claims Union priority, should pay a modest fee (for example, US $1 or 5 Swiss francs) for the benefit of BIRPI. The payment, it was suggested, could take the form of a stamp which would be sold by BIRPI and affixed under the control of the National Patent Offices.

67. The scheme presents some practical difficulties but it is ingenious and would seem to deserve serious study.

68. Rough estimates indicate that the scheme could lead to a very substantial reduction of contributions by member countries.

69. Should the Stockholm Conference find the suggestion worth further exploration, it might wish to express this in the form of a resolution along the following lines:

"The countries members of the International (Paris) Union for the Protection of Industrial Property,

"In a Conference assembled at Stockholm from June 12 to July 14, 1967,

"RESOLVE that a study be carried out as to the desirability and the feasibility of financing part of the expenses of the International Bureau through the collection of a modest fee for each application filed with a national Administration if, in such application, Union priority is claimed.

"Should the study lead to positive results and should it show that the Paris Convention would require revision to introduce the scheme, concrete proposals should be worked out for the Vienna Revision Conference of the Paris Union.

POINTS FOR DECISION

70. The following points raised by the present document call for a decision at the Stockholm Conference:

(a) *by the member countries of the Paris Union:*

(i) the ceiling of contributions (see paragraph 27, above);

(ii) the study of a possible new source of revenue (see paragraph 69, above).

(b) *by the member countries of the Berne Union:*

the ceiling of contributions (see paragraph 42, above).

(c) *by all Unions and the Conference as such:*

the frequency of the assemblies and budgets (see paragraph 65, above).

INVITATIONS TO THE CONFERENCE

INVITATIONS TO THE CONFERENCE SENT BY THE GOVERNMENT OF SWEDEN

INVITATIONS TO THE CONFERENCE SENT BY THE GOVERNMENT OF SWEDEN

CIRCULAR LETTER OF INVITATION

Sent by the Government of Sweden

Salutations

1. (a) The Diplomatic Conference which revised the Berne Convention for the Protection of Literary and Artistic Works at Brussels in 1948 unanimously agreed that the next Revision Conference should be held at Stockholm.

(b) As a result of discussions that took place within the Paris Union for the Protection of Industrial Property, it was decided that a partial revision of the Paris Convention for the Protection of Industrial Property would also be made at the Intellectual Property Conference of Stockholm so as to introduce the notion of the inventor's certificate into the Convention.

(c) A revision of the structural and administrative provisions of the Berne and Paris Conventions and of the Agreements concluded in connection with the Paris Convention, as well as the adoption of a Convention establishing an international intellectual property organization, will also appear on the agenda of the Stockholm Conference.

2. The Conference will be held at Stockholm from June 12 to July 14, 1967.

3.[1] (a) The Government of . . . . is hereby invited to attend the Conference.

(b) During the revision of the Conventions and Agreements to which . . . . is party, the Delegation of . . . . will have the right to vote, whereas during the revision of any Convention or Agreement to which . . . . is not party, the Delegation will have observer status. Regarding the adoption of a Convention establishing an international intellectual property organization, all States invited to the Conference will have the right to vote.

(c) Delegates are to present their credentials in due form. For the signature of the instruments adopted by the Conference, full powers for the purpose will be required.

4. (a) The number of seats available for each delegation in the conference rooms will unfortunately be limited due to lack of space. Every effort will be made to allocate to each delegation the number of seats it requires; however, no more than three seats per delegation can be guaranteed in each of the two main rooms. Efforts will also be made to provide the necessary number of seats for delegations acting as observers, but only one seat can be guaranteed for each one in each of the two main rooms.

(b) Fuller information on the organization of the Conference will be communicated in due time.

5. The preparatory documents concerning the items mentioned in paragraph 1 above are being dispatched, as and when available, by the United International Bureaux for the Protection of Intellectual Property (BIRPI).

6. The Embassy would be grateful if the Ministry would inform it as soon as possible whether the Government of . . . . accepts this invitation to participate in the Conference and would indicate approximately how many delegates are expected to attend.

The names and capacities of the members of the Delegation should be communicated to this Embassy by April 1, 1967, at the latest.

Compliments.

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[1] For Organizations, the text of paragraph 3(a), (b) and (c) reads as follows: 3. ...... is invited to participate in the Conference as an observer.

COUNTRIES INVITED
by the Government of Sweden

Afghanistan
Albania
Algeria
Argentina
Australia
Austria
Barbados
Belgium
Bolivia
Botswana
Brazil
Bulgaria
Burma
Burundi
Byelorussian Soviet Socialist Republic
Cambodia
Cameroon
Canada
Central African Republic
Ceylon
Chad
Chile
Colombia
Congo (Brazzaville)
Congo (Democratic Republic of)
Costa Rica
Cuba
Cyprus
Czechoslovakia
Dahomey
Denmark
Dominican Republic
Ecuador
El Salvador
Ethiopia
Finland
France
Gabon
Gambia
Germany (Fed. Rep.)
Ghana
Greece
Guatemala
Guinea
Guyana
Haiti
Holy See
Honduras
Hungary
Iceland
India
Indonesia
Iran
Iraq
Ireland
Israel
Italy
Ivory Coast
Jamaica
Japan
Jordan
Kenya
Korea
Kuwait
Laos
Lebanon
Lesotho
Liberia
Libya
Liechtenstein
Luxembourg
Madagascar
Malawi
Malaysia
Maldive Islands
Mali
Malta
Mauritania
Mexico
Monaco
Mongolia
Morocco
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Rumania
Rwanda
San Marino
Saudi Arabia
Senegal
Sierra Leone
Singapore
Somalia
South Africa
Spain
Sudan
Sweden
Switzerland
Syria (Arab Republic of)
Tanzania (United Republic of)
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
Ukrainian Soviet Socialist Republic
Union of Soviet Socialist Republics
United Arab Republic
United Kingdom of Great Britain and Northern Ireland
United States of America
Upper Volta
Uruguay
Venezuela
Viet Nam (Republic of)
Western Samoa
Yugoslavia
Zambia

INTERGOVERNMENTAL ORGANIZATIONS INVITED
by the Government of Sweden

United Nations Organization (UN)
International Labour Organization (ILO)
World Health Organization (WHO)
United Nations Educational, Scientific and Cultural Organization (UNESCO)
General Agreement on Tariffs and Trade (GATT)
United Nations Conference on Trade and Development (UNCTAD)
United Nations Industrial Development Organization (UNIDO)
International Institute for the Unification of Private Law (UNIDROIT)
Organization of American States (OAS)
Council of Europe (CE)
European Free Trade Association (EFTA)
European Economic Community (EEC)

INVITATIONS TO THE CONFERENCE SENT BY THE UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY (BIRPI)

INVITATIONS TO THE CONFERENCE SENT BY THE UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY (BIRPI)

CIRCULAR LETTER OF INVITATION

Sent by BIRPI

Sir,

I have the honour to inform you that the Intellectual Property Conference of Stockholm will take place from June 12 to July 14, 1967.

With the agreement of the Government of Sweden, I herewith extend an invitation to your Organization to be represented at the Conference by observers.

It would be appreciated if you could indicate, *by October 15, 1966*, the number of your prospective representatives and, *not later than March 15, 1967*, their names, titles, and addresses.

Because of space limitations both in the conference rooms and the hotels, the Swedish Authorities have asked me to let you know that they would appreciate it if your Delegation could be as small as possible. In any case, not more than one seat can be guaranteed to your representatives in any of the conference rooms. It is expected that at no time will there be simultaneous meetings in more than three conference rooms.

Yours faithfully,

G. H. C. Bodenhausen

Director

INTERGOVERNMENTAL ORGANIZATIONS INVITED by BIRPI

African and Malagasy Industrial Property Office (OAMPI)
Council for Mutual Economic Assistance (COMECON)
European Atomic Energy Community (EURATOM)
International Olive Oil Council (COI)
International Patent Institute (IIB)
International Vine and Wine Office (IWO)
Latin-American Free Trade Association (ALALC)

INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS INVITED by BIRPI

Asian Broadcasting Union (ABU)
European Broadcasting Union (EBU)
Inter-American Association of Industrial Property (ASIPI)
International Alliance for Diffusion by Wire (AID)
International Association for the Protection of Industrial Property (IAPIP)
International Bureau for Mechanical Reproduction (BIEM)
International Chamber of Commerce (ICC)
International Confederation of Societies of Authors and Composers (CISAC)
International Federation of Actors (FIA)
International Federation of Film Distributors' Associations (FIAD)
International Federation of Film Producers' Associations (FIAPF)
International Federation of Journalists (IFJ)
International Federation of Musicians (FIM)
International Federation of Newspaper Publishers (FIEJ)
International Federation of Patent Agents (FICPI)
International Federation of the Phonographic Industry (IFPI)
International Federation of Variety Artists (IFVA)
Internationale Gesellschaft für Urheberrecht (INTERGU)
International League Against Unfair Competition (LICCD)
International Literary and Artistic Association (ALAI)
International Publishers' Association (IPA)
International Radio and Television Organization (OIRT)
International Secretariat of Entertainment Trade Unions
International Union of Cinematograph Exhibitors (UIEC)
International Writers' Guild (IWG)
Union of European Patent Agents
Union of National Radio and Television Organizations of Africa (URTNA)

PARTICIPANTS IN THE CONFERENCE

PARTICIPANTS IN THE CONFERENCE

STATES

ALGERIA

Head of Delegation

Aziz Hacene, Ambassador Extraordinary and Plenipotentiary at Stockholm.

Members of Delegation

Nadjib Boulbina, Counsellor, Ministry of Foreign Affairs.
Djemaleddine Berrouka, Counsellor, Ministry of Foreign Affairs.
Mohamed Agag, Deputy Director, Ministry of Industry and Power.
Azzeddine Bendiab, Head of Division, National Industrial Property Office.

Observer

Moktar Bou-Abdallah, Counsellor, Ministry of Information.

ARGENTINA

Head of Delegation

Eduardo Tomás Pardo, Ambassador at Stockholm.

Member of Delegation

Luis Maria Laurelli, Permanent Mission to the United Nations, Geneva.

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Head of Delegation

Karl Barry Petersson, Commissioner of Patents, Patent Office.

Members of Delegation

Alfred Capel King, Barrister.
Lindsay James Curtis, Senior Assistant Secretary, Attorney-General's Department.
John Henry Allen Hoyle, First Secretary, Embassy at Stockholm.

AUSTRIA

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Gottfried Thaler, President, Patent Office.

Deputy Head of Delegation

Robert Dittrich, *Sektionsrat*, Federal Ministry of Justice.

Members of Delegation

Thomas Lorenz, *Ratssekretär*, Patent Office.
Helmuth Tades, *Sektionsrat*, Federal Ministry of Justice.
Gerhard Karsch, Legal Advisor, Federal Chamber of Economy and Industry.
Wolfgang Ploderer, Director, Austro-Mechana Society.

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F. van Isacker, Attorney, Professor at the University of Ghent.
Louis Hermans, Counsellor, Head of Service, Ministry of Economic Affairs.
Arthur Schurmans, Director, Ministry of Economic Affairs.
Jacques Bocqué, Assistant Counsellor, Ministry of Foreign Affairs and Foreign Trade.
J. Schokkaert, Assistant Counsellor, Ministry of Foreign Affairs and Foreign Trade.
Jacques Degavre, Administrative Secretary, Industrial Property Department, Ministry of Economic Affairs.
Edgard Hoolants, Director-General, Society of Authors, Composers and Publishers.
Albert Namurois, Legal Advisor, Radiodiffusion-Télévision Belge.

BRAZIL

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Luis Leivas Bastian Pinto, Ambassador at Stockholm.

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Joracy Camargo, President, Brazilian Society of Authors of Dramatic Works.

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Cláudio de Souza Amaral, Attorney-at-Law.

Counsellors

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Laliu Gantchev, Ambassador at Stockholm.

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Members of Delegation

Lucien Avramov, Director, Copyright Office.
Ivan Ivanov, Director, Institute of Inventions and Rationalization.
Georgi Ossikowski, Head, Department of International Law and Trademarks, Institute of Inventions and Rationalization.
Vladimir Vassilev, Director, Department of Patents and Trademarks, Chamber of Commerce.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

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Boris Kudriavtsev, Ministry of Foreign Affairs.

CAMEROON

Head of Delegation

Denis Ekani, Director-General, African and Malagasy Industrial Property Office.

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Roy M. Davidson, Patent Office, Department of the Registrar-General.

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Jean-Charles Bonenfant, Parliamentary Library, Province of Quebec.
A. A. Keyes, Liaison Officer, National Film Board of Canada.
Roy C. Sharp, Q.C., Director, Canadian Copyright Institute.
Olivier Mercier Gouin, Canadian Broadcasting Corporation.

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Bruce C. McDonald, Faculty of Law, Queen's University, Kingston.

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Edvard Jeppesen, Head of Service, Ministry of Cultural Affairs.
Hans Jacob Kjaer, Secretary, Ministry of Cultural Affairs.

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Assistant Counsellors

Einar Jensen, Director of Economic Affairs, Danmarks Radio.
Axel Fischer, Head of Secretariat, Danmarks Radio.

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Henri Desbois, Professor, Faculty of Law, University of Paris.
Roger Gajac, Legal Advisor, National Institute of Industrial Property.
André Kerever, *Maître des requêtes*, Council of State, Cabinet of the Minister of State for Cultural Affairs.
Roger Labry, Counsellor of Embassy, Ministry of Foreign Affairs.
Yves Mas, Counsellor of Embassy, Ministry of Foreign Affairs.
François Miquel, Cultural Counsellor, Embassy of France, Stockholm.
Paul Nollet, Inspector-General, Ministry of Industry.
Jean-Paul Palewski, President, High Council of Industrial Property.
Charles Rohmer, Head of the Copyright Office, Ministry of State for Cultural Affairs.
François Savignon, Director, National Institute of Industrial Property.
Robert Touzery, *Maître des requêtes*, Council of State; Head of Department, Ministry of Information.
Gérard Valter, Head of Service, National Centre of French Cinematography.

Counsellors

Henri Calef, President, Film Authors' Society.
Roger Fournier, Secretary-General, Chambre Syndicale de la Production Cinématographique.
André Géranton, Legal Advisor, National Publishers' Association.
Jean-Pierre Halévy, Attaché, State Secretariat for Cooperation, Ministry of Foreign Affairs.
Robert Lemaître, Legal Advisor, Legal Service, Ministry of Foreign Affairs.
Maurice Lenoble, General Delegate, National Association of the Phonographic Industry and Trade.
Jean Matthyssens, General Delegate, Society of Authors and Composers of Dramatic Works.
Jean Raux-Filio, Bureau of International Organizations, Ministry of Foreign Affairs.
Jean-Loup Tournier, Director-General, Society of Authors, Composers and Music Publishers.
Jean Vilbois, Secretary-General, French Legal Association for Copyright Protection.

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Members of Delegation

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Heribert Mast, *Regierungsdirektor*, Federal Ministry of Justice.
Kurt Schiefler, *Regierungsdirektor*, Federal Ministry of Justice.
Karl Heinz Kunzmann, *Legationsrat*, Ministry of Foreign Affairs.
Dirk Itel Rogge, *Landgerichtsrat*, Federal Ministry of Justice.
Dietrich Reimer, Attorney-at-Law.

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Members of Delegation

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Dimitri Xanthopoulos, Director-General, Hellenic Society of Authors.

GUATEMALA

Head of Delegation

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Member of Delegation

Frederick W. Lettström, Vice-Consul at Stockholm.

HOLY SEE

Head of Delegation

Gunnar Sterner, Vice-President, Court of First Instance, Stockholm.

HUNGARY

Head of Delegation

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József Bényi, Deputy Director, Ministry of Foreign Affairs.
Gábor Urmösi, Head of Legal Service, Ministry of Foreign Trade.
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György Pálos, Legal Counsellor, National Office for Inventions.

ICELAND

Head of Delegation

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Member of Delegation

Hannes Hafstein, First Secretary, Embassy at Stockholm.

INDIA

Head of Delegation

Sher Singh, Minister of State, Ministry of Education.

Deputy Heads of Delegation

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Members of Delegation

K. Krishna Rao, Joint Secretary to the Government of India, Legal Advisor, Ministry of External Affairs.
T. S. Krishnamurti, Deputy Secretary to the Government of India, Registrar of Copyrights, Ministry of Education.
S. C. Shukla, Deputy Registrar of Copyrights, Ministry of Education.

INDONESIA

Head of Delegation

Ibrahim Jasin, Second Secretary (Economic), Embassy at Stockholm.

IRAN

Head of Delegation

Akbar Daraï, Ambassador at Stockholm.

Members of Delegation

Mehdi Naraghi, Director, Office for the Registration of Companies and Industrial Property.
Mohamed Amine Kardan, Attaché, Embassy at Stockholm.
Iradj Said-Vaziri, Legal Department, Ministry of Foreign Affairs.

IRELAND

Head of Delegation

J. J. Lennon, Controller of Patents, Designs and Trade Marks, Department of Industry and Commerce.

Member of Delegation

M. J. Quinn, Principal Officer, Department of Industry and Commerce.

Counsellor

F. O'Hannracháin, Legal Advisor, Radio Telefis Éireann.

ISRAEL

Head of Delegation

Ze'ev Sher, Registrar of Patents, Designs and Trademarks, Ministry of Justice.

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Elhanan Shanoon, First Secretary (Economic Affairs), Embassy at Stockholm.

ITALY

Head of Delegation

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Members of Delegation

Giuseppe Padellaro, Director-General of Services for Information and Literary, Artistic and Scientific Property, Presidency of the Council of Ministers.
Giorgio Ranzi, Director-General, Ministry of Industry, Commerce and Handicrafts.
Dino Marchetti, Justice of the Supreme Court; Head of the Legislative Service, Ministry of Industry, Commerce and Handicrafts.
Gino Galtieri, Inspector-General; Head of the Literary, Artistic and Scientific Property Office, Presidency of the Council of Ministers.
Mosè Angel-Pulsinelli, Inspector-General; Patent Department, Ministry of Industry, Commerce and Handicrafts.
Giuseppe Trotta, Judge at the Court of Appeal; Italian Delegation for Intellectual Property Treaties, Ministry of Foreign Affairs.
Italo Bologna, Judge at the Court of Appeal; Ministry of Industry, Commerce and Handicrafts.
Giancarlo Corradini, Counsellor of Legation; General Directorate for Economic Affairs, Ministry of Foreign Affairs.

Stefano Falsetti, Head of Division, Ministry of Industry, Commerce and Handicrafts.
Antonio Ciampi, Director-General, Italian Society of Authors and Publishers; Former Head, Literary, Artistic and Scientific Property Office.
Valerio de Sanctis, Attorney-at-Law; Legal Advisor, Italian Society of Authors and Publishers.

Counsellors

Maurizio Meloni, Literary, Artistic and Scientific Property Office, Presidency of the Council of Ministers.
Mario G. E. Luzzati, Attorney-at-Law; President of the Italian Group of the International Association for the Protection of Industrial Property.

Experts

Antonio Ferrante, Attorney-at-Law.
Massimo Ferrara Santamaria, Professor; National Association of Film Producers.
Mario Ferrari, Industrial Advisor.
Pietro Frisoli, Attorney-at-Law; Legal Advisor, National Association of Writers.
Salvatore Loi, Legal Advisor, Italian Association of Publishers.
Roberto Messerotti-Benvenuti, Attorney-at-Law.
Carlo Zini Lamberti, Legal Advisor, RAI — Radiotelevisione Italiana.

IVORY COAST

Head of Delegation

Denis Coffi Bilé, Ambassador Extraordinary and Plenipotentiary at London.

Deputy Head of Delegation

François-Joseph Amon d'Aby, Inspector-General, Administrative Affairs.

Member of Delegation

Ibrahima Touré, Director of International Cooperation, Ministry of Foreign Affairs.

JAPAN

Head of Delegation

Michitoshi Takahashi, Ambassador Extraordinary and Plenipotentiary at Stockholm.

Deputy Heads of Delegation

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Kenji Adachi, Deputy Director, Cultural Affairs Bureau, Ministry of Education.

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Tadashi Takada, Director, First Examination Division, Patent Office.
Masahiro Maeda, Counsellor, Embassy at Stockholm.
Yuzuru Murakami, Chief, International Conventions Section, Treaties Bureau, Ministry of Foreign Affairs.
Bunichiro Sano, Chief, Copyright Section, Cultural Affairs Bureau, Ministry of Education.

Counsellor

Yoshio Nomura, Member of the Governmental Copyright Council.

Experts

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CONFERENCE DOCUMENTS

CONFERENCE DOCUMENTS OF THE MAIN ("S") SERIES

(S/13 to S/302)

LIST OF DOCUMENTS

No.	*Submitted by*	*Distribution*	*Subject*
13	BIRPI	Berne	Observations of Governments on S/1 (received as at December 31, 1966).
14	BIRPI	Paris	Observations of Governments on S/2.
15	BIRPI	All Unions	Observations of Governments on S/3 to S/10.
16	BIRPI	Berne	Report by the Director on the Extraordinary Session of the Permanent Committee.
17	BIRPI	Berne	Observations of Governments on S/1 (received from January 1 to March 31, 1967).
18	BIRPI	Berne	Summary of observations on S/1 (documents S/13 and S/17).
19	Portugal	All Unions	Observations on documents S/9, S/10 and S/11.
20	Sweden	All Unions	List of candidates for all positions.
21	Austria	All Unions	Observations on documents S/10, S/12 and S/4.
22	Austria	I	New Article (question of domicile).
23	United Kingdom	III	Paris Convention, Art. 1(2).
24	Austria	IV	S/3, Art. 13(2)*(a)* and (3)*(f) (g) (h)*.
25	Austria	IV	S/9, Art. 21(2)*(a)* and (3)*(f) (g) (h)*.
26	France	I	S/1, Art. 4(2).
27	France	I	S/1, Art. 4(4)*(c) (i)*, (5) and (6).
28	France	I	S/1, Art. 6(2).
29	France	IV	S/9, Art. 21(2)*(a)*, 21*bis*(6)*(a)* and (7)*(b)*, 24(1) and 32(2).
30	Austria	IV	S/3, Art. 13*bis*(6)*(a)*, (7)*(b)* and (8), 13*ter*(9) and 13*quater*(4).
31	Austria	IV	S/9, Art. 21*bis*(6)*(a)*, (7)*(b)* and (8), 21*ter*(9) and 22(4).
31/Rev.	Austria	IV	S/9, Art. 21*bis*(6)*(a)*, (7)*(b)* and (8), 21*ter*(9) and 22(4).
32	USA	IV	S/3, Art. 13*ter*(1).
33	Switzerland	IV	S/3, Art. 13; S/9, Art. 21.
34	Poland	IV	S/3, Art. 16*quinquies*.
35	Germany (Fed. Rep.)	IV	S/3, Art. 13(3)*(g)* and 13*quinquies*(2).

Notes: The name of the city indicated in the column "Distribution" refers to the Union concerned or its Plenary; the Roman numerals designate the Main Committees.

Documents S/1 to S/12 are reprinted above on pages 71 to 570.

No.	*Submitted by*	*Distribution*	*Subject*
36	Germany (Fed. Rep.)	IV	S/9, Art. 21(3)*(g)* and 23(2).
37	Madagascar	IV	S/3, Art. 13(1) and (3)*(a)(g)* and 13*bis*(2)*(b)* and (8)*(a)(e)*.
38	Austria	I	S/1, Art. 9(1).
39	Austria	IV	S/3, Art. 13(2); S/9, Art. 21(2).
40	Israel	Berne	Observations on the Protocol Regarding Developing Countries.
41	India	I	S/1, Art. 4(4), (5) and 6.
42	United Kingdom	I	S/1, Art. 4(5) and (6), 6(2), 7(2)(3) and (3 A) and 9.
43	Hungary, Poland	I	S/1, Art. 4(6).
44	Chairman of Main Committee I	I	S/1, Art. 3 to 6 (new drafting).
45	France	I	S/1, Art. 10(1).
46	Switzerland	IV	S/3, Art. 13*ter*(2).
47	Sweden	IV	S/3, Art. 13(2); S/9, Art. 21(2); see S/39.
48	Australia	IV	S/3, Art. 13*bis*(4); S/9, Art. 21*bis*(4).
49	Netherlands	I	S/1, Art. 4(5).
50	Bulgaria, Poland	I	S/1, Art. 7(6).
51	Czechoslovakia, Hungary, Poland	I	S/1, Art. 9 (new paragraph (3)) and 10(1).
52	Australia	I	S/1, Art. 6(3).
53	South Africa	I	S/1, Art. 4(5).
54	Netherlands	IV	S/9, Art. 23(4) and 25(1)*(b)*.
55	Netherlands	IV	S/3, Art. 13*quinquies*(4) and 16(1)*(b)*.
56	Greece	I	S/1, Art. 2(2), 4(2), (4)*(c)* (i) and (6), 6(2), 6*bis*, 7(2), (3) and (4), 8, 9(2), 10(1), 11(1), 13(1) and 14(1) and (4) to (7).
57	(Deleted)	—	—
58	Austria, Poland	IV	S/3, Art. 13(3)*(b)*; S/9, Art. 21(3)*(b)*.
59	USA	IV	S/3, Art. 13*quinquies*(1).
60	South Africa, Germany (Fed. Rep.), Luxembourg, Monaco	I	S/1, Art. 4(5).
61	Czechoslovakia	IV IV	S/3, Art. 13(3)*(b)* and *(c)*, 13*bis*(8)*(c)*, 13*quinquies*(2), 16*ter*, 16*quinquies*; S/9, Art. 20*bis*(2), 21(3)*(b)* and *(c)*, 21*bis*(8)*(c)*, 23(2), 26, 27*bis*; S/4, S/6, S/7, S/8 (corresponding Articles).
62	France, Germany (Fed. Rep.), Italy, USA	IV	S/3, Art. 13*quater*(1)*(b)(c)* and (2); S/9, Art. 22(1)*(b)(c)* and (2).
63	Switzerland	I	S/1, Art. 4, 5 and 6.
64	Hungary	IV	S/3, Art. 13*quinquies*(1) and (2); S/9, Art. 23(1) and (2).
65	Poland	IV	S/9, Art. 26.
66	Monaco	I	S/1, Art. 9(2).
67	Germany (Fed. Rep.)	I	S/1, Art. 9(1) and (2)*(c)*.
68	Switzerland	I	S/1, Art. 10(1).
69	Switzerland	I	S/1, Art. 7(7).
70	France	I	S/1, Art. 9(1), (2)*(a)* and 10.
71	Austria	I	S/1, new provision (deposit of microfilm copies).
72	Austria, Italy, Morocco	I	S/1, Art. 9(1).
73	India	I	S/1, Art. 2(1), 2*bis*(2), 4(6), 6*bis*(2), 7(3) and (4), 7*bis*.
74	Drafting Committee III	III	S/2, Art. 4-I (text established by the Drafting Committee).
75	Rumania	I	S/1, Art. 9.

No.	*Submitted by*	*Distribution*	*Subject*
76	Monaco	I	S/1, Art. 10*bis*.
77	Monaco	I	S/1, Art. 11*bis*(3).
78	Working Group IV	IV	S/3, Art. 13(3)*(b)*; S/9, Art. 21(3)*(b)*.
79	Bulgaria, Poland, Czechoslovakia	I	S/1, Art. 2*bis*(2).
80	Japan	I	S/1, Art. 9(3).
81	Netherlands	I	S/1, Art. 9(2).
82	Spain	IV	S/3, Art. 13*quater*(3).
83	Bulgaria, Poland, Rumania, Czechoslovakia	I	S/1, Art. 10(2).
84	Madagascar	V	S/10, Art. 6, 7 and 8.
85	Rumania	V	S/10, Preamble.
86	India	I	S/1, Art. 9.
87	III	Paris	S/2, Art. 4-I (text adopted by Main Committee III).
88	Drafting Committee I	I	S/1, Art. 4(4) and (5) and 6(3).
89	Bulgaria	I	S/1, Art. 2(1), (2) and 6*bis*(2).
90	Rapporteur III	III	Report.
91	Hungary	I	S/1, Art. 7(2) and (4).
92	Germany (Fed. Rep.)	I	S/1, Art. 2(2) and (3), 2*bis* (2), 11*ter*, 13(1) and (2), 14(1) and (4).
93	Germany (Fed. Rep.), USA, France, Hungary, Italy, United Kingdom, USSR	V	S/10, Art. 6(2), 7(2)*(a)* and (3)*(d)*, 8(1)*(c)* and (3), 10(1) to (4) and 13(2).
93/Add.	USSR	V	Reservation concerning document S/93.
94	Argentina, Brazil, Madagascar, Senegal, Uruguay	IV	S/3, Art. 14(2).
95	United Kingdom	IV	S/3, Art. 16(2) and (3), 16*bis*(2) and (3), 16*quinquies* (3)*(a)*, 18(3), 19(1)*(b)* and (5); S/9, Art. 25(2) and (3), 25*bis*(2) and (3), 26(3)*(a)*, 27, 31(1)*(b)* and (5).
96	United Kingdom	V	S/10, Art. 4, 6(1), 7(1) to (3), 8(1), 11(3), 16 and 18(2).
97	Germany (Fed. Rep.), Netherlands, Switzerland	IV	S/9, Art. 24(3).
98	Japan	IV	S/9, Art. 25*ter*(2)*(a)*.
99	Denmark	I	S/1, Art. 2(6) and 7(4).
100	United Kingdom	I	S/1, Art. 2(2).
101	United Kingdom	I	S/1, Art. 14(7).
102	Austria	V	S/10, Art. 6(2) and 7(2)*(a)*.
103	Austria	V	S/10, Art. 8(1)*(c)*.
104	Austria	V	S/10, Art. 8(3).
105	Rapporteur III	III	Report, text adopted by Main Committee III.
106	Germany (Fed. Rep.), Netherlands, Switzerland	IV	S/3, Art. 14(3).
107	Yugoslavia	I	S/1, Art. 2(1) and (2) and 14(4) to (7).
108	Netherlands	I	S/1, Art. 10(2).
109	Working Group I (reproduction)	I	S/1, Art. 9(2).
110	Portugal	I	S/1, Art. 2 (new paragraph (2)).
111	Japan	I	S/1, Art. 14(4) and (7).
112	Japan	I	S/1, Art. 11*bis*(3).
113	Austria	V	S/10, Preamble.
114	Secretariat	IV	S/9, Art. 21 to 24.

No.	*Submitted by*	*Distribution*	*Subject*
115	Monaco	I	S/1, Art. 14.
116	France	V	S/10, Art. 3(1) and (2)(i).
117	France	V	S/10, Art. 2(vii) and 3(2)(ii) and (iii).
118	France	V	S/10, Art. 6(2) and (3)*(g)*.
119	USA	V	S/10, Preamble.
120	USA	V	S/10, Art. 1.
121	USA	V	S/10, Art. 2(ii) and 9(1).
122	USA	V	S/10, Art. 2(iii) and (iv).
123	USA	V	S/10, Art. 3(1).
124	USA	V	S/10, Art. 6(2)(vi).
125	USA	V	S/10, Art. 7(2)*(a)*(i).
126	USA	V	S/10, Art. 8(1)*(a)*.
127	Japan	II	S/1, Protocol, Art. 1*(a)*, and *(e)*.
128	Italy	V	S/10, Preamble.
128/Corr.	Italy	V	S/10, Preamble.
129	Italy	V	S/10, Art. 3(1).
130	France	I	S/1, Art. 14(4).
131	Czechoslovakia	V	S/10, Art. 3(2).
132	Czechoslovakia	V	S/10, Art. 4.
133	Czechoslovakia	V	S/10, Art. 6(3)*(b)* and *(c)*.
134	Czechoslovakia	V	S/10, Art. 8(6)*(a)*.
135	Czechoslovakia	V	S/10, Art. 11.
136	France	I	S/1, Art. 2(1).
137	Working Group IV	IV	Report on document S/37.
138	Switzerland	V	S/10, Art. 3(2)(ii).
139	Hungary	I	S/1, Art. 14(5).
140	Netherlands	I	S/1, Art. 2(6).
141	Germany (Fed. Rep.)	V	S/10, Art. 6(2).
142	Germany (Fed. Rep.)	V	S/10, Art. 8(3)(i).
143	Germany (Fed. Rep.)	V	S/10, Art. 9(3).
144	Belgium	I	S/1, Art. 14(7).
145	South Africa	V	S/10, Art. 7(2)*(a)*(i).
146	Denmark	II	S/1, Protocol, Art. 1*(a)*.
147	Austria	I	S/1, Art. 6*bis* (new paragraph (4)).
148	Netherlands	II	S/1, Protocol, Art. 1*(e)*.
149	United Kingdom	II	S/1, Protocol, Art. 1 (introd.)*(d)(e)* and a new Article 1B (territories).
150	Czechoslovakia, Hungary, Netherlands, Poland, USSR	V	S/10, Art. 4 and 7.
151	Greece, Portugal	I	S/1, Art. 6*bis* and 7(5) (posthumous works).
152	Portugal	I	S/1, Art. 4(6) and 7(2) and (4).
153	Austria	V	S/10, Art. 19(3).
154	Austria	V	S/10, Art. 9(1) (new), (2), (5).
155	Argentina, Brazil, Colombia, Chile, Ecuador, Mexico, Peru, Spain, Uruguay, Venezuela	V	S/10, Art. 6(2)(iv).
156	Israel	V	S/10, Art. 11(3).
157	Israel	V	S/10, Art. 6.

No.	*Submitted by*	*Distribution*	*Subject*
158	Israel	V	S/10, Art. 8(1)*(c)*.
159	Secretariat	V	S/10, List of amendments (by Articles).
160	Congo (Brazzaville), Congo (Kinshasa), Ivory Coast, Gabon, India, Madagascar, Morocco, Niger, Senegal, Tunisia	II	S/1, Protocol (full text).
161	Italy	I	S/1, Art. 2(1), (2) and (5).
162	Italy	II	S/1, Protocol, Art. 1*(a)*, *(b)* and *(e)*.
163	Spain	IV	S/3, Art. 13*quater*(3).
164	Germany (Fed. Rep.)	V	S/10, Art. 6(3)(i), 7(3)*(g)* and 8(5)*(c)*.
165	Germany (Fed. Rep.)	V	S/10, Art. 12 (new paragraph (3)).
166	Switzerland	V	S/10, Art. 8(4).
167	Switzerland	V	S/10, Art. 10(3)*(b)* and (5)*(a)*.
168	Italy	I	S/1, Art. 4(6).
169	USA	V	S/10, Art. 7(2)*(a)*, 3*(c)(d)(e)*.
170	Madagascar, Senegal	IV, V	Memorandum on S/37.
171	United Kingdom	I	S/1, Art. 2(7), 11*bis*(3), 13(1) and 17.
172	Germany (Fed. Rep.)	V	S/10, Art. 15(1).
173	France	V	S/10, Art. 7(2)*(a)*.
174	France	V	S/10, Art. 13.
175	France	V	S/10, Art. 11(4).
176	France	II	S/1, Protocol, Art. 1 (introd.)
177	France	II	S/1, Protocol, Art. 1*(a)* and *(b)*.
178	France	II	S/1, Protocol, Art. 1*(e)*.
179	Madagascar, Senegal	IV, V	S/3, Art. 13(3); S/37; S/137; S/170.
180	Drafting Committee IV	IV	S/3, Art. 13 to 20; S/9, Art. 21 to 32, Memorandum.
181	Greece	II	S/1, Protocol.
182	Japan	V	S/10, new Art. 18 (settlement of disputes).
183	Greece	I	S/1, Art. 6*bis* (new paragraph).
184	Sweden	IV	S/3, Art. 13(2)*(a)*(viii) and (3)*(h)* (new).
185	Working Group I (reproduction)	I	S/1, Art. 10(2).
186	Secretariat	V	S/10, List of amendments (by Articles).
187	Secretariat	Drafting Committee I	S/1, Art. 3 to 6 (S/44 revised), 9, 10 and 10*bis*.
188	Working Group V	V	S/10, Art. 4.
189	Argentina, Brazil, Uruguay	IV	S/3, Art. 13(3)*(h)*, amendment to S/179.
190	Working Group I (cinema)	I	S/1, Art. 2(1), 4(4) and 6(2).
191	United Kingdom	I	S/1, Art. 2(1).
192	United Kingdom	I	S/1, Art. 7(4).
193	Germany (Fed. Rep.)	V	S/10, Art. 6(3)(i), 7(3)*(g)* and 8(5)*(c)* (see document S/164).
194	France, Switzerland	V	S/10, Art. 11(4).
195	Working Group I (cinema)	I	S/1, Art. 11*bis* (new paragraph 4), 14 and 14*bis* (new).
196	Hungary	I	S/1, new provision (works created on commission or under employment).
197	Bulgaria	I	S/1, Art. 6*bis*(2).
198	Secretariat	V	S/10, Art. 9(3).
199	Israel	II	S/1, Protocol.

No.	*Submitted by*	*Distribution*	*Subject*
200	Secretariat	IV	S/4 (version brought up to date).
201	Secretariat	IV	S/5, Art. 5(2).
202	Secretariat	IV	S/6 (version brought up to date).*
203	Secretariat	IV	S/7 (version brought up to date).
204	Secretariat	IV	S/8 (version brought up to date).
205	Germany (Fed. Rep.)	I	Wish concerning the term of protection.
206	Austria	IV	S/4, Art. 8(7) to (9).
207	Austria	IV	S/4, Art. 10(2)*(a)*.
208	Austria	IV	S/4, Art. 10*ter*(5).
209	III	Paris	S/2, Art. 4-I (see document S/87).
210	Brazil	I	S/1, Preamble, Art. 1, 4(1) and 6*bis*(1).
211	United Kingdom	I	S/1, Art. 16(1) and (2).
212	Czechoslovakia	I	S/1, new provision (folklore works).
213	Italy	II	S/1, Protocol, Art. 1 (introd.).
214	Drafting Committee IV	IV	S/3, Art. 13(2-*bis*), (3) and (3-*bis*) and (3-*ter*); S/9, Art. 21(3).
215	Australia	I	S/1, Art. 17 (new paragraph (2)).
216	Mexico, Brazil, Portugal	I	S/1, and S/185, Art. 10(2).
217	Brazil	I	S/1, Art. 11*bis*(1), (3) and 13(1), (3).
218	V	Drafting Committee V	Composition of Drafting Committee.
219	Brazil	II	S/1, Protocol, Art. 1 (introd.).
220	Sweden	IV	S/3, Art. 20(2); S/9, Art. 32(2).
221	Germany (Fed. Rep.), USA	IV	S/3, Art. 20(2); S/9, Art. 32(2).
222	Netherlands, Switzerland	IV	S/3, new Article (settlement of disputes); S/9, Art. 27*bis*.
223	Israel	I	S/1, Art. 17 (new paragraph (3)).
224	Working Group II (criterion)	II	S/1, Protocol, Art. 1 (introd.) (criterion for definition of developing countries).
225	Secretariat	I	S/1, Art. 7(6).
226	Italy	I	S/1, Art. 17.
227	Israel	II-IV	S/9, Art. 20*bis* and 30 (new paragraph (3)).
228	Israel	II-IV	Draft Resolution concerning the implementation of the Protocol (return to authors).
229	Netherlands	IV	S/4, Art. 8(5) and (6).
230	Netherlands	I	S/1, Art. 13(1).
231	Argentina, Mexico, Uruguay	II-IV	S/9, Art. 20*bis*(2), 25 etc.
232	Australia, Denmark, Finland, Ireland, Norway, Sweden, United Kingdom	I	S/1, Art. 6*bis*(2).
233	Working Group II (Art. 1*(a)* and *(e)*)	II	S/1, Protocol, Art. 1*(a)* and *(e)*; Report and proposals.
234	Ivory Coast	II	S/1, Protocol (add to the list of developing countries).
235	Secretariat	II-IV	S/3 to S/9, list of the problems to be discussed.
236	France, Italy	II-IV	S/3, Art. 18; S/9, Art. 27.
237	Belgium, Luxembourg, Netherlands	I	S/1, Additional Protocol (international organizations).
238	Secretariat	Drafting Committee I	S/1, Art. 1, 2, 9, 10 and 10*bis*.

* This document does not exist in English.

No.	Submitted by	Distribution	Subject
239	Working Group I (oral works)	I	S/1, Art. 2*bis*(2).
240	Working Group I (folklore)	I	S/1, Art. 15 (new paragraph (3)).
241	Secretariat	Drafting Committee I	S/1, Art. 1 to 20 (except Art. 6*bis* and 8).
242	Working Group II (Art. 1*(a)* and *(e)*)	II	S/1, Protocol, Art. 1*(a)* and *(e)*.
243	United Kingdom	II	S/1, Protocol, Art. 1*(a)* and *(e)*.
244	Secretariat	II	S/1, Protocol (text prepared for the Drafting Committee).
245	Italy	IV	S/9, Art. 25*ter*(2)*(a)*.
246	Senegal	Working Group II-IV	S/9, Art. 25(1) (new subparagraph *(b-bis)*).
247	Australia, Austria, Denmark, Germany (Fed. Rep.), Finland, Norway, Sweden, United Kingdom	I	S/1, Art. 6*bis*(2).
248	Drafting Committee I	I	S/1, Art. 8, Report.
249	Secretariat	II	S/1, Protocol (text prepared after discussion by the Working Group).
249/Add.	Secretariat	II	Addendum to document S/249 (Protocol, Art. 1*(e)*).
250	Drafting Committee V	V	S/10, Draft.
251	Drafting Committee IV	IV	S/3, Draft.
252	Drafting Committee IV	IV	S/9, Draft
253	Denmark, Finland, Norway, Sweden	II	S/1, Protocol, Art. 1 (introd.).
254	Drafting Committee IV	IV	S/4, Draft.*
255	Drafting Committee IV	IV	S/5, Draft.
256	Drafting Committee IV	IV	S/6, Draft.*
257	Drafting Committee IV	IV	S/7, Draft.
258	Drafting Committee IV	IV	S/8, Draft.
259	Italy	IV	S/9, Art. 25*ter*(2).
260	Secretariat	IV	Draft Resolution (S/12, paragraph 69) (priority fees).
261	Secretariat	IV	Draft Resolution (S/12, paragraph 27) (ceiling of contributions, Paris).
262	Secretariat	IV	Draft Decision (S/12, paragraph 42) (ceiling of contributions, Berne).
263	Secretariat	Drafting Committee I	S/1, Art. 6*bis* and 8, Draft Resolutions I (term of protection) and II (obligation to deposit).
264	Working Group IV	IV	S/3, Art. 13(4)*(c)(c-bis)* and S/9, Art. 21(4)*(c)(c-bis)* (see S/251 and S/252).
265	Secretariat	IV	Information on modifications adopted by Main Committees II and IV (S/9, Art. 27; S/3, Art. 18).
266	Drafting Committee IV	IV	S/260, 261, 262 and 264 (also S/250, Art. 6(3)*(c)*).
267	(Deleted)	—	—
268	Switzerland	IV	S/9, Art. 27(3).
269	Drafting Committee I	I	S/1, except Protocol; Draft Resolutions (S/263).
269/Add.	Drafting Committee I	I	Addendum to Draft Report
270	Rapporteur II	II	Draft Report.
270/Add.	Rapporteur II	II	Addendum to Draft Report.

* This document does not exist in English.

No.	*Submitted by*	*Distribution*	*Subject*
270/Rev.	Rapporteur II	II	Report (revised text).
270/Rev./Corr.	Rapporteur II	II	Corrigendum, S/270/Rev.
271	Rapporteur I	I	Report.
271/Corr.	Rapporteur I	I	Corrigendum to S/271.
272	Drafting Committee II	II	S/1, Protocol; Draft Resolution (S/228).
273	Rapporteur V	V	Report.
274	IV	Paris	Recommendation (S/260).
275	IV	Paris	Decision (S/261).
276	IV	Berne	Decision (S/262).
277	Secretariat	Paris	Information on the English text of the Paris Convention.
278	Main Committees I, II and IV	Berne	Berne Convention.
279	Secretariat	Madrid (trademarks)	Information on the English text of the Madrid Agreement (trademarks).
280	Secretariat	Madrid (indications of source)	Information on the English text of the Madrid Agreement Additional Act (indications of source).
281	Secretariat	The Hague	Information on the English text of the Hague Agreement Complementary Act.
282	Secretariat	Nice	Information on the English text of the Nice Agreement.
283	Secretariat	Lisbon	Information on the English text of the Lisbon Agreement.
284	V	WIPO	WIPO Convention.
285	USA	I-II	Statement on the Berne Convention.
286	Czechoslovakia	IV	S/9, Art. 25(2) (new sub-paragraph *(d)*).
287	II	Berne	Resolution (S/272).
288	Rapporteur IV	IV	Report.
288/Rev.	Rapporteur IV	IV	Report (new wording).*
289	Secretariat	Drafting Committee I	S/1, Art. 9, 10*bis*, 13, 14*bis*, Draft Resolution II (Addendum to S/269).
290	Drafting Committee I	I	S/1, Art. 9, 10*bis*, 13 and 14*bis*.
291	Drafting Committee IV	IV	S/3, Art. 18 (new paragraph (3)) (Art. 27 in the final version).
292	Drafting Committee IV	IV	S/9, Art. 27 (new paragraph (2)) (Art. 32 in the final version).
293	Drafting Committee IV	IV	S/9, Art. 25(2).
294	Working Group IV	IV	S/4, Art. 12; S/7, Art. 8*bis*; S/8, Art. 13.*
295	Credentials Committee	General	Report.
296	I	Berne	Resolution (term of protection).
297	I	Berne	Resolution (obligation to deposit).
298	Secretariat	Plenary Conference	Final Act.
299	Chairman of Main Committee I	I	S/1, Art. 14*bis*(2)*(c)*.
300	Developing countries	General	Joint statement.
301	Rapporteur II	II	Report (final version).
302	Secretariat	Paris	Paris Convention, Art. 4-I and 13 to 30 (provisional English translation).

* This document does not exist in English.

TEXT OF DOCUMENTS (S/13 to S/302)

S/13 AUSTRIA, BELGIUM, CZECHOSLOVAKIA, DENMARK, FRANCE, GERMANY (FEDERAL REPUBLIC), IRELAND, ISRAEL, ITALY, JAPAN, MADAGASCAR, PORTUGAL, SOUTH AFRICA, UNITED KINGDOM. Berne Convention. *The following observations are made on the proposals as they appear in document S/1.*

AUSTRIA

Article 2: The Berne Convention applies exclusively to *works*, that is to say to the results of an individual intellectual activity (BAPPERT-WAGNER, Internationales Urheberrecht, 1956, page 51, n. 2, with quotations). The penultimate paragraph on page 15 of document S/1 is not, however, in conformity with this idea, for, in the context of a discussion on the protection of works produced by a process analogous to cinematography, mention is made of televised broadcasts of current events; yet, as a general rule, these do not constitute *cinematographic works*. It should therefore be mentioned in the General Report of the Conference that television recordings only enjoy the protection provided in the Convention for the benefit of cinematographic *works* to the extent that they constitute creative works.

Article 4(2): The concept of "domicile"—which also appears elsewhere—is defined in a different way in various jurisdictions. The insertion in a suitable place is therefore suggested of the rule, contained in Article 1, paragraph (3), of the Convention on conflicts of laws with regard to the form of testamentary dispositions, which stipulates that the question whether a person had a domicile in a given place is governed by the law of that same place.

Article 9: 1. The term "reproduction" might give rise to difficulties of interpretation if it is considered as the equivalent of "Wiedergabe" (cf. the translation of "reproduced" by "wiedergeben" in Article 9, paragraph (1), of the Brussels text of the Berne Convention). The meaning of this term appears to be "Vervielfältigung" (cf. § 15 of the Austrian law on copyright; § 16 of the German law on copyright), and not "Recht der (unkörperlichen) Wiedergabe" (right of (incorporeal) reproduction) by means of lectures or public performance (§ 18 of the Austrian law on copyright; §§ 19, 21 and 22 of the German law on copyright). So as to remove any doubts of this sort, it would be advisable to define "reproduction", in the Berne Convention, in the sense of Article 28 of the French law on copyright of 11 March 1957:

"Reproduction shall consist in the material fixation of the work by all methods that permit of indirect communication to the public.
It can be accomplished, in particular, by printing, drawing, engraving, photographing, casting and all processes of the graphic and plastic arts, and by mechanical, cinematographic, or magnetic recording.
In the case of architectural works, reproduction shall also consist in the repeated execution of a plan or standard draft."

In addition, a definition of this kind would make it clear that recording by means of instruments recording sounds or images likewise constitutes a form of reproduction.

2. Article 9 which provides for a special right of reproduction also gives rise to the following comment: a number of publishing firms render difficult for the makers of discs or films or for television the recording of published works; for that purpose, they refuse to sell printed vocal and instrumental scores in order to let them out on hire at exorbitant prices and thus to make profits by reason not only of dues for the mechanical reproduction and the subsequent public performance but also of the hiring of the material.
The International Federation of Musicians has therefore suggested the addition to the proposed text of Article 9 of the Berne Convention of a paragraph (3), worded as follows:

"It shall also be a matter for legislation in the countries of the Union to subject the exercise of that right to conditions ensuring that when a musical or dramatico-musical work has been published with the authorisation of the author thereof, the graphic copies of the work be made accessible to the public without improper restrictions."

This addition appears desirable.

*Article 10*bis*:* The term "disc" would be superfluous in view of the general right of reproduction.

Article 13(1): In paragraph (1) of Article 13 (new) it should be specified that musical works include also those with words (cf. Article 2, paragraph (1) of the Berne Convention); otherwise, a restrictive interpretation would exclude works of the Lieder type or dramatico-musical works although in a number of national laws the compulsory license, if any, is extended to works of this kind (cf. § 58, paragraph (2), of the Austrian law on copyright; § 61, paragraph (5), of the German law on copyright; Article 18 of the Swiss law on copyright; Section 8, paragraph (5), of the British Copyright Act 1956). This clarification seems all the more necessary as Article 14, paragraph (6), contains a mention of musical works with or without words, which appears to invite the argument *a contrario*.

Article 13(2): It is proposed that the limit for the transitional period be set at December 31, 1970.

Article 14: In paragraph (1) of Article 14, new text, it does not seem logical to speak of authors of literary, scientific or artistic works, since paragraph (1) of Article 2 defines scientific works as already comprised in literary and artistic works; proposed Article 10*bis* also speaks of literary or artistic works. It would therefore be advisable to bring into harmony with the terminology used in the above-mentioned provision that used in Article 14, paragraph (1) and proposed paragraph (7).

With regard to cinematographic works made professionally, the Austrian law provides that the rights of utilization belong to the head of the undertaking—that is to say, to the maker of the film; the authors' rights in works used for the making of cinematographic works are not affected by this provision. There is only one exception to this rule: in addition to the consent of the film maker, that of the author covered by the designation of author is required, to enable the adaptation and the translation of a cinematographic

work to be used. The persons who have taken part in the making of that work in such a way that the collective creation takes on the character of an original intellectual work have the right to appear as authors in the film and on the placards announcing it.

Cinematographic works which are not made professionally are not governed by special rules.

The Austrian Government takes the view that, in accepting the proposals for revision, it will have the right to maintain this regulation which is currently in force in respect of works made professionally and to extend the special rules to works that are not made professionally. It is necessary to stress this point, since new paragraph (2) of Article 14 stipulates that the *author* of a cinematographic work has the same rights as the author of an original work.

The principle underlying paragraphs (4) and (7) of Article 14 appears to offer a reasonable compromise between rather divergent points of view. As far as rules of detail are concerned, however, these provisions would seem to constitute a source of difficulty, as the Member State which will be the country of origin by virtue of publication is not fixed beforehand and as, moreover, the country of origin will generally change, that is to say that it will be determined in the first place under the terms of *sub-paragraph (c)* of paragraph (4) of Article 4 and then under the terms of *sub-paragraphs (a) or (b)* of that paragraph.

Belgium

In general terms, the Belgian Government signifies its agreement to the Programme of the Conference and keenly commends the authors of document S/1 on the outstanding manner in which the latter is conceived and worded.

The Belgian Government notes with satisfaction that the Programme contains numerous improvements in the protection afforded to authors, especially the extension of the criteria whereby a work is eligible under the Convention, the wider protection of copyright as to term, the establishment *jure conventionis* of a minimum term of protection for cinematographic, photographic and three-dimensional works and, lastly, the introduction of a general right of reproduction.

The Belgian Government also agrees that reforms should be introduced into the Convention so as to make its rules easier to apply and to adapt them to the social, technical and economic conditions of contemporary society.

In this respect it considers that it would be totally inadvisable to allow in any way for the possibility of reservations as regards the provisions envisaged in favor of developing countries.

A general comment is called for on the question of interpretation.

The Programme (document S/1, page 10) states that in certain cases "clarifications of the meanings of some of the clauses of the Convention have simply been given in the statement of reasons, acting upon the hypothesis that such declarations in the documents of the Conference would be sufficient to attain the objective sought by these clarifications."

The Belgian Government's initial reaction is one of doubt as to whether it is sufficient to interpret terms of some importance in the statement of reasons.

It must not be overlooked that, as a matter of fact, different conceptions have been expressed on this point in the various countries of the Union. It is therefore preferable for certain terms to be interpreted in the text of the Convention itself. This applies, for instance, to the terms "public" and "in sufficient quantities" used to define "published works" in paragraph (5) of Article 4 of the draft Convention.

The Belgian Government also finds it difficult to agree with the actual interpretation given to these two terms.

The individual articles of the draft Convention call for the following observations from the Belgian Government.

Article 2: It is to be regretted that the Programme proposes to delete the present requirement that the acting form should be fixed in writing or otherwise for the protection of choreographic works and entertainments in dumb show.

It is doubtful indeed whether the domestic laws at present stipulating this form of fixation would be in accordance with the proposed new provision, whereas if the requirement of fixation were maintained the provision of the Convention would present no problem in countries in which protection extends to unfixed works.

Furthermore, it is illogical to provide for abolishing fixation for choreographic works and entertainments in dumb show when such a requirement exists in the proposal concerning works considered to be cinematographic works.

The Programme also proposes that the protection afforded by the Convention should be extended to works considered to be cinematographic works and fixed in some material form. The time at which the fixation should take place and the persons by whom it can be effected should perhaps have been specified.

Serious difficulties will arise in applying this provision if the matter is left to the discretion of the domestic legislator or the courts.

Article 4: With regard to paragraph (2), attention must be drawn to the difficulties involved in defining the concept of "domicile", which varies from country to country.

The Belgian Government wonders whether it might be preferable to replace the term by that of "habitual residence" as in the draft Protocol concerning stateless persons and refugees.

With regard to paragraph (5) of this Article, it is recalled that the Belgian Government cannot easily support the interpretation given to the terms "public" and "in sufficient quantities" on page 26 of document S/1.

Article 6: The concept of domicile contained in paragraph (2) of this Article raises the same comment as made above.

Article 9: It is clear that the introduction of a general right of protection must be accompanied by certain reservations in favour of the domestic legislators for the purpose of satisfying specific social or cultural needs.

The Belgian Government nevertheless insists that such needs should be viewed in a strict manner and in the light of the existing laws and courts' decisions.

A more restrictive formula should therefore be sought for Article 9, paragraph (2)(c).

In paragraph (1) of this Article, it would be advisable to insert a provision maintaining the application of the reservations stipulated in Articles 2*bis*, 10, 10*bis*, 11*bis*, paragraph (3), and 13, paragraph (2). This proposal is in line with the method adopted for other provisions of the Convention such as those in Article 11.

Article 13: The compulsory recording license introduced by several countries relates to musical works with or without words.

It seems that, after the introduction in Article 9 of an absolute right of reproduction, doubts may arise as to whether this practice is in accordance with the proposed new text.

It would therefore be advisable to clarify this point in the proposed text of paragraph (1) of Article 13.

Paragraph (3) of this Article should certainly need amplification to extend it, like the first two paragraphs, to reproductions as well as recordings.

Article 14: In paragraph (1) it would be advisable to stipulate that the exclusive right of authorizing the cinematographic adaptation and reproduction of works is not subject to the reservations and conditions referred to in Article (13), paragraph (1), as proposed. On the other hand, it must be clearly understood that this right remains subject to the reservations and conditions provided for in Article 11*bis*.

Paragraph (4) calls for a number of comments. Firstly, it stipulates that authorizations and undertakings shall be given in the manner prescribed "by the legislation of the country of origin of the cinematographic work". This requirement may lead to very real difficulties, since the country of origin is not always the country in which the work is made. It would therefore be advisable to delete the above wording.

Secondly, the words "fixed in some material form" seem superfluous in view of the fact that Article 2, paragraph (2), as proposed, already requires works considered as cinematographic works to be fixed, and that cinematographic works themselves are of necessity fixed.

Thirdly, it seems inadvisable to insert a provision in the Convention as to the manner in which the authorization or

undertaking is to be given by the author. In point of fact, since the authorizations and undertakings in question are given in the country of origin of the work, this provision refers either to domestic relationships, and is therefore out of place in the Convention, or else to international ones, in which case it involves the danger that the rule of interpretation may be rejected in a given country in which the written form is required if agreements concluded in the other country, in which the written form is not required, are not in that form.

Lastly, from a general point of view, the rule of interpretation will only make international exploitation more secure if it is imposed on every member of the Union as a strict obligation in respect of cinematographic works and works considered as such coming from other countries of the Union.

With regard to paragraph (5) of Article 14, the Belgian Government regards the provision as superfluous, because it is obvious that countries can provide for a participation in receipts in their domestic legislation; authorizations and undertakings can be accompanied by all manner of financial conditions, as is the case with the right of performance.

Paragraph (6) of Article 14 clearly provides preferential treatment for the authors of musical works. This may be justified, in that the rights in musical works are usually handled by societies which charge the users thereof a lump sum. It would nevertheless be useful to provide for the circumstance in which the rights in a musical work are handled by the composer himself, in which case it should not escape the rule of interpretation, because if it did a composer might create obstacles to the normal exploitation of a cinematographic work in which he has collaborated.

The Belgian Government is aware that the proposed paragraph (7) of Article 14 will be the object of severe criticism in that it implies that pre-existing works are subject to the rule of interpretation. It seems that, if this means classic works such as novels from which cinematographic works are derived, it is not essential to subject them to the rule of interpretation. The difficulty clearly arises from the fact that scenarios and dialogues, for example, are intended to be regarded as pre-existing works.

In the opinion of the Belgian Government, a solution would be to specify in the Convention that scenarios and dialogues are to be considered as modern works. On this understanding, pre-existing works could be excluded from the operation of the rule of interpretation. This in fact was the proposal made by the Belgian delegation to the 1965 Committee of Governmental Experts.

With regard to the draft Additional Protocol concerning the application of the Convention to the works of certain international organizations, the Belgian Government considers that it should be made applicable to works first published by the Council of Europe.

Czechoslovakia

Article 2: The competent Czechoslovak authorities agree that television works fixed on some material support should be subject to the same legal régime as cinematographic works. They therefore recommend that the category "television works" be inserted after the category "cinematographic works" in the first paragraph of Article 2.

Regarding the provisions of Article 2, it is further recommended that paragraph (2) be amended in such a way that national legislation in the member countries of the Union shall have the right to apply to television works the same régime as that governing cinematographic works, even if such television works are not fixed on some material support.

Article 7: It is proposed that the term of protection of 50 years, fixed in Article 7 as a principle, should not be fixed in a mandatory manner in respect of all the categories of works protected, owing to the fact that, in this matter, legislation in the different countries varies considerably, and that protection for a term of 50 years in respect of all categories of works might give rise to difficulties in several countries and might reduce the possible number of ratifications of the Stockholm text of the Convention.

Article 9: Proposed Article 9 contains, in paragraph (2), a formula allowing of exceptions to the right mentioned in paragraph (1) of the same Article (right of reproduction). One of these exceptions relates to private use. In the view of the competent Czechoslovak authorities the mention of this exception in Article 9 might lead to the false conclusion that, in the case of other modes of utilization of works referred to in the Convention, private use is not permitted. In order to avoid any mistaken interpretation of the text, it is recommended that the draft Convention should include again Article 3, which would specify the rights mentioned in the Convention in respect of which private use is permitted beside the rights of reproduction.

Article 13: In the proposed text, the provisions of paragraph (1) of the existing text, which had already been the subject of the Rome version of the Berne Convention and were included in the Brussels version, are deleted. The result is to merge, in the right of reproduction granted by virtue of proposed Article 9, on the one hand, the right of publication and, on the other, the multiplication of mechanical recordings of the protected work. Considering that the manner of using the work in the two cases mentioned is not the same, and that moreover, with regard to the economic exploitation of these reproductions, the dissemination of the work by printing and by mechanical recording is effected by different methods, the competent Czechoslovak authorities are of the opinion that it would be more effectual if Article 9 dealt specially with publication by means of printing and Article 13 with the multiplication of mechanical recordings of protected works. At the same time, it is recommended that the provisions of Article 13 be extended so as expressly to cover literary works as well.

Articles 4 and 14: The Czechoslovak position with regard to cinematographic works cannot yet be fully stated because the discussions on all the questions relating thereto are still in progress. The position finally adopted will be stated by the Czechoslovak Delegation to the Stockholm Conference. Even at this stage, however, it may be mentioned that the definition of the maker of a cinematographic work as contained in Article 4, paragraph (6), cannot be considered as satisfactory, and it is recommended either that it be deleted from the text of the Convention or that it be redrafted.

Protocol Regarding Developing Countries: The provisions which form the subject of Annex II differ in essential points from the proposals put forward earlier by the Committee of Experts, and the competent Czechoslovak authorities have the impression that if certain fundamental questions raised by that body were cleared up in advance, the result would be helpful to the discussions on the subject which will take place at the Stockholm Conference.

Proposed Article 1, paragraph (a), of the Protocol is obviously based on Article V of the Universal Copyright Convention. But the automatic transfer of that Article to the Berne Convention cannot be considered as a satisfactory arrangement. In practice, it means that there will be within the Berne Convention two different reservations concerning translation, one according to the existing version of the Berne Convention (until and including the Brussels text) and the other according to the Stockholm text.

Besides, the draft provides a new interpretation for developing countries which, apart from the advantage of being usable after seven years instead of after ten years, presents great disadvantages in the way of administrative complications and the obligation of transfer of royalties. It is not easy to find convincing reasons for this system which, for the developing countries, is less advantageous than that hitherto used by the countries of the Union.

The traditional system of the Berne Convention is likewise contradicted by the provisions of proposed Article 2 of the Protocol, under which the reservations applied in accordance with Article 1 expire after a short period of ten years; under the traditional system each country of the Union is allowed the possibility of deciding for itself at what time it will renounce the reservations previously applied. The period of ten years mentioned in the draft Protocol is too short to enable such changes to take place in the economic situation of developing countries that they can renounce the reservations without difficulty. The competent Czechoslovak

authorities therefore feel that, even for this change in the system of the Berne Convention, there are no convincing reasons.

The Czechoslovak Government presents the above proposals while reserving the right to put forward a definite formula and to submit, if needed, new proposals at the Stockholm Conference.

DENMARK

General Comments: As stated in the introduction to Conference document S/1, the Danish Government has been represented by observers in the Swedish Committee of Experts assisting the Swedish Government in the preparation of the Revision Programme for the Stockholm Conference. There has thus been opportunity for the presentation of Danish viewpoints during the preparation of the revision proposals. The Danish Government, therefore, has only a few comments to make on certain of the present proposals for amendments to the Convention.

Beyond this, the Danish Government has found it justifiable to submit a few new recommendations for amendments to the Convention, as further motivated in the individual recommendations.

Notwithstanding the statement in the Preamble that the Convention has been drawn up in the desire to protect in as effective a manner as possible the rights of authors over their works, and in Article 1 the mention of a Union for the protection of these rights, the Danish Government is of the opinion that a Revision Conference is not precluded from introducing rules to adapt copyright provisions to technical and social developments, and such amendments will, incidentally, very often benefit authors indirectly.

The Danish Government is in agreement with the view put forward by the United Kingdom of Great Britain and Northern Ireland, to the effect that "a complete recasting of the Convention should be undertaken." However, it is agreed that such a review of the formal structure and formulation of the Convention would be very difficult to carry out at the present juncture. Under these circumstances, isolated alterations should not be effected, such as the changing of the designation of Article 2*bis* to Article 3.

Article 2: The special provisions governing works of applied art, industrial designs and models should be deleted from the Convention, so that works of applied art enumerated in the catalogue of protected works in paragraph (1) be given the same status as other artistic works in all the provisions of the Convention. *Article 2, paragraph (6), in the proposal is therefore recommended to be deleted in its entirety.*

Article 2(1): The Danish Government supports the proposal to leave out the existing rule which requires choreographic works and entertainments in dumb show to have been fixed in order to qualify for protection. The Danish Government accepts the motivation given for this in document S/1, page 15, under the heading "Programme of the Conference".

But the Danish Government stresses that by taking this attitude it has not committed itself in regard to the general question as to whether the Convention otherwise prevents the participating countries from or allows them to introduce national legislation requiring fixation for certain categories of works.

In accordance with the generally recognized principle of the universality of art, paragraph (1) mentions works of applied art as being a special group of protected works on a par with other forms of artistic works. The object of copyright law is to protect art in each and every method of expression. Consequently, those productions in applied art which fulfil the general requirements of being a result of personal creative talent should enjoy full copyright protection.

A logical consequence of this is that the special provision which leaves it entirely to the individual country to determine the extent of the protection given to works of applied art should be deleted. The designs and models mentioned in the provision are quite outside the scope of the Berne Convention, and the international protection of these industrial productions should be undertaken within the framework of the Paris Convention. Article 2, paragraph (6), can therefore be deleted in its entirety.

Both the organizations for Danish creators of applied art and the organizations for Danish industry and crafts have emphatically insisted that works of applied art in the Berne Convention achieve completely equal status with other artistic works.

In Denmark, works of applied art have been protected since 1908 under the Copyright Act in the same way as other artistic works, whereas designs and models not fulfilling the general requirements for being accorded copyright protection have only been able to secure protection under the legislation governing designs and unfair competition. The experience gained has shown that this is a satisfactory form of protection for applied art and also one that is enforceable through the courts.

Article 4(5): According to the comments on this provision in document S/1, page 26, a film is considered as "published" as soon as it has been rented to cinema owners except where a cinema showing the film is under direct control of the film producer. The Danish Government finds it doubtful whether it will be possible to enforce the restriction indicated. Publication must probably be regarded as having taken place in all cases where a film is available for showing in cinemas when copies of the film have been delivered for such showing.

*Article 6*bis: Danish copyright legislation, ever since ratification in 1933 of the Berne Convention as revised at Rome in 1928, has provided for a particularly effective protection of the moral rights of the author in his work. This protection has also been applicable to the period following the expiration of economic rights. This is so also in the most recent Copyright Act passed in 1961.

During the author's lifetime, the right of protection is exercised by the author himself. After the author's death and until the expiration of the economic rights, the protection is exercisable in the first place by the heir to the author's rights, by the author's spouse, by relatives in ascending or descending line, or by brothers and sisters. Furthermore, in regard to the latter period, the authorities may prosecute for infringement of the moral rights rule, but only when cultural interests may be considered as being violated by such infringement.

As stated above, the protection of moral rights is everlasting in principle; but after the expiration of the economic rights the protection changes somewhat in character, greater significance being given to the interests of the community in protecting the integrity of the works and in vindicating the author's name in connection with the works. The result of this is a rule which provides that violation of moral rights may only be subject to prosecution by the authorities and only if cultural interests are infringed.

It is laid down in the Act that the Ministry of Cultural Affairs shall, on request, submit a statement as to whether the use of a work after the author's death is deemed to be in contravention of the rules governing moral rights.

As a consequence of these rules, there is in Denmark a comprehensive and extremely illustrative administrative practice, but also the courts have time and again established that there has been infringement of authors' moral rights. Thus, in 1965, the Danish Supreme Court ruled that the utilization of a serious composition in the form of a greatly distorted "pop" version, one year after the expiration of economic rights, constituted a violation of the rules governing moral rights.

In Denmark, very valuable experience has thus been gained as regards the importance and influence of effective provisions concerning the moral rights of the author in his work for the time after his death. This experience is to the effect that such rules have a considerable significance both for the author himself and for the authorities as the guardian of cultural interests. Denmark therefore desires to stress the great importance of introducing the proposed wording of Article 6*bis*.

Article 7(4): Delete the following sentence: "and that of works of applied arts in so far as they are protected as artistic works".

This recommendation is a consequence of the principle enunciated in Article 2, that works of applied art should be accorded equal status with other artistic works.

See remarks on the proposed amendment to Article 2(6).

Article 9: The proposal to give express recognition to the general right of reproduction by introducing in the Convention a special provision on this right must be regarded as an important step. In this connection, however, a necessary condition must be that the rules on the requisite exceptions from the right of reproduction be worded in such a way that all forms of exploitation having considerable economic and practical importance be reserved the author, and, on the other hand, that the exceptions sanctioned in national legislation in favour of important public and cultural needs be retained.

Various organizations of Danish authors have objected to the proposed wording of paragraph (2), since they find that the rules governing exceptions given under (a) and (b) are too vague and therefore make it possible to produce copies of works to an extent and for purposes that will mean an unjustified limitation of the author's right to normal exploitation of his works.

To some extent, the Danish Government is able to support these views, and would therefore find it proper that an endeavor be made to contrive a precise formulation in a restrictive direction, e.g., by stipulating that for the purposes mentioned only a single copy or single copies be produced, which must not be utilized in any other way, and also that the term "administrative" might perhaps be omitted. It might also be considered to delete the rules given under (a) and (b), since they may be regarded as being covered by the general exception rule under (c), or to stipulate that the conditions laid down in item (c) must also apply in the cases mentioned under (a) and (b).

The Danish Government is prepared to support proposals which will mean a more precise formulation and a restriction of the exceptions provided for under (a) and (b).

Protocol Regarding Developing Countries: In the desire to meet the special needs of developing countries for a provisionally lower degree of protection than that provided in the Convention, and with a view to giving the Berne Union a universal character to the highest possible degree, the Danish Government recommends the proposed Protocol.

Since it is very much in the interest of an author, particularly in the case of scientific works, that there is a clear indication of the date when he wrote a work which might be translated without his consent after the expiration of a period of seven years according to the provisions of Article 1 (a), it is recommended to insert a rule to the effect that the year in which the work was first published in the original language shall always be indicated in translated copies of the work.

Proposal for amendment to Article 1 (a), After the words "The original title" insert "the year of the first publication."

France

Article 2: It would be preferable to maintain, after the words: "choreographic works and entertainments in dumb show" the following phrase: "the acting form of which is fixed in writing or otherwise." This clarification seems necessary in order to distinguish the authors from the performers of their works.

Article 4 (4) and (5); Article 6 (2): With regard to Article 4, paragraph (4), sub-paragraph (c)(i), which refers to the maker of cinematographic works, the French Government wishes to voice reservations which may also be made, and for the same reasons, in respect of Article 6, paragraph (2). It does not seem to the Government, even though the maker appears only in a subsidiary capacity, that it is advisable to provide for a régime based on the concept of maker. Consequently, it considers it preferable that the provisions concerning the latter should be disjoined.

On the other hand, it is most desirable that the concept of publication of cinematographic and television works should be defined, since paragraph (5) of Article 4 is obviously not suited to this category of works.

The French Government reserves the right to propose, at the appropriate time, a new definition of the publication of cinematographic and television works. This definition would be calculated to broaden the field of application of the concept of publication and would in many cases avoid recourse to a reference to the maker.

Articles 9 and 10: To make them more precise, these Articles might be drafted in the following form:

Article 9

"Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form."

Article 10

"(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works:

(a) *for individual or family use;*

(b) for judicial or administrative purposes;

(c) in certain particular cases where the reproduction is not contrary to the legitimate interests of the author and does not conflict with a normal exploitation of the work.

"(2) It shall be permissible to make *short* quotations from a work which has already been lawfully made available to the public, provided that they are compatible with fair practice, and to the extent justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

"(3) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit, to the extent justified by the purpose, borrowings from literary or artistic works for use in publications intended for teaching or having a scientific character or in chrestomathies.

"(4) Quotations and borrowings shall be accompanied by an acknowledgement of the source and of the name of the author, if his name appears thereon."

Article 14 (4): The French Government is unable to accept the proposed wording.

In its view, this wording does not guarantee to the joint authors of a cinematographic work the minimum legal security on which, like the maker, they should be able to count, and consequently a *written instrument* is indispensable in the common interest of the authors and the maker.

The Government therefore proposes that paragraph (4) be worded as follows:

"However, and on condition that a written agreement exists between the maker and the authors authorizing the adaptation and reproduction of the pre-existing work or undertaking to bring literary or artistic contributions to the making of the cinematographic work in accordance with the legislation of the country of origin, such authors may not, in the absence of any contrary or special stipulation, object to its cinematographic and televisual exploitation by wire or by broadcasting, provided that the conditions specified in such agreements are complied with in full.

"By 'contrary or special stipulation' is meant any restrictive condition agreed between the maker and the persons mentioned above."

Protocol Regarding Developing Countries: The French Government is fully aware of the difficulties which may be encountered by some developing States, having regard to their economic situation and their social or cultural needs, in making provision immediately for the protection of all the rights provided for in the Convention of the Berne Union.

In this connection, it seems that a distinction may be made, among the developing States, between those which have so far remained outside the Union more especially because they do not yet possess an appropriate system for the effective protection of intellectual works on their territory, and those which are already members of the Union or which, by reason of their cultural advancement, contemplate joining them.

As regards the former, they have the option, until they are in a position to join the Union, of acceding, if they have not already done so, to the Universal Copyright Convention of 6 September 1952, which was concluded precisely for the purpose—without impairing the Berne Convention—of extending to the largest possible number of States in the world a minimum copyright protection.

As regards the latter, whose membership of the Union or desire to join it implies a national legislation compatible with the principles of the Convention, they have, by virtue of various provisions of the Brussels Act, the possibility of restricting, in the light of their economic, social or cultural needs, the exercise of certain rights granted to authors.

The French Government considers it essential, moreover, to safeguard and further improve, to the utmost possible extent, the system affording a high degree of protection which has gradually been built up by the Berne Union and which, in the view of the Government, conditions the development of the cultural heritage common to the whole of mankind as well as the expansion of the national culture in all the developing countries, which have an obvious interest in protecting their own creative workers.

It notes, furthermore, that the programs of co-operation and exchanges already existing and steadily expanding, both at the bilateral level and as part of multilateral arrangements, make it possible to provide the developing countries with the help that they might need for the promotion of their cultural advancement, while abiding by the principles and rules of the Convention.

For the foregoing reasons, the French Government is not in favor of the incorporation in the Convention of possibilities for excessive reservations which would be liable to change the nature of the spirit and the very foundations of the Convention and would be contrary to the goal sought—the development of culture in all countries. Such would be the case with some of the proposed provisions, the application of which might result in the establishment of a system of protection even inferior to that provided by the Universal Convention.

In a desire to take into consideration the concern expressed by several developing States, the French Government agrees to the principle of a Protocol, but it feels that this would only be conceivable in the following conditions:

— The developing countries able to avail themselves of the reservations listed in the Protocol should be defined. The following criterion, which appears to be at the same time justified and easy to apply, might be considered: "Any developing country which, as an independent and sovereign State, has acceded to the Union or has confirmed its accession thereto since the 1st July 1951." As is known, this is the date from which, under Article 28, paragraph (3), of the Convention, countries outside the Union could no longer accede to the Rome Act of 1928 but were obliged to accede to the Brussels Act.

— To the extent that the Protocol can be considered as expressing the idea of an intermediate stage between the Universal Copyright Convention and the Berne Convention, the system of protection resulting from its possible application should on the whole be on an appreciably higher level than that of the Universal Convention.

Moreover, it would be preferable to increase the period mentioned in paragraph (a) to ten years (instead of seven) and the period *post mortem* provided for in paragraph (b) to 30 years (instead of 25).

— The French Government could not in any case accept the reservation contained in paragraph (e) which, whatever may be the intention of its authors, would be liable to give rise to an interpretation so wide that it might finally result in the abolition of all protection for intellectual works. Although Article 10 of the Convention already confers on the countries of the Union the right "to permit, to the extent justified by the purpose, borrowings from literary or artistic works for use in publications intended for teaching or having a scientific character or in chrestomathies", it might be possible to consider maintaining in the Protocol a reservation couched in the following terms: "(e) reserve the right to restrict, to the extent justified by the purpose, the protection of literary and artistic works when their utilization is intended for the exclusive use of scholastic or educational institutions in connection with their pedagogical activities."

Protocol Concerning the Application of the Convention to the Works of Certain International Organizations: There are other international organizations which appear to be entitled to request the extension to the works published by them of the protection provided in the draft Protocol for the benefit of works first published by the United Nations and its Specialized Agencies. Some have already expressed a wish to this effect.

It seems difficult, however, to consider extending the protection of literary works to all international organizations.

It is therefore desirable: (1) to determine the criteria according to which this right would be conferred on such organizations; (2) to specify the works to which the protection would apply; (3) to study the possible effects in this connection of the immunity from jurisdiction which is enjoyed by the majority of international organizations.

In view of the complexity of the question, the proposed text should be the subject of a detailed examination, which might be entrusted by the Stockholm Conference to a special committee whose proposals would be submitted to the next Revision Conference.

GERMANY (FEDERAL REPUBLIC)

Considering, as it does, that the proposals prepared by the Government of Sweden with the assistance of BIRPI concerning the revision of the substantive copyright provisions of the Berne Convention for the Protection of Literary and Artistic Works constitute an excellent basis for the work of the Diplomatic Conference which is to meet in 1967 at Stockholm, the Government of the Federal Republic of Germany, after hearing the interested groups in the Federal Republic, ventures to make the following comments regarding those proposals:

Article 1: No comments.

Article 2(1): The German Government entirely approves the proposal to delete, in regard to the protection of choreographic works and entertainments in dumb show, the requirement contained in the present wording that the acting form should be fixed.

Article 2(2): The proposal that, for the purpose of this Convention, televisual works shall be considered to be cinematographic works, appears desirable. However, it does not seem justifiable to make the protection of televisual works conditional upon their being fixed in some material form.

The reasons for which it is proposed to delete, in Article 2, paragraph (1), in regard to the protection of choreographic works and entertainments in dumb show, the requirement that the acting form should be fixed, apply equally to televisual works. It seems illogical to establish with respect to a single category of works this requirement which does not exist in the case of any other kind of works. Concerning televisual works, more especially, such a rule is liable to give rise to troublesome difficulties owing to the fact that the illicit use of an unfixed work is particularly easy; for a work broadcast directly without being fixed can at any time be recorded on a magnetic tape and used afterwards. Moreover, the proposed rule is lacking in clarity. Ought protection to be secured only when the work has been fixed before the broadcast, or should it suffice that fixation was effected at the time of the broadcast? In the event of its sufficing that the work was fixed simultaneously with the broadcast, ought protection to exist only when the fixation has been effected by the broadcasting organization itself, or should it also exist when a third party has effected the fixation?

In addition, the German Government is aware of the fact that the criterion of fixation as a condition for protection is recognized by national legislation in several countries, and that they are unlikely to renounce this criterion. It therefore suggests that the proposal adopted by the 1963 Committee of Experts be endorsed and that the first sentence of Article 2, paragraph (2), be worded as follows:

"(2) For the purposes of this Convention, works expressed by a process producing visual effects analogous to cinematography shall be considered to be cinematographic works. There shall however be no obligation to protect, as a cinematographic work, a series of visual images which is not recorded on some material support."

As a consequence of this amendment, the words "fixed in some material form" would have to be deleted from the first sentence of Article 14, paragraph (4).

Article 2(3): Under Article 5 of the German Copyright Act, laws, decrees, decisions and other official works do not enjoy the protection granted to authors. In most national legislations provision is made for similar limitations to the protection of such official texts.

Up to now, the Berne Convention contains no express provision permitting a general limitation to the protection of official works. Only in Article 2, paragraph (2), second sentence, is it stated that it shall be a matter for legislation in the countries of the Union to determine the protection to be granted to *translations* of official texts of a legislative, administrative and legal nature. A more extensive rule has not so far been necessary because the Convention does not provide for a general right of reproduction. If, however, such a right is henceforth established according to the proposal made in the Programme of the Conference concerning the wording of Article 9, paragraph (1), the German Government considers it essential to extend the provision contained in the second sentence of Article 2, paragraph (2), so as to reserve to the legislation of the countries of the Union the right to determine also the protection to be granted to the aforesaid *official texts themselves* notwithstanding the provisions of the Convention. In the view of the German Government, the exceptions established in Article 9, paragraph (2), as proposed by the Programme of the Conference, do not make superfluous a special regulation of this question.

In this connection, the German Government also considers it desirable to limit to some extent the exception hitherto provided with respect to translations of official texts. According to the second sentence of Article 2, paragraph (2), of the text in force, the protection of official translations may be limited not only if the translation itself has been made by an official service but also if it has been made by a private person. This seems unfair, since a limitation of copyright protection can only be justified by the official character of the subject of protection. Consequently, translations of official texts should only be subject to the limitation provided if they have been made by an official service itself.

It is therefore proposed that the second sentence of the former Article 2, paragraph (2), be deleted and that a new paragraph be inserted in Article 2, worded as follows:

"It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts."

This new paragraph might be placed between paragraphs (6) and (7).

Article 2(4) and (5): No comments.

Article 2(6): According to the first sentence of this provision, every country of the Union is obliged to grant protection to works of applied art; it is, however, free to do so either by virtue of its laws on copyright protection or by virtue of its special laws on the protection of industrial designs and models. The German Government considers that the ruling contained in the second sentence does not depart from this principle. The German Government therefore interprets this provision as meaning that, in respect of works protected in their country of origin solely as designs and models, protection can only be limited, in the other countries of the Union, to the protection accorded to designs and models if the laws of the countries in question recognize such protection. In the view of the German Government, countries which protect works of applied art by copyright only cannot refuse all protection to those works on the grounds of the provision contained in the second sentence of Article 2, paragraph (6).

In any case, the text of that provision is not entirely clear on the point in question. For this reason, the German Government hopes that a corresponding comment may be included in the records of the Conference. It does not seem necessary to make any alteration in the wording of the text so long as the interpretation set forth above is not disputed.

Article 2(7): No comments.

*Article 2*bis*:* The German Government supports the proposal to extend to broadcasting the provision contained in paragraph (2), because it seems to it unjustifiable to treat the press and radio differently. Nevertheless, it agrees with the opinion expressed in the Programme of the Conference that, if the provision were extended, the sphere of the works in question would have to be limited in some way. Such a limitation might be effected by allowing broadcasts only when the lectures, addresses and other works of a similar nature refer to news.

The German Government would have no hesitation in introducing this limitation, which is necessary to broadcasting, in regard likewise to the reproduction of the works in question by the press, although it fears that such a limitation of the rule in force might not be approved by all the countries of the Union. In consequence, it proposes, as far as the reproduction of works by the press is concerned, that the present text of Article 2*bis*, paragraph (2), be maintained unchanged, and that provision be made for the necessary limitation of the sphere of the works in question only with regard to the proposed new exception for the benefit of broadcasting. A regulation of this kind might be achieved by wording Article 2*bis*, paragraph (2), as follows:

"(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press and, when they refer to news, may be broadcast by radio or communicated by wire to the public."

Article 4(1): The proposed extension of the field of application of the Convention is desirable.

Article 4(2) to (5): No comments.

Article 4(6): The proposed definition of a cinematographic work seems somewhat unsatisfactory, since it may happen that the initiative in the making of the work is taken by a person other than the one who has taken the responsibility for the making. In such a case, it is not clear who should be considered as the maker of the cinematographic work. However, the German Government fears that it may be difficult to find another definition that would be acceptable to all the countries of the Union. It therefore proposes that the attempt to define the maker of a cinematographic work be abandoned, for, while it is desirable, it does not seem to be essential for purposes of the application of the Convention.

Article 5: No comments.

Article 6: No comments.

*Article 6*bis*:* The German Government is pleased to note the proposed extension of this provision.

Article 7(1): By its new Copyright Act, the Federal Republic of Germany has extended the term of protection from 50 years to 70 years after the death of the author. The German Government would therefore be gratified if the Conference could establish a term of protection in excess of that of 50 years which is at present provided as a minimum term. Convinced, however, that the time has not yet come for a general extension of copyright protection, it refrains from submitting a corresponding request.

In defending the interests of authors, the German Government considers it desirable, nevertheless, to adopt and vigorously follow up the suggestions made by the Committee of Experts in 1961 at Geneva and in 1962 at Rome for the determination of the extension of the term of protection by a special arrangement between the countries concerned. It is true that Article 7, the text of which should not be changed on this point, already establishes the possibility, in regard to every country of the Union, of providing for a term of protection in excess of 50 years after the death of the author, an extension which will likewise be enjoyed, as a matter of reciprocity, by works of which the country of origin also recognizes a longer term of protection. But a special arrangement would have the advantage of contributing towards a harmonization of terms of protection which vary considerably from one country to another, and of leading the countries concerned to introduce a longer term of protection.

Article 7(2) to (7): No comments.

Article 8: No comments.

Article 9(1) (new provision): The German Government agrees with the proposal for the incorporation in the Convention of a general provision on the right of reproduction. It shares the opinion expressed in the Programme of the Conference relating to Article 13, paragraph (1), according to which the general right of reproduction includes the composer's right to authorize the recording of his works by instruments capable of reproducing them mechanically, thus permitting the former text of Article 13, paragraph (1), to be deleted.

Since, however, Article 13 maintains in another connection a special ruling on this sort of right of reproduction, the German Government considers it advisable to include in Article 9, paragraph (1), an express reference to the right of recording by mechanical instruments. This would at the same time make it clear that, notwithstanding the present ruling contained in Article 13, which refers only to musical works, this right shall henceforth be granted to all authors. It is therefore proposed that Article 9, paragraph (1), be worded as follows:

"(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of their works including the recording of such works by instruments capable of reproducing them mechanically, in any manner or form."

Article 9(2) (new provision): In the view of the German Government, the proposed provision is calculated to solve the difficult problem of the delimitation of allowable exceptions to the right of reproduction. As far as the details of the proposed ruling are concerned, it has the following remarks to make:

It would be desirable to delimit the reservation concerning private use within the meaning of paragraph (2) so as to avoid too great an interference with the interests of the author. Referring in this context to the studies carried out as a result of the joint resolutions of the Permanent Committee and the Intergovernmental Committee of the Universal Copyright Convention concerning the question of the reproduction of protected works by photographic or similar processes, the German Government suggests that corresponding studies should be undertaken with regard to the question of the reproduction of protected works by recordings on magnetic tape. In view of the fact that the rapid development of these modern processes of reproduction in the private sector is liable to deprive the author's right of reproduction of its substance, it is advisable that such studies should be carried out with vigour so as to afford as speedily as may be a possibility of achieving a better regulation of this question at the international level. On the other hand, the German Government realizes that it will not yet be possible to reach an agreement on this question at the Revision Conference to be held in Stockholm.

Having regard to the considerations of the Study Group reproduced on page 42 of document Berne S/1, the German Government interprets as follows the general reservation appearing under (2) (c): conflict with a normal exploitation of the work can only be supposed or can only exist in exceptional cases when remuneration is granted to the author for the use of his work and in that case also there can be no question of a conflict with other legitimate interests of the author. For instance, Article 49 of the German Copyright Act allows the reproduction in newspapers of certain broadcast commentaries and certain newspaper articles when they bear on current economic, political or religious topics and when adequate remuneration is not granted in connection therewith to the author. The German Government is of the opinion that such a provision is compatible with the new text of Article 9.

In the event of doubts being expressed with regard to the foregoing interpretation of the reservation provided in Article 9, paragraph (2)(c), the German Government would like to see the text of that provision clarified by the following wording:

"(c) in certain particular cases where the permission does not conflict with a normal exploitation of the work or with the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority, and where the permission is not contrary to the legitimate interests of the author."

Article 9 (deletion of former paragraphs (1) and (2)): There is no objection to the proposed abolition of these provisions. The German Government supposes, however, that the deletion of former Article 9, paragraph (2), is not contrary to the rule contained in Article 49 of the German Copyright Act and set forth above, since this rule is covered by the general reservation provided in new Article 9, paragraph (2)(c).

In the event of this opinion encountering doubts and of the corresponding clarification of the text of the reservation in question not being approved, the German Government would find itself obliged to oppose the deletion of Article 9, paragraph (2). It would suggest, however, in this case that the provision be completed in such a manner as to guarantee to authors a right of remuneration on account of the exploitation of their works.

Article 9 (transfer of former paragraph (3)): No comments.

*Article 10 and 10*bis*:* The new wording of these provisions is desirable.

Article 11(1): The Programme of the Conference proposes the deletion of the special provision on the exclusive right of authors of musical works to authorize the public performance of such works by means of instruments capable of reproducing them mechanically, hitherto specified in Article 13, paragraph (1)(ii), because this provision is comprised in Article 11. The German Government has no objection to the deletion of Article 13, paragraph (1)(ii). It considers it expedient, however, to make it clear by a corresponding reference in Article 11, paragraph (1), that Article 11 will cover the right, hitherto provided for separately, of public performance by means of mechanical instruments. Consequently, it is proposed that Article 11, paragraph (1)(i) be completed in the following manner:

"(i) the public performance of their works including the public performance of such works by means of instruments capable of reproducing them mechanically."

Article 11(2): In the view of the German Government, this provision is superfluous and likely to give rise to misunderstandings with regard to the content of the right of translation regulated in a general way by Article 8. It is generally recognized that Article 8, although its text is not entirely clear on the point, confers on the author not only the right of authorizing the translation of his work but also, in respect of the translation, all the rights granted by the Convention to his original work. Article 11, paragraph (2), therefore merely contains a ruling which takes up a general principle already established in Article 8. However, it is not very satisfactory and may give rise to misunderstandings if this principle is stressed in one particular case without being so in other cases, as, for example, in the case of the right of broadcasting within the meaning of Article 11*bis* and of the right of recitation within the meaning of Article 11*ter*. This might lead to the erroneous conclusion that in the examples mentioned the right of broadcasting and the right of recitation would not be granted to authors in respect of translations of their works because Articles 11*bis* and 11*ter* do not contain a rule corresponding to Article 11, paragraph (2).

For this reason the German Government proposes the deletion, as superfluous, of Article 11, paragraph (2), in the same way that the Programme of the Conference proposes the deletion of Article 11, paragraph (3).

*Article 11*bis*:* No comments.

*Article 11*ter*:* The effect of the incorporation in the Convention (Article 9, paragraph (1)) of the general right of reproduction in respect of all literary and artistic works, including the right, hitherto regulated by Article 13, paragraph (1)(i), of authorizing the recording of works by instruments capable of reproducing them mechanically, is that this right, which, by virtue of Article 13, paragraph (1), has hitherto been reserved to authors of musical works, will henceforth be granted to all authors of literary and artistic

works, hence in particular to the authors of literary works. Moreover, the proposed incorporation of the right—hitherto regulated by Article 13, paragraph (1)(ii), and likewise limited to musical works—of public performance by means of such instruments in the general right of performance within the meaning of Article 11 involves an extension of this right to dramatic and dramatico-musical works. It would seem to be a logical consequence of this desirable extension of the rights of authors of literary works that the right of recitation of literary works provided in Article 11*ter* should be extended to the recitation of such works by means of instruments capable of recording them mechanically. The German Government is of the opinion that this fact should be made clear by a corresponding reference, as has already been proposed concerning Article 11, paragraph (1), with regard to the right of public performance.

The German Government also considers it fitting that Article 11*ter* should at the same time be adapted to Article 11 in this respect that the latter comprises, in addition to the right of public performance, the right of authorizing any communication to the public of the performance. Such a complete adaptation of the right of recitation to the right of performance would fill a gap which authors of literary works have long felt to be rather unsatisfactory.

The German Government therefore proposes that Article 11*ter* be worded as follows:

"Subject to the provisions of Article 11*bis*, the authors of literary works shall enjoy the exclusive right of authorizing:

(i) the public recitation of their works including the public recitation of these works by means of instruments capable of reproducing them mechanically;

(ii) any communication to the public of the recitation of their works."

Article 12: In general, use is made in the Convention, as a generic term covering all protected works, of the expression "literary and artistic works" (cf., for instance, Article 10, paragraph (2), and Article 11*bis*). Scientific works are mentioned only in the list of categories of works contained in Article 2, paragraph (1). With the object of adapting Article 12 to this general terminology, the German Government proposes that the word "scientific" be deleted.

Article 13 (deletion of paragraph (1) of the present text): While agreeing to the proposed deletion of this provision, the German Government nevertheless deems it advisable to make it clear that the rights specified therein are incorporated in the new Article 9, paragraph (1), and in Article 11, by including an express reference in those Articles, as has already been stated above with regard to Articles 9, paragraph (1), and 11, paragraph (1).

Article 13(1): The German Government is pleased to note the proposed abolition of the compulsory license with respect to the public performance of musical works by means of instruments capable of reproducing them mechanically.

With regard to the compulsory license that is maintained with respect to the recording of such works by the said instruments, the German Government considers that a certain extension is needed. Musical works are often accompanied by words without the reproduction of which they cannot be used. In order to guard against a considerable diminution of the importance of the compulsory license with respect to the recording of musical works by instruments capable of reproducing them mechanically, it is necessary that that license be extended to the words accompanying musical works. The need for this extension—which involves no material change in the existing legal situation—follows from the proposed incorporation of a general right of reproduction in the new Article 9, paragraph (1), under which for the first time authors of words accompanying musical works are also granted the exclusive right of authorizing the recording of their works by instruments capable of reproducing them mechanically.

The German Government proposes that this necessary extension be achieved by adding after the words "authors of musical works" the words "with or without words."

Article 13(2): The German Government is also in favor of the limitations proposed in connection with this provision. It is necessary, however, to extend this provision likewise to words accompanying musical works. It is therefore proposed that this paragraph be worded as follows:

"(2) Recordings of musical works with or without words made in a country of the Union in accordance with Article 13, paragraph (3), of the Convention signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of these works until December 31, 19. . ."

Article 14(1): The German Government is pleased to note the proposal to add to this provision the right of authorizing communication to the public by wire, as well as the proposal to transfer to this paragraph the provision at present contained in Article 14, paragraph (4). It feels, however, that this new text, too, is unsatisfactory in that it lists only incompletely the rights enjoyed by authors of literary and artistic works with regard to the cinematographic adaptation and reproduction of their works. This results in a lack of harmony between the provisions of Article 14, since new paragraphs (4) and (6) contain a complete list of all the rights including that of broadcasting and that of communication to the public. The German Government therefore proposes that all the rights enjoyed by authors of literary and artistic works with regard to cinematographic adaptation and reproduction should likewise be mentioned in paragraph (1) of Article 14.

The incorporation in paragraph (1) of the right of authorizing broadcasting would at the same time have the advantage of allowing of a clear settlement of the problem of the application of the provisions of Article 11*bis*, paragraphs (2) and (3), concerning the compulsory license for the benefit of broadcasting organizations and ephemeral recordings fixed in some material form. As regards the manner in which this question can be settled, the German Government feels that it would be appropriate to exclude the application of the provision concerning the compulsory license—as is proposed with regard to the corresponding ruling contained in Article 13, paragraph (1)—but to reserve the application of the provision concerning ephemeral recordings.

For the reasons already stated in connection with Article 12, the word "scientific", at the beginning of the new text of Article 14, paragraph (1), should be deleted.

It is therefore proposed that Article 14, paragraph (1), be worded as follows:

"(1) Authors of literary or artistic works shall have the exclusive right of authorizing:

(i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;

(ii) the public performance, communication to the public by wire, broadcasting, and any other communication to the public, of the works thus adapted or reproduced.

The provisions of Article 11*bis*, paragraph (2), and of Article 13, paragraph (1), shall not apply; however, the application of Article 11*bis*, paragraph (3), shall be reserved."

Article 14(2) and (3): No comments.

Article 14(4): In accordance with its earlier statement, in connection with Article 2, paragraph (2), the German Government proposes the deletion in Article 14, paragraph (4), first sentence, of the words "fixed in some material form." Otherwise, the German Government has no objections to make concerning the new text, subject to the following conditions:

(a) The right granted to the countries of the Union by virtue of the second sentence to provide that the authorization or undertaking referred to in the first subparagraph shall be given by a written agreement or something having the same force, should, in the view of the German Government, relate solely to cinematographic works of which the country in question is the country of origin. If, for instance, France avails itself of this right, it should nevertheless be possible, even if the formalities prescribed in France have not been complied with, to invoke there the rule of interpretation

contained in Article 14, paragraph (4), when the work in question is a cinematographic work in the country of origin of which no corresponding formality exists. Any other interpretation would be contrary to the meaning of the rule of interpretation—the purpose of which is to help the maker of the film to obtain the necessary rights for the exploitation of the cinematographic work in all the countries of the Union—since the maker of the film would then be obliged to comply with the formalities prescribed in all the countries of the Union.

It seems to the German Government that the necessary limitation, to cinematographic works of which the country in question is the country of origin, of the effect of a reservation envisaged in the second sentence already follows from the connection between the second sentence and the first sentence of Article 14, paragraph (4), which contains an express reference to the legislation of the country of origin of the cinematographic work. In the event of this interpretation giving rise to objections, however, the German Government suggests that the necessary limitation be made clear by wording the second sentence as follows:

"The countries of the Union may provide, with respect to cinematographic works of which they are the country of origin, that the authorization or undertaking referred to above shall be given by a written agreement or something having the same force."

(b) In the view of the German Government, it further follows from the reference in the first sentence to the legislation of the country of origin that the question whether and to what extent the application of the rule of interpretation is excluded in the case where the author's rights have previously been ceded to a third party, more particularly to an exploiting company, is also governed exclusively by the legislation of the country of origin of the cinematographic work.

Article 14(5) and (6): No comments.

Article 14(7): It would be advisable to delete, in the first sentence of paragraph (7), the word "scientific", as has been proposed with regard to Articles 12 and 14, paragraph (1).

*Article 14*bis*:* The German Government suggests that, as in the case of new paragraph (2) of Article 4, domicile should also be considered, in Article 14*bis*, paragraph (2), as a criterion of eligibility, and that this provision should accordingly be worded as follows:

"(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country of which the author is a national or in which he has his domicile so permits, and to the extent permitted by the country where this protection is claimed."

Articles 15 to 20: No comments.

Protocol Regarding Developing Countries: No comments.

Additional Protocol Concerning the Protection of the Works of Stateless Persons and Refugees: No comments.

Additional Protocol Concerning the Application of the Convention to the Works of Certain International Organizations: The German Government considers that a general reference to the provisions of Articles 4, 5 and 6 of the Convention is lacking in clarity, since these provisions determine in different ways the protection granted by the Convention. Moreover, the proposed ruling does not take account of the fact that in the system of the Convention the country of origin of the work to be protected plays a leading part. It is not possible to deduce from the provisions of Articles 4, 5 and 6 what country should be considered as the country of origin of a work which has been first published in a country outside the Union and the author of which is not a national of any country of the Union. However, this is the only case in which the Additional Protocol is of practical significance, since in all other cases the works published by the organizations in question are already protected by the Convention itself.

Consequently, the German Government suggests that the text of the Additional Protocol be revised, so as to avoid misunderstandings in applying it.

IRELAND

Article 2(1): The deletion of the condition of fixation is not favored.

*Article 2*bis*:* No bar should be placed on international legislation extending to broadcasting organizations' rights given to the press.

Article 6(2): It is considered that the new provisions should allow the maker to be regarded as author. Irish copyright legislation establishes copyrights in a cinematographic film in its own right, separate from any copyright that may subsist in any work incorporated in the film. The copyright is vested in the maker who is the person by whom the arrangements necessary for the making of the film are undertaken.

Article 6(3): No need is seen to make the proposed extension for the protection of works of architecture obligatory. Irish legislation does not provide this protection.

*Article 6*bis*:* The author's moral right is protected in Ireland under the common law. Such rights are regarded as ceasing at death. The proposal to extend the rights after the author's death is not supported.

Article 7(4): Contracting States should not be required to protect works of applied art for so long a term as that proposed.

Article 9: The inclusion of a right of reproduction is not favored because of the difficulty of defining exceptions and matters to be left to domestic legislation.

*Article 10*bis*:* It is felt that the wording of the proposal needs clarification.

*Article 11*bis*:* It is considered that national legislation should not be prevented by the Convention from allowing broadcasting organizations to employ others to make their ephemeral recordings.

Article 14: National legislations which do not find it necessary to do so should not be required by the Convention to provide presumptions in favor of the maker of a cinematographic work.

Protocol Regarding Developing Countries: On the information at present available as to the need for and the consequences of the adoption of this Protocol it is not possible to put forward a final view at this stage.

ISRAEL

1. The Government of Israel has the honor to submit its comments and suggestions on the proposals for the revision of the Berne Convention set out in document S/1 of May 15, 1966.

By way of preliminary the Government of Israel desires to pay tribute to the Government of Sweden and the Swedish/BIRPI Study Group, as well as the different Committees of Experts, for their labors in undertaking a thoroughgoing examination and analysis of the problems involved and the elegant and lucid presentation of the report of their deliberations and constructive proposals in anticipation of the Stockholm Conference.

The comments and suggestions which follow are offered in the same positive spirit and to the intent that the vital revision work of the Conference shall be ensured, so far as may be the success it warrants.

2. A Committee of Experts appointed by the Minister of Justice of the State of Israel is now in the process of considering, in association with representatives of various interested groups, the whole question of the local law of copyright but has not yet presented any report. For this reason the Government of Israel cannot generally commit itself in advance and must reserve the right to make further comments and sug-

gestions both before and during the course of the Conference. The Government of Israel also feels obliged to reserve its right of submitting additional observations after it has had the opportunity of considering the comments and suggestions of other members of the Conference. In the result, it may perhaps find it ultimately necessary to revise its views and position not only on all or some of the matters hereinafter set out but also on those proposals which are not expressly dealt with in this memorandum.

3. Although fully aware of the consequential difficulties which may arise because countries have adopted different modes of applying the Convention in their national law, the Government of Israel would respectfully urge the desirability of a technical redrafting of the Convention and a systematic rearrangement of its Articles. The Convention has grown by periodical amendment of and additions to its original form over a very long period indeed, and it is suggested that the time is certainly ripe for recasting it in modern and more streamlined form and logical pattern in some such manner as follows—subject matter to be protected, rights granted, eligibility for protection, reservations, and preservation of rights under the various texts of the Convention. The need for redrafting is increased by the realization of serious discrepancies in language, as a comparison of the French and English text reveals, which arouses the fear that in considering the present proposals members may sometimes be at cross purposes in discussing wholly different things or laboring under misapprehensions as to what is intended: see, for example, the difficulties involved with the term "lawfully published" in Article 4(5) and "national" in Article 5.

The Government of Israel would be happy to play its part in this task.

4. The following comments and suggestions are respectfully offered on the proposals made in document S/1.

Article 2(1): The Government of Israel finds the omission of all reference to fixation as a condition for the protection of choreographic works and dumb shows rather unhelpful for the following reasons.

It must be a rare event even for choreographic works not to have their origin, or not to be "expressed", at least in broad outline in some material form to which copyright can and would attach.

The central problem is to identify the author and to distinguish between author and performer. The latter as such is protected by the Rome Convention of 1961 and is not the subject of copyright in the traditional sense.

As in other areas of law, it is unreal and impractical to distinguish between substantive and adjective law. Proof of copyright in an "unfixed" work is extremely difficult, if not impossible, to establish, and in the event such a work might only on very rare occasions be protected, a result which would defeat the whole purpose of the law. The evidential aspect in this regard and in this sense is vital to give proper effect to the Convention. It is not to be confused with modes of proof which may very well vary from country to country.

Article 2(2): It is to be observed that it is illogical to insist upon fixation in the case only of cinematographic works, as distinguished from other works, including choreographic works and dumb shows. If such a rule is adopted, it will be discriminatory of live television shows.

If the suggestion under paragraph (1) is not adopted, the Government of Israel suggests for the sake of uniformity that the words "and fixed in some material form" should be deleted and a proviso added at the end of the paragraph in the following terms: "However, it shall be a matter for legislation in the countries of the Union to permit such works to be protected under condition that they are fixed in some material form, and such protection shall apply only in the countries which have so provided."

Article 2(6): It is noted that the phrase "industrial designs and models" does not form part of the definition of "literary and artistic works" in paragraph (1). The phrase is also not mentioned in Article 7(4). This might well lead to confusion and difficulties of interpretation. The question of industrial designs and models appears to be outside the scope of copyright and involved in the protection of industrial property under the Paris Convention.

As the Government of Israel understands the second sentence of paragraph (6), the obligations assumed by countries under the Paris Convention may be affected and, therefore, unacceptable to most, if not all, of them.

In the light of the foregoing the Government of Israel has the following suggestion to make for amending the paragraph: "(6)(a) Subject to the obligation to provide a minimum term of protection under the provisions of Article 7, paragraph (4), of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art as well as the conditions under which such works shall be protected. (b) Works of applied art protected in the country of origin solely as designs and models and not as works of applied art shall be entitled in other countries of the Union only to such protection as shall be granted to designs and models in such countries and not to the rights granted under this Convention."

Article 2(7): Two difficulties of interpretation are noted. First, the introduction of the word "facts" may give rise to the implication that protection is given not to the form of the work but rather to what is expressed therein, i.e. ideas as facts. Second, "items of information" could embrace the practice of substantial "reference", short of entire reproduction, to literary and artistic works, which may in some circumstances possess the character of information and might, therefore, impinge upon the provisions of Articles 2*bis*(2), 10 and 10*bis*.

The Government of Israel doubts whether in view of these difficulties it would not be better to retain Article 9(3) in its present version as the text of Article 2(7).

*Article 2*bis*(2):* There is no reason why the right of reproduction given by national legislation should be limited to the medium of the press and not be extended to news broadcasts and the like. It is, therefore, proposed that at the end of the paragraph (2) there be added the following:

"or recorded, reproduced and communicated to the public by broadcasting or communication to the public by wire or other means of radio diffusion in the course and for the purpose of reporting current events."

Article 4(2): The Government of Israel submits the following to replace the proposed text: "(2) Authors who are not nationals of one of the countries of the Union, including stateless persons, and having habitual residence in one of them shall, for the purpose of this Convention, be assimilated to the nationals of that country. A legal entity shall be treated as a national of the country in which it has its headquarters."

The reasons for this suggestion are:

The treatment of stateless persons should not be a matter for a Protocol, permissive in the manner of Annex III, but should be incorporated in the body of the Convention.

"Habitual residence" is a question of fact, while "domicile" one of law. A person may, therefore, have only one habitual residence but many domiciles. The term "domicile" is also differently construed in different countries.

The reference to "nationals" throughout the Convention could be simpler and without qualification, e.g. in Article 4(4)(c)(i).

Article 4(4)(c): The general rule is set out in item (iii) and the exceptions thereto are contained in item (i) and (ii). It is, therefore, suggested that the order of the items should be rearranged accordingly in the following manner: "(c) in the case of unpublished works or of works first published outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that: (i) where the works are cinematographic works, the maker of which is a national of a country of the Union, the country of origin shall be that country, and, (ii) where the works are works of architecture erected in a country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union, that country."

Article 4(5): Owing to serious differences between the French and English texts and the importance of clear definition, for purposes of the entire Convention, the Government of Israel suggests that this paragraph should read as follows: "(5) For the purposes of this Convention, a work shall be deemed to have been published if copies thereof have been lawfully issued and made available in sufficient quantities to the public..."

Article 5: This Article is not comprehensive enough. While it complements Article 4(1) in dealing with protection in the country of origin for published works, it does not cover the cases referred to in Article 4(4)(c).

The Government of Israel, therefore, proposes the following text:

"Authors who are nationals of one of the countries of the Union shall enjoy in the country of origin of their work the same rights as national authors even if they are not nationals of that country."

Article 6(2): In order to clarify the text and render the rights of authors in cinematographic works more secure, the following is suggested: "(2) Authors who are not nationals of one of the countries of the Union shall enjoy for their cinematographic works which are unpublished, or if published are not entitled to enjoy, any right for such works under this Convention by virtue of that publication, but the maker of which is a national of one of the countries of the Union, the same rights in that country as national authors and, in the other countries of the Union, the rights granted by this Convention."

It is doubtful whether this provision even as amended would apply automatically to those countries which grant rights only to the makers who have to make their own arrangements with the authors.

Article 7(3): In view of the proposed deletion of present Article 7(5), dealing with posthumous works, an amendment of the last sentence in this paragraph is called for in order to cover the case where disclosure of real authorship is made by some person other than the author himself; otherwise, certain posthumous works—if anonymous or pseudonymous—may never enjoy protection.

The following is suggested to replace the second and third sentences of this paragraph: "When the pseudonym adopted by the author leaves no doubt as to his identity or if the identity of the author of an anonymous or pseudonymous work is disclosed, the term of protection shall be that provided in paragraph (1)."

Article 7(6) and (7): The Government of Israel proposes to combine paragraphs (6) and (7) and provide that as a rule national treatment shall prevail even if a longer period of protection is provided for, unless specifically excluded. This simplifies the matter for reference and is more in line with the Convention.

The combined text will be: "The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs and that term shall be applied whenever protection is claimed in such country. However, such a country may provide that the term of protection for any work shall not exceed the term fixed in the country of origin of that work."

*Article 7*bis*:* Present Article *7bis* is to be preferred since the proposed text does not solve all the problems that may arise in connection with joint authors, as for instance when one of the joint authors is a national of a country of the Union and the other is not a national nor domiciled or habitually resident in any country of the Union. It seems preferable to leave the matter as a whole to the courts rather than deal with part only thereof.

Article 8: It is illogical to permit reproduction and not translation in the same instance. It seems to the Government of Israel that the rights of reproduction would in such a case be rendered ineffective without the right of translation.

The Government of Israel accordingly suggests that the following should be added at the end of the proposed text: "Translation shall be authorized in all cases where reproduction of the works is permitted under this Convention to the extent and for the purposes of such reproduction."

Article 9(1): In welcoming this new provision in principle, since it makes express what until now has been implicit, it is the understanding of the Government of Israel that "reproduction" includes reproduction by the various mechanical means available.

Article 9(2): In view of the deletion of present Article 9(2), the proposed paragraph may say too much or too little. As to paragraph (2) (c), we may also advert to the uncertainty which surrounds the words "in certain particular cases", "legitimate interests" and "normal exploitation". Further, "legitimate interests" and "normal exploitation" are in terms cumulative factors.

In order to avoid some of the inherent difficulties which may arise on applying these provisions, it is suggested that a general provision should replace paragraphs (a), (b) and (c) in the following form: "It shall be a matter for legislation in the countries of the Union to permit reproduction, if the reproduction is not contrary to or in conflict with the normal exploitation of the work by the author in the country concerned provided that where normal exploitation is restricted by administrative regulation, the user of the copyright material should be under the duty to make compensation to the author."

By "administrative regulations" is intended such things as monopoly in broadcasting and import and currency restrictions, which may impede the promotion of the author's legitimate interests.

Article 10(1): It is not clear whether the retention of the existing words at the end of the sentence in this paragraph is intended to extend the scope of the provision beyond that which is already covered by the words proposed to be added. If indeed compatibility with fair practice is, as it should be, the criterion with regard to quotations generally, then the words from "including" to the end seem to be unnecessary. If, however, these words are meant to enlarge the permission granted, they might be restrictively interpreted to exclude, on the one hand, "quotations" of drawings and music appearing in newspapers and periodicals and, on the other hand, summaries by broadcasting and other modes of public communication.

Article 10(2): In view of Article 20 there is no need to retain any reference to special agreements.

In addition to the authority "to permit", members should also be allowed "to regulate."

To give effect to the foregoing, it is suggested that the paragraph should be worded as follows: "(2) It shall be a matter for legislation in the countries of the Union to permit or to regulate, to the extent justified by the purpose, borrowings from literary or artistic works for use in publications intended for teaching or having a scientific character or in chrestomathies."

The precise difference between "borrowings" in this paragraph and "quotations" in paragraph (1) calls for clarification.

*Articles 11 and 11*bis*:* These two Articles must be made subject to the proviso that nothing therein contained shall prejudice the right of any country to control and regulate trade restrictive and monopoly practices.

Article 13(1): Instead of the opening words of proposed paragraph (1) ("Each country... for itself"), the more usual formula ("It shall be a matter for legislation etc.") should be adopted.

The provisions of this paragraph should not be confined to "musical works" but should extend to "all works usually recorded" or to the other categories of work mentioned in Article 11(1).

Article 13(2): This paragraph is purely transitional and should appear among the transitional provisions.

Article 13(3): To avoid injustices which may possibly arise and in order to give the whole Article more consistent application, the Government of Israel suggests that the words

"where they are treated as infringing recordings" in paragraph 13(3) be replaced by the words "which does not exercise its powers under paragraph (1)."

This suggestion is made in order to avoid any conflict with paragraph (1) and the injustices which may arise therefrom when one country regards a recording permitted in another country under paragraph (1) as an infringement under its own law.

Article 14(1): To avoid any conflict of interpretation it seems necessary to make this paragraph subject to the provisions of Article 10*bis*.

Article 14(2): In the case of non-national cinematographic works the application of this paragraph will involve an inquiry into the question of who is the "author", particularly in those countries which recognize and protect the "maker" rather than the "author". A kind of *renvoi* might thus emerge—a feature which is in our view undesirable. Accordingly, it is suggested that it be left to the country in which protection is sought to determine according to its own legal principles whether the "author" or the "maker", as the case may be, has copyright. Even where the maker has copyright, the rights of those who may have copyright in the works which together go to constitute the final cinematographic work will not be prejudiced. The enforcement of the rights of such "contributory" authors will be a matter to be settled by contract between them and the maker.

The paragraph would accordingly read as follows: "The maker of the cinematographic work shall be considered as the author thereof. Countries of the Union may, however, by their own legislation provide that the copyright in the cinematographic work shall be vested in other authors who have participated and contributed in the creation of the cinematographic work provided that such provision shall apply only in such countries and to cinematographic works of which the country of origin also so provides."

Article 14(3): The term "literary and artistic works" has already been defined in Article 2(1) to include productions in the scientific domain. Hence it is unnecessary to include the word "scientific" in this paragraph.

Article 14(4): To be consistent with the suggestion in respect of paragraph (2), this paragraph should be introduced by the words "Where under the legislation of the country in which protection is sought the maker is not considered the author of the work then the following rules shall apply..." (followed by the terms of proposed paragraph).

Article 14(6): In respect of musical works the rights must be limited to the matter of royalties which the authors are entitled to receive; an impossible situation may otherwise be created. It is, therefore, proposed that this paragraph should be in the following form: "(6) Unless national legislation provides otherwise, the provisions of this Article shall not exclude the right of the author of musical works to receive equitable remuneration for the public performance, communication to the public by wire, broadcasting, any other communication to the public, of such musical works, with or without words, used in the cinematographic work, to be determined by mutual agreement with the maker or author of the cinematographic work or, failing such agreement, by a competent authority."

Article 14(7): In view of our previous suggestions, this paragraph is superfluous.

Annex II (Protocol Regarding Developing Countries): The Government of Israel approves of the principle to incorporate specific provisions in the Convention, which recognize and cater for the special needs of the developing countries in matters of copyright. It is of the highest importance that such countries should be able fully to adhere to the Convention and derive all such assistance as is possible in this regard.

The Government of Israel does not believe it to be a shortcoming or otherwise disadvantageous that the term "developing countries" has itself been left undefined. Indeed, since the term expresses an essentially relative concept, it defies definition in advance and may be best left to pragmatic interpretation.

One technical suggestion might, however, be proffered. The terms of the relevant paragraphs mentioned in Article 1(c) and (d) of the Protocol should be reproduced in full or in such other manner as to obviate the need to refer back to two other documents and to facilitate the application of the Protocol.

Italy

Article 2(1) and (2):

As regards choreographic works, it seems advisable to maintain the present wording, not with the aim of insisting on the accomplishment of a formality, but so as to provide an element of certainty in contractual relations concerning such works.

Televisual and broadcasting works constitute independent categories of intellectual works and should therefore be expressly mentioned in the list in paragraph (1).

As a result, it seems that the concept of assimilating television to cinematography, as introduced in paragraph (2) of Article 2 of the proposals, should be abandoned, since it might involve the extension to television organizations of the very special system which the proposals establish as regards makers of cinematographic works.

Article 4(6): Doubts might be raised as to the need to introduce a definition of the maker of a cinematographic work in view of the fact that the Convention generally refrains from definitions, even as regards author and publisher.

Article 9(1): It is considered that the reference to the right of reproduction should be accompanied by a reference to the right of distribution, because the right of reproduction should be protected even independently from the distribution of copies of the reproduced work.

Article 9(2)(a) and (c): It is suggested that in (a) the term "private use" should be replaced by "personal use", since the concept of "private" might lend itself to too extensive an interpretation.

For the same reason it is suggested that "special cases" in (c) should be replaced by "exceptional cases."

Article 10: With regard to the right of quotation, it is considered that if it is decided to delete the word "short" in the Brussels text, there should at least be an express indication of the purposes for which a quotation can be regarded as lawful.

Article 14: The proposals appearing in the proposed new text of Article 14 omit certain provisions (known as the "transitional provisions") adopted by the 1965 Committee of Governmental Experts regarding the preservation of the so-called "film copyright" and "legal assignment" systems.

Reasons for this omission are given in the Commentary (see page 64), but they cannot be regarded as entirely satisfactory for the purpose of safeguarding the application of the Italian system.

Consequently, quite apart from certain other observations which could be made on specific points in the proposed text, it seems necessary for the latter to reproduce the provisions contained in Alternative B, paragraph (7), of the draft prepared by the 1965 Committee of Governmental Experts.

Protocol Regarding Developing Countries: The Italian Authorities are in full sympathy with the principles on which this Protocol is based.

At the same time the adoption of objective criteria is proposed for uniformly determining the countries entitled to the benefit of the reservations stipulated in the Protocol. Consideration might also be given to the advisability of making these reservations subject to the same principles as inspired the provision in Article IV(4) of the Universal Copyright Convention.

[*Editor's Note: The following has been communicated to BIRPI as an "Annex" nine days later than the foregoing*]:

The Ministry refers to the text of the Proposals for Revising the Berne Convention for the Protection of Literary and Artistic Works prepared by the Swedish Government with the assistance of BIRPI (BIRPI document S/1 of May 15,

1966), and in particular to the Additional Protocol (Annex IV, p. 99 of the said text) concerning the application of the Convention to works first published by certain international organizations.

The Ministry hereby kindly requests that the further consideration of the above-mentioned draft Additional Protocol should not be limited solely to the case of the United Nations and the Specialized Agencies connected therewith but should cover all international organizations, and in particular EEC, EURATOM and ECSC.

JAPAN

Article 2 (Choreographic works and entertainments in dumb show): The existing text of the Brussels Act which requires that the acting form should be "fixed in writing or otherwise" should be retained because a certain fixation is necessary for identification of such works and entertainments and of their authors and also to avoid any confusion between the protection of the author and that granted to the performer.

Article 2 (Cinematographic works): The Japanese Government supports the suggestion that televisual and assimilated works ought to be subject to the same régime as cinematographic works, provided that they are fixed on some material support. However, recordings of images or of images and sounds, prepared by a broadcasting body as a mere technical means exclusively for the use of the broadcasting to be done with permission, should not be considered to be cinematographic works in view of their purpose of use.

Article 4(1): The Japanese Government supports the proposal to make the nationality of the author a general criterion of eligibility for protection under the Convention.

Article 9: The Japanese Government agrees to the proposal that a rule concerning the general right of reproduction should be incorporated in the Convention, on the understanding that the proposed paragraph (2) will not reject the possibilities of allowing various exceptions already recognized in domestic laws.

However, since there is still need to retain a provision similar to the existing text of paragraph (2) of Article 9 of the Brussels Act for the benefit of the press and broadcasting world in various countries, the Japanese Government suggests that the following provision be added as paragraph (2) of Article 10:

"Articles on current economic, political or religious topics may be reproduced by the press *or be broadcast* unless the reproduction or *the broadcasting thereof* is expressly reserved; nevertheless, the source must always be clearly indicated. The legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed."

Article 10(1): The Japanese Government is in favor of the proposed text, but if the present provisions are to be amended as proposed, the last phrase "including quotations from newspaper articles and periodicals in the form of press summaries" being covered by the first phrase becomes unnecessary and, accordingly, should be deleted.

*Article 11*bis*(3):* So long as recordings in question remain ephemeral as a mere technical means for broadcasting purposes (even if they are not prepared by a broadcasting body by means of its own facilities and used for its own emissions), it is unnecessary to require the authorization of authors for such recordings. So, the Japanese Government proposes to replace the words of paragraph (3) of the Brussels text "by means of its own facilities and used for its own emissions" by the words "as a mere technical means for the use of the broadcasts made with permission."

Article 13: In view of the fact that mechanical rights have been recognized as an established legal concept separate from that of reproduction in the Convention and domestic laws, therefore, it is suggested to retain the existing provisions of paragraph (1) of Article 13 of the Brussels Act (but subject to the deletion of the words "(ii), the public performance by means of such instruments of works thus recorded," this being covered by Article 11).

The Japanese Government has no objection to the proposed amendment to paragraph (2) as well as to the proposed deletion of (3) of the Brussels text, and to the suggestion that the transitional period which is to be set due to the deletion of paragraph (3) of the Brussels text be three years.

Article 14(4) to (7): The Japanese Government supports in principle the introduction into the Convention of a rule of interpretation for agreements between authors who undertake to bring literary and artistic contributions to the making of the cinematographic works and makers of such work. However, it is not agreeable for the Japanese Government, in spite of the proposed provisions of paragraph (7), that such rule of interpretation should be made in the Convention concerning agreements between authors who authorize to make a cinematographic adaptation and reproduction of pre-existing works and authors of cinematographic works. For, with regard to contracts of the latter category, such rule of nterpretation will limit excessively the rights of authors of pre-existing works.

There should be an express provision in the Convention that the rule of interpretation in this Convention shall not preclude countries which apply the systems of film copyright and legal assignment, from retaining these systems (for example, provisions similar to paragraphs (6) and (7) of Article 14 of Alternative B, proposed by the Study Group).

Protocol Regarding Developing Countries: The Japanese Government agrees in principle to the proposal. However, as a consequence of the Japanese proposal to retain a provision similar to the existing provision of paragraph (2) of Article 9 of the Brussels Act (see observations concerning Article 9, above), Article 1, paragraph (c), of the Protocol should be deleted.

Additional Protocol Concerning the Protection of the Works of Stateless Persons and Refugees: The Japanese Government agrees to the proposed Additional Protocol.

Additional Protocol Concerning the Application of the Convention to the Works of Certain International Organizations: The Japanese Government agrees to the proposed Additional Protocol.

MADAGASCAR

The proposed amendments to Articles 1 to 20 (substantive copyright provisions) of the International Convention for the Protection of Literary and Artistic Works (Berne Convention) give rise to no objection on the part of the Malagasy Government.

PORTUGAL

The following comments represent purely general views, which may be modified or supplemented in the light of new data or of a revaluation of existing data.

Article 2(1) (Choreographic works and entertainments in dumb show): The Programme proposes the deletion of the requirement that the acting form of these works shall be fixed in writing or otherwise, as a condition of protection. After summarizing the discussions held on this point, it concludes that there is good reason to believe that, in national legislation, protection may continue to be conditioned by fixation in some material form.

This statement, it seems to us, is extremely risky unless it finds support in the text of the Convention.

Without disputing the reasons of principle advanced in favor of the deletion, the Portuguese Government feels that practical reasons militate in the opposite direction; and this, not because of a theoretical impossibility of distinguishing between the work and the performance, but because all the practical objectives envisaged can equally well be met through protection of the performer.

Article 2(1) and (2) (Works considered to be cinematographic works): The aim of the proposed amendment is not, strictly speaking, to include in the Convention new categories of works but to ensure that the régime governing cinemato-

graphic works shall automatically be extended to television works, provided that they are fixed on some material support. It is important to ascertain whether the régime proposed in the case of the former is also applicable to the latter. The Portuguese Government has come to an affirmative conclusion, subject to the proposals made further on, with regard to Article 7, paragraph (2).

The Portuguese Government has, in any case, two comments to make on proposed paragraph (2):

1. The problems involved in the determination of what is meant by fixation, which are very serious in respect of television works, have not been solved.

2. The proposed wording succeeds particularly in establishing an inadmissible régime with regard to works which produce visual effects analogous to those of cinematography and which are not fixed in some material form. The proposed wording has already been interpreted as meaning that these works are not protected, but this is not apparent from the text. Although they are not considered to be cinematographic works, these works continue to be included in the general concept of literary and artistic works as set forth in paragraph (1), since the latter specification is solely given as example. It would seem to follow that these works, in respect of which it was sought to establish a régime less favourable than that for works fixed in some material form, would in fact benefit from a more favorable régime. In particular, as regards the term of protection, this would necessarily continue throughout the life of the author, and then for 50 years after his death!

It is therefore necessary to clarify this point, for instance, by adding a sentence simply stating that "the countries of the Union shall have the right to protect works thus expressed which are not fixed in some material form", and not, as proposed by the 1965 Committee of Governmental Experts, that the countries of the Union shall have the right to protect such works "as cinematographic works."

Article 2(2) (Works considered to be photographic works): The Portuguese Government has only one comment to make on this sub-paragraph, namely, that it should constitute a separate paragraph, numbered (3). Otherwise the Government is entirely in agreement with the proposed doctrine.

Article 2(6) (Works of applied art and industrial designs and models): The Programme proposes that the freedom, hitherto existing, to determine the conditions of protection of these works, shall be subject to the restriction resulting from the establishment of a term of protection in Article 7, paragraph (4). The Portuguese Government is in favor of the proposed amendment.

Article 2(7) (Items of information): The Programme proposes that the present paragraph (3) of Article 9 be transferred to this paragraph as a consequence of the changes proposed in Article 9.

As the Portuguese Government does not agree with those changes, it sees no reason for the transfer of this provision.

*Article 2*bis *(Extension to broadcasting and to communication by wire of the right, already allowed to the press, of reproduction of certain works):* The Programme does not endorse this proposal, put forward in the course of the preparatory work.

But the reasons given are not convincing, because:
either the rights allowed to the press are unnecessary—an idea that no-one would uphold;
or they are necessary, and the Portuguese Government sees no sufficient reason why they should not be extended to other media of communication.

Article 4(1) (Extension of protection to the works of authors who are nationals of one of the countries of the Union, published outside the countries of the Union): The Portuguese Government has no objection of principle to raise against this extension. Nevertheless, as the Berne Convention entails very strong bonds maintained over a period which, for our economic and social circumstances, is too long, the Portuguese Government cannot agree to this generalization if the present situation continues. It would be another matter if other terms of protection, similar to those of the Universal Convention, could be used.

Article 4(2) (Extension of protection to the works of authors domiciled in one of the countries of the Union): In regard to acceptance of these amendments the Portuguese Government would encounter the same obstacles as those mentioned in connection with paragraph (1).

It should be added that, since domicile is an easily changeable connection, frequent difficulties are likely to arise in the determination of the applicable law. It does not seem admissible to apply the system of the Convention to works which an author who is a national of a country outside the Union has published in the country of origin, although he may be living at present in another country outside the Union for the sole reason that, between-whiles, he was domiciled—if only for a very short time—in a country of the Union. Consequently, it does not seem justifiable to forbid that these works should cease to be protected when the author changes his domicile.

Article 4(4) (Determination of the country of origin): The Programme proposes an interesting system, whereby a country of origin is in all cases attributed to the works which, by virtue of other provisions, come under the protection of the present Convention.

The Portuguese Government agrees with the proposed system, to the extent that it is not prejudiced by the rejection of the two previous paragraphs, and subject to what is said below concerning cinematographic works.

The definition of simultaneous publication, contained in a final sentence, independently of any other paragraph, should, from a technical point of view, constitute a new paragraph (5), the following paragraphs being renumbered accordngly.

Article 4(4) (Determination of the country of origin of cinematographic works): In the proposed system, a separate reference is made to the origin of cinematographic works. From a combination of all the various sub-paragraphs, it emerges that this origin is determined:

(a) by the place of publication (sub-paragraphs (a) and (b));

(b) if the work has not been published, by the nationality of the maker, or by his domicile or headquarters (sub-paragraph (c)(i));

(c) if the previous rules are not applicable, by the nationality of the author (sub-paragraph (c)(iii)).

The rule contained in sub-paragraph (c)(i) would find its justification in the amendment proposed for Article 6, paragraph (2). The Portuguese Government is not in agreement with this amendment, as will be explained later; it feels, however, that this position is not prejudicial to the reference to the person of the maker in connection with the determination of the country of origin of the work, since, as a matter of fact, this reference appears to derive from the nature of the cinematographic work.

A cinematographic work necessarily implies a *producing company;* it is therefore normal that the place where this operates should be considered as the place of origin of the work. The place of publication is not significant, whether publication is understood as meaning divulgation (what importance attaches, today, to the place where the film had its first showing?) or whether the place of publication is considered in its most restricted sense, towards which, incidentally, paragraph (5) of Article 4 seems to incline. The place of nationality of the author is even less significant.

At all events, sub-paragraph (c)(i) also contains another circumstance, placed moreover before the domicile or headquarters, which seems to us of equally slight significance, namely, that of nationality of the maker, which is much less relevant than the place where the producing company operates.

The Portuguese Government therefore suggests that cinematographic works be dealt with separately, in a paragraph numbered (5), which might be worded as follows:

"The country of origin of cinematographic works shall be considered to be the country of the Union in which the maker has his domicile or headquarters or, if this hypothesis does

not apply, the country of the Union of which the author is a national."

Article 4(5) (Publication): The Programme proposes that the definition of publication, contained in Article 4, should apply to the Convention as a whole.

Considering that, in current use, the French term *publier* (to publish) means *rendre public* (to make public), the Portuguese Government fears that an artificial acceptation of publication may come into general use. In a restricted acceptation, it would perhaps be better to use the (French) term *éditer*. [*Translator's note:* This remark does not seem to apply to the English text.] However, no objection will be raised on this point.

It seems to the Portuguese Government that the definition of *publication* is not very apt, and it is only by artifice that it can include the examples referred to during the preparatory work—such as, for instance, the hiring to theatres of one single copy of a musical work.

The Programme adds the requirement that publication shall be *lawful*. The Portuguese Government can only agree to this addition if the problems to which it gives rise are solved. It is possible to imagine that the author is not opposed to unlawful publication; or that, under the national legislation, the author can do no more than claim compensation in consequence of the unlawful publication of the work. In this case it cannot be said that the work is not published.

Article 4(6) (Definition of the maker): The Programme proposes that the Convention shall contain a definition of the maker. The Portuguese Government is in agreement with this proposal.

However, the terms of the definition do not seem very satisfactory, and the fact that the formula already exists in an international instrument does not suffice to secure its unconditional acceptance. "To take the initiative" is anodyne, "to take the responsibility" is ambiguous. It seems preferable to us (although the formula should be improved) to adopt the definition contained in Article 125 of the Portuguese Copyright Code, which states that the maker is the person or entity that undertakes and organizes the making of the work, assuming entire responsibility for its production, whether from the technical or the financial aspect.

Article 5 (Rights of authors who are nationals of one of the countries of the Union, and who publish their works in another country of the Union): The Portuguese Government supports the proposed change, inasmuch as it is unable to agree to the proposed changes in Article 4. Nevertheless, if these changes were approved, Article 5 would probably have to be revised.

Article 6 (1) (Rights of authors who are not nationals of one of the countries of the Union, and who publish their works in a country of the Union): The Portuguese Government is in favor of the proposed changes.

Article 6(2) (Authors who are not nationals of one of the countries of the Union of cinematographic works, the maker of which is a national of one of the countries of the Union, or has his domicile or headquarters in that country): The Programme proposes that these works should also be covered. The Portuguese Government cannot agree to this proposal, because of the reasons already stated with regard to Article 4, paragraph (1).

It should be added that, in our view, this rule is not at all indispensable to the operation of Article 14 of the Convention, and the result of its application would be to protect authors whose connections with the countries of the Union are purely fortuitous.

Article 6(3) (Works of architecture and graphic and three-dimensional works of authors who are not nationals of one of the countries of the Union): The Programme proposes that the Convention should cover these works, when they have been erected or affixed to land or to a building in a country of the Union.

The Portuguese Government feels able to agree to this extension.

*Article 6*bis *(Moral rights):* According to the Programme, the maintenance of moral rights after the death of the author would become compulsory, at least until the expiry of the economic rights.

The Portuguese Government commends this amendment for, in its view, moral rights still occupy a minor position in the Convention, which is anomalous.

It may happen that the beneficiaries of moral rights invoke those rights solely for the purpose of obtaining economic advantages, thus causing hindrance and prejudice to a normal exploitation of the works so as to be able to profit by the compensation which they might be granted. For this reason, the Portuguese Government proposes that paragraph (3) should provide that national legislation may exclude pecuniary compensation, a possibility which is not readily apparent from the existing text and which may help in avoiding the risk referred to.

The Portuguese Government agrees to the proposed change in paragraph (1).

The wording of paragraph (2) is not entirely satisfactory, more especially because it is needlessly encumbered by a quotation from the previous paragraph. The following text is therefore proposed:

"After the death of the author, these rights shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed, at least until the expiry of the economic rights."

Article 7(2) (Term of protection for cinematographic works): The Programme proposes the fixing of a minimum term of protection for these works. The normal term of 50 years after the death of the author (paragraph (1)) may be replaced by a term of 50 years after divulgation of the work, or in the absence of divulgation, after its making.

The proposed term seems to the Portuguese Government to be inadmissible. The exploitation of a cinematographic work is by its very nature ephemeral. It continues for a few years, after which (apart from a few exceptional cases) the work becomes a museum-piece, offering no more than a cultural interest, the satisfaction of which should not be difficult. The rapidity with which techniques are changing is a further argument for shortening this term.

The above comments are strengthened if it is recalled that, according to Article 2, paragraph (2), they apply automatically to television works.

If it is not desired to fix a very small number of years, the criterion for the solution of the problem is apparent when we reflect that a cinematographic work is intended for economic exploitation. *The rights in this work should be maintained during the period required to secure a fair return on the investment made.* This formula has the advantage of being applicable both to cinematographic works and to television works. It would be out of place to attempt to quantify this period, for, with the changes taking place in techniques, such a reasoning would soon be out of date—probably, even before the ratification of the Convention by the countries of the Union.

Consequently, there seems to be no reason for presenting paragraph (2) as a right accorded to national legislation. A special term of protection for cinematographic works should be the rule, necessitated by their very nature—and this, of course, without prejudice to the rights which rest with the various countries to establish a longer term.

No provision has been made for the eventuality of divulgation not taking place within a reasonable time of the making of the work. It is inconceivable that a film that is only made public 45 years after its making should enjoy a protection that will not expire for another 50 years! The Italian law No. 633, of 22 April 1941, provides in its Article 32 that if there is no performance of the film within five years from its making, the term of protection shall begin from the making. The Portuguese Government is of the opinion that this rule should be adopted in the Convention.

Lastly, we would point out that the only mode of broadcasting that presents an interest from the point of view of divulgation is *visual* broadcasting.

We therefore propose the following wording:

"The term of protection for cinematographic works shall

be fixed by national legislation in such a way as to allow a fair return on the investment made. This term shall begin from the first publication, public performance or visual broadcast, or, if these take place more than five years after the making of the work, from the making."

Article 7(3) (Term of protection for anonymous and pseudonymous works): The Portuguese Government supports the proposed amendments. It would point out, however, that the formula "made available to the public" is too complicated. In its view, the terms "divulged" or "communicated" would express more simply the idea underlying the aforesaid formula.

The requirement that the divulgation shall be lawful suggests the comments already submitted with regard to Article 4, paragraph (5).

Article 7(4) (Term of protection for photographic works and works of applied arts): The Programme proposes the introduction of a minimum term of 25 years from the making of such works.

The Portuguese Government considers this period to be unduly long. Having regard to the term of protection allowed under the Universal Convention, which is ten years, the Portuguese Government proposes that this same term be adopted, since it is in conformity with the nature of the works in question. This would assist the harmonization of the international instruments.

The Portuguese Government thus agrees with paragraph (4), so long as the term provided therein is reduced to ten years.

Article 7 (5) (Calculation of terms of protection): The Portuguese Government agrees with the proposed change.

Article 7(5) of existing text (Posthumous works): The Programme proposes the deletion of this paragraph as being superfluous, since posthumous works, like other works, are subject to various provisions of Article 7.

To the Portuguese Government it seems, nevertheless, that this paragraph contains a rule that is useful in connection with the calculation of the term of protection. It might be thought in the future that the term should be calculated from the date of publication; but the paragraph stipulates that it shall be calculated from the date of the death of the author. It should therefore be maintained, with some changes in the wording if necessary.

Article 7(6) (The countries of the Union allowed to grant longer terms of protection): The Portuguese Government supports this new provision.

Article 7(7) (Comparison of terms): The Portuguese Government supports the proposed changes.

*Article 7*bis *(Work of joint authorship):* The Portuguese Government supports the proposed new text.

Article 8 (Right of translation): This is the first revision of the Berne Convention since the approval, in 1952, of the Universal Convention. It would therefore be well to try to take over what is useful in that Convention, with a view to the unification of the international instruments.

Article V of the Universal Convention contains a very useful rule, which provides for the obtaining of a *license* for translation in certain circumstances. This rule meets a cultural need without being prejudicial to the interests of authors.

Admittedly, this provision is reproduced almost textually in paragraph (a) of Article 1 of the proposed Protocol Regarding Developing Countries. But it is difficult to understand why it should apply specifically to the developing countries, for it concerns all countries, in that it serves a public interest.

The Portuguese Government therefore proposes that this provision be included in the actual text of Article 8.

Article 9(1) and (2) (Right of reproduction): The Programme proposes the inclusion in the text of the Convention of a rule granting to authors the exclusive right of authorizing the reproduction of their works; it then lists the permitted exceptions.

The Portuguese Government cannot agree to this amendment, which is justified only in semblance, having regard to the nature of intellectual works.

Once it is made public, such a work can, owing to its very nature, be used by everyone; it can thus also be the subject of reproduction, not by virtue of the exceptions but by virtue of a veritable rule. Not all reproductions are reserved to the author, but only those affecting a normal economic exploitation of the work. To specify all the forms of reproduction that are countenanced at the present time would be a futile task incapable of producing acceptable results.

The Portuguese Government is therefore opposed to the proposed change.

Article 9(1) of existing text (Prohibition of the reproduction of works published in newspapers and periodicals): The Programme proposes the deletion of this paragraph because the principle is already comprised in the general right of reproduction.

The Portuguese Government proposes that the paragraph be maintained, since it is not in agreement with this right of reproduction.

Article 9(2) of existing text (Permission for reproduction by the press of articles on current topics): The Programme proposes the abolition of this right. The Portuguese Government feels bound to express its disagreement. The need to keep the public informed on "current economic, political or religious topics" is highly important now, as in the past, and especially in remote places. This purpose cannot be sufficiently served by press summaries and quotations alone. There can be no serious fear of competition, since the original work is published first.

It should be noted, moreover, that the Convention already excludes the case in which reproduction is expressly reserved.

For the Portuguese Government, the problem consists rather in the admissibility of the extension of this rule to organizations for broadcasting and communication by wire. The comments made with regard to Article 2*bis* are also valid here.

The most that could be admitted would be that this paragraph should be presented by way of an exception, needing to be expressly recognized in national laws.

Article 9(3) (Items of news): The Programme proposes the transfer of this paragraph to Article 2, as has already been said.

The Portuguese Government, as was stated above, does not agree to the inclusion in Article 9 of the right of reproduction; neither, therefore, can it agree to the aforesaid transfer. This provision should continue to form part of Article 9, in which the provisions concerning the press are concentrated.

Article 10(1) (Quotations): The Programme proposes a general provision on the right to make quotations, in replacement of the specific rules contained in the present text, which relate solely to periodicals. The stipulation that quotations shall be short would also be deleted and replaced by a substantial delimination.

The Portuguese Government commends this amendment, which is not dependent upon the inclusion of a right of reproduction. It would merely point out that (in the French text) the part of the present text that has been maintained has in fact been modified without attention being drawn thereto by the use of roman type (document S/1, page 47). The proposed text says: "sous forme de revues de presse", whereas the existing text says: "*même* sous forme de revues de presse"; the text of the Convention is thereby weakened, for no apparent reason.

*Article 10*bis *(Reproduction of works in the reporting of current events):* The Portuguese Government is entirely in agreement with the proposed changes.

Article 11 (Rights of authors of dramatic, dramatico-musical and musical works): The Portuguese Government agrees to the deletion of paragraph (3), which does indeed seem superfluous.

The Programme further proposes the deletion, in paragraph (1), of the reference to Article 13 "in view of the amendments proposed for that Article" (document S/1, page 51). On page 54, it is explained that it is the deletion of paragraph (1) of the present text that involves the need to delete in Article 11 the reference to Article 13. In reality, however, the reservation provided in Article 11 with regard to the rights of public performance and communication to the public relates to paragraphs (2) to (4), which contain provisions on compulsory licenses, and has nothing to do with paragraph (1) of Article 13.

At all events, the Portuguese Government does not agree either to the deletion of paragraph (1) or to the proposed changes in the other paragraphs of Article 13, and, as the intention of the Programme is not to touch the existing reservations, the Government proposes that the present text of paragraph (1) be maintained in full.

*Article 11*bis*(3) (Ephemeral recordings made by a broadcasting organization):* The Programme provides for no changes in this Article. The Portuguese Government, however, aware of the proposals that have been made for the amendment of paragraph (3), is in agreement with them. What is proposed is deletion of the requirement that the ephemeral recording shall have been made by the organization "by means of its own facilities"; and, further, permission for it to be used by other organizations existing in the same country. It might be said that the recordings could be made "for their own broadcasts and those of analogous organizations, existing in the same country, with which they co-operate."

Article 13(1) of existing text (Right of recording and of public performance): The Programme proposes the deletion of this paragraph, in consequence of the recognition of a general right of reproduction.

In view of the fact that it is opposed to the incorporation in the Convention of a general right of reproduction, the Portuguese Government cannot agree to the deletion of this paragraph.

Article 13(1) (Licenses for recording): The Programme proposes some alterations in the wording, in consequence of the deletion of existing paragraph (1). The Portuguese Government cannot accept them, as it does not agree to this deletion.

It is also proposed that compulsory licenses should be limited to recording and should no longer refer to public performance. It seems to the Portuguese Government that the same reasons, essentially of public interest, which militate in favor of licenses for recording also militate in favor of licenses for performance.

The Portuguese Government also hopes that the opportunity will be taken of making it clear, if only in the Report of the Conference, that these licenses relate likewise to the words accompanying musical works and not only to those works themselves.

Article 13(2) and (3) (Old recordings): The Programme proposes the deletion of the rule which maintained earlier situations while providing for a transitional régime.

The Portuguese Government agrees, in principle, to the proposed amendment.

Article 14(1) (Addition of the right of communication to the public by wire, and of a new sentence in substitution of paragraph (4) of the existing text): The Portuguese Government agrees to the first proposed amendment.

With regard to the second, this results in too great an extension of the exception to the right to grant compulsory licenses, which would cease to relate solely to cinematographic adaptations. This extension is not justifiable, since the same grounds for licenses exist here as in Article 13. The Portuguese Government is therefore in favor of maintaining the present paragraph (4).

Article 14(2) (Rights of the author of a cinematographic work): The Portuguese Government is in favor of the proposed addition.

Article 14(4) (Rule of interpretation for agreements permitting the use of literary and artistic works in a cinematographic work): The Programme proposes a rule of interpretation to the effect that, in the absence of any contrary or special stipulation, the authors of the works used may not oppose the exploitation of the cinematographic work. The Portuguese Government fully supports this proposal.

Nevertheless, the requirement that these authorizations shall have been given "in the manner prescribed by the legislation of the country of origin of the cinematographic work" should be deleted. Even taking into consideration the comments made above, concerning the determination of the country of origin, the connection offered by this country can in any case only be of slight significance. The value of the authorization should be judged in accordance with the general principles of International Private Law.

The requirement that the work shall be fixed in some material form also seems superfluous; indeed. judging from the text of the Convention, there is no cinematographic work which is not fixed in some material form.

Article 14(5) (National laws may provide, for the benefit of authors, a participation in the receipts): It is obvious that national laws can go beyond the minimum guaranteed by the Convention for the benefit of authors. The Portuguese Government therefore considers this paragraph to be superfluous and proposes its deletion.

Article 14(6) (Exclusion of musical works from the rule of interpretation): The result of this provision—which appears to the Portuguese Government to be inexplicable—would be to give a privileged position to musical works, whether in relation to pre-existing works or in relation to any other contribution to the cinematographic work. In view of the serious consequences to which it might give rise, the Portuguese Government is in favor of the deletion of this paragraph.

It would seem preferable to insert a rule similar to that contained in Article 132 of the Portuguese Copyright Code, namely: "The authors of the literary part and the musical part of a cinematographic work may reproduce them and use them separately in any manner, so long as this is not prejudicial to the exploitation of the work as a whole."

This right, which appears to be very useful, is not apparent from the present text of the Convention.

Article 14(7) (Possibility open to the countries of the Union to exclude the application of paragraph (4)): The Portuguese Government observes that this right deprives of security a system which has been proposed precisely for reasons of security.

Protocol Regarding Developing Countries: The Portuguese Government commends the proposals for the creation of a more favorable régime, having regard to the economic, social and cultural needs of certain countries. The proposals submitted give rise to no general objection on the part of the Government. The latter is, however, in favor of the deletion of Article 1 (a), because it has previously proposed that the doctrine set forth therein shall be contained in Article 8 of the Convention. It is also in favor of the deletion of paragraph (c), because it does not agree to the amendment of Article 9, which would render necessary the said paragraph (c).

There remain the present paragraphs (b), (d) and (e). The Portuguese Government does not understand why these matters have their place in a separate Protocol instead of being integrated, as far as the first two are concerned, in Articles 7 and 11 respectively; or, at least, why they do not form the subject of a new article placed among the administrative provisions. Only a change of this kind would be in keeping with the statement contained in the proposed text of Article 20*bis*, according to which the Protocol forms an *integral* part of the present Act. It should be observed that the Programme mentions among the reasons justifying this arrangement the fact that the text is too extensive, which would cease to be the case if the amendments proposed by the Portuguese Government were adopted.

It would further seem appropriate that the limits to the use of the right provided in paragraph (e) should be determined more precisely.

Protocol Concerning the Protection of the Works of Stateless Persons and Refugees and *Protocol Concerning the Application of the Convention to the Works of Certain International Organizations:* Portugal, as one of the signatories of Protocols 1 and 2 annexed to the Universal Copyright Convention, on which these Protocols are patterned, can have no objection in principle to the protection of these entities and, in its domestic law, no discrimination exists in respect of them. However, the same reasons which obliged the Portuguese Government to reject the proposed amendment to Article 4, paragraph (1), now lead it to refuse to admit this new extension of the field of application of the Convention.

South Africa

The parties responsible for the preparation of document S/1 are to be congratulated on the very thorough and lucid presentation of the subject. The main criticism which occurs to the writer is that the authors have in some cases elected to depart from the decisions given at the 1965 Geneva meeting.

In this respect attention will be invited to document No. DA/22/33 (Report of the 1965 Debates) by referring to the page number and paragraph by that Report (herein referred to as "DA").

Article 2: See page 3, paragraph (15) of DA. The amendment now proposed was rejected by 15 votes to 12. There may well be merit in subjecting the question to further consideration; but with 15 votes against it at the 1965 conference the reconsideration appears to be wishful thinking.

See DA, page 22, paragraph (113). Adopted by 20 votes to 6—the words "However, the countries of the Union shall have the right to protect, as cinematographic works, such works which are not fixed on some material support" should be added.

*Article 2*bis*:* See page 4 of DA, paragraphs (18) to (20). There was a strong feeling that this Article should extend to radio diffusion or wire diffusion. By 18 votes to 10 the Study Group was asked to reconsider the matter.

South Africa would support the extension.

Article 4(2): Add "The rights of authors who are stateless or who are refugees and who have their habitual residence in one of the countries of the Union will be dependent on the adoption by the country in which they reside of the Protocol determining their status."

Article 4(5): It has been recognized that there is difficulty in reconciling the definition of "published works" with films and musical scores in so far as they may be deemed to be issued and made available in sufficient quantities. It is felt that consideration should be given to the suggestion at DA, page 6, paragraph (30). South Africa would support the definition proposed by the European Broadcasting Union which is: "The expression 'published works' means works lawfully published, whatever may be the means of manufacture of the copies, provided that the availability of such copies is sufficient to render the work accessible to the public."

Article 6(3): This does not tally with the Study Group's proposal which was adopted by 22 votes to 7. The amendment now made extends the rights in graphic and three-dimensional works to such works which are *not* affixed to a building.

Article 7(2): The proposal to add "or failing such an event within 50 years from the making of such a work, 50 years after the making". This was not accepted at Geneva (page 29, paragraph (147) of DA). However, the proposal has merit in that it does limit the term which could otherwise be unlimited.

*Article 7*bis*:* See DA, page 9, paragraph (48). It is suggested that a proviso be added as suggested by India as follows: "provided he is a national of a country of the Union."

Article 9: It is felt that Article 9 (1), standing alone, is misleading particularly having regard to Articles 2*bis*, 10, 10*bis*, 11*bis* (3), and 13, and it is suggested that this aspect be remedied by the inclusion after the words "this Convention shall" of the words "subject to the other provisions of this Convention..."

The use of words attached to a musical work should also be subject to a compulsory license in paragraph (2) or local legislation should be permitted to provide for it. Such a provision at present exists in South African Copyright Laws.

Article 13(1) and (2): There was no decision at Geneva to alter the compulsory license with respect to *performance* of musical works by means of discs or other recordings—*vide* page 12 of DA, paragraph (65). South Africa will reserve its position on this question. See also comments under Article 14(6).

It is suggested that the words—"where they are treated as infringing recordings shall be liable to seizure" be replaced by "where they are not lawfully introduced shall be treated as infringing copies and liable to seizure."

Article 14(4): In the first sentence of paragraph (4) the words "in the manner prescribed by the legislation of the country of origin of the cinematographic work" should be deleted as they are superfluous and invite local legislation to cater especially for a form of authority which may bring about a diversity of legal views. It follows also that the words "The countries of the Union may provide that the authorization or undertaking referred to above shall be given by a written agreement or something having the same force" should also be omitted.

Article 14(5): It is felt that this paragraph should be deleted as there may be no end to the participants in the exploitation of a cinematographic work. The maker will ensure that his rights are secured or paid for and he will naturally be obliged to reimburse the other participants. This was not passed by the 1965 Committee although 3 voted in favour of it and there were 12 abstentions. To restrict the participation to the maker is pointless as he will be able to look after his own interests.

Article 14(6): See comments under Article 13(1) and (2). Why should the author of the music be in a better position than the author of the literary or dramatic work? Compulsory license exists for the recorded music under Article 13 and music used with film is in the same category. This paragraph should be deleted.

Article 14(7): While it may be a compromise solution, South Africa is not disposed to support this provision. However, it realizes that some compromise is necessary and at this stage, reserves its views.

Proposed new provision to Article 14(8): It is clear that as the Convention now reads an author may rely on Article 6*bis* to prohibit the production of a film. In order to circumvent this it is felt that the proposal by the European Broadcasting Union is not unreasonable. The proposal is to add a new paragraph: "Without prejudice to Article 6*bis* and in the absence of any contrary stipulation, the authors referred to in paragraph (4) above may not oppose alterations that are indispensable for the exploitation of the cinematographic work."

Protocol Regarding Developing Countries: South Africa will reserve its position as regards this Protocol and will after discussions at Stockholm formulate its views.

United Kingdom

Article 2(1) (Choreographic works and entertainments in dumb show): It is considered undesirable to delete the words "the acting form of which is fixed in writing or otherwise." These words serve to make it clear that the Convention is dealing with the work of a choreographer rather than with the stage "business"—make-up, expressions, gestures, etc.—of the individual performer. Without them there is danger that the Convention might be thought to apply to the performances given by performers. These are already protected by the Rome Convention and it would lead to confusion if they were also to be protected by this one. Most of the countries voting on this point in Geneva in 1965 were in favor of retaining the words.

Article 2(2): In order to correspond with the first sentence, the second sentence should read: "For the purpose of this Convention, works expressed by a process analogous to photography and fixed in some material form shall be considered to be photographic works." The first sentence of Article 2(2) makes it clear that the Convention shall not apply to unfixed television. *A fortiori*, it should not apply to single unfixed images appearing on television screens.

Article 2(7): We would prefer this paragraph to read: "The protection of this Convention shall not apply to the facts constituting news of the day or having the character of mere news items."

*Article 2*bis*(2):* Add at end "or broadcast." It is doubtful whether, having regard to Article 10(1) and 10*bis*, this paragraph is needed at all. If it is to be retained, member countries should be free to give the same facilities to broadcasting organizations as to newspapers.

Article 4(5): In our view, publication as a result of compulsory licensing should not start time running. We propose therefore the substitution of the words "published with the consent of their authors" for "lawfully published."

Article 4(6): This definition is generally satisfactory. But there may be cases in which the person who has "taken the initiative" may not be the same as the person who has "taken the responsibility for " the making of the film. We suggest a better definition might be "the person or body corporate by whom the arrangements necessary for the making of the film are undertaken."

Article 6: It is fundamental to our acceptance of any changes in the Convention relating to cinematographic works, that we should continue to retain the "film copyright" system. Article 6(2) speaks of "author" and "maker" in such a way as to suggest that they must always be different persons. It is therefore necessary to add: "Any country of the Union shall be free to treat the maker of a cinematographic work as its author."

*Article 6*bis*:* The United Kingdom sees no need to extend the controversial rights given by this Article beyond the life of the author. Among other things it is not unlikely that any extension of these rights would have the effect of dissuading other countries, not yet members of the Berne Union, from joining.

Article 7(2): We would prefer to replace the words "first publication, public performance or broadcast" by "work has been made available to the public with the consent of the author." It seems wrong that an unauthorised publication, performance, or broadcast should start the 50-year period running. But, provided the author's consent has been obtained, the means by which the work is disseminated does not appear to matter.

Article 7(3): For "lawfully made available to the public" substitute "made available to the public with the consent of the author."

New Article 7(3A): "In respect of the collective works mentioned in Article 2(4), the term of protection shall be 50 years from the death of the author of such works."

This is, no doubt, the present effect of the Convention; but it could, with advantage, be said expressly in the interests of clarity.

Article 7(4): For the final phrase substitute: "However, this term shall last at least: (a) in respect of photographs, for 50 years from the making of the photograph, (b) in respect of works of applied art, for 15 years from the making of the work."

We think photographs should have a term of protection more akin to that enjoyed by other artistic works. But we could not accept an obligation to protect mass-produced articles of commerce for more than 15 years.

Article 9: Amend to read: "(1) Authors of literary and artistic works shall have the exclusive right of authorizing the reproduction of such works, *or any substantial parts thereof*, in any manner or form. (2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works or substantial parts thereof in certain special cases where the reproduction does not unreasonably prejudice the legitimate interests of the author and does not conflict with a normal exploitation of the work."

The amendment in paragraph 1 requires no explanation. But mention in document S/1 of "private use" and "administrative purposes" goes too far and carries many dangers for authors and publishers. Most books are intended for private use, and these expressions could allow the wholesale use of copyright material, without payment, by large industrial organisations or for governmental education systems. On the other hand, the formula we propose can take care of legitimate cases of private use and judicial and administrative purposes. Where the legitimate interests of the author would otherwise be unreasonably prejudiced, the national legislation will have to provide for the payment to him of some remuneration.

Article 10(2): For "borrowings" substitute "excerpts."

It is doubtful whether this paragraph is needed at all having regard to Article 10(1) and the proposed Article 9(2). If it is to be retained it should be clear that it does not permit the free publication of *complete* works in educational or scientific textbooks.

*Article 11*bis*(1):* Amend paragraph (1) (ii) to read: "Any communication to the public by wire or by re-broadcasting of the broadcast of a work, when this communication is made (a) in a country of the Union other than that in which the broadcast was made, (b) by a body other than that which broadcast the work, and (c) to an audience not contemplated by the body which broadcast the work."

The Convention should take account, more clearly than it does now, of the increasing use of wire diffusion, as a substitute for broadcast reception, and of the cases in which the audience which receives the program by wire has already been taken into consideration in the payments made, to the author, by the original broadcasting organization. Domestic situations should be left entirely to national legislation.

*Article 11*bis*(3):* For the first two sentences substitute: "In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to reproduce, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the conditions under which ephemeral recordings may be made by *or at the request of* a broadcasting organization for use in its own broadcasts, *when, for technical or other reasons, the broadcast cannot be made at the time of the performance of the work.*"

This is intended: (i) to allow broadcasting organizations to have ephemeral recordings made for them by others; but, (ii) to make clearer the circumstances in which the provisions relating to ephemeral recordings shall apply.

Article 13(1): For "authorizing the recording of such works by instruments capable of reproducing them mechanically" substitute: "of authorizing the reproduction of such works *including any words intended by their author to be performed with them*, on instruments by means of which they can be performed."

The only change which is more than mere drafting is the words underlined. These will now be necessary because of the introduction in Article 9 of a general right of reproduction.

Article 14(7): Amend to read: "The provisions of paragraph (4) of this Article shall not apply in countries whose laws grant copyright in a cinematographic work to its maker."

In countries which have the "film copyright" system, there is no need to create any presumption whatsoever in favor of the maker of the work. He is able by contract to acquire from the authors of those literary and artistic works which are incorporated in the film, the rights which he finds necessary to allow him to exploit the film. This includes not only those works which were in existence before the decision was taken to make the film, but also those works, within the meaning of the other Articles in this Convention, which come

into existence during the making of the film (e.g. the script). The film maker is aware of what can be considered a work which enjoys a separate copyright and hence knows the individuals with whom he must contract.

The United Kingdom cannot agree that its law should contain *any* presumptions in favor of film makers who, in the UK system at least, are quite capable of looking after themselves.

On the assumption that paragraph (7) is changed as suggested, the United Kingdom considers that the scope of the presumptions is a matter for those countries in which they will apply and therefore refrains from comment on the text of paragraphs (4) to (6).

Article 17: The United Kingdom considers that this Article requires amendment to clarify its meaning and scope. The United Kingdom does not consider that a member country should be free to enact legislation under which, for instance, plays may be performed without the consent of the individual author and copyright owner. The United Kingdom does not think Article 17 gives such freedom, but it nevertheless considers that the position should be clarified by the deletion of the words "to permit."

On the other hand, the United Kingdom believes that member countries must be free to exercise control over monopoly situations which might lead to abuse. Most countries would no doubt agree that this freedom is in any case inherent in the Convention. It seems nevertheless desirable to say so in terms. The United Kingdom therefore also proposes the insertion in Article 17 of a new paragraph as follows: "(2) Each country of the Union is free to enact such legislation as is necessary to prevent or deal with any abuse, by persons or organizations exercising one or more of the rights in a substantial number of different copyright works, of the monopoly position they enjoy."

Protocol Concerning Developing Countries: The Berne Convention is an instrument primarily designed to meet the needs of countries which have reached a certain stage of development. The United Kingdom can understand the feeling of some developing countries that certain of the obligations of the Convention are too onerous for them to accept. This does not, however, necessarily mean that the Convention should be amended in the way suggested.

If this were the only international copyright treaty, the situation might be different. But developing countries which feel that the state of their cultural and economic needs does not permit them to accept the standards of the Berne Convention can, now, by adhering only to the Universal Copyright Convention, enjoy the much greater latitude which that Convention gives, while still gaining protection for their authors in all the 53 countries which are members of it.

However, if it is the wish of the great majority of the member countries to provide for the possibility of membership of the Berne Union by developing countries on less onerous terms than those accepted by existing members, the United Kingdom would be prepared to assist in formulating a Protocol which makes this possible. The United Kingdom believes, however, that the terms of the Protocol now proposed go too far in some respects if, in the long term, the Convention itself is not to be damaged and it accordingly suggests the following amendments:

1. *Article I.* Substitute in the beginning "Any developing country which, having regard to the state of its cultural and economic needs, does not consider it is in a position to make provision for the protection of all the rights provided for in this Act, may, with the prior agreement of the Executive Committee of the Berne Union, notify (etc.)."

2. *Article I(d).* Add at end: "This paragraph shall not apply so as to permit the performance in public for profit-making purposes, otherwise than on payment of equitable remuneration, fixed, in the absence of agreement, by competent authority, of broadcasts of literary and artistic works."

3. *Article I(e).* This paragraph is in such wide terms that it would permit the rest of the Convention to be virtually disregarded. There are few things which are not in one sense "educational" or "scientific." The words "restrict the protection" would permit the enactment of laws which denied not only the right of reproduction but also the other rights given by the Convention (performance, broadcasting, etc.). The United Kingdom therefore suggests that this paragraph be deleted.

4. If a Protocol is adopted it should be made clear, in Article 20, that, in considering whether any given provision in a Special Agreement is "contrary to this Convention", the Protocol shall be disregarded.

The United Kingdom will also wish to propose certain changes of a drafting nature to the Convention as a whole. In particular the following points call for consideration:

(a) change the expression "literary, scientific and artistic works" wherever it appears to "literary and artistic works." Since this latter expression is defined in Article 2(2) as including "every production in the literary, scientific and artistic domain", the inclusion of the word "scientific" in some articles but not in others leads to confusion.

(b) When an article providing for a general right is subject to another article or articles which provide for particular cases of exception to that right, the Convention sometimes says so explicitly, e.g., in Article 11(1), and at other times does not. For example, the rights given by Article 14(1) are subject to Articles 10*bis* and 11*bis*, and those given by the new Article 9 are subject to Articles 10, 11*bis* and 13 and, perhaps, other articles. The text of the Convention should be consistent on this point to avoid confusion and misunderstanding. Perhaps either the Convention itself or the Report of the Conference might contain some general formula such as: "Where an article provides for exceptions to, or limitations of, a right given by another article, the former article shall be taken as governing all cases with which it deals."

S/14 CZECHOSLOVAKIA, FRANCE, IRELAND, ISRAEL, ITALY, JAPAN, KENYA, LUXEMBOURG, UNITED KINGDOM, UNITED STATES OF AMERICA. Paris Convention. *The following observations, preceded by an introductory and explanatory note of BIRPI, are made on the proposals as they appear in document S/2:*

Introductory and Explanatory Note

1. By April 30, 1967, BIRPI had received observations from ten States (Czechoslovakia, France, Ireland, Israel, Italy, Japan, Kenya, Luxembourg, United Kingdom, United States of America) regarding the proposal, as it appears in document S/2, for amending Article 4 of the Paris Convention.

2. All ten States expressed their agreement with the proposal in question (see, however, paragraph 5, below).

3. Five of these States (Czechoslovakia, Ireland, Israel, Kenya, United States of America) purely and simply indicated their acceptance of the proposed text.

4. Three of the States (Japan, Luxembourg, United Kingdom) also touched on the question whether it would suffice to amend Article 4 or whether other articles of the Paris Convention should also be amended.

5. Lastly, two States (France, Italy) proposed changes in the wording.

CZECHOSLOVAKIA

The competent Czechoslovak authorities have no comments on the proposal for amending Article 4 of the International Convention for the Protection of Industrial Property contained in BIRPI document S/2 of April 15, 1966.

FRANCE

The French Government is of the opinion that new Section I, paragraph (1) of Article 4 of the International Convention for the Protection of Industrial Property should be amended as follows:

In the 4th line, after the words "shall be", the words "admitted on the same conditions..." should be inserted.

The text of the Section, I paragraph (1) would then read: "Applications for inventors' certificates, filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be *admitted on the same conditions*, treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents."

The text proposed by the Government of Sweden and BIRPI provides that, "for the purpose of the right of priority", inventors' certificates shall be treated in the same manner as applications for patents and that they shall have the same effects. It seems that the expression "shall be treated" should be taken to mean the application of domestic provisions concerning the claiming of the right, such as, for example, those concerning the declaration of priority, the production of a copy of the earlier application, and the time limits allowed for producing these documents. As for the effects, these should be understood as the legal effects relating to the immunity of the invention during the priority period.

This text does not expressly specify the conditions of admissibility of the inventor's certificate for the purpose of the right of priority, which, as in the case of a patent, can only be determined from the document which enables the exact date of filing with the administration of the country of origin to be established and which must include an adequate specification of the invention for which the right of priority is claimed.

The purpose of this proposal is to fill this gap.

Ireland

Ireland sees no objection to the proposed amendment to Article 4 of the International Convention for the Protection of Industrial Property.

Israel

The proposals contained in Working Paper S/2 are acceptable to the Government of Israel.

Italy

1. The Italian Administration has examined the proposal for amending Article 4 of the Paris Convention presented in document S/2.

The proposed amendment takes into account the fact that the inventor's certificate is not used in most countries and that consequently its acceptance cannot be considered in so far as any possibility of assimilating it to the patent is concerned. Thus, taking into account the opinion expressed by the 1965 BIRPI Committee of Experts, the objective of the proposed amendment is to introduce the notion of the inventor's certificate into the Paris Convention for the sole purpose of the exercise of the right of priority.

2. The Italian Administration is prepared to agree to the modification of the Paris Convention in this specific sense. Acceptance of the application for an inventor's certificate as a basis for claiming the right of priority naturally cannot, at the same time, imply automatic recognition of its contents.

3. As regards the form of the proposed amendment, the Italian Administration feels that the wording of the text could be altered so as to avoid any possible ambiguity or misinterpretation.

Thus, in Section I, paragraph (1), the words specifying that the amendment only concerns the right of priority should, for greater clarity, appear at the beginning of the sentence.

It is also felt that the expression "shall be treated in the same manner and have the same effects... as applications for patents" could be broadly interpreted and even lead to the affirmation of a legal identity between the inventor's certificate and the patent for an industrial invention.

The Italian Administration therefore suggests that the text of the amendment be altered to read as follows: "(1) The right of priority under this Article may also be based on applications for inventors' certificates filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate. (2) In countries in which applicants have the option between applying for a patent and applying for an inventor's certificate, the right of priority provided for under this Article shall be recognized also where the applicant seeks an inventor's certificate, irrespective of whether the first application (Section A, paragraph (2)) was an application for a patent or a utility model, or for an inventor's certificate."

Japan

1. The Japanese Government supports in principle the Swedish proposal for amending Article 4 of the Paris Convention contained in document S/2.

2. As is seen from the above Swedish proposal, the Intellectual Property Conference of Stockholm, 1967, is to consider introducing into the Paris Convention the concept of inventor's certificate only in the context of Article 4, that is to say, for the purpose of the right of priority. Therefore it is hoped that before the Revision Conference to be convened in Vienna in the 1970's, further studies will be made within the Paris Union as to the possibility of introducing the concept of inventor's certificate in the context of other articles or in the context of the whole legal structure of the Paris Convention.

Kenya

The Government of Kenya has no objection in principle to the proposed amendments to the Convention.

Luxembourg

After the exchange of views on inventors' certificates which took place at the Diplomatic Conference of Lisbon, BIRPI continued the study of this question in collaboration with a Group of Experts from a limited number of countries. As the Government of Luxembourg did not participate in the preparatory work, it therefore expresses its views now on the above-mentioned subject.

First of all, it congratulates BIRPI and the Group of Experts on the results of their work. It notes with interest that, in the countries where inventors' certificates are recognized, inventors may at their discretion apply for either a patent or a certificate and that the documents to be attached to the application for a certificate (that is, a specification together with drawings, if necessary, as in the case of patent applications) should be sufficiently explicit to enable others to execute the invention. Furthermore, it is not unaware of the fact that, since the Lisbon Conference of 1958, the situation has evolved in the sense that commercial exchanges with the countries of Eastern Europe have undergone a remarkable development and, in 1965, the USSR acceded to the Paris Convention.

In view of the above considerations, the Government of Luxembourg shares the opinion of the Swedish Government and of BIRPI as to the advisability of submitting this question for examination to the Stockholm Conference and it considers the proposed amendment to Article 4 of the Paris Convention as a progressive step and a basis for useful discussion. It notes with satisfaction that the above amendment provides that the recognition of inventors' certificates is only obligatory as a basis for claiming priority in respect of patent applications if the application for the certificate is filed in a country where the applicant has the right to apply, at his discretion, either for a patent or for an inventor's certificate. Finally, it supports the proposal to consider at Stockholm inventors' certificates only within the context of Article 4 of the Paris Convention.

As to the text of the proposed amendment, the Government of Luxembourg has no counter-proposals to make.

United Kingdom of Great Britain and Northern Ireland

The Government of the United Kingdom of Great Britain and Northern Ireland are in agreement with the addition of a new Section I(1) and (2) to Article 4 of the International Convention for the Protection of Industrial Property, as proposed in document S/2.

The Government of the United Kingdom make the further proposal that, in Article 1(2) of the Convention, the words "inventors' certificates" should be inserted after the word

"patents," thus broadening the definition of "industrial property" to include inventors' certificates. This would ensure that the national treatment obligations of Article 2 would apply also to inventors' certificates.

UNITED STATES OF AMERICA

BIRPI document S/2 proposes the addition of a new Section I, paragraph (1), to Article 4 of the Paris Convention to provide that an application for an inventor's certificate must be recognized as a basis for the right of priority for a patent application, and of new Section, I paragraph (2), to provide that in a country in which applicants have the option to apply either for a patent or an inventor's certificate, the right of priority provided shall also be recognized where the applicant seeks an inventor's certificate irrespective of whether the first application (Section A, paragraph (2)) was an application for a patent or a utility model, or for an inventor's certificate.

The United States Government considers this proposal to amend Article 4 of the Paris Convention, as set forth in BIRPI document S/2, to be generally acceptable both in substance and form.

S/15 CZECHOSLOVAKIA, FINLAND, FRANCE, GERMANY (FEDERAL REPUBLIC), IRELAND, ISRAEL, ITALY, JAPAN, LUXEMBOURG, MEMBER STATES OF THE AFRICAN AND MALAGASY INDUSTRIAL PROPERTY OFFICE (OAMPI), SPAIN, SOUTH AFRICA, SWITZERLAND, UNITED KINGDOM, UNITED STATES OF AMERICA, WESTERN SAMOA. Berne, Paris and WIPO Conventions. The Hague, Madrid (TM), Madrid (FIS), Nice and Lisbon Agreements. *The following observations received by BIRPI as of April 30, 1960, are made on the proposals appearing in documents S/3, S/4, S/5, S/6, S/7, S/8, S/9, and S/10.*

CZECHOSLOVAKIA

*Document S/3, Article 13*bis*(8)(c):* It is suggested that the simple majority be changed to a qualified two-thirds majority.

*Documents S/3, Article 13*bis*(9), and S/9, Article 21*bis*(9):* The Czechoslovak authorities are of the opinion that the rights of observers at the meetings should be stipulated, as is done in document S/10, Article 8.

*Document S/9, Article 20*bis: If the Protocol Regarding Developing Countries is to serve as an effective aid to those countries for which it is intended, it must become, without exception, an integral part of the Stockholm Act. It is not considered adequate to adopt a solution according to which States should have the possibility, when ratifying the Convention or acceding thereto, of excluding all the substantive provisions, or the provisions of Article 21 to 23 pertaining to the organs of the Union, finances, and amendments to articles dealing with such questions. Should the Stockholm Conference nevertheless adopt the principle of a twofold system, that is, exclusion of unanimity of countries of the Union in pursuance of Article 23, paragraphs (2) and (3), and observance of the provisions of Article 25(1)(b), provisions of Article 20*bis*—as well as the Protocol should form an integral part of the text, which a State, when ratifying the Stockholm Act or acceding thereto, would be obliged to accept without exception. To a certain extent, the new proposal in document S/9 Corr. 1 to delete Article 25*quater* corresponds to the Czechoslovak conception. In order to attain the objective sought by the consequential changes, as explained in paragraph 8 of the said document, it would seem to be more logical to have Article 20*bis* precede Article 24 and to delete from paragraph (2) of Article 20*bis* the words: "subject to the provisions of Article 25(1)(b)(i) and (c)." Article 25(1)(b)(i) would then read: "to Articles 1 to 20, or...", the words "*bis* and the Protocol" being likewise deleted from Article 25(2)(a).

*Documents S/3, Article 13*ter*(2), and S/9, Article 21*ter*(2):* The wording of this provision regarding the obligation for States "promptly" to communicate to the International Bureau all new laws and official texts concerning the protection of industrial property and copyright is too severe for those States whose language is not an official language of the Union. It is therefore recommended that "promptly" should be changed to "within a reasonable period of time" or "as soon as possible."

Document S/9, Article 27bis: The responsible Czechoslovak authorities propose the adoption of Alternatives C or D, as they are in line with the generally accepted legal principles, governing the free choice of the means of seeking a peaceful solution of international disputes.

Alternative C corresponds to Article 36 of the Statutes of the International Court of Justice. Alternative D has become common practice, during the past few years, in the negotiation of international multilateral treaties (Vienna Conventions on diplomatic and consular relations, Conventions on maritime law, etc.).

Document S/10, Article 3(2)(vi) and (vii): It is suggested that more importance should be given to items (vi) and (vii) by moving them to the head of the list and numbering them (i) and (ii).

Future activity within the framework of the development of measures calculated to protect intellectual property and the offer of effective cooperation to States requesting legal-technical assistance in the field of intellectual property are the main reasons behind the proposals for establishing a new organization. It would consequently be advisable to stress the importance of these objectives and functions of the Organization by placing them at the top of the list rather than at the foot, as is done in the draft.

Document S/10, Article 4: The Czechoslovak authorities suggest that the IVth Alternative, "C", should be adopted because the Convention involves matters that are of interest to all States. It would be contradictory to the principle of sovereign equality of States if some of them were to be prevented from acceding to a Convention of this sort.

Document S/10, Article 8(6)(a): It is proposed that the simple majority be changed to a qualified two-thirds majority.

Generally, concerning the Contractual Obligations of Member States of the Union as regards Earlier Texts: In the opinion of the Czechoslovak authorities, it is not fully apparent from the texts of the Conventions, including those of Stockholm, whether contracting parties for whom a given text is not equally valid are contractually bound by reciprocity. The Czechoslovak authorities presume, therefore, that careful attention is still to be given to this question and, if need be, Czechoslovakia will put forward proposals.

In making these observations and proposals, the Czechoslovak authorities reserve the right to present any further observations and proposals that may be deemed necessary. By doing so, they hope to contribute, to the best of their ability, to the preparation of the documents for the Diplomatic Conference of Stockholm on the protection of intellectual property.

FINLAND

The Finnish Government makes the following comments. It is obvious that the need for the protection of intellectual property has strongly grown as a result of the continuing development of international cooperation. Therefore the Finnish Government deem it necessary to have the relevant existing Conventions revised not only in order to ensure the development in this field but also in order to contribute both towards the centralization of the activities and towards the delegation of the responsibility for the activities to the States parties to the Conventions. Furthermore, the accession of States not parties to the existing Conventions to the Conventions dealing with questions of intellectual property is in this way being facilitated. The representatives of Finland have, as a matter of fact, at the preliminary congresses supported these views. The proposed changes to the Berne and Paris Conventions as well as the draft Convention of a new international organization of intellectual property aim all at

achieving the aforementioned goals. The Finnish Government fully support all these proposals nor have they any remarks in principle to make on the proposed administrative and organizational changes and arrangements.

France

These observations relate only to substance. The French Delegation reserves its right to formulate, during the Diplomatic Conference, such observations on drafting questions as it considers useful.

As to Document S/3: Article 13(2)(ii) and (xi), Article 13*bis*(6)(a) (vi) and (7)(b), Article 13*quater* (1), Article 14(1), and Article 20(2), call for the same observations and the same proposals as those made in connection with document S/9 concerning Article 21(2)(ii) and(xi), Article 21*bis*(6)(a)(vi) and (7)(b), Article 22(1), Article 24(1), and Article 32(2).

As to Document S/9:

*Article 20*bis *(Protocol Regarding Developing Countries):* The present wording is unsatisfactory, as the references contained in the Article do not make clear, in spite of the Commentary, the practical application of all the provisions concerned.

It would be advisable to re-examine Articles 20*bis*(2), 25(1)(b)(i) and (c), and 25*quater*, as a whole, to try to clarify the enumeration of the said Articles.

Article 21 (Assembly): As to paragraph (2), item (ii): The conferences of revision are also of interest to member countries which, under Article 25(1)(b), may have declared that their ratification or accession did not apply to Articles 21 to 23 and which would therefore not have a seat on the Assembly after the expiration of the period of five years provided for in Article 32. It would be advisable for the Assembly to take account of the views which these countries might express. For that purpose, it is proposed that the following phrase should be added at the end of this item: "*...having regard to the observations which might be made by member countries of the Union not bound by Articles 21 to 23.*"

As to paragraph (2), item (xi): The present wording is too vague. It would seem necessary either to list the other functions allocated to the Assembly in other provisions of the Act or in the provisions of the Convention establishing the Organization, or at least to make express reference to these provisions.

*Article 21*bis *(Executive Committee): As to paragraph (6) (a) (vi):* The wording calls for the same comments as Article 21(2)(xi). It would be advisable either to list the other functions provided for in other provisions or to make express reference to these provisions.

As to paragraph (7) (b): It is suggested that the words "*at the request of its Chairman...*" should be added after "upon convocation of the Director General."

Article 22 (Finances): As to paragraph (1): The text would require to be reviewed in the light of the wording which will have been adopted for Article 10(1) of the Convention establishing the Organization, and having regard to the principle of the financial autonomy of each of the Unions.

Article 24 (Revision of the Provisions of the Convention Other than Articles 21 to 23): As to paragraph (1): The term "system" is not a satisfactory one. It was acceptable in the text of the Brussels Act where it covered all the provisions of the Berne Convention, both substantive and administrative.

In the present draft, amendments to the administrative provisions are governed by the procedure provided for in Article 23.

Future conferences of revision will therefore deal essentially with substantive clauses.

Consequently, it would be preferable to say: "*...amendments designed to improve the system of protection established by the Union.*"

*Article 27*bis *(Settlement of Disputes):* The French Government considers it essential to maintain a provision on the settlement of disputes which might arise between two or more countries of the Union concerning the interpretation or application of the Convention.

At the same time, it is aware of the difficulties which the text of Article 27*bis* has caused for certain States, as indicated in paragraph 174 of the Commentary.

The French Government would therefore be willing to envisage the solution mentioned in paragraph 178 of the Commentary, which suggests the possibility of substituting for the present jurisdictional clause a clause on arbitration similar to that appearing in Article 38 of the Convention of December 2, 1961, for the Protection of New Varieties of Plants.

Article 31 (Signature, etc.): The French Government is in favor of maintaining in paragraph (1) the text at present in force, which does not appear to have given rise to any difficulties as regards its application and which it does not therefore seem necessary to modify.

Article 32 (Transitional Provisions): As to paragraph (2): The rights which may be exercised are those provided under Articles 21 to 23 of the Act and not the rights provided under the Convention establishing the Organization. It would therefore be more appropriate to say: "...until five years after the entry into force *of the present Act*, exercise..."

As to Document S/10:

I. *Preliminary Observations*

The proposal for an International Intellectual Property Organization has a twofold purpose: to modernize and render more efficient the administration of the Intellectual Property Unions; and to promote the protection of intellectual property throughout the world.

The French Government shares and approves these aspirations. Its Delegation to the Committee of Governmental Experts in May 1966 made this clear when it gave its approval to the establishment of the proposed inter-Union organs (General Assembly and Coordination Committee), to the creation of a Conference open to States not yet members of any of the Unions, and to the implementation of a program of legal-technical assistance for developing countries. The Delegation of France pointed out, however, that the purposes to be achieved could be attained without placing the Unions as a whole within the framework of an international organization whose usefulness and desirability were not apparent and whose structure did not exclude the possibility of a threat to the autonomy and the role of the various Unions. It had therefore not been able to accept the very principle of an organization such as was envisaged in the document submitted to the Committee.

The French Government has noted, however, that, on the one hand, this draft has been considerably improved and, on the other hand, the establishment of an International Intellectual Property Organization seems to answer the wishes of a large number of Union countries.

Under these conditions, while continuing to be of the opinion that it is perfectly possible to satisfy the legitimate aspirations of Union countries without having to resort to the creation of a new Organization, the French Government is willing to consider the draft now submitted, but believes that a number of amendments are necessary.

The amendments proposed are shown below. They are dictated primarily by the desire:

(a) to guarantee the system of protection of intellectual property progressively established by the Paris Union and the Berne Union, a protection which it believes to be essential to the economic and cultural progress of all countries, whatever the stage of their development;

(b) to ensure that the independence and the special role of each Union and, hence, the equality of all the Unions, are fully respected;

(c) to make a clear distinction, as to their fulfilment, between the two roles of the Organization (administrative

coordination among the various Unions, spreading the protection of intellectual property throughout the world), roles that might, if confused, endanger the fundamental objective which is, and must remain, to defend and promote the protection of intellectual property.

II. *Amendments Proposed*

Article 2 (Definitions): In *item (vii)*, it is proposed to make the following change: "...and any other *international agreement for the promotion of the protection of intellectual property* whose administration..." It seems obvious, in fact that only international agreements whose purpose is such that it coincides with that of the Organization could be assumed by the latter, especially as the countries parties to these agreements would be called upon to sit in the General Assembly (Article 6(2)).

Article 3 (Objective and Functions): As to paragraph (1): It is proposed that paragraph (1) should be divided into two subparagraphs.

In order to distinguish more clearly the two objectives of the Organization, it is suggested that the greater part of the text of the Preamble, which admirably fills the purpose, should be transferred to paragraph (1) (on the understanding that certain changes would have to be made to the present wording of the Preamble). The text of paragraph (1) would therefore read as follows: "(1) The objective of the Organization is:

(i) *to modernize and render more efficient the administration of the Intellectual Property Unions through the establishment of common administrative organs which fully respect the autonomy of each of the various Unions;*

(ii) *to promote the protection of intellectual property throughout the world by encouraging cooperation to that end among States members of the Unions and Third States.*"

The text of the new paragraph (2) would contain a list of the various fields to which such protection would apply. This list should not be restrictive, however, as it is now in document S/10, in order not to limit it to fields to which the said protection applies *at present;* it should rather be possible, by inserting an expression such as "in particular," to include fields to which it might apply in the future. In this connection, the French Government reserves the right to make certain observations and proposals concerning this list at the Stockholm Conference.

As to paragraph (2), item (i): It is proposed to make the following substitution: "*shall provide the Paris Union...with the administrative services necessary to each*"; this change is intended to show more clearly that the Unions, as such, are not integrated to the Organization.

As to paragraph (2), item (ii): For the reasons given above in connection with Article 2, it is proposed to make the following substitution: "other existing *international agreements for the promotion of the protection of intellectual property*, on the request..."

As to paragraph (2), item (iii): For the same reasons, it is proposed to substitute: "shall encourage the conclusion of new *international agreements*, where appropriate, *with a view to the promotion of the protection of intellectual property*, and may..."

As to paragraph (2), item (vi): It is proposed to substitute *in fine*, in the French text, the words "*à cette fin*" instead of "*dans ce domaine.*"

Article 4 (Membership): The proposal appearing under I, which expresses satisfactorily the duality of the objectives of the Organization, as specified in paragraph 15 of the Introduction, is the one preferred by the French Government.

Article 6 (General Assembly): As to paragraph (2): A new wording is proposed for this paragraph in the light of the considerations expressed above under (a), (b), and (c), of paragraph I of the preliminary observations. The principal amendment requested by the French Government—and one to which it attaches the greatest importance—is that the General Assembly, and not the Conference, would adopt the budget of the Organization, while respecting the proper competence and responsibilities of the Conference.

The new wording proposed is the following:

"The General Assembly shall:

(i) *adopt the triennial budget of the Organization on the proposal of the Coordination Committee, within the limits of the decisions taken respectively by the Paris and Berne Unions and the Conference with regard, on the one hand, to their participation in the program of legal-technical assistance of the Organization, and subject, on the other hand, to approval by each of the Unions and the Conference of the share in the common expenses attributed to them respectively.*

In reviewing that part of the budget relating to the program of legal-technical assistance of the Organization, the General Assembly shall also take account of the proposals of the Conference concerning that program and its implementation.

(ii) review and approve the reports and activities of the Coordination Committee *and of the Director General on administrative and financial questions of common interest to two or more Unions, and give them the necessary instructions;*

(iii) appoint the Director General upon nomination by the Coordination Committee;

(iv) pronounce upon the arrangements proposed by the Director General concerning the administration of the *international agreements referred to in Article 3(2)(ii) and (iii);*

(v) determine the languages which, in addition to English and French, shall be the working languages of the Secretariat;

(vi) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(vii) *approve the amendments to this Convention, as provided in Article 13, with due regard to the advice of the Conference concerning amendments to Article 7 of the Convention;*

(viii) *make proposals for the promotion of the protection of intellectual property;*

(ix) *approve the Headquarters Agreement concluded with the State on the territory of which the Organization has its headquarters;*

(x) *approve the financial regulations provided in Article 10.*"

As to paragraph (3)(g): The following wording is proposed, to safeguard the independence of each of the Unions and their equality:

"(g) *The required majority must be attained not only among the States represented in the General Assembly but also among the States members of each Union which are members of that Assembly.*

However, for the transfer of headquarters (Article 5), the appointment of the Director General *(Article 6*, paragraph (2)(ii)), the confirmation of arrangements *proposed by the Director General* concerning the administration of international agreements (paragraph (2)(iii)), *the adoption of amendments to this Convention (Article 13), and the approval of the Headquarters Agreement (Article 6, paragraph (2)(ix) of the new wording proposed by the French Government), the required majority must be attained not only in the General Assembly but* also *within each Union.*"

Article 7 (Conference): The creation of a Conference serves the second of the Organization's purposes: to promote the protection of intellectual property throughout the world and to encourage to that end discussion and cooperation between States members of one or more of the Unions and States which are not yet members of any of the Unions. It follows from the Commentary in document S/10 and from the preparatory work that the Conference would provide a forum for the discussion of questions of general interest concerning the promotion of the protection of intellectual property throughout the world and, in particular, in the developing countries. Its role would primarily be advisory.

The French Government agrees with this conception of the Conference but observes that the provisions of Article 7, as proposed, go too far and imply, at least tacitly, a threat of indirect interference in the affairs of the Unions by States outside these Unions.

As to paragraph (1): The Delegation of France at the Committee of Governmental Experts in May 1966 recommended the creation of a Conference for the Paris Union and another Conference for the Berne Union; it considered, in fact, that in view of the independence and the special role of each Union, on the one hand, and the very different nature of the problems connected with the protection of industrial property and those connected with the protection of literary and artistic property, on the other hand, a forum would only be truly useful and constructive if there were one for each of the two Unions. The French Government has no intention, however, of insisting on this point and it is prepared to accept the present text of paragraph (1).

As to paragraph (2)(a), item (i): It is proposed to substitute: "discuss matters of general interest *relating to the promotion of the protection of intellectual property throughout the world* and may..."

As to paragraph (2)(a), item (ii): The present wording implies that the Conference alone would be competent to fix the amount of the expenses appearing in the budget of the Organization, whereas, in fact, except for that part of the expenses of the Conference which is borne by the Associate Members, they are paid almost entirely by the Unions, whether it be the proper expenses of the General Assembly and the Coordination Committee, other common expenses, or expenses in connection with the program of legal-technical assistance. Such a state of affairs would be contrary to one of the fundamental principles of the Organization, which is respect for the autonomy of each of the Unions. Furthermore, the very principle of the adoption of the budget of the Organization by the Conference is in contradiction to the primarily advisory role of the latter and to its fundamental purpose, which is to provide a world forum for the promotion of the protection of intellectual property throughout the world. For these reasons, it is the General Assembly and not the Conference which ought to adopt the budget of the Organization, having regard both to the contributions decided by the Unions and—as pointed out above in connection with Article 6—to the proposals of the Conference, as well as, possibly, to the budget adopted by the latter.

For the above reasons, the French Government is unable to accept the present wording of item (ii). The text should be replaced by another wording, such as: "*The Conference shall adopt its own triennial budget, which shall include provision for the expenses of its sessions.*"

As to paragraph (2)(a), item (iii): If it is accepted that the budget of the Organization be adopted by the General Assembly, the present text of item (iii) could be maintained. The item deals with the apportionment and allocation of the voluntary contributions made within the framework of that budget by each Union to the program of legal-technical assistance, supplemented possibly by the contributions of Associate Members of the Organization.

To enable the Conference to express its views on the future program of legal-technical assistance of the Organization before discussion by the Assembly of each of the Unions of the latter's budget and subsequent discussion by the General Assembly of the budget of the Organization, an additional item worded as follows could be inserted before the present item (iii): "*The Conference shall make proposals regarding the future triennial program of legal-technical assistance of the Organization and the implementation thereof.*"

As to paragraph (2)(a), item (v): It is difficult to see what other functions are meant and by whom they would be allocated to the Conference. If, as it seems, the functions intended are those provided for in other provisions of the Convention, it would be advisable to make express reference to these provisions.

The amendments thus proposed for paragraph (2) would result in the following wording:

"(2)(a) The Conference shall:

(i) discuss matters of general interest *relating to the promotion of the protection of intellectual property throughout the world* and may adopt resolutions and recommendations relating to such matters;

(ii) *adopt its own triennial budget, which shall include provision for the expenses of its session and its participation in the common expenses of the Organization;*

(iii) *make proposals regarding the future triennial program of legal-technical assistance of the Organization and the implementation thereof;*

(iv) within the limits of the budget of the Organization, establish the triennial program of legal-technical assistance;

(v) *express its opinion on the proposals for amending Article 7 of this Convention;*

(vi) *appoint, from among the Associate Members of the Organization, its representatives in the Coordination Committee, when the latter considers matters relating to the agenda and the budget of the Conference, and to the program of legal-technical assistance of the Organization.*"

As to paragraph (3)(d): As a result of the amendments proposed for paragraph (2), it would be necessary to make the following change: "Adoption of that part of the budget of the *Conference* which is financed from contributions of Associate Members shall require at least two-thirds of the votes cast by such Members to the extent that the budget would increase their financial obligations."

Article 8 (Coordination Committee): As to paragraph (1)(a): The wording proposed in order to avoid too great a lack of balance in the composition of the Coordination Committee seems excessively complicated.

As this Committee would be composed of members of the Executive Committees of the Paris and Berne Unions, it would be advisable, in order to ensure the equality of the Unions, to provide that the required majority in the Coordination Committee be attained from among the members of the Executive Committee of the Paris Union and from among the members of the Executive Committee of the Berne Union.

Paragraph (1)(a) would therefore be limited to the following text:

"There shall be a Coordination Committee consisting of States, party to this Convention, which are members of the Executive Committee of the Paris Union and those which are members of the Executive Committee of the Berne Union."

The text of paragraph (6)(b) would then be amended as follows: "*The required majority must be obtained not only among the States members of the Coordination Committee, but among the States members of the Executive Committee of the Paris Union, among the States members of the Executive Committee of the Berne Union, and, in the cases provided for in paragraph (1)(c) and paragraph (2) respectively, among the representatives of the Conference and among the representatives of other Unions whose administrative services are provided by the International Bureau of the Organization.*"

As to paragraph (1)(c): The word "direct" being subject to a variety of interpretations, it would be desirable to define more precisely the cases where representatives of the Associate Members of the Organization would participate in the Coordination Committee with the same rights as the other members of that Committee. The text might be the following:

"*Whenever the Coordination Committee considers matters relating to the agenda and budget of the Conference, and to the program of legal-technical assistance of the Organization...*"

As to paragraph (3), items (i), (ii), (iii), and (iv): As a result of the amendments proposed for Articles 6 and 7, on the one hand, and those proposed above, on the other hand, items (i), (ii), (iii), and (iv), should be modified as follows:

(i) The competence of the inter-Union organs being exclusively limited to "*administrative* and *financial*" matters of common interest, it would be advisable to delete the words "and other matters". The end of the sentence should read: "...and in particular on the *apportionment of the common expenses among the budgets of the various Unions and the budget of the Conference*";

"(ii) prepare the draft agenda of the General Assembly *and the draft budget of the Organization;*

(iii) prepare the draft agenda and budget of the Conference, *and the draft program of legal-technical assistance of the Organization;*

(iv) *within the limits of* the triennial budget and program of the Organization, establish the annual budgets of the Organization, *by applying the sharing formula fixed by the General Assembly*, and the annual programs of the Organization."

As to paragraph (3), item (vii): This item calls for the same remark as Article 7(2)(a)(v) and Article 6(2)(vi).

As to paragraph (6): If the text proposed above for paragraph (6)(b) is accepted, the present wording of paragraph (6)(a) could be maintained (see observations relating to paragraph (1)(a)).

Article 9 (International Bureau): In the course of the preparatory work, the French experts had suggested that the Director General should compulsorily be a national of a State member of both the Berne and Paris Unions, and, secondly, that one of the Deputy Directors General should represent the Paris Union and another the Berne Union.

The objection was made to this suggestion that such a separation of jurisdiction, instead of encouraging collaboration, could lead to division and rivalry within the Secretariat. The French Government does not insist on this point.

It was also pointed out, with regard to the first suggestion, that it was essentially on the ground of his competence and not his nationality that the Director General should be chosen by member States of the Unions. The French Government is entirely in agreement with this principle which, in its view, does not run counter to the suggestion made by its experts but in fact answers the object which inspired it, namely, that the appointment of a candidate who is a national of a State member of both Unions—bearing in mind established practice in international organizations—would make for a better balance between the said Unions.

The French Government persists, therefore, in its belief that it would be preferable to introduce in Article 9 the principle that *the Director General should be a national of a State member of both the Paris and Berne Unions.*

As to paragraph (5): The words "*of the Assemblies*" and "*of the Executive Committees*" should be deleted. The participation of the Director General or of a staff member designated by him in meetings of the Assemblies of the Paris and Berne Unions and of their Executive Committees should normally be mentioned in the administrative provisions of the Paris and Berne Conventions.

Article 10 (Finances): As to paragraph (1): As a result of the amendments proposed on the subject of financial matters in Articles 6, 7, and 8, sub-paragraphs (a), (b), and (c) could be clarified or amended as follows:

"(1)(a) The Organization shall have a budget. It shall be separate from the budgets of the Unions *and the budget of the Conference.*

(b) The budget of the Organization shall include:

(i) *provision for the common expenses;*

(ii) *provision for the expenses of the program of legal-technical assistance of the Organization.*

(c) *Common expenses are expenses which are not borne exclusively by a given Union or exclusively by the Conference. They shall be apportioned, on the proposal of the Coordination Committee, by the General Assembly, in the conditions provided in Article 6(2)(i), among the budgets of the various Unions and the budget of the Conference, according to a sharing formula which shall be fixed by the General Assembly and which the latter may modify where necessary. The fixing of this formula and any modifications thereto shall require the agreement of each of the Unions and of the Conference.*"

As to paragraph (3)(a)(i): Similarly, in order to avoid any doubts concerning the autonomy of each of the Unions, item (i) of paragraph (3)(a) could be worded as follows:

"(i) sums allocated to such budget *by* the Paris, Berne and other Unions, *and the Conference, in their respective budgets.*"

As to paragraph (3)(a)(ii): This item should be drafted as follows: "(ii) *possible* contributions of Associate Members *to the program of legal-technical assistance of the Organization.*"

As to paragraph (3*bis*): It would also be desirable to insert after paragraph (3) a new paragraph, numbered provisionally (3*bis*) and worded as follows:

"*(3*bis*) (a) The budget of the Conference shall include provision for the expenses of its sessions, and for its participation in the common expenses of the Organization.*

(b) *The budget of the Conference shall be financed from the following sources:*

(i) *sums allocated to such budget by the Paris and Berne Unions in their respective budgets;*

(ii) *contributions of Associate Members.*"

As to paragraph (4)(a): Having regard to the amendments suggested elsewhere, the text should be amended to read: "*(4)(a) For the purpose of establishing its contribution, each Associate Member shall belong to a class; it shall pay its annual contribution on the basis...*"

As to paragraph (4)(c): For the same reasons as in paragraph (4)(a), it would be necessary to delete from the proposed text the words "to the budget of the Organization."

As to paragraph (5)(a): Since Associate Members are not members of the General Assembly, and members of the Coordination Committee represent other States, there is reason to modify the first sentence of this paragraph as follows:

"*Any Full Member State which is in arrears in the payment of its contributions to any of the Unions shall have no vote in the General Assembly and the Conference, if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two full years. The same holds good, as regards the vote in the Conference, for any Associate Member State which is in arrears in the payment of its contributions within the terms of paragraph (4)(d) of this Article.*"

Article 11 (Legal Capacity; Privileges and Immunities): As to paragraph (4): It would be advisable to distinguish between the agreements referred to in paragraph (3) and the Headquarters Agreement which, in the view of the French Government, ought, by reason of its importance, to be approved by the General Assembly, as suggested in the amendments relating to Article 6(2)(ix).

The following wording is therefore proposed for paragraph (4), which would consist of two subparagraphs:

"*(4)(a) The Director General shall be authorized to negotiate, in cooperation with the Coordination Committee, and to conclude, with the approval of the General Assembly, as provided in Article 6(2)(ix), the Headquarters Agreement referred to in paragraph (2) of this Article.*

(b) The Director General shall be authorized to negotiate and conclude, with the approval of the Coordination Committee, the agreements referred to in paragraph (3)."

Article 12 (Relations with Other Organizations): As to paragraph (1): The word "general" should be deleted. Any working agreement with other intergovernmental organizations ought, in fact, to be approved by the Coordination Committee.

Article 13 (Amendments): The following wording is proposed:

"(1) Proposals for the amendment of this Convention shall be communicated by the Director General to the Member States of the Organization at least six months in advance of their consideration by the *General Assembly, and by the Conference when the proposals for amendment concern Article 7.*

(2) Amendments shall be adopted by the *General Assembly.* Adoption shall require a simple majority of the votes cast, provided that the *General Assembly* shall vote only on such proposals for amendments as have previously been adopted by the Paris Union and the Berne Union according to the rules applicable in each of them regarding the adoption of amendments to the administrative provisions *of the Paris and Berne Conventions, and by the Conference regarding proposals for the amendment of Article 7.*

(3) Amendments shall enter into force *one month after* written notification of acceptance..."

Article 14 (Becoming Party to the Convention; Entry into Force of the Convention): As to paragraph (1)(b): The wording of paragraph (1)(b) may be ambiguous, whereas the Commentary is clear.

It would be desirable to word the text along the following lines, for example: "Notwithstanding... either the Stockholm Act of the Paris Convention in its entirety, *or only the administrative provisions of that Act (Articles 13 to 13*quinquies*), as provided in Article 16(1)(b) thereof,* or the Stockholm Act of the Berne Convention in its entirety, *or only the administrative provisions of that Act (Articles 21 to 23), as provided in Article 25(1)(b) thereof.*" This is purely a drafting change.

As to paragraph (2)(a): Amendment of the Paris and Berne Conventions, including their administrative provisions, requires unanimity of the votes cast.

But, after the Stockholm Conference, a simple or more or less qualified majority will be substituted for the requirement of unanimity in the case of amendments to the administrative provisions of the Paris and Berne Conventions and to those of the Convention establishing IPO.

For that reason, it seems hardly conceivable that the new system could enter into force when some 10 or 12 per cent only of Union countries would be bound by the Convention establishing the said system and the great majority of these countries would be parties only to texts earlier than the Stockholm Act.

Certainly, various texts will continue to coexist as far as the substantive clauses of both the Paris and Berne Conventions are concerned; but, when it is a question of organization, the coexistence of two very different systems would be likely to create an awkward situation in so far as the entry into force of the new system would not be based on the consensus of a substantial number of Union countries.

The French Government proposes, therefore, to make the entry into force of the Convention conditional upon the fact that *thirty* States members of the Paris Union and *twenty* States members of the Berne Union have taken action as provided in paragraph (1)(a), instead of ten and seven States, respectively, as envisaged.

Article 16 (Notifications): The Organization being established by this Convention, the Director General cannot, at least until the Convention enters into force, assume the tasks of notification and other similar administrative formalities in respect of this international instrument.

The text of Article 16 should consequently read as follows:

"(1) *The Government of Sweden shall notify the Governments of all the Member States of:*

(i) *the date of entry into force of the Convention,*

(ii) *signatures and deposits of instruments of ratification or accession, prior to the entry into force of the Convention.*

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

(i) signatures and deposits of instruments of ratification or accession *subsequent to the entry into force of the Convention,*

(ii) acceptances of an amendment to this Convention, and the date upon which the amendment enters into force,

(iii) denunciations of this Convention."

Article 18 (Final Provisions): As to paragraph (1)(a): As a result of the amendment suggested for Article 16, the text of paragraph (1)(a) should be completed by the words "*... which, after its entry into force, shall transmit it to the Director General.*"

Federal Republic of Germany

General Observations

The German Government welcomes the proposal of a modernization of the administrative structures of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works and of a simultaneous establishment of an international organization for the protection of intellectual property. As in the case of other large unions of nations that have meanwhile modernized their many-decades-old administrative structures and adapted them to the new requirements of a progressed international law situation, so the time seems to have come also for the Paris and Berne Conventions to reform their structures, which date back as far as the last century, and to adjust them to the modern development that intergovernmental organizations are undergoing.

Apart from this, the German Government believes that a change in the administrative structure of the present Conventions and the establishment of the proposed new Organization will satisfy an existing need which arises from the growing interlacement of the cultural and trade relations of the nations of the world. This development makes it expedient for an organization to be established that will devote itself to the protection of intellectual property on a world-wide basis and will be particularly well suited for this objective. Such an organization will become the crystallization point of all efforts made in this regard; it will encourage and promote the collaboration of nations in the cultural and technical fields and make it easier for them to understand each other. It will also become a forum where countries of unequal technical development may meet and discuss the problems arising out of this difference between them.

The German Government also considers it useful for the new Organization to be developed from the Unions of Paris and Berne, since these look back on a long tradition and have proved themselves successful in the past. This will ensure that previous achievements will be carried on and consistently developed and it will prevent the danger of an unproductive simultaneous existence of many different institutions all serving the same or a similar purpose.

On the other side, however, the German Government takes the view that the International Organization for the Protection of Intellectual Property as now presenting itself in the draft submitted for an IPO Convention is but a minimum solution. The German Government would have preferred a solution, rather on the lines of the draft of 1964, giving the new Organization more independence of action and incorporating the present Unions into it more strongly. But in the interest of a conference result that will be acceptable to all countries concerned and in view of the fact that at the several conferences held in preparation of this one, the views expressed on this question varied greatly, the German Government is prepared, in principle, to accept the solution now proposed, as a compromise.

The German Government does not wish to comment on every single detail of the proposals. It reserves for itself the right to revert at a later date to certain specific points, such as, for instance, the wording of the accession clauses in the Conventions.

As to Document S/10:

Article 6: (a) A former version of Article 6, paragraph (2)(ii), provided that there should be no restrictions of the General Assembly's power of appointing the Director General. According to the present proposal, however, the

General Assembly, when appointing the Director General, is confined in its choice to the candidate nominated by the Coordination Committee. All it can do is appoint the candidate or reject him, but it cannot elect any other candidate. This, in the German Government's view, constitutes a restriction of the General Assembly's sovereignty, which is difficult to justify. Not only would the procedure of appointment be seriously complicated in cases where the General Assembly is unwilling to follow the Coordination Committee's proposal; it might even mean that the General Assembly, for the mere reason of avoiding practical difficulties and delays, can hardly do otherwise but appoint the candidate proposed by the Coordination Committee, unless there are very serious objections against his person. The Conference of Experts of May 1966, it is true, was in favor of this solution after shortly discussing Article 8, paragraph (3)(v). But in the German Government's opinion, its actual suitability should be re-examined. If it is intended to uphold it in principle, there should at least be a provision that as a rule the Coordination Committee shall propose several candidates to the General Assembly for the office of the Director General.

(b) The fact that a quorum shall be required for the General Assembly's decisions (Article 6, paragraph (3)(b)), must be welcomed. But it might be recommendable, in cases where a decision cannot be adjourned, to provide that those decisions also shall be effective which were made when, strictly speaking, no quorum was present, provided a sufficient number of States not represented at the time will give their agreement in writing subsequently.

(c) The former version of Article 6, paragraph (3)(h), provided that each *State* may not vote only for itself. The present version of Article 6, paragraph 3(i), provides that each *delegate* may represent, and vote in the name of, one State only. This wording might easily give rise to doubt, since under paragraph (1)(b) of Article 6 each State may be represented by one or more delegates. The view might be taken that if a delegation consisted of several members, individual members of the delegation could represent also another State or vote in its name. In order to exclude such an interpretation right from the beginning, it is suggested that there should be a provision declaring a transfer of vote to be inadmissible.

Article 7: (a) According to a former version of Article 7, paragraph (2), not the Organization as such, but only the Conference was to have a budget. Accordingly, the Conference was to decide on the budget.

The revised Draft IPO Convention does not provide for a special Conference budget, but instead of this, for a separate budget of the Organization (Article 10, paragraph (1)(a)). The German Government welcomes this alteration for the reason that a budget of its own will give the Organization at least a certain amount of independence. The German Government, however, would like the question to be considered whether it will be consistent with the nature of compromise inherent in the entire conception now proposed, to confer the function of deciding on the budget not to the General Assembly, but to the Conference. If those States which are parties neither to the Paris Convention nor to the Berne Convention are admitted to the new Organization merely as Associate Members, as is done by the present proposals, it would be more in keeping with this solution to restrict their powers of deciding on the budget. It is true, the Associate States, which shall be liable to pay contributions, should not be excluded from taking part in the decisions on the budget. But the German Government inclines to the view that it should, on the other hand, not be possible for the Conference to decide a budget to which the majority of the Full Members is opposed.

(b) The German Government, on the other hand, sees no reason why the Conference should be refused all participation in the election of the Director General. Therefore, in the German Government's view, the provision contained in a former version and not taken over into the present proposals, according to which the Conference was to be entitled to be heard on the question of the Director General's appointment, should be reintroduced into the text. The German Government, however, does not consider it necessary for the Conference to be given a full vote in the appointment of the Director General. But in its view, the status and significance of the Conference would not be done justice to if the Conference were not even heard in the matter.

(c) As regards the wording of the provision of Article 7, paragraph 3(g), concerning the prohibition of a transfer of vote, reference may be made to the observations concerning Article 6(3)(i).

Article 8: (a) The German Government welcomes the proposal to let the Associated Members participate not only in budget deliberations of the Coordination Committee, but also in the deliberations of certain other matters (paragraph (1)(c)). It is in doubt, however, as to whether the formula "matters of direct interest to the Conference" will constitute a clear enough demarcation. So, for instance, the nomination of a candidate for the post of Director General of the Organization must be considered a matter "of direct interest" for the Conference, since the Director General is of decisive importance in the preparation of the program and the budget of the Conference and for the practical functioning of its sessions and the carrying through of its decisions and resolutions. Yet, to all intents and purposes such a far-reaching participation on the part of the Conference is not considered since, on the contrary, it is the very intention, as appears from the present proposals, not to confer on the Conference the right to participate or even to be heard in the matter of the appointment of the Director General. The German Government may, therefore, be allowed to suggest that it should be attempted to determine the conditions requisite for a participation of the Conference in the deliberations of the Coordination Committee more precisely.

(b) As regards the procedure for nominating a candidate for the post of the Director General provided by Article 8, paragraph (3)(v), reference may be made to the observations concerning Article 6(2)(ii).

(c) Under Article 12 of the proposed IPO Convention, it shall be one of the functions of the Coordination Committee to approve the agreements concluded by the Director General with intergovernmental or international non-governmental organizations. As in certain individual cases such agreements may be of very considerable importance, the German Government considers it expedient that, for the decisions of the Coordination Committee, a qualified majority should be provided in paragraph (6)(a) and (b). In the view of the German Government, a two-thirds majority appears to be appropriate.

(d) As regards the wording of paragraph 5(c) of Article 8 (no transfer of vote), reference is made to the observations concerning Article 6(3)(i).

Article 10: (a) The German Government welcomes the proposal that the new Organization shall have a budget of its own. (Article 10, paragraph 1(a)). The German Government believes that this will serve to lend the new Organization more weight and greater effectiveness within the meaning of the original concept than would have been the case according to the resolutions of the last Conference of Experts in May 1966.

(b) Under paragraph (6) of Article 10, the Director General shall have the function of establishing the amount of the charges due for services rendered by the International Bureau in the field of legal-technical assistance. The amount of these charges shall be merely reported to the Coordination Committee by him. In the German Government's view, the question should be examined whether the Coordination Committee should, in addition to this, not be given the right to vary the amounts of the charges established by the Director General.

Article 13(2): As, according to the proposals, the new Organization may assume the administration also of Unions not depending on the Paris Convention or the Berne Convention (Article 2(vii) read in conjunction with Article 3, paragraph 2(ii)), the German Government takes the liberty of

suggesting a consideration of the question whether this possibility should be taken into account already at this stage when wording Article 13, paragraph (2). A similar question may arise in connection with Article 6, paragraph (3)(g) and Article 14.

Article 14(1)(b): It appears from the Commentary on Article 14, paragraph (1)(b), that countries members of the Paris or Berne Unions shall be allowed to accede to the proposed IPO Convention only if at the same time they accede to the Stockholm version of the Paris and Berne Conventions at least to the extent that the administrative provisions are concerned (Articles 13 to 13*quinquies* of the Paris Convention, Articles 21 to 23 of the Berne Convention). The German Government fully approves of this objective. But in order to realize it, reference should be made, in Article 14, paragraph (1)(b), to both Article 16, paragraphs (1)(b) and (3)(i) of the Paris Convention and Article 25, paragraphs (1)(b) and (3)(i) of the Berne Convention, in the Stockholm version in either case. Otherwise it would also be possible to accede to the IPO Convention by a mere accession to the provisions of substantive law of the Stockholm versions of these Conventions.

Article 15: Contrary to a former version, the new wording of this Article no longer provides that membership in the Organization may be denounced by members of the Unions only if they have already given up, or concurrently give up, their membership in the Unions. This shows that a denunciation of membership in the new Organization is not intended to affect membership in the Paris and Berne Unions. This solution constitutes a considerable risk for the Organization. In the German Government's view, the former version was more useful, according to which it was not to be possible to denounce the IPO Convention without simultaneously denouncing membership in the Paris and Berne Unions.

Article 19(3): If, contrary to the German Government's proposal, the present version of Article 15 were upheld, Article 19, paragraph (3), would, in its view, have to be deleted or varied. Article 19, paragraph (3), presupposes that some day in the future, all States parties to the Paris and Berne Conventions will have acceded to the new Organization and will be unable to leave it again unless they denounce the Paris and Berne Conventions at the same time. In the opinion of the German Government, such an assumption is not justified with absolute certainty if Article 15 will be worded as has now been proposed.

As to Document S/3:

The German Government welcomes the proposal that the new administrative provisions of the Paris Convention shall not be grouped in a separate Protocol, as had originally been planned, but that they shall be incorporated into the text of the Convention itself.

Article 13: The observations relating to document S/9, Article 6(3)(i) (no transfer of vote), also apply to Article 13, paragraph (3)(g).

Article 13(quinquies)*:* The German Government agrees, in principle, with the solution provided in paragraph (2) of this Article with regard to the adoption of amendments to Articles 13 to 13*quinquies*. But in concurrence with the opinion expressed by BIRPI in No. 119 of the Commentary on Article 13*quinquies*, it takes the view that it is neither customary nor necessary for the provisions concerning the Assembly of the Union (Article 13) and those concerning the voting majorities (Article 13*quinquies*, paragraph (2)) to be governed by the principle of unanimity. The German Government appreciates the consideration that the requirements for amending the provisions concerning the Assembly of the Union, its most essential organ, should be very strict; but it believes that it would be inadvisable to subject the entire procedure for amending Article 13 to the principle of unrestricted veto. Article 13 contains provisions which go into great detail, in particular those on the various functions of this organ of the Union. In view of the diversity of the matters dealt with in this Article, it is easily conceivable that, in the course of time, a need for its amendment or supplementation may arise. In that case, an absolute veto would appear to the German Government to be too great an impediment, by means of which the States Members in the Union would obstruct for themselves all reasonable progress. In the German Government's view, the considerations leading to the proposal of an unrestricted veto in the Draft would have been fully complied with if a specifically qualified majority were required in this instance, a majority that, in view of the significance of Article 13, might even go beyond the three-quarters majority required in other cases. The German Government believes that, like the nine-tenth majority required under Article 6, paragraph (3)(f), of the Draft IPO Convention for a matter of similarly outstanding importance, that is, that of converting the new Organization into a special agency of the United Nations, also in the case of Article 13, such a majority might serve, on the one hand, to make amendments as difficult as is necessary, without on the other, preventing all amendment altogether. In that case, the majority provided in this connection in Article 13*quinquies*, paragraph (2), would have to be fixed accordingly.

Article 16: The German Government is of the opinion that it would be desirable if not only countries outside the Union (Article 16*bis*), but also the States Members of the Union, were not allowed accession to the Stockholm version of the Paris Convention unless acceding to it in its entirety. As several versions of this Convention are already in force and further revisions and amendments of it must be expected in the future, the splitting up of the Stockholm Act in two parts, each capable of being acceded to independently, will constitute a complication liable to make it very difficult for the legal relations of the Member States amongst each other, and between themselves and the Unions, to be overlooked. But, in spite of this, the German Government agrees, though not without hesitation, to the solution provided in this regard in Article 16, paragraph (1).

The German Government does not consider it expedient, however, to allow accession also to the new Administrative Provisions of the Paris Convention without a simultaneous accession to the new Organization for the Protection of Intellectual Property. Apart from the transfer to the Assembly of the Paris Union of the control at present exercised by the Swiss Government, the administrative reform of the present Conventions will obtain the significance it is intended to have, only in connection with the establishment of the new Organization.

For that reason, it is the view of the German Government that this question should be re-examined.

Article 20(4): As regards any comments on Article 20, paragraph (4), reference is made to the observations contained in the previous paragraph and to those relating to document S/10, Article 19.

As to Document S/9:

As regards the proposals for a reform of the provisions respecting the administration of the Berne Union and the Final Clauses of the Convention underlying this Union, reference is made by the German Government to the observations relating to document S/3.

As to Documents S/4 to S/8:

In view of the fact that the proposals for a reform of these Special Agreements are essentially consequences of the proposed reform of the Paris Convention (document S/3), the German Government will probably not make any separate comments on documents S/4 to S/8.

The observations on document S/3 also apply to the documents S/4 to S/8, *mutatis mutandis.*

IRELAND

As to Document S/9:

Ireland generally accepts the proposals for revision of the Administrative Provisions as proposed in documents S/9 and S/9/Corr. 1. Pending further study of the final clauses it is desired to reserve comments except to observe that the proposals regarding reservations in Article 25(1)(b) do not

appear to be desirable and that Alternative A is favored for Article 27*bis*.

As to Document S/10:

Ireland generally accepts the proposals for establishing an International Intellectual Property Organization as prepared by BIRPI at the request of the Government of Sweden.

ISRAEL

As to Documents S/3 and S/9:

1. The Government of Israel has the honor to submit its comments and observations on the proposals for the revision of the administrative provisions and final clauses of the Berne Convention set out in Document S/9 of September 16, 1966 (further to its memorandum on Document S/1 of May 15, 1966), as well as those of the Paris Convention set out in Document S/3 of September 16, 1966.

2. The Government of Israel must as before reserve its right to make additional comments and suggestions on Documents S/9 and S/3 and revise its views and position in the light of further reflection, the comments and suggestions of other members of the Conference and such corrigenda as may hereafter be prepared and circulated by BIRPI at the request of the Government of Sweden.

3. The Government of Israel feels that the Proposals contained in Documents S/3 and S/9, as those in Document S/1, might require some redrafting.

4. The following detailed comments and suggestions are respectfully advanced in respect of the Proposals in Documents S/3 and S/9. [Reference to Documents S/9 and S/3 are prefixed by the letters B and P respectively.] They are made, it is to be noted, on the assumption that amendments to the Berne and Paris Conventions will take effect before the Convention establishing the IPO.

*B Article 20*bis*:* The Government of Israel suggests that this Article shall be deleted and the substance of its provisions included in Article 30 as an additional paragraph. The reason for this suggestion is that the Protocol as an "optional" provision of the proposed Act is more properly to be mentioned in the Article dealing with Domestic Implementation. This will render it clearer that the countries concerned may adhere fully to the Convention although under their domestic legislation they afford a different level of protection. The suggested amendment, however, still does not solve the problem of the developing countries, i.e. to ensure that immediately upon the signing of the Stockholm Act they should be in a position immediately to enjoy the benefits and advantages of the Protocol whether under that Act or any other Act, and this particularly in view of Document S/9/Corr. 1. Accordingly the Government of Israel reserves its right subsequently to express its considered views on this problem and to advance in due course such suggestions for a special article as may appear to it to be desirable and requisite for dealing with this point.

P Article 13; B Article 21: As to paragraph (1) (a): In order to render clear beyond all doubt the "confined" composition of the Assembly, the Government of Israel suggests that in place of the words "Articles 13 to 13*quinquies*" ["Articles 21 to 23"] the following should appear: "the administrative provisions of this Convention."

As to paragraph (2)(a)(ix): The immediately foregoing remark applies here.

As to paragraph (3)(b): The quorum necessary for the Executive Committee is one-half, whereas for the Assembly it is only one-third. The difference in treatment is not understood. If anything, the Assembly as the more important of the two organs should be required to have at least a similar quorum, if not a higher one. The Government of Israel, therefore, proposes that the quorum of the Assembly shall be one-half.

As to paragraph (3) (c): The Government of Israel suggests that, in addition to votes cast "in person" at meetings, the opportunity should be given for voting to be carried out by correspondence on postal circulation of resolutions to member countries which may for some reason or other not be represented by a delegation.

As to paragraph (3) (e): Comparison of the instant provision with the end of Article 13*quinquies* (3) [Article 23(3)] suggests that considerable uncertainty may arise, engendering perhaps an impossible situation. Whereas under the present provision a two-thirds majority vote on the budget as such, which increases a member's financial obligations, binds that member whether or not it voted for the adoption of the budget, an increase in the financial obligations of countries achieved by an amendment of the Articles under the other provisions mentioned must be expressly accepted by a member before it becomes binding, notwithstanding that in the latter case the amendment has received the larger majority of three-fourths. For good measure, any country that finds a particular increase too great a burden can always fall back on the provisions of Article 13*quater*(4)(b) [Article 22(4)(b)]. It would be better to remove this discordance by choosing between the unanimity or the majority principle.

As to paragraph (4) (a): In view of the suggestions made in this regard by the Government of Israel with respect to the IPO Convention, the meeting of the Assembly of each of the Unions should be linked with that of the Assembly of the other. Accordingly, in place of the words "General Assembly of the Organisation", there should be substituted the words "Assembly of the Berne [Paris] Union."

A further provision which appears to be desirable is one to enable the Assemblies of the Unions to meet together for the purposes of discussing and coordinating matters of common interest. Such provision is also important in view of the fact that the General Assembly under the IPO Convention is constituted also of non-Union Members.

As to paragraph (5): For reasons above indicated, the words "subject to this Convention" should be inserted between the word "shall" and the word "adopt."

*P Article 13*bis*; B Article 21*bis*: As to paragraph (4):* Here, as in all other provisions of the Convention where the term appears (for example paragraph (5)(a)), it is suggested that the words "a balanced geographical distribution" should be replaced by "the social, economic and cultural character of member countries."

As to paragraph (5) (b): It is suggested that the election rules should, in the interests of justice, provide equal opportunity for a l member countries to be elected from time to time to the Executive Committee. A distinct substantive provision to this end should be incorporated in the Convention or the power of the Assembly to establish election rules should be expressly qualified accordingly.

As to paragraph (6) (a) (vi): It is understood that the "other functions" of the Executive Committee are those things which will be allocated to it by the Assembly of the Union or in pursuance of the IPO Convention, and with regard to the latter the Executive Committee will have the duty to vote at the Coordination Committee of the IPO.

The Government of Israel suggests the following text: "(vi) perform such other functions as are allocated to it by the Assembly or in pursuance of the Convention of the Organization; (vii) participate in the meetings of the Coordination Committee of the Organization and cast their votes at such meetings in accordance with the instructions of the Assembly and otherwise having regard for the legitimate interests of the Union."

As to paragraph (7) (a): As with Article 13(4)(a) [Article 21(4)(a)], in place of "Coordination Committee of the Organization" the following should be inserted: "Executive Committee of the Paris Union."

As to paragraph (9): Two questions arise here. The first is whether countries of the Union, which have not accepted the administrative provisions of the Convention after the five-year transitional period, continue to possess the right to be admitted as observers at meetings of the Executive Com-

mittee. The second, does the right of admission comprehend also the right to take part in debates? These questions require clarification. The Government of Israel takes the view that after the five-year transitional period, any country which has not by then adhered to the administrative provisions should not be excluded, and that the right of admission should include the right to speak but clearly not the right to vote, as is the case with the Coordination Committee under the IPO Convention.

As to paragraph (10): For reasons set out above the Executive Committee's power to adopt its own rules of procedure should once again be made "subject to this Convention."

*P Article 13*ter; *B Article 21*ter: *As to paragraph (9):* The words "by the Assembly" should be added at the end.

*P Article 13*quinquies; *B Article 23: As to paragraph (1):* To render these provisions as full as possible, after the words "the present Article" the words "as well as for the other matters of an administrative nature," should be inserted.

As to paragraph (4): It is suggested that the present wording should be replaced by "Subject to this Article, the revision of this Convention is governed by Article 14 [Article 24]". The reason for this is to avoid the possibly confusing and unnecessary references to other articles and to dispose of the vexed question whether all the final clauses as such can in fact be amended or revised. It may be observed that in respect of the Berne Convention, the final clauses have always in the various Acts been entirely drafted *de novo.*

P Article 14; B Article 24: Hitherto the word "shall" in paragraph (1), with its obligatory connotation, has always been used, mainly because no forum existed to take care of continuity and to consider the various developments that were taking place in the different areas of activity. The position is now radically different with the establishment of an Assembly and the far more rapid pace of development. The Assembly will inevitably in the course of carrying out its functions review when necessary the question of revision and take such steps in this direction as may be required. There appears no need, therefore, to stipulate that special conferences should be held for this purpose. The matter of revision should be left to the discretion of the Assembly.

P Article 16; B Article 25: As to paragraph (1)(b)(i): By way of consequential amendment to what has already been suggested this item in B should read simply "(i) to Articles 1 to 20."

In essence, it is not a question of applying the Protocol but allowing developing countries to take advantage thereof, as will be set out in B Article 30.

As to paragraph (1)(b)(ii): It is suggested that the words "the administrative provisions of this Convention" should take the place of the present version.

As to paragraph (2) (c): This paragraph should be deleted. In the nature of things, final clauses become operative forthwith upon the signing of the Convention. The suggested deletion will also contribute to make it clear that the special benefits and advantages accruing to developing countries under B Article 30, as elaborated in the Protocol, will come into effect from the date that the Convention is signed. All subsequent reference to this sub-paragraph would consequentially require deletion.

*P Article 16*ter; *B Article 25*ter: The Government of Israel is of the opinion that the following three matters require clarification: (a) That the basic rule should be one analogous to P Article 16*ter*, i.e. ratification or accession admits of no reservations. (b) That partial acceptance under P Article 16(1)(b) or B Article 25(1)(b) is admissible but is not deemed to be a reservation in the technical sense. (c) That "acquired" rights under previous Acts should continue to be maintained and recognized provided that a State has not ratified or acceded to the substantive provisions of the Stockholm Act.

Whether these matters are adequately covered by the present terms of the proposed Article remains still to be considered.

*B Article 25*quater: The Government of Israel notes Document S/9/Corr.1, but reserves its right to make observations thereon when as hereinbefore mentioned it comes to present its particular views on the Protocol and the whole question of developing countries.

*P Article 16*quater; *B Article 28:* The Government of Israel notes with satisfaction the amendments proposed in Document S/3/Corr.1 and Document S/9/Corr.1.

P Article 18; B Article 27: The Government of Israel notes Document S/3/Corr.1 and Document S/9/Corr.1. It does not appreciate why the amendment proposed to B Article 27(1) is not likewise proposed for P Article 18(1) with the consequential deletion of paragraph (2). The proposal to omit paragraph (3) is welcomed.

B Article 30: In view of what has been said above in respect of B Article 20*bis*, the Government of Israel suggests the addition of the following new paragraph: "(3) Any developing country which ratifies or accedes to this Convention may at the date of ratification or accession by a notification deposited in accordance with Article 25(1)(a) declare that it will avail itself of the provisions of the "Protocol Regarding Developing Countries" (annexed to and forming an integral part of this Convention) according in all respects to the terms thereof, in place of undertaking to adopt in accordance with its Constitution the measures necessary to ensure the application of the parallel provisions of this Convention."

A paragraph in this form puts a somewhat different complexion on to the Protocol. A developing country availing itself of the Protocol will not strictly be undertaking different or lesser obligations but merely obtaining temporary exemption from the relevant provisions of the Convention, thereby stressing the transitional nature of the benefits and advantages contained in the Protocol.

B Article 31: As to paragraph (1)(c): Unless a clear choice is made between the French and the English texts, this sub-paragraph is not only unnecessary but likely to lead to confusion and difficulties.

P Article 20; B Article 32: As to paragraph (3). This paragraph is not really in the nature of a transitional provision. In the opinion of the Government of Israel, the provisions of the paragraph are more properly achieved by resolution or in the Final Act.

As to Document S/5:

1. The Government of Israel has the honor to submit its comment on the proposals for the conclusion of an additional Act to the Madrid Agreement set out in Document S/5 of November 22, 1966.

2. The Government of Israel sees no necessity for the formulation and acceptance of an additional Act, the main, if not the sole, purpose of which is to provide for the depository functions of the International Bureau consequent upon the prospective establishment of IPO at Stockholm. The necessary change could be sufficiently achieved by relatively simple amendments of the Madrid Agreement, which would also incidentally avoid any possible complications arising from the requirement to ratify and accede to the additional Act and matters incidental thereto.

As to Documents S/7 and S/8:

1. The Government of Israel has the honor to submit its comments and observations on the proposals for revising the administrative provisions and final clauses of the Nice Convention set out in Document S/7, and of the Lisbon Convention set out in Document S/8, both of December 13, 1966.

2. The Government must reserve its right to make additional comments and suggestions on Documents S/7 and S/8 in the light of further consideration thereof.

3. The following comments and suggestions are respectfully offered in respect of the proposals in the said Documents. [Reference to Documents S/7 and S/8 are prefixed by the letters N and L respectively.]

N Article 5: The Nice Convention provides for Regulations in Article 3. In order to complete the picture, such Regulations should be modifiable by the Assembly (as in the case of L Article 9(2)(a)(iii).) See also item (3)(e).

N Article 5; L Article 9: As to N paragraph (2) (a) (x); L paragraph (2) (a) (ix). Since the Assembly is the supreme body of the Special Union, it cannot strictly be allocated other functions by anyone, but may assume them.

As to paragraph (3) (b): As has been suggested for the Paris and Berne Conventions, the quorum should be fixed at one-half.

As to paragraph (3) (c): The suggestion made with respect to the parallel item in the Paris and Berne Conventions as regards postal voting is repeated here.

As to paragraph (3)(e): The comments made upon the parallel sub-paragraph in the Paris and Berne Conventions as regards financial obligations are repeated here.

As to paragraph (4)(a): Provision should be made that meetings of the Assembly should be linked with the meetings of the Paris and Berne Assemblies in line with the suggestions previously made in regard to Documents S/3 and S/9. See also N Article 8 and L Article 10.

As to paragraph (5): The words "subject to this Convention" should be inserted between the word "shall" and the word "adopt."

*N Article 5*bis; *L Article 9*bis: The International Bureau could be given the additional task of assembling and publishing relevant information, etc., as in the Paris and Berne Conventions.

As to paragraph (4): The other tasks must be assigned to the International Bureau by the Assembly.

N Article 9(1): This paragraph seems to be superfluous in view of Article 7.

As to Document S/10:

1. The Government of Israel has the honor to submit its comments and suggestions on the proposals for establishing the International Intellectual Property Organization set out in Document S/10 of September 16, 1966. The Government of Israel wishes to express its sincere appreciation of the manner in which the most difficult task of drafting a Convention for the establishment of the IPO has been executed.

2. The Government of Israel is fully aware of the difficulties which attend such an undertaking when several other international Unions and organizations are already in being and active in carrying out certain defined tasks in the field of intellectual property. The Government of Israel is, in this regard, particularly conscious of the challenge that faces countries, members of the relevant Unions, in their relation to other users and producers of intellectual property, who are not as yet formally associated with such Unions and, or alternatively, are members of other organizations which deal with the problems of the utilization of rights in such property and are concerned with the social and economic effects thereof.

3. With these sentiments in mind, the Government of Israel welcomes the proposals for the modernization of the administration of the Unions, the introduction of coordinating machinery and the concept of establishing a forum in which general questions concerning intellectual property can be formulated, discussed and elucidated.

4. While believing in the need for rendering more pliant the rules currently prevailing among members of the Unions with regard to the level of protection of intellectual property, taking into account the new needs and the development of technology, and kindred matters, the Government of Israel is of the opinion that the smooth functional and autonomous operation of each of the Unions as a constituent of the new Organization is in and by itself a positive requirement of the utmost value and importance, ranking first in precedence, for any further development in this area of activity. In the sequel, it is requisite to avoid the possibility of structural innovations and reorganization creating operational difficulties and, more positively, to ensure that the new Organization provides a viable and workable system of consultation and coordination, dispensing with such administrative arrangements as might prejudice the possibilities of prospective development.

5. Bearing in mind the foregoing considerations, the Government of Israel is in principle in favor of the establishment by way of international convention of a body providing common services for and controlled by the Unions acting in coordination among themselves through a Coordination Committee. The foundation of a new Organization may possibly be the proper means for achieving the purpose of an extension of activities, but it is felt that the primary tasks should be inter-organizational cooperation and correlation of the Unions, on the one hand, and the working out of measures to enable those countries which now stand outside the frame of international cooperation through the Unions to associate themselves in the protection of intellectual property, on the other hand. Thereafter, the considered creation of conditions conducive to a progressive encouragement of the international flow of information and knowledge might be undertaken.

For these reasons the Government of Israel envisages the building up of a broad consultative system and apparatus, in which the various elements involved in promoting these objectives will participate. It does not object in principle to consultation at the widest level, and intergovernmental consultation in particular, being effected by setting up—in addition to a Coordination Committee of Union members which together with the Bureau would remain the main operational and administrative organs of the new Organization—a General Assembly having, apart from over-all control of the administrative organs and the final decision on all common matters, a consultative function to facilitate in particular collaboration of those States which might at this stage feel for reasons internal to themselves and otherwise unable to join more intimately or organically in the work of the Unions.

6. In the opinion of the Government of Israel, the complexity at all levels of the problems accompanying the protection of intellectual property and kindred matters renders it preferable, if not inevitable, to proceed by way of a gradual elaboration of operational machinery and devices. It should, however, also be borne in mind that the success of any programme of development and expansion hinges upon the promotion of assistance to the developing countries and the flexibility of the system of protection.

7. As will hereafter appear, the Government of Israel prefers the adoption of Alternative B of the 1965 Committee to Article 4 to govern the question of membership of the Organization. Since Alternative B envisages no distinction between full and associate membership, it would follow that there is no reason or no justification for a four-tier structure of the Organization, comprising a General Assembly, a Conference, a Coordination Committee and the International Bureau. The number can be reduced to three by merging the General Assembly and the Conference into a single body. The Government of Israel is, however, fully aware of the desire and the need to preserve the autonomy of the various Unions and, whilst propounding the foregoing suggestion, will advance certain other suggestions in furtherance of this purpose when commenting on the relevant articles.

8. In the interests of clarity, the Government of Israel also offers the suggestion that the proposed Convention could profitably be recast in some such manner as is set out in the schedule annexed to these observations and comments.

9. In view of the novelty of the situation, of the radical problems which it raises and of its possible and probable repercussions, the Government of Israel clearly cannot in general commit itself in advance and must reserve the right to make additional or alternative observations, both before and during the deliberations of the Conference, upon further reflection on the present Proposals and consideration of the comments and suggestions submitted by other Governments.

For the same reasons, the Government of Israel desires to note that such of the present Proposals on which no comment is made or suggestion offered in this memorandum are not to be presumed as fully acceptable to it either in substance or in form.

10. Subject to the foregoing, the Government of Israel wishes to make the following more detailed comments and suggestions on the Proposals contained in Document S/10.

Preamble: It is felt that the Preamble should be phrased in wholly general terms without reference to matters which have their proper place in the substantive parts of the proposed Convention. Accordingly, it is suggested that all the words after "the various Unions" should be deleted and replaced by the simple statement "and to establish and promote further cooperation in the protection of intellectual property and legal-technical asssistance."

Article 1: In consequence of what has already been said in paragraph 7 above, the Government of Israel suggests the deletion of the words "a Conference."

The Government of Israel prefers the retention of the word "International" in the name of the Bureau.

Article 2; As to item (ii): The words "that is, the Secretariat of the Organization" belong properly to Article 9 where the composition, functions and powers of the International Bureau are otherwise dealt with in full. These words should, therefore, be deleted from the present item, a step which would also render it parallel with the definition in item (i).

As to items (iii) and (iv): The Paris and Berne Conventions are not mentioned elsewhere in the proposed Convention other than in items (v) and (vi) of this Article. Items (iii) and (iv) could be conveniently incorporated in items (v) and (vi) respectively, with consequential renumbering, as follows:

"(iii) 'Paris Union' shall mean the International Union established by the Convention for the Protection of Industrial Property signed on March 20, 1883, and any of its revisions;

"(iv) 'Berne Union' shall mean the International Union established by the Convention for the Protection of Literary and Artistic Works signed on September 9, 1886, and any of its revisions."

As to item (vii) (now item (v)): Since the possible expansion of the Organization is contemplated by the adhesion of other Unions and organizations with rights of representation on some or all of the constituent organs comprising the Organization, the Government of Israel suggests the insertion of the words "other Unions or organizations" between the words "the Berne Union" and the words "and any other Convention."

Article 3: As to paragraph (1): The Organization can by its very nature operate only through and under the Convention. It, therefore, appears expedient to put this at the forefront of its objective.

Moreover, as the Government of Israel understands the situation, cooperation is not intended to be confined "among States" alone nor would it be advisable or desirable so to confine it.

Again, protection of intellectual property can be achieved either by regulating the rights of owners with countervailing protection of consumer rights, or by regulating the rights attached to the different kinds of intellectual property as between owners and consumers, and in both cases in the national and intra-national areas. The former is the current form of protection and whilst the Government of Israel adheres thereto, it wishes to suggest some modification in the opening terms of the paragraph so as to indicate that the items which follow are not exhaustive and thereby allow for the like protection of other owners who may in the light of scientific, technical and industrial progress require the same.

The comments and suggestions which are hereafter advanced in respect of items (i) to (vi) are based on the following considerations: (a) in view of its origins and in order not to create possible complications of interpretation, the proposed Convention should, so far as may be, not depart too radically from the texts of the Conventions under which the Unions function but stick to broad terms, eschewing partial definitions; and (b) since legal-technical assistance is avowed in the Preamble to be one of the desiderata of the Contracting Parties and forms an intrinsic part of protection, it should be expressly mentioned as being one of the essential elements.

As to items (ii) and (iii): These provisions are correlative but rightly listed separately. Item (iii) seems to mark a radical extension of protection. The "expression" of a discovery may now, it appears, acquire a form of copyright or even patent protection. In view of this prevailing tendency to expand into new areas, inevitable as already suggested, it may be asked why "know-how" is not to be similarly protected and how generally, in the absence of any provision therefor in the Conventions of the various Unions, such enlarged protection is to be afforded.

The foregoing observations on paragraph (1) involve a number of drafting changes. The following is suggested:

"(1) The objective of the Organization is to promote through administrative cooperation among the Unions and by other appropriate means set out in the present Convention cooperation in the field of protection for intellectual and industrial property, including protection of:

(i) authors of literary and artistic works;

(ii) inventors of industrial property;

(iii) scientists in respect of their scientific discoveries;

(iv) persons in trade and industry in respect of their know-how;

(v) creators of works of applied art and industrial designs;

(vi) owners of trade and service marks and other commercial designations;

(vii) performing artists, producers of phonograms and broadcasting organizations;

(viii) consumers and traders against unfair practices and acts contrary to honest trade;

(ix) parties to the inter-state flow of intellectual property."

As to paragraph (2): Since the Organization cannot operate except through its appropriate organs, it seems redundant to mention the same.

The term "Unions" has already been defined and there is no need to particularize the same in item (i).

Since the objective of the Organization goes beyond the protection of intellectual property alone, it seems advisable to allow for this in item (iii); in view of what has been said above, it is suggested that reference should be made to the International Bureau.

To distinguish item (vi) from item (iii) and avoid any possible conflict with it, the former needs slight amendment.

Item (vii). It would appear that this item could very well be deleted and provision made for the point in item (vi).

As the heading to Article 3 and the substance of paragraph (1) indicate, there is only one objective. We propose, therefore, that in item (viii) and throughout the Convention the word remain in the singular.

Paragraph (2) should on the foregoing observations appear in the following form:

"(2) To this end, the Organization shall, subject to the competence of each of the Unions, take all necessary action to attain the objective of the Organization, and in particular

(a) generally

(i) encourage the conclusion of new conventions, agreements or treaties where appropriate in the fields pertinent to the attainment of the objective of the Organization, and to this end provide legal technical assistance to States requesting the same;

(ii) consult and establish relations with intergovernmental and international non-governmental organizations active or interested in the fields pertinent to the attainment of the objective of the Organization;

(b) through the International Bureau

(i) carry out the administrative tasks of the Unions as allocated to it by such Unions respectively;

(ii) assume or participate in the administration of other existing intellectual property conventions, agreements and treaties, on the request of and in agreement with the competent organs established by such conventions, agreements or treaties;

(iii) assemble information concerning the protection of intellectual property, promote and carry out studies in this field, and disseminate the information assembled and the results of the studies;

(iv) maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in the field of intellectual property and the publication of the data concerning the registrations;

(v) assist in the development of measures calculated to facilitate the efficient national protection of intellectual property throughout the world and to harmonize national legislations."

Article 4: The argument for two classes of membership is not acceptable to the Government of Israel for the following reasons. The new Organization is planned as a separate and independent organization and accordingly there seems to be no justification for distinguishing between full and associate members. The Organization has its own particular objective and functions. All its members should, therefore, possess equal rights in all matters that concern the Organization as a whole. Nevertheless, in as far as the Organization is also concerned with the various Unions and may take decisions within its prescribed powers solely or exclusively affecting the internal affairs or obligations or relations of any of the constituent Unions, it would be right and proper that no such decision should be taken by the Organization without the concurrent decision of those concerned.

Accordingly, the Government of Israel prefers Alternative "B" of the 1965 Committee, subject to the above qualification which may here be expressed in general terms by the addition of the following general words at the end:

"with such rights and obligations hereinafter in this Convention set out."

When dealing with the subsequent Articles, provisions will be suggested to give effect to the said qualification.

Articles 6 and 7: In view of the preference expressed for Alternative "B" to Article 4, it appears proper for the new Organization to possess one central organ to be called the General Assembly or General Conference. In the opinion of the Government of Israel, any over-elaboration of administrative changes and machinery would tend to obscure and hamper the main and substantive function of the Organization to attain its objective.

The Government of Israel is opposed to weakening the real connection that should exist between the various Unions and the Organization and, granted this connection, finds it desirable and necessary to uphold the independence of the former. Such independence can be secured by an appropriate provision that the central organ of the Organization shall only act in concurrence or in agreement with the Unions in any matter which is not exclusive to it as such but also involves the tasks and interests of such Unions. Incidentally, the meetings of the General Assembly of the Organization should be linked to that of the Assemblies of the Paris and Berne Unions and not the other way round. Accordingly it is suggested that in place of Articles 6 and 7 a new Article be drafted, which shall combine the relevant provisions of these Articles in one whole, subject to the observations and suggestions hereinafter set out.

For the reasons given in paragraph 7 above, all references to Full and Associate Members are to be deleted.

Paragraphs (1)(b), (3)(a), (b), (h), and (i) in each of Articles 6 and 7 are essentially procedural matters and should be collected together with all other points of procedure now to be found elsewhere in the proposed Convention and those that may be hereafter suggested or proposed.

Owing to the participation of the various Unions, each with its own separate budget, and in the light of Article 10(1)(b), it appears to be advisable to indicate expressly in paragraph (2)(a)(ii) of Article 7 that the budget referred to is that of the Organization itself.

To avoid all doubts as to the intention to give the Organization a continuing existence, it is suggested that the word "program" in paragraph (2)(a)(iii) of Article 7 should be in the plural.

As presently drafted, paragraph (2)(iv) of Article 7 might be understood as making it incumbent upon the Conference to adopt amendments proposed in accordance with Article 13. To avoid any misapprehension on this score, it is suggested to replace the words "adopt amendments" by "decide upon the adoption of amendments."

Paragraph (2)(vi) of Article 6 and its parallel, paragraph (2) (v) of Article 7, are left, so to speak, hanging in the air by not indicating who is to allocate the "other functions" or how the same is to be done. It is, therefore, suggested that the words "subject to this Convention" should be added at the appropriate point.

It is proposed wholly to delete paragraph (2)(b) of Article 7, since its retention makes it appear, at least theoretically, that the Organization is divided into or composed of subsidiary organizations, which is clearly not the case. Within the Organization itself, matters of common interest to all members must be dealt with by the central organ as a whole. In any event, each Union will itself discuss and determine in its own Assembly such matters as lie within its competence and where these impinge upon the common interest of the Organization will present its determinations to the General Assembly.

Paragraph (3)(g) of Article 6 is a provision of special importance and requires to be "isolated" from the rest of paragraph (3).

In view of the foregoing suggestions, the Government of Israel submits the following as the new Article 6 in place of the present Articles 6 and 7. Subsequent Articles would need in consequence to be renumbered:

"*Article 6: General Assembly:*

"(1) The General Assembly shall consist of the States party to this Convention whether or not members of any of the Unions.

"(2) The General Assembly shall:

(i) discuss matters of general interest in the field of intellectual property and may adopt resolutions and recommendations relating to such matters;

(ii) act on the reports and activities of the Coordination Committee;

(iii) appoint the Director General upon nomination by the Coordination Committee;

(iv) pronounce upon the arrangements proposed by the Director General concerning the administration of the conventions, agreements and treaties referred to in Article 3(2)(ii) and (iii);

(v) adopt the triennial budget of the Organization as such and within the limits thereof establish triennial programs of legal-technical assistance;

(vi) decide upon the adoption of amendments to this Convention as provided in Article 13;

(vii) determine the languages which, in addition to English and French, shall be the working languages of the Secretariat;

(viii) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) exercise such other functions as are allocated to it in accordance with this Convention.

"(3)(a) The Government of each State shall be represented by one or more delegates who may be assisted by alternate delegates, advisors and experts.

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

(c) Each State shall have one vote in the General Assembly.

(d) Abstentions shall not be considered as votes.

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

"(4)(a) Subject to the provisions of the following sub-paragraphs and Article 13[12], the General Assembly shall make its decision by a simple majority of the votes cast.

(b) The following shall require at least two-thirds of the votes cast:

(i) invitations addressed to a State to become a Member of the Organization (Article 4(3));

(ii) decisions concerning the transfer of the headquarters of the Organization (Article 5);

(iii) invitations addressed to States not Members of the Organization and to intergovernmental and international non-governmental organizations to attend meetings as observers (paragraph (2)(ix));

(iv) decisions on the budget which would increase the financial obligation of the Members of the Organization.

(c) The confirmation of arrangements concerning the administration of conventions, agreements and treaties, referred to in Article 3(2)(ii) and (iii), shall require at least three-fourths of the votes cast.

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

"(5) All decisions of the Organization, other than those which are of procedural nature or are not within the competence of any of the Unions, shall require the due concurrent agreement of the Unions.

"(6)(a) The General Assembly shall meet once in every third calendar year in ordinary session, upon convocation by the Director General, preferably during the same period and at the same place as the Assemblies of the Paris and Berne Unions.

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

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

"(7) The General Assembly shall subject to this Convention adopt its own rules of procedure."

Article 8 (now Article 7): As to paragraph (1) (a): In the third line, the word "or" should be replaced by the word "and" in order to make it quite clear that both Unions are to be represented on the Coordination Committee.

As to paragraph (1) (c): Since, in view of the suggestions above made, membership of the Organization will now be unitary, this sub-paragraph requires recasting in the following manner: "(c) Whenever the Coordination Committee considers matters of direct interest to the Organization as such, it shall further include one-fourth of those States party to this Convention, which are not members of the Unions, with the right, subject to paragraph (6)(b), to vote and otherwise participate equally with other members of the Coordination Committee in the work thereof. Such one-fourth shall be elected at each ordinary session of the General Assembly by all States party to this Convention, which are not members of the Unions."

As to paragraph (2): The Government of Israel wonders whether the word "appointed" in the third line is not perhaps indicative of a certain status not provided for in the proposed Convention nor in any other authoritative instrument.

As to paragraph 3 (i): In view of the suggestion to dispense with the Conference, the word "and" is to be inserted between the words "Unions" and "the" in the first line. In the second line the words "and the Conference" require to be deleted; in the fifth line in place of the word "Conference" the words "General Assembly" should be inserted.

It is observed that whilst Member States which are members of the Unions are covered by Article 10(3)(a)(i), no provision exists for the right of other Member States to fix their aggregate contribution parallel to the rights of the Unions.

As to paragraph (4): For reasons already set out above, the second sentence should be deleted and the following added as a continuation of the first sentence: "preferably during the same period and at the same place as the Executive Committees of the Paris and Berne Unions."

Article 9 (now Article 8): As to paragraph (5): The words "the Conference" require to be deleted.

In view of the suggestions made under Article 2(ii), it is necessary to add a sub-paragraph setting out the functions and duties of the International Bureau. The following is suggested: "(2) the International Bureau shall serve as the Secretariat of the Organization and exercise such other administrative functions as may be allocated to it by the Unions."

Article 10 (now Article 9): The overall aim must be to keep the budget as small as possible, consonant with the objective and functions of the Organization. In particular, the contributions of the Unions must be kept down to the very minimum. It is, therefore, desirable to provide expressly that Members pay their own expenses when attending meetings of the General Assembly and the Coordination Committee and the same should not fall upon the budget as they well might under the terms of paragraph (1)(b) as at present drafted. That paragraph also requires amendment, in light of the suggestions made above, by replacing the word "Conference" by the word "General Assembly."

In *paragraph (3) (a) (ii)*, for similar reasons, the words "Member States not being members of the Unions" should replace the words "Associate Members." It would be appropriate here to provide how the aggregate contribution of such Members is to be determined.

In *paragraphs (4) (a), (b), (c); (5) (a); (8) (a), (c)*, likewise the words "Member States not being Members of the Unions" should replace the words "Associate Members" or "Associate Member States". In paragraph (5)(a), the words "Full Member State" should be replaced by the words "Member State being a member of any of the Unions."

In *paragraph (9) (a)* the word "Member" towards the end is out of place and should be deleted.

The following *new paragraph* should be inserted before paragraph (10): "The expenses of each Delegation to the General Assembly and to the Coordination Committee respectively shall be borne by the Government which has appointed it."

Present *paragraph (10)* requires renumbering in consequence.

Article 11 (now Article 10): As to paragraph (3): The Government of Israel, aware of certain attitudes, will have to insist that the word "all" be inserted between the words "representatives of" and the word "Member" in the fourth line. No uncertainty may be admitted in this connection. The Government of Israel understands that before any meetings of the Organization are convened the agreements referred to will so far as may be necessary be concluded.

Article 13 (now Article 12): In *paragraphs (1) and(2):* the words "General Assembly" must, in consequence of what has been suggested before, replace the word "Conference".

In *paragraph (2)*, the first sentence would better read: "Amendments shall be subject to adoption by the General Assembly." Amendment of the Convention is such a basic matter that it obviously requires not a simple but a two-thirds majority, which would incidentally tend to secure more speedy and ready acceptance by three-fourths of the Member States under paragraph (3).

Article 14 (now Article 13): As to paragraph (1) (b): To avoid formal inflexibility, it is suggested that in the fourth line the words "previously or" should be inserted between the words "only if" and the word "concurrently."

As to paragraph (3) (b): The right of the States affected to attend as observers should be expressly retained. Accordingly the words "the right to attend as observers but with"

should be inserted between the words "shall have" and the words "no right." Consequently as above, the last three words should be deleted and the word "or" inserted between "the General Assembly" and "the Coordination Committee."

Schedule: [See paragraph 8 above] *Suggested rearrangement of the provisions of the proposed Convention* (The figures in parentheses indicate the numbers of the parallel existing Articles.)

Preamble

Chapter I: The Establishment of the Organization
Article 1: The Organization (1)
Article 2: Definitions (2)
Article 3: Purposes (3)
Sec. (1): Objectives
Sec. (2): Functions
Article 4: Headquarters (5)
Article 5: Legal Capacity, etc. (11)
Article 6: Relations with other Organizations (12)

Chapter II: The Structure of the Organization
Article 1: Membership (4)
Article 2: The General Assembly (6 and 7)
Sec. (1): Composition
Sec. (2): Powers
Sec. (3): Meetings
Sec. (4): Voting
Sec. (5): Procedure
Article 3: The Coordination Committee (8)
Sec. (1): Composition
Sec. (2): Powers
Sec. (3): Meetings
Sec. (4): Voting
Sec. (5): Procedure
Article 4: The International Bureau (9)
Sec. (1): General
Sec. (2): The Director General
Sec. (3): Powers and Duties
Sec. (4): Responsibility
Article 5: Finances (10)
Sec. (1): Budget
Sec. (2): Sources of Income
Sec. (3): Contributions
Sec. (4): Working Capital
Sec. (5): Advances
Sec. (6): Auditing

Chapter III: Adhesion to the Organization
Article 1: Becoming a Member (14)
Article 2: Reservations (17)
Article 3: Entry in Force of the Convention (14)
Article 4: Denunciation (15)
Article 5: Notifications (16)

Chapter IV: Miscellaneous
Article 1: Amendments (13)
Article 2: Final Provisions (18)
Article 3: Transitional (19)

ITALY

As to Document S/3:

Article 13 and following Articles: Considering as a whole the administrative clauses contained in Article 13 and the following Articles, it is hoped that their final wording can consistently ensure the administrative autonomy of each Union.

Article 13(3)(b): It is felt that the quorum for the Assembly should not be less than half of the member countries.

*Article 13*bis*(8)(b):* Inasmuch as the Executive Committee is composed of a limited number of member countries, it is suggested that the quorum be raised to two-thirds.

*Article 13*quinquies*: As to paragraph (1):* The Italian Administration wonders whether it would not be worth while to have the text include some indication regarding the power of initiative for all amendment proposals concerned in this paragraph.

As to paragraph (2): Inasmuch as the administrative provisions are now given in the text of the Convention itself, it seems that it might be desirable to reconsider the question whether the majority provided for in this paragraph is the most satisfactory one.

Article 16(2)(a) and (b): In view of the importance of Articles 1 to 12 mentioned in sub-paragraph (a), one might consider the advisability of requiring, for their entry into force, that the same number of instruments of ratification or accession be deposited as is indicated in sub-paragraph (b). If this is done, the text of sub-paragraph (c), as well as any other provision in the draft Convention relating to entry into force, would have to be modified accordingly.

As to Documents S/4, S/6, S/7, and S/8: Assembly (Documents S/4, Article 10(3)(b); S/6, Article 2(3)(b); S/7, Article 5(3)(b); S/8, Article 9(3)(b)): It is felt that the quorum for the Assemblies should not be less than half of the member countries.

Power of Initiative (Documents S/4, Article 10*quater*(1); S/6, Article 5(1); S/7, Article 5*quater*(1); S/8, Article 9*quater*(1)): The Italian Administration wonders whether it would not be worth while to have the texts include some indication regarding the power of initiative for all amendment proposals concerned in these paragraphs.

Quorum (Documents S/4, Article 10*quater*(2); S/6, Article 5(2); S/7, Article 5*quater*(2); S/8, Article 9*quater*(2)): As regards the qualified majorities mentioned in the above paragraphs, reference is made to the comments already made by the Italian Delegation in connection with Article 23, paragraph (2), of the text of the administrative and final provisions of the Berne Convention (S/9).

As to Documents S/5 and S/6: The proposals made in the above documents are approved, in principle.

As to Document S/9: After having considered the text of document S/9, as modified by document S/9 corr. 1, the Italian Administration wishes to put forward the following observations.

*Article 20*bis *(Protocol Regarding Developing Countries):* Inasmuch as there could be some doubt about the advisability of deleting Article 25*quater*, for the reasons stated hereinafter in connection with the said Article 25*quater*, we are of the opinion that the original wording of Article 20*bis* should be maintained.

Article 21 and the following Articles: Regarding in general the administrative clauses contained in Article 21 and the following Articles, we trust that the final wording of these clauses will consistently ensure the administrative autonomy of each Union.

Article 21 (Assembly): As to paragraph (3)(b): It is felt that the quorum of the Assembly should consist of not less than half of the member countries.

*Article 21*bis *(Executive Committee): As to paragraph (8)(b):* In view of the fact that the Executive Committee is composed of a limited number of member countries, it is suggested that the quorum should be raised to two-thirds.

Article 23 (Amendments to Articles 21 to 23): As to paragraph (1): We wonder whether the text should not give some indication regarding the power of initiating any proposals for amendment provided for in this paragraph.

As to paragraph (2): Inasmuch as the administrative provisions will now be included in the text of the Convention itself, we wonder if it would not be wise to reconsider the question of whether the qualified majority indicated in this paragraph is the most satisfactory.

Article 25 (Ratification, Accession, and Entry into Force): As to paragraph (2), sub-paragraphs (a) and (b): In view of the importance of Articles 1 to 20*bis* and the Protocol, mentioned in sub-paragraph (a), it might be advisable to consider requiring, for entry into force thereof, that the same number of instruments of ratification and accession be

deposited as is stipulated in sub-paragraph (b). If this modification is made, the text of sub-paragraph (c) will have to be altered accordingly, as will any other provision referring to the entry into force contained in the proposed Convention.

*Article 25*quater *(Admission of the Application of Reservations Made under the Protocol Regarding Developing Countries):* The Italian Administration feels that it would be better to retain Article 25*quater* (Document S/9, page 51), with the consequences this will have for the other provisions of the draft, because it ensures complete freedom of decision to countries of the Union which are not yet bound by Articles 1 to 20 of the Stockholm Act and by the Protocol Regarding Developing Countries.

In the opinion of the Italian Administration, the Diplomatic Conference of Stockholm should consider this question very carefully and endeavor to find reasonable solutions which preserve the basic principles of the system of the Union.

As to Document S/10:

General Observations: The Italian Administration considers it would be well to recall that, when the proposal to set up the International Intellectual Property Organization (IPO) was being discussed, certain delegations—including the Italian Delegation—were somewhat disturbed about the complexity of such an Organization. As a matter of fact, it was not clearly apparent that it would be advisable to set up a new international organization especially for the purpose of achieving such precise finalities as those specified in the resolution passed by the 1962 Interunion Committee, and it was felt that it might be possible to achieve the said finalities by simpler and less costly instruments.

At the same time, we think there could be reason to wonder whether, despite all formal precautions taken, the establishment of the new Organization might not affect, in some way, the full autonomy of the two Unions, which autonomy is required by all of the member countries. Furthermore, even if the primarily administrative tasks of the two Unions are brought close together within the framework of a single organ, one might ask whether it would not be possible that the two distinct forms of protection would tend to interfere with each other, either on the legal or the administrative plane. It must not be forgotten that these two forms of protection differ greatly as a result of the very diverse, yet equally important, rights and private interests relating thereto.

Preamble: The use of the expression "Intellectual Property Unions" in the Preamble could lead one to think that, to a certain degree, the principle of uniting industrial property and literary and artistic property had been accepted.

It therefore seems necessary to replace it by the following, more precise expression: "Unions in the field of industrial property and the protection of literary and artistic works," while maintaining the expression "intellectual property" in the second part of the Preamble and in the text of the Convention.

Article 2: We suggest adding here a definition of the expression "intellectual property," in the sense indicated in paragraph 34 of the Commentary on Article 1 (S/10, page 10).

Article 3: As to paragraph (1): The excessively detailed enumeration in this paragraph makes the text read awkwardly as a whole, and yet it does not appear to be comprehensible enough. It would consequently seem better to synthesize the wording and to stress the two primary objectives of the Organization, namely administrative cooperation among the Unions and protection of intellectual property throughout the world. We would accordingly suggest that the following text be substituted for the text of the draft:

"(1) The objective of the Organization is:

(a) to encourage administrative cooperation among the various Unions administered by the Organization;

(b) to endeavor to promote the protection of intellectual property throughout the world through collaboration between the States and, where necessary, by collaborating with any other international organization."

As to paragraph (2): As a result of the proposed modification of paragraph (1), paragraph 2(vi) would have to be amended as follows:

"shall assist in harmonizing national legislation in the field of intellectual property."

Article 4: The Italian Administration approves the spirit in which BIRPI's new proposal concerning Members of the Organization has been made.

Article 6, paragraph (3): The Italian Administration is of the opinion that the quorum appearing in sub-paragraph (b) should consist of not less than half of the States members of the General Assembly.

In addition, with reference to sub-paragraph (d), the Italian Administration considers that it would be advisable to require a qualified majority for the adoption of the General Assembly's rules of procedure.

Article 7: We feel that the drafting of the financial clauses in this Article will have to be reviewed at a later date so as to coordinate them better with the other financial provisions governing the Organization and with the new administrative clauses of the various Unions.

In particular, it would appear desirable to consider the possibility of reserving to the General Assembly the task of approving the budget of the Organization, except for the part of that budget which is within the competence of the Conference.

As to paragraph (3) (b): It would seem advisable to stipulate that the quorum should consist of not less than half of the Full Members and half of the Associate Members.

As to paragraph (6): We repeat here the suggestion already made regarding the majority required for approval of the General Assembly's rules of procedure.

Article 8: As to paragraph (3) (iv): It would seem desirable to alter the wording of this provision to make it more readily understandable.

As to paragraph (8): We repeat here the suggestion already made regarding paragraph (6) of Article 7.

Article 9: As to paragraph (1): We believe it would be wise to consider the possibility of redrafting this paragraph eventually so that it will better reflect the necessity of preserving the autonomy of the Unions and of ensuring the proper functioning of the new Organization.

Article 13(1): We wonder whether it might not be worth while to have the text include a few details regarding the powers of initiating any proposals for the amendment of the Convention.

Article 14(2) (a): In view of the vastness of the administrative reform represented by the new Organization, we think that the participation of an even greater number of Member States than is proposed in the text should be required in order for IPO to enter into force.

JAPAN

General Comments

(1) The Draft Convention establishing the International Intellectual Property Organization (S/10) intends to create, on the basis of fully respecting the autonomy of each of the existing intellectual property Unions, a new inter-governmental Organization which aims to modernize and make more coordinated the administration of the intellectual property Unions through the establishment of administrative organs common to them and to promote on a world-wide basis the protection of intellectual property through the establishment of a forum in which member countries of any of the existing Unions as well as States not affiliated with any of these Unions, particularly developing countries, participate.

Japan is of the opinion that there is a need for creating such an Organization and has no objection to accepting, as a basis for discussion in the Stockholm Conference, the Draft

Convention establishing the Organization (S/10), Proposals for Revising the Administrative Provisions and Final Clauses of the Paris Convention (S/3), Proposals for Revising the Administrative Provisions and Final Clauses of the Berne Convention (S/9), etc.

(2) It is to be noted, however, that in the field of the international protection of copyright, UNESCO has played a considerable role as administrative organ of the Universal Copyright Convention; Japan wishes, therefore, to express a hope that utmost efforts should be made in future for the coordination of the functions between the new Organization and UNESCO.

As to Document S/10:

Article 4 (Membership): Japan supports the proposed Article, but subject to the following modifications:

Following examples of international conventions concluded in conferences convened by the UN Specialized Agencies, paragraph (3)(i) should be amended to read "it is a Member of the United Nations or any of the Specialized Agencies brought into relationship with the United Nations *or the International Atomic Energy Agency* or" (the italicized words added).

Article 6 (General Assembly): With regard to the functions of the General Assembly referred to in paragraph (2)(i) to (vi), Japan considers that they are appropriate. However, with regard to the appointment of the Director General referred to in (ii) of paragraph (2), see the Japanese proposal relating to paragraph (1)(c) of Article 8.

Article 8 (Coordination Committee): In principle, Japan has no objection to the functions of the Coordination Committee referred to in paragraph (3)(i) to (vii). However, as far as the appointment of the Director General is concerned, Japan considers that the Associate Members should also be given a voice, though evidently smaller than that of the Full Members. Therefore, Japan proposes to amend paragraph (1)(c) as follows (the italized words added): "Whenever the Coordination Committee considers matters of direct interest to the Conference *and matters referred to in paragraph (3) (v) and (vi) of the present Article*, one-fourth of the Associate Members shall participate in the Coordination Committee with the same rights as the members of that Committee. This one-fourth shall be elected by and at each ordinary session of the Conference."

Article 14 (Becoming Party to the Convention; Entry into Force of the Convention): In the present Draft Convention, the legal links between the IPO Convention on the one hand and the Berne Convention and Paris Convention on the other, which had been formulated in Article 14 of the Draft Convention for the 1966 Committee (A/III/12), has been abolished.

With regard to the advisability of abolishing such legal links, Japan, being desirous to study it further, wishes to reserve its position on the proposed Article and other related Articles until the Stockholm Conference.

Article Concerning Settlement of Disputes: The present Articles 18 (Final Provisions) and 19 (Transitional Provisions) should be renumbered as Articles 19 and 20 respectively. As in many constitutional instruments of the UN Specialized Agencies, there should be in the Convention an article concerning the settlement of disputes.

So it is suggested that the following should be added as Article 18:

"Any dispute between two or more member States of the Organization concerning the interpretation and application of this Convention not settled by negotiation, or by the General Assembly, shall be brought before the International Court of Justice for determination by it, unless the member States concerned agree on some other method of settlement. The member State requesting that the dispute should be brought before the Court shall inform the International Bureau; the Bureau shall bring the matter to the attention of the other member States."

As to Document S/9:

Article 25 (Ratification and Accession by) Countries of the Union; Entry into Force, and *Article 25*bis*: Accession by Countries outside the Union; Entry into Force:* In the present Proposals, the legal links between the IPO Convention and the Berne Convention, which had been formulated in Articles 25*ter* and 25*quater* of the Draft Text of the Berne Convention Final Clauses for the 1966 Committee (AA/III/3, Berne Addendum), have been abolished. With regard to the advisability of abolishing such legal links, Japan, being desirous to study it further, wishes to reserve its position on these Articles and other related Articles until the Stockholm Conference.

*Article 25*ter *(Reservations):* Japan opposes the proposed paragraph (2) which does not allow countries of the Union not making the declaration permitted by Article 25(1)(b)(i) to retain the benefit of the reservations they have previously formulated. The countries of the Union which accept or accede to the Stockholm Act should have the free choice of whether or not they abandon the benefit of the reservations they have previously formulated.

*Article 27*bis *(Settlement of Disputes):* Japan supports Alternative A, that is to say, the maintenance of the existing Article (Article 27*bis* of the Brussels Act).

As to Document S/3:

Article 16: Ratification and Accession by Countries of the Union; Entry into Force, and *Article 16*bis*: Accession by Countries outside the Union; Entry into Force:* In the present Proposals, the legal links between the IPO Convention and the Paris Convention which had been formulated in Article 16*ter* and 16*quater* of the Draft Text of the Paris Convention Final Clauses (AA/III/3, Paris Addendum) for the 1966 Committee, have been abolished. With regard to the advisability of abolishing such legal links, Japan, being desirous to study it further, wishes to reserve its position on these Articles and other related Articles until the Stockholm Conference.

Articles on Settlement of Disputes: The proposed Articles 19 and 20 should be renumbered as Articles 20 and 21 respectively and it is suggested the following Article concerning the settlement of disputes should be added as Article 19:

"Any dispute between two or more countries of the Union concerning the application of this Convention, not settled by negotiation, shall be brought before the International Court of Justice for determination by it, unless the countries concerned agree on some other method of settlement. The country requesting that the dispute should be brought before the Court shall inform the International Bureau; the Bureau shall bring the matter to the attention of the other countries of the Union."

LUXEMBOURG

As to Document S/3:

General Observations: By participating in the meetings of the 1965 and 1966 Committees of Experts, the Luxembourg Government indicated its interest in the proposed administrative and structural reforms to be effected in the Paris and Berne Unions and in the other Unions administered by BIRPI.

Considering that, with one exception, the provisions proposed in document S/3 follow the views expressed by the 1966 Committee of Experts, the observations and counterproposals of the Luxembourg Administration concern only a very limited number of points.

The Luxembourg Administration, after having re-examined the question, maintains its positive attitude towards the proposed reform. It is convinced that it will prove beneficial to the various Unions since the member countries will participate more directly in the administration of these Unions and BIRPI will have the appropriate means to develop its field of activity and accomplish its various tasks more efficiently.

Article 13: As to paragraph (1)(c): According to this provision, the expenses of each Delegation would be borne by the Government which has appointed it. The Luxembourg Administration agrees to this proposal, and to its insertion in Article 13 of the Convention, although it is of the opinion that such a provision should normally appear in the internal rules of procedure of the Assembly.

As to paragraph (3)(b): The question which arises is that of the procedure to be followed when the quorum is not reached. This question is particularly important in view of the fact that the Assembly must adopt the triennial budget and that normally it meets only once every three years. To cover such an eventuality, should there not be provision for the convening of another meeting within a relatively short period of time and with the same agenda? The new meeting should then be able to deliberate validly, regardless of the number of delegates present. This provision would have to be brought to the attention of the delegates.

*Article 13*bis*: As to paragraph (2)(c):* The comment made in connection with Article 13(1)(c) also applies to Article 13*bis*(2)(c).

As to paragraph (4): This paragraph stipulates the need for countries members of the Special Unions established in relation with the Union to be among the countries constituting the Executive Committee. The proposed text could be understood to mean that all countries belonging to the Special Unions should be among the countries of the Committee, which is obviously not what was intended. For the sake of clarity, the following wording is suggested: "...and to the need for countries members of the Special Unions established in relation with the Union to have their interests represented by one or more of the countries constituting the Executive Committee."

*Article 13*ter*: As to paragraph (2):* For the sake of completeness, it is suggested that the words "all new laws" in the second sentence be replaced by "all new texts of laws or regulations."

*Article 13*quater*: As to paragraph (3)(ii):* It is suggested that the word "*dues*" in French be replaced by "perçues".

As to paragraph (4)(a): The Luxembourg Administration supports the proposal whereby a seventh class, having one unit, would be added to the six existing contribution classes. Nevertheless, it wonders whether this change—although it does represent some progress—makes sufficient allowance for the financial means of the various categories of countries. It is true that the present contributions of States are still rather modest. This question would, however, become more important if, for one reason or another, the expenditure of the Union were to be sharply increased. In such a case, it might be useful to have contributions spread over ten classes.

Article 14: Article 14 concerns revisions of the provisions of the Convention other than Articles 13 to 13*quinquies*, yet the term used in connection with Articles 13 to 13*quinquies* is not "*revisions*" but "*amendments*". In order to take this distinction in terminology into account, it is proposed that the title should read: "Article 14: Revision of the Provisions of Articles 1 to 12 and 14 to 20 of the Convention."

As to paragraph (1): The question which arises is whether the first paragraph should not mention the various articles of the Convention to be submitted to periodical revision. The text would then be worded as follows: "Articles 1 to 12 and 14 to 20 of the present Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union."

Adoption of the above-mentioned new text would appear to make it possible for paragraph (3) of Article 14 to be deleted. Paragraph (4) of Article 13*quinquies* could also be deleted.

As to Document S/9:

Regarding the proposals for revising the administrative provisions, reference is made to the observations which will be submitted in connection with the other Unions.

As the administrative organization of these other Unions will be similar to that of the Berne Union, the comments on document S/3 also apply to the present document.

The final proposals, appearing in Articles 23 to 32, give rise to the following observations.

Article 23: Article 23 governs the procedure for modifying the administrative provisions. Amendments are adopted by a three-fourths majority of the votes cast. Amendments of Article 21 and Article 23(2) require a unanimous vote.

This system of requiring unanimity for matters of great importance is acceptable.

*Articles 25 and 25*bis*:* The provisions of Articles 25 and 25*bis* deal with the accession of countries to the Stockholm Act and do not call for any general observations. There is, however, one comment to be made.

Acceptance of the Stockholm Act by the countries of the Union will not necessarily imply acceptance of both the new substantive provisions and the new administrative provisions. The countries will have the option of accepting only the new substantive provisions or only the new administrative provisions. Although there are certain practical advantages in allowing this option, it will not tend to simplify relations between the member States. Harmonizing international copyright would, in fact, require that all countries of the Union be bound by the same Act.

*Article 27*bis *(Settlement of Disputes):* The present Article 27*b s*, added when the Convention was last revised, provides that the jurisdiction of the International Court of Justice shall be compulsory.

As certain countries have not accepted this provision, it would seem that Alternative C, making this jurisdiction of the Court optional, should be retained. It would, in fact, be unfortunate if certain countries should be prevented from ratifying the Stockholm Act or acceding to it because the present clause is maintained.

As to Document S/10:

General Observations: At the 1965 and 1966 meetings of the Committees of Experts, the Luxembourg Administration adopted a favorable attitude toward the plan to establish a new International Intellectual Property Organization. To date, we see no reason why this attitude should be changed. We are convinced that the new Organization will be called upon to play an important role in the sense that it will provide a coordinated and rational administration of the various intellectual property Unions and will promote the circulation and harmonization of the general principles governing the protection of intellectual property in all States of the world and particularly in the developing countries. It is moreover interesting to note that, according to the Draft Convention, the new Organization will be called upon to act only in matters of common interest to the different Unions and that the latter will retain their full independence, especially as regards establishing and carrying out their programs of activity. Concerning the budgets of the Unions, the introductory note points out that approval thereof lies fully within the competence of each Union's Assembly. The Luxembourg Administration would merely like to call attention to the fact that staff costs, which would normally represent the largest item of a Union's total expenses, are determined by applying the staff regulations. According to Article 9 of the Draft Convention, however, the Staff Regulations are to be approved by the Coordination Committee on the proposal of the Director General, which means that the establishment and approval of these regulations are not within the competence of the Assemblies of the various Unions. It must therefore be concluded that the Assemblies, when called upon to approve their budgets, will be more or less obliged to allow for commitments made by virtue of a decision taken by an organ external to the individual Unions. Consequently, the independence of the Assembly will be merely relative.

Article 1: Regarding the suggested alternative for the title of the new Organization, Luxembourg would like to put off taking a position until the time of the Conference.

Article 4: Concerning the proposed alternatives in respect of the conditions to be met in order for States to become Members of the Organization, Luxembourg will take a decision once the issue has been debated at the Conference. We wish to state at this time, however, that we share the opinion of the Swedish Government and BIRPI that the Stockholm Conference, which is to deal with matters of a primarily technical nature, is not the appropriate forum for solving a purely political issue.

Article 8: Paragraph (3) of Article 8 lists the functions of the Coordination Committee. This list does not, however, mention the important duty of approving the Staff Regulations. Although item (vii) does stipulate that the Committee shall perform such other functions as are allocated to it, it would seem, in view of the financial consequences involved, that approval of the Staff Regulations should be explicitly mentioned.

Article 9(6): Under the heading "General Observations," we have already drawn attention to the problem raised by the proposal to entrust the function of approving Staff Regulations to the Coordination Committee. In short, this proposal is contrary to the general idea of ensuring the independence of the different Unions. Considering this drawback, the Luxembourg Administration wonders whether it would not be better to assign the task of approving the Staff Regulations to the General Assembly, in which all countries members of the different Unions are represented, and to authorize the Coordination Committee to make modifications required in certain specific cases (such as periodically adapting salaries to changes in cost of living). For the time being, the Luxembourg Administration merely wishes to raise the question, without offering a concrete counter-proposal.

Article 10(4)(a): For purposes of achieving harmony, should the same number of classes not be provided as for the other Unions? Obviously, it is more than likely that, at the beginning, the contributions to be paid to the Organization by Associate Members will still be rather modest and a greater number of classes will not be required in the near future. It is difficult, however, to predict how the activities of the Organization will develop and what its longer-range financial needs will be.

African and Malagasy Industrial Property Office (OAMPI) and Cameroon, Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal, Upper Volta

Further to your letter No. (36)—312, of February 2, 1967, I have the honor to enclose, on behalf of the States members of OAMPI, the amendments which the OAMPI Governing Body, meeting in Brazzaville from January 30 to February 6, 1967, requested the countries of the Libreville Agreement to propose to the organizers of the Stockholm Conference.

These are, therefore, the official proposals made by the States members of OAMPI. The Governments of each of these States will confirm this shortly through the usual channels.

These proposals pertain solely to questions of representation and voting and are intended to complete the work of regional regrouping of which the Africano-Malagasy Office is the instrument. The effort being made within the framework of the Libreville Agreement to achieve harmony and uniformity is in line with the ideas of the United Nations. I am convinced that it will also meet with your understanding and with that of the members of the Paris and Berne Unions.

Preliminary Observations: The States members of the African and Malagasy Industrial Property Office (OAMPI) have studied documents S/1 to S/12, as well as documents S/3/Corr.1, S/4/Corr.1, S/7/Corr.1, S/8/Corr.1 and S/9/Corr.1, prepared by the Government of Sweden with the collaboration of the United International Bureaux for the Protection of Intellectual Property (BIRPI) for the purposes of the Diplomatic Conference to be held in Stockholm, from June 12 to July 14.

The conclusions arrived at as a result of this study were submitted to the OAMPI Governing Body for consideration at its sixth session, held in Brazzaville from January 30 to February 6, 1967.

The Governing Body decided to submit certain conclusions to the organizers of the Stockholm Conference in the form of proposed amendments to some of the provisions contained in documents S/3 and S/10.

These proposed amendments relate to Articles 13 (Assembly) and 13*bis* (Executive Committee) of document S/3 (Paris Union) and Articles 6 (General Assembly), 7 (Conference) and 8 (Co-ordination Committee) of Document S/10 (International Intellectual Property Organization, IPO).

The matters concerned have to do with *representation* and *voting*. The proposed amendments are given below.

As to Document S/3:

Article 13 (Assembly): In paragraph (1), insert a sub-paragraph (c) between sub-paragraph (b) and the present sub-paragraph (c), the latter sub-paragraph then becoming sub-paragraph (d). The following wording is proposed for the new sub-paragraph (c):

"(c) *A plurality of countries, members of one or more Unions and grouped together in a single Office under the terms of an international agreement, may be represented by a single delegation or by their common organ which shall have as many votes as the said Office has member States.*"

Add the following reservation to paragraph (3)(a): "*. . . subject to the application of the provisions of paragraph (1)(c) above.*"

Add the same reservation to paragraph (3)(g).

*Article 13*bis *(Executive Committee):* Add the following reservation to paragraph (2)(b): "*...subject to the application of the provisions of Article 13(1) (c).*"

Add the same reservation to paragraphs (8)(a) and (8)(e).

As to Document S/10:

Article 6 (General Assembly): In paragraph (1), add a sub-paragraph (c) worded as follows: "(c) *A plurality of countries, members of one or more Unions and grouped together in a single Office under the terms of an international agreement, may be represented by a single delegation or by their common organ which shall have as many votes as the said Office has member States.*"

Add the following reservation to paragraph (3), sub-paragraph (a): "*. . . subject to the application of the provisions of paragraph (1)(c) above.*"

Add the same reservation to paragraph (3)(i).

Article 7 (Conference): Add the following reservation to sub-paragraph (1)(b): "*. . . subject to the application of the provisions of Article 6(1) (c).*"

Add the same reservation to paragraphs (3)(a) and (3)(g).

Article 8 (Coordination Committee): Add the following reservation to paragraph (1)(b): "*...subject to the application of the provisions of Article 6(1) (c).*"

Add the same reservation to paragraphs (5)(a) and (5)(c).

Comments

These are the amendments which the States of the African and Malagasy Industrial Property Office suggest should be added to certain of the provisions of documents S/3 and S/10. What are the reasons for proposing these amendments?

The basic objectives of the proposals for revision, drawn up for the purposes of the Stockholm Conference, can be summarized under two main headings:

modernization of the international conventions for the protection of intellectual property rights, in particular with a view to having the member States play an effective part in the management of those conventions;

Universalization of intellectual property by the establishment of a world forum—the International Intellectual Property Organization, and especially the Conference thereof—through which countries not members of the Unions

can benefit from international cooperation in this field and, by becoming familiar with intellectual property matters, can accede to the Unions.

In the preparatory documents, however, there is no mention of the idea of regional grouping. The purpose of the OAMPI amendments is to introduce this idea.

The importance of regional integration is, in fact, receiving wider and wider recognition, and this is equally true in the field of intellectual property.

As regards industrial property, OAMPI represents the first, and practically the only, concrete achievement in the pursuit of such integration. It has therefore been internationally sanctioned, and was analyzed in the 1964 report of the Secretary-General of the United Nations on "the role of patents in the transfer of technology to developing countries." This report states in particular: "While the Paris Union and the other conventions mentioned earlier did not purport to bring about uniformity in national legislation, they have advanced the idea of harmonizing and coordinating the functioning of national patent systems." (In this connection, see also Article 15 of the Paris Convention.) "There have since been efforts, in connection with the drive towards regional economic integration, to obtain greater uniformity in the granting and administration of patents. These efforts have resulted in several plans for the granting of a uniform regional patent..., of which *only the African and Malagasy proposal* has thus far been implemented...the potentialities of a central patent office serving the needs of an entire region are of considerable interest."

In addition, more and more thought is being given to the idea of a universal patent. A report on the patent system, drawn up by a commission appointed by the President of the United States of America, thus concludes that the formation of regional patent system groups should be encouraged as an intermediate stage in the establishment of a universal patent system.

Thirdly, paragraph 2(a)(x) of the Resolution constituting the United Nations Industrial Development Organization (UNIDO) recognizes regional groupings in the field of industrial property by assigning UNIDO the task of "proposing, in cooperation with the international bodies or intergovernmental *regional* bodies concerned with industrial property, measures for the improvement of the international system of industrial property, with a view to accelerating the transfer of technical know-how to developing countries and to strengthening the role of patents consistent with national interests as an incentive to industrial innovations."

To adopt the OAMPI amendments would therefore be to support the effort being made to achieve cooperation and solidarity among the countries of this regional group, and this effort would then be raised to the international level. The adoption of these amendments would, in particular, permit those countries to overcome both the disadvantage of having too few or, as is the case in many OAMPI States, no specialists in industrial property matters, and the handicap of not having the wherewithal to organize international conferences or participate in them.

The proposed amendment furthermore represents a compromise, for it says that "a plurality of countries... *may*..." Each State having the means to do so may consequently be represented; the amendment only applies to States unable to secure their own representation.

South Africa

As to Document S/3:

Article 13: The powers of the Assembly are specified in paragraph 2(a). It is significant that no power is given to the Assembly to implement the provisions of Article 6(3)(g) of the proposed International Intellectual Property Organization which provides for approval by both the Paris and Berne Unions in regard to certain matters such as the transfer of headquarters or appointment of the Director General. These should be provided for in paragraph (2)(a)(xi) of Article 13. The Assembly must have the power to consider and vote on such matters and to report the result to the IPO.

*Article 13*ter*:* Paragraph (1)(c) provides that the Director General "shall represent the Union". It is not clear what is meant by this. His powers and duties are specified in the Convention and he performs the duties entrusted or vested in him by the Union. If he is to "represent" the Union he will have very wide powers and it may be claimed that he can take decisions on behalf of the Union without consultation.

*Article 13*quater*:* Paragraph (4)(a) now provides for a new class VII which involves a contribution of ±1600 Swiss francs. This is really an insignificant amount and merely amounts to the support by other countries of those electing to adopt class VII.

Paragraph (8) which permits external auditors should be limited to audit by the Swiss Government as in the past.

As to Document S/9:

*Article 20*bis*:* In view of the attitude adopted by a group of States in that they have requested the United Nations Organization to investigate the creation of separate Unions in respect of Industrial Property and Copyright, the question arises as to whether much progress will be made at Stockholm in so far as the Berne Convention is to be amended to cater for developing countries. Much will depend on the attitude adopted at Stockholm and the reaction of the members of Berne. South Africa, at this stage, must reserve its final decision.

In this respect comments on the Berne final clauses were sent by the Registrar of Patents to BIRPI on April 29, 1966. However, since that date the document S/9 has come to hand.

It is noted that the position as regards acceptance of the amended substantive clauses (1-20) is still dependent on acceptance of clause 20*bis* so that no country may adopt the revised substantive clauses without being bound by the Protocol relating to developing countries. There may be countries which are quite prepared to adopt the revised substantive provisions but they may wish to reserve their position as regards 20*bis*. Why should they not be afforded the opportunity to be bound by Articles 1-20 only? It is not suggested that South Africa will wish to exclude 20*bis* but there may be countries which would elect to do so. If this suggestion is adopted an amendment to Article 25 would be necessary.

Article 21: The proposed International Intellectual Property Organisation contains in Article 6(3)(g) a requirement for the separate approval of both the Berne and Paris Unions in regard to certain matters such as the transfer of headquarters or appointment of the Director General. These matters should be specifically provided for under Article 21(2)(a)(xi). *Provision must be made for the Assembly to consider and vote on such matters and to report the result to the IPO.* These are very important matters and should be specifically dealt with.

*Article 27*bis*:* South Africa would be disposed to accept alternative B in terms of which this Article is to be omitted. There never has been recourse to the International Court and no similar provision exists in the Paris Convention. If alternative B is not favored either alternative C or D would be acceptable.

Article 31(1)(c): South Africa would be happy to accept this provision but if there are objections these may be met by providing that a country when ratifying the Convention may elect to adopt either the English or French text.

As to Document S/10:

General Observations: 1. Since this document was compiled it has come to the notice of BIRPI that representations have been made by a group of States at the United Nations calling for an investigation to be made as to the possibility of the establishment of separate conventions to cater for Industrial Property Rights and Copyright. Most of the States making these representations fall in the category of developing countries.

2. We are aware that efforts are being made to cater for such States in the Copyright Programme at Stockholm and the States concerned, notwithstanding, have seen fit to approach the United Nations for what appears to be a breakaway from Paris and Berne Unions. The motive for such representation is not clear, but it would appear that they are dissatisfied with what Stockholm proposes to offer them.

3. The proposed establishment of the IPO whose main object is to attract non-members to the Berne and Paris Unions and to finance legal-technical assistance to developing countries, is, by this approach to the United Nations, rejected by such countries, which will, if they succeed in their approach to the United Nations, no doubt establish their own Unions rather on the lines of the Universal Copyright Union.

4. In these circumstances the creation of the IPO is not likely to achieve its main object. It is felt moreover that this proposed organization is not the proper forum to raise funds for legal-technical assistance as provision for such purposes is provided by States without an obligation to do so in terms of a convention.

Article 2(vii): If the approach to the United Nations succeeds in the promotion of new Unions to cater for the developing countries, such Unions would qualify for full membership and would include members of the Universal Copyright Convention. Is this really the intention? Why should those outside members not join Paris or Berne Unions?

If these outside members are admitted they could dominate the proceedings in the General Assembly as well as the Conference. This is not acceptable and South Africa would reserve its position.

Article 4(2): It is felt that full membership should be restricted to members of Paris and Berne. (See comments under Article 2.)

Article 6(2): If the IPO is dominated by States (non-members of Paris and Berne) they will have the say in the appointment of the Director General. This is not acceptable. Members of Paris and Berne should have this right. It is also felt that the words "Upon nomination by the Co-ordination Committee" should be deleted as this will tie the hands of the General Assembly. The fact that paragraph (3)(g) requires approval separately by Berne and Paris does not give the right to appoint—only a right to veto. A Deputy Director General should also be provided for by the General Assembly.

Article 6(3)(d): It is felt that this paragraph should also provide for a two-thirds majority in so far as the transfer of headquarters and appointment of the Director General are concerned.

Article 8(3)(v): The General Assembly should decide this without a nomination by the Co-ordination Committee.

Article 8(3)(vi): This temporary appointment may be for three years. It would be better to provide for a Deputy Director General to act and this to be automatic in the absence of the Director-General.

Article 9(6): There should be one Deputy Director General appointed by the Assembly who would automatically act in the absence of the Director General.

Article 15: What will the position be if a State joins and denounces within the five-year period? Will the rights under 14(3)(a) be revived? This requires consideration.

Spain

As to Document S/3:

*Proposal for the addition of an item (i-*bis*) to paragraph (3) of Article 13*quater *on "Finances":* An examination of the text of the draft confirms the continuation of the existing situation, that is, the sources of revenue for the budget of the General Union are still based primarily on contributions from the member States of that Union, since the other revenues provided for cannot be expected to solve the serious financial problems confronting the Union which have come to the foreground over the past few years as a result of the rise in the cost of all services, the compulsory improvements made in staff benefits, and, especially, the unanimous acknowledgement of the need of a vaster program of technical assistance to all countries and, in general, of ever-increasing activities.

We feel that, despite the present greater number of States and the important financial contribution of some of them, it is obvious to all those who follow and are familiar with the financial problems of the Paris Union that the contributions of the States are not adequate to enable the Union to undertake the programs it is now committed to carry out. This means that a large and substantial increase in the contributions from States will be inevitable.

But, before the imminent (although subsequent to the Conference) fact of having to decide on a considerable increase in the contributions of the respective States, it should be recognized that, of the 74 countries belonging to the Paris Union, only half a dozen would, at the beginning of the year, be in a position to give a clearly affirmative reply.

Nevertheless, we believe that the time has come to find out whether there is not some way of resolving the financial problem of the Union definitively—which will have to be done in any event—apart from increasing the contributions from States. We would reply that within the Organization itself there are Special Unions (international trademark registry, etc.) that offer a clear example of what the financial support of the direct beneficiaries can represent, inasmuch as in the General Union, and on the basis of each country's recognition of the priority right, there are obvious benefits for the parties concerned.

Many reasons and advantages, from various points of view, could be given in support of the introduction of a fee for the priority claimed; there is no doubt but that they will be present in everyone's mind and, consequently, we do not think it necessary to dwell on them. We do feel, however, that advantage should be taken of the opportunity now offered by the Diplomatic Conference of Stockholm to establish a new source of revenue, the surpassing importance of which can entirely change the financial picture of the Union and its possibilities of action.

It is therefore specifically proposed that an item (1*bis*) be added to paragraph (3) of Article 13*quater* indicated above; this item could be worded as follows: "*fees collected by the International Bureau through the national Offices for each patent application or other transaction where the right of priority established by this Convention is invoked.*"

Switzerland

Observations on documents S/3 to S/12: "...the Swiss Federal Authorities approve, in principle, the proposals appearing in preparatory documents S/3 to S/12. They nevertheless reserve the right to present proposals and observations, through their Delegation to Stockholm, at the Diplomatic Conference itself."

United Kingdom

As to Document S/3:

The United Kingdom agrees in principle with the proposals as they relate to the future structure of the Union and the Secretariat. We have the following specific points:

*Article 13*ter*(7):* In order to bring this into line with the proposals establishing the Organization (Document S/10), insert "normally" before "participate".

*Articles 16*quater *and 18:* We agree with the wording of Article 16*quater* proposed in Document S/3/Corr. 1. Omission of Article 18(3) would, however, result in the position that a new country of Union would legally be bound to give convention treatment only to nationals of countries which have ratified or acceded to the Stockholm Act. We consider this should be avoided and therefore suggest that Article 18(3) should read as follows: "(3) Countries outside the Union which accede to the present Act shall apply the present Act in their relations with all other countries of the Union."

*Article 16(2) and (3); Article 16*bis*(2) and (3); Article 16*quinquies*(3) (a):* Substitute "three months" for "one month" wherever this appears.

It is necessary, at least in countries in which the Convention is not self-applying, to make an order in respect of each new country joining the Convention. Since communications through diplomatic channels take time, and some administrative delay is inevitable in the making of an order, one month is scarcely enough for this purpose and there is consequent risk that we may not meet our obligations.

Article 19(1): We are not clear as to the significance of the reference to "*Authoritative* texts" and would prefer to refer to "Official texts". There is a difference between a text which has been agreed by all the member countries at a Diplomatic Conference and one which has been agreed only by the countries interested in the language in question, and the Director General.

Article 19(5): This should be amended so as to require the Director General to notify, in addition, the classes to which countries belong for subscription purposes and any changes in such classes.

As to Document S/5:

In spite of what is said in paragraph 9 of the Commentary, the United Kingdom is not convinced of the necessity to add an Additional Act, rather than to amend the Agreement itself as is proposed for the other Agreements. It is, however, content to abide by the wishes of the majority on this point.

As to Document S/7:

The United Kingdom agrees in principle with the proposals. We have the following specific points:

*Article 5*bis*(2):* In order to bring this into line with the proposals establishing the Organization (Document S/10), insert "normally" before "participate."

Article 7: This should be cancelled, as being redundant upon Article 9(1).

Article 8: The following new paragraph should be added: "(3) Amendments to Articles 5 to 5*quater* are governed by Article 5*quater*."

Article 11(1)(b): We would prefer the words "Authoritative texts" to be amended to read "Official texts" (see observations on document S/3).

As to Document S/9:

The United Kingdom agrees in principle with the proposals as they relate to the future structure of the Union and the Secretariat. It does not, however, agree with the proposals dealing with the rights and obligations of countries of the Union which are parties to different convention texts—in particular Article 27. The revised proposals in S/9/Corr.1 are an improvement but they do not go far enough.

The present situation in practice is that a country which has become a party to the Brussels text gives to the works of *all* other countries of the Union the protection demanded by that text. It expects in return that in each country of the Union its works will receive the protection demanded by the latest text to which that country has become a party. Article 27(1) of the Brussels text, with its reference to "countries of the Union", reinforces this practice.

Under the scheme as proposed in Document S/9, the relations between any two countries of the Union would have been governed exclusively by the latest text to which *both* were parties. Thus, the obligations of a country which had ratified the Stockholm text towards Union works would have differed country by country and would have changed each time there was a new ratification. In a country such as the United Kingdom, where conventions are not self-applying and legislation is required to meet convention obligations, such a system is administratively impossible. The United Kingdom agrees with what is said in paragraph 7(i) and (ii) of Document S/9/Corr.1. The new proposals for Article 27 do not go far enough to achieve this object. In particular the words "between the countries of the Union", which appear in the Brussels text, are not repeated. It is desirable that the Convention be clear on this point. We therefore suggest that for Article 27 there should be substituted:

"(1) The obligations of a country ratifying or acceding to this Act shall, as regards all other countries of the Union, be governed by those provisions of this Act by which, in accordance with Article 25, it is bound.

(2) The obligations of a country of the Union to which the present Act does not apply or, in accordance with Article 25, does not apply in its entirety shall, as regards all other countries of the Union, continue to be governed by the most recent Act to which it is a party to the extent that they are not replaced by provisions of this Act accepted by that country."

In addition we have the following observations and suggestions:

*Article 21*ter*(2):* In both sentences after "copyright" insert "and related rights."

*Article 21*ter*(7):* In order to bring this into line with the Proposals establishing the Organization (Document S/10) insert "normally" before "participate."

*Article 25(2) and (3); Article 25*bis*(2) and (3); Article 26(3) (a):* Substitute "three months" for "one month" wherever this appears.

It is necessary, at least in countries in which the Convention is not self-applying, to make an order to protect the works of each new country joining the Convention. Since communications through diplomatic channels take time and some administrative delay is inevitable in the making of an order, one month is scarcely enough for this purpose and there is consequent risk that we may not meet our obligations.

*Article 25*ter*(1):* In our observations on Document S/1, we suggested that the Convention should make it clear that member countries are free to exercise control over monopoly situations which might lead to abuse. It is fundamental that we should retain the right to have a tribunal with power to control the monopoly exercise of performing rights. If, therefore, our proposed amendment to Article 17 is not acceptable we shall have to retain the advantage of the reservation made in Brussels as regards Article 11 of that text, in which case this paragraph will be unacceptable in its present form.

*Article 25*quater*:* We agree with Document S/9/Corr. 1 that this Article becomes unnecessary.

Article 27: See first paragraph of these Observations.

*Article 27*bis*:* We prefer Alternative A.

Article 28: See also first paragraph of these Observations.

Article 31(1): We are not clear as to the significance of the reference to "*Authoritative* texts" and would prefer to refer to "Official texts". There is a difference between a text which has been agreed by all the member countries at a Diplomatic Conference and one which has been agreed only by the countries interested in the language in question, and the Director General.

Article 31(5): This should be amended so as to require the Director General to notify, in addition, the classes to which countries belong for subscription purposes and any changes in such classes.

Article 32(4): Should not "international bureau" be replaced by "organization"? Compare Article 20(4) of the Paris proposals (S/3) and Article 19/3)(b) of the proposals establishing the Organization (S/10). In the above Article 19(3) the word "property" also appears. Should not all these Articles be consistent?

As to Document S/10:

The United Kingdom is in favor of:

(a) modernizing the administrative provisions of the Berne and Paris Conventions;

(b) creating a specialist international forum in which all forms of intellectual property can be discussed and to which all countries can come and make their views and needs known. It is however important that, subject to the require-

ments of co-ordination, the autonomy of the Paris and Berne Unions should, so far as possible, be maintained.

The United Kingdom is therefore in agreement in principle with the proposals in this draft Convention. We have the following specific points:

Article 1: It is conceivable that the use of the term "General Assembly" might lead to confusion with the General Assembly of the United Nations, the only other Organization in which this expression appears. We therefore suggest that consideration might be given to using the term "General Council" whenever the expression "General Assembly" appears.

Article 3(1): It is not clear why item (i) singles out "scientific" works for special mention but does not mention music, dramatic works, films, etc. This item might therefore read: "(i) Authors of literary and artistic works within the meaning of Article 2 of the Berne Convention as revised at Stockholm."

Article 4: The United Kingdom finds the idea of Full and Associate Membership acceptable. However, it is considered that the BIRPI proposal for Article 4 and also Alternatives A, B and C of the 1965 Committee have the defect that these proposals carry the danger of converting the General Assembly from a technical forum into a political forum. As is well known, there are certain areas of the world whose status is not a matter of general agreement. In the view of the United Kingdom it is entirely inappropriate that the General Assembly should be required to take a difficult and controversial decision of a political nature, as to whether or not a particular entity is a "State" and so entitled to become a member of the Organization. It is suggested therefore that Article 4 should read as follows:

"(1) Membership of the Organization shall be open to all States Members of the United Nations or any of the Specialized Agencies or Parties to the Statute of the International Court of Justice.

(2) Full membership shall be accorded to any such State which is also a member of any of the Unions.

(3) Associate membership shall be accorded to any such State which is not a member of any of the Unions."

Articles 6, 7, and 8: It should be stated explicitly as in the Paris and Berne proposals, that "The expenses of each Delegation shall be borne by the Government which has appointed it."

Article 7(2)(b): The meaning of this sub-paragraph is not understood. If the intention is to exclude from the "Copyright Conference" countries which have joined Paris but not Berne (while admitting countries which have joined neither) it is illogical. We suggest it be deleted.

Article 7(3)(b): There might be occasions on which insufficient Associate Members or Full Members (as the case may be) would be interested enough to attend, and hence no action could be taken for lack of a quorum. We suggest: "(b) one-third of those entitled to be present shall constitute a quorum."

Article 8(1)(c): The expression "matters of direct interest to the Conference" is not sufficiently clear. We suggest substituting "the budget of the Organization."

Article 10(6): We are not clear why this is mentioned specifically.

Article 11: We recommend that the words "bilateral or" be deleted from paragraph (3). Freedom for the organization to negotiate bilaterally, and *seriatim*, with Member States would not be in harmony with the general principle, which we support, that the Organization should enjoy the same status in the matter of privileges and immunities in all the Member States. We consider that the present needs of the Organization are likely to be met by a bilateral agreement with the host State, and paragraph (2) of the present Article allows for this. Should it prove, however, that the Organization requires privileges and immunities in other Member States because, for example, it wishes to establish regional offices there, then we consider that the Member States have a general interest in according this by means of a multilateral agreement which would give each member a voice in the level of privileges and immunities to be accorded.

Article 16: Add new item: "(v) The subscription classes to which Associate Members belong (Article 10(4)) and any changes in such classes."

Article 18: We are not clear as to the significance of the reference to "*Authoritative* texts" and would prefer to refer to "Official texts" (see observations on Document S/3).

Article 18(3): Amendments are adopted by the Conference not by the General Assembly (see Article 7(2)(a)(iv) and Article 13(2)). Therefore delete "General Assembly" in line 3 and substitute "Conference".

UNITED STATES OF AMERICA

General Observations: The proposals for revising the administrative and final clauses of the Paris Convention (S/3) and the proposal for establishing the International Intellectual Property Organization (S/10) are considered generally acceptable and desirable both in substance and in formulation.

In offering the following preliminary comments on certain provisions of the proposals, the United States reserves the privilege of making additional comments or proposals.

As to Document S/3:

*Article 13*bis *(Executive Committee):* It is suggested that consideration be given to the desirability of including provisions for intergovernmental and international non-governmental organizations to attend meetings of the Executive Committee as observers.

*Article 13*ter *(International Bureau):* With reference to paragraph (8), it is proposed that present sub-paragraph (b) be changed to (c) and that the following provisions be inserted as sub-paragraph (b): "(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision."

*Article 13*quinquies *(Amendments to Articles 13 to 13*quinquies*):* It is suggested that the Article specify who may initiate proposals for amendments. Any contracting party, the Executive Committee, and the Director General should each have this privilege.

Article 18 (Application of Earlier Acts): It is proposed that the provisions of paragraph (2) be deleted as unnecessary. Paragraph (2) is simply a partial detailing of the effect of Paragraph (1). If any provision is to be included, it would be preferable to pattern it, with a clarifying addition, on the change proposed in S/9/Corr.1 for paragraph (4) of Article 27 of the Berne Convention. The substitute paragraph (2) would read as follows: "The Acts previously in force shall continue to be applicable, in their entirety or to the extent that the present Act does not replace them by virtue of the preceding paragraph, in relations with countries which do not ratify or accede to this Act, or which limit the effects of their ratifications or accessions pursuant to paragraph (1)(b) of Article 16 of this Act."

Article 19 (Signature): It is proposed that the Act be signed in the English as well as the French language, each equally authentic.

As to Document S/10:

General Comments: The United States is agreeable to the establishment of two types of membership, designated in the draft as "Full Members" and "Associate Members"; however, it is proposed that the term "Member" be substituted for the term "Full Member." As a consequence of such change the words "States party to this Convention" should be substituted for the word "Member" appearing alone in the draft whenever a reference to both types of members is intended.

Further, we understand that certain delegations are concerned about the procedure with respect to the approval of

the budget of the Organization by the Conference. They believe that the budget of the Organization should be adopted by the General Assembly rather than by the Conference. The United States is prepared to give the fullest consideration to specific proposals regarding this matter.

Article 8 (Coordination Committee): It is suggested that consideration be given to the desirability of including provisions for intergovernmental and international non-governmental organizations to attend meetings of the Coordination Committee as observers.

Article 13 (Amendments): It is proposed that the Article specify who may initiate proposals for amendments. Any contracting party, the Coordination Committee, and the Director General should each have this privilege.

Western Samoa

The Government of Western Samoa has no observations or counter-proposals to make concerning these documents.

S/16 BIRPI. Berne Convention. *The Director of BIRPI submitted the following report concerning the March 1967 extraordinary session of the Berne Union Permanent Committee:*

1. Document S/1 contains proposals of the Government of Sweden—which constitute the basis for discussions at the Stockholm Conference—for the establishment of a *protocol regarding developing countries*, protocol which would be attached to the Berne Convention as to be revised at that Conference. The proposed protocol would allow developing countries to depart from the minima otherwise prescribed by the Berne Convention for the duration of protection and for the rights of reproduction, translation, and broadcasting. The Protocol would also allow developing countries to restrict any kinds of rights otherwise guaranteed, if the use of the works is for exclusively educational, scientific, or scholastic purposes.

2. These proposals are intended to make it easier for developing countries to adhere to the Berne Convention since these countries, believed to be more "consumers" of foreign works than "producers" of national works, may find it in the interest of their cultural development to restrict the rights of authors and their assignees or licensees.

3. The proposals of the Swedish Government are to be considered also in the light of some recent events. The purpose of the present document is to report on these events in order to allow the countries invited to the Stockholm Conference to take cognizance of them, consider them in preparing for the Stockholm Conference, and keep them in mind at that Conference.

4. The events alluded to are three and took place in November 1966, December 1966, and March 1967, respectively.

5. *In November 1966*, the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted a resolution (No. 5122) which contemplates the possibility of suspending, in the case of developing countries parties to the Universal Copyright Convention, the application of those provisions of the Appendix Declaration relating to Article XVII of the Universal Copyright Convention which are commonly referred to as the "safeguard clause for the Berne Convention." Such suspension would require that the Universal Copyright Convention be amended in a revision conference according to the procedure provided for in Article XI of the Universal Copyright Convention.

6. *In December 1966*, the Acting Director General of UNESCO addressed a circular (No. DG/6/126/397) to the States parties to the Universal Copyright Convention inviting them to let the Secretariat of UNESCO know, if possible by May 1, 1967, whether they wish a revision conference of the Universal Copyright Convention to be convened. He also informed those States members of UNESCO which are not parties to the Universal Copyright Convention.

7. The question is of the first importance to the future development of the international protection of literary and artistic works in general, and to the interests defended by the Member States of the Berne Union in particular. The inscription of the safeguard clause in the Universal Copyright Convention in 1952 was a *conditio sine qua non* for the acceptance of that Convention for most of the Member States of the Berne Union; any plan or proposal for the possible revision or suspension of the safeguard clause would create an entirely new situation, and the desirability of any such revision or suspension requires a most careful examination.

8. (a) It is for these reasons that, *in March 1967*, the Permanent Committee of the Berne Union met in extraordinary session. The only question on its agenda was the consideration of the possible repercussions of the UNESCO circular on the Berne Convention. In view of the proximity of the Stockholm Conference (June 12 to July 14, 1967) and the possible impact of the proposed Berne Union protocol regarding developing countries, the Permanent Committee did not deal with the substance of the question. It decided to consider the substance of the question *after* the Stockholm Conference, in its next ordinary session (December 1967), possibly after joint discussions with the Committee established by the Universal Copyright Convention which is the only competent body to make preparation for possible revisions of that Convention.

(b) But the extraordinary session of the Berne Union Permanent Committee did deal with the question raised in UNESCO's circular and unanimously adopted a resolution suggesting to the Governments of the Member States of the Berne Union: "that they consider the advisability of expressing their views on the question of a possible revision of the provisions in the Universal Copyright Convention dealing with the Berne Convention *only after the December 1967* session of the Permanent Committee" [emphasis added] (see BIRPI document DA/25/6, paragraph 32, point 6).

9. (a) The text of the report of the Director of BIRPI to the extraordinary session of the Permanent Committee and the text of the report of that Committee are attached to the present document (BIRPI documents DA/25/2 and 6).

(b) The first of these reports retraces the history of the safeguard clause, explains its *raison d'être* and its relations to the Stockholm Conference. It also quotes the UNESCO resolution and the relevant parts of the UNESCO circular.

(c) The report of the Permanent Committee relates the discussions in the extraordinary session, quotes in full the text of the resolution adopted by that session, and contains the list of participants in that session. These included all the members of the Committee—Belgium, Brazil, Denmark, France, Germany (Federal Republic), India, Italy, Portugal, Rumania, Spain, Sweden (ex officio), Switzerland, United Kingdom of Great Britain and Northern Ireland—and the following States as observers: Austria, Canada, Ceylon, Congo (Democratic Republic), Czechoslovakia, Finland, Ireland, Japan, Morocco, Norway, Pakistan, Poland, Tunisia, Turkey.

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[*Annexes:* A. BIRPI Document DA/25/2 of February 8, 1967.
B. BIRPI Document DA/25/6 of March 22, 1967.]

ANNEX A: BIRPI DOCUMENT DA/25/2 OF FEBRUARY 8, 1967

(Report of the Directors of BIRPI to the Extraordinary Session (March 14 to 17, 1967) of the Permanent Committee of the Berne Union)

Background: 1. There are two multilateral copyright treaties which are open for accession by any country of the world: the Berne Convention for the Protection of Literary and Artistic Works of 1886, and the Universal Copyright Convention of 1952.

2. One of the questions most carefully considered during the preparatory work and at the Geneva Conference of 1952, establishing the Universal Copyright Convention, was the question of the possible impact of that Convention on the Berne Union. The result of these deliberations was Article XVII of the Universal Convention, together with the Appendix Declaration relating to that Article, and the association of the Director of BIRPI, in an advisory capacity, in the work of the Intergovernmental Copyright Committee (Article XI of the Universal Convention). The preparation of any revision of the Universal Convention is one of the tasks of that Committee (Article XI(1)(b) of the Universal Convention).

3. The General Conference of UNESCO, in its 14th Session (October 25 - November 30, 1966), adopted a resolution which contemplates the possibility of revising Article XVII of the Universal Convention and the Appendix Declaration relating thereto, provisions which directly concern the Berne Convention.

4. Consequently, the matter is of concern both to the Permanent Committee of the Berne Union which "shall advise the International Bureau [BIRPI] on questions concerning the development and general functioning of the [Berne] Union" (Rule 5 of the Statute of the Permanent Committee) and to the Director of BIRPI, in case the Intergovernmental Copyright Committee—whose meetings he attends in an advisory capacity—is convened in order to consider the advisability of revising some of the provisions of the Universal Convention which deal with the Berne Convention.

5. Thus, the reason for which the Permanent Committee of the Berne Union has been convened in extraordinary session, from March 14 to 17, 1967, is to examine the significance of the resolution of the General Conference of UNESCO for the development and general functioning of the Berne Union, and to assist the Director of BIRPI in formulating the advice which he might be called upon to furnish, if and when the Intergovernmental Copyright Committee meets.

The UNESCO Resolution: 6. The full text of Resolution 5.122 of the 14th Session of the General Conference of UNESCO is reproduced in Annex I to this document. It expresses the opinion that "Article XVII of the Universal Convention and the Appendix Declaration relating thereto have consequences which are prejudicial to the interests of the States acceding to that Convention" and invites the Director General of UNESCO "to submit this matter as soon as possible to the competent bodies to examine the possibility of revising the Universal Convention along the lines indicated in the present resolution." These lines do not seem to be made explicit in the resolution. However, a circular dated December 30, 1966, from the Acting Director General of UNESCO contains an interpretation. The circular states that "the purpose of this resolution is to suspend, in the case of works which have as their country of origin a developing State, the sanctions provided for in sub-paragraph (a) of the Appendix Declaration relating to Article XVII of the said [Universal Copyright] Convention in the event of the accession thereto by a State which has withdrawn from the Berne Union." The circular of the Secretariat of UNESCO also states the aim which the contemplated revision would try to achieve. It states that aim in the following terms: "The proposed change is intended to enable developing countries to enjoy unrestrictedly the protection guaranteed by the Universal Convention which ensures minimum rights for authors, while permitting a wide dissemination of culture." The circular ends by inviting the States parties to the Universal Convention to let the Secretariat of UNESCO know, if possible by May 1, 1967, whether they wish a revision conference of the Universal Convention to be convened. It is to be noted in this connection that a revision conference may be convened either at the request of ten Contracting States or by decision of the Intergovernmental Copyright Committee (Article XII of the Universal Convention).

The Significance for the Berne Convention of Article XVII and the Appendix Declaration of the Universal Convention: 7. Turning now to the question of the significance—for international cooperation in the field of copyright in general and the Berne Convention in particular—of Article XVII of the Universal Convention and the Appendix Declaration relating thereto, it might be useful to recall some of the basic features and objectives of the two Conventions.

8. Both the Berne and the Universal Conventions prescribe that each contracting country has to grant the same protection to literary and artistic works originating in the other contracting countries as it does to works of which it is the country of origin ("national treatment" or "assimilation" principle). It is obvious that such a provision, in itself, contains no assurances that foreign authors will be entitled to a meaningful protection because, if the protection given to domestic authors is very limited, the national treatment (or assimilation) principle will result in equally limited protection for foreign authors.

9. Recognizing this truth, both Conventions contain provisions which, in effect, limit the otherwise complete freedom of each contracting country to provide for as little or as much protection as it desires.

10. However, these minimal requirements of protection—commonly called "minima"—written into the two Conventions are very different, as they were intended to satisfy very different needs in very different circumstances.

11. The Universal Convention was negotiated just after the Second World War with the principal aim in mind to establish treaty links between the Berne Union countries and most countries of the western hemisphere. (At that time, out of the present 39 African countries—to which the UNESCO resolution seems to be addressed principally—only five were independent and the very concept of "developing countries" was unknown.) The reason for which it was found desirable to establish a convention distinct from the Berne Convention was not that the American countries did not have laws generally compatible with the Berne Convention. They did as far as the definition of the works protected and the exclusive rights to be granted are concerned, since this definition generally coincided with or even exceeded the requirements of the Berne Convention. This is the reason why—subject only to three exceptions—the drafters of the Universal Convention did not find it necessary to write, and did not write, minima into that Convention. The three exceptions were the following. One was the question of duration, which was given a solution solely to satisfy the requirements of the law of the United States. The second was the question of formalities, which resulted in a compromise provision acceptable to the United States. The third was the question of the right of translation, where a solution was found mainly to accommodate the wishes of Argentina, Mexico, and other Latin American countries not members of the Berne Union.

12. Thus, if considered in its historical context, the Universal Convention satisfied a need which existed—and still exists—with respect to certain countries at a certain point in the development of their copyright laws.

13. On the other hand, the Berne Convention, in its long history of more than eighty years, is so constructed that the adequacy of the national laws should not only be a fact, not guaranteed because independent of the Convention, but should be a legal requirement, inherent in the Convention. Naturally, views on what is adequate, and on what should be required, are subject to constant change. The minima prescribed in the Berne Convention grew both in number and scope until the Revision Conference of Brussels in 1948. At that Conference, they continued to grow on certain points but on others (e.g., the new provision on ephemeral recordings) more flexibility was provided for national laws. The proposals of the Government of Sweden—which will constitute the basis for discussions at the Stockholm Conference next summer—continue the trend started at Brussels: on certain points, they provide for new minima; on others, they allow exceptions from existing minima. The proposed protocol regarding developing countries would, in effect, allow such countries to depart to the extent defined in the protocol from the minima otherwise prescribed for the duration of protection and for the rights of reproduction,

translation and broadcasting. The protocol would also allow developing countries to restrict any kinds of rights otherwise guaranteed, if the use of the works is for exclusively educational, scientific, or scholastic purposes.

14. Notwithstanding these proposed exceptions devised for the benefit of African and any other developing countries, the Berne Convention continues to differ from the Universal Convention in that it (the Berne Convention) specifically *requires* the protection of the usual types of works and the usual types of rights—and not only of the right of translation—as minima. Thereby, the Berne Convention fulfils its historic role of fostering a significant degree of *similarity* among national legislations so that each country acceding to it be assured that, in exchange for giving protection to foreign works, it will receive a comparable, meaningful protection in the other countries for the works of its own nationals. This, by the way, is of course true for all countries, whether developed or developing.

15. The countries of the Berne Union which participated in the establishment of the Universal Convention had in mind—as evidenced by the declarations their delegations made at the Geneva Conference of 1952 (see Annex II to this document)—this role of the Berne Convention when they made their acceptance of the Universal Convention conditional upon the incorporation, in the Universal Convention, of the provisions of Article XVII and the Appendix Declaration.

16. The reason underlying these provisions was a strong belief that countries which, through their membership in the Berne Union, were the architects and guardians of a certain level of meaningful international protection should continue, together, the task of evolving such protection. That such evolution may, for certain countries or in certain circumstances, result in reducing the requirements of minimum protection—as evidenced by the Brussels revision and some of the proposals for the Stockholm revision—shows that the members of the Berne Union are not unmindful of the changing needs resulting from changing circumstances and that, on the contrary, the Berne Convention is flexible in its requirements and thus continued adherence puts no unreasonable burden on the countries parties to it.

17. It is in the light of these considerations that the question of maintaining Article XVII of the Universal Convention and the Appendix Declaration relating thereto should, it is suggested, be considered.

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Attached: Annexes I, II, and III (extracts of the Universal Copyright Convention) and the text of the Berne (Brussels) Convention.

ANNEX I

Resolution 5.122 of the 14th Session
of the General Conference of UNESCO

"The General Conference,

Referring to the recommendation adopted by the African Study Meeting on Copyright, held at Brazzaville (5-10 August 1963) under the joint auspices of UNESCO and BIRPI, to the effect that the utilization of the works of the mind is an essential factor in the human fulfilment of the peoples of the developing countries and in their effective contribution to the establishment of mutual understanding among nations,

Recalling the spirit of Article 27 of the Universal Declaration of Human Rights,

Considering that the conventions at present governing international relations in the matter of copyright should be partially revised to take account of the economic, social and cultural conditions obtaining in the developing countries, which are essentially importers of works of the mind, while ensuring that authors enjoy a legitimate minimum degree of protection calculated to meet with the broadest and most general approval,

Considering that this would facilitate the free flow of ideas and the adherence of all countries to an adequate and universal system of protection,

Considering that every possible effort should be made to ensure the universality of copyright,

Considering that Africa, as an integral part of the world community, should be able to benefit from existing conventions by calling for their revision through constructive and sustained action,

Referring to the recommendation of the Committee of African Experts on the study of a Draft Model Copyright Law (Geneva, 30 November-4 December 1964), addressed to the African States which have acceded to the Universal Convention, that they should request modification of Article XI and the relevant resolution, so as to enable Africans to become members of the Intergovernmental Copyright Committee,

Considering that, in order to continue to assist African Member States, at their request, in the matter of copyright, UNESCO should, as authorized by the General Conference at its thirteenth session, facilitate the accession of those States to the Universal Copyright Convention, so as to guarantee a minimum degree of protection to authors of works of the mind while allowing a broad dissemination of culture,

Being of the opinion that Article XVII of the Universal Convention and the Appendix Declaration relating thereto have consequences that are prejudicial to the interests of the States acceding to that Convention, since it is stipulated therein that works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the said Convention, after January 1, 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union,

Having noted the proposals concerning the application of the Appendix Declaration relating to Article XVII of the Universal Convention to works originating in a developing country, as defined by the Economic and Social Council (Resolution 2029(XX) of the United Nations General Assembly), [1]

Invites the Director General to submit this matter as soon as possible to the competent bodies to examine the possibility of revising the Universal Convention along the lines indicated in the present resolution."

ANNEX II

Extracts from the Records
of the Intergovernmental Copyright Conference
(Geneva, August 18 to September 6, 1962)

Report of the Rapporteur-General

"The chief delegate of Italy opened the general discussion... He was most happy at the prospect of a universal convention, provided that such a convention in no way threatened or impaired the Berne Union, that is to say, provided that Article XV and Protocol of the Programme text were, in substance, adopted" (p. 72).

"When the Main Commission discussed the Article relating to the Berne Convention (XV of the Programme text and XVII finally) and the associated Protocol, many delegations of leading countries of the Berne Union declared that this provision to the effect that the Berne Convention must prevail for countries of the Union was in their view essential, and several made it clear that they could neither sign nor ratify the Convention if the Protocol were omitted" (p. 90).

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[1] *Note:* In application of the criterion contained in this Resolution 2029(XX), out of the 55 member States of the Berne Union the following 24 States should be considered as "developing countries": Brazil, Cameroon, Ceylon, Congo (Brazzaville), Congo (Kinshasa), Cyprus, Dahomey, Gabon, India, Israel, Ivory Coast, Lebanon, Madagascar, Mali, Morocco, Niger, Pakistan, Philippines, Senegal, Thailand, Tunisia, Turkey, Upper Volta, Yugoslavia.

Minutes: Plenary Sessions

Mr. Thomas (UNESCO Secretariat):

"...It would be erroneous to believe that the protection, lesser on certain points, provided in the preliminary draft of the Universal Convention, could endanger the conquests achieved in the field of copyright and especially those achieved by the Berne Convention. Article XV of the draft provides for and ensures the integral maintenance of the results of the Berne Convention" (p. 119).

Mr. Pennetta (Italy):

"...There is one thing I should like to say at the outset: the Italian Government is very glad to see that there is a provision, in Article XV of the draft Convention, safeguarding the Berne Union. I have to make a very plain statement, as I have received very clear instructions. I could not, on behalf of the Italian Government, accept anything prejudicial to the Berne Union or even anything likely to become so... The Italian Delegation declares that it attaches importance to the retention of this provision in the Convention that we hope to sign" (p. 119).

Sir John Blake (United Kingdom):

"...With those two things, that is, the abandonment of formalities and the safeguarding of the Berne Union by means of Article XV and the Protocol, a very great advance in the general international law of copyright will have been made" (p. 124).

Mr. Vaniliou (Greece):

"...The Greek Government continues to attach great importance to the standards laid down in the Berne Convention and particularly to Article XV and the relevant protocol" (p. 124).

Mr. Evans (United States of America):

"...Certainly, as far as I know, no one has ever had any intention of injuring the Berne system of copyright and it seems to me that the safeguards which Berne has put in the draft Convention are adequate to prevent such unintended results" (p. 125).

Mr. Morf (Switzerland):

"...A compromise must and can be reached without detriment to the results so far achieved by the Berne Union. In this connection, it [the Swiss delegation] heartily subscribes to the statements already made by several delegates, notably by the distinguished Head of the Italian delegation" (p. 126).

Mr. Plaisant (France):

"...We shall take a stand extremely favorable to the idea of a universal convention, provided that this in no way weakens the principles underlying the Berne Convention. I am glad that, in saying this, I am echoing the opinions already expressed by the honorable delegates of Italy and the United States of America, the Director of the Berne Bureau and the delegate of the United Kingdom, all of whom hold the view that any text that we may adopt must in no way weaken the previous achievements of international law. I therefore wish to state, on behalf of my Government, that we are willing to approve Article XV of the preliminary draft, on the understanding that the Protocol forms an integral part of it..." (p. 126).

Mr. Lokur (India):

"...Since the present draft Convention was an attempt to reconcile two conflicting systems of copyright protection, it could not claim to be a comprehensive document dwelling upon all aspects of copyright; hence it was impossible to scrap international instruments which had evolved over a long period of years and covered the ground in great detail" (p. 178).

Annex III

Extracts of the Universal Copyright Convention

Article XVII

1. This Convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works or membership in the Union created by that Convention.

2. In application of the foregoing paragraph, a Declaration has been annexed to the present Article. This Declaration is an integral part of this Convention for the States bound by the Berne Convention on January 1, 1951, or which have or may become bound to it at a later date. The signature of this Convention by such States shall also constitute signature of the said Declaration, and ratification, acceptance or accession by such States shall include the Declaration as well as the Convention.

Appendix Declaration relating to Article XVII

The States which are members of the International Union for the Protection of Literary and Artistic Works, and which are signatories to the Universal Copyright Convention,

Desiring to reinforce their mutual relations on the basis of the said Union and to avoid any conflict which might result from the coexistence of the Convention of Berne and the Universal Convention,

Have, by common agreement, accepted the terms of the following declaration:

(a) Works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the said Convention, after January 1, 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union;

(b) The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union in so far as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the International Union created by the said Convention.

ANNEX B: BIRPI DOCUMENT DA/25/6 OF MARCH 22, 1967

(Report of the Permanent Committee of the Berne Union, Second Session, Geneva, March 14 to 16, 1967)

1. The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) met in extraordinary session from March 14 to 16, 1967, in Geneva, at the headquarters of BIRPI. The twelve member States of the Permanent Committee were represented: Belgium, Brazil, Denmark, France, Germany (Federal Republic), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom, and Sweden as ex-officio member.

2. The following States members of the Berne Union had delegated observers: Austria, Canada, Ceylon, Congo (Kinshasa) Czechoslovakia, Finland, Ireland, Japan, Morocco, Norway, Pakistan, Poland, Tunisia, Turkey.

3. Two international intergovernmental organizations were present in the capacity of observers: the International Labour Office and UNESCO.

4. The list of participants appears in an annex to this report. [Omitted].

5. This extraordinary session was convened at the request of the Director of BIRPI, in pursuance of Rule 6(1) of the Rules of Procedure of the Permanent Committee.

6. The session was motivated by the urgent necessity for the Director of BIRPI to have the advice of the Committee on the attitude to be adopted towards the problems posed by the possibility of a revision of the Universal Copyright Convention, which would affect in particular the conditions governing the application of Article XVII of that Convention and of the Appendix Declaration relating thereto (the so-called Berne Union safeguarding clause), as envisaged in Resolution No. 5122 passed by the General Conference of UNESCO at its 14th session (October 25 to November 30, 1966).

7. As these matters concern the development and general functioning of the Berne Union, the Committee is empowered, under Rule 5 of its Rules of Procedure, to advise the Director of BIRPI. Furthermore, as any revision of the Universal Convention requires, in pursuance of Article XI of the Convention, the intervention of the Intergovernmental Copyright Committee, whose meetings may be attended by the Director of BIRPI in an advisory capacity, the Permanent Committee is called upon to assist the latter in forming the opinion which

he might wish to express if and when the said Intergovernmental Copyright Committee meets.

8. The Permanent Committee had before it the working documents prepared by BIRPI, which provided the secretariat of the meeting, in conformity with Rule 7 of the Committee's Rules of Procedure.

9. This extraordinary session was opened by the Vice-Chairman of the Permanent Committee, Professor Ildefonso Mascarenhas da Silva, who paid a moving tribute to the late Chairman, Mr. Puget. He took this opportunity to recall the highlights of the career of Mr. Puget and reminded the meeting of his qualities and the services which he had rendered, particularly in the field of international copyright. The Committee observed a minute's silence in memory of Mr. Puget.

10. The Committee then adopted its agenda and proceeded to examine the report which was presented by the Director of BIRPI (document DA/25/2).

11. In the ensuing full discussion, the member States of the Committee and some of the Observers expressed in turn their various points of view.

12. It emerged from the declarations made that there was a unanimous desire to give due consideration to the special position of the developing countries and to assist these countries to solve their difficulties of a legal, economic and practical nature in the field of copyright.

13. It was also apparent that the unanimous feeling of the meeting was that, in view of the fact that the official proposals submitted to the forthcoming Revision Conference of the Berne Convention, scheduled for June 1967, included special provisions for the benefit of developing countries, it would be advisable to await the results of that Conference before expressing an opinion on the problems raised.

14. This was the feeling expressed, in particular, by the Delegations of the following countries: Belgium, Denmark, France, Germany (Federal Republic), India, Italy, Spain, Sweden, Switzerland and the United Kingdom, as well as by the Observers of Ceylon, Czechoslovakia, Japan, and Poland.

15. The Observer of UNESCO declared that the outcome and conclusions of the Stockholm Conference could be a determining factor, for States which were parties to the Universal Copyright Convention, in the substantive decision to be taken concerning the revision of that Convention.

16. A number of additional considerations were mentioned by certain delegations.

17. The Delegation of Germany (Federal Republic) pointed out that the proposed revision was not intended to facilitate accession to the Universal Copyright Convention but to make it easy for developing countries to denounce the Berne Convention, since Article XVII and the Appendix Declaration relating thereto apply only in the case of countries leaving the Berne Union. The Delegation also indicated that the proposals submitted to the Stockholm Conference (Protocol Regarding Developing Countries), on the one hand, and a possible revision of the Universal Convention along the lines envisaged, on the other hand, represented two possible ways of satisfying the requirements of developing countries. It expressed the opinion that it would be advisable to allow these countries to remain members of the Berne Union by facilitating, in certain respects, the exercise of the rights recognized by the Berne Convention.

18. The Delegation of France, after reaffirming the attachment of France to the Berne Union, declared that the problem of the developing countries should be resolved within the Berne Union for countries members of that Union, in order to encourage them to remain members, and that the solution adopted should serve as an example to countries not yet members and be an incitement to them to join the Union. It also expressed the opinion that the settlement of this problem should, for the time being, be worked out within the Berne Union itself, by trying to find solutions which would be acceptable to all. It reminded the meeting that France had participated in the drafting of the resolution adopted by the General Conference of UNESCO, but that it had always considered that the problem should first be discussed within the framework of the Berne Convention and that the outcome of the Stockholm Conference would then make it possible to estimate the attitude to be adopted towards the said resolution.

19. The Delegation of Spain observed that it seemed undesirable to go too deeply into the question at the moment, in view of the proposals that had been made for the Stockholm revision in order to satisfy the needs of the developing countries within the framework of the Berne Union.

20. The Delegation of Denmark declared that it was not opposed to the idea of a revision of the Universal Convention but that any such revision should be undertaken at a suitable time, that is to say, in the light of the provisions which would be adopted at the Stockholm Conference for the benefit of developing countries.

21. The Delegation of Italy, recalling that the Italian Delegates at the General Conference of UNESCO had been among those who had associated themselves with the resolution adopted by that Conference, stressed the need to avoid any conflict between the two international Organizations.

22. The Delegation of the United Kingdom, after observing that common sense required that nothing should be done before the results of the Stockholm Conference were known, pointed out the difficulties which States consulted by UNESCO would have in adopting a position by May 1, 1967, and said that, if the United Kingdom Government were obliged to reply immediately, it would have to declare that it was opposed to a revision of the Universal Convention.

23. The Delegation of India hoped that, in view of the Stockholm Conference, UNESCO would extend the time limit given to States for making known their opinions. It further declared that India had no desire to leave the Berne Union, which had been performing a very useful task for the last 80 years, and it expressed the hope that the two Conventions would be able to continue to develop and strive together with a view to interesting countries not yet parties to either Convention in the protection of copyright.

24. The Observer of UNESCO, after recalling the reasons which had led the General Conference of his Organization to adopt Resolution No. 5122, defined the scope of the proposed revision. He stated that the date of May 1, 1967, fixed at the time of the consultation of States by UNESCO, was not a deadline and that in all probability, after May 1, 1967, States which had not yet replied would be consulted again. He also stated that it was not proposed to put the question of a possible revision of the Universal Convention to the Intergovernmental Copyright Committee before next autumn.

25. The Delegation of Germany (Federal Republic) observed that, as far as procedure was concerned, it seemed preferable to it that Governments should be invited to express their opinions *after* the meeting of the Intergovernmental Committee and it expressed the hope that, as the matter concerned both Conventions, the two Committees (Intergovernmental and Permanent) would have an opportunity to discuss it at joint sessions.

26. The Observer of Tunisia, after affirming the attachment of his country to the Berne Union, expressed the opinion that the multilateral copyright Conventions ought to evolve with a view to reaching solutions aimed at satisfying the needs of developing countries. He also expressed the hope that a universality of copyright would be achieved which would reconcile both the respect for the rights of authors and the special position of certain countries, mainly at the economic level.

27. The Observer of Czechoslovakia noted that it was not possible, in the immediate future, to express an opinion on the inadvisability of a revision of the Universal Convention in the event that the Stockholm Conference would satisfy the requirements of developing countries, because it depended, on the one hand, on the results of that Conference and, on the other hand, on the opinion of the States concerning the scope of these results. As far as procedure was concerned, he agreed with the declarations of the Delegation of Germany (Federal Republic).

28. The Observer of Japan also agreed with the view expressed by the Delegation of Germany (Federal Republic) and hoped that all the States concerned would be informed of the opinion expressed by the Committee.

29. The Delegation of Belgium shared this view.

30. At the close of the general discussion, the Permanent Committee entrusted to a drafting committee, composed of Professor Ulmer (Federal Republic of Germany), and Mr. Mas (France), Mr. Krishnamurti (India) and Mr. Wallace (United Kingdom), the task of drafting, with the assistance of the Secretariat, a resolution on the basis of the declarations made and the considerations expressed.

32. As pointed out by its Chairman, Professor Ulmer, the resolution presented by the Drafting Committee confined itself to questions of procedure, without entering into the details of the problems raised.

32. The Committee unanimously adopted the said resolution, couched in the following terms:

"1. *Considering*

(a) that the Universal Copyright Convention contains provisions concerning the consequences of denunciation of the Berne Convention for the Protection of Literary and Artistic Works,

(b) that the General Conference of UNESCO adopted, in November 1966, a resolution (No. 5122) inviting a study of the possibility of revising the said provisions of the Universal Copyright Convention in relation to developing countries,

(c) that the Director General of UNESCO invited, in December 1966, the States parties to the Universal Copyright Convention to let the Secretariat of UNESCO know, if possible by May 1, 1967, whether they wished a revision conference of the Universal Copyright Convention to be convened,

(d) that the Representative of UNESCO has stated that replies arriving after May 1, 1967, will also be taken into consideration,

(e) that the Berne Convention is going to be revised in July 1967 at the Stockholm Conference and that the results of that revision will have an important bearing on the question of a possible revision of the Universal Copyright Convention, having regard to the fact that the official proposals for that Conference include special provisions relating to developing countries,

the Permanent Committee of the Berne Union, in extraordinary session assembled at Geneva from March 14 to 16, 1967,

2. *Expresses the opinion* that it would be premature to take a final position, by May 1, 1967, on the question of a possible revision of the provisions of the Universal Copyright Convention dealing with the Berne Convention;

3. *Decides* to re-examine the question, after the Stockholm Conference, in its next ordinary session scheduled for December 12 to 15, 1967;

4. *Invites* the Director of BIRPI to make a detailed report to that session and to draw the attention of all those member States of the Berne Union which are not members of the Permanent Committee to the desirability of being represented by observers;

5. *Invites* the Director of BIRPI to propose to the Chairman of the Intergovernmental Copyright Committee that, subject to the competence of that Committee, the matter also be discussed in its next joint meetings with the Permanent Committee;

6. *Suggests* to the Governments of the member States of the Berne Union that they consider the advisability of expressing their views on the question of a possible revision of the provisions in the Universal Copyright Convention dealing with the Berne Convention only after the December 1967 session of the Permanent Committee."

33. In the course of the deliberations of the Committee which preceded the adoption of this resolution, a number of observations were made.

34. The Observer of UNESCO remarked that item (d) of the Preamble should be taken to mean that May 1, 1967, was not a deadline. As regards item (e) of the Preamble, he stressed, while recognizing the bearing which the results of the Stockholm Conference might have on the question, that the effect to be given to the resolution of the General Conference of UNESCO was not necessarily subject to that event. With regard to paragraph 5 of the resolution adopted by the Permanent Committee, he expressed certain reservations, for constitutional reasons, and drew attention to the need to respect the competence of the Intergovernmental Copyright Committee in the fulfilment of the role expressly entrusted to it by the Universal Convention. He pointed out that, in his opinion, there could only be an exchange of views on the occasion of joint sessions.

35. The Observer of Czechoslovakia, in this last connection, recalled that it was only the deliberations of the two Committees (Intergovernmental and Permanent) that were joint, for certain matters of common interest, but that the decisions were made separately.

36. The Delegation of Italy stressed that the bearing on the question mentioned in item (e) of the resolution concerned more especially the attitude of States members of the Berne Union which were also parties to the Universal Convention. It further endorsed the opinions of the Delegation of Germany (Federal Republic) on questions of procedure.

37. The Delegation of Germany (Federal Republic) observed that the question was of interest to all States members of the Berne Union, whether or not they were parties to the Universal Convention.

38. The Delegation of the United Kingdom, noting the convocation in Geneva, at the headquarters of the ILO, from April 10 to 12, 1967, of the Intergovernmental Committee set up by the Rome Convention on neighbouring rights, asked whether, in conformity with Article 32, paragraph (6), of that Convention, the States members of the said Committee had been consulted on the advisability of such a meeting. It also recalled that the Permanent Committee had expressed the wish, at its 12th session in Paris, in 1965, that for convenience sake, the possibility should be studied of convening on the same date and at the same place the said Intergovernmental Committee and the Permanent Committee of the Berne Union and the Intergovernmental Copyright Committee.

39. The Director of BIRPI declared that, for its part, BIRPI had asked that prior consultation be undertaken.

40. Adopting the views of the Delegation of the United Kingdom, supported by the Delegation of Germany (Federal Republic) and the Observer of Czechoslovakia, the Permanent Committee asked the Director of BIRPI to get in touch mmediately with the Directors General of the ILO and UNESCO, with a view to studying the possibility of postponing the holding of the meeting of the Intergovernmental Committee of the Rome Convention until December 1967 in Geneva, at the time of the sessions of the Intergovernmental Copyright Committee and the Permanent Committee of the Berne Union.

41. At the close of its deliberations, the Committee heard a declaration by the Observer of Tunisia, who had some general remarks to make on the subject of the Stockholm Conference. He first recalled that the discussion of the official proposals for revision of the Berne Convention would doubtless permit jurists and diplomats to work out solutions by a method of synthesis. He pointed out, however, that the main problem would be the establishment of the protocol regarding developing countries, including provisions capable of satisfying these countries to a considerable extent. Such countries relied on the universal humanism and the spirit of synthesis which, at all times, had prevailed at international assemblies. He reaffirmed that those who considered developing countries to be opposed to the protection of copyright showed in fact a complete ignorance of the economic, social and cultural aspects of the problem. In conclusion, he urged the delegates present at the session of the Committee to defend a noble cause, the improvement of the human lot within the framework of a normal development of the texts governing copyright.

42. The Committee unanimously adopted this report.

43. The Delegation of France congratulated the Chairman, Professor Mascarenhas, for the brilliant and distinguished manner in which he had conducted the proceedings and had permitted the Committee to bring its work to a successful conclusion. These congratulations were unanimously endorsed by the Committee.

44. The Chairman of the Committee thanked the representatives of the States members of the Committee and the Observers for their contribution to the debates. He expressed his gratitude to the Secretariat for the quality of the preparatory documentation and the excellence of the work accomplished. In the name of the Delegation of Brazil, he recalled his country's concern for the protection of copyright, a concern which was borne out by the fact that Brazil was the only country which had acceded to all the multilateral Conventions on the subject. Stressing the Berne Convention's role of pioneer, he expressed the hope that its application would extend throughout the world, ensuring an ever-increasing protection of authors' works, on a universal scale. He then declared the extraordinary session of the Permanent Committee closed.

S/17 BULGARIA, LUXEMBOURG, SWITZERLAND, TURKEY. Berne Convention. *The following observations are made on the proposals as they appear in document S/1:*

BULGARIA

The competent Bulgarian authorities are highly appreciative of the efforts put forth by the Swedish Government and BIRPI to ensure the study of, and consultations on, the proposals for revising the International Convention for the Protection of Literary and Artistic Works and are aware of the numerous difficulties which have had to be met.

The attempts to extend the scope of this very old Convention in the field of copyright are greatly appreciated and they offer the possibility, in the event of their reaching fulfilment, of a greater number of countries acceding to it.

If this trend is to be pursued with greater success, it seems necessary to be more respectful of national legislations.

The adoption of wording which would oblige countries to amend their internal legislation has hitherto presented an obstacle to many countries as regards acceding to the Convention as worded at Brussels. If this tendency were continued in the Act of Stockholm it would not encourage the desired universalization of the Convention.

The period of fifty years after the death of the author for the extinction of copyright as provided for in Article 7 is unacceptable, and Bulgaria would welcome the reintroduction of Article 7, paragraph (2) of the Rome wording in the new wording of paragraph (7), namely: "In all cases the term shall be governed by the law of the country where protection is claimed. It follows that the countries of the Union are bound to enforce the foregoing paragraphs to the extent that their national legislation permits. However, unless the legislation of such a country provides otherwise, the term shall not exceed that fixed in the country of origin of the work."

The universality of the Convention would be enhanced if the question of the protection of authors who are not nationals of a member country of the Union but are domiciled in such a country were settled according to national legislation. The new Article 4, paragraph (2), should therefore be worded as follows:

"Unless the legislation of the country where protection is claimed provides otherwise, authors who are not nationals of one of the countries of the Union but are domiciled in one of them shall, for the purpose of this Convention, be assimilated to the nationals of that country."

The improved wording of Article 6*bis*, paragraph (1), of the Convention meets with the approval of the Bulgarian authorities. It is considered that for cultural and political reasons no distortion, mutilation or modification of authors' works or any derogatory action in relation to them can be permitted. This requirement serves the interests not only of the author and his heirs but also of world culture. The Bulgarian Government therefore proposes the abolition of the term of protection defined in Article 6*bis*, paragraph (2), in the words "until the expiry of the economic rights." Such a term is even less acceptable in relation to the author, whose authorship is inalienable and not limited by any period of time.

As regards Annex II, Protocol Regarding Developing Countries, Bulgaria's observations are as follows:

Certain member countries of the Berne Union do not accept the Brussels wording of the Convention for economic, social or cultural reasons of their own, on account of the fact that the wording in question does not offer sufficient possibilities for formulating reservations concerning certain clauses. The majority of the clauses concerned are those regarding which provision is now made for formulating reservations, but solely on the part of developing countries.

If all countries wishing to make reservations are not assured of such a possibility, many will abstain from ratifying the Act of Stockholm, because although they are prepared to accept the majority of its clauses they are not disposed to accept some of them. In order to ensure that more countries subscribe to the new Stockholm wording of the Convention, all the member countries of the Berne Union should be given the possibility, when ratifying the Stockholm wording of the substantive provisions of the Convention (Articles 1 to 20), of formulating the reservations now provided for in the Protocol Regarding Developing Countries. If for simplicity's sake it is agreed that the wording of the reservations as incorporated in the Convention should not appear in the Convention itself, it could form part of an additional Protocol like the Protocol Regarding Developing Countries but with the word "developing" deleted from Article 1 and with the title "Protocol of reservations by countries ratifying or acceding to the Act of Stockholm."

The duration of the reservations should not be limited to a fixed term, and it should be made possible for them to be valid until further consideration of their opportuneness on the occasion of a subsequent revision of the Convention. Bulgaria therefore proposes the deletion from Articles 1 and 2 of the Protocol of the words "for a period of the first ten years during which it is a party thereto."

It would be preferable to replace the complicated translations procedure provided for in Article 1 (a) of the Protocol by the possibility of making a reservation such as that contained in Article 25, paragraph (3), of the Rome and Brussels texts of the Convention.

In the event of acceptance of the proposed amendment to Article 7, paragraph (7) of the Convention, as referred to above, Article 1(b) of the Protocol would be unnecessary and should be deleted.

LUXEMBOURG

Article 2(1): The proposed revision abolishes the stipulation regarding the fixation in writing or otherwise of choreographic works and entertainments in dumb show.

It is nevertheless desirable that this stipulation should be retained in the Convention. The countries of the Union may also introduce the requirement of fixation into their national legislation, for example as regards the method of proof, and document S/1 states in this respect that "there is good reason to believe that provisions of this sort are not contrary to the Convention."

Article 2(2): An additional provision is introduced in Article 2. It is worded as follows: "For the purpose of this Convention, works expressed by a process producing visual effects analogous to those of cinematography and fixed in some material form shall be considered to be cinematographic works."

This mainly concerns television works. A similar provision covers photographic works.

These new provisions are acceptable. The general report to be submitted on the Stockholm Convention should note that States can extend the rules governing cinematographic works to unfixed works producing analogous visual effects, and should state the time at which fixation must take place and the person by whom it must be effected for the work to be considered cinematographic.

*Article 2*bis: Paragraph (2) of this Article provides that countries of the Union shall have the right to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press. It was suggested at the preparatory meetings that the same right of reproduction should be stipulated for broadcasting and wire diffusion. This point of view is justified, and the right of reproduction should be extended to these methods of dissemination in Article 2*bis*.

Article 4(5): In order to emphasize the generality of the scope of the first sentence of Article 4, paragraph (5), it is proposed that it should be worded as follows: "The expression 'published work' means works lawfully published, whatever may be the means of manufacture of the copies thereof, provided that the copies are made available in sufficient quantity to render the work accessible to the public."

The wording proposed in the document is equally acceptable, however, provided one agrees with the drafters that the definition of "published works" applies to works of all kinds.

Article 9: The proposed wording introduces rules on the general right of reproduction. This is a fundamental right of the author and obviously deserves to be specified.

Certain provisions of the Convention stipulating or permitting a restriction of this right remain intact.

On the other hand, the provisions on newspaper articles (paragraph (1)) are deleted, since a rule on the general right of reproduction is introduced.

The International Federation of Journalists has proposed the deletion of paragraph (2), the present wording of which grants to the press the right freely to reproduce articles on current economic, political or religious topics, unless the reproduction thereof is expressly reserved.

The Commentary on this provision states that "in our day it can hardly be compatible with the moral principles recognized by the press to reproduce an article published in another newspaper without having first obtained the author's permission." The commentators note that there is nevertheless a need to report articles on economic, political or religious topics freely and to a fairly general extent. They consider that no legal obstacle exists to reviewing protected works. Reference is also made to the right of quotation, dealt with in Article 10.

These considerations emphasize the fact that the protection of newspaper articles does not lead to excessively strict rules. Too much restriction would certainly be inadvisable.

In principle, therefore, the solutions proposed for the Stockholm Conference can be accepted.

The last paragraph of this Article rightly refuses protection to news of the day or miscellaneous information having the character of mere items of news.

*Article 10*bis: This Article deals with the right to use protected works in the reporting of current events.

The Commentary points out that the existing provisions are not entirely satisfactory from the practical point of view.

The new wording drafted by the experts seems acceptable. Should the occasion arise, the text could nevertheless be worded more precisely.

*Article 11*bis*(3):* This paragraph, the last sentence of which enables regulations for ephemeral recordings to be laid down in national legislation, has not been altered.

The conditions enumerated in the text and required to be complied with by the national legislator no longer correspond to the actual conditions of television working.

The words "by means of its own facilities" in the second sentence of Article 11*bis*, paragraph (3), should be deleted and replaced by "made by or for broadcasting organizations."

Article 14: An important innovation has been proposed as regards cinematographic works. As a compromise between the system known as "film copyright", whereby the copyright is vested in the maker of the film, and the system granting the right to the intellectual creators of the film, the Study Groups have proposed the introduction of presumptions whereby certain rights in the film are granted to its maker in the absence of agreement to the contrary.

This solution deserves acceptance.

The words "in the manner prescribed by the legislation of the country of origin of the cinematographic work" should be deleted, because a film frequently has its world première in a country other than that in which it was made.

Since the hiring of films to cinemas generally constitutes publication, is not the country of origin of the film the country in which it is first distributed rather than the country in which it is made and in which all the agreements are signed? If this interpretation is justifiable, can such agreements be required to comply with the legislation of the country in which the film is going to be released, which may be decided on after the film is made?

The deletion of the second sentence of Article 14, paragraph (4), also seems desirable.

The right granted to the countries of the Union to provide that the authorization or undertaking shall be given by a written agreement or something having the same force seems to signify that a country can, in applying the new system of the rule of interpretation, require the authorization of cinematographic adaptation and reproduction always to be the object of written agreements or something having the same force, even if this requirement does not exist in the law of the country of origin. Such a requirement seems excessive. In paragraph (6) of the same Article special provisions are introduced for composers whose works are used in cinematographic works. Such an author can prevent any exploitation of the cinematographic work if he refuses the necessary authorization. He would therefore have an arbitrary power liable to entail substantial and prejudicial economic consequences for the other authors of the work.

Paragraph (7) of the same Article allows countries of the Union not to apply the rule of interpretation to pre-existing works. This provision distorts the new system in such a way as to endanger the entire structure built up by the experts. The paragraph should be deleted.

As regards moral rights in the field of cinematography, the document states that it appeared in the end that the problem should not be dealt with within the framework of the Convention. Although the question of moral rights is extremely complex, the following provision, which is intended to simplify relations between those exploiting a work and authors, could appear in the Convention as a further paragraph to Article 14:

"Authors referred to in paragraph (4) above may not, subject to the application of Article 6*bis* and in the absence of any contrary or special stipulation, oppose the modifications which are indispensable to the exploitation of the cinematographic work."

Protocol Regarding Developing Countries: The experts propose to enable developing countries to make certain reservations of limited duration concerning the right of translation, the term of protection, the right of radiodiffusion, the right of use, etc., of intellectual works for educational purposes.

This flexibility of the Convention in favor of developing countries seems necessary. The strict application of the Convention might constitute an obstacle to the wide dissemination of intellectual works. The clauses drafted by the experts are worth being taken as a basis for discussion at the Stockholm Conference.

Additional Protocol ...concerning the application of that Convention to the works of certain international organizations.

By virtue of Article 1 of this Draft Protocol, the provisions of Articles 4, 5 and 6 of the Convention shall apply to works first published by the United Nations and by the Specialized Agencies in relationship therewith.

Articles 4, 5 and 6 of the Convention, referred to in the Protocol, contain the most important substantive provisions warranting copyright in the territories of Member States of the Union.

The field of application of this provision, which gives protection to works published by the United Nations and its Specialized Agencies only, seems to be too limited and arbitrary.

The European Communities and other European international organizations take a great interest in the publications

of their works being protected in conformity with the provisions of the Berne Convention.

On the other hand, the adoption of the Additional Protocol in its present version would constitute a discrimination against the said communities and other international organizations as compared to the United Nations and their Specialized Agencies.

To conclude, the above-mentioned text should provide for the protection of intellectual works published by intergovernmental organizations.

SWITZERLAND

Article 2, paragraph (1) and new paragraph (2): Since television productions do not derive their character of intellectual works from being fixed in some material form, we suggest that this attribute should not be made a condition of granting protection to this category of works. The phrase "and fixed in some material form" could therefore be deleted from Article 2, new paragraph (2).

Article 2(7): News of the day and miscellaneous facts, which the Programme proposes to transfer from Article 9, paragraph (3), of the Brussels text to Article 2, paragraph (7), are not in themselves works within the meaning of the Berne Convention. Hence the rule that these items are not protected by the Convention is self-evident. While there might have been some justification for it in the context of a provision dealing with articles in the press, there is no longer any *raison d'être* for it in Article 2. We consider that the forthcoming revision of the Convention will provide a favorable opportunity for removing this provision from the said Convention. In order to ensure that this deletion will not be construed as extending the protection of the Convention to these items, the reasons for the deletion might be set out in the general report.

*Article 2*bis*(2):* It would be advisable for the Diplomatic Conference to consider whether States should not also be given the right to allow the communication of the works mentioned in this provision by radio and television organizations.

Article 4(1): While agreeing that the system of protection under the Convention should be extended to the works of authors belonging to a country of the Union which are first published outside the Union, the Swiss Government would accept a solution under which the scope of the principle of author's nationality would be still further widened and the country of the Union of which the author is a national would become the sole country of origin of all his works, whether published or not, in whatever country they may have been first published. If this standard were adopted, publication would be retained as a criterion of association with the Union solely in the case of works of authors not belonging to or domiciled in a country of the Union.

A rule of this kind would have the advantage, as compared with the proposal contained in the Programme, of conferring the same legal status on all the works of an author belonging to a country of the Union, before and after their publication. This would make for greater simplicity in applying the Convention, by comparison with the rule proposed in the Programme, under which it would be necessary to find out in which country of the Union each work had been first published, taking into account the relatively complex rules of Article 4, paragraph (4) (new).

If this rule were added, some of the provisions set out in the Programme would have to be amended, including Article 4, paragraph (4), which might perhaps be reduced to a single rule, under which the country of the Union of which the author is a national would become the country of origin for his works, whether published or not. Such a rule would also render the existing Article 5 superfluous.

Article 4(5): We should prefer to see the present definition of publication replaced by a more liberal one, under which a work would be regarded as published when it has been lawfully published in a sufficient number of copies to be made available to the public.

Article 6: The general report should indicate that, in application of Article 4, paragraph (2) (new), the benefits of Article 6, paragraph (1), will be enjoyed solely by foreign authors not domiciled in a country of the Union.

Article 7(7): It would be more in keeping with the principle of national treatment, which predominates in all the other rules of the Convention, to state that the term of protection shall be that of the country where protection is claimed, unless the latter expressly lays it down that the term shall not exceed that of the country of origin of the work. The rule might be worded as follows: "In any case, the term shall be governed by the law of the country where protection is claimed; however, this latter country may provide that the term shall not exceed the term fixed in the country of origin on the work."

Article 10(1): We approve the principle of including in the Convention a right of quotation covering all the categories of works protected. We consider, however, that the condition expressed in the words: "to the extent justified by the purpose" is not sufficiently restrictive. In order to bring out the fact that quotations are permissible only when used strictly in a subordinate role, we suggest the following wording: "...provided that they are compatible with fair practice and to the extent that they serve as an explanation, reference or illustration in the context in which they are used, including quotations from newspaper articles..."

*Article 10*bis*:* We suggest that, in the last part of the provision, the words "communicate to the public" should be replaced by a wider term which would include all the processes by which the work is made accessible to the public.

*Article 11*ter*:* Article 11 gives the authors of dramatic, dramatico-musical and musical works the right to authorize communication to the public. Provision is made for granting this right to the authors of cinematographic works and the authors of works which have been adapted for the cinema. It therefore seems to us only fair that the authors of literary works should have the right to authorize the communication of recitations of their works to the public by wire.

Article 14(4), first sentence: (a) Under the provision proposed in paragraph (4), first sentence, the Berne Convention would oblige States to accept an interpretative clause in a sphere—that of contracts—which, by its very nature, is solely within the competence of national authorities. We therefore consider that this interference by international legislation in the legislations of the States of the Union, which occurs nowhere else in the Berne Convention, should be studied with great care at the Revision Conference.

(b) As it is now drafted, the interpretative clause appears to give rise to some uncertainty as to its legal effects.

This clause does not assign to the maker the rights of the authors of a cinematographic work. It merely has the effect of preventing those authors who have not made any contrary or special stipulation with the maker from exercising their right to forbid the exploitation of the cinematographic work.

The text which is proposed does not state whether the interpretative clause applies only to the maker or whether authors must also renounce the exercise of their rights vis-à-vis third parties, in particular cinemas and television organizations. If the clause can be invoked only in favor of the maker, the authors will still be free to oppose the exploitation of the cinematographic work by cinemas or television organizations, even though these may have been authorized by the maker to exhibit it. A situation of this kind is obviously unsatisfactory for the maker, since he would have no guarantee of being able peacefully to exploit the cinematographic work. If, on the other hand, the interpretative clause applies also to third parties, in that it obliges authors to tolerate the exploitation of the work not only by the maker but also by third parties, the provision to this effect should be explicit; in this case, it should specify those third parties which are the beneficiaries of the clause.

Moreover, as the authors retain their rights in the cinematographic work, they alone are entitled to institute proceedings against third parties using the work without themselves enjoying the protection of the interpretative clause. As for the maker, he has not acquired the authors' rights and hence he has no means of taking direct action against third parties contravening the law. He can only request the authors to safeguard their interests, when these

are affected, by instituting proceedings for infringement of authors' rights. However, unless they have entered into engagements with the maker, the authors will be under no obligation to take action, even if the maker's interests are seriously threatened or affected.

A further question appears to arise in connection with the first sentence of paragraph (4). An author who has not received the agreed payment from the producer can in principle claim the sequestration of the original negative of the film and its copies, in his capacity as creditor of an outstanding debt. In so doing, he will impede the exploitation of the cinematographic work by the maker. In a case where there is no stipulation allowing the author to prevent such exploitation, would this sequestration be compatible with the interpretative clause?

In our view, the questions raised under (b) should be carefully examined by the Diplomatic Conference.

Article 14(5): The rule contained in this provision appears to us to be superfluous. In our view, States have in any case entire freedom to provide, for the benefit of the authors, a certain form of remuneration consisting of participation in the receipts resulting from the exploitation of their work.

Article 14 (new paragraph (moral rights)): We consider it desirable to introduce into the Berne Convention, preferably in Article 14 in proximity to paragraph (4), a provision laying down certain limits to the exercise by authors of their moral rights in a cinematographic work. Disputes arising in this field centre mainly round the right to modify a work. We propose the following clause dealing with the exercise of this right by the authors of a cinematographic work: "The authors referred to in paragraph (4), first sentence, may not, in the absence of any contrary or special stipulation, object to such modifications of the cinematographic work as may be essential to its production and exploitation, provided that such modifications are compatible with Article 6*bis*, paragraph (1)."

The reference to Article 6*bis* means that the proposed provision will not affect the rights of the authors of a cinematographic work to object to any modifications of the work which would be prejudicial to their honor or reputation.

The Swiss federal authorities reserve the right to amend or supplement the above proposals through their Delegation during the course of the Diplomatic Conference.

Turkey

The proposals in Section IV of S/1 concerning the special provisions proposed in favor of the developing countries with regard to the translation rights, duration of literary protection, newspaper articles, radio broadcasts, etc., and in particular concerning the publications made exclusively for educational, scientific and training purposes are considered to be a positive and forward step.

Although expressing its preference to include the said provisions in the Berne Convention itself as an additional Article 25*bis*, as already proposed by the Study Group and the Committee of Experts which consecutively met in 1963 and 1965, the Government of Turkey does not consider to oppose any move to include them in a separate Protocol to be annexed in the Stockholm Act.

On the other hand, the Turkish Government shares the views that the text which the developing countries will be allowed to substitute for Article 8 of the Stockholm Draft should be that recommended by the Study Group and the 1963 Committee of Experts. This would be acceptable for the countries who have made reservations to the provisions on the translation period in accordance with the last sentence of Article 25(3) of the Berne Convention when adhering to it as revised by the Brussels Act.

However, if the text proposed by the Swedish Government which maintains the same line as in Article V of the Universal Copyright Convention would receive the approval of the Conference, my Government will find itself unable to sign and approve the Articles 1 to 20*bis* of the Stockholm Act, as well as its integral part, the Protocol Regarding Developing Countries.

Therefore, it is considered to be essential to revise Article 1(a) of the Draft Protocol as to enable the application of the provisions of Article 5 of the 1896 Convention or in case this meets objection to add a clause to the Protocol to enable the developing countries make their choice for the 1896 Convention or the Universal Convention.

It is the opinion of the Government of Turkey that it should be borne in mind when revising the Berne Convention that the main objective should be to enable as many countries as possible to sign and approve or adhere to the Convention. Therefore, close attention should be paid to the reservations made by the developing countries to the provisions of the current Conventions. Furthermore, an interruption of the legal relations arising from copyright matters between the countries who would be accepting the Articles 1 to 20*bis* of the Stockholm Act and those who are parties to the Brussels Act or to the more ancient ones (Rome, Berlin) would be avoided.

S/18 BIRPI. Berne Convention. *The following summary of observations of governments (Documents S/13 and S/17) on the provisions as they appear in Document S/1 is submitted:*

Introduction

The following summary has been prepared on the basis of the observations of member countries of the Berne Union contained in Documents S/13 and S/17 [1]). In its preparation, the following rules have been observed.

The material is set forth, Article by Article and paragraph by paragraph, in the order of the texts which are submitted for revision (Articles 1 to 20 of the Berne Convention). In the analysis, no mention is made of those countries that have raised no objection or that have explicitly given their support to the proposals put forward in Document S/1. This implies that the countries in question can be considered as having declared themselves in agreement with the proposed texts.

As regards the observations mentioned in the present document, account has been taken mainly of those which contain definite proposals and of those which offer a point of view differing clearly from that expressed in the proposals for revision (document S/1). In the interest of conciseness, some remarks of a purely drafting nature have been omitted.

General Observations

Before taking up the particular questions dealt with in the various Articles, some member countries made a few general observations, the main points of which are given below:

Belgium: The Belgian Government wonders whether it is sufficient to interpret terms of some importance in the statement of reasons.

Bulgaria: The Bulgarian Government considers that, if the trend towards the accession of a larger number of countries is to be pursued with greater success, it seems necessary to be more respectful of national legislations.

Denmark: The Danish Government shares the view put forward by the United Kingdom of Great Britain and Northern Ireland, to the effect that "a complete recasting of the Convention should be undertaken." However, it is agreed that such a review of the formal structure and formulation of the Convention would be very difficult to carry out at the present juncture. Under these circumstances, isolated alterations should not be effected, such as changing of the designation of Article 2*bis* to Article 3.

Israel: The Israeli Government urges the desirability of a technical redrafting of the Convention and a systematic rearrangement of its Articles. The need for redrafting is increased by the existence of serious discrepancies in language, as is revealed by a comparison of the French and English texts.

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[1] As at March 31, 1967, observations had been received from the following eighteen countries: Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Ireland, Israel, Italy, Japan, Luxembourg, Madagascar, Portugal, South Africa, Switzerland, Turkey, United Kingdom.

The Government also reserves its right to submit additional observations.

South Africa: The South African Government points out that the authors of document S/1 have in some cases elected to depart from the decisions given at the meeting held at Geneva in 1965.

Turkey: In the view of the Turkish Government, the main objective of the revision should be to enable as many countries as possible to sign and ratify the Convention or to accede to it.

United Kingdom: The United Kingdom Government considers it desirable to change the expression "literary, scientific and artistic works," wherever it appears, to "literary and artistic works," since the latter expression is defined in Article 2(1).

In regard to the reservations made in the text of the Convention, the Government suggests a general formula such as: "Where an Article provides for exceptions to, or limitations of, a right given by another Article, the former Article shall be taken as governing all cases with which it deals."

Article 1

No observations.

Article 2

Paragraph (1)

Choreographic works and entertainments in dumb show

Denmark has not committed itself in regard to the general question whether the Convention prevents countries from introducing national legislation requiring fixation.

The following countries consider that it would be preferable to maintain the phrase "the acting form of which is fixed in writing or otherwise": *Belgium, France, Ireland, Israel, Italy, Japan, Luxembourg, Portugal, United Kingdom.*

Television works

Czechoslovakia and *Italy* are of the opinion that television works should also be expressly mentioned, after cinematographic works, in the list contained in paragraph (1).

Paragraph (2)

Television works

Some countries have made observations which may be summarized as follows:

Austria: It should be mentioned in the General Report of the Conference that television recordings only enjoy protection to the extent that they constitute creative works.

Japan: However, recordings of images or of images and sounds, prepared by a broadcasting body as a mere technical means exclusively for the use of the broadcasting to be done with permission, should not be considered to be cinematographic works in view of their purpose of use.

Luxembourg: It should be noted in the General Report of the Conference that States can extend the rules governing cinematographic works to works producing analogous visual effects, but not fixed; and it should be stated at what time and by whom the fixation must be effected for the work to be considered cinematographic.

Portugal: (a) It is necessary to determine what is meant by fixation. (b) It is necessary to clarify the situation by the addition of a sentence stating that "the countries of the Union shall have the right to protect works thus expressed which are not fixed in some material form."

Five countries (*Czechoslovakia, Germany* (Fed. Rep.), *Israel, Italy, Switzerland)* have declared against fixation in some material form as a condition for considering television works to be cinematographic works. *Germany* (Fed. Rep.) has proposed the following wording: "(2) For the purposes of this Convention, works expressed by a process producing visual effects analogous to cinematography shall be considered to be cinematographic works. There shall however be no obligation to protect, as a cinematographic work, a series of visual images which is not recorded on some material support."

Photographic works

Portugal has observed that the second sentence of this paragraph, concerning photographic works, should constitute a separate paragraph (3).

In the opinion of the *United Kingdom*, this sentence should read: "For the purpose of this Convention, works expressed by a process analogous to photography and fixed in some material form shall be considered to be photographic works."

Paragraph (3)

The only observation on this paragraph has been made by *Germany* (Fed. Rep.), which has suggested an extension of the provision contained in the second sentence so as to reserve to the legislation of the countries of the Union the right to determine also the protection to be granted to official texts themselves. Moreover, translations of these texts should only be subject to the limitation provided if they have been made by an official service itself. Consequently, Germany (Fed. Rep.) proposes that the sentence in question be worded as follows: "It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts."

Paragraphs (4) and (5)

No observations.

Paragraph (6)

Denmark is of the opinion that this paragraph should be deleted in its entirety.

Germany (Fed. Rep.) thinks that the text of this provision is not entirely clear, and therefore suggests that it be stated (in the Records of the Conference or, if necessary, by means of an alteration in the wording) that protection can only be limited, in the other countries of the Union, to the protection granted to designs and models if the laws of the countries in question recognize such protection.

Israel, considering that the question of designs and models appears to be outside the scope of copyright, has proposed the following text:

"(6)(a) Subject to the obligation to provide a minimum term of protection under the provisions of Article 7, paragraph (4), of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art as well as the conditions under which such works shall be protected.

(b) Works of applied art protected in the country of origin solely as designs and models and not as works of applied art shall be entitled in other countries of the Union only to such protection as shall be granted to designs and models in such countries and not to the rights granted under this Convention."

Paragraph (7)

Most of the Governments which sent in replies have made no remarks concerning the proposed transfer of this provision from the present Article 9(3).

However, with regard to the English text, *Israel* doubts whether it would not be better to retain Article 9(3) in its present version as the text of Article 2(7).

Portugal does not approve the transfer of this text from Article 9, because it is not in agreement with the changes proposed in that Article.

For its part, the *United Kingdom* would prefer this paragraph to read: "The protection of this Convention shall not apply to the facts constituting news of the day or having the character of mere news items."

Lastly, *Switzerland* considers that this provision should be deleted, news of the day and miscellaneous facts being not works within the meaning of the Convention.

Article 2*(bis)*

Paragraph (1)

No observations.

Paragraph (2)

Eight countries *(Germany* (Fed. Rep.), *Ireland, Israel, Luxembourg, Portugal, South Africa, Switzerland, United Kingdom)* see no sufficient reason why the rights granted to the press should not be extended to other media of communication. In this connection, three different formulae have been suggested, as a phrase to be added at the end of this paragraph:

Germany (Fed. Rep.): "and, when they refer to news, may be broadcast by radio or communicated by wire to the public."

Israel: "or recorded, reproduced and communicated to the public by broadcasting or communication to the public by wire or other means of radio diffusion in the course and for the purpose of reporting current events."

United Kingdom: "or broadcast."

Paragraph (3)

No observations.

Article 4

Paragraph (1)

The only observation on the subject of this paragraph has been made by *Portugal*, which has stated that it cannot agree to such a generalization if the present situation continues.

On the other hand, *Switzerland* has proposed that the scope of the principle of author's nationality should be still further widened, by making the country of the Union of which the author is a national the sole country of origin of all his works, whether published or not, in whatever country they may have been first published.

Paragraph (2)

Observations have been made by the following countries:

Austria: suggests the insertion in a suitable place of the rule concerning domicile contained in Article 1, paragraph (3) of the *Convention on conflicts of laws with regard to the form testamentary dispositions.*

Belgium: suggests replacing the concept of domicile by that of "habitual residence."

Bulgaria: proposes the addition, at the beginning of the paragraph, of the words "Unless the legislation of the country where protection is claimed provides otherwise,..."

Israel: proposes the following text: "(2) Authors who are not nationals of one of the countries of the Union, including stateless persons, and having habitual residence in one of them shall, for the purpose of this Convention, be assimilated to the nationals of that country. A legal entity shall be treated as a national of the country in which it has its headquarters."

Portugal: does not accept the proposed amendment, for the same reasons as those invoked in respect of paragraph (1).

Lastly, *South Africa* proposes the addition of the following sentence: "The rights of authors who are stateless or who are refugees and who have their habitual residence in one of the countries of the Union will be dependent on the adoption by the country in which they reside of the Protocol determining their status."

Paragraph (3)

No observations.

Paragraph (4)

The provisions contained in this paragraph have given rise to observations from only four countries:

France considers it preferable that the provisions concerning the maker of cinematographic works should be disjoined (see also the observation relating to Article 6, paragraph (2)).

Israel proposes the following text for sub-paragraph (c): "(c) in the case of unpublished works or of works first published outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:

(i) where the works are cinematographic works, the maker of which is a national of a country of the Union, the country of origin shall be that country and

(ii) where the works are works of architecture erected in a country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union, that country."

Portugal agrees with the proposed system, to the extent that it is not prejudiced by the rejection of the two previous paragraphs ((1) and (2)), and subject to the Portuguese observations concerning cinematographic works. With regard to the latter, the Portuguese Government suggests that they be dealt with separately, in a paragraph which might be worded as follows: "The country of origin of cinematographic works shall be considered to be the country of the Union in which the maker has his domicile or headquarters or, if this hypothesis does not apply, the country of the Union of which the author is a national."

In the view of the Portuguese Government, the definition of simultaneous publication should constitute a new paragraph (5).

Switzerland considers that the amendment proposed by it in paragraph (1) would involve an amendment of paragraph (4), which might perhaps be reduced to a single rule, under which the country of the Union of which the author is a national would become the country of origin of his works, whether published or not.

Paragraph (5)

Various observations have been made by the following countries:

Belgium cannot easily support the interpretation given to the terms "public" and "in sufficient quantities" (document S/1, p. 26).

In the opinion of *Denmark*, publication must probably be regarded as having taken place in all cases where a film is available for showing in cinemas when copies of the film have been delivered for such showing (that is to say, also in cases where a cinema is under direct control of the film producer).

France holds the view that it is most desirable that the concept of publication of cinematographic and television works should be defined. The French Government has reserved the right to propose a new definition.

Owing to serious differences between the French and English texts, *Israel* has proposed that this paragraph should read as follows: "(5) For the purposes of this Convention, a work shall be deemed to have been published if copies thereof have been lawfully issued and made available in sufficient quantities to the public...."

Luxembourg and *South Africa* would support the definition proposed by the European Broadcasting Union, which is: "The expression 'published works' means works lawfully published, whatever may be the means of manufacture of the copies, provided that the availability of such copies is sufficient to render the work accessible to the public."

Portugal considers that the proposed definition is not very apt, especially the requirement that publication shall be lawful. The Portuguese Government can only agree to this addition if the problems to which it gives rise are solved.

Switzerland would prefer a more liberal definition, under which a work would be regarded as published when it has

been lawfully published in a sufficient number of copies to be made available to the public.

The *United Kingdom* has proposed the substitution of the words "published with the consent of their authors" for the words "lawfully published."

Paragraph (6)

Czechoslovakia does not consider the proposed definition to be satisfactory and suggests that it be either deleted or redrafted, while to *Germany* (Fed. Rep.) and *Italy* this definition does not seem to be essential.

In addition, two countries have proposed formulae which seem to them to be preferable, namely:

Portugal: "The maker is the person or entity that undertakes and organizes the making of the work, assuming entire responsibility for its production, whether from the technical or the financial aspect" (Article 125 of the Portuguese Copyright Code).

United Kingdom: "The maker is the person or body corporate by whom the arrangements necessary for the making of the film are undertaken."

ARTICLE 5

Portugal has stated that it supports the proposed change, inasmuch as it is unable to agree to the proposed changes in Article 4.

Israel does not consider this Article to be comprehensive enough, and has therefore proposed the following text: "Authors who are nationals of one of the countries of the Union shall enjoy in the country of origin of their work the same rights as national authors even if they are not nationals of that country."

Switzerland considers that the amendments proposed by it in Article 4, paragraphs (1) and (4), would render the existing Article 5 superfluous.

ARTICLE 6

Paragraph (1)

No observations.

Paragraph (2)

Portugal has stated that it cannot agree to this proposal.

Some remarks have been made by the following countries:

Belgium: suggests replacing the concept of domicile by that of "habitual residence" (see also the identical observation made with regard to Article 4, paragraph (2)).

France: considers it preferable that the provisions concerning the maker of cinematographic works should be disjoined (see also the observation relating to Article 4, paragraph (4)).

Ireland: considers that the new provisions should allow the maker to be regarded as author.

In order to clarify the text, *Israel* has proposed the following wording: "(2) Authors who are not nationals of one of the countries of the Union shall enjoy for their cinematographic works which are unpublished or if published are not entitled to enjoy any right for such works under this Convention by virtue of that publication, but the maker of which is a national of one of the countries of the Union, the same rights in that country as national authors and, in the other countries of the Union, the rights granted by this Convention."

In the opinion of the *United Kingdom*, it is necessary to add: "Any country of the Union shall be free to treat the maker of a cinematographic work as its author."

Paragraph (3)

Only one substantial observation has been made, by *Ireland*, which sees no need to make the proposed extension for the protection of works of architecture obligatory.

Paragraphs (4) to (6)

No observations.

ARTICLE 6*bis*

Paragraph (1)

No observations.

ARTICLE 6*bis*

Paragraph (1)

Two countries have declared against this proposal:

Ireland, because moral rights are protected in that country under the common law; and the *United Kingdom*, which sees no need to extend these controversial rights beyond the life of the author.

Paragraph (2)

Bulgaria has proposed the abolition of the term of protection defined by the words "at least until the expiry of the economic rights."

Portugal does not consider the wording of this paragraph to be entirely satisfactory, and has therefore proposed the following text: "After the death of the author, these rights shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed at least until the expiry of the economic rights."

Paragraph (3)

Portugal has proposed that this paragraph should provide that national legislation may exclude pecuniary compensation.

ARTICLE 7

Paragraph (1)

Bulgaria does not agree with the proposed term (see the suggestion made in that connection by Bulgaria under Article 7, paragraph (7)).

Similarly, *Czechoslovakia* has proposed that the term of fifty years should not be fixed in a mandatory manner in respect of all the categories of works protected.

On the other hand, *Germany* (Fed. Rep.) has adopted the suggestions for the determination of the extension of the term of protection by a special arrangement between the countries concerned.

Paragraph (2)

The proposed term seems to *Portugal* to be inadmissible; it has therefore suggested the following wording: "The term of protection for cinematographic works shall be fixed by national legislation in such a way as to allow a fair return on the investment made. This term shall begin from the first publication, public performance or visual broadcast, or, if these take place more than five years after the making of the work, from the making."

On the other hand, the *United Kingdom* would prefer to replace the words "after the first publication, public performance or broadcast" by the words "after the work has been made available to the public with the consent of the author."

Paragraph (3)

Israel has proposed that the second and third sentences be replaced by the following: "When the pseudonym adopted by the author leaves no doubt as to his identity or if the identity of the author of an anonymous or pseudonymous work is disclosed, the term of protection shall be that provided in paragraph (1)."

Portugal has pointed out that the formula "made available to the public" is too complicated, and has proposed that it be replaced by the words "divulged" or "communicated."

The *United Kingdom* has proposed that the words "lawfully made available to the public" be replaced by "made available to the public with the consent of the author."

New paragraph (3A)

The *United Kingdom* has proposed the addition, after paragraph (3), of a new paragraph to be worded as follows: "In respect of the collective works mentioned in Article 2(4), the term of protection shall be 50 years from the death of the author of such works."

Paragraph (4)

Denmark desires the deletion of the phrase "and that of works of applied art in so far as they are protected as artistic works"—in accordance with the conception that works of applied art should be accorded the same legal status as other artistic works (see observations relating to Article 2, paragraph (6)).

Three countries have made observations concerning the term of protection:

Ireland considers that States should not be required to protect works of applied art for so long a term as that proposed.

Portugal takes the view that the term of 25 years is unduly long, and it proposes the same term (10 years) as that allowed under the Universal Copyright Convention.

The *United Kingdom* has proposed that the final phrase be replaced by the following: "However this term shall last at least: (a) in respect of photographs, for 50 years from the making of the photograph, (b) in respect of works of applied art, for 15 years from the making of the work."

Paragraph (5)

No observations.

Paragraph (5) (Brussels text)

Portugal is of the opinion that this paragraph should be maintained, with some changes in the wording if necessary.

Paragraph (6) and (7)

Israel has proposed combining these two paragraphs; the combined text would read: "The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs and that term shall be applied whenever protection is claimed in such country. However, such a country may provide that the term of protection for any work shall not exceed the term fixed in the country of origin of that work."

Paragraph (7)

Bulgaria has proposed a new wording, based on Article 7, paragraph (2), of the Rome text: "In all cases the term shall be governed by the law of the country where protection is claimed. It follows that the countries of the Union are bound to enforce the foregoing paragraphs to the extent that their national legislation permits. However, unless the legislation of such a country provides otherwise, the term shall not exceed that fixed in the country of origin of the work."

Another wording has been formulated by *Switzerland*, which has proposed the following text: "In any case, the term shall be governed by the law of the country where protection is claimed; however, this latter country may provide that the term shall not exceed the term fixed in the country of origin of the work."

ARTICLE 7bis

Israel considers that the present text is to be preferred.

South Africa has proposed the addition of the following clause: "provided he is a national of a country of the Union."

ARTICLE 8

Israel has suggested that the following be added at the end of the text: "Translation shall be authorized in all cases where reproduction of the works is permitted under this Convention to the extent and for the purposes of such reproduction."

Portugal has proposed that the provision contained in Article V of the Universal Copyright Convention, which is reproduced in paragraph (a) of Article 1 of the draft Protocol Regarding Developing Countries, should be included in the actual text of Article 8.

ARTICLE 9

Paragraph (1)

Austria thinks that it would be advisable to define "reproduction" in the sense of Article 28 of the French law of 1957.

Belgium considers that it would be desirable to insert a provision maintaining the application of the reservations stipulated in Articles 2*bis*, 10, 10*bis*, 11*bis*, paragraph (3), and 13, paragraph (2).

Germany (Fed. Rep.) has proposed the insertion, after the words "their works" of the following phrase: "including the recording of such works by instruments capable of reproducing them mechanically."

It is the understanding of *Israel* that "reproduction" includes reproduction by the various mechanical means available.

Italy considers that the reference to the right of reproduction should be accompanied by a reference to the right of distribution.

South Africa has proposed the insertion of the words "subject to the other provisions of this Convention."

The *United Kingdom* has proposed that this paragraph be amended to read as follows: "Authors of literary and artistic works shall have the exclusive right of authorizing the reproduction of such works, *or any substantial parts thereof*, in any manner or form."

On the other hand, the Governments of *Ireland* and *Portugal* have stated that they cannot agree to the proposed text.

Paragraph (2)

Belgium considers that a more restrictive formula should be sought for sub-paragraph (c).

Czechoslovakia recommends that the draft Convention should include again Article 3, which would specify the rights mentioned in the Convention in respect of which private use is permitted beside the rights of reproduction.

Denmark is prepared to support proposals which would lead to a more precise formulation and a restriction of the exceptions provided for under (a) and (b).

In the opinion of *Germany* (Fed. Rep.), it would be desirable to delimit the reservation concerning private use (sub-paragraph (a)) so as to avoid too great an interference with the interests of the author. In the event of doubts being expressed with regard to the interpretation of the reservation provided in sub-paragraph (c) as far as its compatibility with the German law is concerned, Germany (Fed. Rep.) would like to see the text of that provision clarified by the following wording: "(c) in certain particular cases where the permission does not conflict with a normal exploitation of the work or with the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority, and where the permission is not contrary to the legitimate interests of the author."

In the event of this point of view not being approved, the Government of the Federal Republic of Germany would find itself obliged to oppose the deletion of the present Article 9(2).

Israel has suggested that a general provision should replace sub-paragraphs (a), (b) and (c) in the following form: "It shall be a matter for legislation in the countries of the Union to permit reproduction, if the reproduction is not contrary to or in conflict with the normal exploitation of the work

by the author in the country concerned provided that where normal exploitation is restricted by administrative regulation, the user of the copyright material should be under the duty to make compensation to the author."

Italy has suggested that in sub-paragraph (a) the term "private use" should be replaced by "personal use", and that in sub-paragraph (c) "special cases" should be replaced by "exceptional cases."

Japan agrees to the proposal concerning the general right of reproduction, on the understanding that proposed paragraph (2) does not reject the possibility of allowing various exceptions already recognized in domestic laws.

South Africa considers that the use of words attached to a musical work should also be subject to a compulsory license, or that local legislation should be permitted to provide for it.

The *United Kingdom* has proposed that this paragraph be amended to read: "It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works or substantial parts thereof in certain special cases where the reproduction does not unreasonably prejudice the legitimate interests of the author and does not conflict with a normal exploitation of the work."

Lastly, *Ireland* and *Portugal* have stated that they cannot agree to the proposed change.

New paragraph (3)

Austria considers it desirable to add to Article 9 a paragraph (3), proposed by the International Federation of Musicians, namely: "It shall also be a matter for legislation in the countries of the Union to subject the exercise of that right to conditions ensuring that, when a musical or dramatico-musical work has been published with the authorization of the author thereof, the graphic copies of the work be made accessible to the public without improper restrictions."

ARTICLES 9 AND 10 (common observation)

France has proposed, for Articles 9 and 10, the following wording:

Article 9: "Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form."

Article 10: "(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works: (a) *for individual or family use;* (b) for judicial or administrative purposes; (c) in certain particular cases where the reproduction is not contrary to the legitimate interests of the author and does not conflict with a normal exploitation of the work.

(2) It shall be permissible to make *short* quotations from a work which has already been lawfully made available to the public, provided that they are compatible with fair practice, and to the extent justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(3) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit, to the extent justified by the purpose, borrowings from literary or artistic works for use in publications intended for teaching or having a scientific character or in chrestomathies.

(4) Quotations and borrowings shall be accompanied by an acknowledgement of the source and by the name of the author, if his name appears thereon."

ARTICLE 10

Paragraph (1)

Israel feels that it is not clear whether the retention of the existing words at the end of the sentence in this paragraph is intended to extend the scope of the provision beyond that which is already covered by the words proposed to be added.

Italy considers that, if it is decided to delete the word "short", there should at least be an express indication of the purposes.

In the view of *Japan*, if the present provisions are to be amended as proposed, the last phrase "including quotations from newspaper articles and periodicals in the form of press summaries" should be deleted as unnecessary.

Switzerland considers that the condition expressed in the words "to the extent justified by the purpose", is not sufficiently restrictive, and has proposed the following wording: "...provided that they are compatible with fair practice and to the extent that they serve as an explanation, reference or illustration in the context in which they are used, including quotations from newspaper articles...".

Paragraph (2)

The three following countries have made remarks concerning the present text of this paragraph:

Israel has proposed that the paragraph be worded as follows: "It shall be a matter for legislation in the countries of the Union to permit or to regulate, to the extent justified by the purpose, borrowings from literary or artistic works for use in publications intended for teaching or having a scientific character or in chrestomathies."

Japan has suggested that the following provision (amended text of present Article 9(2)) be added to it: "Articles on current economic, political or religious topics may be reproduced by the press *or be broadcast* unless the reproduction *or the broadcasting thereof* is expressly reserved; nevertheless, the source must always be clearly indicated. The legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed."

The *United Kingdom* has proposed that, in the English text, the word "borrowings" be replaced by the word "excerpts".

Paragraph (3)

No observations.

ARTICLE 10*bis*

Two observations of a general nature have been made by *Ireland* and *Luxembourg*, which feel that the wording of this Article needs clarification.

Switzerland has suggested that the words "communicate to the public" should be replaced by a wider term which would include all the processes by which the work is made accessible to the public.

ARTICLE 11

Paragraph (1)

Germany (Fed. Rep.) proposes to add, under (i): "including the public performance of such works by means of instruments capable of reproducing them mechanically."

Portugal, on the other hand, has proposed that the present text be maintained in full.

Paragraph (2)

Only one observation has been made on the subject of this paragraph—by *Germany* (Fed. Rep.), which considers this provision to be superfluous since it merely contains a ruling which takes up a general principle already established in Article 8.

ARTICLES 11 and 11*bis* (common observation)

Israel holds the view that these two Articles must be made subject to the proviso that nothing therein contained shall prejudice the right of any country to control and regulate trade restrictive and monopoly practices.

ARTICLE 11*bis*

Paragraph (1)

Only one country—the *United Kingdom*—has made an observation regarding this paragraph; it has proposed that sub-paragraph (ii) be amended to read: "any communication to the public by wire or by rebroadcasting of the broadcast of a work, when this communication is made (a) in a country of the Union other than that in which the broadcast was made, (b) by a body other than that which broadcast the work, and (c) to an audience not contemplated by the body which broadcast the work".

Paragraph (2)

No observations.

Paragraph (3)

Five countries *(Ireland, Japan, Luxembourg, Portugal* and the *United Kingdom)* have made observations to the effect that national legislation should not be prevented by the Convention from allowing broadcasting organizations to employ others to make their ephemeral recordings.

Japan has proposed that the words "by means of its own facilities and used for its own broadcasts" be replaced by the words "as a mere technical means for the use of the broadcasts made with permission."

Luxembourg has suggested the following formula: "made by or for broadcasting organizations."

In the opinion of *Portugal*, it might be said that the recordings could be made "for their own broadcasts and those of analogous organizations, existing in the same country, with which they co-operate."

The *United Kingdom* has proposed that the first two sentences be replaced by the following: "In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to reproduce, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the conditions under which ephemeral recordings may be made by *or at the request of* a broadcasting organization for use in its own broadcasts, *when, for technical or other reasons, the broadcast cannot be made at the time of the performance of the work.*"

ARTICLE 11*ter*

An observation has been made by *Germany* (Fed. Rep.), which has proposed the following wording: "Subject to the provisions of Article 11*bis*, the authors of literary works shall enjoy the exclusive right of authorizing: (i) the public recitation of their works including the public recitation of these works by means of instruments capable of reproducing them mechanically; (ii) any communication to the public of the recitation of their works."

Similarly, *Switzerland* is of the opinion that it would be only fair that the authors of literary works should have the right to authorize the communication of recitations of their works to the public by wire.

ARTICLE 12

The only observation—made by *Germany* (Fed. Rep.)—bears on a point of drafting: it is proposed to delete the word "scientific".

ARTICLE 13

Paragraph (1)

Four countries *(Austria, Belgium, Germany* (Fed. Rep.) and the *United Kingdom)* have expressed the opinion that there is a need for clarification in regard to musical works *with or without words. Germany* (Fed. Rep.) has proposed the addition of the words "with or without words" after the words "authors of musical works". Moreover, the *United Kingdom* has proposed that the words "of authorizing the recording of such works by instruments capable of reproducing them mechanically" be replaced by: "of authorizing the reproduction of such works *including any words intended by their author to be performed with them*, on instruments by means of which they can be performed."

Czechoslovakia is of the opinion that it would be more effectual if Article 9 dealt specially with publication by means of printing and Article 13 with the recording of protected works and the multiplication of such mechanical recordings —expressly covering literary works as well.

Israel considers that the provisions of this paragraph should extend to "all works usually recorded" or to the other categories of works mentioned in Article 11(1).

South Africa has reserved its position in regard to the *performance* of the works in question.

Lastly, two countries have refused to agree to the proposed text:

Japan has suggested retaining the present provisions (Brussels text), subject to the deletion of Article 13 (1)(ii).

Portugal agrees neither to the deletion of present paragraph (1) nor to the proposed alterations in the wording.

Paragraph (2)

Three observations have been made concerning this paragraph.

Austria proposes that the limit for the transitional period be set at December 31, 1970.

Germany (Fed. Rep.) considers it necessary to extend this provision likewise to words accompanying musical works. It is therefore proposed that this paragraph be worded as follows: "(2) Recordings of musical works *with or without words* made in a country of the Union in accordance with Article 13, paragraph (3), of the Convention signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of *these works* until December 31, 19. ."

Israel is of the opinion that this paragraph should appear among the transitional provisions.

Paragraph (3)

Belgium considers that this paragraph should undoubtedly be amplified, so as to cover not only recordings but, as in the first two paragraphs, reproductions as well.

Israel has proposed that the words "where they are treated as infringing recordings" be replaced by the words "which does not exercise its powers under paragraph (1)."

South Africa has suggested that the words "where they are treated as infringing recordings shall be liable to seizure" be replaced by: "where they are not lawfully introduced shall be treated as infringing copies and liable to seizure."

ARTICLE 14

Czechoslovakia has stated that the position finally adopted by it will be submitted by the Czechoslovak Delegation at Stockholm.

Paragraph (1)

Four countries have made observations concerning the scope and wording of this paragraph.

Austria considers that the word "scientific", at the beginning of the first phrase, should be deleted.

In the opinion of *Belgium*, it would be advisable to stipulate that the exclusive right of authorizing the cinematographic adaptation and reproduction of works is not subject to the reservations and conditions referred to in Article 13, paragraph (1), as proposed; on the other hand, it must be clearly understood that this right remains subject to the reservations and conditions provided for in Article 11*bis*.

Germany (Fed. Rep.) has proposed the following wording: "Authors of literary or artistic works shall have the exclusive right of authorizing: (i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced; (ii) the public performance, communication to the public by wire, broadcasting, and any other communication to the public, of the works thus adapted or reproduced.

The provisions of Article 11*bis*, paragraph (2), and of Article 13, paragraph (1), shall not apply; however, the application of Article 11*bis*, paragraph (3), shall be reserved."

To the Government of *Israel* it seems necessary to make this paragraph subject to the provisions of Article 10*bis*.

On the other hand, *Portugal* is in favor of maintaining the present paragraph (4).

Paragraph (2)

Austria takes the view that, in accepting the proposals for revision, it will have the right to maintain the regulation obtaining under Austrian law, according to which the rights of utilization of cinematographic works made professionally belong to the head of the undertaking—that is to say, to the maker of the film.

Israel has suggested that it be left to the country in which protection is sought to determine according to its own legal principles whether the "author" or the "maker", as the case may be, has copyright. This paragraph would accordingly read as follows: "The maker of the cinematographic work shall be considered as the author thereof. Countries of the Union may, however, by their own legislation provide that the copyright in the cinematographic work shall be vested in other authors who have participated and contributed in the creation of the cinematographic work provided that such provision shall apply only in such countries and to cinematographic works of which the country of origin also so provides."

Paragraph (3)

Israel observes that it is unnecessary to include the word "scientific" in this paragraph.

Paragraph (4)

Belgium, Germany (Fed. Rep.) and *Portugal* propose the deletion of the words (in the first sentence) "fixed in some material form."

Belgium, Luxembourg, Portugal and *South Africa* are of the opinion that the words "in the manner prescribed by the legislation of the country of origin of the cinematographic work" should also be deleted, because they are superfluous.

Austria points out that these provisions would seem to constitute a source of difficulty, as the member State which will be the country of origin by virtue of publication is not fixed beforehand and as, moreover, the country of origin will generally change.

Israel considers that, to be consistent with the suggestion in respect of paragraph (2), this paragraph should be introduced by the words: "Where under the legislation of the country in which protection is sought the maker is not considered the author of the work then the following rules shall apply... (followed by the terms of the proposed paragraph)."

With regard to the second sentence, *Belgium, Luxembourg* and *South Africa* are of the opinion that it should be omitted.

On the other hand, *France* takes the view that a written instrument is indispensable in the common interest of the authors and the maker. The French Government, after stating that it is unable to accept the proposed wording, has proposed that paragraph (4) be worded as follows: "However, and on condition that a written agreement exists between the maker and the authors authorizing the adaptation and reproduction of the pre-existing work or undertaking to bring literary or artistic contributions to the making of the cinematographic work in accordance with the legislation of the country of origin, such authors may not, in the absence of any contrary or special stipulation, object to its cinematographic and televisual exploitation by wire or by broadcasting, provided that the conditions specified in such agreements are complied with in full.

By 'contrary or special stipulation' is meant any restrictive condition agreed between the maker and the persons mentioned above."

Germany (Fed. Rep.) gives the following interpretation: The right granted to the countries of the Union by virtue of the second sentence to provide that the authorization or undertaking referred to in the first sentence shall be given by a written agreement or something having the same force, should, in the view of the German Government, relate solely to cinematographic works of which the country in question is the country of origin.

Japan has stated that it is not agreeable for it, in spite of the proposed provisions of paragraph (7), that such rule of interpretation should be made in the Convention concerning agreements between the authors who authorize to make a cinematographic adaptation and reproduction of their pre-existing works and the makers of cinematographic works.

Lastly, *Switzerland* considers that this interference by international legislation in the legislations of the States of the Union, which occurs nowhere else in the Berne Convention, should be studied with great care at the Revision Conference.

Furthermore, the interpretative clause, such as it is now drafted, appears to it to give rise to some uncertainty as to its legal effects.

Paragraph (5)

Four countries *(Belgium, Portugal, South Africa* and *Switzerland)* have expressed the opinion that this paragraph should be deleted, as being superfluous.

Paragraph (6)

Belgium thinks that it would be useful to provide for the case in which the rights in a musical work are handled by the composer himself (and not by a society—which justifies the preferential treatment accorded to the authors of musical works).

Israel considers that, in respect of musical works, the rights must be limited to the matter of royalties which the authors are entitled to receive; an impossible situation may otherwise be created. The Israeli Government has therefore proposed that this paragraph should be in the following form: "Unless national legislation provides otherwise, the provisions of this Article shall not exclude the right of the author of musical works to receive equitable remuneration for the public performance, communication to the public by wire, broadcasting, any other communication to the public, of such musical works, with or without words, used in the cinematographic work, to be determined by mutual agreement with the maker or author of the cinematographic work or, failing such agreement, by a competent authority."

On the other hand, *Luxembourg, Portugal* and *South Africa* take the view that this paragraph should be deleted. The *Portuguese* Government expresses the opinion that it would seem preferable to insert a rule similar to that contained in Article 132 of the Portuguese Copyright Code, namely: "The authors of the literary part and the musical part of a cinematographic work may reproduce them and use them separately in any manner, so long as this is not prejudicial to the exploitation of the work as a whole."

Paragraph (7)

Belgium points out that this paragraph will be the object of severe criticism in that it implies that pre-existing works are subject to the rule of interpretation. In its view, the difficulty arises from the fact that scenarios and dialogues are intended to be regarded as pre-existing works. A solution would be to specify in the Convention that scenarios and dialogues are to be considered as modern works. On this understanding, pre-existing works could be excluded from the operation of the rule of interpretation.

Germany (Fed. Rep.) has suggested the deletion, in the first sentence, of the word "scientific."

Israel considers this paragraph to be superfluous, in view of the previous proposals made by the Israeli Government.

Three countries *(Italy, Japan* and the *United Kingdom)* have raised doubts regarding the need to create any presumption whatsoever in favour of the maker of a cinematographic work in countries which apply the "film copyright" or the "legal assignment" system.

Italy thinks it necessary to reproduce the provision contained in Alternative B, paragraph (7), of the draft prepared by the 1965 Committee of Governmental Experts.

Japan likewise considers that there should be an express provision in the Convention that the rule of interpretation in this Convention shall not preclude countries which apply the systems of film copyright and legal assignment from retaining these systems (for example, provisions similar to paragraphs (6) and (7) of Article 14 of Alternative B, proposed by the Study Group).

The *United Kingdom* has proposed that this paragraph be amended to read: "The provisions of paragraph (4) of this Article shall not apply in countries whose laws grant copyright in a cinematographic work to its maker."
It has added that it cannot agree that its law should contain any presumptions in favor of film makers.

Lastly, *Luxembourg* and *Portugal* have pointed out that the right granted by this paragraph deprives of security a system which has been proposed precisely for reasons of security, and endangers the entire structure built up by the experts; consequently, the paragraph should be deleted.

New paragraph (8)

Luxembourg and *South Africa* have proposed the addition of a new paragraph (8), the text of which would be that already suggested by the European Broadcasting Union: "Without prejudice to Article 6*bis* and in the absence of any contrary stipulation, the authors referred to in paragraph (4) above may not oppose alterations that are indispensable to the exploitation of the cinematographic work."

Their opinion is shared by *Switzerland*, which has proposed to introduce the following provision, preferably in proximity to paragraph (4): "The authors referred to in paragraph (4), first sentence, may not, in the absence of any contrary or special stipulation, object to such modifications of the cinematographic work as may be essential to its production and exploitation, provided that such modifications are compatible with Article 6*bis*, paragraph (1)."

Article 14*bis*

Paragraph (1)

No observations.

Paragraph (2)

Germany (Fed. Rep.) has suggested that domicile should also be considered as a criterion of eligibility, and that this provision should be worded as follows: "(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country of which the author is a national or in which he has his domicile so permits, and to the extent permitted by the country where this protection is claimed."

Paragraph (3)

No observations.

Article 15

Paragraphs (1) and (2)

No observations.

Article 16

Paragraphs (1) to (3)

No observations.

Article 17

The *United Kingdom* considers that, in this Article, the position should be clarified by the deletion of the words "to permit". It has also proposed the insertion in the Article of a new paragraph in the following terms: "(2) Each country of the Union is free to enact such legislation as is necessary to prevent or deal with any abuse, by persons or organizations exercising one or more of the rights in a substantial number of different copyright works, of the monopoly position they enjoy."

Article 18

Paragraphs (1) to (4)

No observations.

Article 19

No observations.

Article 20

No observations.

Protocol Regarding Developing Countries

General observations

France agrees to the principle of a Protocol but feels that this would only be conceivable in the conditions specified hereafter.
In its view, the system of protection should on the whole be on an appreciably higher level than that of the Universal Copyright Convention.

Ireland has stated that it is unable to put forward a final view at this stage.

Portugal, having declared in favor of the deletion of paragraphs (a) and (c) (see the observations made by Portugal on Article 8 and 9), does not understand why the remaining three sub-paragraphs have their place in a separate Protocol.

South Africa has reserved its position and stated that it will formulate its views after the discussions at Stockholm.

The *United Kingdom* has stated that, if it is the wish of the great majority of the member countries to provide for the possibility of membership of the Berne Union by developing countries on less onerous terms than those accepted by existing members, it would be prepared to assist in formulating a Protocol which makes this possible. It believes, however, that the terms of the Protocol now proposed go too far in some respects; it accordingly suggests the amendments specified hereafter.
The United Kingdom Government is also of the opinion that, if a Protocol is adopted, it should be made clear, in Article 20, that, in considering whether any given provision in a special agreement is "contrary to this Convention", the Protocol shall be disregarded.

Article 1

Bulgaria considers that all the member countries of the Union should be allowed the possibility, when ratifying the substantive provisions of the Convention (Articles 1 to 20), of making the reservations now provided in the Protocol Regarding Developing Countries.

With regard to the duration of the reservations, the Bulgarian Government has proposed the deletion of the phrase "for a period of the first ten years during which it is a party thereto."

Czechoslovakia also feels that the proposed period of ten years is too short.

France considers that the developing countries should be defined; the following criterion is suggested: "Any developing country which, as an independent and sovereign State, has acceded to the Union or has confirmed its accession thereto since July 1, 1951."

Italy has likewise suggested the adoption of objective criteria for uniformly determining the countries entitled to avail themselves of the reservations provided in the Protocol.

The *United Kingdom* has proposed substitution by the following: "Any developing country which, having regard to the state of its cultural and economic needs, does not consider it is in a position to make provision for the protection of all the rights provided for in this Act, may, with the prior agreement of the Executive Committee of the Berne Union, notify (etc.)."

Article 1(a)

Three countries *(Bulgaria, Czechoslovakia, Turkey)* feel that the system proposed is less advantageous than that provided by Article 25, paragraph (3), of the Brussels text. The *Turkish* Government considers it essential to allow the countries in question at least to choose between the two systems.

Denmark has proposed the insertion, after the words "The original title", of the words "the year of the first publication."

In the opinion of *France*, it would be preferable to increase the period mentioned of seven years to ten.

Portugal has proposed the deletion of this paragraph (see its observation on Article 8).

Article 1(b)

Bulgaria considers that, in the event of its proposed amendment to Article 7, paragraph (7), being accepted, this paragraph of the Protocol should be deleted, as being unnecessary.

In the opinion of *France*, it would be preferable to increase the period mentioned of 25 years to 30.

Article 1(c)

Japan considers that this paragraph of the Protocol should be deleted, as a consequence of its proposal to retain a provision similar to the existing provision of Article 9, paragraph (2), of the Brussels Act (see the observation made by the Japanese Government concerning Article 10, paragraph (2)).

Portugal has likewise proposed the deletion of this paragraph (see its observations on Article 9).

Article 1(d)

The *United Kingdom* has proposed that the following be added, at the end: "This paragraph shall not apply so as to permit the performance in public for profit-making purposes, otherwise than on payment of equitable remuneration, fixed, in the absence of agreement, by competent authority, of broadcasts of literary and artistic works."

Article 1(c) and (d)

Israel has brought forward a technical suggestion, namely that the terms of the relevant paragraphs mentioned in Article 1(c) and (d) of the Protocol should be reproduced in full or in such other manner as to obviate the need to refer back to two other documents.

Article 1(e)

France could not in any case accept the reservation proposed in this paragraph; it might possibly consider maintaining in the Protocol a reservation couched in the following terms: "(e) reserve the right to restrict, to the extent justified by the purpose, the protection of literary and artistic works when their utilization is intended for the exclusive use of scholastic or educational institutions in connection with their pedagogical activities."

The *United Kingdom* suggests that this paragraph be deleted.

Article 2

Bulgaria has proposed the deletion of the mention, made in this Article, of the period of ten years.

Czechoslovakia likewise considers that the period mentioned is too short.

Additional Protocol Concerning the Protection of the Works of Stateless Persons and Refugees

The only country that has made an observation concerning this Protocol is *Portugal*, which refuses to admit this new extension of the field of application of the Convention.

Additional Protocol concerning the Application of the Convention to the Works of Certain International Organizations

Germany (Fed. Rep.) considers that a general reference to the provisions of Articles 4, 5 and 6 of the Convention is lacking in clarity, and suggests that the proposed text be revised.

The observations made by three countries relate to the question of the extension of the protection provided by this Protocol to international organizations other than the United Nations and its Specialized Agencies.

Belgium considers that the Protocol should be made applicable to works first published by the Council of Europe.

In the view of *France*, it seems difficult to consider extending the protection of literary works to all international organizations.

It therefore appears to it desirable: (1) to determine the criteria according to which this right would be conferred on such organizations; (2) to specify the works to which the protection would apply; (3) to study the possible effects in this connection of the immunity from jurisdiction which is enjoyed by the majority of international organizations.

In view of the complexity of the question, the French Government considers that the proposed text should be the subject of a detailed examination, which might be entrusted by the Stockholm Conference to a special committee whose proposals would be submitted to the next Revision Conference.

Italy, for its part, requests that the further consideration of the draft Protocol should not be limited solely to the case of the United Nations and the Specialized Agencies but should cover all international organizations, and in particular the EEC, EURATOM and the ECSC.

Luxembourg has made an observation to the same effect, specifying that the Protocol should provide for the protection of works published by the intergovernmental organizations, including in particular the European Communities and other European international organizations.

Lastly, *Portugal* refuses to admit this new extension of the field of application of the Convention.

S/19 Portugal. Berne and WIPO Conventions. *The following observations are made on the proposals as they appear in documents S/9, S/10, and S/11:*

The Portuguese Government, having considered attentively the proposals presented by BIRPI in the above-mentioned documents, ventures to express some apprehension with regard to them.

The Berne Union, like the other Unions administered by BIRPI, is at present an administrative union of the conventional type. It has a rudimentary organization which must be improved, but which, nevertheless, has hitherto functioned satisfactorily. The proposals now submitted are intended to replace it, without any necessity for this, by a structure which is sometimes very complex, whose objectives are over-ambitious, and which might become far more costly. The Portuguese Government thinks that this radical transformation is not justified.

As to Document S/10:

The Portuguese Government cannot agree to the proposal to set up a new international Organization.

Article 3(1) of the proposed Convention indicates the persons who would be protected by this Organization. The inclusion among such persons of "scientists having made discoveries" and "performing artists, producers of phonograms and broadcasting organizations" immediately gives rise to reservations. Such persons have hitherto been outside the Unions; as regards the second category, it must be pointed out that their interests differ quite frequently from those of authors. What guarantees of authenticity are given by a protection which broadcasting organizations, for example, do not claim, and which is to be given concrete form to a very large extent through the Unions, that is to say, through entities with very different aims?

If, after aims, we consider the functions enumerated in Article 3(2), we think we can discern the following picture: (1) The Organization is entrusted with the administrative tasks of the existing Unions and may assume the administration of similar bodies ((i) and (ii)). (2) The Organization is to promote the protection of intellectual property throughout the world ((iii) to (viii)).

As regards the first objective, the intervention of the Organization seems to us quite unnecessary. The administration of the Unions needs some adjustments, in particular to establish co-ordination between them and to ensure more active intervention of Members; we shall speak of these adjustments with reference to document S/9, but we may say here and now that they can be achieved without the institution of the Organization.

The objectives relating to the promotion of the protection of "intellectual property," were not foreign to the Unions, but their extent was limited; it may be supposed that action can be extended by improving the structure of the Unions. This is one thing, but it is quite another to want to set up a world organization with ambitious aims competing with existing organizations and which will certainly be very costly. The traditional framework of the Conventions will thus be disturbed without there being any pressing necessity that we can see for setting up such an institution.

The Portuguese Government also has to express most serious reservations with regard to financing.

It is proposed that the principal source of income be the "voluntary contributions" of the Paris and Berne Unions (document S/12, paragraph 7).

The Portuguese Government cannot fail to draw attention to the illegality of such a proposal. The receipts of the Union must be used for carrying out the objectives of the Unions and not for sometimes very different purposes, as those of the Organization would be. It has been stressed that each country of the Union would accede to the Organization only if it so desired; it has also been specified that the last ties between membership of the Union and membership of the Organization (document S/9, paragraph 14) were severed—but in reality one is taking on one side in order to give on another, by making those who have not acceded to the Organization pay for its functioning. The only position which seems satisfactory is to apportion the liabilities of the Organization among the countries which have acceded to it.

Turning to another general question, the Portuguese Government wishes to make the following comments in regard to the status of Associate Members: The intention is obviously to attract new countries, even where the legislation of those countries does not provide adequate protection for copyright; there would seem to be a tendency, if we may say so, toward a kind of formal integration of those countries in the Union. Thus, they are even being given the right to vote in the Organization. In order to minimize the ill effects of such a solution, it has been suggested that a distinction should be drawn between Full Members and Associate Members, at the cost of duplicating the central organs of the new institution.

The Portuguese Government considers that this idea, ingenious though it is, is not satisfactory. It is undesirable, in order to attract new countries, to give them the right to vote and to duplicate the organs of the institution. A more satisfactory solution would be to take account of the circumstances of these countries by making the Convention sufficiently flexible to enable them to accede to it. An attempt has been made to do this, though only hesitantly, in the case of the Protocol Regarding Developing Countries.

The Portuguese Government considers that if a decision is reached, after all, on the establishment of the Organization, the status of "Associate Members" should then at least be revised. An organization in which some members, who are not required to protect the institutions with which the organization is concerned, still have the right not only to receive technical assistance, but also to take part in discussions and to vote, must be regarded as an anomaly. Associate Members ought rather to be placed in the category of simple observers, although the title of Associate Members might be maintained. They would then be permanent observers, entitled to take part in the discussion of some or all subjects, but without the right to vote. In this way, it would be made easier for them to be associated with the Convention, without this forming any obstacle to their receiving full technical assistance. In addition, it should be expressly provided that assistance could be given to countries outside the Unions and the Organization.

Thus, the point to which reference has just been made would blur the distinction between the General Assembly and the Conference; we should be left with only a General Assembly.

But even supposing that there were no objection to the Organization's being set up with this duality in its governing organs, it would not be acceptable to give to the Conference the extensive voting rights which are suggested, particularly in regard to the preparation of the program of assistance and the adoption of the budget (see Article 7(2)(a)(ii) and (iii)).

Such, then, are the reasons which make it impossible for the Portuguese Government to approve the proposal for the establishment of a new Organization. In spite of the position which it has adopted, the Portuguese Government submits certain very brief observations on the specific points set out below.

Preamble: The Portuguese Government merely wishes to refer to the objective: "to promote the protection of intellectual property throughout the world." There is a danger that this phrase may set the seal of approval on an ambiguity which may well have been the cause of certain difficulties in the past. When States join together in a Union, they do so with the intention of giving protection, without discrimination, to those persons who have rights in intellectual assets and those who make use of these assets, since the object is to promote the improvement of international regulations concerning rights in intellectual assets and not merely the protection of intellectual property; this conclusion is not adequately expressed in the phrase mentioned above.

Article 1 (Establishment and Organs): The Portuguese Government has reservations to make with regard to the expression "Intellectual Property" included in the title of the Organization. There is at present considerable dispute as to whether these rights can be described as "property", and the expression is not in universal usage (see paragraph 34 of the Commentary); it would therefore seem that this description should be rejected. The Portuguese Government is aware of the difficulty of finding a new expression but thinks that it would be preferable to try to insist on the use of a term which is technically correct, for instance by speaking of an "International Organization for Rights in Intellectual Assets" or, quite simply, of an "Intellectual Right" or "Intellectual Rights."

Article 6 (General Assembly): The Portuguese Government fears that the quorum of one-third of the Members (paragraph (3)(b)) is too small and considers that a quorum of at least one-half which is customary in other international organizations would afford greater security, especially in cases where a qualified majority is required.

No reason is seen for requiring a qualified majority of two-thirds for such a routine matter as the invitation of observers (paragraph (3)(d)(iii)).

The Portuguese Government suggests that the Assembly should meet in ordinary session once in every fourth calendar year, as a shorter interval does not appear necessary, and it is also suggested that the term of appointment of the Director General should coincide with this period of four years.

We shall return to these points in our observations regarding the General Assembly of the Berne Union.

Article 7 (Conference): Apart from what was said at the beginning, it appears to the Portuguese Government inconsistent to entrust essentially the task of "promoting the protection of intellectual property throughout the world" to an organ the members of which (Associate Members) are not committed to the protection of intellectual property.

The distinction (paragraph (2)(b)) between an "Industrial Property Conference" and a "Copyright Conference" would not only be pointless but would also complicate further a structure which is already too complex.

As regards the quorum (paragraph (3)(b)) and invitations to observers (paragraph (3)(e)), reference is made to what was said on this subject concerning the General Assembly.

Article 8 (Coordination Committee): The Portuguese Government fears that the composition of the organ referred to here is too large and considers that it might perhaps be appropriate to establish a maximum number of representatives from every State.

It would also be appropriate to clarify paragraph (2) so as to remove all doubts regarding the impossibility of increasing the number of members of the Co-ordination Committee by this means.

Article 9 (International Bureau): The Portuguese Government considers that the length of the term of appointment of the Director General is anomalous, in spite of the explanations given in paragraph 78 of the Commentary. It is not, in fact, very well understood for what reason this initial period of appointment, which should be of an experimental character, should be for a fixed term of not less than six years while the other periods could be of shorter duration. It would perhaps be desirable that the period of appointment should always be four years, so that it would correspond to the proposed frequency of ordinary meetings of the Assembly which elects the Director General. Such a solution would presuppose the existence of a rule for the temporary occupation of the post whenever it became vacant, as has already been contemplated in Article 8(3).

Paragraph (6) does not make it clear what is meant by the "approval" of the Coordination Committee necessary for the appointment of Deputy Director General. It would, therefore, be necessary to know whether it is a question of a ratification of an appointment already made or a condition of such appointment. In the latter case, recourse might be had, *mutatis mutandis,* to the system provided in Article 8(3)(v).

Article 10 (Finances): The criteria governing the apportionment of expenses and income as specified in paragraphs (1)(c) and (3)(b) are so vague as to make differences in interpretation and application inevitable. The apportionment criterion should at least be indicated in the case where the interest of these two bodies is identical. Otherwise, reference is made to the observations of the Portuguese Government regarding the proposed Article 22 of the Berne Convention.

Article 11 (Legal Capacity, Privileges, and Immunities): The wording of paragraph (1) is not particularly felicitous, as the expression "on the territory of each Member State" might be interpreted as a quality of sovereignty or extra-territoriality where simply legal capacity is involved. The Portuguese Government proposes the following wording: "Each Member State shall afford the Organization, in accordance with its own laws, legal capacity, etc.".

It would be preferable that the Headquarters Agreement should, in view of its importance, be submitted to the Assembly and not to the Coordination Committee (paragraph (4)).

Article 13 (Amendments): The Portuguese Government considers that the simple majority for amendments to the Convention is unjustified. In actual fact, this rule, although modified by the requirement that such amendments should previously have been adopted by the Assemblies of the Paris Union and the Berne Union nevertheless allows the most important provisions, such as that governing the objectives of the Organization and the statutes of its Members or organs, to remain at the mercy of contingent majorities.

Article 14 (Becoming Party to the Convention; Entry into Force of the Convention): The Portuguese Government does not consider it logical that a State party to the Paris Convention, the Berne Convention, or both, may become a party to the present Convention only if it concurrently ratifies or accedes to either the Stockholm Act of the Paris Convention or of the Berne Convention, whereas the other States, even if intellectual rights are not protected under their legislation, may become party to this Convention without any restriction.

Article 18 (Final Provisions): The Portuguese Government requests that immediate provision be made for the establishment of a text in Portuguese. This request is justified by the fact that Portuguese is a more international language and is spoken by more people in the world than some of the languages specified in paragraphs (1) and (2). It will also be recalled that Portuguese is included in Article 31 of the Berne Convention and therefore no reason exists to justify its omission from an instrument which, like the present Convention, is intended to be of a universal character.

Article 19 (Transitional Provisions): There is one point in the text which is not very clear. It is not very well understood why, as regards the Bureau of the Paris Union, the rights, obligations, and *property* should devolve on the International Bureau, while in the case of the Bureau of the Berne Union only the rights and obligations so devolve.

As to Document S/9:

In relation to the Proposals for Revising the Administrative Provisions and the Final Clauses of the Berne Convention, the Portuguese Government is in agreement in principle with the need for administrative and structural modifications. Nevertheless, the desire to simplify the structure created as far as possible, without detriment to its functional utility, leads it to raise certain objections, the chief of which is that concerning the existence of an Executive Committee as proposed in Article 21*bis.*

The justification which has been given is based on the custom and practice of intergovernmental organizations to set up a smaller organ to deal with urgent matters and matters of lesser importance.

Nevertheless, having examined the functions of the Executive Committee as provided in Article 21*bis* (6)(a) of document S/9, the Portuguese Government was struck by the uselessness of such a Committee, which appears to be either a duplication of the Bureau or a useless letter-box between the Assembly and the Bureau.

In actual fact,

(i) the draft agenda of the Assembly should be prepared by the Bureau;

(ii) and (iv) the intervention of the Committee is pointless;

(v) and (vi) not of practical significance.

In particular, the intervention of the Executive Committee in the preparation of revision conferences (Article 21*ter*(8)(a)) should be replaced by that of a committee specifically set up for that purpose in accordance with Article 21(2)(a)(vii).

The only significant item is (iii): the Executive Committee, whose meetings would be annual, is to establish, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General.

Having reached that point, it would appear that such needs do not necessitate the creation of a new organ. As regards the program, it should be noted that it depends more on normal functions than on outside activities, in contrast to the situation in other international bodies, and for that reason annual approval would appear to be superfluous.

As regards the budget, since it is a question of allocating a proportion of the total budget to each year, it would seem reasonable to request that its approval should remain a responsibility of the Swiss Government; which would amount to continuing, to a limited degree, the present situation. In reality, even the proposals that have been presented to us continue to accord a special position to the Swiss Government in its capacity as the headquarters country. It might also be considered that one or two other countries apart from the Swiss might carry out this role of financial supervision of the activities of the Bureau.

The Portuguese Government therefore proposes that the Executive Committee should be omitted; the most that could be envisaged would be to make provision in Article 21 for the Assembly to set up an Executive Committee if that should prove necessary.

The Portuguese Government is, however, associating this attitude with its suggestion that a simpler method of work that has already proved itself in the international sphere should be adopted, namely *written consultation* of the members of the Union. Provision should be made for the Bureau to use that type of consultation whenever a problem arises between meetings of the Assembly. That method of written consultation could be combined with the possibility of convening an Extraordinary Assembly whenever such an Assembly should prove necessary.

Since, apart from these matters, the Portuguese Government is in agreement with the approach adopted in document S/9, we shall pass immediately to article by article consideration of the proposals presented. All references to the Organization contained in these proposals (see document S/9, paragraph 17(vi)) should be considered as affected by our comments on document S/10.

Reference will also be made to the subject of the essential coordination with the other Unions.

*Article 20*bis *(Protocol Regarding Developing Countries):* The Portuguese Government, for the reasons outlined in the comments on document S/1, does not accept that the Protocol and the text of the Convention should be separately presented, and considers such separation pointless.

This Article should therefore be deleted.

Article 21 (Assembly): The Portuguese Government agrees to the setting up of this supreme organ of the Union, although it cannot approve of the total transfer of the powers at present exercised by the Swiss Government, to which reference is made in paragraph 62 of the Commentary.

In relation to references to the International Bureau, the Executive Committee and the Coordination Committee, our comments concerning the respective articles may be regarded as reproduced here.

Ordinary meetings: provision is made in the proposed paragraph (4)(a) that meetings should be triennial. However, document S/12, paragraphs 13 and 63-65 suggests, arising from a report of the United Nations, that meetings should be biennial.

This preoccupation with parallelism would not seem to the Portuguese Government to be justified. In practice it is difficult to imagine that the quantity of subjects to be dealt with would be so large that a frequency of that nature would become necessary. Four-yearly meetings would seem rather to be indicated, the more so if that frequency coincides with that subsequently proposed for the term of office of the Director of the Bureau.

Moreover, it should also be stipulated not that meetings should be held "preferably during the same period and at the same place as the General Assembly of the Organization," but categorically that meetings should be held during the same period and at the same place as the meetings of the General Assemblies of the other Unions administered by BIRPI, with a view to the coordination that is foreseen in the future.

Extraordinary meetings: the Portuguese Government considers this to be a case where written consultation will make it possible to obtain results that would seem to be far more appropriate than those that would stem from the proposed paragraph (4)(b). We would suggest the following wording: "the Assembly shall meet in extraordinary session after written consultation of the Director General with the countries of the Union on his initiative or at the request of one of the countries, as soon as one-half of them shall have given their agreement to the said meeting."

Amendments to the administrative provisions of the Convention: see our comments on Article 23.

Majority: the Portuguese Government agrees that the Assembly shall take decisions by simple majority, although in certain cases a qualified majority may be required. It proposes, however, that the qualified majority should always be three-fourths. Such is the majority required in Article 23(2) for the amendment of the Administrative Provisions of the Convention, and uniformity would appear to be very appropriate.

Nevertheless, the Portuguese Government finds it strange that this qualified majority should be required for a decision as devoid of importance as that of admitting observers to the meetings (paragraph (3)(d)).

Quorum: the Portuguese Government fears that a quorum of one-third may be too small. If that quorum is combined with the proposed majority rule, it follows that two-ninths of the members could take decisions binding on all the others, which would seem excessive. It would seem that a quorum of at least 50 per cent might be more adequate.

Provision could, however, be made for the fixing of an increased quorum for certain discussions.

Joint meetings with the Assemblies of the other Unions: the Portuguese Government proposes that here (or in another article) provision should be made for the possibility of holding joint meetings of the Assembly with the Assemblies of the other Unions; it is also proposed that such joint meetings should be regarded as obligatory whenever their subject calls for concordant decisions by more than one Assembly, as for example:

(1) transfer of the headquarters;
(2) confirmation of provisions relating to the administration by the Bureau of other conventions, agreements and treaties;
(3) appointment of the Director General.

As it is not a question of a new organ, but of joint meetings of existing organs, voting would necessarily have to be separate.

The Portuguese Government also proposes that the provisions relating to these matters referred to in document S/10 should, *mutatis mutandis*, be reproduced here (as they should also be reproduced in the text relating to the Assemblies of the Paris Union and the special Unions established in relation with it).

Although it is equally true that the same results could be achieved by means of the simple coordination of decisions, the Portuguese Government is of the opinion that a joint discussion would be more rewarding.

*Article 21*bis *(Executive Committee):* The Portuguese Government has already indicated the reasons that have led it to state its reservations on the institution of this Committee.

Apart from that, the Portuguese Government would like to make three comments on the subject of the proposed Article 21*bis*:

(1) It is perhaps to be feared that this Committee might have too many members; one-fifth of the countries Members of the Assembly would be a more suitable proportion;
(2) More effective assurance should be given of the possible access of all members to the Committee, for example, by compulsorily reserving some places for countries

which have not yet served on the Committee and which submit their candidature;

(3) The Committee should serve for four years until a new ordinary meeting of the Assembly.

*Article 21*ter *(Bureau):* The Portuguese Government is in agreement with the characteristics attributed to the Bureau of the Union.

It would be desirable that references to the "protection of copyright" should be replaced here, as in other places, by more neutral expressions such as the "system of copyright" in order not to give an impression of one-sidedness.

It is stated in paragraph 107 of the Commentary that the present paragraph (6) is based on Article 22(1) of the Brussels Act. It is equally true that there has been considerable expansion, if only because that Article referred only to studies of interest to the Union. Nevertheless the Portuguese Government is in agreement with that expansion, which moreover confirms the pointlessness of setting up the international Organization.

Having regard to the reasons outlined at the beginning of our comments on document S/9, the reference in paragraph (8)(a) to the cooperation of the Executive Committee in the preparation of revision conferences should be replaced by a reference to the special committees that might possibly be set up for that purpose by the Assembly.

Article 22 (Finances): It follows from what we have said above that the Union's contribution to the Organization should be suppressed, even if the Organization were in fact established.

The Portuguese Government wishes to point out that the increase in the contribution in a year's time, together with the future contribution to the working capital fund, will become too burdensome. It would therefore prefer a less burdensome arrangement. It will not, however, take the initiative in raising objections.

It would also be possible to postpone the entry into force of each of these increases. In regard to the working capital fund, in particular, paragraph (6)(c) could be amended to read: "The proportion, *the date* and the terms of payment..." In this way the Assembly would be able to choose the best time to constitute the working capital fund.

In regard to paragraph (7), the Portuguese Government's only comment is that it would welcome the retention of the existing system. If this system is linked to a supervisory function, it should be remembered that we have previously proposed that the Swiss Government should retain this function in part. Hence, a change in the existing situation could only be brought about by a change in the position of the Swiss Government.

The same applies *a fortiori* to the auditing of the accounts (paragraph 8). Here it should be emphasized that the BIRPI proposals provide for one or more countries to assume a special position. There is therefore no reason in principle why such a special position should not be assumed by the Swiss Government.

Article 23 (Amendments to Articles 21 to 23): The Portuguese Government welcomes not only the proposal to submit to the Assembly amendments to the administrative provisions of the Convention, but also the deletion of the rule of unanimity; it therefore supports the proposed Article 23.

Paragraph (4) appears to be completely unnecessary in view of what has been laid down in previous paragraphs and of the complete clarity of Article 24. We therefore propose its deletion.

Article 24 (Revision): In view of the reasons put forward previously, the Portuguese Government requests the deletion of the reference to the Protocol Regarding Developing Countries.

Article 25 (Ratification and Accession by Countries of the Union; Entry into Force): Here again, reference to the Protocol Regarding Developing Countries should be deleted.

The Portuguese Government is in some doubt about the substantive proposal (exclusion from ratification or accession of the substantive or administrative provisions, paragraph (1)(b). On the one hand, it recognizes the validity of the reasons put forward in paragraph 33 of document S/9, but on the other hand it is apprehensive about the divisions which a proposal of this kind will undoubtedly produce within the Union and also about the insecurity which such divisions will inevitably produce in the relations between member countries.

The Portuguese Government wonders whether the entry into force of the administrative provisions is of such urgency as to justify such an orthodox system, under which the administrative provisions would enter into force before the substantive provisions.

The deletion of paragraph 1(c) will involve a change not merely in the numbering of paragraphs but also in the text of subparagraph (d), where a reference to "the preceding subparagraph" will become necessary.

*Article 25*bis *(Accession by Countries outside the Union; Entry into Force):* In the view of the Portuguese Government, it is undesirable to make provision for accession to the Stockholm Act by countries outside the Union before the date of entry into force of this Act. Paragraph (2)(a) provides that during the interim period before the entry into force of such provisions, and in substitution therefor, such countries shall be bound by the provisions of the earlier Acts. A consequence of this kind, although it can be avoided, might in some cases prove disadvantageous to these countries.

If the difference in treatment of the substantive and administrative provisions is to be retained, it is difficult to understand why accession to the Stockholm Act should be allowed before the entry into force of the substantive provisions (which are essential), if only because countries outside the Union can always acquire membership by acceding to earlier Acts (Article 28). Such accession might perhaps be allowable if the substantive provisions alone were in force, but it could never be allowed if the administrative provisions alone were in force.

*Article 25*ter *(Reservations):* The Portuguese Government welcomes the proposal, apart from the reference to the Protocol Regarding Developing Countries, the deletion of which is requested for reasons which have already been given.

This provision should logically be interchanged with Article 26, provided that the declarations or notifications mentioned in the latter can also be accompanied by reservations.

We also accept the deletion of the proposed Article 25*quater*, in view of the arguments adduced in paragraph 8 of document S/9/Corr. 1.

Article 26 (Territories): The Portuguese Government considers that in this connection the definition of territories contained in the existing Article 26(1) of the Brussels Act is clearer than the definition proposed here.

Article 27 (Application of Earlier Acts): Bearing in mind the discussion provoked by the proposed Article 27, the Portuguese Government accepts the new wording suggested in the corrigendum. It wishes to point out, however, that in adopting this attitude it is seeking to maintain the *status quo* in regard to the definition of the relations between countries bound by different versions of the Convention; without thereby considering itself bound by the interpretation referred to in paragraph 7 of the corrigendum (S/9/Corr. 1).

Article 27bis (Settlement of Disputes): The Portuguese Government favors the retention of the present system of referring disputes to the jurisdiction of the International Court of Justice. Nevertheless, if it should be found that the objections mentioned in paragraph 174 are substantiated, we should be prepared to accept another solution designed to make the obligations under the Convention as effective as possible. The proposed Alternative "D" appears to meet these requirements, in so far as it transfers this question to a separate Protocol.

Article 28 (Accession to Earlier Acts): The Portuguese Government has some hesitations about accepting the new version. The wording of this new version appears to be based on one of the possible interpretations of Article 27. In fact, however, this Article was drafted in such a way as to give

no definite ruling on the problem of relations between countries which are bound by different Acts. The Portuguese Government would prefer to see it laid down that accession to Article 28 implies accession to the earlier Acts unless a declaration is made to the contrary. If that approach has to be rejected, another possibility might be to adopt a neutral formula such as the following: "After the entry into force of this Act in its entirety a country outside the Union may accede to it only in accordance with the terms of Article 25*bis*;" in other words by accession to the Stockholm Act.

The Portuguese Government proposes that the first step should be to state explicitly that countries outside the Union can accede to the Brussels Act pending the entry into force of the Stockholm Act, as was done in the present Article 28(3), unless this point is already made quite clear from Article 25*bis*.

Article 29 (Denunciation): The principle that the denunciation of the last Act shall also constitute denunciation of all earlier Acts was not inherent in Article 29 of the Brussels Act according to what appears to be the correct interpretation. The Portuguese Government entertains some doubts as to the advisability of establishing this principle.

Article 30 (Implementation by Domestic Law): The Portuguese Government welcomes the introduction of this principle, as it represents what should be an obvious consequence of the imperative character of the Convention.

One reservation is made, however, namely that this Article 30 might be interpreted as involving an obligation for domestic law to be in material conformity with the Stockholm Act, which was obviously not included in Article 21(1) of the Brussels Act. Such an obligation would have been unacceptable in so far as it was opposed to the tradition of the Berne Convention. Article 30 should, therefore, be clarified so as to avoid such an interpretation.

Article 31 (Signature, etc.): The Portuguese Government has no objections to the proposed text.

Article 32 (Transitional Provisions): These provisions are to a large extent affected by the attitude adopted by the Portuguese Government towards the proposed Organization. As regards paragraph (2), the Portuguese Government suggests that provision should be made for all States Members of the Union to participate with full rights in the first meeting of the General Assembly.

As to Document S/11:

The Portuguese Government considers that the proposals for resolutions on transitional measures are in general affected by the stand that it has already taken with regard to documents S/9 and S/10.

Since the Portuguese Government is not in favor of the international Organization, it cannot therefore accept the draft resolution in accordance with which that Organization would commence to function, to some extent, from January 1, 1968, with all the member countries of the Paris and Berne Unions.

That is the sense of the proposed resolution, although powers of decision have been withdrawn from the organs referred to during the transitional period.

Since the Portuguese Government questions the advantage of the existence of an Executive Committee in the Berne Union, it cannot approve its provisional functioning.

There only remains what concerns the Assembly. Actually no essential advantage could result from the immediate functioning of that organ with purely consultative functions. The reasons referred to in paragraph 13 do not seem to us to be very convincing. It is not apparent why the present system could not be maintained.

In addition to these remarks, which are based on the position adopted by the Portuguese Government with regard to points prejudicial to those that are now under discussion, it does not seem to the Portuguese Government that an acceptable approach is being followed, to the extent that an attempt is being made to apply a convention before it enters into force, that is to say, to create a sort of *de facto* functioning before the *de jure* functioning.

For these reasons, the Portuguese Government finds itself obliged to reject the proposed resolutions in their totality, and their detailed discussion is therefore pointless.

S/20 SWEDEN. All Unions. *Pursuant to Rule 44 of the Draft Rules of Procedure (document S/Misc/1) the following list of candidates for positions to which elections are to be voted upon by Plenaries is proposed:*

I. CONFERENCE

President:—
First Vice-President:—
19 Vice-Presidents: Algeria, Argentina, Brazil, Congo (Brazzaville), Congo (Kinshasa), Finland, France, Greece, India, Iran, Italy, Japan, Kenya, Morocco, Philippines, Poland, United Kingdom, USA, USSR.

II. PLENARIES

Berne Union

President of the Plenary: United Kingdom
Vice-President of the Plenary: Belgium
Members of the Credentials Committee: Bulgaria, Ireland
Chairman of Main Committee I: Germany (Fed. Rep. of)
Vice-Chairman of Main Committee I: Tunisia
Rapporteur of Main Committee I: Mr. Bergström (Sweden)
Chairman of Main Committee II: India
Vice-Chairman of Main Committee II: Denmark
Rapporteur of Main Committee II: Mr. Strnad (Czechoslovakia)

Paris Union

President of the Plenary: USSR
Vice-President of the Plenary: Austria
Members of the Credentials Committee: USA, USSR
Chairman of Main Committee III: Rumania
Vice-Chairman of Main Committee III: Netherlands
Rapporteur of Main Committee III: Mr. King (Australia)

Madrid Union (TM)

President of the Plenary: Hungary
Vice-President of the Plenary: Portugal
Member of the Credentials Committee: France

Madrid Agreement (FIS)

President of the Plenary: Japan
Vice-President of the Plenary: Turkey
Member of the Credentials Committee: Japan

Hague Union

President of the Plenary: United Arab Republic
Vice-President of the Plenary: Monaco
Member of the Credentials Committee: Netherlands

Nice Union

President of the Plenary: Spain
Vice-President of the Plenary: Norway
Member of the Credentials Committee: Italy

Lisbon Union

President of the Plenary: Mexico
Vice-President of the Plenary: Israel
Member of the Credentials Committee: Mexico

Berne Union, Paris Union, Madrid Union (TM), Madrid Agreement (FIS), Hague Union, Nice Union, Lisbon Union

Chairman of Main Committee IV: France
Vice-Chairman of Main Committee IV: Uganda
Rapporteur of Main Committee IV: Mr. de Sanctis (Italy)

IPO

President of the Plenary: Switzerland
Vice-President of the Plenary: Canada
Member of the Credentials Committee: Venezuela
Chairman of Main Committee V: USA
Vice-Chairman of Main Committee V: Cameroon
Rapporteur of Main Committee V: Mr. Voyame (Switzerland)

Notes

1. With the exception of the Rapporteurs, who are specifically mentioned in their individual capacity in these proposals, the head of each delegation concerned shall designate the person to fill the relevant function, should he not undertake it himself.

2. No proposals have been submitted for the Chairman and Vice-Chairman of the Credentials Committee, the General Drafting Committee and other Drafting Committees, because these bodies elect their own chairmen and vice-chairmen from amongst their members, according to Rule 15(5) of the draft Rules of Procedure.

3. The Draft Rules of Procedure provide that Sweden and Switzerland shall be ex officio members of the Credentials Committee.

S/21 AUSTRIA. WIPO and Paris Conventions, Madrid (TM) Agreement. *The following observations are made on the proposals as they appear in documents S/4, S/10 and S/12:*

As to Document S/10:

Preamble: The first part deals with the administrative and structural reorganization of the Unions, and the second with the establishment of a World Intellectual Property Organization, to be concerned primarily with technical assistance.

The objection concerning the word "modernize" referred to in the footnote on page 5 seems justified. That term is obviously intended to refer to the establishment of organs of the Unions (Assemblies and Executive Committees). This modernization will not, however, be brought about by the treaty dealing with the new Organization but by the revision of the administrative provisions of the treaties of the various Unions. There is no need to set up a new Organization for that purpose, as each Union can undertake such modernization on its own account by revising its treaty accordingly. The only points which make it necessary to establish an "umbrella" organization for the Unions are the transfer of administrative tasks to a Secretariat common to the various Unions and the consequent need for coordination by organs common to the Unions (General Assembly, Coordination Committee). This purpose is more precisely defined in the explanations contained in paragraph 15 (document S/10, page 6) than in the text of the Preamble.

General observations on the financial and administrative system (Articles 6 to 10 of the treaty establishing the Organization, Articles 13 to 13*quater* of the Paris Convention, and Articles 21 to 22 of the Berne Convention):

A — The present ceilings laid down by the Conventions for the expenses of the Bureau are to be abolished. They are to be replaced by provisions under which a budget will be adopted at certain intervals by the organs of the Unions. As regards those States which are members of the Unions, the obligations relating to certain fixed amounts will therefore be replaced by an obligation relating to a share of the budgetary expenses adopted.

There should be a corresponding obligation—but this is not expressly mentioned in the drafts—to ensure that the expenses of the Secretariat do not exceed the amounts contemplated in the budget which is adopted.

It is, however, conceivable that for various reasons it may prove impossible to adopt the budget in time. Provision should therefore be made for a provisional budget which

(1) would oblige the contracting States to continue to pay contributions, for example on the basis of the total expenditure of the preceding financial year, and
(2) would authorize the Secretariat to incur expenses on the same basis.

In this connection, it may be noted that in the drafts which have been submitted no mention is made of the principle that the Director General must be bound by the budget; no provision is made for sanctions in case the budget is exceeded.

B — The organs possessing powers to make decisions in financial matters, namely the Conference of the Organization and the Assemblies of each Union respectively will adopt budgets for a comparatively long period covering several financial years (three years according to the proposals, and two years according to document S/12, paragraphs 62 to 65).

Control of annual programs and final accounts is the concern of the Coordination Committee of the Organization and of the Executive Committees of each Union respectively. In view of the fact that these organs do not possess any power of decision as regards the financial obligations of the Member States, they have only to verify whether the annual programs of BIRPI remain within the framework of the triennial or biennial programs adopted, and whether the final accounts correspond to the respective triennial or biennial budget concerned.

In this connection it should be noted that the following points arise on these proposals:

(1) The wording of the corresponding provisions for IPO (Article 8(3)(iv)) differs from the wording of the same provisions for each Union Convention (Paris, Article 13*bis*(6)(iii); Berne, Article 21*bis*(6)(iii)). The wording which appears in the Union Conventions ("within the limits") is preferable, because of its greater clarity, to the terms used in the IPO draft ("on the basis").

    Furthermore, that part of the sentence, starting with the words "within the limits..." should be transposed, inasmuch as the present wording may create the impression that the Executive Committee would not have to express an opinion on the various elements of the annual budget outside the framework of the triennial budget.

    The following text is therefore proposed: "...establish the annual programs and budgets prepared by the Director General within the limits of the triennial program and budget."

(2) Article 13(2)(iii) and Article 13*bis*(6)(iv) of the proposals for revising the Paris Convention, and Article 21(2)(a)(iv) of the Berne Convention contain rules regarding the approval of final accounts. It is proposed that similar provisions be inserted in Article 7(2) and Article 8(3) of the IPO Convention.

C — As regards the General Assembly, the Conference and the Coordination Committee, Articles 6(2)(vi), 7(2)(a)(v) and 8(3)(vii) contain the expression "exercise such other functions as are allocated to it." This power seems to be too vague; it is therefore proposed to complete this part of the sentence by the words "by the present Convention."

The same proposal is presented as regards the similar provisions of the Paris Convention (Article 13(2)(a)(xi), Article 13*bis*(6)(a)(vi)) and of the Berne Convention (Article 21(2)(a)(xi), Article 21*bis*(6)(a)(vi)).

D — Furthermore, the powers granted to the International Bureau by Article 13*ter*(9) of the Paris Convention and by Article 21*ter*(9) of the Berne Convention seem too vague. It is therefore proposed that the words "by the present Convention or by the organs of the Union" should be added to these Articles as well.

E — It is furthermore proposed, in relation to the deliberations of the Assembly and the Executive Committee of the Paris Union, and in relation to those of the Coordination Committee, that the following provision should be inserted in the provisions relating to voting in the organs and committees of the Organization and the Unions: "A secret ballot shall be held if requested by at least three members."

Specific Comments. In addition to the preceding general comments, the following remarks may be made on the various proposals in document S/10:

Article 6: Paragraph 2(i) subordinates the activities of the Coordination Committee to the control and authorization of the General Assembly. In accordance with Article 7(2)(a)(ii), it is the Conference that is competent to adopt the triennial budget of the Organization. To avoid any doubt as to the respective competence of these two organs, the scope of these two provisions should be clearly defined.

The provisions of Article 9(6) (Staff Regulations) and of Articles 11(4) and 12(2) would appear to constitute exceptions to the general rule incorporated in Article 6(2)(i).

Article 8: In paragraph (1)(c) the phrase "matters of direct interest to the Conference" seems not to be sufficiently precise; it should be replaced by the words "questions with which the Conference is competent to deal in accordance with the provisions of Article 7."

Article 9: The principle of the continuity of the International Bureau is approved; nevertheless some doubt may arise with respect to the formulation of the provisions relating to it. The formulation to be found in the Conventions (Article 13*ter*(1)(a) of the Paris Convention; Article 21*ter*(1)(a) of the Berne Convention) "the International Bureau ... is a continuation of the Bureau of the Union..." appears preferable to the formulation in Article 9(1) of the BIRPI draft: "the International Bureau ... shall continue as the International Bureau..."

Moreover, some contradiction exists between the formulation of Article 9(1), which states that the Bureaux of the Unions shall continue, and the text of Article 19(3) which states that the Bureaux of the Unions shall cease to exist.

In paragraph (5), the words "of the Organization or of the Unions" should be added after the words "working group" at the end of line 5; otherwise it would be advisable that the scope of paragraph (5) should be restricted to the organs of the Organization, since the corresponding powers are stipulated in the Conventions (Article 13*ter*(7) of the Paris Convention; Article 21*ter*(7) of the Berne Convention).

Article 10: Paragraph (2) contains two different elements, namely coordination inasmuch as it is one of the two tasks of the Organization, and the contributions of the Unions inasmuch as they constitute one of the two principal sources of revenue of the Organization. It would seem appropriate, having regard to paragraph (3), to delete the words "and the contributions of the various Unions."

It would perhaps be advisable to insert in paragraph (4)(b) a provision that would enable a State changing to a lower class to be automatically classified in a particular class (for example, the last) to avoid difficulties in the calculation of contributions up to the time that that change of class takes effect.

Paragraph (10) does not contain any provision indicating which organ is empowered to adopt the financial regulations. It would appear appropriate to entrust this power to the General Assembly or to the Conference through the Coordination Committee.

Article 13: The distinction between amendments increasing financial obligations and other amendments will probably give rise to difficulties, since the financial consequences of amendments cannot always be assessed in advance or cannot always be assessed by each Member State. The application of this provision could give rise at the very least to uncertainties. Provisions should therefore be inserted in the Convention to the effect either that the organs of the Organization or of the Unions should formally establish whether a given amendment would involve an increase in financial obligations, or that States rejecting an amendment should adopt a position that would bind them within a certain period if, in a given case, the amendment involved an increase in their financial obligations.

Moreover, it should be noted that Article 24 of the Berne Convention does not stipulate clearly that the decisions of revision conferences must be ratified by the Member States before coming into effect.

Article 14: The text of paragraph (1)(b) is not in complete accord with the explanations relating to it (paragraph 100). According to those explanations, one of the conditions precedent to the accession of a State of the Paris Union or the Berne Union is that that State must at least have acceded to the administrative provisions of the Stockholm Act. According to the text of paragraph (1)(b), the Member States of the Union would be able to accede to the Stockholm Act without at the same time acceding to the new administrative provisions.

As to Document S/12:

The draft resolution concerning the raising of the contributions of the Paris Union is based on the text of the Lisbon Convention. Since Austria has still not ratified the Lisbon text, the legal basis needed for the participation of Austria in that resolution is lacking.

Austria has no objection to the proposal to replace the triennial period by a biennial one. Nevertheless, the question arises whether, in that case, there would still be economic justification for the system proposed for the establishment and acceptance of budgets and for final accounts, which was designed for a long period, and which would be entrusted to the plenary organs of the Organization and the Unions, and for the system proposed for the control of annual budgets prepared in that context and for final accounts, which would be entrusted to the executive organs. The proposals could be considerably simplified by grouping the period covered by the programs and budgets, and the accounting period; it would not then be necessary to convene the executive organs for matters relating to budgets and accounts.

Granting that the proposal of Spain (paragraph 66) merits detailed study, Austria has no objection to the draft resolution concerning the creation of a new source of revenue for the Paris Union.

As to Document S/4:

The comments of Austria concerning the Agreements reached within the framework of the Paris Convention are restricted to the proposals for the revision of the Madrid Agreement on Trademarks, since Austria is at present only a member of that special Agreement.

It should firstly be noted that Austria's general comments on the preceding documents are equally applicable to the corresponding proposals in document S/4, in view of the necessary coordination of the various Conventions.

In addition to the foregoing general comments, the following comments have also been formulated in relation to the various articles of the proposals for revising the Madrid Agreement on Trademarks.

Article 8: The proposal to omit paragraphs (7), (8) and (9) and to incorporate their contents in the Regulations gives rise to doubts.

These proposals do not concern only the amount of the fees provided for in the Agreement (paragraph (2)), but also the question of the term of protection. That question should be dealt with in the Agreement itself. Paragraphs (7), (8) and (9) should therefore stand, even if determination of the amount of the fees for a protection of ten years can be relegated to the Regulations.

Article 10: Paragraph (2)(a)(iv) does not decide the question of whether the International Bureau should present its final accounts for the triennial period only or whether it should do so each year.

*Article 10*bis*:* It is proposed that paragraph (4) should be augmented by addition of the words "by the present Agreement or by the organs of the Special Union."

*Article 10*ter*:* Paragraph (4)(a), although modelled on Article 10(4)(a) of the Nice text of the Madrid Agreement, raises the question of whether the amount of fees can be determined by the Assembly *only* on the proposal of the Director General. If that were not the case, this provision would merely be a repetition of the competence provided for in Article 10(2)(a)(iii).

The principle incorporated in paragraph (4)(b), according to which the amounts of such fees shall be so fixed as to be

"at least" sufficient to cover the expenses of the International Bureau in the matter would seem to be at variance with Article 8, paragraphs (4) to (6), which provide for a distribution of surplus receipts among the Member States. It may also be recalled that, in accordance with Article 8, paragraph (1), Member States can collect a national fee only on trademarks of which they are the country of origin. Expenses relating to all other marks would not therefore be covered by fees.

Austria is unable for express reasons to accept paragraph (5). The fact that the amount of fees no longer appears in the Agreement, but will henceforward be fixed by a *majority* decision taken by an organ of the Union, contrary to the principle of unanimity which has prevailed hitherto, and that this amount could now be fixed against the wish of any Member State, constitutes a fundamental change. Austria could not approve the acceptance of even greater powers by reason of its rules of domestic law. Moreover, it should be noted that the drafting does not make it possible to decide precisely what fees are referred to. In short, all fees relate to the subject of the Agreement, that is to say, to the international registration of trademarks.

Since, moreover, in view of present practice, it is to be feared that the justified proposals of the Director of the International Bureau may not be taken into consideration, Austria proposes that the fixing of fees should be entrusted to the Assembly.

Furthermore, consideration should be given to the provisions of Article 28, paragraph (15) of the Regulations of the Madrid Agreement.

Paragraph (8) deals with the financial regulations. It is not stipulated which is the competent organ to adopt these regulations. It is proposed that competence should be vested in the Assembly. The question arises, moreover, whether the Madrid Union can adopt autonomous financial regulations or whether the financial rules should not at least be harmonized with the financial regulations of the parent Union (the Paris Union) and of the Organization.

S/22 AUSTRIA. Berne Convention. *The following new Article should be inserted in a suitable place:* The question whether a person has a domicile in a given place is governed by the law of that same place.

S/23 UNITED KINGDOM. Paris Convention. *In Article 1(2) of the Lisbon Act, after the word "patents", insert:* inventors' certificates.

S/24 AUSTRIA. Paris Convention. *In Article 13 (document S/3), make the following changes:*

1. *in paragraph (2)(a), insert a new item between (iii) and (iv):* adopt the financial regulations of the Union.
2. *either replace paragraph (2)(a)(xi) by a precise list of other tasks or add:* by the present Convention.
3. *paragraph (3)(f) should become paragraph (3)(g).*
4. *paragraph (3)(g) should become paragraph (3)(f).*
5. *add as paragraph (3)(h):* A secret vote shall be taken if it is requested by at least (three) members.

S/25 AUSTRIA. Berne Convention. *In Article 21 (document S/9), make the following changes:*

1. *in paragraph (2)(a), between items (iii) and (iv), insert:* adopt the financial regulations of the Union.
2. *either replace paragraph (2)(a)(xi) by a precise list of other tasks or add:* by the present Convention.
3. *paragraph (3)(f) should become paragraph (3)(g).*
4. *paragraph (3)(g) should become paragraph (3)(f).*
5. *add as paragraph (3)(h):* A secret vote shall be taken if it is requested by at least (three) members.

S/26 FRANCE. Berne Convention. *In Article 4(2) (document S/1), before the word "domiciled", insert:* effectively.

S/27 FRANCE. Berne Convention. *In Article 4 (document S/1), make the following changes:*

1. *delete paragraph (4)(c)(i).*
2. *in paragraph (5), after the first sentence, insert:* A cinematographic work shall be considered as having been published as from the date on which one or more copies of the work were distributed with a view to public performance, on condition that such performance effectively took place.
3. *delete paragraph (6).*

S/28 FRANCE. Berne Convention. *In Article 6 (document S/1), delete paragraph (2).*

S/29 FRANCE. Berne Convention. *The following changes should be made in, and the following comments are made on, the provisions as they appear in document S/9:*

at the end of Article 21(2)(a)(ii), add: due account being taken of any comments by Member States of the Union which are not bound by Articles 21 to 23.

observations on Article 21(2)(a)(xi): The present wording is too vague. It would be advisable either to enumerate the additional functions allocated to the Assembly in other provisions of the relevant Act or in the provisions of the Convention establishing the Organization, or at least to refer expressly to such provisions.

*observations on Article 21*bis*(6)(a)(vi):* The wording here calls for the same comments as Article 21(2)(a)(xi). It would be advisable either to enumerate the additional functions referred to in other provisions or to refer expressly to such provisions.

*in Article 21*bis*(7)(b), after the words "of the Director General" add:* at the request of its Chairman.

in Article 24(1), after the words "system of", insert: protection established by.

in Article 32(2), for the words "Convention establishing the International Intellectual Property Organization", substitute: the present Act.

S/30 AUSTRIA. Paris Convention. *In the provisions appearing in document S/3, make the following changes:*

*in Article 13*bis*:*

1. *paragraph (6)(a)(iii) should read:* establish the programs and adopt the specific yearly budgets prepared by the Director General, within the limits of the program and the biennial budget; *in paragraph (6)(a)(vi), either list the "other functions," or, at the end of the text, add:* by the present Convention or by the Assembly.
2. *in paragraph (7)(b), after the words "Director General," insert:* acting on his own initiative.
3. *in paragraph (8), add the following as a new sub-paragraph (b):* A secret ballot shall be held if requested by at least (three) members.

*in Article 13*ter*(9), at the end of the text, add:* by the present Convention or by the organs of the Union.

*in Article 13*quater*(4), add as a new sub-paragraph (f):* Should the competent organ have been unable to adopt a budget before the beginning of a new financial period, the countries of the Union shall be required to pay their contributions within the limits of the previous budget, and the International Bureau shall be authorized to incur such expenditure as may be necessary for the functioning of the Union and its administrative services within the limits of the previous budget.

S/31 AUSTRIA. Berne Convention. *In the provisions appearing in document S/9, make the following changes:*

*in Article 21*ter*(9), at the end of the text, add:* by the present Convention or by the organs of the Union.

in Article 22(4), add as a new sub-paragraph (f): Should the competent organ have been unable to adopt a budget before the beginning of a new financial period, the countries of the Union shall be required to pay their contributions within the limits of the previous budget, and the International Bureau shall be authorized to incur such expenditure as may be necessary for the functioning of the Union and its administrative services within the limits of the previous budget.

*in Article 21*bis*:*

1. *paragraph (6)(a)(iii) should read:* establish the programs and adopt the specific yearly budgets prepared by the Director General, within the limits of the program and the biennial budget; *in paragraph (6)(a)(vi), either list the "other functions," or, at the end of the text, add:* by the present Convention or by the Assembly.

2. *in paragraph (7)(b), after the words "Director General," insert:* acting on his own initiative.

3. *in paragraph (8), add as a new subparagraph (f):* A secret ballot shall be held if requested by at least (three) members.

S/31/Rev. Austria. Berne Convention. [*Note of the Editor:* This document contains the same proposals as in document S/31 except that the proposals concerning Article 21*bis* are placed ahead of the proposals concerning Articles 21*ter* and 22.]

S/32 United States. Paris Convention. *In Article 13*ter*(1) (document S/3), renumber subparagraphs (b) and (c) to read (c) and (d), and insert as a new subparagraph (b):* The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparation for conferences of revision.

S/33 Switzerland. Paris and Berne Conventions. *In Article 13 (document S/3) and Article 21 (document S/9), state that the Assembly has the power:* (a) to appoint the Director General of BIRPI; (b) to determine the location of the headquarters of the Organization; (c) to administer the Convention; (d) to appoint the Auditors (transfer the contents of Article 13*quater*(8)(Paris) and Article 22(8)(Berne)).

S/34 Poland. Paris Convention. *Article 16*quinquies *(document S/3) should be deleted.*

S/35 Germany (Fed. Rep.). Paris Convention. *In document S/3, make the following changes:*

1. *Article 13(3)(g) should read:* A delegation may represent, and vote in the name of, its own country only.

2. *in Article 13*quinquies*(2), the words "the unanimity" should be replaced by:* four-fifths.

S/36 Germany (Fed. Rep.). Berne Convention. *In document S/9, make the following changes:*

1. *Article 21(3)(g) should read:* A delegation may represent, and vote in the name of, its own country only.

2. *in Article 23(2), the words "the unanimity" should be replaced by:* four-fifths.

S/37 Madagascar. Paris Convention. *In document S/3, make the following changes:*

in Article 13:

1. *in paragraph (1), insert as a new subparagraph (c):* A plurality of countries, members of one or more Unions and grouped together in a single Office under the terms of an international agreement, may be represented by a single delegation or by their common organ which shall have as many votes as the said Office has Member States. *Renumber present sub-paragraph (c) so as it becomes (d).*

2. *at the end of paragraph (3)(a), add:* subject to the application of the provisions of paragraph (1)(c) above.

3. *at the end of paragraph (3)(g), add:* subject to the application of the provisions of paragraph (1)(c), above.

*in Article 13*bis*:*

1. *at the end of paragraph (2)(b), add:* subject to the application of the provisions of Article 13(1)(c).

2. *at the end of paragraphs (8)(a) and (8)(e), add:* subject to the application of the provisions of Article 13(1)(c).

S/38 Austria. Berne Convention. *In Article 9 (document S/1) at the end of paragraph (1) add:* Reproduction shall consist in the material fixation of the work by all methods that permit of indirect communication to the public. It can be accomplished, in particular, by printing, drawing, engraving, photographing, carting, and all processes of the graphic and plastic arts, and by mechanical, cinematographic, or magnetic recording. In the case of architectural works, reproduction shall also consist in the repeated execution of a plan or standard draft.

S/39 Austria. Paris and Berne Conventions. *In Article 13(2) (document S/3) and Article 21(2) (document S/9), make the following changes:*

1. *at the end of item (xi),* add: by this Convention.

2. *add as a new item (xii):* exercise such rights that are given to it in the IPO Convention.

S/40 Israel. Berne Convention. *The following observations are made on document S/1, Annex II:*

In its observations on document S/1 of May 15, 1966, the Government of Israel expressed its approval of the principle of incorporating, in an appropriate instrument, specific provisions to meet the special needs of the developing countries in matters of copyright, so as to enable such countries fully to adhere to the Convention and derive all the assistance possible in this regard.

* * *

Several developments have meanwhile taken place both on the international and national level and the time has come, so the Government of Israel believes, to present a comprehensive analysis of the problem how to achieve what should be the main purpose in this matter—the formulation of rules which will enable developing countries to provide for their vital interests within the framework of a system of international protection of intellectual property rights, and the elaboration of machinery for applying these rules which must be freely accessible and operative immediately and unconditionally upon adoption at the Stockholm Conference, and irrespective of other measures. The fashioning of an Optional Protocol of independent status must therefore become the primary task of the Stockholm Conference.

It must be recognized that the prevailing interplay of several international systems of protection is not helpful since it leads to or encourages postponement of debate and decision. It is the considered conviction of the Government of Israel that this is not a path which commends itself. Aware that the Stockholm Conference is the nearest major international conference of competence authoritatively to deal with this matter, the Government of Israel favors that this gathering of delegates with plenipotentiary powers be entrusted with the task and that further postponements be avoided. In its submissions to UNESCO (see Annexes to the present document), the Government of Israel has made it clear that it desires UNESCO to intervene only in case no satisfactory decision is reached at Stockholm, or in so far as certain matters, not yet the subject matter of the Berne Convention, are not dealt with at Stockholm, or may properly be dealt with within the framework of UNESCO; and that such intervention should be made as soon as possible, under the full authority of UNESCO's terms of reference. The problem itself is urgent, and it cannot be permitted that harm be caused by further delay. In this context it may also be noted that the Government of Israel is ready to consider any proposal which may facilitate the merger of the two Conventions into one real world-wide régime. At the same time it supports the

needs of the developing countries, i.e. to provide within the régime of the Berne Union that any member of the UCC being a developing country may join the Union, and shall be deemed to fulfil its obligations under the Berne Convention if it complies with the UCC as modified by the Protocol as hereinafter described, such provision to be completed by a proper declaration of the Members of the UCC in approval and confirmation thereof.

Of course, if such a proposal is adopted, adequate steps will have to be taken in order to merge the organs of the two Conventions and ensure UNESCO's participation in the day-to-day work of the Bureau of the Berne Convention.

* * *

The questions involved in the treatment of the developing countries are matters both of substance and of form. It is clear that any legal instrument of the kind proposed must be regarded as being for the major part a "self-denying ordinance" by the developed countries. Without relaxing in principle the long-established norms governing the standards and measure of protection under the Berne Convention but maintaining them in full vigor, permissive provisions are to be introduced in this regard for the benefit of developing countries, which the latter in their present economic, social and cultural circumstances require. The Government of Israel takes the view that this object is to be achieved by a generalized universal legal order. The permissive provisions are understood to be temporary in duration and should not be so formulated as to impede the creation of an all-embracing world legal régime by lowering the standards of protection on the one hand or by making full participation of developing countries in the régime of the Convention difficult or unattractive on the other hand. Whilst meeting the legitimate needs of developing countries, the provisions must operate equitably with regards to authors and other owners of the rights protected by or under the Convention.

In general, as already indicated, the Government of Israel agrees with the proposals that have thus far been made but would like to suggest certain modifications and additions (a) to facilitate translations for educational and other needs of developing countries, (b) to regulate importations, etc., for free use of copyright material, (c) to establish an equitable system for spreading the burden of royalties, and (d) to protect the folklore of all and specifically of developing countries. Suggestions on some of these matters have contemporaneously been submitted to the attention of UNESCO (see Annexes).

(a) Translations into the vernacular clearly constitute a potent force in accelerating the course of development. If for no other reason, it should be encouraged in order to reduce the period in which the permissive provisions of the Protocol will be required. Instead, therefore, of a waiting period of seven years provided for in the existing proposals, translations should be permitted as soon as possible after publication. In any event, a period of seven years is or may be far too long in view of the increasingly rapid advances which technology and science (in the broadest sense) in particular are today undergoing in all fields. Knowledge of such advances receives fairly speedy publication. Its reproduction in translation is essential for pedagogical purposes generally, if the developing countries are not to be forever behind in the race. It is clear that this suggestion goes beyond the provisions of the UCC but it is called for by reason of the special needs involved.

In this context attention should be drawn to the proposal made by the Government of Israel in its observation on Document S/1, with regard to Article 8 of the Berne Convention, that to the proposed text the following should be added ..."Translation shall..."

(b) The problem which arises in connection with the importation and local printing and publication of books is mainly economic in nature. To promote the establishment of local printing industries would be of great economic benefit to developing countries, but their operation must be regulated under the general régime of copyright, not to encourage infringement of copyright nor to further the interests of countries which are not members of the Union, an outcome which ultimately would not help the developing countries. In this regard, Article 1(e) of the Protocol in its present form is a provision of crucial importance and directly and vitally relevant to the maintenance of the norms of the Convention. Its pivotal terms, therefore, should be strictly defined in order to avoid conflicting constructions and to ensure that it is applied equitably to and by the parties concerned. In order to eliminate certain malpractices which ultimately benefit no-one and may in the last resort be harmful to the social and cultural progress of the developing countries themselves, provision should be made that no developing country shall export any copyright material imported or printed in its territory except to other developing countries in the Berne Union acting under the Protocol. The Government of Israel thinks that it would be just and proper to ask developing countries to accept in their turn such a self-denying measure. The encouragement of a local printing and publishing industry on the economic side and of local authors and other talents on the cultural and educational side are of foremost importance to developing countries. The depreciation of standards of protection whilst possibly it may in the short run yield certain advantages will ultimately not advance the real progress of the developing countries. The needs of producer and consumer alike are better served by reasonable and fair regulation of the exploitation of copyright work, which takes account of the legitimate interests of all concerned, than by any purely self-regarding practice.

(c) The economic aspects of copyright protection are central to the problems confronting the developing countries. From its own experience the Government of Israel is fully conscious of the difficulties that are involved. Whilst almost any method that balances fairly and justly the requirements and resources of developing countries with the proper rights and interests of authors and others concerned in copyright protection is to be welcomed, it should be emphasized that any undue invasion or depreciation of such rights and interests however applied may by reaction create a feeling of ill-treatment and resentment which could in turn lead to the adoption of counter-protective measures. Such an outcome would be most unfortunate and might well defeat or confuse the purposes which all developed and developing countries alike desire to achieve. The Government of Israel, therefore, urges that its suggestions on the problem of payment of royalties to authors for use of their works in developing countries, which has been placed before UNESCO, should be given serious consideration in Stockholm. (See Annex.) Although this particular aspect is not formally due to be dealt with at the Stockholm Conference, it should be borne in mind when drafting the Protocol so that if the suggested or some other like method of financing the copyright needs of the developing countries is adopted, it will fit into the pattern of the provisions of the Protocol. It is, however, important to avoid unilateral action of any kind and from any direction, if the matter is so to be regulated for the benefit of all. If, however, a developed country should refrain for one reason or another from operating the suggested scheme, it could enter into bilateral agreements upon the matter, but such agreements must again always be within the framework of the Protocol and consonant both with its provisions and those of the Convention generally.

If, however, a proposal or suggestion of the same nature will be proposed at Stockholm then the Government of Israel is ready and willing to suggest that the above-mentioned proposal shall also be considered with the addition of the following provisions:

"(1) The rights granted in the Protocol shall be exercised only with regard to works, the country of origin of which is a country which has established a compensation fund or has waived its right to do so by notice given to the Director General of BIRPI and the Director General of UNESCO;

(2) Paragraph (1) shall not apply as long as countries not having declared themselves to be developing countries have set up, by an international document, machinery for the establishment and operation of such compensation fund."

A serious omission in the Convention and Protocol is the absence of any provisions dealing with folklore as such. The protection of folklore at an international level is a matter of importance to the developing countries which are probably nowadays its major source. The terms of Article 7 of the Berne Convention either in its present or in its proposed form are not entirely adequate for this purpose. The special legal-technical and other questions that are involved and their possible solutions have been discussed at the recent East Asian Seminar on Copyright. A number of suggestions were there made in connection with Article 7. It appears to the Government of Israel most desirable that the matter should be dealt with at Stockholm within the context of the Convention itself rather than that of the Protocol and in such a manner that those States from which folklore emanates shall over a given period derive some benefit from its publication. Folklore must not be treated as being in the public domain, but the rights therein must belong to the States aforesaid. On the other hand, such States should not be empowered to prevent the collection, recording and publication of their folklore but be entitled to receive a reasonable fee in respect thereof.

* * *

The formal aspects of the Protocol are, in the opinion of the Government of Israel, of radical importance in achieving its overall purpose. The following suggestions are made.

(a) The entry into force and the operation of the permissive provisions should not be tied to ratification of or accession to, or otherwise be conditional upon, the fate of the Stockholm text or any other instrument. It will be recalled that briefly the Government of Israel suggested in its observations on Document S/9 to add a paragraph to Article 30 of the Convention (dealing with the domestic implementation of the Convention) to enable any developing country to declare at the date of its ratification or accession to the Convention that it will avail itself of the provisions of the Protocol in place of the parallel provisions of the Convention. For those who become parties to the Stockholm Act by ratification or accession, Article 30 in the form suggested by the Government of Israel, will govern the situation. Every other developing country which is a member of the Union or currently a member of the UCC will be at liberty to enter into a formal declaration to the effect that being a developing country it is not bound to implement Article 30 provided that it abides by the provisions of the Protocol which will be set out in substance, or was a member of the UCC before the date of the signing of the Stockholm Act. This will be complemented by a declaration of all members of the Union at Stockholm that such a procedure is acceptable.

(b) The term of 10 years proposed as the firm initial period for the duration of the permissive provisions might turn out to be unrealistic, notwithstanding the open-end provisions of Article 2 of the Protocol. By leaving the situation too vague, this Article could stultify the attainment of the overall objective, for the pace of development of the developing countries may very well be uneven both absolutely for each of them and relatively as among themselves. What is, therefore, ideally required is not a rigidly uniform period of initial duration with a problematic power of extension, but an arrangement dependent upon objective factors. The Government of Israel has no concluded views on this particular matter but believes that the period must be foreseeably realistic and allow for clear, reasonable and equitable extensions in the light of prevailing circumstances. The Government of Israel suggests that 15 years (half a generation) would be most suitable for the initial period. Extension should be subject to a resolution of the General Assembly, passed by a majority of two-thirds, for a fixed but shorter period for all developing countries, or for such as the General Assembly may by definition in its resolution indicate. This sort of arrangement would help to "untie" extension from any revision conference, which may be long delayed or too imminent, as well as provide for the position of States which enter into the declaration suggested in paragraph (a) above. In the event, however, of no decision as to extension being made by the General Assembly, the initial period would automatically lapse at the date of the revision conference next thereafter but the opportunity would still remain at such conference to decide upon a further extension or some other arrangement as the circumstances may require.

* * *

From the foregoing it emerges that what the Government of Israel suggests is:

(a) Merger for developing countries of the régimes of the Berne Convention and the UCC, under a joint legal system, leadership and administration;

(b) Permission of translation into the vernacular after a relative short period, and in all cases where reproduction is permitted;

(c) Permission of use of copyright material for educational purposes only if its origin is in a Berne Union or UCC country;

(d) Establishment of a compensation fund for use of copyright material in developing countries;

(e) Provisions for the protection of folklore within the régime of the Berne Union;

(f) Provisions for the implementation of the special concessions for the developing countries immediately upon the closing of the Stockholm Conference by way of a declaration of the Conference.

The Government of Israel feels strongly that notwithstanding, or rather because of, the diversity of economic, social and cultural development among the nations it is vitally essential for the satisfaction and protection of the requirements and rights of all concerned in the encouragement and dissemination of intellectual, creative and other works to fashion a common legal régime and administrative structure, and with this overriding object in mind trusts that the different efforts now being made in this area of activity and the arrangements in which they are embodied will come together and be organically united for the benefit of the totality of mankind.

ANNEX I: Payment of royalties to authors for use of their works in developing countries.

The Problem. The developing countries properly require the right to enjoy in their national languages the benefits of literary works published throughout the world, for educational and cultural purposes without the economic burden of the cost involved in payment of royalties to authors.

The existing Conventions prohibit the translation of works into a foreign language, without the authors' permission, for the relatively lengthy period of seven years, whilst it is in the interest of the developing countries to bring certain publications to the attention of their people, and in their own language, as soon after appearance as possible.

The solution at present suggested by way of amendment of the Berne Convention to be dealt with at the Stockholm Conference, or in the proposals of the General Conference of UNESCO, is to permit the developing countries, although members of the organizations for the protection of copyright, to dispense with the requirements of a protection granted to authors by the Copyright Conventions during the period of their development.

The basic grounds for opposition to such a proposal are that authors will thereunder be deprived of their just and lawful rights, and that those States which will agree to the proposal will in fact be imposing a form of taxation upon a particular group of their citizens which is economically productive and intellectually creative.

The Suggestion. In order to avoid the above-mentioned negative effect, but without prejudicing the needs of the developing countries, it is suggested that copyright fees should be paid by the generality of users of copyright material in the developed countries themselves for works which are used in the developing countries.

Every State, which is defined as developed according to the criteria hereafter set out, shall render it obligatory for all publishers and other producers of copyright material to

attach to every copy of the books, etc. published, etc., by them in that State a stamp to the value of 10 cents or of such other appropriate sum as may be agreed upon. The collection of this "duty" shall be coordinated and centralized by a national association of publishers and other producers themselves, to form a fund from which those authors, etc., whose works are sold to, or otherwise distributed in, the developing countries, or are printed or translated or broadcast there, shall be paid a fee suitably calculated according to returns made by the association of authors or some other like body of the developing countries concerned. A system such as this would be one means of correcting the disequilibrium which at present exists between popular mass literature and literature of quality.

The definition of a developed country for this purpose can be based upon one or more of the following criteria—the number of books, etc., published in relation to population; the number of literates in relation to population; the number of persons receiving some form of education in relation to schools and to population; or in some other manner—and should be drawn up by a committee established by UNESCO for this purpose.

International control can be exercised by a joint committee set up by UNESCO together with the International Associations of Writers and like associations, which are already active in the collection of royalties throughout the world.

Implementation. It appears that the first step towards the implementation of the scheme above-outlined is necessarily the formation of a committee of UNESCO with the participation of representatives of a number of international non-governmental organizations to examine the problem in its entirety and to devise such practical measures as the solution thereof as above-outlined may require.

The matter is of some urgency and it is proper and fitting that it should be clarified before the Stockholm Conference takes place, since its adoption may involve a change of attitude towards the Protocol Regarding the Developing Countries, which has been proposed for discussion there.

Annex II: Observations upon Resolution 5.122 of the Fourteenth Session of the General Conference of UNESCO

1. The Government of Israel welcomes all international action which would enable the developing countries to be embraced in the arrangements for the protection of copyright, with due attention to the special needs of such countries.

2. The Government of Israel regards it essential to secure the special needs of the developing countries in matters of copyright, but takes the view that this could be achieved by a union of the organizations which are at present concerned with copyright protection. The Government of Israel shares the aspiration that in matters of copyright there should be one legal régime applicable to all nations, and views with regretful concern that different organizations vie among themselves. Such a situation would in the nature of things and in view of existing developments be pregnant of danger. The Government of Israel is of the opinion that one of the means for attaining this object is to broaden the application of the Protocol to the Berne Convention, which is shortly to be discussed at the Diplomatic Conference in Stockholm.

3. The Government of Israel will therefore consider sympathetically a proposal within the scope of the discussions at the Stockholm Conference which will enable a developing country that is a member of the Universal Copyright Convention to join the Union of the Berne Convention without the necessity of taking legislative measures for such period as it may decide in order to comply with the relevant provisions of the Berne Conventions.

If indeed such a proposal is adopted there will no longer be any need for the changes mentioned in Resolution 5.122 since those developing countries which such changes affect will be in the same position as they would have been had these changes been made, and furthermore the necessity will not arise for them to leave the Union of the Berne Convention.

4. In the light of what transpires at Stockholm, and for the purpose of constructive cooperation, the Government of Israel suggests that it would be proper for UNESCO to re-examine together with BIRPI the Universal Copyright Convention in order to determine whether indeed all its provisions are compatible with the promotion of the requirements of the developing countries.

In the opinion of the Government of Israel there is in fact occasion to introduce certain changes in this Convention, touching among others the following matters:

(a) The right of the free use of works for teaching and training requirements.

(b) The right of immediate translation where the translation is devoted to use for pedagogical purposes or for educational and scholastic activities.

(c) The protection of folklore at an international level, in such a manner that those States in which the folklore is collected or which is the source thereof shall enjoy for a defined period part of the benefits which the collector, the adaptor or the user thereof derives from the copyright he possesses during that period in such collection, adaptation, etc.

5. The Government of Israel also hopes that in the course of the discussions that are to take place in the future, a way will be found to couple together the respective administrative establishments of the two existing Conventions and fortify cooperation among the organizations concerned.

S/41 India. Berne Convention. *In document S/1, make the following changes:*

1. *in Article 4, substitute one of the following alternatives for paragraph (4):*

as Alternative "A": The country of origin shall be considered to be: (a) the country of the Union of which the author is a national; (b) in the case of a work first or simultaneously published in one or more countries of the Union, to which the provision at (a) above does not apply, the country of publication which grants the shortest term of protection; (c) in the case of a work simultaneously published in a country of the Union and a country outside the Union, to which the provision at (a) above does not apply, the former country, provided that the first publication takes place in that country and all the copies of the work published subsequently outside the Union indicate the country of the Union where first publication took place, the name and address of the publisher and the year date of publication, placed in such manner and location as to give reasonable notice of copyright. Provided further that protection shall be available only in the country of the Union in which the work is first published; (d) in the case of cinematographic work the maker of which is a national of a country of the Union or has his domicile or headquarters therein, that country; (e) in the case of architecture erected in the country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union, that country.

The work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within 30 days of its first publication.

All works made lawfully available to the public shall, as far as possible, contain the names, addresses and nationalities of the authors and the publishers or such other agents through whom the works are made lawfully available to the public and the year dates and places at which such incidents took place.

as Alternative "B": modify Alternative "A" by omitting sub-paragraphs (b) and (c), by retaining the rest and re-numbering sub-paragraphs (d) and (e), and by replacing sub-paragraph (a) by the following text: in the case of works made lawfully available to the public, the country of the Union of which the author is a national.

Note: Alternative "B" proceeds on the presumption that protection should start from the date of which a work was lawfully made available to the public. This would make it unnecessary to have a stilted definition of "publication." For instance, Article 4(5) imposes different treatments for (1) TV films exchanged by two TV organizations; (2) musical scores hired even once; and (3) films shown even many times in theatres owned by the maker.

It also assumes that perpetual protection for literary and artistic works will not arise. They will all go with the public domain after the post-mortem period prescribed.

The next assumption is that only authors of the Union should be protected. Where a non-Union author publishes in a Union country, he will not get protection, though, as now, the domestic legislation may protect the publisher in that country. The adoption of this course would obviate the need for retaliatory clauses (in Article 6) and back-door entries.

Alternative "A" is self-evident. Sub-paragraphs (b) and (c) are not necessary logically. But, if this is too drastic, they may be retained. However, such back-door entry and protection should hold good only for the country of publication.

The only other change of substance is that, for simultaneous publication, the first publication must be in the Union.

2. *Article 4(5) should read as follows:* The expression "published works" means works lawfully reproduced in tangible form and made available to the public in copies from which it can be read or otherwise visually perceived.

The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by voice or the broadcasting of literary or artistic works, the exhibition of a work of art, the construction of a work of architecture, the issue of records recording a literary or artistic work and the issue of photographs or paintings or engravings of architectural or other three-dimensional works shall not constitute publication.

Explanation: The issue of gramophone records should not be treated as publication of the literary and artistic work. In the Rome Convention on Neighboring Rights, it only means the issue of records. The same act should not lead to two different results under different conventions. The other change is that the issue of photographs or paintings or engravings of architectural or other three-dimensional works shall not constitute publication. If Alternative "B" is adopted in Article 4(4), this definition will become unnecessary.

3. *delete Article 6.*

S/42 United Kingdom. Berne Convention. *In document S/1, make the following changes:*

in Article 4(5), the words "lawfully published" should be replaced by: published with the consent of their authors.

Article 4(6) should read: The maker of a cinematographic work means the person or body corporate by whom the arrangements necessary for the making of the film are undertaken.

at the end of Article 6(2), add: Any country of the Union shall be free to treat the maker of a cinematographic work as its author.

in Article 7(2), the words "first publication, public performance or broadcast," should be replaced by: work has been made available to the public with the consent of the author.

in Article 7(3), the words "lawfully made available to the public," should be replaced by: made available to the public with the consent of the author.

in Article 7, add as a new paragraph (3A): In respect of the collective works mentioned in Article 2(4), the term of protection shall be 50 years from the death of the author of such works.

Article 9 should read: (1) Authors of literary and artistic works shall have the exclusive right of authorizing the reproduction of such works, or any substantial parts thereof, in any manner of form. (2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works or substantial parts thereof in certain special cases where the reproduction does not unreasonably prejudice the legitimate interests of the author and does not conflict with a normal exploitation of the work.

S/43 Hungary, Poland. Berne Convention. *Article 4(6) (document S/1) should be deleted.*

S/44 Chairman of Main Committee I. Berne Convention. *Articles 3 to 6 should read as follows:*

Article 3: (1) The protection of this Convention shall apply to

(a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;

(b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but are domiciled in one of them, shall, for the purpose of this Convention, be assimilated to the nationals of that country.

(3) The expression "published works" means works lawfully published, copies of which have been issued and made available in sufficient quantities to the public, whatever may be the means of manufacture of the copies. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4: (1) The protection of this Convention shall apply, independently of the provisions of Article 3, to

(a) authors of cinematographic works, the maker of which is a national of one of the countries of the Union, or has his domicile or headquarters in that country;

(b) authors of works of architecture, erected in a country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union.

(2) The maker of a cinematographic work means the person or body corporate who has taken the initiative in, and responsibility for, the making of the work.

Article 5: (1) The authors shall enjoy, in regard to such works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be

(a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country of which the legislation grants the shortest term of protection;

(b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;

(c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union:

(i) when these are cinematographic works the maker of which is a national of a country of the Union or has his domicile or headquarters therein, that country;

(ii) when these are works of architecture erected in a country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union, that country;

(iii) when these are works to which the provisions referred to in (i) or (ii) above do not apply, the country of the Union of which the author is a national.

Article 6: (1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not effectively domiciled in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Government of the Swiss Confederation by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Government of the Swiss Confederation shall immediately communicate this declaration to all the countries of the Union.

S/45 FRANCE. Berne Convention. *In Article 10(1) (document S/1), before the word "quotations," insert:* short.

S/46 SWITZERLAND. Paris Convention. *In Article 13*ter *(document S/3), add to the tasks enumerated in paragraph (2):* the preparation of draft periodical reports, programs and triennial and annual budgets, to be examined subsequently by the Executive Committee and submitted by the latter to the Assembly in accordance with Article 13*bis*(6).

S/47 SWEDEN. Paris and Berne Conventions. *The text proposed for item (xii) by Austria (document S/39) should be completed by having it preceded by the following words:* subject to its approval. *Explanation:* The question of the majority required for such approval will have to be considered when Articles 13(3) and 21(3) respectively will be discussed by the Committee.

S/48 AUSTRALIA. Paris and Berne Conventions. *In Article 13*bis (4) *(document S/3) and Article 21*bis (4) *(document S/9), omit:* and to the need for countries members of the Special Unions established in relation with the Union to be among the countries constituting the Executive Committee.

S/49 NETHERLANDS. Berne Convention. *In Article 4(5) (document S/1), the first sentence should read:* The expression "published works" means works [lawfully] published whatever may be the means of manufacture of the copies, provided that the latter have been made available in such a manner as to make the work accessible to the public.

S/50 BULGARIA, POLAND. Berne Convention. *Article 7(6) (document S/1) should be completed by adding the following:* The countries of the Union bound by the Rome Act at the time of accession to or ratification of the present Act shall be entitled to grant a term of protection shorter than those provided by the preceding paragraphs.

S/51 CZECHOSLOVAKIA, HUNGARY, POLAND. Berne Convention. *In document S/1, make the following changes:*

1. *add a new paragraph (3) to Article 9 to read:* Articles on current political or economic affairs may be reproduced, even in translation, by the press, in press reviews or broadcast or televised, if the reproduction or broadcasting rights of the article concerned are not expressly reserved; the source should, however, always be clearly indicated. The method of enforcing this obligation shall be determined by the legislation of the country in which protection is claimed.

2. *In Article 10(1), after the words* "make quotations," *insert: even in translation.*

S/52 AUSTRALIA. Berne Convention. *In Article 6(3) (document S/1), delete the words:* or graphic and three-dimensional works affixed to land or to a building, *and the words:* or so affixed.

S/53 SOUTH AFRICA. Berne Convention. *Article 4(5) (document S/1) should read:* The expression "published works" means works lawfully published, whatever may be the means of manufacture of the copies, provided that the availability of such copies is sufficient to render the work accessible to the public.

S/54 NETHERLANDS. Berne Convention. *The following changes are proposed in, and the following comments are made on, document S/9:*

1. *delete Article 23(4). Explanation:* As the scope of the present Article has already been defined in the first and second paragraphs, there appears to be no need to refer to it again in the final paragraph.

2. *delete Article 25(1)(b)(ii). Explanation:* There seems to be no purpose in practice for the possibility offered by this provision. After the omission of item (ii), the Drafting Committee will be able to effect some simplification of the subsequent paragraphs of the same Article and of Article 25*bis*.

S/55 NETHERLANDS. Paris Convention. *The following changes are proposed in, and the following comments are made on, document S/3:*

1. *delete Article 13*quinquies*(4). Explanation:* As the scope of the present Article has already been defined in the first and second paragraphs, there appears to be no need to refer to it again in the final paragraph.

2. *delete Article 16(1)(b)(ii). Explanation:* There seems to be no purpose in practice for the possibility offered by this provision. After the omission of item (ii), the Drafting Committee will be able to effect some simplification of the subsequent paragraphs of the same Article and of Article 16*bis*.

S/56 GREECE. Berne Convention. *The following observations are made on, and the following changes are proposed in, document S/1:*

Greece accepts the proposals contained in that document S/1 except for the following points presented in detail below:

Article 2, new paragraph (2): Greece considers that a special category referring to television works should be established in order to enable a distinction to be made between the protection of such works and that of cinematographic works.

Article 4, paragraph (2): Greece accepts this paragraph, while nevertheless considering that Article 2 of the Additional Protocol relating to the protection of the works of stateless persons and refugees should be abolished.

Article 4, paragraph (4)(c)(i): Greece considers that no purpose is to be served by giving special consideration to the maker of cinematographic works.

Article 4, paragraph (6): Greece considers that this provision should be abolished because any definition on this subject is hazardous. The formula that "the maker means the person who has taken the initiative in and responsibility for the making of the work" creates some uncertainty as to whether it is a question of economic initiative and responsi-

bility or whether, for example, the maker is considered to be the director who conceived the idea of and took the initiative in the making of the film, or whether both parties are considered to be makers. In this last case, numerous complicated problems will arise.

Article 6, paragraph (2). Greece does not consider special provisions relating to cinematographic works to be necessary.

*Article 6*bis. Greece proposes that there be incorporated in this Article the Belgian proposal made at the Brussels Conference (1948), which is contained in the Documents of the Brussels Conference, page 186.

If this proposal is not accepted, Greece proposes the addition of a new paragraph (3) to this Article, reading as follows:

"In so far as the legislation of the countries of the Union permits, the rights granted to the author in accordance with paragraph (1) shall, after the expiry of the economic rights, be granted to and shall be exercisable by the persons or institutions authorized by the said legislation. The determination of the conditions under which the rights mentioned in this paragraph shall be exercised shall be governed by the legislation of the countries of the Union."

The existing paragraph (3) will be renumbered (4).

Article 7, paragraph (2): Greece considers that the term of protection of 50 years is excessive and proposes a term of 25 years. In any case it should be definitely specified that the term of protection starts from the making of the work and not from its publication.

Article 7, paragraph (3): Greece considers that the provision restricting the term of protection of anonymous or pseudonymous works to 50 years after the death of the author, instead of 50 years after their publication, is unjust. It is of course possible that the latter may lead to a longer term of protection of such works, but the new provision may reverse the principle on which the protection of anonymous or pseudonymous works was based, namely the desire of the author to conceal his identity. According to the new provision, it will be possible to raise in the Courts the question of the death of the author of an anonymous or pseudonymous work, and such author will be obliged to disclose his identity in order to protect his rights.

Article 7, paragraph (4): Greece considers that the minimum term of 25 years prescribed for the protection of works of applied arts is excessive and proposes that the said term should be ten years.

This long-term protection might perhaps involve a change in domestic laws concerning the protection of such works as designs and models, referred to in Article 2, paragraph (6).

It is proposed that paragraph (5) of Article 7 regarding the term of protection of posthumous works should remain in force and that a term of protection of 25 years starting from the date of first publication should be granted. It is necessary to have a motive for the publication of these works, such as the establishment of the rights deriving from publication.

Article 8: Greece proposes that the system referred to in Article V of the Universal Copyright Convention be introduced, while prolonging the term of protection from seven to ten years after first publication.

This system affords possibilities of circulating intellectual works without any detriment to their maker, who receives reasonable compensation and whose moral rights are safeguarded. The need for countries whose language is spoken by only a small number of persons to participate fully in the cultural development of countries with a widely spoken language, should not be disregarded. If permission to translate a literary work is easily obtainable, such a provision will be harmful to nobody, but, on the contrary, will constitute a motive for granting permission for translation.

Article 9: Greece considers that sub-paragraphs (a) and (b) which are covered by sub-paragraph (c) should be abolished, and that sub-paragraph (c) should constitute the continuation of paragraph (2) without any distinction between (a), (b), and (c).

Article 10, paragraph (1): Greece considers that the quotations should be brief and proposes that the paragraph concerned should begin as follows:

"It shall be permissible to make short quotations..."

Article 11, paragraph (1). Greece considers that cinematographic and television works should be included in the enumeration of protected works in paragraph (1).

Article 13, paragraph (1) (in force): Greece considers that this paragraph should remain in force, while adding after the words "Authors of musical works shall have" the phrase "independently of the exclusive right referred to in Article 9, paragraph (2)."

Article 14 (1): The last sentence should be worded as follows: "The provisions of Article 11*bis*, paragraphs (2) and (3) and of Article 13, paragraph (2), shall not apply."

Article 14, paragraph (4), etc.: Greece is opposed to any provision introducing into an international convention any subjects governed by private agreements, and therefore proposes the abolition of paragraph (4), (5), (6), and (7) of this Article.

S/57 [*Editor's Note:* No document bearing this number was issued.]

S/58 Austria, Poland. Paris and Berne Conventions. *Article 13(3)(b) (document S/3) and Article 21(3)(b) (document S/9) should read:* One-half of the countries members of the Assembly shall constitute a quorum. If the quorum is not attained at the session, the Assembly shall make provisional decisions which shall be communicated in writing to the countries which were absent, inviting them to pronounce themselves within a period of four months from the date of the communication. If, within this period, the written replies communicated to the International Bureau attain the required quorum and majority, the decision shall be secured.

S/59 United States. Paris Convention. *In Article 13*quinquies*(1) (document S/3), after the words "the present Article," insert:* may be initiated by any country of the Union, the Executive Committee, or the Director General and.

S/60 Germany (Fed. Rep.), Luxembourg, Monaco, South Africa. Berne Convention. *In Article 4(5) (document S/1), the first sentence should read:* The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been sufficient to satisfy the requirements of the public.

S/61 Czechoslovakia. Berne and Paris Conventions. Madrid (TM), Hague. Nice and Lisbon Agreements. *The following changes are proposed in documents S/3, S/4, S/6, S/7, S/8 and S/9:*

1. *in Article 13(3)(b) (document S/3) and Article 21(3)(b) (document S/9), the words "one-third" should be replaced by:* one-half.

2. *in Article 13(3)(c) (document S/3) and Article 21(3)(c) (document S/9), the words "a simple majority of the votes cast" should be replaced by:* a majority of two-thirds of the votes cast.

3. *in Article 13*bis*(8)(c) (document S/3) and Article 21*bis*(8)(c) (document S/9), the words "a simple majority of the votes cast" should be replaced by:* two-thirds of the votes cast.

4. *in Article 13*quinquies*(2) (document S/3) and Article 23(2) (document S/9), the words "three-fourths of the votes cast" should be replaced by:* the unanimity of the votes cast.

5. *Article 16*ter *(document S/3) should be deleted.*

6. *Article 16*quinquies *(document S 3) and Article 26 (document S/9) should be deleted.*

7. *in Article 27*bis *(document S/9), adopt alternative C or D.*

8. *in documents S/4, S/6, S/7, and S/8, amend in a similar way the Articles corresponding to those cited above.*

9. *in Article 20*bis*(2) (document S/9), delete:* subject to the provisions of Article 25(1)(b)(i) and (c), and Article 25*quater*, *and make the consequential changes in other articles.*

S/62 FRANCE, GERMANY (FED. REP.), ITALY, UNITED STATES. Paris and Berne Conventions. *The following changes are proposed in Article 13*quater *(document S/3) and Article 22 (document S/9):*

A. *paragraph (1)(b) should read:* The budget of the Union shall include the expenses proper to the Union itself, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

B. *in the first sentence of paragraph (1)(c), replace the words "common expenses" by:* expenses common to the Unions, *and delete the words:* or also to the Organization as such.

C. *in paragraph (2), delete:* and with the budget of the Organization as such.

S/63 SWITZERLAND. Berne Convention. *The following changes are proposed in document S/1:*

Article 4 should read:

(1) Authors who are nationals of one of the countries of the Union shall enjoy in the other countries of the Union, for their works, whether published or not, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

Protection in the country of which the author is a national (country of origin) shall be governed solely by the legislation of that country.

(2) Authors who are not nationals of one of the countries of the Union but habitually reside in one of them shall, for the purpose of this Convention, be assimilated to the nationals of that country.

(3) The country of origin shall be considered to be:

(a) in the case of cinematographic works the maker of which is a national of a country of the Union or has his habitual residence or headquarters therein, that country;

(b) in the case of works of architecture erected in the country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union, that country.

The maker of a cinematographic work means the person or body corporate who has taken the initiative in, and responsibility for, the making of the work.

(4) In the case of plural nationality, the last nationality acquired shall prevail.

(5) The enjoyment and the exercise of the rights granted to authors shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

Article 5 should be deleted.

in Article 6: retain paragraph (1) as proposed in document S/1; insert a new paragraph (2) with the definition of published works as in the present Article 4(5) and with the definition of simultaneous publication as in the present Article 4(4), last sentence; and renumber paragraphs (2) to (6) (document S/1) as (3) to (7).

S/64 HUNGARY. Paris and Berne Conventions. *The following changes are proposed in Article 13*quinquies *(document S/3) and Article 23 (document S/9):*

1. *in paragraph (1), after the words "Proposals for amendment," insert:* made by member countries or by the Director General.

2. *in paragraph (2), the second sentence should read:* Adoption requires the unanimity of votes cast.

S/65 POLAND. Berne Convention. *Article 26 (document S/9) should be deleted.*

S/66 MONACO. Berne Convention. *In Article 9(2) (document S/1), add at the beginning of the text:* Subject to the provisions of this Convention.

S/67 GERMANY (FED. REP.). Berne Convention. *The following changes are proposed in Article 9 (document S/1):*

in paragraph (1), after the words "these works," insert: including the recording of these works by instruments capable of reproducing them mechanically.

paragraph (2)(c) should read: in certain particular cases where permission does not conflict with a normal exploitation of the work or with the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority, and where permission is not contrary to the legitimate interests of the author.

S/68 SWITZERLAND. Berne Convention. *Article 10(1) (document S/1) should read:* It shall be permissible to make short quotations from a work which has already been lawfully made available to the public, provided that they are compatible with fair practice, and to the extent that they serve as explanation, reference or illustration in the context in which they occur, including quotations from newspaper articles and periodicals in the form of press summaries.

S/69 SWITZERLAND. Berne Convention. *Article 7(7) (document S/1) should read:* In any case, the term shall be governed by the law of the country where protection is claimed; however, the legislation of that country may provide that the term of protection shall not exceed the term fixed in the country of origin of the work.

S/70 FRANCE. Berne Convention. *In Article 9 (document S/1), make the following changes:*

1. *at the end of paragraph (1), add:* and for any purpose.

2. *paragraph (2) should be incorporated into Article 10.*

3. *in paragraph (2)(a), the words "private use" should be replaced by:* individual or family use.

S/71 AUSTRIA. Berne Convention. *In document S/1, insert in a suitable place the following provision:* The publisher of every work of cultural importance shall be obliged to deposit in a designated national archive a microfilm copy of the manuscript sources on which the published work is based. It shall be a matter for legislation in the countries of the Union to designate national archives for this purpose and to prescribe penalties for non-compliance with this obligation, provided that such penalties shall not invalidate the rights of the author under the present Convention.

S/72 AUSTRIA, ITALY, MOROCCO. Berne Convention. *In Article 9(1) (document S/1), after the word "reproduction," add:* and circulation.

S/73 INDIA. Berne Convention. *The following comments are made on, and the following changes are proposed in, document S/1:*

1. *Comment:* In Article 1, the term used is "literary and artistic works" which is defined in Article 2(1). Later, the Convention refers to "literary or artistic work" (for example, Articles 2(4), 10(2), 10*bis*, 12, 14(1), and 15) at some places, to "literary and artistic works" at some other places (see

Articles 8, 9(1), 11*bis*(1)), and to "literary, scientific or artistic works" elsewhere (for example, Articles 12, 14(1), and 14(3)). The Drafting Committee might like to look into this.

2. *in Article 2(1), make the following changes:* (a) *insert in the enumeration of literary and artistic works:* works of folklore; *and* (b) *add a new sub-paragraph to read:* It shall, however, be a matter for legislation in the countries of the Union to prescribe that any specified categories of works shall be fixed in some material form.

3. *in Article* 2bis*(2), the words "reproduced by the press" should be replaced by:* reproduced in original or in translation by the press or cinematography or broadcasting.

4. *in Article 4(6), omit:* or body corporate.

5. *Article* 6bis*(2) should read:* The rights granted to the author in accordance with the preceding paragraph, other than the right to claim authorship of the work, shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by his successor in title or in the absence of such successor in title, by the persons or institutions authorized by the legislation of the country where protection is claimed.

6. *in Article 7(3), make the following changes:*

(a) *after the words "in the case of anonymous or pseudonymous works," insert:* other than works of folklore.

(b) *add as a new sub-paragraph:* In the case of works of folklore, the term of protection shall last at least until the end of a period of fifty years from the date of publication of the work. For the purpose of this sub-paragraph, the issue of any records recording such work shall not be deemed to be publication of the work.

7. *Comment:* In Article 7(4), industrial designs and models referred to in Article 2(6) are not specifically mentioned. Domestic legislation should provide for these matters too. The Drafting Committee might like to look into this question.

8. *in Article* 7bis, *add at the end:* who was a national of a country of the Union.

S/74 DRAFTING COMMITTEE OF MAIN COMMITTEE III. Paris Convention. *Article 4-I (document S/2) should read:*

(1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model or an inventor's certificate.

S/75 RUMANIA. Berne Convention. *Article 9 (document S/1) should read:*

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in paragraph (1) may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) The countries of the Union may provide that the authorization referred to above shall be given by a written agreement or something having the same force; the agreement shall also specify the period within which reproduction must be effected and a stipulation that should reproduction not have been effected in the course of that period the agreement shall be void.

(4) It shall be a matter for legislation in the countries of the Union to permit the reproduction of literary and artistic works

(a) for private use;

(b) for judicial or administrative purposes;

(c) in certain particular cases where the reproduction is not contrary to the legitimate interests of the author and does not conflict with a normal exploitation of the work.

S/76 MONACO. Berne Convention. *Article 10*bis *(document S/1) should read:* It shall be a matter for legislation in countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography or cinematography, or by broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

S/77 MONACO. Berne Convention. *In Article 11*bis*(3), the second sentence (document S/1) should read:* It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by or for a broadcasting organization and used for its own broadcasts and for those of other organizations under the jurisidiction of the same country.

S/78 WORKING GROUP OF MAIN COMMITTEE IV. Paris and Berne Conventions. *In Article 13(3) (document S/3) and Article 21(3) (document S/9), sub-paragraph (b) should read:* One-half of the countries members of the Assembly shall constitute a quorum. If that quorum is not attained at the session but one-third of the countries members of the Assembly are present, the Assembly shall make provisional decisions which shall be communicated in writing to the countries which were absent, inviting them to pronounce themselves within a period of four months from the date of the communication. If, within this period, together with the written replies communicated to the International Bureau, the required quorum and majority are attained, the decision shall be secured.

S/79 BULGARIA, CZECHOSLOVAKIA, POLAND. Berne Convention. *In Article* 2bis*(2) (document S/1), after the words "reproduced by the press," insert:* or broadcast.

S/80 JAPAN. Berne Convention. *In Article 9 (document S/1), add as paragraph (3):* Articles on current, economic, political or religious topics may be reproduced by the press or be broadcast unless the reproduction or the broadcasting thereof is expressly reserved; nevertheless, the source must always be clearly indicated. The legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.

S/81 NETHERLANDS. Berne Convention. *Article 9(2) (document S/1) should read:* The reproduction of these works shall, however, be permitted: (a)(i) for individual or family use; (ii) for strictly judicial or administrative purposes; (iii) in certain particular cases where the reproduction does not adversely affect the interests of the author or of his successors in title and does not conflict with a normal exploitation of the work; provided that the legislation of the country in which protection is claimed expressly permits such reproduction; (b) in other cases expressly provided for in this Convention.

S/82 SPAIN. Paris Convention. *The following comments are made on, and the following addition of a new item (i-*bis*) is proposed for, paragraph (3) of Article 13*quater *(document S/3):*

Comment. An examination of the text of the draft confirms the continuation of the existing situation, that is, the

sources of revenue for the budget of the General Union are still based primarily on contributions from member States of that Union, since the other revenues provided for cannot be expected to solve the serious financial problems confronting the Union which have come to the foreground over the past few years as a result of the rise in the cost of all services, the compulsory improvements made in staff benefits, and especially, the unanimous acknowledgement of the need of a vaster program of technical assistance to all countries and, in general, of ever-increasing activities.

We feel that, despite the present greater number of States and the important financial contribution of some of them, it is obvious to all those who follow and are familiar with the financial problems of the Paris Union that the contributions of the States are not adequate to enable the Union to undertake the programs it is now committed to carry out. This means that a large and substantial increase in the contributions from States will be inevitable.

But, before the imminent (although subsequent to the Conference) fact of having to decide on a considerable increase in the contributions of the respective States, it should be recognized that, of the 74 countries belonging to the Paris Union, only half a dozen would, at the beginning of the year, be in a position to give a clearly affirmative reply.

Nevertheless, we believe that the time has come to find out whether there is not some way of resolving the financial problem of the Union definitively—which will have to be done in any event—apart from increasing the contributions from States. We would reply that within the Organization itself there are Special Unions (international trademark registry, etc.) that offer a clear example of what the financial support of the direct beneficiaries can represent, inasmuch as in the General Union, and on the basis of each country's recognition of the priority right, there are obvious benefits for the parties concerned.

Many reasons and advantages, from various points of view, could be given in support of the introduction of a fee for the priority claimed; there is no doubt but that they will be present in everyone's mind and, consequently, we do not think it necessary to dwell on them. We do feel, however, that advantage should be taken of the opportunity now offered by the Diplomatic Conference of Stockholm to establish a new source of revenue, the surpassing importance of which can entirely change the financial picture of the Union and its possibilities of action.

*Proposal: In Article 13*quater*(3), add a new item (i-*bis*):* fees collected by the International Bureau through the national Offices for each patent application or other transaction where the right of priority established by this Convention is invoked.

S/83 BULGARIA, CZECHOSLOVAKIA, POLAND, RUMANIA. Berne Convention. *In Article 10(2) (document S/1), after the word "publications," insert:* radio and television broadcasts and phonograms.

S/84 MADAGASCAR. WIPO Convention. *The following changes are proposed in document S/10:*

in Article 6:

1. *add as a new paragraph (1)(c):* Several countries, members of one or more Unions, which are grouped together in a single organization by virtue of an international agreement, may be represented by a single delegation or by their joint organization, which shall then dispose of as many votes as there are Member States of the aforementioned organization.

2. *in Article 6(3), at the beginning of sub-paragraph (a), insert:* Subject to the provisions of paragraph (1)(c) above.

3. *in Article 6(3), at the beginning of sub-paragraph (i), insert:* Subject to the provisions of paragraph (1)(c) above.

in Article 7:

1. *at the beginning of paragraph (1)(b), insert:* Subject to the provisions of Article 6(1)(c).

2. *at the beginning of paragraphs (3)(a) and (3)(g), insert:* Subject to the provisions of Article 6(1)(c).

in Article 8:

1. *at the beginning of paragraph (1)(b), insert:* Subject to the provisions of Article 6(1)(c).

2. *at the beginning of paragraphs (5)(a) and (5)(b), insert:* Subject to the provisions of Article 6(1)(c).

S/85 RUMANIA. WIPO Convention. *In the Preamble (document S/10), after the word "Desiring," insert:* to contribute to better understanding and collaboration between the peoples, on the basis of the principles of respect for sovereignty, equality before the law and mutual advantage, wishing, to that end.

S/86 INDIA. Berne Convention. *Either retain the Brussels text of Article 9, or, in Article 9 (document S/1), add as a new paragraph (2)(d):* in cases not covered by (a), (b) or (c) above, on payment of such remuneration which, in the absence of agreement, shall be fixed by competent authority.

S/87 MAIN COMMITTEE III. Paris Convention. *The following text of Article 4-I was adopted by the Main Committee and is submitted to the Plenary of the Paris Union:*

(1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model or an inventor's certificate.

S/88 DRAFTING COMMITTEE, MAIN COMMITTEE I. Berne Convention. *The following changes are proposed in, and the following comments are made on, document S/1:*

in Article 4, the first sentence of paragraph (5) should read: The expression "published works" means published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work.

in Article 6, paragraph (3) should read: Authors who are not nationals of one of the countries of the Union shall enjoy in a country of the Union, for their works of architecture erected in that country, and other artistic works incorporated in a building or other structure erected in that country, the same rights as national authors and, in the other countries of the Union, the rights granted by this Convention.

Comment. The same wording proposed for Article 6(3) should be used in Article 4(4)(c)(ii).

S/89 BULGARIA. Berne Convention. *The following changes are proposed in the provisions as they appear in document S/1:*

in Article 2:

in paragraph (1), after the words "cinematographic works," add: televisual works.

delete paragraph (2).

*in Article 6*bis*(2), delete:* until the expiry of the economic rights.

S/90 RAPPORTEUR, MAIN COMMITTEE III. Paris Convention. *The following draft report of the proceedings was submitted for approval to the Main Committee*

1. On Monday, June 12, the Plenary of the Union constituted under the Paris Convention for the Protection of

Industrial Property of March 20, 1883 (delegates of 55 member countries [1] being in attendance), under the Presidency of Mr. J. E. Maksarev, head of the Delegation of the Union of Soviet Socialist Republics, accepted without objection the proposals of the Government of Sweden that a member of the Rumanian Delegation be Chairman of Main Committee III, that a member of the Netherlands Delegation be Vice-Chairman of that Committee, and that I be rapporteur. This Committee began work on Tuesday, June 13, under the chairmanship of Mr. Lucian Marinette, the Vice-Chairman being Mr. van Benthem. Observers were present on behalf of the United Nations, the International Association for the Protection of Industrial Property (IAPIP), the International Chamber of Commerce (ICC), the International Federation of Patent Agents (FICPI), and the Union of European Patent Agents.

2. The function of this Committee was to consider the revision of the Paris Convention, as revised at Lisbon on October 31, 1958, so as to put applicants for inventors' certificates in those countries of the Union, the laws of which make provision for the grant of such certificates as an alternative to the grant of patents, in the same position in in respect of priority rights under Article 4 of the Convention as if they were applicants for patents.

3. The basic proposals for discussion before the Committee were contained in a paper prepared by the Government of Sweden with the assistance of BIRPI, marked S/2 and bearing the date of April 15, 1966. Copies of this paper had been previously distributed to Union members. In addition to an explanation of the need for the above-mentioned revision of the Convention and a history of the work already done on such revision (which require no repetition here), this paper proposed that to Article 4 there be added a new Section, the English version of which was as follows:

"I. (1) Applications for inventors' certificates, filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents.

(2) In a country in which applicants have the above option, the right of priority provided for under this Article shall be recognized also where the applicant seeks an inventor's certificate irrespective of whether the first application (Section A, paragraph (2)) was an application for a patent or a utility model, or for an inventor's certificate."

4. Unqualified approval of the principle that applications for inventors' certificates in countries where applicants could if they wished apply instead for patents should give rise to the right of priority provided for by Article 4 of the Convention, and that the same priority right should attach to such applications for inventors' certificates, was expressed by the Delegations of the United States of America, the Federal Republic of Germany, France, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, Spain, Italy, Hungary, Yugoslavia, Switzerland, Bulgaria, Czechoslovakia, the Union of Soviet Socialist Republics, Austria, Poland, Sweden, Ireland, Belgium, Portugal, Rumania, Japan and Australia. The representatives of Ecuador, the United Nations and the AIPIP were also heard in its favor. No delegation objected to the incorporation of the above principle in the Convention.

5. During the course of the meeting references were made to proposals by the Delegations of France and Italy for amendment of the proposed new Section referred to in paragraph 3 above. The French proposal was to add several words to the first paragraph thereof so that it would take the following form:

"Applications for inventors' certificates, filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be *admitted on the same conditions*, treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents."

The Italian proposal was to amend the whole of the proposed Section to the following form:

"I. (1) The right of priority under this Article may also be based on applications for inventors' certificates filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate.

(2) In countries in which applicants have the option between applying for a patent and applying for an inventor's certificate, the right of priority provided for under this Article shall be recognized also where the applicant seeks an inventor's certificate, irrespective of whether the first application (Section A, paragraph (2)) was an application for a patent or a utility model, or for an inventor's certificate."

The Netherlands Delegation referred to a draft Section which the Congress of the AIPIP held in Tokyo in 1966 wished substituted for the proposed new Section, namely:

"Applications for inventors' certificates filed in a country in which applicants have the right to apply, at their own option and on the same substantive conditions either for a patent or for an inventor's certificate, shall engender the right of priority provided for by this article, under the same conditions and with the same effects as an application for a patent.

Conversely, in the countries in which applicants have the above option between a patent and an inventor's certificate, it shall be provided that an inventor's certificate can be applied for by claiming, pursuant to the present article, a priority founded on an application for a patent, utility model, or an inventor's certificate."

The representative of the AIPIP also referred to this proposal. As all these proposals differed from that of the Swedish Government and BIRPI only in form, the Committee agreed with the Chairman's view that they should be referred to the Drafting Committee which was to be set up.

6. The Delegation of the United Kingdom of Great Britain and Northern Ireland proposed that the Convention be further revised by inserting in Article 1(2), after the word "patents", the words "inventors' certificates". It was explained that this was not intended to be a far-reaching amendment, but that it was aimed only at making the definition of "industrial property" consistent with Article 4 as proposed to be revised. The proposers thought that its only possible effect would be on the references to "industrial property" in Article 2. No delegation disapproved of this suggestion, and a number indicated their interest in it. However, all other delegations of member countries were opposed to the consideration of it in Stockholm for the reasons that it required further study and that they had come prepared to consider only the proposed revision of Article 4. The United Kingdom Delegation then withdrew its proposal.

7. A Drafting Committee was appointed, to consist of a member of the Delegations of each of France, Italy, the Netherlands, the Union of Soviet Socialist Republics, the United States of America, Spain, the Federal Republic of Germany, Czechoslovakia, the United Kingdom of Great Britain and Northern Ireland, Sweden and Switzerland. It sat in the afternoon of Tuesday, June 13, and the morning of Wednesday, June 14, under the chairmanship of Mr. E. Brenner (United States of America). In the morning of Thursday, June 15, its proposed addition to the Convention

[1] Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Central African Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Gabon, Greece, Holy See, Hungary, Iceland, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Kenya, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Poland, Portugal, Rumania, Senegal, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, USSR, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia.

was put before the main Committee together with the information that the representatives of France and Sweden on the drafting committee had been appointed to the General Drafting Committee.

8. The Drafting Committee's recommended English text of the new Article 4(I) was as follows:

"I. (1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model or an inventor's certificate."

The recommended French text was as follows:

"I. (1) Les demandes de certificats d'auteur d'invention, déposées dans un pays où les déposants ont le droit de demander à leur choix soit un brevet, soit un certificat d'auteur d'invention, donneront naissance au droit de priorité institué par le présent article dans les mêmes conditions et avec les mêmes effets que des demandes de brevets d'invention.

(2) Dans un pays où les déposants ont le droit de demander à leur choix soit un brevet, soit un certificat d'auteur d'invention, le demandeur d'un certificat d'auteur d'invention bénéficiera, dans les termes du présent article applicables aux demandes de brevets, du droit de priorité basé sur le dépôt d'une demande de brevet d'invention, de modèle d'utilité ou de certificat d'auteur d'invention."

9. Approval of the above texts was expressed by the Delegations of Czechoslovakia, Union of Soviet Socialist Republics, Australia, Canada, Federal Republic of Germany, Austria, Yugoslavia, Sweden, Bulgaria, United Kingdom of Great Britain and Northern Ireland, Iceland, Italy, Denmark, United States of America, Switzerland, Portugal, the Netherlands, France, Spain, Norway, Brazil, Japan, Belgium, Finland, Iran and South Africa, and no objections to them were raised.

10. The Secretary of the Committee (Mr. Magnin) proposed that in the second paragraph of the French version the words "selon les dispositions" be substituted for the words "dans les termes", and this drafting amendment was accepted without objection.

11. The Chairman announced that the texts proposed by the Drafting Committee, amended in the manner referred to in paragraph 10 above, were approved unanimously. He expressed the Committee's appreciation of the work done by the Drafting Committee and its Chairman, thanked the members of the Main Committee and announced that the Main Committee would meet again on the afternoon of Friday, June 16, to consider this Report.

S/91 HUNGARY. Berne Convention. *The following changes are proposed in Article 7 (document S/1):*

1. *delete paragraph (2).*

2. *in paragraph (4), after the words "to determine the term of protection," insert:* of cinematographic works.

S/92 GERMANY (FED. REP.). Berne Convention. *The following changes are proposed in document S/1:*

1. *Article 2(2) should read:* For the purposes of this Convention, works expressed by a process producing visual effects analogous to cinematography shall be considered to be cinematographic works. There shall however be no obligation to protect, as a cinematographic work, a series of visual images which is not recorded on some material support.

2. *in Article 2(3), delete the second sentence and insert a new paragraph in Article 2 to read:* It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

3. *Article 2*bis*(2) should read:* It shall also be a matter for legislation in the country of the Union to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press and, when they refer to news, may be broadcast by radio or communicated by wire to the public.

4. *in Article 13(1), after the words "authors of musical works," insert:* with or without words.

5. *Article 11*ter *should read:* Subject to the provisions of Article 11*bis*, the authors of literary works shall enjoy the exclusive right of authorizing: (i) the public recitation of their works including the public recitation of these works by means of instruments capable of reproducing them mechanically; (ii) any communication to the public of the recitation of their works.

6. *Article 13(2) should read:* Recordings of musical works made in a country of the Union in accordance with Article 13, paragraph (3) of the Convention signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of these works until December 31, 19...

7. *Article 14(1) should read:* Authors of literary or artistic works shall have the exclusive right of authorizing: (i) the cinematographic adaptation and reproduction of these works thus adapted or reproduced; (ii) the public performance, communication to the public by wire, broadcasting, and any other communication to the public, of the works thus adapted or reproduced. The provisions of Article 11*bis*, paragraph (2), and of Article 13, paragraph (1), shall not apply; however, the application of Article 11*bis*, paragraph (3), shall be reserved.

8. *in Article 14(4), the second sentence should read:* The countries of the Union may provide, with respect to cinematographic works of which they are the country of origin, that the authorization or undertaking referred to above shall be given by a written agreement or something having the same force.

S/93 FRANCE, GERMANY (FED. REP.), HUNGARY, ITALY, SOVIET UNION, UNITED KINGDOM, UNITED STATES. WIPO Convention. *The following changes are proposed in document S/10:*

in Article 6(2), insert a new item to read: adopt the budget of expenses common to the Unions.

in Article 7:

A. *paragraph (2)(a)(ii) should be replaced by:* adopt the budget of the Conference.

B. *in paragraph (2)(a)(iii), the words "of the budget of the Organization" should be replaced by:* of the budget of the Conference.

C. *in paragraph (3) subparagraph (d) should read:* The amounts of the contributions of Associate Members shall be fixed by a vote in which only the representatives of such Members shall have the right to participate.

in Article 8:

A. *before the word "Conference," in the first sentence of paragraph (1)(c), insert:* budget of the.

B. *in paragraph (3)(i), the words "the common expenses to be included in the budgets of the various Unions and in the budget of the Organization," should be replaced by:* the budget of expenses common to the Unions.

C. *in paragraph (3)(iii), delete:* and the draft program and budget of the Organization.

D. *delete paragraph (3) (iv).*

in Article 10:

A. *The first three paragraphs should read:*

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

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

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

(i) contributions of the Unions, provided that the amount of the contribution of each Union shall be fixed by the Assembly of that Union, having regard to the interest the Union has in the common expenses;

(ii) charges due for services performed by the International Bureau not in direct relation with any of the Unions or not received for services rendered by the International Bureau in the field of legal-technical assistance [see paragraph (6)];

(iii) sale of, or royalties on, the publications of the International Bureau not directly concerning any of the Unions;

(iv) gifts, bequests, and subventions, given to the Organization as such;

(v) rents, interests, and other miscellaneous income of the Organization as such.

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

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

(i) contributions of Associate Members;

(ii) any sums made available to this budget by the Unions, provided that the amount of the sum made available by each Union shall be fixed by the Assembly of that Union and that each Union shall be free to abstain from contributing to the said budget;

(iii) sums received for services rendered by the International Bureau in the field of legal-technical assistance [see paragraph (6)]:

B. *in subparagraphs (a) and (c) of paragraph (4) the word "Organization," should be replaced by:* Conference.

in Article 13, after the first sentence in paragraph (2), insert: Whenever these amendments affect the rights and obligations of Associate Members, the latter shall take part in the voting. In all other cases, only Full Members shall vote on proposals for amendments.

S/93/Add. SOVIET UNION. WIPO Convention. *The following comment is made on document S/93:* The Delegation of the Soviet Union co-sponsored document S/93 with the understanding that it reserves its position on its possible impact on the institution of the so-called "Conference."

S/94 ARGENTINA, BRAZIL, MADAGASCAR, SENEGAL, URUGUAY. Paris Convention. *Article 14(2) (document S/3) should read:* To this effect, conferences will take place at the headquarters of the Union, except under special circumstances.

S/95 UNITED KINGDOM. Paris and Berne Conventions. *The following changes are proposed in document S/3 and document S/9:*

in document S/3:

*in Article 16(2) and (3), Article 16*bis*(2) and (3), Article 16*quinqies*(3)(a), the words "one month," should be replaced by:* three months.

Article 18(3) should read: Countries outside the Union which accede to the present Act shall apply the present Act in their relations with all other countries of the Union.

in Article 19(1)(b), the word "Authoritative" should be replaced by: Official.

in Article 19(5), after the word "denunciation," insert: notifications of the class to which a country belongs for subscription purposes and of any change in such class.

in document S/9:

*in Article 25(2) and (3), Article 25*bis*(2) and (3), Article 26(3)(a), the words "one month," should be replaced by:* three months.

Article 27 should read:

(1) The obligations of a country ratifying or acceding to this Act shall, as regards all other countries of the Union, be governed by those provisions of this Act by which, in accordance with Article 25, it is bound.

(2) The obligations of a country of the Union to which the present Act does not apply or, in accordance with Article 25, does not apply in its entirety shall as regards all other countries of the Union, continue to be governed by the most recent Act to which it is a party to the extent that they are not replaced by provisions of this Act accepted by that country.

in Article 31(1)(b), the word "Authoritative," should be replaced by: Official.

in Article 31(5), after the word "denunciation," insert: notifications of the class to which a country belongs for subscription purposes and of any change in such class.

S/96 UNITED KINGDOM. WIPO Convention. *The following comments are made on, and the following changes are proposed in document S/10:*

Article 4:

Comment. In its observations on the proposal for establishing the Organization, the United Kingdom said that it found the idea of full and associate membership acceptable. However, it considered that the proposal as the alternatives A, B, and C in document S/10, had the danger of converting the General Assembly from a technical forum into a political forum. Thus the United Kingdom would regard [it] as entirely inappropriate and likely to hinder the purpose of the Organization.

Proposal: Article 4 should read:

(1) Membership of the Organization shall be open to all States Members of the United Nations or any of the specialized agencies or Parties to the Statute of the International Court of Justice.

(2) Full membership shall be accorded to any such State which is also a member of any of the Unions.

(3) Associate membership shall be accorded to any such State which is not a member of any of the Unions.

Articles 6, 7, and 8:

in paragraph (1), add as a subparagraph (c): The expenses of each Delegation shall be borne by the Government which has appointed it.

delete Article 7(2)(b).

Article 7(3)(b) should read: one-third of those entitled to be present shall constitute a quorum.

in Article 11(3), delete: bilateral or.

in Article 16, add as a new item (v): The subscription classes to which Associate Members belong (Article 10(4)) and any changes in such classes.

in Article 18(2), the word "Authoritative" should be replaced by: Official.

S/97 GERMANY (FED. REP.), NETHERLANDS, SWITZERLAND. Berne Convention. *Article 24(3) (document S/9) should read:* Subject to the provisions of Article 23 which apply to the amendment of Articles 21 to 23, any amendment of this Convention, including the Protocol Regarding Developing

Countries, shall require an affirmative vote by nine-tenths of the States attending the revision conference, provided that this majority includes two-thirds of the States which, at the time of the revision conference, are parties to the Convention.

S/98 JAPAN. Berne Convention. *In Article 25*ter*(2)(a) (document S/9), delete:* making the declaration permitted by Article 25(1)(b)(i).

S/99 DENMARK. Berne Convention. *The following changes are proposed in document S/1:*

delete Article 2(6).

in Article 7(4), delete: and that of works of applied arts in so far as they are protected as artistic works.

S/100 UNITED KINGDOM. Berne Convention. *In Article 2 (document S/1), the second sentence of paragraph (2) should read:* For the purpose of this Convention, works expressed by a process analogous to photography and fixed in some material form shall be considered to be photographic works.

S/101 UNITED KINGDOM. Berne Convention. *Article 14(7) (document S/1) should read:* The provisions of paragraph (4) of this Article shall not apply in countries whose laws grant copyright in a cinematographic work to its maker.

S/102 AUSTRIA. WIPO Convention. *The following changes are proposed in document S/10:*

at the end of Article 6(2)(vi), add: by the present Convention.

add a new item between Article 6(2)(ii) and (iii): adopt the financial regulations of the Organization.

at the end of Article 7(2)(a)(v), add: by the present Convention.

S/103 AUSTRIA. WIPO Convention. *In Article 8(1)(c) (document S/10), the words "matters of direct interest to the Conference" should be replaced by:* matters with regard to which the Conference is competent under the provisions of Article 7.

S/104 AUSTRIA. WIPO Convention. *The following changes are proposed in document S/10:*

Article 8(3)(iv) should read: establish the programs and adopt the annual budgets (of the Organization) prepared by the Director General within the limits of the triennial program and budget (of the Organization).

add a new item between Article 8(3)(iv) and (v): establish the final accounts (of the Organization).

Article 8(3)(vii) should read: perform such other functions as are allocated to it by the present Convention.

S/105 RAPPORTEUR, MAIN COMMITTEE III. Paris Convention. Report on the Proceedings of Main Committee III by Mr. Alfred C. King (Australia). [*Editor's note:* This document contains the text of the Report as adopted by the Main Committee. It is reproduced in Vol. II.]

S/106 GERMANY (FED. REP.), NETHERLANDS, SWITZERLAND. Paris Convention. *Article 14(3) (document S/3) should read:* Subject to the provisions of Article 13*quinquies* which apply to the amendment of Articles 13 to 13*quinquies*, any amendment of this Convention shall require an affirmative vote by nine-tenths of the States attending the revision Conference, provided that this majority includes two-thirds of the States which, at the time of the revision conference, are parties to the Convention.

S/107 YUGOSLAVIA. Berne Convention. *The following changes are proposed in document S/1:*

delete Article 2(1) and substitute Article 2(1) of the Brussels text by adding after the words "analogous to cinematography": televisual works.

delete Article 2(2).

delete Article 14(4) to (7).

S/108 NETHERLANDS. Berne Convention. *Delete Article 10(2) (document S/1).*

S/109 WORKING GROUP OF MAIN COMMITTEE I. Berne Convention. *Article 9(2) should read:* It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not unreasonably prejudice the legitimate interests of the author and does not conflict with a normal exploitation of the work.

S/110 PORTUGAL. Berne Convention. *The following changes are proposed in document S/1:*

in Article 2(2), at the end of the first sentence, add: countries of the Union shall, however, have the right to protect, as cinematographic works, works thus expressed which are not fixed in some material form.

Article 2(2), second sentence should become Article 2(3), and renumber Article 2(3) to (7) as Article 2(4) to (8).

S/111 JAPAN. Berne Convention. *The following changes are proposed in document S/1:*

Article 14(4) should read: Authors who have undertaken to bring literary or artistic contributions to the making of the cinematographic work fixed in some material form, may not, in the absence of any contrary or special stipulation object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting, any other communication to the public, sub-titling and dubbing of the texts, of the cinematographic work.

By "contrary or special stipulation" is meant any restrictive condition agreed between the maker and the persons mentioned above.

Delete Article 14(7).

S/112 JAPAN. Berne Convention. *In Article 11*bis*(3) (document S/1) the words "by means of its own facilities and used for its own broadcasts" should be replaced by:* as a mere technical means for the use of the broadcasts made with permission.

S/113 AUSTRIA. WIPO Convention. *In the Preamble (document S/10), the words "Desiring to modernize and render more efficient the administration of the Intellectual Property Unions through the establishment of administrative organs which, although in part common, fully respect the autonomy of each of the various Unions," should be replaced by:* Desiring to establish a common administration of the Unions in the field of protection of intellectual property and to provide the necessary coordination by the establsihment of common organs, while respecting the autonomy of each Union.

S/114 SECRETARIAT. Berne Convention. *The following changes, reflecting the discussion in Main Committee IV, are proposed in document S/9:*

in Article 21(1), the proposal of the Delegation of Madagascar (S/37) is reserved.

in Article 21(2)(a)(ii), at the end, add: due account being taken of any comments made by member States of the Union which are not bound by Articles 21 to 23.

*in Article 21(2)(a), as item (iii*bis*), add:* adopt the financial regulations of the Union.

in Article 21(2)(a)(xi), at the end, add: by this Convention.

in Article 21(2)(a), as item (xii), add: subject to its approval, exercise such rights as are given to it in the IPO Convention.

in Article 21(2)(b) the words "take into consideration" should be replaced by: decide after having heard.

in Article 21(3), subparagraph (b) should read: [see S/78].

in Article 21(3), subparagraph (c) should read: Decisions of the Assembly shall require at least two-thirds of the votes cast.

in Article 21(3), delete subparagraphs (d) and (e).

in Article 21(3), renumber subparagraph (f) as subparagraph (d).

in Article 21(3), the proposal of the Delegation of Madagascar (S/37) is reserved.

in Article 21(4)(a), the word "preferably" should be replaced by: barring exceptional cases.

*in Article 21*bis*(4) the word "balanced" should be replaced by:* equitable.

*in Article 21*bis*(6)(a)(iii), the proposal of the Delegation of Austria (S/31) is reserved for consideration by the Drafting Committee.*

*in Article 21*bis*(6)(a)(vi), the item should be adapted to the proposal for a new Article 21(2)(a)(xii).*

*in Article 21*bis*(6)(b), the words "take into consideration" should be replaced by:* decide after having heard.

*in Article 21*bis*(7)(b), the words "or at the" should be replaced by:* at his own initiative, at the request of the Chairman of the Executive Committee, or at the.

*in Article 21*bis*(8)(e), the proposal of the Delegation of the Federal Republic of Germany (S/35) is reserved for consideration by the Drafting Committee.*

*in Article 21*ter*(1)(a), the Delegation of Italy requested the Drafting Committee to reconsider the language used in the last phrase.*

*in Article 21*ter*(2), the proposal of the Delegation of Switzerland (S/42) is to be considered by the Drafting Committee.*

*in Article 21*ter*(7), the words "the International Bureau" should be replaced either by:* The Director General; *or* the representative of the International Bureau.

*in Article 21*ter*(8), as subparagraph (b), insert:* [see S/32].

*in Article 21*ter*(8), renumber subparagraph (b) as subparagraph (c).*

in Article 22(1), subparagraph (b) should read: The budget of the Union shall include the expenses proper to the Union itself, its contribution to the expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

in Article 22(1)(c), the words "or also the Organization as such" should be deleted and the words "common expenses" should be replaced by: common to the Unions.

in Article 22(2), the words "and with the budget of the Organization as such" should be deleted.

in Article 22(4)(e), the possible deletion and transfer into the financial regulations of the last sentence are to be considered by the Drafting Committee.

in Article 22(4), as subparagraph (f), add: [see S/31].

in Article 22(7)(a), the proper place for the last sentence is to be examined by the Drafting Committee.

in Article 23, after the words "present Article," insert: may be initiated by any country of the Union, the Executive Committee, or the Director General, and.

in Article 23(2), the words "the unanimity" should be replaced by: at least four-fifths.

in Article 23, paragraph (4) should be deleted.

in Article 24(2), the words "in one of the countries of the Union" are reserved for amendment by the Delegations of Argentina and Brazil.

S/115 MONACO. Berne Convention. *Article 14 (document S/1) should read:*

(1) *as in document S/1.*

(2) *as in document S/1.*

(3) *as in document S/1.*

(4) Authors who have authorized, by a valid written agreement or document having the same force, the cinematographic adaptation and reproduction of their preexisting works or undertaken to bring literary or artistic contributions to the making of the cinematographic work, may not, in the absence of any contrary or special stipulation, object to the exploitation of such work. This provision shall apply notwithstanding any previous assignment.

(5) The provisions of paragraph (4) above shall not apply in the countries of the Union the national legislation of which provides for regulations different from those contained in the said paragraph (4), to the extent to which these regulations have effects analogous to those of paragraph (4).

(6) The countries of the Union the national legislation of which, at the date of the signature of this Convention, provides for regulations having effects analogous to those of paragraph (4) but explicitly excluding works from which the cinematographic work is derived, may declare that they will not apply the provisions of paragraph (4) above, so far as they concern preexisting works.

(7) The countries of the Union the national legislation of which grants copyright in a cinematographic work to its maker, may declare that they will not apply the provisions of paragraph (4) above, so far as they concern contributions to the making of the cinematographic work.
The countries of the Union which have such legislation at the date of the signature of this Convention may extend their declaration to all provisions of paragraph (4) above.

(8) The declarations referred to in paragraphs (6) and (7) above may at any time be deposited with the ... Their withdrawal may at any time be notified by a declaration deposited with the...

(9) Authors referred to in paragraph (4) above may not, subject to the application of Article 6*bis* and in the absence of any contrary or special stipulation, oppose alterations that might become indispensable for the exploitation of the cinematographic work.

(10) By "contrary or special stipulation" is meant any restrictive condition contained in the agreement or document referred to in paragraph (4) above.

S/116 FRANCE. WIPO Convention. *The following comment is made on, and the following changes are proposed in, Article 3 (document S/10):*

paragraph (1):

Comment: It is proposed to divide paragraph (1) into two paragraphs. In order to express more clearly the two tasks of the Organization, it is suggested to reproduce in paragraph (1) most of the text of the Preamble which achieves this purpose.
The text should read: The objective of the Organization is: (i) to modernize and render more efficient the administration of the Intellectual Property Unions through the establishment of common administrative organs which fully respect the autonomy of each of the various Unions; (ii) to promote the protection of intellectual property throughout the world by encouraging, for this purpose, cooperation among States members of the Unions and third party States.
Should the enumeration in the text in paragraph (1) (document S/10) be maintained, it should be preceded by: in particular.

paragraph (2), item (i) should read: makes available to the Paris Union, the Unions attached thereto, and to the Berne

Union, the administrative services which each of them requires.

S/117 FRANCE. WIPO Convention. *The following changes are proposed in document S/10:*

in Article 2(vii), the words "any other convention, agreement or treaty," should be replaced by: any other international undertaking designed to promote the protection of intellectual property;

in Article 3(2)(ii) and (iii), make the appropriate changes to agree with Article 2(vii).

S/118 FRANCE. WIPO Convention. *In Article 6 (document S/10), make the following changes:*

in paragraph (2), add the following three items:

makes proposals for the development of the protection of intellectual property;

approves the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters;

approves the financial regulations of the Organization provided for in Article 10.

paragraph (3)(g) should read: for the transfer of headquarters (Article 5), the appointment of the Director General (paragraph (2)(ii)), the approval of arrangements proposed by the Director General concerning the administration of international undertakings (paragraph (2)(iii)), adoption of amendments of this convention (article 13), and the approval of the headquarters agreement (Article 11), the required majority must be obtained not only in the General Assembly but also within each of the Unions.

S/119 UNITED STATES. WIPO Convention. *The Preamble (document S/10) should read:* The Contracting Parties, desiring to modernize and render more efficient the administration of the Intellectual Property Unions and to promote the protection of intellectual property throughout the world, while fully respecting the autonomy of each of the various Unions, agree as follows:

S/120 UNITED STATES. WIPO Convention. *Article 1 (document S/10) should read:* The International Intellectual Property Organization, comprising a General Assembly, a Coordination Committee, a Conference, and an International Bureau of Intellectual Property, is hereby established.

S/121 UNITED STATES. WIPO Convention. *In document S/10 make the following changes:*

in Article 2(ii), the words "that is, the Secretariat of the Organization," should be deleted.

in Article 9, at the end of paragraph (1) insert: The International Bureau shall serve as the Secretariat of the Organization.

S/122 UNITED STATES. WIPO Convention. *In items (iii) and (iv) of Article 2 (document S/10), the word "and" should be replaced by:* including.

S/123 UNITED STATES. WIPO Convention. *The following comments are made on, and the following changes are proposed in Article 3 (1) (document S/10): Comment:* Paragraph (1) purports to define the aims of the Organization. However paragraph (1) speaks of persons rather than in terms of the work protected. *Article 3 (1) (document S/10), should read:* The objective of the Organization is to promote cooperation among States for the protection of intellectual property in all its forms and particularly in the following: (i) the protection of literary, artistic and scientific property and works of applied art; (ii) the protection of inventions in all fields of human endeavors and particularly in industry and agriculture; (iii) the protection of discoveries of scientists; (iv) the protection of industrial designs and models, trademarks, service marks and commercial names; (v) the protection of performing artists, producers of phonograms and broadcasting organizations; (vi) the protection against acts of unfair competition; by any or all means which may be developed by the Organization.

S/124 UNITED STATES. WIPO Convention. *In Article 6(2)(vi) (document S/10), the words "as are allocated to it," should be replaced by:* as are appropriate pursuant to this Convention, or any revision thereof.

S/125 UNITED STATES. WIPO Convention. *In Article 7(2)(a)(i) (document S/10), the words "resolutions and" should be deleted.*

S/126 UNITED STATES. WIPO Convention. *In Article 8(1)(a) (document S/10), after the words "Berne Union" insert:* or both.

S/127 JAPAN. Berne Convention. *In Article 1 (document S/1, Annex II), make the following changes:*

paragraph (a) should read: substitute for Article 8 of this Convention the provisions of Article 5 of the Convention as revised in Paris in 1896, in respect of translations into the language or languages of that country, and apply the same provisions to the translations referred to in paragraph (2) of Article 11;

in paragraph (e), add at the end of the sentence: to the extent justified by the purposes.

S/128 ITALY. WIPO Convention. *In the Preamble (document S/10), after the words "Intellectual Property Unions," insert:* and those dealing with the protection of literary and artistic works.

S/128 Corr. ITALY. WIPO Convention. *In the Preamble (document S/10), the words "Intellectual Property Unions" should be replaced by:* Unions in the field of industrial property and the protection of literary and artistic works.

S/129 ITALY. WIPO Convention. *Article 3(1) (document S/10) should read:* The objective of the Organization is: (a) to promote administrative cooperation between the various Unions administered by the Organization; (b) to take steps to promote the protection of intellectual property throughout the world through cooperation between States and where necessary in collaboration with any other international Organization.

S/130 FRANCE. Berne Convention. *Article 14(4) (document S/1) should read:* However, and on condition that a written agreement exists between the maker and the authors authorizing the adaptation and reproduction of the preexisting work or undertaking to bring literary or artistic contributions to the making of the cinematographic work in accordance with the legislation of the country of origin, such authors may not, in the absence of any contrary or special stipulation, object to its cinematographic and televisual exploitation by wire or by broadcasting provided that the conditions specified in such agreements are complied with in full.

By "contrary or special stipulation" is meant any restrictive condition agreed between the maker and the persons mentioned above.

S/131 CZECHOSLOVAKIA. WIPO Convention. *In Article 3(2) (document S/10), items (ii) and (iii) should be replaced by items (vi) and (vii) and the remaining items renumbered accordingly.*

S/132 CZECHOSLOVAKIA. WIPO Convention. *The following comment is made on Article 4 (document S/10):* It is suggested that the fourth alternative "C" be accepted, because the Convention involves matters that are of interest to all States. It would be contradictory to the principle of the sovereign equality of States if some of them were to be prevented from acceding to a convention of this sort.

S/133 CZECHOSLOVAKIA. WIPO Convention. *In document S/10 make the following changes:*

in Article 6(3)(b), the words "one-third" should be replaced by: one-half.

in Article 6(3)(c), the words " a simple majority of the votes cast" should be replaced by: a majority of two-thirds of the votes cast.

S/134 CZECHOSLOVAKIA. WIPO Convention. *In Article 8(6)(a) (document S/10), the words "a simple majority of the votes cast" should be replaced by:* a two-thirds majority of the votes cast.

S/135 CZECHOSLOVAKIA. WIPO Convention. *Article 11 (document S/10) should read:*

(1) *as in document S/10.*

(2) *as in document S/10.*

(3)(a) The Organization shall enjoy in the territory of each Member State such privileges and immunities as may be necessary for the fulfilment of its objective and for the exercise of its functions.

(b) Representatives of Member States and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

(4) Such legal capacity, privileges and immunities shall be defined in a separate agreement to be prepared by the Organization and concluded between the Member States.

S/136 FRANCE. Berne Convention. *In Article 2(1) (document S/1), after the words "dumb show" add:* the acting form of which is fixed in writing or otherwise.

S/137 WORKING GROUP OF MAIN COMMITTEE IV. Paris Convention. *The following comments were submitted by the Working Group on the proposal of the Delegation of Madagascar (S/37):*

1. The Malagasy Delegation in Main Committee IV proposed during the discussion of document S/3 amendments to Article 13 (Assembly) of the Paris Convention (S/37). These amendments aimed at giving a plurality of member countries grouped together under the terms of an international agreement in a single industrial property office the possibility of entrusting their representation and right to vote to that office.

2. After preliminary discussion in the Main Committee showing divergent views, a Working Group was constituted which met on June 15 and 16 to explore possible solutions.

3. Some members of the Working Group, especially the Delegates of Madagascar and Senegal and the Observer from OAMPI, pointed out that the shortage of qualified experts in the field of industrial property which was the main reason to create OAMPI necessitated a concentration of effort with respect to representation and right to vote in the organs of the Paris Union.

4. Other members of the Working Group expressed concern that such an arrangement might set a precedent introducing block proxy voting.

5. As precedent for proxy voting, Rules 640-642 of the General Regulations annexed to the International Telecommunication Convention were cited. These rules provide that each member State of the Union must make an effort to send its own Delegation to meetings but that if, for exceptional circumstances, a member State cannot send its own Delegation, it may delegate the right to vote to another member State of the Union. Such delegation of power must be signed by the competent authorities of the delegating State. Any delegation to a meeting may hold a proxy for one other member State only.

6. The discussion led to the following conclusions:

(a) Representation for the *discussions* and representation for the *vote* have to be distinguished.

(b) As to representation for the *discussions*, the Working Group agreed in general that the Delegation of one of the member States of OAMPI should have the possibility to represent other member States of OAMPI during the discussion in the Assembly of the Paris Union. As to the question of whether such a possibility should be given to an official of an international organization, some members of the Working Group expressed doubt and reserved their position.

(c) As to representation for the *vote*, most members of the Working Group favored the above-mentioned solution of the General Regulations annexed to the International Telecommunication Convention, i.e., the right of a member State of the Union—not an official of an international organization—to vote for one other member State of the Union, in exceptional circumstances. However, several delegations reserved their opinion on this compromise proposal and favored the solution for voting provided for in the official proposals (Article 13(3)(g) in document S/3) according to which proxy voting is excluded.

S/138 SWITZERLAND. WIPO Convention. *Article 3(2)(ii) (document S/10) should read:* may accept to undertake the administration, or participate in the administration, of other conventions, agreements and treaties in the field of intellectual property.

S/139 HUNGARY. Berne Convention. *In Article 14(5) (document S/1), the word "may" should be replaced by:* shall.

S/140 NETHERLANDS. Berne Convention. *In Article 2(6) (document S/1), the last sentence should be deleted.*

S/141 GERMANY (FED. REP.). WIPO Convention. *In document S/10, make the following changes:*

in Article 6(2)(i), at the end of the item add: and give instructions to such Committee.

in Article 6(2), insert a new item between items (v) and (vi): review and approve reports and activities of the Director General concerning the Organization and give instructions to him on such matters; *and renumber item (vi) as item (vii).*

S/142 GERMANY (FED. REP.). WIPO Convention. *In Article 8(3)(i) (document S/10), the words "and the Conference" appearing for the first time should be replaced by:* the Conference and the Director General; *and after the words "and the Conference," appearing for the second time, insert:* or the Organization.

S/143 GERMANY (FED. REP.). WIPO Convention. *In Article 9 (document S/10), at the end of paragraph (3), add:* In the exercise of his functions, the Director General is responsible to the General Assembly.

S/144 BELGIUM. Berne Convention. *Article 14(7) (document S/1), should read:* The provisions of paragraph (4) shall not apply to the literary, scientific or artistic works from which the cinematographic work is derived, except for dialogues and scenarios.

However, the countries of the Union whose national legislation, at the date of the signature of the present Convention, provides for a system whose effects are similar to those of paragraph (4) but which explicitly excludes from its application dialogues or scenarios, may declare that they will not apply the provisions of paragraph (4) above in so far as they relate to such works.

S/145 SOUTH AFRICA. WIPO Convention. *Article 7(2)(a)(i) (document S/10) should read:* Discuss matters of general legal-technical interest in the field of intellectual property and adopt recommendations by way of resolutions relating to such matters.

S/146 DENMARK. Berne Convention. *In Article 1(a) (document S/1, Annex II), after the words "the original title," in the fourth subparagraph, insert:* the year of the first publication of the work.

S/147 AUSTRIA. Berne Convention. *In Article* 6bis *(document S/1), add as paragraph (4):* In the case of a literary, musical or dramatico-musical work published in a country of the Union, it shall be the duty of the publisher to deposit in the national library or archive of that country a facsimile copy of the earliest and most authentic available text or score of the work in the form and version finished and approved by the author. It shall be a matter of national legislation to determine the time and conditions of the deposit, to establish the requirements for making the facsimile copy accessible to the public, and to provide the consequences of failure to make such deposit. These consequences shall not include the loss of any exclusive right under the convention.

S/148 NETHERLANDS. Berne Convention. *Article 1(e) (document S/1, Annex II) should read:* reserve the right, for exclusively educational or scholastic purposes, to restrict the protection of literary and artistic works; nevertheless, those restrictions shall be allowed only if those purposes are expressly mentioned either in the commentary accompanying the public performance of those works, or, in the case of the reproduction of a work, in all copies of that reproduction.

S/149 UNITED KINGDOM. Berne Convention. *The following changes are proposed in document S/1, Annex II:*

1. *in Article 1, the text before the first footnote should read:* Any developing country which, having regard to the state of its cultural and economic needs does not consider it is in a position to make provision for the protection of all rights provided for in this Act, may, with the prior agreement of the Executive Committee of the Berne Union, notify ...

2. *in Article 1(d), add at the end:* This paragraph shall not apply so as to permit the performance in public for profit-making purposes, otherwise than on payment of equitable remuneration, fixed, in the absence of agreement, by competent authority, of broadcasts of literary and artistic works.

3. *Article 1(e) should be deleted, or alternatively it should read:* reserve the right, exclusively for teaching purposes, to provide for the grant of licenses to reproduce literary and artistic works on payment of equitable remuneration, fixed, in the absence of agreement, by competent authority; *and a new Article 1A should be added:* Copies of works made in a developing country in accordance with a reservation made by that country under Article 1(e) shall not be exported to any other country and shall, if imported into another country of the Union, whether developing or not, be treated as infringing copies.

4. *as a new Article 1B add:* (1) Any country which has made a declaration or notification under Article 26(1) in respect of territories for whose external relations that country is responsible may [with the prior agreement of the Executive Committee of the Berne Union], notify the Director General that the provisions of this Protocol shall apply to all or part of those territories and such notification shall specify which of the reservations permitted by this Protocol shall apply in respect of all or part of those territories. (2) A notification made under this Article shall take effect [three months] after its receipt by the Director General.

S/150 CZECHOSLOVAKIA, HUNGARY, NETHERLANDS, POLAND, SOVIET UNION. WIPO Convention. *The following comments are made on Articles 4 and 7 of document S/10:*

1. In order to avoid any impression of possible discrimination among countries, and in order to simplify the structure of the proposed new Organization, it is proposed:

(a) to designate by the simple word "member" any member, whether it is a member of a Union or not, and—where in the Convention there are differences as to the rights and obligations of members or non-members—to speak about "members of the Unions" and "not members of Unions."

(b) not to institute a separate Conference, but to provide that countries not members of the Unions are also members of the General Assembly, *except that* they will not participate in any decision—that is, will *not* have a right to vote—in any of the matters enumerated in Article 6, paragraph (2). The General Assembly would also deal with the matters provided for in Article 7, paragraph (2), and in these matters —but only in these matters—countries not members of the Unions will also vote.

2. To the extent the above principles are accepted by Main Committee V, detailed proposals will be made as to the necessary amendments, unless the matter could be sent to the Drafting Committee of Main Committee V.

S/151 GREECE, PORTUGAL. Berne Convention. *In document S/1 make the following changes:*

in Article 6bis *substitute one of the following variants:*

Variant A: paragraph (2) should read: After the death of the author, those rights shall be maintained by the persons or institutions authorized by the national legislation of the country in which the protection is claimed.

Variant B: maintain paragraph (2) (document S/1) and, as paragraph (3), add: To the extent that the national legislation of the countries of the Union shall permit, those rights shall, after the expiry of the economic rights, be recognized and exercised by the persons or institutions authorized by that legislation. It shall be a matter for the national legislations of the countries of the Union to establish the conditions under which the rights provided for in the present paragraph shall be exercised; *and renumber paragraph (3) as paragraph (4);*

in Article 7, paragraph (5) should be replaced by the corresponding paragraph of the Brussels text.

S/152 PORTUGAL. Berne Convention. *In document S/1 make the following changes:*

Article 4(6) should read: The maker of a cinematographic work means the person or body corporate who has been entrusted with the organization of the means essential to the making of the work, whether from the technical or the financial aspect.

Article 7(2) should read: The term of protection for cinematographic works shall be fixed by national legislation in such a way as to allow a fair return on the investment made. This term shall begin from the first publication, public performance or visual broadcast, or, if these take place more than five years after the making of the work, from the making.

in Article 7(4), the words "twenty-five" should be replaced by: ten.

S/153 AUSTRIA. WIPO Convention. *Article 19(3) (document S/10) should read:* (a) Once all the States members of the Paris Union have become Members of the Organization, the rights, obligations, and property of the Bureau of that Union shall devolve on the Organization. (b) Once all the States members of the Berne Union have become Members of the Organization, the rights, obligations and property of the Bureau of that Union shall devolve on the Organization.

S/154 AUSTRIA. WIPO Convention. *In Article 9 (document S/10), make the following changes:*

1. *paragraph (1) should read:* The administrative tasks concerning the Organization (especially the Secretariat of various organs of the Organization) are accomplished by the International Bureau.

2. *at the end of paragraph (1), insert as paragraph (2):* The International Bureau is the continuation of the International Bureaux, established by the Conventions of Paris and Berne and later united. It is directed by a Director General, assisted by one or more Deputy Directors General (or: It consists of a Director General, two or more Deputy Directors General, and other staff members as required).

3. *paragraph (5) should read:* The Director General, or a staff member designated by him, shall normally participate without the right to vote, in all meetings of the General Assembly, the Conference, the Coordination Committee, and any other committee or working group of the Organization.

S/155 ARGENTINA, BRAZIL, CHILE, COLOMBIA, ECUADOR, MEXICO, PERU, SPAIN, URUGUAY, VENEZUELA. WIPO Convention. *Article 6(1) (iv) (document S/10) should read:* determine the languages which shall be the working languages of the Secretariat, taking into consideration the practice of the United Nations in this respect.

S/156 ISRAEL. WIPO Convention. *In Article 11(3) (document S/10), after the words "representatives of," insert:* all.

S/157 ISRAEL. WIPO Convention. *Article 6 (document S/10) should read:*

(1) The General Assembly shall consist of the States party to this Convention whether or not members of any of the Unions.

(2) The General Assembly shall:

(i) discuss matters of general interest in the field of intellectual property and may adopt resolutions and recommendations relating to such matters;

(ii) act on the reports and activities of the Coordination Committee;

(iii) appoint the Director General upon nomination by the Coordination Committee;

(iv) pronounce upon the arrangements proposed by the Director General concerning the administration of the conventions, agreements and treaties referred to in Article 3(2)(ii) and (iii);

(v) adopt the triennial budget of the Organization as such and within the limits thereof establish triennial programs of legal-technical assistance;

(vi) decide upon the adoption of amendments to this Convention as provided in Article 13;

(vii) determine the languages which, in addition to English and French, shall be the working languages of the Secretariat;

(viii) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to the meetings as observers;

(ix) exercise such other functions as are allocated to it in accordance with this Convention.

(3)(a) The Government of each State shall be represented by one or more delegates who may be assisted by alternate delegates, advisors and experts.

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

(c) Each State shall have one vote in the General Assembly.

(d) Abstentions shall not be considered as votes.

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

(4)(a) Subject to the provisions of the following subparagraphs and Article 13(2), the General Assembly shall make the decision by a simple majority of the votes cast.

(b) The following shall require at least two-thirds of the votes cast.

(i) invitations addressed to a State to become a Member of the Organization (Article 4(3));

(ii) decisions concerning the transfer of the headquarters of the Organization (Article 5);

(iii) invitations addressed to States not Members of the Organization and to intergovernmental and international non-governmental organizations to attend meetings as observers (paragraph (2)(ix));

(iv) decisions on the budget which would increase the financial obligation of the Members of the Organization.

(c) The confirmation of arrangements concerning the administration of conventions, agreements and treaties, referred to in Article 3(2)(ii) and (iii), shall require at least three-fourths of the votes cast.

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

(5) All decisions of the Organization, other than those which are of a procedural nature or are not within the competence of any of the Unions, shall require the due concurrent agreement of the Unions.

(6)(a) The General Assembly shall meet once in every third calendar year in ordinary session, upon convocation by the Director General, preferably during the same period and at the same place as the Assemblies of the Paris and Berne Unions.

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

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

(7) The General Assembly shall, subject to this Convention, adopt its own rules of procedure.

S/158 ISRAEL. WIPO Convention. *Article 8(1)(c) (document S/10) should read:* Whenever the Coordination Committee considers matters of direct interest to the Organization as such, it shall further include one-fourth of those States party to this Convention, which are not members of the Unions, with the right, subject to paragraph (6)(b), to vote and otherwise participate equally with other members of the Coordination Committee in the work thereof. Such one-fourth shall be elected at each ordinary session of the general Assembly by all States party to this Convention, which are not members of the Unions.

S/159 SECRETARIAT. WIPO Convention. *The following list shows the numbers of these documents which propose amendments to document S/10 and which were filed prior to June 20, 1967:*

Preamble:	85, 113, 119, 128
Article 1:	120
Article 2:	117, 121, 122
Article 3:	116, 123, 129, 131, 138
Article 4:	96, 132, 150
Article 5:	—
Article 6:	84, 93, 93 Add., 96 ,102, 118, 124, 133, 141, 155, 157
Article 7:	84, 93, 93 Add., 96, 102, 125, 145
Article 8:	84, 93, 93 Add., 96, 103, 126, 134, 142, 158
Article 9:	121, 143, 154
Article 10:	93, 93 Add.
Article 11:	96, 135, 156
Article 12:	—
Article 13:	—
Article 14:	—
Article 15:	—
Article 16:	96
Article 17:	—
Article 18:	—
Article 19:	153

S/160 CONGO (BRAZZAVILLE), CONGO (KINSHASA), GABON, IVORY COAST, INDIA, MADAGASCAR, MOROCCO, NIGER, SENEGAL, TUNISIA. Berne Convention. Annex II of document S/1 should read:

Article 1: Any developing country which ratifies or accedes to the Act to which this Protocol is annexed and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided in the Act, may, by a notification deposited with the..., at the time of ratification or accession, comprising Article 20*bis* of the Act, declare that it will, for a period of the first ten years during which it is a party thereto, avail itself of any or all of the following reservations:

(a) Substitute for Article 8 of this Convention the following provisions:

(i) Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works during the entire term of their right over the original work;

(ii) Nevertheless it shall be a matter for legislation in countries of the Union to provide that the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of 10 years from the date of the first publication of the original work, by publishing or causing to be published in the country of the Union, a translation in the language for which protection is to be claimed in that country of the Union;

(iii) If, after the expiration of a period, fixed by domestic legislation, from the date of the first publication of a literary, scientific or artistic work, a translation of such work has not been published into the national or official or regional language or languages of that country in that country, by the owner of the right of translation or with his authorization, any national of such country may obtain a non-exclusive license from the competent authority to translate the work and publish the work so translated in any of the national or official or regional languages in which it has not been published; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and failed to receive, within a reasonable time authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of a translation in such language in that country are out of print.

(iv) If the owner of the right of translation cannot be found, then the applicant for a license shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the government of that country. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

(v) Due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms to the standards of the country enacting the legislation.

(vi) The original title and the name of the author of the work shall be printed on all copies of the published translation. The license shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union if one of the national or official or regional languages of such other country is the same language as that into which the work has been so translated, and if the domestic law in such other country makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements. The license shall not be transferred by the licensee except in accordance with the provisions of the domestic law.

(vii) The license shall not be granted when the author has withdrawn from circulation all copies of the work.

(viii) Should, however, the author avail himself of the right under paragraph (ii) above during the term of ten years from the date of first publication, the license shall be withdrawn from the date on which the author publishes or causes to be published his translation in the country which has granted the license, provided, however, that any copies of the translation already made before the license is withdrawn may continue to be sold until the edition is exhausted.

(ix) Should, however, the author not avail himself of the right under paragraph (ii) above during the said term of ten years, compensation shall cease to be payable on the expiry of that term.

(b) substitute for the term of 50 years referred to in paragraphs (1), (2) and (3) of Article 7 of this Convention a shorter term, being not less than twenty-five years and substitute for the term of twenty-five years referred to in paragraph (4) of the said Article a shorter term being not less than ten years;

(Alternative: Adopt Article 7 of the Rome Text for above.)

(c) reserve the right to apply the provisions of paragraph (2) of Article 9 of the Convention as revised at Brussels in 1948;

(d) substitute for paragraphs (1) and (2) of Article 11*bis* of this Convention the provisions of Article 11*bis* of the Convention as revised at Rome in 1928;

(e) reserve the right to restrict the protection of literary and artistic works and, unless it is primarily for educational, scientific or scholastic purposes, on the condition that the authors shall be entitled to receive equitable remuneration. Such remuneration shall, in the absence of any agreement between the parties, be fixed by the authority designated by domestic legislation;

(f) reserve the right to authorize the press, to publish as part of the journal or magazine but not otherwise in serial form or abridgement or translation, literary and artistic works, subject to the authors thereof receiving such equitable remuneration as shall be fixed by the authority designated by domestic legislation.

Article 2: A country which no longer needs to maintain any or all the reservations made in accordance with Article 1 shall withdraw such reservation or reservations by notification deposited with the...

Article 3: A country, which has made reservations in accordance with Article 1, and which at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to withdraw the reservations under Article 1 above, may continue to maintain any or all the reservations until it accedes to the Act adopted by the next revision conference.

S/161 ITALY. Berne Convention. *The following changes are proposed in document S/1:*

in Article 2, paragraph (1) should be replaced by the corresponding paragraph of the Brussels text with the following changes: the words "works produced by a process analogous to cinematography" should be replaced by: works expressed by means of a process analogous to cinematography; *the words "works produced by a process analogous to photography," should be replaced by:* works expressed by means of a process analogous to photography.

delete Article 2(2).

retain Article 2(2) of the Brussels text and, in the second sentence, the words "translations of official texts of a legislative, administrative and legal nature" should be replaced by: official texts of a legislative, administrative and legal nature and to translations thereof.

retain Article 2(5) of the Brussels text and at the end add: if the laws of the country in question admit such special protection, or otherwise under the copyright law.

S/162 ITALY. Berne Convention. *In Annex II of document S/1, make the following changes:*

in Article 1(a): the words "seven years" should be replaced by: ten years.

in the fourth sub-paragraph, the words "if one of the national languages of such other country" should be replaced by: only if that country is a developing country and one of its national languages.

in Article 1(b), the words "less than twenty-five years" should be replaced by: less than thirty-years; *and the words "ten years" should be replaced by:* fifteen years.

Article 1(e) should read: reserve the right to restrict the protection of literary and artistic works when such works are to be used exclusively by educational or scholastic institutions within the framework of their teaching activities; such measures shall in no case adversely affect the author's copyright under Article 6*bis* or the author's right to secure a fair remuneration established by the competent authority instead of the exclusive right which might be claimed on the basis of the provisions of the Convention.

S/163 SPAIN. Paris Convention. *The following change is proposed in, and the following comment is made on, Article 13*quater *(document S/3):*

*in paragraph (3), between items (i) and (ii), insert item (i-*bis*):* Any fees collected for claiming the right of priority provided by the present Convention.

Explanation: The Spanish Delegation considers that, when the financial provisions of the Paris Convention are being revised, it is permissible to mention priority fees as one of the possible sources of revenue for the International Bureau. Questions concerning the amount of the fee, the procedure for collecting it and the date of its introduction would remain open for the moment. It should be pointed out, however, that in the opinion of the Spanish Delegation the amount should be approximately four Swiss francs per priority application, that the fees should be collected by means of the sale of BIRPI stamps by national industrial property offices or by patent agents to the applicants, and that the date of application should be determined as soon as possible. In any case, the fee would be paid by the foreign applicants and not by the national offices. It will not conflict with the principle of assimilation, as the fee would benefit the International Bureau and not a national authority.

S/164 GERMANY (FED. REP.). WIPO Convention. *In Article 6(3)(i), Article 7(3)(g), and Article 8(5)(c) of document S/10, the text should read:* a delegation may represent and vote in the name of its own country only.

S/165 GERMANY (FED. REP.). WIPO Convention. *In Article 12 (document S/10), as paragraph (3) add:* The approval of the Coordination Committee as foreseen in paragraphs (1) and (2) above shall require a two-thirds majority.

S/166 SWITZERLAND. WIPO Convention. *The following changes are proposed in, and the following comments are made on, document S/10:*

in Article 8(4): (1) *delete the words "at least."* (2) *as a subparagraph add:* The Coordination Committee shall meet in extraordinary session upon convocation by the Director General or at the request of one-quarter of its members.

Explanation: There seems to be no reason why the Coordination Committee should meet more frequently than the Executive Committees of Paris or Berne (see Article 13*bis*(7), Paris Convention, document S/3).

S/167 SWITZERLAND. WIPO Convention. *The following changes are proposed in, and the following comments are made on, document S/10:*

in Article 10:

(1) *in paragraph (3)(b), the words "the interest each of them has in such income" should be replaced by:* the share of each of them in the common expenses.

Explanation: The phrase "in proportion to the interest of each of them" is too vague.

(2) *in paragraph (5)(a), after the words "exercise its vote", insert:* in this organ.

S/168 ITALY. Berne Convention. *Article 4(6) (document S/1) should read:* The maker of a cinematographic work is presumed to be the person indicated as such in the credit titles of the film.

S/169 UNITED STATES. WIPO Convention. *The following changes are proposed in Article 7 (document S/10):*

in paragraph 3(c), the words " a simple majority" should be replaced by: majority of two-thirds.

in paragraphs 3(d) and 3(e), before the words "two-thirds," insert: a majority of.

in paragraph (2)(a), delete the words "resolutions and" and insert, after the word "adopt", the words: by a majority of two-thirds of the votes cast.

S/170 MADAGASCAR, SENEGAL. Paris and WIPO Conventions. *The following memorandum is submitted to Main Committees IV and V:*

1. The Malagasy Delegation in Main Committee IV proposed during the discussion of document S/3 amendments to Article 13 (Assembly) of the Paris Convention (document S/37). These amendments aimed at giving a plurality of member countries grouped together under the terms of an international agreement in a single industrial property office the possibility of entrusting their representation and right to vote to a single delegation (of a State or of OAMPI as such).

2. After preliminary discussion in the Main Committee showing divergent views, a Working Group was constituted which met on June 15 and 16 to explore possible solutions.

3. Some members of the Working Group, especially the Delegates of Madagascar and Senegal and the Observer from OAMPI, pointed out that the very reasons which had led to the establishment of OAMPI necessitated a concentration of effort with respect to representation and right to vote in the organs of the Paris Union.

4. Other members of the Working Group expressed concern that such an arrangement might set a precedent introducing block proxy voting.

5. However, it appears that there is at least one precedent on this matter, namely Rules 640-642 of the General Regulations annexed to the International Telecommunication Convention.

(a) *Rule 640* [1]—In general, the Members of the Union must endeavor to send their own delegation to the conferences of the Union. If, however, for exceptional reasons a Member cannot send its own delegation, it may give to the delegation of another Member the power to vote and sign in its name. This delegation of powers must be set out in a document signed by one of the authorities mentioned in Rules 629 or 630, as the case may be.

[1] Unofficial translation—original text not available.

(b) *Rule 641*[1]—A delegation having the right to vote may empower another delegation, which also has the right to vote, to exercise this right at one or more meetings in which the first delegation is unable to participate. In that case, the first delegation must inform the President of the Conference in due time and in writing.

(c) *Rule 642*[1]—A delegation may not exercise more than one proxy vote in either of the cases provided for in Rules 640 and 641.

6. It appears that the conditions for the implementation of the amendments proposed by Madagascar (that is members of the Paris Union, grouped together in a single office under an international agreement) may be assimilated to the "exceptional reasons" referred to but not defined in Rules 640 to 642 of the above-mentioned General Regulations.

7. The discussion led to the following conclusions:

(a) Representation for the *discussions* and representation for the *vote* have to be distinguished.

(b) As to representation for the *discussions*, the Working Group agreed in general that the delegation of one of the member States of OAMPI or of OAMPI as such should have the possibility to represent member States of OAMPI during the discussion in the Assembly of the Paris Union.

(c) As to representation for the *vote*, most members of the Working Group favored the above-mentioned solution of the General Regulations annexed to the International Telecommunication Convention, that is the right of a member State of the Union—not an official of an international organization—to vote for one other member State of the Union, in the conditions defined by the amendments proposed by Madagascar. However, *two delegations* reserved their opinion on this compromise proposal.

S/171 UNITED KINGDOM. Berne Convention. *The following changes are proposed in the provisions as they appear in document S/1:*

Article 2(7) should read: The protection of this Convention shall not apply to the facts constituting news of the day or having the character of mere news items.

*in Article 11*bis*(3), the first two sentences should be replaced by:* In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to reproduce by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the conditions under which ephemeral recordings may be made by or at the request of a broadcasting organization for use in its own broadcasts, when, for technical or other reasons, the broadcast cannot be made at the time of the performance of the work.

in Article 13(1), the words "authorizing the recording of such works by instruments capable of reproducing them mechanically" should be replaced by: of authorizing the reproduction of such works including any words intended by their author to be performed with them, on instruments by means of which they can be performed.

in Article 17, the words "to permit" should be deleted and a new paragraph inserted: Each country of the Union is free to enact such legislation as is necessary to prevent or deal with any abuse, by persons or organizations exercising one or more of the rights in a substantial number of different copyright works, of the monopoly position they enjoy.

S/172 GERMANY (FED. REP.). WIPO Convention. *In Article 15(1) (document S/10), the words "any Member State" should be replaced by:* Any party to the present Convention which is not a party to any of the conventions, agreements or treaties, the administrative tasks or the administration of which is entrusted to the Organization.

[1] Unofficial translation—original text not available.

S/173 FRANCE. WIPO Convention. *In Article 7(2)(a) (document S/10), items (i), (v), and a new item (vi) should read:* (i) discuss matters of general interest relating to the promotion of the protection of intellectual property throughout the world and may adopt resolutions and recommendations relating to such matters; (v) express its opinion on the proposals for amending Article 7 of the present Convention; (vi) appoint, from among the Associate Members of the Organization, its representatives in the Coordination Committee when the latter considers matters relating to the agenda and the budget of the Conference and to the program of legal-technical assistance of the Organization.

S/174 FRANCE. WIPO Convention. *In Article 13 (document S/10), make the following changes:*

in paragraph (1), the word "Conference" should be replaced by: General Assembly, and by the Conference when the proposals for amendment concern Article 7.

in paragraph (2), the word "Conference" should be replaced by: General Assembly; *and the words "of their respective Conventions" should be replaced by:* of the Paris and Berne Conventions, and by the Conference regarding proposals for the amendment of Article 7.

in paragraph (3), the word "when" should be replaced by: one month after.

S/175 FRANCE. WIPO Convention. *The following comment is made on, and the following proposal is made for, Article 11(4) (document S/10):*

Comment: It would be advisable to distinguish between the agreements referred to in paragraph (3) and the Headquarters Agreement which, in the view of the French Government, ought, by reason of its importance, to be approved by the General Assembly, as suggested in the amendments relating to Article 6(2).

paragraph (4) should read, therefore: (a) The Director General shall be authorized to negotiate, in cooperation with the Coordination Committee, and to conclude, with the approval of the General Assembly, as provided in Article 6(2), the Headquarters Agreement referred to in paragraph (2) of this Article. (b) The Director General shall be authorized to negotiate and conclude, with the approval of the Coordination Committee, the agreements referred to in paragraph (3).

S/176 FRANCE. Berne Convention. *In the beginning of Article 1 (Annex II of document S/1), before the words "may by a notification," substitute:* Any developing country which, as an independent and sovereign State, has acceded to the Union or has confirmed its accession thereto since June 26, 1948.

S/177 FRANCE. Berne Convention. *The following changes are proposed in Annex II to document S/1:*

in Article 1(a), the words "seven years" should be replaced by: ten years.

in Article 1(b), the words "less than twenty-five years" should be replaced by: less than thirty years.

S/178 FRANCE. Berne Convention. *In Annex II to document S/1, Article 1(e) should read:* reserve the right to restrict, to the extent justified by the purpose, the protection of literary and artistic works when their utilization is intended for the exclusive use of scholastic or educational institutions and vocational training centres in connection with their pedagogical activities.

S/179 MADAGASCAR, SENEGAL. Paris and WIPO Conventions. *The following Memorandum is submitted to Main Committees IV and V.* [*Editor's Note:* see also documents S/37 and S/170.]

1. The Delegation of Madagascar withdraws its proposed amendments contained in document S/37.

2. The Delegations of Madagascar and Senegal propose that an additional item (h) should be inserted in Article 13 (Assembly), paragraph (3) (document S/3) to read as follows:

"(h) (i) the member States of one or more Unions grouped together under the terms of an international agreement in a common Office possessing for each of them the character of a national service, may, notwithstanding Article 13(3)(g), be jointly represented during discussions either by one of their number or by the common Office itself;

(ii) in general, the members of the Union referred to in item (i) must endeavor to send their own delegation to the conferences of the Union. If, however, for exceptional reasons a Member cannot send its own delegation, it may give to the delegation of another Member the power to vote and sign in its name. This delegation of powers must be set out in a document signed by the Head of State or Head of Government or the Minister of Foreign Affairs in the case of conferences of plenipotentiaries, and by the same authorities or the competent Minister in the case of administrative conferences;

(iii) a delegation having the right to vote may empower another delegation, which also has the right to vote, to exercise this right at one or more meetings in which the first delegation is unable to participate. In that case, the first delegation must inform the President of the Conference in due time and in writing;

(iv) a delegation may not exercise more than one proxy in either of the cases provided for in items (ii) and (iii) above."

3. The Delegations of Madagascar and Senegal draw the attention of the Conference to the previous wording proposed for items (ii), (iii) and (iv), which follows the wording of Rules 629, 630, 640, 641 and 642 of the International Telecommunication Convention (General Regulations).

S/180 DRAFTING COMMITTEE OF MAIN COMMITTEE IV. Paris and Berne Conventions. *The following draft of the administrative and final clauses (documents S/3 and S/9) was prepared by the Drafting Committee of Main Committee IV at its meetings of June 19 and 20. The articles in documents S/3 and S/9 not finally dealt with by the Main Committee were not considered in the draft.*

PARIS CONVENTION *Document S/3*	BERNE CONVENTION *Document S/9*
Article 13: Assembly	*Article 21: Assembly*
(1)(a): *Replace "the countries of the Union" by: those* countries of the Union.	(1)(a): *same as opposite*
(1)(b): *no change*	(1)(b): *no change*
(1)(c): *no change*	(1)(c): *no change*
(2)(a)(i): *no change*	(2)(a)(i): *no change*
(2)(a)(ii): *add:* due account being taken of any comments made by those countries of the Union which are not bound by Articles 13 to 13*quinquies*	(2)(a)(ii): *same as opposite except last words read:* Articles 21 to 23.
(2)(a)(iii): *no change*	(2)(a)(iii): *no change*
(2)(a)(iii*bis*) *should read:* adopt the financial regulations of the Union;	(2)(a)(iii*bis*): *same as opposite*
(2)(a)(iv): *no change*	(2)(a)(iv): *no change*
(2)(a)(v): *no change*	(2)(a)(v): *no change*
(2)(a)(vi) *should read:* review and approve reports and activities of the Director General concerning the Union and give him any necessary instructions concerning matters within the competence of the Union;	(2)(a)(vi): *same as opposite*
(2)(a)(vii): *no change*	(2)(a)(vii): *no change*
(2)(a)(viii): *no change*	(2)(a)(viii): *no change*
(2)(a)(ix): *no change*	(2)(a)(ix): *no change*
(2)(a)(x): *no change*	(2)(a)(x): *no change*
(2)(a)(xi) *should read:* exercise such other functions as are allocated to it by this Convention.	(2)(a)(xi): *same as opposite*
(2)(a)(xii) *should read:* subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.	(2)(a)(xii): *same as opposite*
(2)(b) *should read:* In exercising its functions with respect to matters which are of interest also to other Unions within the meaning of Article (2)(vii) of the Convention establishing the Organization, the Assembly shall make a decision after having heard the advice of the Coordination Committee of the Organization.	(2)(b): *same as opposite*
(3)(a): *no change*	(3)(a): *no change*
(3)(b) *should read:* One-half of the countries members of the Assembly shall constitute a quorum.	(3)(b): *same as opposite*
(3)(c) *should read:* If less than one-half but at least one-third of the countries members of the Assembly are represented in any session, the decision of the Assembly shall be provisional. Any provisional decision shall be communicated in writing to each country member of the Assembly which was not represented in the session. The communication shall be accompanied by an invitation that such country pronounce itself within a period of four months from the date of the communication. If, within this period, together with the written pronouncements received by the International Bureau, the required quorum and majority are attained, the decision shall be final.	(3)(c): *same as opposite*
(3)(d) *should read:* Decisions of the Assembly shall require at least two-thirds of the votes cast.	(3)(d): *same as opposite*
(3)(e) *should read:* Abstentions shall not be considered as votes.	(3)(e): *same as opposite*
(3)(f): *Reserved. See documents S/35 and S/37*	(3)(f): *same as opposite but without the reservation for S/37*
(4)(a): *Replace "preferably" by:* in the absence of exceptional circumstances.	(4)(a): *same as opposite*
(4)(b): *Replace "countries constituting the Assembly" by:* countries members of the Assembly.	(4)(b): *same as opposite*
(5): *no change*	(5): *same as opposite*
*Article 13*bis*: Executive Committee*	*Article 21*bis*: Executive Committee*

PARIS CONVENTION *Document S/3*	BERNE CONVENTION *Document S/9*
(1): *no change*	(1): *no change*
(2)(a): *no change*	(2)(a): *no change*
(2)(b): *no change*	(2)(b): *no change*
(2)(c): *no change*	(2)(c): *no change*
(3): *no change*	(3): *no change*
(4): 1. *Replace "a balanced" by:* an equitable	(4): *same as opposite*
2. *Replace "Special Unions" by:* Special Agreements	
(5)(a): *no change*	(5)(a): *no change*
(5)(b): *no change*	(5)(b): *no change*
(6)(a)(i): *no change*	(6)(a)(i): *no change*
(6)(a)(ii): *no change*	(6)(a)(ii): *no change*
(6)(a)(iii): *no change*	(6)(a)(iii): *no change*
(6)(a)(iv): *no change*	(6)(a)(iv): *no change*
(6)(a)(v): *no change*	(6)(a)(v): *no change*
(6)(a)(vi) *should read:* perform such other functions as are allocated to it by this Convention.	(6)(a)(vi): *same as opposite*
(6)(b) *should read:* In exercising its functions with respect to matters which are of interest also to other Unions within the meaning of Article 2(vii) of the Convention establishing the Organization, the Executive Committee shall make a decision after having heard the advice of the Coordination Committee of the Organization.	(6)(b): *same as opposite*
(7)(a): *no change*	(7)(a): *no change*
(7)(b) *should read:* The Executive Committee shall meet in extraordinary session, upon convocation of the Director General, at his own initiative, or at the request of its Chairman or one-fourth of its members.	(7)(b): *same as opposite*
(8)(a): *no change*	(8)(a): *no change*
(8)(b): *no change*	(8)(b): *no change*
(8)(c): *no change*	(8)(c): *no change*
(8)(d): *no change*	(8)(d): *no change*
(8)(e): *no change*	(8)(e): *no change*
(9): *no change*	(9): *no change*
(10): *no change*	(10): *no change*
*Article 13*ter*: International Bureau*	*Article 21*ter*: International Bureau*
(1)(a): *no change*	(1)(a): *no change*
(1)(b): *no change*	(1)(b): *no change*
(1)(c): *no change*	(1)(c): *no change*
(2): *no change*	(2): *no change*
(3): *no change*	(3): *no change*
(4): *no change*	(4): *no change*
(5): *no change*	(5): *no change*
(6): *no change*	(6): *no change*
(7) *should read:* The Director General or persons designated by him shall participate in the meetings of the various organs of the Union, but without the right to vote.	(7): *same as opposite*
(8)(a): *no change*	(8)(a): *no change*
(8)(a*bis*) *should read:* The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.	(8)(a*bis*): *same as opposite*
(8)(b): *no change*	(8)(b): *no change*
(9): *no change*	(9): *no change*
*Article 13*quater*: Finances*	*Article 22: Finances*
(1)(a): *no change*	(1)(a): *no change*
(1)(b) *should read:* The budget of the Union shall include the income and expenses proper to the Union itself, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.	(1)(b): *same as opposite*
(1)(c) *should read:* Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.	(1)(c): *same as opposite*
(2) *should read:* The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.	(2): *same as opposite*
(3): *no change*	(3): *no change*
(4)(a): *no change*	(4)(a): *no change*
(4)(b): *no change*	(4)(b): *no change*
(4)(c): *Replace: "The contribution" by:* the annual contribution.	(4)(c): *same as opposite*
(4)(d): *no change*	(4)(d): *no change*
(4)(e): *Omit the last two sentences*	(4)(e): *same as opposite*
(4)(f) *should read:* If the budget is not adopted before the beginning of a new financial period, it shall be carried over as provided in the Financial Regulations.	(4)(f): *same as opposite*
(5): *no change*	(5): *no change*
(6)(a) *should read:* The Union shall have a Working Capital Fund which shall be constituted by a single payment made by each of the countries of the Union. If the fund is reduced to an unreasonable level, an increase shall be decided by the Assembly.	(6)(a): *same as opposite*
(6)(b) *should read:* The amount of the payment of each country to the fund or to an increase shall be a proportion of the contribution of that country for the year in which the fund is established or the increase made.	(6)(b): *same as opposite*
(6)(c): *no change*	(6)(c): *no change*
(7)(a): *no change*	(7)(a): *no change*

PARIS CONVENTION
Document S/3

(7)(b): *no change*

(8): *no change*

*Article 13*quinquies: *Amendments to Articles 13 to 13*quinquies

1) *should read:* Proposals for amendment of Articles 13, 13*bis*, 13*ter*, 13*quater*, and the present Article, may be initiated by any country member of the Assembly, the Executive Committee, or the Director General, and shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2): *Replace "the unanimity" by:* at least four-fifths.

(3): *no change*

(4): *Omit*

*Article 14: Revision of the provisions of the Convention other than Articles 13 to 13*quinquies

(1): *no change*

(2): *Reserved (S/94)*

(3): *Reserved (S/106)*

Article 15: Special agreements
No change

Article 16: Ratification and accession by countries of the Union; Entry into force

[Discussion not completed by the Main Committee. But already now the Drafting Committee proposes the following changes in the text, pursuant to decisions taken in the Main Committee]:

(2)(a) *Replace "one month" by:* three months; *and replace "fifth such instrument" by:* tenth such instrument.

(2)(b) *Replace "one month" by:* three months.

(3) *Replace "one month" by:* three months.

*Article 16*bis: *Accession by countries outside the Union; Entry into force*

[Discussion not completed by the Main Committee. But already now the Drafting Committee proposes the following changes in the text, pursuant to decisions taken in the Main Committee]:

(2)(a): 1. *Introduce after "enter into force":* unless a subsequent date has been indicated in the instrument of accession. 2. *Add the following sentence at the end:* If a country indicates a subsequent date in its instrument of accession, the present Act shall enter into force with respect to that country on the date thus indicated.

(2)(b): *Replace "one month" by:* three months; *and add:* unless a subsequent date has been indicated in the instrument of accession. In the latter case, the present Article shall enter into force with respect to that country on the date thus indicated.

(3) *Replace "one month" by:* three months.

*Article 16*ter: *No reservations*
Title: "Effect of Ratification or Accession."

Text: *no change*

*Article 16*quater: *Accession to earlier Acts*
Reserved

*Article 16*quinquies: *Territories*

(1): *no change*

(2): *no change*

(3)(a): *no change except replace "one month" by:* three months.

(3)(b): *no change*

Article 17: Implementation by Domestic Law

Title: "Implementation of the Convention."

(1): *no change*

(2): *no change*

*Article 17*bis: *Denunciation*

(1): *no change*

(2): *no change*

(3): *no change*

(4): *no change*

Article 18: Application of Earlier Acts
Reserved

Article 19: Signature, etc.

(1)(a): *no change*

(1)(b): *no change, except replace "authoritative" by:* official.

(1)(c): *no change*

(2): *no change*

(3): *no change*

(4): *no change, except omit:* as soon as possible.

(5): *no change, except after the words "any declarations included in such instruments": insert:* or made pursuant to Article 16(1)(c)

Article 20: Transitional provisions

(1): *no change*

(2): *no change*

(3): *no change*

(4) *should read:* Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property of the Bureau of the Union shall devolve on the International Bureau.

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(7)(b): *no change*

(8): *no change*

Article 23: Amendments to Articles 21 to 23

(1): *same as opposite*

(2): *same as opposite*

(3): *no change*

(4): *Omit*

Article 24: Revision of the provisions of the Convention other than Articles 21 to 23

(1): *no change*

(2): *same as opposite*

(3): *Reserved (S/97)*

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Articles 25 to 32 were not considered by the Drafting Committee as they had not yet been discussed by the Main Committee.

S/181 GREECE. Berne Convention. *The following observations are made on the proposals as they appear in Annex II to document S/1:*

1. The Greek Delegation considers that the provisions recommended in favor of developing countries are granted only to the detriment of the creators of intellectual works when cultural advancement is in the first instance an obligation incumbent upon States.

It is possible that the facilities for making use of foreign works are liable to have harmful effects on the development of indigenous cultural life in the developing countries. Moreover, the benefit deriving from the non-payment of royalties would accrue in the first instance to persons instrumental in the distribution of intellectual works.

Nevertheless, because Greece does not wish to put difficulties in the way of the States that are in favor of the Protocol, it will re-examine the proposed provisions.

2. Greece considers that recognition of the existence of the right to invoke the Protocol should be accorded at the request of an interested country after the decision of an organ of the future IPO or, should that Organization not be established, of a specially established organ of the Berne Convention. To ensure the independence of that organ, the latter might possibly consist of experts coming in part from the judiciaries of the Member States and enjoying a certain permanence. In consequence of this proposal Greece considers that it might be possible to agree that the Protocol could be invoked at any time.

3. In regard to paragraph (a) of Article 1, Greece proposes that the period should be increased from two months to six months.

4. Greece also proposes that works covered by the Protocol should bear an indication that they have been published in conformity with the Protocol and should state the country and year of publication and the name of the publisher. This would make it possible to control those publications in a country where the Protocol was not applied. When a work did not bear the above indication, the Protocol would not be applied even in a country enjoying its privileges.

5. In regard to paragraph (d) of Article 1, Greece considers that the facilities afforded for the exploitation of cultural works are superfluous and that the facilities provided by paragraph (e) are sufficient.

Greece therefore proposes the deletion of paragraph (d).

6. In regard to paragraph (e), Greece considers: firstly that paragraph (2) of Article 10 of the Convention should be repeated, and secondly that a restrictive definition should be given of the facilities accorded to States that would have the right to avail themselves of the Protocol.

S/182 JAPAN. WIPO Convention. *The following proposal and comments are made: on document S/10: renumber Article 18 and 19 and, as Article 18, add:* Any dispute between two or more member States of the Organization concerning the interpretation and application of this Convention not settled by negotiation, or by the General Assembly shall be brought before the International Court of Justice for determination by it, unless the member States concerned agree on some other method of settlement. The member State requesting that the dispute should be brought before the Court shall inform the International Bureau; the Bureau shall bring the matter to the attention of the other member States. *Explanation:* As in many constitutional instruments of the UN Specialized Agencies, it is desirable that there be in the Convention an article concerning the settlement of disputes.

S/183 GREECE. Berne Convention. *In Article 6*bis *(document S/1), as a new paragraph, add:* Literary and artistic works over which economic rights do not exist shall be protected against all use in a manner prejudicial to the cultural heritage of mankind. It shall be a matter for national legislation in the countries of the Union to establish the organizations qualified to exercise these rights and the conditions under which they shall be exercised.

S/184 SWEDEN. Paris Convention. *The following changes are proposed in Article 13 (document S/3):*

in paragraph (2) (a) (viii), the words "the Assembly" should be replaced by: the Union.

as paragraph (3) (h), add: Member States of the Union that are not members of the Assembly shall be admitted to its meetings as Observers.

S/185 WORKING GROUP OF MAIN COMMITTEE I. Berne Convention. *Article 10(2) (document S/1) should read:* It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications [broadcasts or recordings] for teaching, provided such utilization is compatible with fair practice.

S/186 SECRETARIAT. WIPO Convention. *The following list shows the numbers of those documents which propose amendments to document S/10 and which were filed as of June 21, 1967:*

Article 9: 121, 143, 154
Article 10: 93, 93 Add., 167
Article 11: 96, 135, 156, 175
Article 12: 165
Article 13: 93, 93 Add., 174, 179
Article 14: —
Article 15: 172
Article 16: 96
Article 17: —
Article 18: 96
Article 19: 153

S/187 SECRETARIAT. Berne Convention. *The following text of Articles 3, 4, 5, 6, 9, 10 and 10*bis *was given to the Drafting Committee:*

Article 3: (1) The protection of this Convention shall apply to (a) authors who are nationals of one of the countries of the Union, for their works, whether published or not; (b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but having their habitual residence in one of them, shall, for the purpose of this Convention, be assimilated to the nationals of that country.

(3) The expression "published works" means works published with the consent of their authors whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4: The protection of this Convention shall apply, independently of the provisions of Article 3, to (a) authors of cinematographic works, the maker of which has his headquarters or habitual residence in one of the countries of the Union; (b) authors of works of architecture, erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5: (1) The authors shall enjoy, in regard to such works for which they are protected under this Convention, in countries of the Union other than the country of origin,

the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be (a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country of which the legislation grants the shortest term of protection; (b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country; (c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union:

(i) when these are cinematographic works the maker of which has his headquarters therein or habitual residence in a country of the Union, that country;

(ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, that country;

(iii) when these are works to which the provisions referred to in (i) and (ii) above do not apply, the country of the Union of which the author is a national.

Article 6: (1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not effectively domiciled in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Government by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Government shall immediately communicate this declaration to all the countries of the Union.

Article 9: (1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not unreasonably prejudice the legitimate interests of the author and does not conflict with a normal exploitation of the work.

(3) Articles on current economic, political or religious topics may be reproduced, in original or in translation, by the press or by broadcasting unless the reproduction or the broadcasting thereof is expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.

Article 10: (1) It shall be permissible to make, in original or in translation, quotations from a work which has already been lawfully made available to the public, provided that they are compatible with fair practice, and to the extent justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

*Article 10*bis*:* It shall be a matter for legislation in countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography or cinematography, or by broadcasting or communication to the public by wire, it shall be permissible, to the extent justified by the informatory purpose, to reproduce and communicate to the public literary or artistic works being seen or heard in the course of the event.

S/188 WORKING GROUP OF MAIN COMMITTEE V. WIPO Convention. *The following report on the meetings of the Working Group on Membership (Article 4 of document S/10) was submitted to Main Committee V:*

1. The Working Group met on June 21, 23, and 27, 1967.

2. All six members of the Working Group, that is Czechoslovakia, France, Kenya, Mexico, Soviet Union, and the United Kingdom, were present at all three meetings.

3. The Chairman and Rapporteur of Main Committee V were present but did not participate in the discussion.

4. On a proposal of Czechoslovakia, Mr. Arpad Bogsch as Representative of the Director of BIRPI, was unanimously elected to direct the discussions.

5. After several members asked for new instructions from their Governments, and subject to the Delegate of Mexico reserving his position for the moment, it was unanimously agreed in the last meeting to recommend to Main Committee V the following provision:

Article 4 should read: (1) Membership in the Organization shall be open to any State which is a member of any of the Unions as defined in Article 2(vii); (2) Membership shall be equally open to any State not a member of any of the Unions provided that: (i) it is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, the International Atomic Energy Agency, or the International Court of Justice, or (ii) it is invited by the General Assembly to become a party to the present Convention.

S/189 ARGENTINA, BRAZIL, URUGUAY. Paris Convention. *In Article 13(3)(h)(ii), proposed in document S/179, the words "referred to in item (i)" should be deleted.*

S/190 WORKING GROUP OF MAIN COMMITTEE I. Berne Convention. *The following changes should be made in document S/1:*

in Article 2(1) the corresponding paragraph from the Brussels text should be substituted, and, in that text, the words "and works produced" should be replaced by: to which are assimilated those expressed.

Article 4(4)(c)(i) should read: when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, that country.

Article 6(2) should read: Authors who are not nationals of one of the countries of the Union shall enjoy for their cinematographic works which are unpublished or which are not first or simultaneously published in a country of the Union, but the maker of which has his headquarters or his habitual residence in that country, the same rights in that country as national authors and, in the other countries of the Union, the rights granted by this Convention.

in Article 4, in an appropriate place, add: The person or corporate body whose name appears on a cinematographic work in the manner in current use shall be presumed to be the maker of the said work, until the contrary be proved.

S/191 UNITED KINGDOM. Berne Convention. *The following changes are proposed in document S/1:*

in Article 2(1):

- *the words "choreographic works and entertainments in dumb show" should be replaced by:* entertainments in dumb show, the acting form of which is fixed in writing or otherwise, and choreographic works.
- *at the end of the paragraph, add:* It shall, however, be a matter for legislation in countries of the Union to prescribe that works in general or any specified categories of works shall not be considered as having been made until they have been fixed in some material form.

S/192 UNITED KINGDOM. Berne Convention. *In Article 7(4) (document S/1), the words "however, this term... such a work," should be replaced by:* However, this term shall last at least: (a) in respect of photographs, for 50 years from the making of the photograph, (b) in respect of works of applied art, for 15 years from the making of the work.

S/193 GERMANY (FED. REP.). WIPO Convention. *In Article 6(3)(i), Article 7(3)(g) and Article 8(5)(c) of document S/10, the text should be replaced by:* a delegation may represent, and vote in the name of, its own country only.

S/194 FRANCE, SWITZERLAND. WIPO Convention. *Article 11(4) (document S/10) should read:* The Director General shall be authorized to negotiate and conclude, subject to the approval of the Coordination Committee, the agreements referred to in paragraphs (2) and (3) above. These agreements shall have no legal effect before such approval.

S/195 WORKING GROUP OF MAIN COMMITTEE I. Berne Convention. *The following proposals concerning the régime of cinematographic works are submitted to the Main Committee:*

Article 14: (1) Authors of literary or artistic works shall have the exclusive right of authorizing:

(i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;

(ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.

(2) The adaptation into any other artistic form of cinematographic productions derived from literary or artistic works shall, without prejudice to the authorization of their authors, remain subject to the authorization of the author of the original work.

(3) The provisions of Article 13, paragraph (1), shall not apply.

*Article 14*bis *(new):* (1) Without prejudice to the copyright in any work which might have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

(2)(a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

(b) However, in the countries of the Union which by legislation include among such owners of copyright authors who have brought contributions to the making of a cinematographic work, if they have undertaken to bring such contributions to the making of the cinematographic work, they may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting, any other communication to the public, subtitling and dubbing of the texts, of the cinematographic work.

(c) The form of the undertaking referred to above which may be required by a country of the Union to be in a written agreement or something having the same force shall be governed by the legislation of the country of the Union where the maker of the cinematographic work has his headquarters or habitual residence.

(d) By "contrary or special stipulation" is meant any restrictive condition appropriate to the aforesaid undertaking.

(3) Unless the national legislation provides to the contrary, the provision of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works, specially created in the making of the cinematographic work.

*Article 11*bis, *new paragraph (4):* (4) As regards to cinematographic work and works adapted or reproduced in the cinematographic work itself, the provisions of paragraph (2) above shall apply only in so far as they relate to the rights given in subparagraphs (ii) and (iii) of paragraph (1) of the Article.

S/196 HUNGARY. Berne Convention. *In a suitable place in document S/1, add:* With respect to works created on commission or in fulfilment of the author's task as an employee, the employer may, in the absence of any contrary and written stipulation, exploit the work only for purposes belonging to the employer's own functions and in a manner not prejudicial to the moral rights of the author.

S/197 (Corr. to document S/89). BULGARIA. Berne Convention. *In Article 6*bis*(2) (document S/1), the words "at least until the expiry of the economic rights" should be deleted.*

S/198 SECRETARIAT. WIPO Convention. *The following memorandum concerning Article 9 (document S/10) is submitted to the Main Committee:* In its session of June 21, 1967, Main Committee V asked the Secretariat to draft a new text for Article 9(3) of the IPO Convention (S/9) in the light of the discussion that took place in that Committee on the said day.

Paragraph (3) of Article 9 could read as follows:

"(a) The Director General shall be the chief administrative officer of the Organization.

(b) He shall represent the Organization.

(c) Both as to the internal and external affairs of the Organization, he shall be responsible to the General Assembly."

It is to be noted that the Articles of the Paris Convention (13*ter*(1)(c)) and of the Berne Convention (21*ter*(1)(c)) on the International Bureau—as adopted by Main Committee IV—already provide that "The Director General of the Organization shall be the chief administrative officer of the (Paris) (Berne) Union and shall represent the Union."

Consequently, it appeared to be superfluous to refer in the IPO Convention to the Director General as chief administrative officer of the Union.

Omission, in the IPO Convention, of any such reference to the Unions seems to be logical also from a legal point of view since it seems preferable to speak about the chief administrative officer of the Paris Union in the Paris Convention, and of the chief administrative officer of the Berne Union in the Berne Convention.

The entrusting of the administrative tasks of each of these Unions to the International Bureau of the Organization implies that the administrative head of the Organization will be also the administrative head of the Unions.

It is to be also noted that the above draft provision takes into account the amendment proposed in document S/143 of the Delegation of the Federal Republic of Germany, which read as follows: "In the exercise of his functions the Director General is responsible to the General Assembly." The principle of this amendment was supported by several delegations, and opposed by none, in the June 21, 1967, meeting of Main Committee V.

S/199 ISRAEL. Berne Convention. *The following changes are proposed in Annex II to document S/1:*

1. *In the first paragraph of Article 1, the words "for a period of the first ten years during which it is a party thereto,"* should be deleted.

2. *immediately at the end of the first paragraph of Article 1, add:* Such right may be exercised for a period of 15 years from the date of its ratification of or accession to this Act and for such further period as may be determined by the General Assembly prior to the expiration of the said period of 15 years or any extension thereof.

3. *at the end of Article 1, add:* Whenever a right of reproduction arises under the foregoing, the same shall include the right of translation. The obligation to assure authors just compensation under this Article shall not prevail over any exchange restriction provisions of the country upon which such obligation rests.

4. *delete Article 2.*

5. *as a new Article 2, insert:* (a) The right under Article 1 shall not include the right to import in any country availing itself of this Protocol or any part thereof copies of any work which, had such country not so availed itself, would have been in that country infringing copies. (b) The right under Article 1 shall not include the right to export copies of any work reproduced or translated or otherwise utilized in the country availing itself of this Protocol to any country not a member of the Union or the UCC, or although such a member has not availed itself of this Protocol or any part thereof.

6. *as a new Article 4, insert:* (a) Whenever a country avails itself of any of the rights under this Protocol it shall at least once a year submit to the Secretariat of the Union full information of the extent of its utilization of the said right; (b) The Secretariat shall pass on such information to the relevant authority of the country in which the authors concerned have their habitual residence and shall after consultation with interested parties make recommendations as to the amount of compensation payable to such authors; (c) Authors whose works are utilized in accordance with Article 1 and not entitled to full compensation thereunder shall be entitled to receive payment up to a fair compensation out of a fund to be created by or under the authority of the country in which they have their habitual residence. Such fund shall preferably be created by a levy in that country of the use of copyright; (d) The non-establishment of such a fund as aforesaid shall not in any way prejudice any rights arising under Article 1.

S/200 SECRETARIAT. Madrid (TM) Agreement. *The following changes, reflecting the discussion in Main Committee IV, are proposed in document S/4:*

in Article 10(1)(a), the word "the" preceding the word "countries" should be replaced by: those.

in Article 10(2)(a)(ii), at the end, add: due account being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Act.

*in Article 10(2)(a), as item (iv-*bis*), add:* adopt the Financial Regulations of the Special Union.

in Article 10(2)(a)(v), the words "instructions to him on such matters," should be replaced by: him any necessary instructions concerning matters within the competence of the Special Union.

in Article 10(2)(a)(x), at the end, add: by this Agreement.

in Article 10(2), sub-paragraph (b) should read: In exercising its functions with respect to matters which are of interest also to other Unions within the meaning of Article (2)(vii) of the Convention establishing the Organization, the Assembly shall make a decision after having heard the advice of the Coordination Committee of the Organization.

in Article 10(3)(b), the word "one-third" should be replaced by: one-half.

in Article 10(3), sub-paragraph (c) should read: If less than one-half but at least one-third of the countries members of the Assembly are represented in any session, the decision of the Assembly shall be provisional. Any provisional decision shall be communicated in writing to each country member of the Assembly which was not represented in the session. The communication shall be accompanied by an invitation that such country pronounce itself within a period of four months from the date of the communication. If, within this period, together with the written pronouncements received by the International Bureau, the required quorum and majority are attained, the decision shall be final.

in Article 10(3), sub-paragraph (d) should read: Decisions of the Assembly shall require at least two-thirds of the votes cast.

in Article 10(3), sub-paragraph (e) should read: Abstentions shall not be considered as votes.

in Article 10(3), sub-paragraph (f) should read: Each delegation may represent, and vote in the name of, one country only (see S/35). However: (i) countries of the Special Union grouped together under the terms of an international agreement in a common Office possessing for each of them the character of a special national service of industrial property, as defined in Article 12 of the Paris Convention for the Protection of Industrial Property, may be jointly represented during discussions by one of their number; (ii) in general, the countries of the Special Union referred to in item (i) must endeavor to send their own delegation to the sessions of the Assembly. If, however, for exceptional reasons a country cannot send its own delegation, it may give to the delegation of another country the power to vote in its name. This delegation of powers must be set out in a document signed by the Head of State, or the competent Minister; (iii) each delegation may vote by proxy for one country only.

in Article 10(3), sub-paragraph (g) should read: Countries of the Special Union that are not members of the Assembly shall be admitted to its meetings as observers.

in Article 10(4)(a), the word "preferably" should be replaced by: in the absence of exceptional circumstances.

in Article 10(4)(b), the word "constituting" should be replaced by: members of.

*in Article 10*bis*(1)(c), the last word "Union" should be preceded by:* Special.

*in Article 10*bis*(2), the words "International Bureau" should be replaced by:* Director General or persons designated by him.

*in Article 10*bis*(3), as sub-paragraph (a-*bis*), add:* The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

*in Article 10*ter*, paragraph (1)(b) should read:* The budget of the Special Union shall include the income and expenses proper to the Special Union itself, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

*in Article 10*ter*, paragraph (1)(c) should read:* Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

*in Article 10*ter*, paragraph (2) should read:* The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

*in Article 10*ter*, as paragraph (4-*bis*), add:* If the budget is not adopted before the beginning of a new financial period, the budget of the previous year shall be carried over as provided in the Financial Regulations.

*in Article 10*ter*, paragraph (6)(a) should read:* The Special Union shall have a working capital fund which shall be constituted by a single payment made by each of the countries of the Special Union. If the fund is reduced to an unreasonable level, an increase shall be decided by the Assembly.

*in Article 10*ter*, paragraph (6)(b) should read:* The amount of the payment of each country to the fund or to an increase shall be a proportion of the contribution of that country as a party to the Paris Convention for the Protection of Industrial Property for the year in which the fund is established or the increase made.

*in Article 10*quater*(1), after the words "present Article," insert:* may be initiated by any country member of the Assembly, or the Director General, and.

*in Article 10*quater*(2), the words "the unanimity" should be replaced by:* at least four-fifths.

in Article 11(4)(a), the words "one month" should be replaced by: three months.

in Article 11(4)(b), the words "one month" should be replaced by: three months.

*in Article 11(6), the corresponding provision of Article 16*quater *(document S/3) is reserved.*

in Article 12, the corresponding provision of Article 18 (document S/3) is reserved.

in Article 13(1)(b), the word "authoritative" should be replaced by: official.

in Article 13(4), the words "as soon as possible" should be deleted.

in Article 14(2), at the end, add: Such countries are deemed to be members of the Assembly.

S/201 SECRETARIAT. Madrid (FIS) Agreement. *In Article 5(2) (document S/5), the words "one month" should—in view of the decision of Main Committee IV relating to the administrative and final clauses of the Paris Convention—be replaced by:* three months.

S/202 SECRETARIAT. Hague Agreement. *The following statement was submitted to Main Committee IV:* Since the Hague Agreement concerning the International Deposit of Industrial Designs exists only in French, this document has only been produced in the French language. It contains an up-to-date version of document S/6 in conformity with the decisions of Main Committee IV.

S/203 SECRETARIAT. Nice Agreement. *The following changes, reflecting the discussion in Main Committee IV are proposed in document S/7:*

in Article 5(1)(a), the word "the" preceding the word "countries" should be replaced by: those.

in Article 5(2)(a)(ii), at the end, add: due account being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Act.

*in Article 5(2)(a), as item (iii-*bis*), insert:* adopt the Financial Regulations of the Special Union.

in Article 5(2)(a)(iv), the words "instructions to him on such matters," should be replaced by: him any necessary instructions concerning matters within the competence of the Special Union.

in Article 5(2)(a)(ix), at the end, add: by this Agreement.

in Article 5(2), sub-paragraph (b) should read: In exercising its functions with respect to matters which are of interest also to other Unions within the meaning of Article (2)(vii) of the Convention establishing the Organization, the Assembly shall make a decision after having heard the advice of the Coordination Committee of the Organization. *Note:* New item (xii) of Article 13(2)(a) of document S/3 does not concern this Agreement.]

in Article 5(3)(b), the words "one-third" should be replaced by: one-half.

in Article 5(3), sub-paragraph (c) should read: If less than one-half but at least one-third of the countries members of the Assembly are represented in any session, the decision of the Assembly shall be provisional. Any provisional decision shall be communicated in writing to each country member of the Assembly which was not represented in the session. The communication shall be accompanied by an invitation that such country pronounce itself within a period of four months from the date of the communication. If, within this period, together with the written pronouncements received by the International Bureau, the required quorum and majority are attained, the decision shall be final.

in Article 5(3), sub-paragraph (d) should read: Decisions of the Assembly shall require at least two-thirds of the votes cast.

in Article 5(3), sub-paragraph (e) should read: Abstentions shall not be considered as votes.

in Article 5(3), sub-paragraph (f) should read: Each delegation may represent, and vote in the name of, one country only (see S/35). However: (i) countries of the Special Union grouped together under the terms of an international agreement in a common Office possessing for each of them the character of a special national service of industrial property, as defined in Article 12 of the Paris Convention for the Protection of Industrial Property, may be jointly represented during discussions by one of their number; (ii) in general, the countries of the Special Union referred to in item (i) must endeavor to send their own delegation to the sessions of the Assembly. If, however, for exceptional reasons a country cannot send its own delegation, it may give to the delegation of another country the power to vote in its name. This delegation of powers must be set out in a document signed by the Head of State or the competent Minister; (iii) each delegation may vote by proxy for one country only.

in Article 5(3), sub-paragraph (g) should read: Countries of the Special Union that are not members of the Assembly shall be admitted to its meetings as observers.

in Article 5(4)(a), the word "preferably" should be replaced by*:* in the absence of exceptional circumstances.

in Article 5(4)(b), the word "constituting" should be replaced by: members of.

*in Article 5*bis*(1)(c), the last word "Union" should be preceded by:* Special.

*in Article 5*bis*(2), the words "International Bureau" should be replaced by:* Director General or persons designated by him.

*in Article 5*bis*(3), as sub-paragraph (a-*bis*), insert:* The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

*in Article 5*ter*, paragraph 1(b) should read:* The budget of the Special Union shall include the income and expenses proper to the Special Union itself, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

*in Article 5*ter*, paragraph 1(c) should read:* Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

*in Article 5*ter*, paragraph (2) should read:* The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

*in Article 5*ter*(4)(b), before the word "contribution," insert:* annual.

*in Article 5*ter*(4)(d), delete the last sentence.*

*in Article 5*ter*(4), as sub-paragraph (e), add:* If the budget is not adopted before the beginning of a new financial period, the budget of the previous year shall be carried over as provided in the Financial Regulations.

*in Article 5*ter*, paragraph (6)(a) should read:* The Special Union shall have a working capital fund which shall be constituted by a single payment made by each of the countries of the Special Union. If the fund is reduced to an unreasonable level, an increase shall be decided by the Assembly.

*in Article 5*ter*, paragraph (6)(b) should read:* The amount of the payment of each country to the fund or to an increase shall be a proportion of the contribution of that country as a party to the Paris Convention for the Protection of Industrial Property for the year in which the fund is established or the increase made.

in Article 5quater*(1), after the words "present Article," insert:* may be initiated by any country member of the Assembly, or the Director General and.

in Article 5quater*(2), the words "the unanimity" should be replaced by:* at least four-fifths.

*in Article 6(2), the corresponding provision in Article 16*bis(1) *(document S/3) is reserved.*

in Article 6(4)(a), the words "one month" should be replaced by: three months.

in Article 6(4)(b), the words "one month" should be replaced by: three months.

*in Article 6(6), the corresponding provision in Article 16*quater *(document S/3) is reserved.*

in Article 8, the corresponding provision of Article 14 (document S/3) is reserved.

*in Article 8*bis, *the corresponding provision of Article 18 (document S/3) is reserved.*

in Article 11(1)(b), the word "authoritative" should be replaced by: official.

in Article 11(4), the words "as soon as possible" should be deleted.

in Article 12(2), at the end, add: Such countries are deemed to be members of the Assembly.

S/204 SECRETARIAT. Lisbon Agreement. *The following changes, reflecting the discussion in Main Committee IV, are proposed in document S/7:*

in Article 9(1)(a), the word "the" preceding the word "countries" should be replaced by: those.

in Article 9(2)(a)(ii), at the end, add: due account being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Act.

in Article 9(2)(a), as item (iv-bis*), insert:* adopt the Financial Regulations of the Special Union.

in Article 9(2)(a)(v), the words "instructions to him on such matters," should be replaced by: him any necessary instructions concerning matters within the competence of the Special Union.

in Article 9(2)(a)(x), at the end, add: by this Agreement.

in Article 9(2), sub-paragraph (b) should read: In exercising its functions with respect to matters which are of interest also to other Unions within the meaning of Article (2)(vii) of the Convention establishing the Organization, the Assembly shall make a decision after having heard the advice of the Coordination Committee of the Organization.

in Article 9(3)(b), the word "one-third" should be replaced by: one-half.

in Article 9(3), sub-paragraph (c) should read: If less than one-half but at least one-third of the countries members of the Assembly are represented in any session, the decision of the Assembly shall be provisional. Any provisional decision shall be communicated in writing to each country member of the Assembly which was not represented in the session. The communication shall be accompanied by an invitation that such country pronounce itself within a period of four months from the date of the communication. If, within this period, together with the written pronouncements received by the International Bureau, the required quorum and majority are attained, the decision shall be final.

in Article 9(3), sub-paragraph (d) should read: Decisions of the Assembly shall require at least two-thirds of the votes cast.

in Article 9(3), sub-paragraph (e) should read: Abstentions shall not be considered as votes.

in Article 9(3), sub-paragraph (f) should read: Each delegation may represent, and vote in the name of, one country only (see S/35). However: (i) countries of the Special Union grouped together under the terms of an international agreement in a common Office possessing for each of them the character of a special national service of industrial property, as defined in Article 12 of the Paris Convention for the Protection of Industrial Property, may be jointly represented during discussions by one of their number; (ii) in general, the countries of the Special Union referred to in item (i) must endeavor to send their own delegation to the sessions of the Assembly. If, however, for exceptional reasons a country cannot send its own delegation, it may give to the delegation of another country the power to vote in its name. This delegation of powers must be set out in a document signed by the Head of State, or the competent Minister; (iii) each delegation may vote by proxy for one country only.

in Article 9(3), sub-paragraph (g) should read: Countries of the Special Union that are not members of the Assembly shall be admitted to its meetings as observers.

in Article 9(4)(a), the word "preferably" should be replaced by: in the absence of exceptional circumstances.

in Article 9(4)(b), the word "constituting" should be replaced by: members of.

in Article 9bis*(2), the words "International Bureau" should be replaced by:* Director General or persons designated by him.

in Article 9bis*(3), as sub-paragraph (a*-bis*), insert:* The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

in Article 9ter, *paragraph (1)(b) should read:* The budget of the Special Union shall include the income and expenses proper to the Special Union itself, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

in Article 9ter, *paragraph (1)(c) should read:* Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

in Article 9ter, *paragraph (2) should read:* The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

in Article 9ter*(5)(b), before the word "contribution," insert:* annual.

in Article 9ter*(5)(d), delete the last sentence.*

in Article 9ter*(5), as sub-paragraph (e), add:* If the budget is not adopted before the beginning of a new financial period, the budget of the previous year shall be carried over as provided in the Financial Regulations. [*The Delegation of the United States orally proposed that the sub-paragraph should read in part:* it may be carried over under the conditions of...; *the Delegation of France orally proposed that the sub-paragraph should read in part:* Budget is carried over within the limits of a normal budget.]

in Article 9ter, *paragraph (7)(a) should read:* The Special Union shall have a working capital fund which shall be constituted by a single payment, made by each of the countries of the Special Union. If the fund is reduced to an unreasonable level, an increase shall be decided by the Assembly.

in Article 9ter, *paragraph (7)(b) should read:* The amount of the payment of each country to the fund or to an increase shall be a proportion of the contribution of that country as a party to the Paris Convention for the Protection of Industrial Property for the year in which the fund is established or the increase made.

in Article 9quater*(1), after the words "present Article," insert:* may be initiated by any country member of the Assembly or the Director General, and.

*in Article 9*quater*(2), the words "the unanimity" should be replaced by:* at least four-fifths.

*in Article 11(2)(a), the corresponding provision of Article 16*bis*(1) (document S/3) is reserved.*

in Article 11(5)(a), the words "one month" should be replaced by: three months.

in Article 11(5)(b), the words "one month" should be replaced by: three months.

*in Article 11(7), the corresponding provision in Article 16*quater *(document S/3) is reserved.*

in Article 13, the corresponding provision of Article 18 (document S/3), is reserved.

in Article 14(1)(b), the word "authoritative" should be replaced by: official.

in Article 14(4), the words "as soon as possible" should be deleted.

in Article 15(2), at the end, add: Such countries are deemed to be members of the Assembly.

S/205 GERMANY (FED. REP.). Berne Convention. *The following proposal was submitted concerning document S/1:*

The German Delegation invites the Stockholm Conference to express the following wish:

"The Stockholm Conference,

Considering that certain countries have expressed a desire for the term of protection to be extended, that certain countries already grant a general term of protection in excess of 50 years after the death of the author, that, moreover, several countries of the Union have extended the term of protection for reasons resulting from the war, that negotiations have already taken place at the international level with the object of providing for an extension of the term of protection by a Special Agreement, that, in addition, agreements have already been concluded between certain countries for the reciprocal recognition of an extension of the term of protection for reasons resulting from the war;

Proposes that negotiations should be continued between the countries concerned for the conclusion of a Special Agreement on the extension of the term of protection in countries parties to that Agreement."

S/206 AUSTRIA. Madrid (TM) Agreement. *The following changes are proposed in Article 8 (document S/4):*

paragraph (7) should read: With regard to the basic fee, the applicant shall be entitled to pay, at the time of application for international registration, a part only of the basic fee laid down in the Regulations.

paragraph (8) should read: If the applicant avails himself of this faculty, he shall, before the expiration of a period of ten years, counted from the international registration, pay to the International Bureau, the balance of the basic fee laid down in the Regulations, failing which, at the expiration of this period, he shall lose the benefit of his registration. Six months before such expiration, the International Bureau shall, by sending an unofficial notice, remind the applicant and his agent of the exact date of expiration. If the balance of the basic fee is not paid to the International Bureau before the expiration of this period, the Bureau shall cancel the mark, shall notify the national Administrations of this operation, and shall publish it in its journal.

paragraph (9) of the Nice text should be retained.

S/207 AUSTRIA. Madrid (TM) Agreement. *The following changes should be made in Article 10(2)(a) (document S/4): at the end of item (iii), add:* (7) and (8) and other charges relating to international registration and sums due for services rendered by the International Bureau concerning the particular Union; *as item (iii-*bis*) add:* adopt the Financial Regulations of the Union; *at the end of item (x), add:* under the present Agreement.

S/208 AUSTRIA. Madrid (TM) Agreement. *In Article 10*ter *(document S/4), delete paragraph (5).*

S/209 MAIN COMMITTEE III. Paris Convention. *The following text of Article 4-I (document S/2) was adopted by the Main Committee and submitted to the Plenary of the Paris Union:*

(1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model or an inventor's certificate.

S/210 BRAZIL. Berne Convention. *The following changes are proposed in document S/1:*

the Preamble should read: The Contracting States, being convinced of the need to revise the Berne Convention on Copyright (1948), in harmony with the actual need to ensure the protection of intellectual property and with the trend towards full protection which is a dominant feature of universal legislation, and in accordance with Article 24 of the said Convention, make the following amendments to its provisions, based on the following formula:

The subject of the protection granted by the present Convention, in regard to authorship and the moral rights of the author, is any production of the mind possessing features of originality, apart from inventions and discoveries, which are protected by legislation on patents and marks.

Article 1 should read: The countries to which this Convention applies constitute a Union for the protection of authors' rights over their literary and artistic works, as well as over the above-mentioned productions of the mind.

Article 4(1) should read: Authors who belong to one of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works first published in a country of the Union, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention. Under the same conditions, the authors of any production of the mind mentioned in the foregoing Preamble shall enjoy the moral rights and the right of authorship.

*in Article 6*bis*(1), the word "work" should be replaced by:* above-mentioned production of the mind.

S/211 UNITED KINGDOM. Berne Convention. *The following changes are proposed in Article 16 (document S/1):*

— *in paragraph (1), the word "may" should be replaced by:* shall;

— *in paragraph (2), the word "may" should be replaced by:* shall.

S/212 CZECHOSLOVAKIA. Berne Convention. *In document S/1, at an appropriate place, insert:* It shall be a matter for legislation in the countries of the Union to determine the competent authority representing the authors of folklore works and entitled to protect and enforce the authors' rights, subject to the application of the second sentence of Article 15(2).

S/213 ITALY. Berne Convention. *In Article 1 (document S/1, Annex II), after the words "cultural needs" in the opening paragraph, insert either:* in the light, with respect to the latter, of the percentage of illiteracy and the rate of school attendance; *or,* the latter in light of the objective situation of eduation.

S/214 DRAFTING COMMITTEE OF MAIN COMMITTEE IV. Paris and Berne Conventions. *Article 13(2-*bis*), (3), (3-*bis*) and (3-*ter*) (document S/3) and Article 21(3) (document S/9) should read:*

Document S/3	*Document S/9*
(2-*bis*)(a) Each delegation may represent only one country.	
(b) However, countries of the Union grouped under the terms of a special agreement in a common Office possessing for each of them the character of a special national service of industrial property referred to in Article 12 may be jointly represented during discussions by one of their number.	
(3)(a) Each country member of the Assembly shall have a vote in the Assembly.	(3)(a): *same as opposite*
(b) One-half of the countries members of the Assembly shall constitute a quorum.	(b): *same as opposite*
(c) If less than one-half but at least one-third of the countries members of the Assembly are represented in any session, the decision of the Assembly shall be provisional. Any provisional decision shall be communicated in writing to each country member of the Assembly which was not represented in the session. The communication shall be accompanied by an invitation that such country pronounce itself within a period of four months from the date of the communication. If, within this period, together with the written pronouncements received by the International Bureau, the required quorum and majority are attained, the decision shall be final.	(c): *same as opposite*
(d) Subject to the provisions of Article 13*quinquies*, the decisions of the Assembly shall require two-thirds of the votes cast.	(d): *same as opposite*
(e) Abstentions shall not be considered as votes.	(e): *same as opposite*
(3-*bis*)(a) Subject to the provisions of sub-paragraph (b), each delegation may vote in the name of one country only.	(3)(f) Each delegation may represent, and vote in the name of, one country only.
(b) The countries of the Union referred to in paragraph (2-*bis*) (b) should, as a general rule, endeavor to send their own delegations to the sessions of the Assembly. If, however, for exceptional reasons, any one of such countries cannot send its own delegation, it may give to the delegation of another such country the power to vote in its name provided that each delegation may vote by proxy for one country only. This power to vote shall be set out in a document signed by the Head of State or the competent Minister.	
(3-*ter*) Member states of the Union that are not members of the Assembly shall be admitted to its meetings as observers.	(3)(g): *same as opposite*

S/215 AUSTRALIA. Berne Convention. *In Article 17 (document S/1), as paragraph (2), insert:* Each country of the Union shall have the right to take such legislative measures as it shall deem necessary to prevent abuses which might result from the exercise of the rights conferred by this Convention. Such legislation shall not, however, be prejudicial to the moral right of the author, or to his right to obtain just remuneration which, in the absence of agreement, shall be fixed by competent authority.

S/216 BRAZIL, MEXICO, PORTUGAL. Berne Convention. *In the French text of document S/185, the word "phonogrammes" should be replaced by:* enregistrements.

S/217 BRAZIL. Berne Convention. *The following changes are proposed in document S/1:*

*in Article 11*bis*:*

at the end of paragraph (1), add: Each of the special rights included in the general broadcasting rights referred to in paragraph (1) shall be exercisable by the author.

at the end of paragraph (3), add: The private broadcasting organizations referred to, or official organizations, to the extent that they are engaged in profit-making activity, shall not benefit from the advantages granted by paragraph (3).

in Article 13:

add to paragraph (1): the provisions of Article 9(2) shall apply to musical works.

paragraph (3), should read: Recordings made in accordance with the provisions of paragraph (2) of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

S/218 MAIN COMMITTEE V. WIPO Convention. *At its morning session on June 23, 1967, the Main Committee elected the Drafting Committee composed of the following States:* Brazil, Czechoslovakia, France, Germany (Federal Republic), Japan, Kenya, Spain, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, and the United States of America.

S/219 BRAZIL. Berne Convention. *The following comment is made on Article 1 (document S/1, Annex II):* Maintain the present wording of "any developing country" in the opening paragraph and stress the idea that the term "any" includes the less developed countries that are already members of the Berne Union and those that may subsequently accede to it. Also strengthen the reservation concerning the protection of folklore.

S/220 SWEDEN. Paris and Berne Conventions. *In Article 20(2) (document S/3) and Article 32(2) (document S/9), make the following changes:* 1. *the words "if they so desire" should be deleted;* 2. *at the end of paragraph (2).* [Editor's Note: as amended by the Drafting Committee, see e.g., S/200 (Article 12(2))], *add:* unless they notify the Director General in writing that they do not desire to exercise the said rights.

S/221 GERMANY (FED. REP.), UNITED STATES. Paris and Berne Conventions. *In Article 20(2) (document S/3) and Article 32(2) (document S/9), as a new second sentence, add:* Any country desiring to exercise such rights shall give written notification to the Director General, which notification shall be effective on receipt by the Director General.

S/222 NETHERLANDS, SWITZERLAND. Paris and Berne Conventions. *As a new Article concerning "Settlement of Disputes" in document S/3, and as Article 27*bis *in document S/9, insert:* (1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one

of the countries concerned, be referred to the International Court of Justice by request in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country referring the dispute to the Court shall inform the International Bureau; the Bureau shall bring the matter to the attention of the other countries of the Union. (2) Each country may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph (1). The other contracting parties shall not be bound by paragraph (1) with respect to any party having made such a declaration. (3) Any contracting party having made a declaration in accordance with paragraph (2) may at any time withdraw this declaration by notification to the Director General.

S/223 ISRAEL. Berne Convention. *In Article 17, as a new paragraph* (3), *add:* It shall also be a matter for legislation in the countries of the Union to ensure that when a musical or dramatico-musical work has been made available with the consent of the author thereof, the graphic copies of the work be made accessible to the public without restrictions contrary to fair practice.

S/224 WORKING GROUP OF MAIN COMMITTEE II. Berne Convention. *The following report of the Working Group set up to consider a possible criterion for the definition of the concept of a "developing country" is submitted to the Main Committee:*

Main Committee II, at its meeting held in the morning of June 27, 1967, referred to a Working Group the consideration of a possible criterion for the definition of the concept of a "developing country."

This Working Group consisted of representatives of the following 12 countries: Brazil, Congo (Kinshasa), Czechoslovakia, France, India, Ireland, Italy, Ivory Coast, Senegal, Sweden, Tunisia, United Kingdom. The Working Group met at 2:30 p.m. the same day under the chairmanship of Mr. J. J. Lennon (Ireland).

The Working Group had before it several proposals for clarification of the wording of the first paragraph of Article 1 of the Protocol, as contained in document S/1, under the terms of which this Protocol might be applied to "any developing country . . . which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided" in the Stockholm Act.

In the meeting of the Main Committee, the opinion had been expressed that the wording quoted above was drawn up too loosely and would not prevent countries which were not truly developing countries from claiming the benefits of the Protocol. The proposals before the Group therefore sought to establish an objective criterion to be used in determining developing countries.

The Working Group considered these proposals which sought to define developing countries entitled to benefit under the Protocol either by taking into account the date of their accession to the Berne Union as independent and sovereign States, or by adopting as a criterion the percentage of illiteracy and the rate of school attendance in those countries. Neither of these systems appeared satisfactory.

It also seemed inappropriate to make the accession of a developing country to the benefits of the Protocol dependent upon the prior approval of the Executive Committee of the Berne Union.

On the other hand, it was felt that an objective criterion which could be used for the practical application of the Protocol was the list of developing countries annexed to Resolution 1897(XVIII) adopted by the General Assembly of the United Nations at its Eighteenth Session on November 13, 1963. The members of the Working Group reached unanimous agreement on this point, on the understanding that the Protocol might also be invoked by other countries which had been or would be subsequently designated as developing countries by the General Assembly of the United Nations.

The Working Group therefore proposed unanimously that the first paragraph of Article 1 of the Protocol, as contained in document S/1, should be worded as follows:

"Any developing country mentioned in the list of developing countries annexed to Resolution 1897(XVIII) adopted by the General Assembly of the United Nations at its Eighteenth Session on November 13, 1963, or which has been or may be subsequently designated as a developing country by the General Assembly of the United Nations and which ratifies or accedes to the Act..." (remainder unchanged).

It was agreed that the report of the Working Group should be submitted directly to Main Committee II.

As no member of the Working Group had asked to speak further, the Chairman closed the meeting at 3:30 p.m.

S/225 SECRETARIAT. Berne Convention. *In Article 7(6) (document S/1), at the end, add:* Countries of the Union bound by the Act of Rome of the present Convention that have in their national legislation in force at the time of signature of the present Act provisions that grant a lesser term of protection than those provided for in the preceding paragraphs shall have the right to maintain them when acceding to or ratifying the present Act.

S/226 ITALY. Berne Convention. *In Article 17 (document S/1), the words "or regulation" should be deleted.*

S/227 ISRAEL. Berne Convention. *The following changes are proposed in document S/9:*

*delete Article 20*bis.

in Article 30, as a new paragraph (3), add: Any developing country which ratifies or accedes to this Convention may, at the date of ratification or accession by a notification deposited in accordance with Article 25(1)(a), declare that it will avail itself of the provisions of the Protocol Regarding Developing Countries (annexed to and forming an integral part of this Convention) according in all respects to the terms thereof in place of undertaking to adopt the measures necessary to ensure the application of the parallel provisions of this Convention.

S/228 ISRAEL. Berne Convention. *It is proposed that the following resolution be adopted by the Diplomatic Conference:*

The Stockholm Conference,

Recognizing the special economic and cultural needs of developing countries, desirous of enabling developing countries to have the full use of works protected by copyright for educational requirements, having for this purpose adopted the Protocol Regarding Developing Countries, requests and authorizes the International Bureau to undertake in association with other governmental and non-governmental organizations a study of ways and means for creating financial machinery to ensure a fair and just return to authors.

S/229 NETHERLANDS. Madrid (TM) Agreement. *The following changes are proposed in, and the following comment is made on, document S/4:*

in Article 8(5) and (6), at the end, add: If, at the time this Act enters into force, a country has not yet ratified or acceded to this Act, it shall be entitled, until the date of entry into force of its ratification or accession, only to a share of the amounts calculated on the basis of the Nice Act.

Comment: The fees referred to in Article 8 can be altered by the Assembly. Thus, the fees due according to the Stockholm Act may differ from those due according to the Nice Act and will doubtless be higher. The amounts paid will be divided among the countries concerned, in accordance with the system specified in paragraphs (5) and (6) of Article 8.

It does not appear justifiable that the countries which are bound by the Nice Act without having acceded to the Stockholm Act and which, by the fees paid by their nationals, have contributed less than the countries bound by the Stockholm Act, should be entitled to a share in the same proportions as the countries bound by the Stockholm Act.

The same idea underlies paragraph (4) and the corresponding provision (Article 8(4)) of the Nice Act.

S/230 NETHERLANDS. Berne Convention. *In Article 13(1) (document S/1), retain the corresponding provision of the Brussels Act.*

S/231 ARGENTINA, MEXICO, URUGUAY. Berne Convention. *Article 20*bis*(2) (document S/9) should read:* All Member States may accede to the Protocol Regarding Developing Countries, which is additional to the present Act and does not form an integral part thereof.

Comment: Article 25 as well as any other provisions relating to the final clauses should be amended to the effect that the Protocol is to be the subject of separate ratification, and the Protocol itself should therefore include the final clauses that are customary in any autonomous international instrument.

S/232 AUSTRALIA, DENMARK, FINLAND, IRELAND, NORWAY, SWEDEN, UNITED KINGDOM. Berne Convention. *In Article 6*bis *(document S/1), at the end of paragraph (2), add:* However, the legislation of a country of the Union may provide that some of the rights granted to the author by the preceding paragraph shall, after his death, not be maintained.

S/233 WORKING GROUP OF MAIN COMMITTEE II. Berne Convention. *The following report and proposals concerning Article 1(a) and (e) (document S/1, Annex II) are submitted to the Main Committee:*

REPORT: The Working Group for paragraphs (a) and (e) of Article 1 of the proposed Protocol Regarding Developing Countries consisted of Delegates from Czechoslovakia, France, India, Ivory Coast, Sweden, Tunisia and the United Kingdom. With Mr. Hesser (Sweden) as Chairman, it met on June 21 at 5 p.m., on June 23 at 9:30 a.m., on June 26 at 3 p.m., and again on June 28 at 2:30 p.m. At the last meeting the Delegate of Mexico attended as an observer.

Proceedings concerning paragraph (a): After the first exchange of views, it was agreed that a compromise should be sought which would assure to developing countries means whereby they can promptly obtain translation rights in protected works upon the payment of an equitable remuneration, while at the same time permitting an author or his successors in title to regain control of translation rights if he or they so desire.

In order to effectuate this compromise, paragraph (a) of Article 1 should begin with the text borrowed from Article 5 of the Paris Act of 1896. This would make it possible for developing countries already members of the Union to restrict the exclusive right of translation, in the same way that newly adhering countries have been able to do in the past, but would also enable the author to maintain his exclusive right of translation.

The system envisaged by the Working Group would further include a compulsory license generally similar to that contained in the Universal Copyright Convention. However, in view of the necessity of early translation and publication within developing countries, while recognizing at the same time that a minimum period is required for an author to arrange for an authorized translation and its publication, it was unanimously agreed that the minimum period required for the issuance of such a license would be three years from the date of first publication. The Indian Delegate pointed out that it is understood that this period will not always be three years but in some cases longer, depending upon the determination of the competent authority of the developing country concerned. The Tunisian Delegate proposed that the text should provide for a minimum period of three years, unless the national legislation of the country which is interested in translation provides for a longer minimum period. This proposal was unanimously adopted.

It was further unanimously agreed that wherever reference is made in paragraph (a) to "national language or languages" there should also be mention of official or regional language or languages, because some countries do not define national languages as such, and because, further, regional languages can also be of great importance.

Sub-paragraphs (viii) and (ix) of Article 1(a) of document S/160 were also unanimously adopted. The Working Group thus recommended a system whereby a previously granted compulsory license would terminate in any given country from the date on which the author avails himself in that country of his exclusive right with respect to the language concerned, within the initial 10-year period from first publication. However, the compulsory licensee would continue to have the right to dispose of copies of the translation made prior to the termination of the compulsory license. If the author does not avail himself of his right of translation, this right would expire at the end of the 10-year period, and therefore compensation would cease to be payable.

It was further agreed that if the author avails himself of the exclusive translation right in the country concerned prior to the expiry of the 10-year period, and if thereafter the copies of the authorized translation become exhausted, then at such time the compulsory license provided for above may again be invoked.

The Indian Delegate requested an interpretation of the phrase "and been denied" as contained in the first unnumbered paragraph of Article 1 (a) of S/1. It was unanimously agreed that a failure to reply to a request for translation rights constitutes a denial within the meaning of the phrase "and been denied."

The Tunisian Delegate requested an interpretation of the provision for domestic legislation to assure transmittal of compensation as contained in the third unnumbered paragraph of Article 1 (a) of S/1. It was unanimously agreed that such transmittal would always be subject to any national currency regulation. Upon the express request of the Tunisian Delegate it was further agreed that the foregoing interpretation should be including in the Report of Main Committee II, and the Reporter of this Committee agreed to such inclusion.

The Working Group further considered proposals contained in documents S/146 and S/162. Both of these were unanimously rejected on the ground that the text should wherever possible adhere to the provisions of the Universal Copyright Convention relating to translation licenses.

Proceedings concerning paragraph (e): In addressing itself to the subject of reproduction and publication for educational purposes, after some discussion it was unanimously agreed that generally the same mechanism adopted for translation purposes in connection with paragraph (a) should be applied in this context as well. The Working Group concluded that this delicate balancing of interests, permitting as it does the recognition of the author's exclusive rights if he so elects, while also providing that if necessary to gain access to the work a compulsory license may be invoked based upon the payment of an equitable remuneration, represents a compromise eminently suited to the serious problem of reproduction for educational purposes in developing countries. It was further concluded that most of the specific provisions relating to translations under paragraph (a) should be equally applicable to reproductions for educational purposes. However, certain changes in such provisions are necessary. For example, the ten-year period in which the author must exercise translation rights is taken from the translation provisions of the Paris Act of 1896, and has no application to reproduction rights.

Although the above compromise was unanimously accepted with respect to reproductions for exclusively educational purposes, the Delegates of India, Ivory Coast and Tunisia made the point that this would not entirely meet the needs of developing countries where the reproductions were to be utilized exclusively by schools and similar institutions. In this limited context, the aforesaid Delegates stated that developing countries find it necessary to reserve the right to impose further restrictions on reproduction rights, so that in some instances no remuneration whatsoever would be payable. In explaining this position, the Indian Delegate added: "The right to reserve is not the right to expropriate. If national authors are paid, foreign authors will be paid also."

It was suggested that the French proposal contained in S/178 represented an appropriate formulation of such a further reservation, provided that an added reference be made to rural development centres. The Working Group voted to adopt S/178 with the foregoing added reference as an additional provision of paragraph (e). The Delegate of the United Kingdom, however, expressed the belief that equitable remuneration should in any event be payable; and said that it was therefore necessary for the United Kingdom to reserve its position in respect of this additional provision. The Delegates of Tunisia and the Ivory Coast questioned the necessity of including in the additional provision the last phrase, reading: "in connection with their pedagogical activities." However, these Delegates, as well as the remainder of the Working Group, agreed that the additional provision should not be applicable to non-pedagogical activities. It was agreed to retain the aforesaid phrase in the text, but to refer to the Drafting Committee the question of whether the intended meaning required inclusion of the phrase, or whether the term "exclusive" sufficiently expresses this meaning.

The question of importation restrictions was then discussed, and it was unanimously agreed that the type of importation provision applicable to compulsory licenses for translations under the Universal Copyright Convention should be applied separately both to the compulsory license for educational purposes and to the additional reservation referred to above.

The Working Group next considered the proposals relating to the subject under consideration contained in each of the following documents: S/127, S/148, S/149, S/162 and S/199. The Working Group voted to reject each of these proposals either because the substance of the proposals had already been adopted, or because, as to the remaining proposals, they were considered undesirable departures from the essence of the compromise that had been agreed upon. With respect to paragraph 6 of S/199, it was voted to return this proposal to Main Committee II for the reason that it combined matters both within and without the competence of the Working Group. Finally, as to the proposal contained in Article 1(f) of S/160, after some discussion the Delegates of India, Ivory Coast and Tunisia agreed to withdraw this proposal.

PROPOSALS: *Article 1(a) should read:* Substitute for Article 8 of the Convention the following provisions:

(i) authors of literary and artistic works protected by this Convention, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works during the entire term of their right over the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is to be claimed;

(ii) if, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the developing country concerned, a translation of such work has not been published in that country into the national or official or regional language or languages of that country by the owner of the right of translation or with his authorization, any national of such country may obtain a non-exclusive license from the competent authority to translate the work and publish the work so translated in any of the national or official or regional languages in which it has not been published; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of a translation in such language in that country are out of print;

(iii) if the owner of the right of translation cannot be found, then the applicant for a license shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the government of that country. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application;

(iv) due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms to international standards, to assure payment and transmittal of such compensation, and to assure a correct translation of the work;

(v) the original title and the name of the author of the work shall be printed on all copies of the published translation. The license shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union if one of the national or official or regional languages of such other country is the same language as that into which the work has been so translated, and if the domestic law in such other country makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements. The license shall not be transferred by the licensee;

(vi) the license shall not be granted when the author has withdrawn from circulation all copies of the work;

(vii) should, however, the author avail himself of the right under sub-paragraph (i) above during the term of ten years from the date of first publication, the license shall terminate from the date on which the author publishes or causes to be published his translation in the country where the license has been granted, provided, however, that any copies of the translation already made before the license is terminated may continue to be sold;

(viii) should, however, the author not avail himself of the right under sub-paragraph (i) above during the said term of ten years, compensation under the non-exclusive license referred to above shall cease to be due for any uses made after the expiry of such term;

(ix) should the author be entitled to exclusive translation rights in a country by having published or caused to be published a translation of the work in such country within ten years from the date of first publication, but should thereafter during the term of the author's copyright in such work all editions of such authorized translation in such country be out of print, then at such time a non-exclusive license to translate the work may be obtained from the competent authority in the same manner and subject to the same conditions as are provided with respect to the non-exclusive license referred to in sub-paragraphs (ii) to (vi) above.

Article 1(e) should read: The provisions of Article 9(1) of the Convention should be subject to the following provisions:

(i) if, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the developing country concerned, such work has not been published in that country in the original form in which it was created, by the owner of the right of reproduction or with his authorization, any national of such country may obtain a non-exclusive license from the competent authority to reproduce and publish such work for exclusively educational purposes; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to reproduce and publish such work for exclusively educational purposes, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of such work in its said original form in that country are out of print;

(ii) if the owner of the right of reproduction cannot be found, then the applicant for a license shall send copies of his application to the publisher whose name appears on the

work and, if the nationality of the owner of the right of reproduction is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the government of that country. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application;

(iii) due provision shall be made by domestic legislation to assure to the owner of the right of reproduction a compensation which is just and conforms to international standards, to assure payment and transmittal of such compensation, and to assure an accurate reproduction of the work;

(iv) the original title and the name of the author of the work shall be printed on all copies of the published reproduction. The license shall be valid only for publication in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union for exclusively educational purposes if the domestic law in such other country makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements. The license shall not be transferred by the licensee;

(v) the license shall not be granted when the author has withdrawn from circulation all copies of the work;

(vi) should, however, the author avail himself of the right to reproduce the work, the license shall terminate from the date on which the author publishes or causes to be published his work in its said original form in the country where the license has been granted, provided, however, that any copies of the work already made before the license is terminated may continue to be sold;

(vii) should the author publish or cause his work to be published in its said original form in a country, but should thereafter during the term of the author's copyright in such work all authorized editions in such original form in such country be out of print, then at such time a non-exclusive license to reproduce and publish the work may be obtained from the competent authority in the same manner and subject to the same conditions as are provided with respect to the non-exclusive license referred to in sub-paragraphs (i) to (v) above, but subject to the provisions of sub-paragraph (vi) above;

(viii) a reservation of the right to impose restrictions on the protection of literary and artistic works more extensive than those provided above in this paragraph (e) when the utilization of such works is intended for the exclusive use of scholastic or educational institutions, vocational training centres or rural development centres, in connection with their pedagogical activities; copies of a work published pursuant to the aforesaid reservation may be imported and sold in another country of the Union for utilization as aforesaid, if the domestic law in such other country has invoked a reservation pursuant to this sub-paragraph (viii), and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements;

(ix) the provisions of sub-paragraphs (i) to (viii) above are subject to the provisions of paragraph (a) above relating to translations, or, with respect to such countries as do not avail themselves of said paragraph (a), to Article 8 of this Convention.

S/234 IVORY COAST. Berne Convention. *Add to the list of developing countries (see hereafter S/249, Annex I):* Botswana, Gambia, Ivory Coast, Kenya, Lesotho, Malawi, Zambia.

S/235 SECRETARIAT. Berne and Paris Conventions. Nice and Lisbon Agreements. *The following memorandum, containing a list of the problems to be discussed, is submitted to the joint meeting of Main Committees II and IV:*

I. *Berne Convention (Document S/9), Article 20*bis*: Protocol Regarding Developing Countries*

(1) This Article proposes that the Protocol forms an integral part of the Stockholm Act of the Berne Convention.

(2) Note proposal of the Delegations of Argentina, Mexico and Uruguay (Document S/231) and proposal of the Delegation of Israel (Document S/227).

(3) This Article has not been discussed in Main Committee IV.

II. *Berne Convention (Document S/9), Article 25*quater*: Admission of the Application of Reservations Made under the Protocol Regarding Developing Countries*

(1) It is proposed in Document S/9/Corr.1 that this Article should be deleted.

(2) The Article has not been discussed in Main Committee IV.

III. *Accession to Earlier Acts*

(1) *Paris Convention* (Document S/3), Article 16*quater*, as amended by Document S/3/Corr.1.

The proposed text, as amended, reads as follows:

"*After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.*"

(2) *Berne Convention* (Document S/9), Article 28, as amended by Document S/9/Corr.1.

The proposed text, as amended, reads as follows:

"*After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.*"

(3) This Article has not been discussed by Main Committee IV, since it has been reserved pending the joint meeting with Main Committee II.

IV. *Application of Earlier Acts*

(1) *Paris Convention* (Document S/3), Article 18, as amended by Document S/3/Corr.1.

(a) The proposed draft of Article 18, as amended by the corrigendum, does not contain the initially proposed paragraph (3) regarding the contractual relations between countries bound by the Stockholm Act and countries bound by earlier Acts.

In this form the rules concerning the application of earlier Acts would, in essence, remain the same as under the Lisbon Act (Article 18, paragraphs (3) to (6)).

(b) Note proposal of the United Kingdom Delegation (Document S/95) to amend Article 18(3) as follows:

"*Countries outside the Union which accede to the present Act shall apply the present Act in their relations with all other countries of the Union.*"

(c) This Article has not been discussed by Main Committee IV, since it has been reserved pending the joint meeting with Main Committee II.

(2) *Berne Convention* (Document S/9), Article 27, as amended by Document S/9/Corr.1.

(a) The proposed draft of Article 27, as amended by the corrigendum, consists of a single paragraph containing paragraph (1) of the S/9 text and the following additional sentence:

"*The Acts previously in force shall continue to be applicable, in their entirety or to the extent that the present Act does not replace them by virtue of the preceding sentence, in relations with countries which do not ratify or accede to this Act.*"

Since paragraphs (2) and (3) of the S/9 text have been deleted, the Article does not contain a provision regarding the contractual relations between countries bound by the Stockholm Act and countries bound by earlier Acts.

(b) Note proposal of the United Kingdom Delegation (Document S/95) to amend Article 27 as follows:

"(1) *The obligations of a country ratifying or acceding to this Act shall, as regards all other countries of the Union, be governed by those provisions of this Act by which, in accordance with Article 25, it is bound.*

(2) *The obligations of a country of the Union to which the present Act does not apply or, in accordance with Article 25, does not apply in its entirety shall, as regards all other countries of the Union, continue to be governed by the most recent Act to which it is a party to the extent that they are not replaced by provisions of this Act accepted by that country.*"

(c) This Article has not been discussed by Main Committee IV since it has been reserved pending the joint meeting with Main Committee II.

(3) *Special Agreements* (Documents S/7 and S/8).

(a) *Nice Agreement* (International Classification of Goods and Services) (Document S/7), Article 8*bis*.

Discussion of this Article was reserved by Main Committee IV until final decision on Article 18 of the Paris Convention (Document S/3).

(b) *Lisbon Agreement* (Appellations of Origin) (Document S/8), Article 13.

Discussion of this Article was reserved by Main Committee IV until final decision on Article 18 of the Paris Convention (Document S/3).

V. *Proposal of the United Kingdom Delegation in Document S/149, paragraph 4, to Insert a Territorial Clause into the Protocol*

It is proposed to add a new Article 1B as follows:

"*1B. (1) Any country which has made a declaration or notification under Article 26(1) in respect of territories for whose external relations that country is responsible may* [*with the prior agreement of the Executive Committee of the Berne Union*], *notify the Director General that the provisions of this Protocol shall apply to all or part of those territories and such notification shall specify which of the reservations permitted by this Protocol shall apply in respect of all or part of those territories.*

(2) A notification made under this Article shall take effect [*three months*] *after its receipt by the Director General.*"

S/236 France, Italy. Paris and Berne Conventions. *The following comment is made on Article 18 (document S/3) and Article 27 (document S/9):* In view of the distribution as Conference documents of the corrigenda to documents S/3 and S/9, and in particular the interpretation of Article 27 of the Berne Convention given in S/9/Corr.1, the Delegations of France and Italy, aware of the importance of such an interpretation, feel obliged to request that the texts originally proposed in documents S/3 and S/9 should be used as a basis of discussion for the Articles in question.

S/237 Belgium, Luxembourg, Netherlands. Berne Convention. *The following "Additional Protocol" should be added to document S/1:* Additional Protocol to the Berne Convention, as revised at Stockholm, on July 14, 1967, concerning the application of that Convention to the works of the international organizations.

The countries of the Union becoming parties to this Protocol have agreed to the following provisions:

The copyright protection provided by the Berne Convention of September 9, 1886, and its successive revisions shall apply to the works of the United Nations and the Specialized Agencies in relationship therewith, and to those international intergovernmental organizations which either have their headquarters in a country of the Union or in which a majority of members are countries of the Union.

S/238 Secretariat. Berne Convention. *The following new texts of Articles 1, 2, 9, 10, and 10*bis *(document S/1) are prepared for the Drafting Committee:*

Article 1: The countries to which this Convention applies constitute a Union for the protection of authors' copyright in their literary and artistic works.

Article 2: (1) The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated those expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated those expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in countries of the Union to prescribe that works in general or any specified categories of works shall not be considered as having been made until they have been fixed in some material form.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

(5) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.

(6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.

(7) Subject to the provisions of Article 7, paragraph (4), of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in other countries of the Union only to such protection as shall be granted to designs and models in such countries, either in special legislation introduced for that purpose or under the protection granted to literary or artistic works.

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of information.

Article 9: (1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author.

(3) It shall also be a matter for legislation in the countries of the Union to permit the reproduction by the press or the broadcasting of articles on current economic, political or religious topics, unless the reproduction or the broadcasting thereof is expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.

Article 10: (1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the

extent justified by the purpose, of literary or artistic works by way of illustration in publications. broadcasts or recordings for teaching, provided such utilization is compatible with fair practice.

(3) The source and the name of the author, if his name appears therein, shall be mentioned in the quotations and utilizations referred to in the preceding paragraphs.

*Article 10*bis*:* It shall be a matter for legislation in countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, it shall be permissible, to the extent justified by the informatory purpose, to reproduce and communicate to the public literary or artistic works seen or heard in the course of the event.

S/239 WORKING GROUP OF MAIN COMMITTEE I (ORAL WORKS). Berne Convention. *Article 2*bis*(2) (document S/1) should read:* It shall be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses and other works of the same nature may be reproduced by the press, broadcast, communicated by wire to the public and made the subject of the public communications envisaged in Article 11*bis*, paragraph (1), of this Convention, when such use is justified by the informatory purpose.

S/240 WORKING GROUP OF MAIN COMMITTEE I (FOLKLORE). Berne Convention. *In Article 15 (document S/1), as paragraph (3), add:* (a) In the case of unpublished works for which the identity of the author is unknown, but for which there is every ground to presume that that author is a national of a country of the Union or has his habitual residence in such country, it shall be a matter for legislation in that country to designate the competent authority who shall represent this author and shall be entitled to protect and enforce his rights in countries of the Union; (b) Countries of the Union which make such designation under the terms of this provision shall notify... by means of a written declaration giving full information concerning the authority thus designated. The ... shall at once communicate this declaration to all other countries of the Union.

S/241 SECRETARIAT. Berne Convention. *The following new text of various articles appearing in document S/1 is submitted to the Drafting Committee. The texts of Articles 2*bis*, 7, 7*bis*, 11, 11*bis*, 11*ter*, 12, 13, 14, 14*bis*, 14*ter*, 15, 16, 17, 18, 19, and 20, were prepared by the Secretariat, whereas the texts of the Preamble and of Articles 1, 2, 3, 4, 5, 6, 9, 10, and 10*bis* were already discussed by the Drafting Committee. [Editor's Note: The Articles are reproduced in that order.]*

*Article 2*bis*:* (1) It shall be a matter for legislation in the countries of the Union to exclude, partially or wholly, from the protection provided by the preceding Article political discourse and discourse as a part of legal proceedings.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses and other works of the same nature may be reproduced by the press, broadcast, communicated by wire to the public and made the subject of the public communications envisaged in Article 11*bis*, paragraph (1), of this Convention, when such use is justified by the informatory purpose.

(3) Nevertheless, the author alone shall have the right of making a collection of his works mentioned in the above paragraphs.

Article 7: (1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.

(2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or failing such an event within fifty years from the making of such a work. fifty years after the making.

(3) In the case of anonymous or pseudonymous works, the term of protection granted by this Convention shall expire fifty years after the work has been made available to the public with the consent of the author. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). The countries of the Union shall not be required to protect anonymous or pseudonymous works of which it is reasonable to presume that their author has been dead for fifty years.

(4) It shall be a matter for legislation in countries of the Union to determine the term of protection of photographic works and that of works of applied arts in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work.

(5) The term of protection subsequent to the death of the author and the terms provided by paragraphs (2), (3) and (4) shall run from the date of death or of the event referred to in those paragraphs, but such terms shall always be deemed to begin on the 1st January of the year following the death or such event.

(6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs. However, the countries of the Union bound by the Rome Act of this Convention, that have in their national legislation in force at the time of signature of the present Act provisions granting a shorter term of protection than those provided for in the preceding paragraphs shall have the right to maintain them when acceding to or ratifying the present Act.

(7) In any case, the term shall be governed by the law of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

*Article 7*bis*:* The provisions of the preceding Article shall also apply in the case of a work of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the last surviving author.

Article 11: (1) Subject to the provisions of Article *11*bis, the authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing: (i) the public performance of their works, including the public performance of these works by means of instruments capable of reproducing them mechanically; (ii) any communication to the public of the performance of their works.

(2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

*Article 11*bis*:* (1) Authors of literary and artistic works shall have the exclusive right of authorizing: (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images; (ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one; (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall,

however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

*Article 11*ter: Subject to the provisions of Article 11*bis*, authors of literary works shall enjoy the exclusive right of authorizing: (i) the public recitation of their works including the public recitation of these works by means of instruments capable of reproducing them mechanically; (ii) any communication to the public of the recitation of their works.

Article 12: Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

Article 13: (1) Each country of the Union may impose for itself reservations and conditions on the exclusive right, granted to authors of musical works, of authorizing the recording of such works, including, as the case may be, the accompanying words, by instruments capable of reproducing them mechanically, but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(2) Recordings of musical works made in a country of the Union in accordance with Article 13, paragraph (3), of the Convention signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until December 31, 19...

(3) Recordings made in accordance with paragraphs (1) and (2) of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

Article 14: (1) Authors of literary or artistic works shall have the exclusive right of authorizing: (i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced; (ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.

(2) The adaptation into any other artistic form of cinematographic productions derived from literary or artistic works shall, without prejudice to the authorization of their authors, remain subject to the authorization of the author of the original work.

(3) The provisions of Article 13, paragraph (1), shall not apply.

*Article 14*bis: (1) Without prejudice to the copyright in any work which might have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

(2)(a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

(b) However in the countries of the Union which by legislation include among such owners of copyright authors who have brought contributions to the making of a cinematographic work, if they have undertaken to bring such contributions to the making of the cinematographic work, they may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting, any other communication to the public, subtitling and dubbing of the texts, of the cinematographic work.

(c) The form of the undertaking referred to above which may be required by a country of the Union to be in a written agreement or something having the same force shall be governed by the legislation of the country of the Union where the maker of the cinematographic work has his headquarters or habitual residence.

(d) By "contrary or special stipulation" is meant any restrictive condition appropriate to the aforesaid undertaking.

(3) Unless the national legislation provides to the contrary, the provision of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works, specially created in the making of the cinematographic work.

*Article 14*ter: (1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.

Article 15: (1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.

(2) In the case of anonymous and pseudonymous works, other than those referred to in the preceding paragraph, the publisher whose name appears on the work shall, in the absence of proof to the contrary be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply if and when the author reveals his identity and establishes his claim to authorship of the work.

(3)(a) In the case of unpublished works for which the identity of the author is unknown, but for which there is every ground to presume that that author is a national of a country of the Union or has his habitual residence in such country, it shall be a matter for legislation in that country to designate the competent authority who shall represent this author and shall be entitled to protect and enforce his rights in countries of the Union.

(b) Countries of the Union which make such designation under the terms of this provision shall notify the ... by means of a written declaration giving full information concerning the authority thus designated. The ... shall at once communicate this declaration to all other countries of the Union.

(4) The person or corporate body whose name appears on a cinematographic work in the manner in current use shall be presumed to be the maker of the said work, until the contrary be proved.

Article 16: (1) Infringing copies of a work may, upon request of the owner of copyright in the said work, be seized by the competent authorities of any country of the Union where the work enjoys legal protection.

(2) In these countries the seizure may, as the case may be, also apply to reproductions coming from a country where the work is not protected or has ceased to be protected.

(3) The seizure shall take place in accordance with the legislation of each country.

Article 17: The provisions of this Convention cannot in any way prejudice the right of each country of the Union to control or to prohibit by legislation or other similar measures, the distribution, performance, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

Article 18: (1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet

fallen into the public domain in the country of origin through the expiry of the term of protection.

(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.

(3) The application of this principle shall be subject to any provisions contained in special Conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.

(4) The above provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.

Article 19: The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.

Article 20: The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention. The provisions of existing Agreements which satisfy these conditions shall remain applicable.

ANNEX to Document S/241

(Text previously discussed by the Drafting Committee)

Preamble: Being equally animated by the desire to protect in as effective and uniform a manner as possible the rights of authors in their literary and artistic works,

Have resolved to revise and to complete the Act signed at Berne on September 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, revised at Rome on June 2, 1928, and revised at Brussels on June 26, 1948.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:

Article 1: The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2: (1) The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

(5) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.

(6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.

(7) Subject to the provisions of Article 7, paragraph (4), of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 3: (1) The protection of this Convention shall apply to (a) authors who are nationals of one of the countries of the Union, for their works, whether published or not; (b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purpose of this Convention, be assimilated to nationals of that country.

(3) The expression "published works" means works published with the consent of their authors whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4: The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to (a) authors of cinematographic works, the maker of which has his headquarters or habitual residence in one of the countries of the Union; (b) authors of works of architecture, erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5: (1) Authors shall enjoy, in respect of such works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of

the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be (a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection; (b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country; (c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:

(i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country and

(ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

Article 6: (1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the ... by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The ... shall immediately communicate this declaration to all the countries of the Union.

Article 9: (1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author.

(3) It shall also be a matter for legislation in the countries of the Union to permit the reproduction by the press or the broadcasting of articles on current economic, political or religious topics, in cases in which the reproduction or the broadcasting thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

Article 10: (1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.

(3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source and of the name of the author, if it appears thereon.

*Article 10*bis*:* It shall be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

S/242 WORKING GROUP OF MAIN COMMITTEE II. Berne Convention. *The following report of the meeting held on July 1, 1967, of the Working Group to consider Article 1(a) and (e) (document S/1, Annex II) is submitted to the Main Committee:*

Following the decision taken by Main Committee II on June 29, the Working Group met again on July 1 at 9 a.m., with Mr. Hesser (Sweden) as Chairman. The Delegates from France, India, Ivory Coast, Sweden, Tunisia and the United Kingdom took part in this meeting, as well as Observers from Australia, Ireland and Mexico.

The purpose set to the Working Group by Main Committee II was to try to find a new formula for Article 1 (e)(viii), on the basis of a new proposal made by Australia or on any other basis representing a compromise.

Two written proposals were submitted for discussion, the one by the Australian Delegation and the other by the Tunisian Delegation. A third proposal was made orally during the meeting by the Delegation of the United Kingdom.

The discussion was mainly centered around the interpretation of the various terms considered for inclusion in a compromise formula, and the historical background of the proposals contained in document S/1. As the divergence of views expressed by various delegations proved to be insurmountable, no unanimous agreement could be reached.

At the request of the Tunisian Delegation, its proposal, as amended jointly by the Indian and Tunisian Delegations, was put to the vote and adopted by 3 votes against 2 and 1 abstention.

The proposal reads as follows: 1. Replace sub-paragraph (viii), which is too long and too confused according to some delegations, by the present text of paragraph (e) in document S/1, Annex II and include in the general report an interpretation of the word "restrict," saying that in no case does this mean treatment other than national treatment. 2. Accept sub-paragraphs (i) to (vii) but deleting in (i) of document S/233 the phrase "for exclusively educational purposes." 3. Make a new paragraph (f) of subparagraph (viii).

No vote has been taken on the proposal of the Australian Delegation.

S/243 UNITED KINGDOM. Berne Convention. *Article 1(e) (document S/1, Annex II) should read:* reserve the right, exclusively for educational purposes, to permit the reproduction of literary and artistic works, provided due provision shall be made by domestic legislation to assure: (i) to the author, a compensation which is just and conforms to international standards, and (ii) payment and transmittal of such compensation, subject to national currency legislation.

S/244 SECRETARIAT. Berne Convention. *The following text of the Protocol Regarding Developing Countries (document S/1, Annex II) is prepared for the Drafting Committee:*

Article 1: Any developing country mentioned in the list of developing countries annexed to Resolution 1897(XVIII) adopted by the General Assembly of the United Nations and which is reproduced in Annex I to this Protocol, or in the list figuring in Annex II to this Protocol, or which has been

or may be subsequently designated as a developing country by the General Assembly of the United Nations and which ratifies or accedes to the Act to which this Protocol is annexed and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided in the Act, may, by a notification deposited with the . . . , at the time of ratification or accession, comprising Article 20*bis* of the Act declare that it will, for a period of the first ten years during which it is a party thereto, avail itself of any or all of the following reservations:

(a) substitute for Article 8 of this Convention the following provisions:

(i) authors of literary and artistic works protected by this Convention, or their lawful representatives, shall enjoy in the other countries of the Union the exclusive right of making or authorizing the translation of their works during the entire term of their right over the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is to be claimed;

(ii) if, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the developing country concerned, a translation of such work has not been published in that country into the national or official or regional language or languages of that country by the owner of the right of translation or with his authorization, any national of such country may obtain a non-exclusive license from the competent authority to translate the work and publish the work so translated in any of the national or official or regional languages in which it has not been published; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of a translation in such language in that country are out of print;

(iii) if the owner of the right of translation cannot be found, then the applicant for a license shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the government of that country. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application;

(iv) due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms to international standards, to assure payment and transmittal of such compensation, and to assure a correct translation of the work;

(v) the original title and the name of the author of the work shall be printed on all copies of the published translation. The license shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union if one of the national or official or regional languages of such other country is the same language as that into which the work has been so translated, and if the domestic law in such other country makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements. The license shall not be transferred by the licensee;

(vi) the license shall not be granted when the author has withdrawn from circulation all copies of the work;

(vii) should, however, the author avail himself of the right under sub-paragraph (i) above during the term of ten years from the date of first publication, the license shall terminate from the date on which the author publishes or causes to be published his translation in the country where the license has been granted, provided, however, that any copies of the translation already made before the license is terminated may continue to be sold;

(viii) should, however, the author not avail himself of the right under sub-paragraph (i) above during the said term of ten years, compensation under the non-exclusive license referred to above shall cease to be due for any uses made after the expiry of such term;

(ix) should the author be entitled to exclusive translation rights in a country by having published or caused to be published a translation of the work in such country within ten years from the date of first publication, but should thereafter during the term of the author's copyright in such work all editions of such authorized translation in such country be out of print, then at such time a non-exclusive license to translate the work may be obtained from the competent authority in the same manner and subject to the same conditions as are provided with respect to the non-exclusive license referred to in subparagraphs (ii) to (vi) above.

(b) substitute for the term of fifty years referred to in paragraphs (1), (2) and (3) of Article 7 of this Convention a different term, provided that it shall not be less than twenty-five years; and substitute for the term of twenty-five years referred to in paragraph (4) of the said Article a different term, provided that it shall not be less than ten years;

(c) substitute for paragraphs (1) and (2) of Article 11*bis* of this Convention the following provisions:

(i) authors of literary and artistic work shall enjoy the exclusive right of authorizing the communication of their works to the public by radio-diffusion;

(ii) the national legislations of the countries of the Union may regulate the conditions under which the right mentioned in the preceding paragraph shall be exercised, but the effect of those conditions will be strictly limited to the countries which have put them in force. Such conditions shall not in any case prejudice the moral right *(droit moral)* of the author, nor the right which belongs to the author to obtain an equitable remuneration which shall be fixed, failing agreement, by the competent authority.

However, this paragraph shall not apply so as to permit the performance in public for profit-making purposes, otherwise than on payment of equitable remuneration, fixed, in the absence of agreement, by competent authority, of broadcasts of literary and artistic works.

(d) (reserved).

Article 2: Any country which no longer needs to maintain any or all the reservations made in accordance with Article 1 of this Protocol shall withdraw such reservation or reservations by notification deposited with the . . . .

Article 3: Any country, which has made reservations in accordance with Article 1 of this Protocol, and which at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to withdraw the reservations under the said Article 1, may continue to maintain any or all of the reservations until it accedes to the Act adopted by the next revision conference of this Convention.

Article 4: Any country which, according to a decision of the General Assembly of the United Nations, ceases to be considered as a developing country, shall no longer be entitled to avail itself of any of the reservations provided for by this Protocol. This fact shall be notified by . . . to the country concerned, and to all the countries of the Union.

ANNEX I: Countries (75) listed as developing countries in the annex to Resolution 1897 (XVIII) adopted by the General Assembly of the United Nations at its Eighteenth Session on November 13, 1963:

Afghanistan, Algeria, Argentina, Bolivia, Brazil, Burma, Burundi, Cambodia, Cameroon, Central African Republic,

Ceylon, Chad, Chile, Colombia, Congo (Brazzaville), Congo (Kinshasa), Costa Rica, Cyprus, Dahomey, Dominican Republic, Ecuador, El Salvador, Ethiopia, Gabon, Ghana, Guatemala, Guinea, Haiti, Honduras, India, Indonesia, Iran, Iraq, Jamaica, Jordan, Kuwait, Laos, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mexico, Morocco, Nepal, New Zealand, Nicaragua, Niger, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Republic, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia.

ANNEX II: Developing countries (7) added to the list figuring in Annex I: Botswana, Gambia, Ivory Coast, Kenya, Lesotho, Malawi, Zambia.

S/245 ITALY. Berne Convention. *In Article 25*ter*(2) (a) (document S/9), add:* Countries of the Union not enjoying this right [of reservation] shall be entitled to apply the principle of equivalent protection in regard to the right of translation of works having as their country of origin a country which enjoys that right.

S/246 SENEGAL. Berne Convention. *In Article 25 (1) (b) (document S/9), as paragraph (b-*bis*), insert:* Any country of the Union may, without being bound by the Stockholm Act in accordance with the foregoing provisions, ratify the Protocol Regarding Developing Countries or accede to it.

S/247 AUSTRALIA, AUSTRIA, DENMARK, GERMANY (FED. REP.), FINLAND, NORWAY, SWEDEN, UNITED KINGDOM. Berne Convention. *In Article 6*bis*(2) (document S/1), at the end, add:* However, those countries whose legislation at the moment of their ratification of or accession to this Act, does not provide for the complete protection after the death of the author of the rights set out in the preceding paragraph, may provide that some of these rights may, after his death, cease to be maintained.

S/248 DRAFTING COMMITTEE OF MAIN COMMITTEE I. Berne Convention. *The following report concerning Article 8 (document S/1), is submitted to the Main Committee:*

At its 17th meeting (S/I/PV/17), the Main Committee decided to entrust the Drafting Committee with the task to find, within Article 8 relating to the right of translation, a formula which would make it possible to state in the Convention that the exceptions to the right of reproduction are equally applicable when reproduction bears not only on the original work but also on its translation.

After discussion, the Drafting Committee was of the opinion that:

(1) In relation to the provisions of *Article 2*bis*, paragraph (2), Article 9, paragraph (3)* (the former paragraph (2) of the Brussels text), *Article 10, paragraph (1), and Article 10, paragraph (2)*, it seems normal that the exceptions introduced into the provisions for the right of reproduction should also apply to the right of translation, that is to say, should also apply to the translated version of the work.

(2) In relation to *Article 9, paragraph (2) (new)*, the problem presents certain difficulties but it would appear possible to consider that there is likewise extension to the translated version of the work only if the conditions provided in paragraph (2) are also fulfilled for that translated version.

(3) In relation to *Article 10*bis*, Article 11*bis*, and Article 13*, the question remains open, by virtue of the fact that those provisions do not refer solely to the right of reproduction but also to the right of broadcasting.

S/249 SECRETARIAT. Berne Convention. *The following text of Article 1 (a), (d), and (e) (document S/1, Annex II) was prepared after discussion by the Working Group and is submitted to the Main Committee:*

Article 1: Any developing country mentioned in the list of developing countries annexed to Resolution 1897 (XVIII) adopted by the General Assembly of the United Nations and which is reproduced in Annex I to this Protocol, or in the list figuring in Annex II to this Protocol, or which has been or may be subsequently designated as a developing country by the General Assembly of the United Nations and which ratifies or accedes to the Act to which this Protocol is annexed and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided in the Act, may, by a notification deposited with the . . ., at the time of ratification or accession, comprising Article 20*bis* of the Act declare that it will, for a period of the first ten years during which it is a party thereto, avail itself of any or all of the following reservations:

(a) substitute for Article 8 of this Convention the following provisions:

(i) authors of literary and artistic works protected by this Convention, or their lawful representatives, shall enjoy in the other countries of the Union the exclusive right of making or authorizing the translation of their works during the entire term of their right over the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is to be claimed;

(ii) if, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the developing country concerned, a translation of such work has not been published in that country into the national or official or regional language or languages of that country by the owner of the right of translation or with his authorization, any national of such country may obtain a non-exclusive license from the competent authority to translate the work and publish the work so translated in any of the national or official or regional languages in which it has not been published; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of a translation in such language in that country are out of print;

(iii) if the owner of the right of translation cannot be found, then the applicant for a license shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the government of that country. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application;

(iv) due provision shall be made by domestic legislation to assure to the owner of the right of translation a just compensation, to assure payment and transmittal of such compensation subject to national currency regulations, and to assure a correct translation of the work;

(v) the original title and the name of the author of the work shall be printed on all copies of the published translation. The license shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union if one of the national or official or regional languages of such other country is the same language as that into which the work has been so translated, and if the domestic law in such other country makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its

agreements. The license shall not be transferred by the licensee;

(vi) the license shall not be granted when the author has withdrawn from circulation all copies of the work;

(vii) should, however, the author avail himself of the right under sub-paragraph (i) above during the term of ten years from the date of first publication, the license shall terminate from the date on which the author publishes or causes to be published his translation in the country where the license has been granted, provided, however, that any copies of the translation already made before the license is terminated may continue to be sold;

(viii) should, however, the author not avail himself of the right under sub-paragraph (i) above during the said term of ten years, compensation under the non-exclusive license referred to above shall cease to be due for any uses made after the expiry of such term;

(ix) should the author be entitled to exclusive translation rights in a country by having published or caused to be published a translation of the work in such country within ten years from the date of first publication, but should thereafter during the term of the author's copyright in such work all editions of such authorized translation in such country be out of print, then at such time a non-exclusive license to translate the work may be obtained from the competent authority in the same manner and subject to the same conditions as are provided with respect to the non-exclusive license referred to in sub-paragraphs (ii) to (vi) above.

(b) substitute for the term of fifty years referred to in paragraphs (1), (2) and (3) of Article 7 of this Convention a different term, provided that it shall not be less than twenty-five years; and substitute for the term of twenty-five years referred to in paragraph (4) of the said Article a different term, provided that it shall not be less than ten years;

(c) substitute for paragraphs (1) and (2) of Article 11*bis* of this Convention the following provisions:

(i) authors of literary and artistic works shall enjoy the exclusive right of authorizing the communication of their works to the public by radio-diffusion;

(ii) the national legislations of the countries of the Union may regulate the conditions under which the right mentioned in the preceding paragraph shall be exercised, but the effect of those conditions will be strictly limited to the countries which have put them in force. Such conditions shall not in any case prejudice the moral right *(droit moral)* of the author, nor the right which belongs to the author to obtain an equitable remuneration which shall be fixed, failing agreement, by the competent authority.

However, this paragraph shall not apply so as to permit the performance in public for profit-making purposes, otherwise than on payment of equitable remuneration, fixed, in the absence of agreement, by competent authority, of broadcasts of literary and artistic works.

(d) the provisions of Article 9(1) of this Convention shall be subject to the following provisions:

(i) if, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the developing country concerned, such work has not been published in that country in the original form in which it was created, by the owner of the right of reproduction or with his authorization, any national of such country may obtain a non-exclusive license from the competent authority to reproduce and publish such work for educational or cultural purposes; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to reproduce and publish such work for educational or cultural purposes, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of such work in its said original form in that country are out of print;

(ii) if the owner of the right of reproduction cannot be found, then the applicant for a license shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of reproduction is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the government of that country. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application;

(iii) due provision shall be made by domestic legislation to assure to the owner of the right of reproduction a just compensation, to assure payment and transmittal of such compensation, subject to national currency regulations, and to assure an accurate reproduction of the work;

(iv) the original title and the name of the author of the work shall be printed on all copies of the published reproduction. The license shall be valid only for publication in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union for educational or cultural purposes if the domestic law in such other country makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements. The license shall not be transferred by the licensee;

(v) the license shall not be granted when the author has withdrawn from circulation all copies of the work;

(vi) should, however, the author avail himself of the right to reproduce the work, the license shall terminate from the date on which the author publishes or causes to be published his work in its said original form in the country where the license has been granted, provided, however, that any copies of the work already made before the license is terminated may continue to be sold;

(vii) should the author publish or cause his work to be published in its said original form in a country, but should thereafter during the term of the author's copyright in such work all authorized editions in such original form in such country be out of print, then at such time a non-exclusive license to reproduce and publish the work may be obtained from the competent authority in the same manner and subject to the same conditions as are provided with respect to the non-exclusive license referred to in subparagraphs (i) to (v) above, but subject to the provisions of subparagraph (vi) above;

(e) reserve the right, exclusively for teaching study and research in all fields of education, to restrict the protection of literary and artistic works, provided due provision shall be made by domestic legislation to assure to the author a compensation which conforms to standards of payment made to national authors; the payment and transmittal of such compensation shall be subject to national currency regulations.

Article 2: Any country which no longer needs to maintain any or all the reservations made in accordance with Article 1 of this Protocol shall withdraw such reservation or reservations by notification deposited with the ...

Article 3: Any country, which has made reservations in accordance with Article 1 of this Protocol, and which at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to withdraw the reservations under the said Article 1, may continue to maintain any or all of the reservations until it accedes to the Act adopted by the next revision conference of this Convention.

Article 4: Any country which, according to a decision of the General Assembly of the United Nations, ceases to be considered as a developing country, shall no longer be entitled to avail itself of any of the reservations provided for by this Protocol. This fact shall be notified by ... to the country concerned, and to all the countries of the Union.

ANNEXES I AND II. [*Editor's note:* same as in document S/244.]

S/249 Add. SECRETARIAT. Berne Convention. *In document S/249, add to Article 1(e):* copies of a work published pursuant to the aforesaid reservation may be imported and sold in the same language in another country of the Union for purposes as aforesaid if the domestic law in such other country has invoked a reservation pursuant to this paragraph (e), and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements.

S/250 DRAFTING COMMITTEE OF MAIN COMMITTEE V. WIPO Convention. [*Editor's Note:* This document contains the complete text of the WIPO Convention as prepared by the Drafting Committee both in French and in English. In the following, only the differences between the English text of the Drafting Committee and the text as signed on July 14, 1967, are indicated. The use of the past tense refers to document S/250.]

in Article 2(vii), the word following "international" was: arrangements; *rather than:* agreement.

in the enumeration contained in Article 2(viii), the words "performances of performing artists, phonograms, and broadcasts," appeared in the penultimate rather than the second position.

in Article 4(i), the word following "national" was: legislations; *rather than:* legislation.

in Article 6(3), the wording of subparagraph (c) was: If, in any session, the number of States represented is less than one-half but equal to or more than one-third of the States members of the General Assembly, the decision of the General Assembly shall be provisional. The International Bureau shall communicate in writing any provisional decision to the States members of the General Assembly which were not represented in the session, and shall invite them at the same time to express their vote or abstention, within a period of four months from the date of the communication. If within this period, together with the written replies received by the International Bureau, the required quorum and majority are attained, the decision shall be final.

in Article 6(3)(d), the words "sub-paragraphs (e) and (f)" were followed by a footnote which read: The Main Committee, when increasing the majority required to two-thirds, decided that this be a general rule as in the administrative provisions of the Paris and Berne Unions. If it was really intended to make the rule general, the provisions underlined [subject to the provisions of sub-paragraphs (e) and (f)] should be omitted. Since the Drafting Committee was not clear about the intentions of the Main Committee, the Drafting Committee did not take any position. *The same footnote appeared following Article 6(3)(e) and (f).*

in Article 6(3)(g), the words following "international agreements" were: (paragraph 2(vi)); *rather than:* (paragraph 2(v)).

in Article 8(1)(a), the opening phrase of the second sentence was: However, if any of these Executive Committees is composed of more than one-fourth of the number of the countries members of the Assembly which elected them; *rather than:* However, if either of these Executive Committees is composed of more than one-fourth of the number of the countries members of the Assembly which elected it.

in Article 8(3)(iv), the words following "triennial budget" were: of the Conference; *rather than:* of expenses common to the Unions and the triennial budget of the Conference.

in Article 10, the wording of paragraph (2) was: Its transfer may be decided as provided for in Article 6(3)(g); *rather than:* Its transfer may be decided as provided for in Article 6(3)(d) and (g).

in Article 11(4)(a), the words following "annual contributions" were: on the basis of a fixed number of units; *rather than:* on the basis of a number of units fixed.

in Article 11(5), the words following "shall have no vote in" were: the General Assembly, the Coordination Committee, and the Conference; *rather than:* any of the bodies of the Organization of which it is a member.

in Article 12(4), the words following "shall conclude" were: the agreements referred to in paragraphs (2) and (3); *rather than:* and sign on behalf of the Organization the agreements referred to in paragraphs (2) and (3).

in Article 13(1), the Drafting Committee included a note recommending that the words "effective" (working relations) and "closely" (cooperate), retained by the Main Committee, be omitted in the final text.

in Article 14, the paragraph numeration was: (1)(a), (b), and (c); *rather than:* (1), (2), and (3).

in Article 14(2), the words following "limitation set forth in" were respectively: Article 16(1)(b)(i), Article 25(1)(b)(i); *rather than:* Article 20(1)(b)(i), Article 28(1)(b)(i).

in Article 15, the words "as provided in" were followed in each case by: Article 14(1)(a); *rather than:* Article 14(1).

in Article 17(3), the words following "notifications of acceptance" were: have been received by the Director General; *rather than:* effected in accordance with their respective constitutional processes, have been received by the Director General.

in Article 20(2), the words following "with the interested Governments" were: in the German, Italian and Portuguese languages; *rather than:* in German, Italian and Portuguese.

in Article 21(4)(a) and in Article 21(4)(b), the words following "and property" were: of that Union and its Bureau shall devolve on the International Bureau: *rather than:* of the Bureau of that Union shall devolve on the International Bureau of the Organization.

S/251 DRAFTING COMMITTEE OF MAIN COMMITTEE IV. Paris Convention. [*Editor's Note:* This document contains the complete text of the administrative provisions of the Paris Convention as prepared by the Drafting Committee both in French and in English. In the following, only the differences between the English text of the Drafting Committee and the official English translation of the text as signed (in French only) on July 14, 1967, are indicated. The use of the past tense refers to document S/251.]

in Article 13, the title was: Assembly; *rather than:* Assembly of the Union.

in Article 13(2)(viii), the words following "working groups" were: as may be necessary for the work of the Union; *rather than:* as it deems appropriate to achieve the objectives of the Union.

in Article 13(2)(xii), the word preceding "such other functions" was: exercise; *rather than:* perform.

in Article 13(3)(a), the words following "may represent" were: only one country; *rather than:* one country only.

in Article 13(4), the wording of sub-paragraph (c) was: If, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the decisions of the Assembly shall be provisional and shall not take effect until they become final. The International Bureau shall communicate in writing any provisional decision to the countries members of the Assembly which were not represented in the session, and shall invite them at the same time to express in writing their vote or abstention, within a period of four months from the date of the communication. If, within this period, together with the written replies received by the International Bureau, the required quorum and majority are attained, the decision shall be final.

in Article 13(6), the words following "admitted to" were: its meetings; *rather than:* the meetings of the latter.

in Article 14(5)(b) the words following "may be re-elected" were: but not more than two-thirds of them; *rather than:* but only up to a maximum of two-thirds of such members.

in Article 14(6)(a)(ii), the word following "Assembly" was: respecting; *rather than:* in respect of.

in Article 14(6)(a)(v), the phrase "in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly" appeared at the beginning of the item.

in Article 15(1)(a), the words preceding "shall be performed" were: the administrative tasks with respect to the Union; *rather than:* administrative tasks concerning the Union.

in Article 15(2), the third sentence began: It shall furnish; *rather than:* Furthermore, it shall furnish.

in Article 15, the wording of paragraph (4) was: The number of free copies of the monthly periodical and other publications of the International Bureau that each country of the Union is entitled to receive shall be proportionate to the number of units in the class to which the country belongs according to Article 16(4)(a) and shall be fixed by the Assembly. *This paragraph was deleted in the final text pursuant to a recommendation of the Drafting Committee contained in a note to the draft text.*

in Article 15, paragraphs (5) to (9) corresponded to paragraphs (4) to (8) in the final text.

in Article 15(7), the word following "any other" was: committee; *rather than:* committee of experts or working group.

in Article 16(3)(ii), the words "the International Bureau" were preceded by: charges due for services performed by; *rather than:* fees and charges due for services rendered by.

in Article 16(4)(b), the word following "must announce" was: it; *rather than:* such change.

in Article 16(4)(e), the words following "of its contributions" were: shall have no vote in any organ of the Union; *rather than:* may not exercise its right to vote in any of the organs of the Union of which it is a member.

in Article 16(4)(f), the words following "the previous year" were: in accordance with; *rather than:* as provided in.

in Article 16(5), the words following "reported to the" were: Coordination Committee; *rather than:* Assembly and the Executive Committee.

in Article 16(6)(a), the words following "becomes insufficient" were: an increase shall be decided by the Assembly; *rather than:* the Assembly shall decide to increase it.

in Article 16(6), sub-paragraph (b) read: The amount of the payment of each country to the fund or to an increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the increase decided.

in Article 16(6)(c), the words following "advice of the" were: Coordination Committee; *rather than:* Coordination Committee of the Organization.

in Article 17(3), the words following "notifications of acceptance" were: have been received; *rather than:* effected in accordance with their respective constitutional processes, have been received.

in Article 18, the title was: Revision of the provisions of the Convention other than Articles 13 to 17; *rather than:* Revision of Articles 1 to 12 and 18 to 30.

in Article 18(2), the word "conferences" was preceded by: For this purpose; *rather than:* For that purpose.

in Article 20(2)(a), the word following "with respect to" was: those; *rather than:* the first ten.

in Article 20(2)(b), the word following "with respect to" was: those; *rather than:* the first ten.

in Article 20(2)(c), the sub-paragraph ended with the words "declaration deposited" and did not have a second sentence.

in Article 20(3), the words following "ratification or accession" were: Articles 18 to 29; *rather than:* Articles 18 to 30.

in Article 21(2)(a)(ii), the words following "be bound by" were: Articles 13 and 14(3) and (4); *rather than:* Articles 13 and 14(3), (4) and (5).

in Article 22, the title was: Effect of ratification or accession; *rather than:* Consequences of ratification or accession.

in Article 22, the words following "provided for in" were: Article 20(1)(b); *rather than:* Articles 20(1)(b) and 28(2).

in Article 23, the text was reserved.

in Article 24(3)(a), the word following "ratification or accession" was: in; *rather than:* in the instrument of.

in Article 25, the title was: Implementation of the Convention; *rather than:* Implementation of the Convention on the domestic level.

in Article 25(1), the first word was: Every; *rather than:* any.

in Article 26(4), a footnote was included which read: The Drafting Committee recommends that the report of Main Committee IV should contain an interpretation of paragraph (4) clarifying that the denunciation can only be notified after the expiration of the five-year period. Thus, denunciation will be effective, at the earliest, six years after the date mentioned in paragraph (4).

in Article 27, the text was reserved.

in Article 28 (document S/251), the title was: Signature, etc.; *rather than:* Signature, Language, Depositary Functions (Article 29 of the official English text of the Paris Convention signed on July 14, 1967).

in Article 28 (signature, etc.) and Article 29 (transitional provisions) the text corresponds to Articles 29 and 30 of the signed text. Article 28 (disputes) in the signed text does not appear in the text of the drafting committee.

in Article 29(2) (document S/251), the words following "shall give written notification" were: to this effect to the Director General; this notification shall be effective on the date of its receipt; *rather than:* to that effect to the Director General; such notification shall be effective from the date of its receipt.

S/252 DRAFTING COMMITTEE OF MAIN COMMITTEE IV. Berne Convention. [*Editor's Note:* This document contains the complete text of the administrative provisions of the Berne Convention as prepared by the Drafting Committee of Main Committee IV both in French and in English. In the following, only the differences between the English text of the Drafting Committee and the text as signed on July 14, 1967, are indicated. The use of the past tense refers to document S/252.]

in Articles 22 to 36 (document S/252), the titles were deleted in the final text.

in Article 22(3), the wording of sub-paragraph (c) was: If, in any session, the number of States represented is less than one-half but equal to or more than one-third of the States members of the General Assembly, the decision of the General Assembly shall be provisional. The International Bureau shall communicate in writing any provisional decision to the States members of the General Assembly which were not represented in the session, and shall invite them at the same time to express their vote or abstention, within a period of four months from the date of the communication. If within this period, together with the written replies received by the International Bureau, the required quorum and majority are attained, the decision shall be final.

in Article 23(4), the word following "Special Agreements" was: established; *rather than:* which might be established.

in Article 24(4), the wording of the paragraph was: The number of free copies of the monthly periodical and other publications of the International Bureau that each country of the Union is entitled to receive shall be proportionate to the number of units in the class to which the country belongs according to Article 25(4)(a) and shall be fixed by the Assembly. *This paragraph was deleted in the final text pursuant to a recommendation of the Drafting Committee contained in a note to the draft text.*

in Article 24, paragraphs (5) to (9) correspond to paragraphs (4) to (8) in the final text.

in Article 24(7), the word following "any other" was: committee; *rather than:* committee of experts or working group.

in Article 25(3)(ii), the words "due for services" were preceded by: charges; *rather than:* fees and charges.

in Article 25(4)(c), the word "budget" was preceded by: the; *rather than:* annual.

in Article 25(4)(e), the words following "shall have no vote" were: in any organ of the Union; *rather than:* in any of the organs of the Union of which it is a member.

in Article 25(5), the words following "reported to the" were: Coordination Committee; *rather than:* Assembly and the Executive Committee.

in Article 25(6)(b), the words following "amount of the" were: payment of each country to the fund or to an increase thereof; *rather than:* initial payment of each country to the said fund or of its participation in the increase thereof.

in Article 25(6)(c), the words following "advice of the" were: Coordination Committee; *rather than:* Coordination Committee of the Organization.

in Article 26(3), the words following "notifications of acceptance" were: have been received; *rather than:* effected in accordance with their respective constitutional processes, have been received.

in Article 28(1), subparagraph (c) did not exist in the Draft text.

in Article 28(1)(d) (numbered (c) in the Draft text), the words following "in accordance with" were: subparagraph (b); *rather than:* subparagraph (b) and (c), *and the word following "to that group of" was:* Articles; *rather than:* provisions.

in Article 28(2), the wording of subparagraph (a) was: Articles 1 to 21 shall enter into force with respect to those countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by paragraph (1)(b)(i), three months after the deposit of the fifth such instrument of ratification or accession.

in Article 28(2)(b), the words following "with respect to" were: those countries; *rather than:* the first seven countries.

in Article 28(2)(c), the word following "two groups of" was: Article; *rather than:* provisions, *and the sub-paragraph ended with the words "declaration deposited" and did not have a second sentence.*

in Article 28(2)(d) did not appear in the text of the Drafting Committee.

in Article 28(3), the word following "of the groups of" was: Articles; *rather than:* provisions.

in Article 29(2)(b), the word following "of one group of" was: Articles; *rather than:* provisions.

in Article 30, the text was reserved.

in Article 32, the text was reserved.

Article 33 (disputes) did not appear in the text of the Drafting Committee.

in Article 34, the text was reserved.

in Article 35, a footnote was included which read: The Drafting Committee recommends that the report of the Main Committee IV should contain an interpretation of paragraph (4) clarifying that the denunciation can only be notified after the expiration of the five-year period. Thus, denunciation will be effective, at the earliest, six years after the date mentioned in paragraph (4).

in Article 37(1)(a) (Article 36(1)(a) of the Draft text), the words following "in a single copy" were: in the French language; *rather than:* in the French and English languages.

in Article 37(5) of the final Act (Article 36(5) of the Draft text) the words following "or made pursuant to" were: Article 28(1)(c); *rather than:* Article 28(1)(d).

S/253 DENMARK, FINLAND, NORWAY, SWEDEN. Berne Convention. *Article 1 (document S/1, Annex II) should read:* Any country designated as a developing country under the established practice of the General Assembly of the United Nations and which ratifies or accedes to this Act...

S/254 [*Editor's Note:* This document in the French series contains the draft text of the Stockholm Act to the Madrid (TM) Agreement as prepared by the Drafting Committee of Main Committee IV. Since, however, the Drafting Committee did not prepare a text in English, no document with this number was issued in the English series.]

S/255 DRAFTING COMMITTEE OF MAIN COMMITTEE IV. Madrid (FIS) Agreement. [*Editor's Note:* This document contains the text of the Additional Act of Stockholm of the Madrid (FIS) Agreement as prepared by the Drafting Committee in French and, as a provisional translation, in English. In the following, only the differences between the provisional English text and the official English translation of the text signed (in French only) on July 14, 1967, are indicated. The use of the past tense refers to document S/255.]

The titles of Articles were omitted in document S/255.

in Article 2, the text was: The reference, in Articles 5 and 6(2) of the Lisbon Act, to Articles 16, 16*bis*, and 17*bis*, of the General Convention shall be considered as references to those provisions of the Stockholm Act of that Convention which correspond to the said Articles;

in Articles 3(1), 4, 5(1), 5(2), 6(1), 6(2), 6(3), 6(4), and 7, the words preceding "Additional Act" were: the present; *rather than:* this.

in Article 5(1), the words following "the World Intellectual Property Organization" were: has come; *rather than:* has entered.

in Article 5(2), the word following "pursuant to the" was: preceding; *rather than:* foregoing.

in Articles 6(3) and (5), the word following "the Governments of all countries" was: parties; *rather than:* party.

in Article 6(1), the words following "in a single copy" were: and shall be deposited; *rather than:* in the French language and shall be deposited.

in Article 7, the word following "shall be" were: deemed to be; *rather than:* construed as.

S/256 [*Editor's Note:* This document in the French series contains the text of the Complementary Act to the Hague Agreement as prepared by the Drafting Committee of Main Committee IV. Since, however, the Drafting Committee did not prepare a text in English, no document with this number was issued in the English series.]

S/257 DRAFTING COMMITTEE OF MAIN COMMITTEE IV. Nice Agreement. [*Editor's Note:* This document contains the text of the Nice Agreement as prepared by the Drafting Committee in French and in English. In the following, only the differences between the English text of the Drafting Committee and the official English translation of the text signed (in French only) on July 14, 1967, are indicated. The use of the past tense refers to document S/257.]

in Article 1(6), the word following "national" was: Administration; *rather than:* Office.

The title of Article 5 (S/257) was: Assembly; *rather than:* Assembly of the Special Union.

in Article 5(2)(a)(i), the word preceding "Agreement" was: its; *rather than:* this.

in Article 5(2)(a)(iii), the word following "and approve" was: reports; *rather than:* the reports: *and the word following "give him" was:* any; *rather than:* all.

in Article 5(2)(a)(vi), the words following "in Article 3" were: such Working Groups as may be considered necessary to further the objectives of the Special Union; *rather than:* such other committees of experts and working groups as it may deem necessary to achieve the objectives of the Special Union.

in Article 5(2)(a)(x), the words "such other" were preceded by: exercise; *rather than:* perform.

in Article 5(3)(c), the text was reserved.

in Article 5(3), the wording of subparagraph (g) was: countries of the Special Union that are not members of the Assembly shall be admitted to its meetings as observers; *rather than:* countries of the Special Union not members of the Assembly shall be admitted to the meeting of the latter as observers.

in Article 6(1)(a), the word following "administrative tasks" was: concerning; *rather than:* with respect to.

in Article 6(1)(b), the words following "International Bureau" were: shall make preparations for; *rather than:* shall prepare; *and the words following "such other" were:* Working Groups; *rather than:* Committees of Experts and Working Groups.

in Article 6(1)(c), the words following "the Director General" were: the chief executive; *rather than:* shall be the chief executive.

in Article 6(2), the words following "of the Assembly" were: of the Committee of Experts and of such other Workings Groups; *rather than:* the Committee of Experts and such other Committees of Experts or Working Groups.

in Article 7(3)(ii), the phrase "by the International Bureau was preceded by: charges due for services performed; *rather than:* fees and charges due for services rendered.

in Article 7(4)(a), the words following "as it belong to in" were: the International (Paris) Union for the Protection of Industrial Property, and shall pay its annual contribution; *rather than:* the Paris Union for the Protection of Industrial Property, and shall pay its annual contributions.

in Article 7(4)(b), the words "to be contributed" were: by all countries; *rather than:* to the budget of the Special Union by all countries.

in Article 7(4)(d), the text was: A country which is in arrears in the payment of its contributions shall have no vote in any organ of the Special Union if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Special Union may allow such a country to continue to exercise its vote if, and as long as it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances.

in Article 7(4)(e), the words following "previous year" were: in accordance with; *rather than:* as provided in.

in Article 7(5), the words following "the amount of" were: the charges due; *rather than:* the fees and charges due.

in Article 7(5), the words following "shall be established" were: by the Director General who shall report on them to the Assembly; *rather than:* and shall be reported to the Assembly, by the Director General.

in Article 7(6)(a), the words following "becomes insufficient" were: an increase shall be decided by the Assembly; *rather than:* the Assembly shall decide to increase it.

in Article 7(6)(b), the text was: The amount of the payment of each country to the fund or to an increase thereof shall be a proportion of the contribution of that country as a party to the Paris Convention for the Protection of Industrial Property for the year in which the fund is established or the increase decided.

in Article 7(6)(c), the words following "advice of the" were: Coordination Committee; *rather than:* Coordination Committee of the Organization.

in Article 7(7)(a), the words following "The amount of" were: these advances; *rather than:* those advances.

in Article 8(1), the word following "communicated by the" was: latter; *rather than:* Director General.

in Article 8(3), the words following "at the time it" were: has adopted; *rather than:* adopted; *and the word following "subsequent date" was:* except; *rather than:* provided than.

The title of Article 9 was: Ratification and Accession; Entry Into Force. Accession to Earlier Acts; *rather than:* Ratification and Accession; Entry Into Force. Effects, Accession to the Original Act of 1957.

in Article 9(4)(b), the words following "Director General" were: unless the country has indicated a subsequent date in its instrument; *rather than:* unless a subsequent date has been indicated in the instrument.

The title of Article 11 was: Revision of the Provisions of the Agreement other than Articles 5 to 8; *rather than:* Revision.

The title of Article 12 was: Application of the Original Act of 1957; *rather than:* Application of the Various Acts.

in Article 12, the text was reserved.

in Article 13, paragraphs (2) to (4) corresponded to paragraphs (1) to (3) in the final text and paragraph (1) read: This agreement shall remain in force without limitation as to time.

The title of Article 14 was: Territories; *rather than:* Reference to Article 24 of the Paris Convention (Territories).

in Article 15(1) (b) the word following "Official texts" was: may; *rather than:* shall.

in Article 16(1), the words following "assumes office references in" were: the present Act; *rather than:* this Act; *and the words following "shall be" were:* deemed to be; *rather than:* construed as.

in Article 16(2), the words following "establishing the" were: World Intellectual Property Organization; *rather than:* Organization; *the words following "give written notification to" were:* this effect; *rather than:* that effect; *and the word following "shall be effective" was:* on; *rather than:* from.

S/258 DRAFTING COMMITTEE OF MAIN COMMITTEE IV. Lisbon Agreement. [*Editor's Note:* This document contains the text of the Lisbon Agreement as prepared by the Drafting Committee in French and in English. In the following, only the differences between the English text of the Drafting Committee and the official translation of the text signed (in French only) on July 14, 1967, are indicated. The use of the past tense refers to document S/258.]

in document S/258, the titles of Articles 1 to 8 were omitted.

in Article 1(1), the word following "applies" was: form; *rather than:* constitute.

in Article 4, the words following "or by virtue" were: national legislation or judicial decisions; *rather than:* of national legislation or court decisions.

in Article 5(1), the words following "at the request of" were: the Administrations of the countries of the Special Union in the name of any individual person or legal entity; *rather than:* the Offices of the countries of the Special Union in the name of any natural persons or legal entities.

in Article 9(2)(a)(i), the word following "the implementation of" was: its; *rather than:* this.

in Article 9(2)(a)(iv), the word following "give him" was: any; *rather than:* all.

in Article 9(2)(a)(vii), the words following "working groups as" were: may be considered necessary to further; *rather than:* as it may deem necessary to achieve.

in Article 9(2)(a)(xi), the word preceding "such other functions" was: exercise; *rather than:* perform.

in Article 9(3)(c), the text was reserved.

in Article 9(3)(d), the words following "shall require" were: at least two-thirds; *rather than:* two-thirds.

in Article 9(3), the wording of subparagraph (g) was: countries of the Special Union that are not members of the Assembly shall be admitted to its meetings as observers; *rather than:* countries of the Special Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

in Article 10(1)(a), the text of the sub-paragraph was: The international registration and related duties, as well as the Union shall be performed by the International Bureau of the Organization.

in Article 10(1)(b), the words following "International Bureau shall" were: make preparations for the meetings and provide the secretariat of the Assembly and of such other committees; *rather than:* shall prepare the meetings and provide the secretariat of the Assembly and of such committees.

in Article 10(1)(c), the words following "Director General" were: of the Organization shall be the chief executive; *rather than:* shall be the chief executive.

in Article 10(2), the words following "of the Assembly" were: and of such other committees; *rather than:* and of such committees of experts or working groups; *and the word following "secretary of" was:* these; *rather than:* those.

in Article 10(3)(c), the word following "the discussions at" was: these; *rather than:* those.

in Article 11(3)(i), the words following "Article 7(2) and" were: charges due for other services performed; *rather than:* other fees and charges due for other services rendered.

in Article 11(4)(a), the words following "Article 7(2)" were: shall be proposed by the Director General and shall be fixed by the Assembly; *rather than:* shall be fixed by the Assembly on the proposal of the Director General.

in Article 11(5)(a), the words following "it belong to in" were: the International (Paris) Union for; *rather than:* the Paris Union for.

in Article 11(5)(b), the words following "to be contributed" were: by all countries of the Special Union; *rather than:* to the budget of the Special Union by all countries.

in Article 11(5)(d), the text of the sub-paragraph was: A country which is in arrears in the payment of its contribution shall have no vote in any organ of the Special Union if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two full years. However, any organ of the Special Union may allow such a country to continue to exercise its vote if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances.

in Article 11(5)(e), the words following: "previous year" were: in accordance with; *rather than:* as provided in.

in Article 11(6), the text of the paragraph was: The amount of the charges due for services rendered by the International Bureau in relation to the Special Union shall be established by the Director General, who shall report on them to the Assembly.

in Article 11(7)(a), the words following "becomes insufficient" were: an increase shall be decided by the Assembly; *rather than:* the Assembly shall decide to increase it.

in Article 11(7)(b), the text of the sub-paragraph was: The amount of the payment of each country to the fund or to an increase thereof shall be a proportion of the contribution of the country as a party to the Paris Convention for the Protection of Industrial Property for the year in which the fund is established or the increase decided.

in Article 11(7)(c), the words following "advice of the" were: Coordination Committee; *rather than:* Coordination Committee of the Organization.

in Article 11(8)(a), the words following "The amount of" were: these advances; *rather than:* those advances.

in Article 12(3), the words following "notifications af acceptance" were: have been received; *rather than:* effected in accordance with their respective constitutional processes, have been received.

in Article 12(3), the word following "subsequent date" was: except; *rather than:* provided.

The title of Article 13 was: Regulations, Amendments; *rather than:* Regulations, Revision.

in Article 13(2), the words following "delegates of" were: the Special Union; *rather than:* the countries of the Special Union.

In title of Article 14, the words following "and Accession" were: Territories, Entry into Force; *rather than:* Entry into Force; Reference to Article 24 of Paris Convention (Territories).

In Article 14(2)(a), the words following "a member of" were: this Special Union; *rather than:* the Special Union.

In Article 14(2)(b), the words following "of itself, ensure" were: on the territory of the acceding country, the benefit of the above provisions for appellations of origin; *rather than:* in the territory of the acceding country, the benefits of the foregoing provisions to appellation of origin.

In Article 14(3), the words following "of ratification" were: or accession; *rather than:* and accession.

in Article 14(5)(b), the words following "Director General" were: unless the country has indicated a subsequent date in its; *rather than:* unless a subsequent date has been indicated in the.

The title of Article 15 was: Denunciation; *rather than:* Duration of the Agreement; Denunciation.

in Article 15(4), the words following "of denunciation provided" were: by this Article; *rather than:* for by this Article.

in Article 16(1), the words following "between the countries" were: by which it has been ratified; *rather than:* of the Special Union by which it has been ratified.

in Article 16(2), the words following "any country" were: which has ratified this Act or has acceded to it shall be bound by the original Act of October 31, 1958, in; *rather than:* of the Special Union which has ratified or acceded to this Act shall be bound by the original Act of October 31, 1958, as regards.

in Article 16 (S/258) there was no text for paragraph (3).

The title of Article 17 was: Signature, etc.; *rather than;* Signature, Languages, Depositary Functions.

in Article 17(1)(b), the words following "interested Governments" were: in the English, German, Italian, Portuguese, Russian and Spanish languages and such additional languages; *rather than:* in such other languages.

in Article 18(1), the words following "shall be" were: deemed to be references to the International Bureau; *rather than:* construed as references to the Bureau.

in Article 18(2), the words following "Convention establishing the" were: World Intellectual Property Organization; *rather than:* Organization.

in Article 18(2), the words following "written notification" were: to this effect to the Director General, this notification shall be effective on the date of its receipt; *rather than:* to that effect to the Director General; such notification shall be effective from the date of its receipt.

S/259 ITALY. Berne Convention. *Article 25*ter*(2) (document S/9) should read:*

(a) *as in document S/9;*

(b) Any country outside the Union may, in acceding to the present Act, state that it intends to substitute, temporarily at least, in Article 8 concerning translations the provisions of Article 5 of the Convention of the 1886 Union revised in Paris in 1896, on the clear understanding that those provisions refer only to translation into the language or languages of the country.

Any country of the Union that does not avail itself of that right of reservation shall have the right to apply the principle of equivalent protection in relation to the right of translation of works whose country of origin is a country that does avail itself of that right.

(c) Any country may, at any time, withdraw such reservations by notification addressed to the Director General.

S/260 [*Editor's Note:* This document, containing the same text of the draft resolution concerning a study on priority fees as appearing in document S/12, paragraph 69, has not been reproduced.]

S/261 [*Editor's Note:* This document, containing the same text of the draft decision on the ceiling of contributions (Paris Union) as appearing in document S/12, paragraph 27, has not been reproduced.]

S/262 [*Editor's Note:* This document, containing the same text of the draft decision on the ceiling of contributions (Berne Union) as appearing in document S/12, paragraph 42, has not been reproduced.]

S/263 SECRETARIAT. Berne Convention. *The following texts of Article 6*bis *and Article 8 (document S/1) and draft Resolutions I and II are submitted to the Drafting Committee:*

*Article 6*bis*:* (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation at the moment of their ratification of or accession to this Act, do not provide for the complete protection after the death of the author of the rights set out in the preceding paragraph, may provide that some of these rights may, after his death, cease to be maintained.

Article 8: Authors of literary and artistic works protected by this Convention shall have the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

Draft Resolution I

The Intellectual Property Conference of Stockholm,

Considering that certain countries have expressed a desire for the term of protection of literary and artistic works to be extended,

that certain countries already grant a general term of protection in excess of 50 years after the death of the author,

that, moreover, several countries of the Union have extended the term of protection for reasons resulting from the war,

that negotiations have already taken place at international level with the object of providing for an extension of the term of protection by a special agreement,

that, in addition, agreements have already been concluded between certain countries for the reciprocal recognition of an extension of the term of protection for reasons resulting from the war,

Expresses the wish that negotiations should be continued between the countries concerned for the conclusion of a special agreement on the extension of the term of protection in countries parties to that agreement.

Draft Resolution II

The Intellectual Property Conference of Stockholm,

Having before it proposals to insert in the Berne Convention provisions under which

(i) the publisher of a literary, dramatico-musical or musical work published in a country of the Union should be under an obligation to deposit with the national library of that country, or with some other similar establishment, a facsimile of the earliest and most authentic copy of such work in the form approved by its author;

(ii) it should be a matter for the legislation of the countries of the Union to provide that, where a dramatico-musical or musical work has been made available to the public with the consent of the author thereof, the graphic copies of the said work should also be made accessible to the public without restrictions contrary to fair practice;

Considers sympathetically the spirit behind these proposals and the purpose which they seek to achieve; and

Expresses the wish that the International Bureau of the Berne Union should undertake a careful study of the above questions, in order that consideration may be given, if necessary, to the possibility of including them in a future revision of the Convention.

S/264 WORKING GROUP OF MAIN COMMITTEE IV. Paris and Berne Conventions. *In Article 13(4) (document S/3) and Article 21(4) (document S/9), as sub-paragraphs (c) and (c-*bis*), insert:*

(c) If, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may meet. Its decisions other than those concerning its own procedure may be carried out only if the conditions referred to in the following sub-paragraph are met.

*(c-*bis*) Proposal A:* The International Bureau shall communicate such decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention. Such decisions shall take effect when the number of countries having thus expressed their vote or abstention attains the number of countries which, for attaining the quorum in the session itself, was lacking, provided that, at the same time, the required majority is not lost.

*(c-*bis*) Proposal B:* The International Bureau shall communicate such decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which, for attaining the quorum in the session itself, was lacking, such decisions shall take effect provided that, at the same time, the required majority is not lost.

S/265 SECRETARIAT. Paris and Berne Conventions. *The following note concerning relations between countries of the Union is submitted to Main Committee IV:*

Berne Convention

A. The Working Group of Main Committees II and IV has adopted the following text to replace paragraphs (1) and (2) of Article 27 in document S/9:

"(1) The present Act shall, as regards the relations between the countries of the Union, *and to the extent that it applies*, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable, *in their entirety or to the extent that the present Act does not replace them by virtue of the preceding sentence*, in relations with countries of the Union which do not ratify or accede to this Act."

Note: With the exception of a few slight drafting changes and the parts italicized, the insertion of which is necessary because of the faculty provided for in Article 25(1)(b) (document S/9), the above text is the same as that contained in the Brussels Act.

B. It is proposed to omit Article 27(3) (document S/9). This proposal is in conformity with the proposal contained in document S/9/Corr.1. Reference is made to the fact that the Brussels Act does not contain a provision on the question dealt with in the said paragraph.

C. For information, it should be recalled that Main Committees II and IV have adopted the following text of a new paragraph to be inserted in Article 27:

"Any country which, in ratifying or acceding to the present Act, has made the reservations permitted under the Protocol annexed to this Act, may apply these reservations in their relations with other countries of the Union which are not party to this Act or which, although party to this Act, have made a declaration as permitted by Article 25(1)(b)(i), provided that the latter countries have accepted the application of the said reservations."

Paris Convention

Parallel to what has been said under A and B, it is proposed to adopt Article 18 in the form contained in document S/3, but without paragraph (3), the deletion of which was already proposed in document S/3 Corr.

S/266 DRAFTING COMMITTEE OF MAIN COMMITTEE IV. WIPO, Paris and Berne Conventions; Madrid (TM), Madrid (FIS), Nice, Hague and Lisbon Agreements. *The following proposals are submitted to the Main Committee:*

A. *The Draft Resolution concerning a Study on Priority Fees should read:* The countries members of the Paris Union for the Protection of Industrial Property, in a Conference assembled at Stockholm from June 12 to July 14, 1967,

Resolve that the International Bureau study, in cooperation with committees of experts, the desirability and the feasibility of creating new sources of revenue for the International Bureau, through the collection of a modest fee for each application field with a national administration if, in such application, the right of priority provided for in the Convention of the Union is claimed.

Should the study lead to positive results and should it show that the Paris Convention would require revision to introduce the scheme, concrete proposals should be worked out for the Vienna Revision Conference of the Paris Convention.

B. *The Draft Decision on the Ceiling of Contributions (Paris Union) should read:* The countries members of the Paris Union for the Protection of Industrial Property, in a Conference of Plenipotentiaries assembled at Stockholm on July 14, 1967,

Unanimously decide:

That the maximum total amount of the ordinary yearly contributions of the member countries shall be the following:

— for 1968: 1,200,000 Swiss francs
— for 1969: 1,400,000 Swiss francs
— for 1970: 1,600,000 Swiss francs

unless new decisions are made, or enter into force, in the meantime.

C. *The Draft Decision on the Ceiling of Contributions (Berne Union) should read:* The countries members of the Berne Union for the Protection of Literary and Artistic Works,

In a Revision Conference assembled at Stockholm from June 12 to July 14, 1967,

Unanimously decide:

That the maximum total amount of the yearly contributions of the member countries shall be the following:

— for 1968: 800,000 Swiss francs
— for 1969: 900,000 Swiss francs
— for 1970: 1,000,000 Swiss francs

unless new decisions are made, or enter into force, in the meantime.

D. *Article 13(4)(c) (document S/3), Article 21(4)(c) (document S/9), and Article 6(3)(c) (document S/10), should read:* Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries (States) represented is less than one-half but equal to or more than one-third of the countries (States) members of the (General) Assembly, the (General) Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decisions to the countries (States) members of the (General) Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries (States) having thus expressed their vote or abstention attains the number of countries (States) which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority is not lost.

E. *Article 23 (document S/251) and the corresponding Article in the Berne Convention should read:* After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.

S/267 [*Editor's Note:* This number was not used.]

S/268 SWITZERLAND. Berne Convention. *In respect to Article 27(3) (document S/9), the following comments and proposals are made:*

Main Committee IV decided on July 5 to delete the paragraph concerned. A compromise which had been suggested by the Chairman of the joint meeting of Main Committees II and IV was not adopted by any of the delegations, so that the question was not put to the vote. Upon reflection, the Delegation of Switzerland is not satisfied with the said decision and proposes, in the hope that its suggestion will not meet with opposition:

(1) to reopen the discussion on this question, and (2) to draft paragraph (3) along the lines of the compromise referred to above, in the following terms: "(3) As regards any country of the Union which is not party to the Stockholm Act or which, although party to that Act, has made a declaration pursuant to Article 25(1)(b)(i), the countries party to this Act shall apply the present Act, while permitting the other country to apply in its relations with them the provisions of the last Act to which it is party and allowing it the right to adapt the level of protection under that Act to the level guaranteed by this Act."

S/269 DRAFTING COMMITTEE OF MAIN COMMITTEE I. Berne Convention. [*Editor's Note:* This document contains the complete text of Articles 1 to 20 of the Berne Convention and Draft Resolutions I and II as prepared by the Drafting Committee both in English and in French. In the following, only the differences between the English text of the Drafting Committee of Articles 1 to 20 and the text as signed on July 14, 1967, or the differences between the English text of the resolutions prepared by the Drafting Committee and the text adopted by the Plenary meeting of the Berne Union are indicated. The use of the past tense refers to document S/269.]

in Preamble, the text began with: ... Being equally animated; *rather than:* The countries of the Union, being equally animated.

in Article 9(1), the text ended with: in any manner of form [including sound or visual recording].

in Article 9(3), the text was: It shall also be a matter for legislation in the countries of the Union to permit the reproduction by the press or the broadcasting of articles published in newspapers or periodicals on current economic, political or religious topics, [and of broadcast programs of the same character] in cases in which the reproduction or the broadcasting thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed

*in Article 10*bis, *the text was:* It shall be a matter for. legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

in Article 13(1), the text was: Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words which, with the consent of the author of those words, are normally performed with that work, of authorizing the sound recording of that work, with those words, if any, but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

in Article 14(2), the text of the paragraph (2) ended with the words: the original work; *rather than:* the original works.

*in Article 14*bis*(2)(c), the text was:* The form of the undertaking referred to above, which any country of the Union may require to be in a written agreement or something having the same force, shall be governed by the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence.

*in Article 14*bis*(3), the text was:* Unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work.

in Article 15(3), the words following "referred to in" were: the preceding paragraph; *rather than:* in paragraph (1) above.

in Article 15(4)(a), the words following "country of the Union" were: or has his habitual residence in such country, it shall be; *rather than:* it shall be.

in Article 15(4)(b), the text was: Countries of the Union which make such designation under the terms of this provision shall notify the ... by means of a written declaration giving full information concerning the authority thus designated. The ... shall at once communicate this declaration to all other countries of the Union.

in Article 17, the text was: The provisions of this Convention shall not in any way prejudice the right of each country of the Union to control or to prohibit, by the measures provided by the legislation of that country, the distribution, performance, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

in Draft Resolution I, the text began with the words: The Intellectual Property Conference of Stockholm; *rather than:* The countries members of the Berne Union for the Protection of Literary and Artistic Works, in a Conference assembled at Stockholm from June 12 to July 14, 1967; *and the words following "Expresses the wish that negotiations" were:* should be pursued; *rather than:* be pursued.

in Draft Resolution II, the text began with the words: The Intellectual Property Conference of Stockholm; having before it proposals; *rather than:* The countries members of the Berne Union for the Protection of Literary and Artistic Works, in a Conference assembled at Stockholm from June 12 to July 14, 1967, having before them proposals; *the word preceding "sympathetically the spirit" was:* Considers; *rather than:* Consider; *and the words preceding "undertake a study" were:* Expresses the wish that the International Bureau of the Berne Union should; *rather than:* Express the wish that the International Bureau.

S/269 Add. DRAFTING COMMITTEE OF MAIN COMMITTEE I. Berne Convention. *The following text concerning exceptions to the exclusive right of translation is submitted for inclusion in the report of Main Committee I:* The provisions of this Convention which permit a work or a part thereof to be used without the authorization of the author—that is to say Articles 2*bis*(2), 9(2), 9(3), 10(1), 10(2), 10*bis*, 11*bis*, and 13—permit the work to be used not only in the original but also in translation, subject to the same conditions, in particular that the use is in conformity with fair practice. It should be added that in these cases, as in all cases where a work is used, the rights given to an author under Article 6*bis* (moral rights) are reserved.

S/270 RAPPORTEUR, MAIN COMMITTEE II. Berne Convention. *The following draft report is submitted to the Main Committee:*

The protection of authors' rights in countries that have recently gained independence is one of the problems that has solicited the attention of the Swedish Government as the host country of the Revision Conference and that of BIRPI for several years. The history of the preparatory studies and proceedings is to be found in document S/1 (pages 67 to 74).

After that report had been presented, there was an important event in this domain, whose influence has been apparent both on the discussion and on the results of the Conference: we refer to the East Asian Seminar on Copyright, which was held at New Delhi in January, 1967.

At the proposal of the Government of Sweden, a special committee was set up to produce a definitive text on the basis of document S/1. The special committee—referred to in the Conference documents as Main Committee II—met nine times. It appointed two Working Groups for certain special problems, one to consider basic matters (Chairman: Mr. Hesser (Sweden): members: Czechoslovakia, France, India, Ivory Coast, Tunisia, United Kingdom), and the other to consider definition of the criterion of countries that would have the right to avail themselves of this Protocol (Chairman: Mr. Lennon (Ireland); members: Brazil, Congo (Kinshasa), Czechoslovakia, France, India, Italy, Ivory Coast, Senegal, Sweden, Tunisia, United Kingdom).

Several amendments were submitted on the *definition* of countries beneficiaries of the Protocol for clarification of the general wording appearing in the beginning to the first Article of the Protocol: the object of a proposal by France (document S/176) was to make countries that acceded to the Berne Union only after the signing and entry into force of the Brussels Convention beneficiaries of the provisions of the Protocol; a proposal by Italy (document S/213) introduced technical criteria (illiteracy, school attendance) into the idea of a developing country; two proposals, one by the United Kingdom (document S/149), and the other by Denmark, Finland, Norway and Sweden (document S/253), envisaged as a solution an international authority competent to decide in each case (the Executive Committee of the Berne Convention in the former and the General Assembly of the United Nations in the latter proposal). After discussion, the Working Group proposed to Main Committee II a text referring to Resolution No. 1897 (XVIII) adopted by the General Assembly of the United Nations at its eighteenth meeting on November 13, 1963, for application to any country subsequently designated a developing country. A proposal of the Ivory Coast (document S/234) brought that list up to date by adding seven new States to it.

The Committee recognized the problem and, while accepting the idea that the countries listed in the Annexes to document S/249 should be beneficiaries of the additional Protocol, it noted that simple reference to the decisions of the United Nations would entail a delay for countries that had recently gained their independence that would prevent them from acceding to the Convention and the Protocol immediately or at least before a decision by the United Nations. A more flexible wording was sought. A joint proposal of the Delegations of Denmark, Finland, Norway and Sweden submitted in document S/253 stipulated that a developing country would be considered to be any country designated as such under the established practice of the General Assembly of the United Nations, it being understood that the term "established practice" implied that the country concerned receives assistance from the United Nations or its Specialized Agencies such as UNESCO. That wording therefore applies not only to the countries referred to in the Annexes to the above document, but also opens the door to the accession of other countries. The final text was produced by the Drafting Committee of Main Committee II under the chairmanship of Mr. Essen (Sweden) (members: Mr. Abi-Sad (Brazil), Mr. Strnad (Czechoslovakia), Mr. Desbois (France), Mr. Krishnamurti (India), Mr. Ciampi (Italy), Mr. Amon d'Aby (Ivory Coast), Mr. Goundiam (Senegal), Mr. Fersi (Tunisia), Mr. White (United Kingdom)) and adopted by Main Committee II at its final meeting.

The basic provisions were also examined on the basis of document S/1 submitted by the Government of Sweden and BIRPI. In the course of the proceedings of the Conference they underwent the following changes.

As an outcome of the insertion of Article 9, paragraph (2) of the Rome Convention of 1928 and the Brussels Convention of 1948 into a new draft of the text of the Convention itself, in which it appears as Article 9(3), this provision became superfluous in the Protocol and was deleted.

A group of countries (Congo (Brazzaville), Congo (Kinshasa), Ivory Coast, Gabon, India, Madagascar, Morocco, Niger, Senegal and Tunisia) submitted a new drafting of the text of the Protocol (document S/160), stemming from document S/1 and adopting its scheme, but adding certain new features.

The *translation license* combines the translation license referred to in Article 27 of the Convention and traditional in the Berne Union with certain elements of the license referred to in Article V of the Universal Copyright Convention; the definition of the languages into which the translation may be made has been clarified.

Several proposals were submitted for regulating the régime of published works on the basis of a legal license (the proposals of Italy, document S/162; of Denmark, document S/146; of Greece, document S/181; and of Israel, document S/199). Japan made a proposal in document S/127 for simplification of the translation license by simply taking over the system as it existed in the Berne Convention.

The result of the proceedings of the Working Group and of Main Committee II, which is set out in document S/249, corresponds with certain slight alterations to the desire to replace the text of Article 5 of the Paris Convention of 1896 quoted in paragraph (a) of Article 1 of the Protocol by an up-to-date wording without basically affecting even the provisions in force.

The principles of the Universal Copyright Convention (see Article V, paragraph (2), which enter into the system of the translation license provided for by the Protocol (Article 1, paragraph (a)(iv)) have also undergone modification: the compensation stipulated should be just and the explicit reference to international usage in this matter was deleted; the transmittal of such compensation, also referred to in the above Article of the Universal Copyright Convention, is made subject to national currency regulations by the text of the additional Protocol.

It should be noted that neither of the international Conventions that might be regarded as having served as a model for paragraph (a) of the first Article of the Protocol stipulates precisely where a translation must be published by the author himself if he does not wish a legal license to come into force. Article 5 of the Paris Convention of 1896 merely stipulates that the publication of such a translation must take place in a country of the Union. The additional Protocol adds an important clarification: the translation must be published in the country invoking the reservation concerning the translation license. Publication does not mean printing in the strict sense; this is an essential distinction for countries that do not possess even the technical means needed to publish translations or reproductions under the conditions laid down by the additional Protocol.

Paragraph (c) of the first Article of the additional Protocol, which concerns the radio-diffusion of literary and artistic works, permits the countries beneficiaries of the Protocol to substitute for paragraph (1) and paragraph (2) of Article 11*bis* of this Convention the text of the Rome Convention of 1928 with two changes. The first, which represents a modernization of the text, is to replace the words "communication by radio-diffusion" of the Rome Convention of 1928 by the word "radio-diffusion". The second change settles a basic matter: the public communication of broadcast works for profit-making purposes shall not be permitted except on payment of equitable remuneration fixed, in the absence of agreement, by competent authority. That addition takes over the wording of the proposal by the Delegation of the United Kingdom (document S/149, paragraph (2)).

The proposals on the right of reproduction contained in Article (1)(e) of document S/1 (Annex II) have undergone profound modification. After discussion and examination of the various proposals (see the proposal of the United Kingdom, document S/149, paragraph 3 and the joint proposal of ten developing countries, document S/160), the Working Group proposed the text contained in document S/249, Article 1, paragraph (d). The final solution adopted for this reproduction license is a copy of the translation license to the extent that the analogy is possible. It provides for the possibility of the introduction of a reproduction license for educational or cultural purposes—the wording should not be interpreted in a restrictive manner, given that the addition "exclusively for ... purposes ..." was intentionally deleted.

On the other hand, restriction of the right of reproduction to educational or cultural purposes excludes from the field of application of this reservation all works whose educational or cultural purpose is not evident; as an example, detective and adventure stories were mentioned in the discussion.

The procedure to be followed in order to obtain such a license, the conditions concerning payment of the compensation, the place of publication, respect for the right of the author to change his mind, and the possibility of having recourse to such a license even after the copies of the original edition of the work are out of print have been established on the same basis as for translations.

A new possibility for restriction open to domestic legislation has been adopted for uses destined *exclusively for teaching, study and research in all fields of education.* It should be noted that that reservation does not apply solely to the right of translation and reproduction; it may also be invoked equally for the other uses of literary and artistic works. A new formula has been inserted for the determination of compensation, by which the latter shall "conform to standards of payment made to national authors." The addition of the words "in all fields of education" and the exclusivity of the purposes for which the reservation can be utilized indicate that industrial, commercial and similar research is outside the scope of this reservation.

The term of protection has been decided without change in the manner proposed by the Government of Sweden with the assistance of BIRPI. The term of protection may therefore be fixed by domestic legislation at a period less than the compulsory term of fifty years referred to in Article 7 of the Convention.

The above reservations may be maintained for ten yeare from the time of ratification by the country concerned (ses Article 1 *(in fine)*); countries that do not consider themselves in a position to withdraw the reservations made under this Protocol, may continue to maintain them until they accede to the Act adopted by the next revision conference; the "maintaining of reservations" therefore implies that it will be essential for a declaration in that sense to be addressed to the Director General of WIPO by the country concerned, and that in default thereof the reservations shall cease to be applicable. The country concerned would then be bound by the Convention itself.

Various proposals made in the course of the Conference by the delegations present, and concerning one or other of the problems mentioned above, have either been incorporated in the final text or withdrawn (see for example publication of serials, abridgements or translations in newspapers or periodicals, document S/160, or the provisions for the institution of certain measures of control over the application of the additional Protocol submitted by the Delegation of Israel, document S/199, or have found their place in a resolution (for example the creation of a fund intended for the authors of works affected by the reservations stipulated in the Protocol, as proposed by the Delegation of Israel, document S/228).

Another question that was the subject of consideration by the developing countries in the course of the preparatory proceedings, that of the protection of folklore, was resolved by Article 15, paragraph (3) of the Convention itself.

S/270/Add. RAPPORTEUR, MAIN COMMITTEE II. Berne Convention. *The following changes are proposed in document S/270:*

in the sixth paragraph, beginning with the words "the basic provisions", *after the word "BIRPI," insert:* The order of the items included here was altered by the Drafting Committee so that the provisions concerning the period of protection—following the system of the Convention itself—were put before the substantive questions; the others were inserted after the latter.

after the eighth paragraph, beginning with the words "a group of countries," *insert, as paragraph nine, the nineteenth paragraph.*

before the penultimate paragraph, insert: In the case of copies of works translated and reproduced on the basis of the reservations in a country availing itself of the additional Protocol, the general principle adopted is that their export and sale are not permitted in a country not availing itself of these reservations. An example quoted in the discussions was that of a reproduction made in India which could not be distributed in Japan. The prohibition does not apply if the legislation of a country which cannot avail itself of the additional Protocol, or the agreements concluded by that country, authorize such importation. The reference to national legislation and to agreements concluded has been replaced, in the case of the works mentioned in Article 1(e), by the condition of the agreement of the author.

before the last paragraph, insert the following three paragraphs: Article 4 was added to the text as the result of a proposal by the United Kingdom which was adopted by Main Committee II at its eighth meeting. Even a developing territory which has not acceded to independence by the day on which the Convention is signed may enjoy the benefits

of the additional Protocol. The declaration to this effect, based on the same criteria as in the case of sovereign countries, will be made by the country responsible for the international relations of the said territory.

The reference to the practice established by the United Nations made it necessary to solve the problem of the legal consequences of a contrary situation, namely to deal with the case of a country from which the status of developing country might be withdrawn. The solution proposed by the Drafting Committee is that this country will no longer be able to avail itself of the Protocol at the expiry of a period of six years from the appropriate notification.

To provide a possibility for developing countries to benefit immediately from the additional Protocol, an Article 5 has been added to the text, offering this possibility even before the text of the Convention itself has been ratified within the meaning of Article 25.

S/270/Rev. RAPPORTEUR, MAIN COMMITTEE II. Berne Convention. *The following revision of the report in document S/270 is submitted to the Main Committee:*

1. The protection of authors' rights in countries that have recently gained independence is one of the problems that has solicited the attention of the Swedish Government as the host country of the Revision Conference and that of BIRPI for several years. The history of the preparatory studies and proceedings is to be found in document S/1 (pages 67 to 74).

2. After the publication of document S/1, there was an important event in this domain, whose influence has been apparent both on the discussion and on the results of the Conference. We refer to the East Asian Seminar on Copyright, which was held at New Delhi in January, 1967.

3. At the proposal of the Government of Sweden, a Main Committee was set up to produce a definitive text on the basis of document S/1. This Main Committee—referred to in the Conference documents as Main Committee II—met nine times. It appointed two Working Groups for certain special problems, one to consider basic matters (Chairman: Mr. Hesser (Sweden); members: Czechoslovakia, France, India, Ivory Coast, Tunisia, United Kingdom), and the other to consider the definition of the criterion of countries that would have the right to avail themselves of this Protocol (Chairman: Mr. Lennon (Ireland); members: Brazil, Congo (Kinshasa), Czechoslovakia, France, India, Italy, Ivory Coast, Senegal, Sweden, Tunisia, United Kingdom).

4. Several amendments were submitted with respect to the *definition* of countries beneficiaries of the Protocol mentioned in the beginning of the first Article of the Protocol with a view to the clarification of the general formula: the object of a proposal by France (document S/176) was to make countries that acceded to the Berne Union only after the signing and entry into force of the Brussels Convention beneficiaries of the provisions of the Protocol; a proposal by Italy (document S/213) introduced technical criteria (illiteracy, school attendance) into the idea of a developing country; two proposals, one by the United Kingdom (document S/149) and the other by Denmark, Finland, Norway and Sweden (document S/253), suggested as a solution an international authority competent to decide in each case (the Executive Committee of the Berne Convention in the former and the General Assembly of the United Nations in the latter proposal). After discussion, the Working Group proposed to Main Committee II a text referring to Resolution No. 1897 (XVIII) adopted by the General Assembly of the United Nations at its eighteenth meeting on November 13, 1963, for application to any country subsequently designated a developing country. A proposal of the Ivory Coast (document S/234) brought that list up to date by adding seven new African States to it.

5. The Committee dealt with the question and, while accepting the idea that the countries listed in the Annexes to document S/249 should be beneficiaries of the additional Protocol, it noted that simple reference to the decisions of the United Nations would entail a delay for countries that had recently gained their independence that would prevent them from acceding to the Convention and the Protocol immediately or at least before a decision by the United Nations. A more flexible wording was sought. A joint proposal of the Delegations of Denmark, Finland, Norway and Sweden submitted in document S/253 stipulated that a developing country would be considered to be any country designated as such under the established practice of the General Assembly of the United Nations, it being understood that the term "established practice" implies that the country concerned receives assistance from the United Nations Development Programme through the United Nations or its Specialized Agencies. The country which considers that it is in a position to have recourse to the Protocol shall notify the Director General of . . . who shall, if necessary, after consultation with the organs of the United Nations, communicate the notification to the other countries Members of the Union together with his observations. The final text was produced by the Drafting Committee of Main Committee II under the chairmanship of Mr. Essen (Sweden) (members: Mr. Abi-Sad (Brazil), Mr. Strnad (Czechoslovakia), Mr. Desbois (France), Mr. Krishnamurti (India), Mr. Ciampi (Italy), Mr. Amon d'Aby (Ivory Coast), Mr. Goundiam (Senegal), Mr. Fersi (Tunisia), Mr. White (United Kingdom)). The text was adopted by Main Committee II at its final meeting.

6. *The substantive provisions* were also examined on the basis of document S/1 submitted by the Government of Sweden and BIRPI. The order of the items included in the Protocol was altered by the Drafting Committee so that the provisions concerning the period of protection—following the system of the Convention itself—were put before the substantive questions; the others were inserted after the latter. In the course of the proceedings of the Conference they underwent the following changes.

7. As an outcome of the insertion of Article 9, paragraph (2) of the Rome Convention of 1928 and the Brussels Convention of 1948, in a new draft of the text of the Convention itself, in which it appears as Article 9(3), this provision mentioned in paragraph (c) in Article 1 of document S/1, became superfluous in the Protocol and was deleted.

8. A group of countries (Congo (Brazzaville), Congo (Kinshasa), Gabon, India, Ivory Coast, Madagascar, Morocco, Niger, Senegal and Tunisia) submitted a new drafting of the text of the Protocol (document S/160), stemming from document S/1 and adopting its scheme, but adding certain new features.

9. *The term of protection* has been decided without change in the manner proposed by the Government of Sweden with the assistance of BIRPI. The term of protection may therefore be fixed by domestic legislation at a period less than the compulsory term of fifty years referred to in Article 7 of the Convention.

10. *The translation license* combines the translation license referred to in Articles 25 and 27 of the Convention and traditional in the Berne Union with certain elements of the license referred to in Article V of the Universal Copyright Convention; the definition of the languages into which the translation may be made has been clarified.

11. Several proposals were submitted for regulating the régime of published works on the basis of a legal license (the proposals of Italy, document S/162; of Denmark, document S/146; of Greece, document S/181; and of Israel, document S/199). Japan made a proposal in document S/127 for simplification of the translation license by simply taking over the system as it existed in the Berne Convention.

12. The result of the proceedings of the Working Group and of Main Committee II, which is set out in document S/249, corresponds with certain slight alterations to the desire to replace the text of Article 5 of the Paris Convention of 1896 quoted in paragraph (a) of Article 1 of the Protocol by an up-to-date wording without basically affecting even the provisions in force.

13. The principles of the Universal Copyright Convention (see Article V, paragraph 2), which enter into the system of the translation license provided for by the Protocol (Article 1, paragraph (a)(iv)) have also undergone modification: the compensation stipulated should be just and the explicit reference to international usage in this matter was deleted; the transmittal of such compensation, also referred to in

the above Article of the Universal Copyright Convention, is made subject to national currency regulations by the text of the additional Protocol.

14. It should be noted that neither of the international Conventions that might be regarded as having served as a model for paragraph (b) of the first Article of the Protocol stipulates precisely where a translation must be published by the author himself if he does not wish a legal license to come into force. Article 5 of the Paris Convention of 1896 merely stipulates that the publication of such a translation must take place in a country of the Union. The additional Protocol adds an important clarification: the translation must be published in the country invoking the reservation concerning the translation license. Publication does not mean printing in the strict sense; this is an essential distinction for countries that do not possess even the technical means needed to publish translations or reproductions under the conditions laid down by the additional Protocol.

15. The proposals on the right of reproduction contained in Article (1)(e) of document S/1 (Annex II), corresponding to Article (1)(c) of the final text, have undergone profound modification. After discussion and examination of the various proposals (see the proposal of the United Kingdom, document S/149, paragraph (3) and the joint proposal of ten developing countries, document S/160), the Working Group proposed the text contained in document S/249, Article 1, paragraph (d). The final solution adopted for this reproduction license is a copy of the translation license to the extent that the analogy is possible. It provides for the possibility of the introduction of a reproduction license for educational or cultural purposes—the wording should not be interpreted in a restrictive manner, given that the addition "exclusively for . . . purposes . . ." was intentionally deleted.

16. On the other hand, restriction of the right of reproduction to educational or cultural purposes excludes from the field of application of this reservation all works whose educational or cultural purpose is not evident; as an example, detective and adventure stories were mentioned in the discussion.

17. The procedure to be followed in order to obtain such a license, the conditions concerning payment of the compensation, the place of publication, respect for the right of the author to change his mind, and the possibility of having recourse to such a license even after the copies of the original edition of the work are out of print have been established on the same basis as for translations.

18. Paragraph (d) of the first Article of the additional Protocol, which concerns the radio-diffusion of literary and artistic works, permits the countries beneficiaries of the Protocol to substitute for paragraph (1) and paragraph (2) of Article 11*bis* of this Convention the text of the Rome Convention of 1928 with two changes. The first, which represents a modernization of the text, is to replace the words "communication by radio-diffusion" of the Rome Convention of 1928 by the word "radio-diffusion." The second change settles a basic matter: the public communication of broadcast works for profit-making purposes shall not be permitted except on payment of equitable remuneration fixed, in the absence of agreement, by competent authority. That addition takes over the wording of the proposal by the Delegation of the United Kingdom (document S/149, paragraph 2).

19. A new possibility for restriction open to domestic legislation has been adopted for uses destined *exclusively for teaching, study and research in all fields of education*. It should be noted that that reservation does not apply solely to the right of translation and reproduction; it may also be invoked equally for the other uses of literary and artistic works. A new formula has been inserted for the determination of compensation, by which the latter shall "conform to standards of payment made to national authors." The addition of the words "in all fields of education" and the exclusivity of the purposes for which the reservation can be utilized indicate that industrial or commercial research or research of the same nature is outside the scope of this reservation.

20. In the case of copies of works translated and reproduced on the basis of the reservations in a country availing itself of the additional Protocol, the general principle adopted is that their export and sale are not permitted in a country not availing itself of these reservations. The prohibition does not apply if the legislation of a country which cannot avail itself of the additional Protocol, or the agreements concluded by that country, authorize such importation. The reference to national legislation and to agreements concluded has been replaced, in the case of the works mentioned in Article 1(c), by the condition of the agreement of the author. An example quoted in the discussions was that of a translation made in India which could be imported into Ceylon but not into Japan. In the same paragraph it has been made clear that only copies of a work published in a country for the relevant educational purposes may be imported and sold in other countries availing themselves of the reservations; the effect, therefore, is that such copies will be in a language relevant to the educational needs of that country.

21. The above reservations may be maintained for ten years from the time of ratification by the country concerned (see Article 1 *(in fine)*); countries that do not consider themselves in a position to withdraw the reservations made under this Protocol, may continue to maintain them until they accede to the Act adopted by the next revision conference; the "maintaining of reservations" therefore implies that it will be essential for a declaration in that sense to be addressed to the Director General of . . . by the country concerned, and that in default thereof the reservations shall cease to be applicable. The country concerned would then be bound by the Convention itself. Various proposals made in the course of the Conference by the delegations present, and concerning one or other of the problems mentioned above, have either been incorporated in the final text or withdrawn (see for example publication of serials, abridgements or translations in newspapers or periodicals, document S/160, or the provisions for the institution of certain measures of control over the application of the additional Protocol submitted by the Delegation of Israel, document S/199, or have found their place in a resolution (for example the creation of a fund intended for the authors of works affected by the reservations stipulated in the Protocol, as proposed by the Delegation of Israel, document S/228).

22. Article 4 was added to the text as the result of a proposal by the United Kingdom which was adopted by Committee II at its eighth meeting. Even a developing territory judged by the same principles as sovereign countries which has not acceded to independence by the day on which the Convention is signed may enjoy the benefits of the additional Protocol.

23. The reference to the practice established by the United Nations made it necessary to solve the problem of the legal consequences of a contrary situation, namely to deal with the case of a country from which the status of developing country might be withdrawn. The solution proposed by the Drafting Committee is that this country will no longer be able to avail itself of the Protocol at the expiry of a period of six years from the appropriate notification.

24. To provide a possibility for developing countries to benefit immediately from the additional Protocol, an Article 5 has been added to the text, offering this possibility even before the text of the Convention itself has been ratified within the meaning of Article 25(1)(b)(i).

Another question that was the subject of consideration by the developing countries in the course of the preparatory proceedings, that of the protection of folklore, was resolved by Article 15, paragraph (3) of the Convention itself.

25. With regard to this Article, the Delegations of Czechoslovakia, India, Israel and Tunisia made statements evidencing their opposition in principle to clauses of this kind in conventions.

S/270/Rev/Corr. RAPPORTEUR, MAIN COMMITTEE II. Berne Convention. *In document S/270/Rev., make the following changes:*

1. *paragraph 20 should read:* In the case of copies of works translated and reproduced on the basis of the reservations in a country availing itself of the additional Protocol, the general principle adopted is that their export and sale are not per-

mitted in a country not availing itself of these reservations. The prohibition does not apply if the legislation of a country which cannot avail itself of the additional Protocol, or the agreements concluded by that country, authorize such importation. The reference to national legislation and to agreements concluded has been replaced, in the case of the works mentioned in Article 1(e), by the condition of the agreement of the author. In the same paragraph it has been made clear that only copies of a work published in a country for the said educational purposes may be imported and sold in other countries availing themselves of the reservations; the effect, therefore, is that such copies will be in a language relevant to the educational needs of that country. An example quoted in the discussions was that of a translation made in India which could be imported into Ceylon but not into Japan.

2. *paragraphs 23 to 26 should read:*

23. With regard to this Article, the Delegations of Czechoslovakia, India, Israel and Tunisia made statements evidencing their opposition in principle to clauses of this kind in conventions.

24. The reference to the practice established by the United Nations made it necessary to solve the problem of the legal consequences of a contrary situation, namely to deal with the case of a country to which the status of developing country ceases to be applicable. The solution proposed by the Drafting Committee is that this country will no longer be able to avail itself of the Protocol at the expiry of a period of six years from the appropriate notification.

25. To provide a possibility for developing countries to benefit immediately from the additional Protocol, an Article 5 has been added to the text, offering this possibility even before the text of the Convention itself has been ratified within the meaning of Article 25(1)(b)(i).

26. Another question that was the subject of consideration by the developing countries in the course of the preparatory proceedings, that of the protection of folklore, was resolved by Article 15, paragraph (3) of the Convention itself.

S/271 RAPPORTEUR, MAIN COMMITTEE I. Berne Convention. [*Editor's Note:* This document, as prepared both in English and in French by the Rapporteur of Main Committee I, contains the draft report of the Committee's work. In the following, only the differences between the English text of the draft report and the English text of the final report are included. The English text of the final report can be found in Volume II. The use of the past tense refers to document S/271. In those cases where the numbering of the paragraphs is different, the number in parentheses refers to document S/271.]

in paragraph 1, the words following "(Articles 1 to 20)" were: excepting, however, the proposals; *rather than:* with the exception, however, of the proposals.

in paragraph 3, the words following "were therefore" were: as follows; *rather than:* the following.

in paragraph 4, the words following "the Netherlands" were: (Mr. S. Gerbrandy); *rather than:* (Professor S. Gerbrandy); *and the words* following "Sweden" were: (Mr. Torwald Hesser); *rather than:* (Professor S. Strömholm).

in paragraph 6, the word following "reproduction" was: contained; *rather than:* mentioned.

in paragraph 8, the words following "consideration of" were: the possible insertion; *rather than:* the possibility of inserting.

in paragraph 11(c), the wording was: Articles 2, paragraph (2), 4, paragraphs (4) and (6), 6, paragraph (2), 7, paragraph (2), 14, paragraphs (1) to (7); regime of cinematographic works.

in paragraph 11(d), the words following "Article 2bis, paragraph (2)" were: (reproduction of speeches); *rather than:* reproduction of discourses; *and the words following "Article 11" were:* right of presentation and performance; *rather than:* right of public performance.

in paragraph 12, there was no corresponding text in the draft report.

in paragraph 13 (numbered 12), the words preceding "that the Committee" were: Firstly, it should be mentioned; *rather than:* It should first be mentioned.

in paragraph 14 (numbered 13), the fourth sentence read: Similarly, Article 11 does not refer to Article 11*bis*.

in paragraph 15 (numbered 14), the words following "The Berne Convention" were: (cf. No. 16 below); *rather than:* (cf. paragraph 17 below); *and the words following "the English view" were:* on which the work of the Drafting Committee was based; *rather than:* which was adopted by the Drafting Committee.

in paragraph 18 (numbered 17), the word following "deal" was: mainly; *rather than:* essentially.

in paragraph 19 (numbered 18), the last words were: (Article 4(1)) or not (Article 6(2)); *rather than:* (Article 4(1), or whether he is not (Article 6(2)).

in paragraph 21 (numbered 20), the beginning of the second sentence was: In addition, it contains a provision excluding formalities as a condition of protection; *rather than:* Furthermore, it contains a provision excluding formalities as a condition for protection.

in paragraph 22 (numbered 21), the words following "proposals on" were: eligibility criteria; *rather than:* the eligibility criteria.

in paragraph 23 (numbered 22), the words following "cinematographic works and" were: architectural works; *rather than:* works of architecture; *and the words following "Special provisions" were:* at present contained; *rather than:* already existing.

in paragraph 24 (numbered 23), the text was: The Committee approved the new presentation of Articles 4 to 6 in principle, but preferred to proceed according to the order followed in the Programme of the Conference. The present report also follows that order. However, when it refers to a certain article or a certain paragraph, the report will also indicate in brackets the corresponding article or paragraph in the new draft finally adopted by the Committee.

The title before paragraph 25 (numbered 24) was: Article 4(1) (Article 3(1)(a)); *rather than:* Article 4(1) (Article 3(1)(a), Article 5(1)).

in paragraph 28 (numbered 27), the text ended with the words: to adopt this Protocol which was proposed in the Programme; *rather than:* to adopt that Protocol.

in paragraph 30 (numbered 29), the text was: It is obvious that this problem may be raised—and solved in the same way—in respect of the date when the author's nationality is decisive as an eligibility criterion.

in paragraph 34 (numbered 33) the texts were identical. However, in paragraph 34 of the draft report, for which there is no corresponding provision in the final report, the text was: In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter, according to the Programme, should be considered as the country of origin (b).

in paragraph 36, the text was: However, the Programme provided for two exceptions. The first relates to cinematographic works in respect of which the country of origin was considered to be the country of which the maker is a national or in which he has his domicile or headquarters ((c)(i)). In the absence of such a criterion, the nationality of the author would be decisive as regards their country of origin. In the same way, the country where a work of architecture and some other works of the same nature were erected or affixed to land or to a building would be the criterion for their country of origin ((c)(ii)).

in paragraph 37, the text of the first sentence was: In the Committee, Switzerland proposed (document S/63) that the nationality of the author should be the general criterion for country of origin even in respect of published works.

in paragraph 38, the words following "the general criterion for" were: country of origin; *rather than:* the country of origin.

in paragraph 40, the words following "the Report dealing with cinematographic" were: questions. During discussion

of Article 6(3), which corresponds to Article 4, paragraph (4)(c)(ii); *rather than:* works. During the discussion of Article 6(3) which parallels Article 4(4)(c)(ii).

in paragraph 41, the words following "the criterion for" were: country of origin; *rather than:* the country of origin; *and the last words were:* and architectural works ((c)(ii)); *rather than:* and works of architecture ((c)(ii)).

in paragraph 42(b), the words following "the concept of publication" were: the statement; *rather than:* the condition.

in paragraph 46, the words "engravings of" were followed by: architectural or; *rather than:* works of architecture or.

in paragraph 47, the words following "South Africa" were: Germany (Federal Republic); *rather than:* the Federal Republic of Germany.

in paragraph 48, the words following "published works" were: (and publication); *rather than:* (and of publication).

in paragraph 51, the words preceding "in the absence of proof" were: in the manner in current use shall; *rather than:* in the usual manner shall.

in paragraph 53, the last sentence was: This is at present the subject of the new Article 5(3).

in paragraph 54, the words preceding "contains a rule" were: This paragraph; *rather than:* This last mentioned new paragraph; *and the words following "other authors" were:* in respect of whose works; *rather than:* of whose works.

in paragraph 58, the words following "the principles of protection" were: to the new Article 5(3); *rather than:* to the new Article 5(1) and (3).

in paragraph 59, the words following "and subject" were: to the principle; *rather than:* also to the principle.

in paragraph 61, the words following "(document S/52)" were: to amend the text; *rather than:* the amendment of the text.

in paragraph 62, the words following "the English version" were: slightly differently to make it correspond to British practice; *rather than:* slightly differently.

in paragraph 63, the text was: It was decided that the report should state that the criterion for the situation of architectural and other artistic works in a country of the Union would apply only in respect of the original work. No protection under the Berne Convention could be claimed in respect solely of a copy of the work erected in a country of the Union if the original remained situated in a country outside the Union.

in paragraph 64, the words following "for an exception to" were: this right; *rather than:* that right.

in paragraph 69, the text was: The Committee adopted the order proposed in the Programme, which will be followed in the present report. Accordingly, Article 9(3) of the Brussels text on items of news will be discussed under Article 2(8) (a new paragraph was added to Article 2, so that paragraph (7) of the Programme becomes paragraph (8) in the text adopted by the Committee). Nevertheless, the Committee has included in Article 9 a new paragraph (3), which was not proposed in the Programme but which corresponds to Article 9(2) of the Brussels text.

in paragraph 71, the words following "the Brussels text" were: or to permit; *rather than:* or permit.

in paragraph 72, the word preceding "Austria, Italy" was: Moreover.

in paragraph 73, the wording of the third sentence was: Some examples were also indicated.

in paragraph 75, the text was: As regards the drafting amendments, Austria withdrew its proposal on condition that the two ideas contained in it appeared in the report: (i) reproduction does not include public presentation or performance; (ii) reproduction includes recordings of sounds or images. There seems no doubt that such clarification is consistent with the general trend of opinion in the Committee.

in paragraph 76, the word preceding "it was emphasized" was: since; *rather than:* as; *and the words following "parts of a work in" were:* an Article; *rather than:* one Article.

in paragraph 78 of the draft report, for which there is no corresponding provision in the final report, the text was: Article 13(1) of the Brussels text provides that authors of musical works shall have the exclusive right of authorizing: (i) the recording of such works by instruments capable of reproducing them mechanically; (ii) the public performance by means of such instruments of works thus recorded. Since the Committee decided to delete this paragraph (1) of Article 13, it was considered appropriate to include in Article 11(1) and in Article 11*ter*(1) a reminder that the right of presentation or performance and the right of recitation include the right at present referred to in Article 13(1). However, as will be set out below, when dealing with Articles 11 and 11*ter*, a slightly modified formula has been adopted to define the latter right. In order to coordinate the provisions of the Convention, the Drafting Committee proposed to insert a similar reminder in Article 9(1), namely that the author's right of reproduction includes the right of reproduction as at present provided in Article 13(1).

in paragraph 79 (numbered 80), there was no corresponding provision in the Draft report for the fifth sentence of the final report, beginning with the words "It further proposed that".

in paragraph 80 (numbered 81), the words "India proposed" were preceded by: For instance; *rather than:* Thus.

in paragraph 81 (numbered 82), the text was: There was also a tendency to group all the exceptions in a single formula and thus to eliminate items (a) and (b) of the Programme text. Proposals to this effect were submitted by the United Kingdom (document S/42) or suggested in the observations submitted by Greece (document S/56). According to the Greek observations, it should be possible to omit items (a) and (b) which are covered by item (c) without changing the text of the latter. According to the United Kingdom proposal, item (c) should be slightly amended. Instead of the expression used in the Programme, namely "in certain particular cases where the reproduction is not contrary to the legitimate interests of the author," the following phrase should be used: "in certain special cases where the reproduction does not unreasonably prejudice the legitimate interests of the author."

in paragraph 82 (numbered 83), the text of the first sentence was: A purely drafting point was raised by Monaco (document S/66) and by the Netherlands (in the above-mentioned document S/81).

in paragraph 85 (numbered 86) the text was: The Committee also adopted a proposal by the Drafting Committee that the second condition should be placed before the first, as this would afford a more logical order for the interpretation of the rule. If it is considered that reproduction conflicts with the normal exploitation of the work, reproduction is not permitted at all. If it is considered that reproduction does not conflict with the normal exploitation of the work, it is then necessary to consider whether it does not unreasonably prejudice the legitimate interests of the author. Only in these circumstances would it be possible to introduce a compulsory license in certain special cases. A practical example might be photocopying for various purposes. If it implies producing a large number of copies, it should never be permitted, as it conflicts with a normal exploitation of the work. If a smaller number of copies is made, it may be permitted for individual or scientific use. If it is intended for use in industrial undertakings, it may not unreasonably prejudice the legitimate interests of the author provided that, according to national legislation, an equitable remuneration is to be paid.

in paragraph 87, there was no corresponding text in the draft report.

in paragraph 88 of the draft report, for which there is no corresponding paragraph in the final report, the text was: In a joint proposal submitted by Czechoslovakia, Hungary and Poland (document S/51), and in a proposal by Japan (document S/80), the reintroduction was suggested, in a new paragraph (3) of Article 9, of the provision at present contained in Article 9(2) dealing with borrowings from newspaper articles. According to the Programme, that provision was to have been deleted.

in paragraph 89 of the draft report, for which there is no corresponding paragraph in the final report, the text was:

The above proposals also provided that the right to borrow articles should apply not only to reproduction by the press but also to broadcasting. In addition, the first of the two proposals stated that, in the cases referred to in the provision in question, articles could be used not only in the original but also in translation.

in paragraph 90 of the draft report, for which there is no corresponding paragraph in the final report, the text was: The Committee adopted the three concepts contained in the two amendments referred to above—namely, the reintroduction of the existing provision of Article 9(2) concerning borrowings from newspaper articles, and its extension to broadcasting, and it agreed that such provisions should be inserted in a new Article 9(3).

in paragraph 91 of the draft report, for which there is no corresponding paragraph in the final report, the text was: It was decided, however, on the proposal of the Drafting Committee, to change the opening words in order to bring them into line with the corresponding words in paragraph (2) of the new version, so as to avoid the impression that it is compulsory for countries to insert in their legislation such a restriction on the author's right of reproduction.

in paragraph 92 of the draft report, for which there is no corresponding paragraph in the final report, the text was: The Drafting Committee made two proposals: (i) to insert in the new paragraph (3) the words "which are published in the newspapers or periodicals", which are taken from Article 9(1) of the Brussels text and which clearly impose upon the meaning of the word "articles" a restriction judged necessary, after the deletion of Article 9(1), so as to retain the meaning of paragraph (3); (ii) to give the press the possibility of borrowing material of the same nature from broadcasting programs, thus restoring the balance between the rights of the two media concerned.

in paragraph 93 of the draft report, for which there is no corresponding paragraph in the final report, the text was: The question of the right of translation of articles utilized in this way will be considered in connection with Article 8 dealing with the general right of translation.

in paragraph 88 (numbered 94), the text was: The Programme proposed an extension of the existing rule in Article 10(1) which deals with the right of quotation and refers only to newspaper articles and periodicals, whereby its application would be extended to all categories of works. The Programme also proposed deletion of the condition according to which only "short" quotations are permitted. On the other hand, the Programme introduced certain conditions restricting the freedom of quotation. The works quoted were (i) to have already been "lawfully made available to the public", (ii) to be "compatible with fair practice", and (iii) to be made only "to the extent justified by the purpose."

in paragraph 89 (numbered 95) the words following "France proposed (document S/45)" were: as did Greece in its comments (document S/56), to reintroduce; *rather than:* reintroducing *and the words following "Poland submitted a proposal (document S/51)" were:* corresponding to that made in connection with Article 9(3) (new), providing that; *rather than:* providing that.

in paragraph 91 (numbered 97), the word following "The question of the" was: freedom; *rather than:* right.

in paragraph 92 (numbered 98), the text of the second sentence was: According to that provision, it is a matter for national legislation or for special agreements concluded between the countries of the Union to permit the inclusion of borrowings from protected works in "publications intended for teaching or having a scientific character" or in "chrestomathies" to the extent justified by the purpose.

in paragraph 95 (numbered 101), the last word was: recordings; *rather than:* phonograms.

in paragraph 96 (numbered 102), the text was: The Committee adopted the Working Group's proposal and the extension to broadcasts and recordings. It subsequently decided to add the words "sound or visual" before "recordings", thus eliminating any doubt as to the possibility that this provision might not apply to visual recordings as well as sound recordings.

in paragraph 97 (numbered 103), the word preceding "Report" was: the; *rather than:* this; *and the text of the last sentence was:* Education outside these institutions for instance in places open to the public but not included in the above categories, should be excluded.

in paragraphs 99 through 104, there were no corresponding texts in the draft report.

in paragraph 105, the text preceding item (i) was: In regard to the provision of Article 10*bis* concerning the reporting of current events, the Programme suggested four minor changes in the Brussels text.

in paragraph 106, the text was: Monaco proposed some drafting amendments (document S/76), namely, that the word "reproduced" should disappear and the words "communicate to the public" should be replaced by the words "made available to the public."

in paragraph 107, the text ended with the phrase: thus amended.

The title before paragraph 108 was: III. Other Provisions; *rather than:* III. Other Provisions in the Text of the Convention.

in paragraph 111, the words following "for the protection of" were: authors' copyright in; *rather than:* the rights of authors over.

in paragraph 113, the word preceding "protection shall operate" was: this; *rather than:* such; *and the word following "protection of works of applied" was:* arts; *rather than:* art.

in paragraph 114, the words preceding "the numbering of the subsequent paragraphs" were: For this reason; *rather than:* For that reason; *and the words preceding "provision concerning" were:* the new; *rather than:* the.

in paragraph 115, the third sentence was: A new provision dealing with fixing as a condition of protection was inserted as paragraph (2); *and the text following the words "became paragraph (8)" was:* The present report will follow the order of the Programme (except in regard to paragraph (2)). The numbers appearing in the text adopted by the Committee will be shown in brackets.

in paragraph 116, the word following "the provision on" was: cinematographic; *rather than:* photographic.

in paragraph 118, the text of the last sentence was: Choreographic works which will hereinafter be deemed to include entertainment in dumb show, unless otherwise indicated, are the only works included in the Convention for which a condition of this kind is laid down.

in paragraph 120, the words following "a general condition" were: of protection; *rather than:* for protection; *and the words following "in a paragraph (2)" were:* (see below); *rather than:* (see paragraph 130 below).

in paragraph 122, the text ended with: (see below); *rather than:* (see paragraph 277 below).

in paragraph 125, the words following "moved it back" were: as the phrase; *rather than:* like the phrase.

in paragraph 126, the wording of the second sentence was: Moreover, some countries proposed that television works should be included in this list (see below).

in paragraph 128, the word following "domestic" was: legislations; *rather than:* laws.

in paragraph 129, the last words were: (document S/191 mentioned above); *rather than:* (document S/191 mentioned above in paragraph 120).

in paragraph 130, the text of the first sentence was: The Committee decided to adopt a new principle.

in paragraph 131, the text ended with: by itself alone should constitute paragraph (3); *rather than:* by itself should constitute paragraph (3).

in paragraph 133, the wording of the first sentence was: The Federal Republic of Germany proposed that the option given to national legislation should apply not only to translations of official texts but also to these texts in their original form.

in paragraph 136, the text was: In accordance with the desire expressed by the United Kingdom, it should be clearly

stipulated in this report that the reference made in the Convention to texts of an administrative nature does not permit countries to refuse protection to all governmental publications.

in paragraph 138, the wording of the first sentence was: It is laid down in paragraph (5) of the Brussels text and, without change, in paragraph (6) of the Programme, that the works mentioned in Article 2 shall enjoy protection in all countries of the Union and that this protection shall operate for the benefit of the author and his legal representative and assignees.

in paragraph 140, the word following "works of applied" was: arts; *rather than:* art.

in paragraph 41, the words following "all respects" were: in the same way as; *rather than:* like.

in paragraph 142, the word following "works of applied" was: arts; *rather than:* art.

in paragraph 143, the word preceding "protection is claimed" was: where the; *rather than:* where.

in paragraph 144, the word following twice "works of applied" was: arts; *rather than:* art.

in paragraph 145, the words following "Brussels text" were: the Programme would transfer that proposal, which is more applicable to the words protected; *rather than:* the Programme transferred that provision, which is more concerned with the works protected.

in paragraph 146, the words following "news of the day" were: or current events; *rather than:* or miscellaneous facts; *and the word preceding "themselves are not protected" was:* events; *rather than:* facts.

in paragraph 151, the text was: It was noted that this paragraph did not raise any special difficulty with regard to translation (see below). Given that domestic legislation can refuse all protection to the works in question, it can obviously also exclude the author's exclusive right of translation.

in paragraph 152, the words preceding "this paragraph" were: In accordance with; *rather than:* According to.

in paragraph 153, the text was: India proposed (document S/73) that the works could be reproduced in original or in translation by the press or cinematography or broadcasting.

in paragraph 155, the words following "to broadcasting" were: by radio and to; *rather than:* and to.

in paragraph 156, the words following "(3) not only" were: can the works be reproduced by the press, but they can also be broadcast, communicated to the public by wire and made the subject of public communication as set out in Article 11*bis*, paragraph (1), (4) this use must be justified by the informatory purpose, that is to say that the character of news must apply not to the subject dealt with in the lecture, address, etc. but to the actual utilization with the object of informing the public.

in paragraph 159, the words following "Paragraph (2)" were: lays it down; *rather than:* provides.

in paragraph 164, the words following "the text the moral rights" were: should be; *rather than:* were to.

in paragraph 165, the wording of the first sentence was: Some countries proposed to eliminate the limitation on the term of the moral rights.

in paragraph 168, the words following "post mortem auctoris" were: for the; *rather than:* in; *the words following "the framework of" were:* copyright law; *rather than:* copyright; *the words following "complete protection" were:* after the death; *rather than:* of such rights after the death; *and the words following "(2), according to" were:* that new text, the legislation of a country of the Union may provide that some of the rights granted to the author by paragraph (1); *rather than:* which the legislation of a country of the Union may provide that some of the rights granted to the author under paragraph (1).

in paragraph 169, the words following "Finland" were: Germany (Federal Republic); *rather than:* the Federal Republic of Germany; *the words following "which did not" were:* entirely protect; *rather than:* protect all; *and the words following "that exception" were:* should be; *rather than:* was to be.

in paragraph 172, the last sentence was: Paragraph (3) is, therefore, maintained as set out in the Brussels text.

in paragraph 173, the word preceding "that prescribed in paragraph (1) was: exceeding; *rather than:* in excess of.

in paragraph 174, the words following "amendments in all" were: paragraphs of the Brussels text, excepting paragraph (1); *rather than:* the paragraphs of the Brussels text except paragraph (1); *and the words following "paragraph (4) were:* in part corresponds to; *rather than:* corresponds in part to.

in paragraph 175, the text was: In the present report the paragraphs appear in the same order as that adopted in the Programme. Where the text adopted by the Committee uses other numbering for the paragraphs, the numbers concerned are indicated in brackets.

in paragraph 177, the last words were: with in connection with paragraph (6) (see below); *rather than:* with under the heading of "Recommendations expressed by the Committee" (see paragraph 329 below).

in paragraph 179, the word following "Paragraph (5)" was: determines; *rather than:* provides.

in paragraph 180, the words following "A fourth sentence" were: was however, added; *rather than:* was added, however; *and the words following "The countries of the Union" were:* are not required to protect anonymous or pseudonymous works of which it is reasonable; *rather than:* would not be required to protect anonymous and pseudonymous works of which it was reasonable.

in paragraph 182, the text ended with: see below).

in paragraph 183, the text ended with: first sentence of the Programme.

in paragraph 184, the word following "works of applied" was: arts; *rather than:* art.

in paragraph 185, the word preceding "three categories" was: these; *rather than:* those.

in paragraph 186, the word preceding "Denmark" was: Moreover; *and the word following "works of applied" was:* arts; *rather than:* art.

in paragraph 191, the text began with: The Federal Republic of Germany *and ended with:* discussed below.

in paragraph 194, the words following "condition imposed" were: on the grant of; *rather than:* on the option to grant.

in paragraph 196, the words following "Switzerland proposed" were: to reverse the formula used in the last part of the paragraph; *rather than:* that the formula used in the last part of the paragraph should be reversed.

in paragraph 198, the words following "from the date" were: of death; *rather than:* of the death.

in paragraph 199, the words following "of the author the general" were: eligibility criterion and the criterion of country; *rather than:* criterion of eligibility and the general criterion of country.

in paragraph 204, the text was: No amendment to the text of Article 8 was submitted to the Committee, but proposals affecting the right of translation were made in connection with other articles. For instance, it was proposed to insert a sentence adding to the limitation of the right of reproduction a corresponding limitation of the right of translation in Article 2*bis*(2), Article 9(3)(new) and Article 10(1) (see these Articles below). During the discussion of these proposals the Committee considered that a general rule regarding exceptions to the right of translation was necessary and should be inserted in Article 8. It was left to the Drafting Committee to try to find a satisfactory formula and to suggest whether such a formula should be included in the text of Article 8 or merely in the report concerning this Article.

in paragraph 205 of the draft report the text was: The majority of the Drafting Committee preferred that the existing text of the Convention should not be altered but that the following formula should be inserted in full in the Report concerning Article 8:

"The provisions of this Convention which permit a work or a part thereof to be used without the authorization of the author—that is to say Articles 2*bis*(2), 9(2), 9(3), 10(1), 10(2), 10*bis*, 11*bis* and 13—permit the work to be used not only in the original but also in translation, subject to the same conditions, in particular that the use is in conformity with fair practice. It should be added that in these cases, as in all cases where a work is used, the rights given to an author under Article 6*bis* (moral rights) are reserved."

in paragraph 205 of the final report, the text corresponds to paragraph 206 of the draft report. In the draft report this text was originally reserved, but subsequently appeared as S/271/Corr.1 which was also intended to replace S/269/Add.

in paragraph 208 (numbered 209), the words following "right of public" were: presentation and public performance; *rather than:* performance; *and the text ended with:* by any means or process.

in paragraph 210 (numbered 211), the text ended with: Article 8.

in paragraph 212 (numbered 213), the last sentence was: Paragraph (2) remains as it was in the Brussels text.

in paragraph 213 (numbered 214), the word following "that authors" was: shall; *rather than:* are.

in paragraph 216 (numbered 217), the word following "compromise between" was: contrary; *rather than:* opposing.

in paragraph 218 (numbered 219), the text preceding item (ii) was: The United Kingdom proposed (document S/171): (i) to delete the condition that ephemeral recordings should be made by the broadcasting body "by means of its own facilities";

in paragraph 219 (numbered 220), the text ended with: the broadcasts made with permission.

in paragraph 222 (numbered 223), the words following "the regime of cinematographic works" were: (document S/195) proposed to insert; *rather than:* proposed (document S/195) the insertion of; *and the word preceding "in sub-paragraphs (ii) and (iii)" was:* given; *rather than:* provided.

in paragraph 224 (numbered 225), the word following "and (ii) any communication to the public of" was: recitations; *rather than:* such recitation.

in paragraph 225 (numbered 226), the text was: The Drafting Committee suggested (document S/269) that under paragraph (1) of this Article authors should enjoy the right of authorizing: (i) the public recitation of their works, including such public recitation by any means or process; (ii) any communication to the public of the recitation of their works. The Drafting Committee also suggested adding a paragraph (2) corresponding to paragraph (2) of Article 11, whereby authors shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

in paragraph 228 (numbered 229), the first sentence was: The Programme proposed to delete paragraph (1), to limit the compulsory license in paragraph (2) and to put an end to the transitorial system provided in paragraph (3).

in paragraph 231 (numbered 232), the words following "the Programme" were: to delete it; *rather than:* that it should be deleted.

in paragraph 233 (numbered 234), the words preceding "a sentence" were: to add; *rather than:* adding.

in paragraph 234 (numbered 235), the words following "(document S/171)" were: proposed to insert; *rather than:* proposed inserting.

in paragraph 236 (numbered 237) the words following "of the words have" were: once given; *rather than:* given; *and the text of the last sentence was:* The Drafting Committee prepared a new formula which was adopted.

in paragraph 237 (numbered 238), the words following "The programme proposed" were: to put; *rather than:* putting.

in paragraph 239 (numbered 240), the wording of the second sentence was: With regard to the date on which the transitorial period should end, the Drafting Committee proposed that this period should expire two years after the country where the recordings were made became bound by the Act of Stockholm.

in paragraph 242 (numbered 243), the wording of the first sentence was: Article 14*bis* in the Brussels text deals with droit de suite.

in paragraph 243 (numbered 244), the text was: The Committee decided to leave that Article as it was but to change the numbering because of the decision already mentioned to insert a new Article 14*bis* dealing with cinematographic works.

in paragraph 247 (numbered 248), the words preceding "the Committee" were: (see below); *rather than:* (see below under paragraph 325).

in paragraph 248 (numbered 249), the text following "No proposal was submitted" was: in regard to this paragraph. The Committee merely changed the number of the paragraph, which becomes number (3); apart from this it remains unchanged.

in paragraph 249 (numbered 250), the words preceding "made several" were: the Indian Delegation; *rather than:* the Delegation of India.

in paragraph 250 (numbered 251), the text preceding "(document S/212)" was: The Delegate of Czechoslovakia was elected Chairman of this Working Group. Czechoslovakia then proposed; *rather than:* The Chairmanship of this Working Group was entrusted to Czechoslovakia, which then proposed.

in paragraph 251 (numbered 252), the words following "(document S/240)" were: to insert in Article 15; *rather than:* the insertion in Article 15 of; *and the words following "(i) the work is" were:* an unpublished one; *rather than:* unpublished.

in paragraph 252 (numbered 253), the word preceding "not mention" was: does; *rather than:* did.

in paragraph 253 (numbered 254), the wording of the first sentence was: It appears that the works of unknown authors constitute a special category comprised within the concept of anonymous works mentioned in the Convention in Article 7(3) and Article 15(3) (new).

in paragraph 254 (numbered 255), the text ended with: to amend that Article; *rather than:* any amendment of this Article.

in paragraph 256 (numbered 257) the word preceding "purely" was: certain; *rather than:* some; *and the text ended with:* to the text.

in paragraph 257 (numbered 258), the words following "or regulation" were: the distribution, performance, or exhibition; *rather than:* the circulation, presentation, or exhibition.

in paragraph 258 (numbered 259), the words following (ii) were: to insert; *rather than:* the insertion of.

in paragraph 259 (numbered 260), the words following "a proposal" were: similar to that under (ii) above (document S/215); *rather than:* (document S/215) similar to that under (ii) above; *the words following "measures" were:* it deems; *rather than:* it deemed; *and the word preceding "remuneration" was:* just; *rather than:* equitable.

in paragraph 261, there was no corresponding paragraph in the draft report.

in paragraph 262, the text was: The Committee decided to adopt the proposal submitted in the above-mentioned document of the United Kingdom under item (i), that is to say, to delete the words "to permit." It also decided that the wording should be modified along the lines of the underlying ideas of the above-mentioned Italian proposal.

in paragraph 263, the text was: In addition, the Committee accepted, without opposition, the proposal of its Chairman that mention should be made in this report that questions of law and order shall always be a matter for domestic legislation and that the countries of the Union are therefore able to take all necessary measures to restrict possible misuses of monopolies.

in paragraph 264, the words following "the Convention" were: is to apply; *rather than:* applies; *and the words following*

"the expiry of the term" were: of protection and Article 18; *rather than:* of protection Article 18.

in paragraph 268, the words following "paragraph (2)" were: lays it down; *rather than;* stipulates.

in paragraph 269, the wording of the first sentence was: The Programme proposed substantial changes in the present system as a result of the development of television since the Brussels Conference, amongst other things; *the words following "in certain cases" were:* in regard to; *rather than:* as regards; *and the words following "national legislation" were:* certain rules; *rather than:* some rules.

in paragraph 270, the wording of the first sentence was: In Article 14(1) to (3), the Programme submitted provisions for existing works which corresponded to the provisions of the present Article 14(1) to (5).

in paragraph 271, the words preceding "on the same lines" were: certain rules; *rather than:* some rules.

in paragraph 272, the text was: No definition of the maker was introduced in Article 4(6). Further, a new provision, which will be mentioned at the appropriate point in this report, was inserted in Article 15 in order to determine who is to be considered as the maker of the film.

in paragraph 273 of the draft report, for which there is no corresponding paragraph in the final report, the text was: Where the numbering of the draft adopted by the Committee differs from that of the Programme, the new numbers will be shown in brackets in this report.

in paragraph 274 (numbered 275), the word preceding "definition" was: that; *rather than:* the.

in paragraph 276 (numbered 277), the words following "not recorded" in the last sentence were: on some; *rather than:* in some.

in paragraph 277 (numbered 278), the words following "as a condition" were: of protection of a work was inserted in a new paragraph *2 (see above)*; *rather than:* for protection of a work was inserted in a new paragraph (2) (see paragraph 130 above).

in paragraph 278 (numbered 279), the first sentence ended with: the following solution; *and the wording of the last sentence was:* If the first or second of these criteria does not apply, the country of the Union of which the author is a national would constitute the third criterion ((c)(iii)).

in paragraph 284 (numbered 285), the words preceding "paragraph (6)" were: to delete; *rather than:* the deletion of; *and the words preceding "in a suitable place" were:* to insert; *rather than:* the insertion.

in paragraph 285 (numbered 286), the words following "the new rule" were: in Article 15 (see above); *rather than:* in Article 15(2).

in paragraph 286 (numbered 287), the words preceding "outside the Union" were: published only; *rather than:* published.

in paragraph 287 (numbered 288), the words following "(document S/28)" were: to delete; *rather than:* deleting; *and the words following "(document S/42)" were:* to add; *rather than:* adding.

in paragraph 288 (numbered 289), the text was: The Working Group proposed (document S/190) to adopt paragraph (2) of the Programme with amendments corresponding to those made to Article 4(4)(c)(i), namely to delete the criterion of the nationality of the maker and to replace "domicile" by "habitual residence." As regards the United Kingdom proposal, it was agreed that it was not necessary to insert the proposed sentence, as it was generally admitted that the Convention has always been interpreted in the manner suggested in that proposal.

in paragraph 290 (numbered 291), the words following "Article 7(1), that is to say" were: during the author's life; *rather than:* the author's life.

in paragraph 291 (numbered 292), the words following "(document S/91)" were: to delete this paragraph and to control the term of protection of cinematographic works in Article 7(4); *rather than:* that this paragraph should be deleted and that the term of protection of cinematographic works should be regulated in Article 7(4).

in paragraph 294 (numbered 295), the words following "The Working Group proposed" were: to adopt; *rather than:* the adoption of.

in paragraph 295 (numbered 296), the text was: Article 14 of the Brussels text consists of five paragraphs. Paragraph (1) deals with the exclusive right of authors of "pre-existing works", often called "classical authors". Paragraph (2) deals with the protection of cinematographic works in the strict sense. Such authors may be called "modern authors." Paragraph (3) deals with the right to adapt cinematographic works. Paragraph (4) excludes cinematographic adaptations of works from the compulsory license referred to in Article 13(2). Paragraph (5) provides that Article 14 shall also apply to works effected by any other process analogous to cinematography.

in paragraph 296 (numbered 297), the words following "which refer" were: to both classical and modern authors; *rather than:* to authors of both pre-existing works and contributions.

in paragraph 297 (numbered 298), the text was: The Committee decided to deal only with the protection of "classical" authors in Article 14 and to reserve Article 14*bis* for the protection of "modern" authors covering the rules of interpretation or as it was commonly called by the Committee, the "presumption of legitimation". At the same time, this presumption was reduced to refer to modern authors alone. In accordance with previous practice, the report follows the numbering of the Programme and gives the numbering of the final draft in brackets.

in paragraph 298 (numbered 299), the words following "Brussels text gives" were: classical authors; *rather than:* authors of pre-existing works.

in paragraph 299 (numbered 300), the text was: The Programme proposed only two amendments. To the rights referred to under (2) it added the right of communication to the public by wire. In addition, it incorporated paragraph (4) of the Brussels text in a shorter formula inserted as the final sentence, whereby the compulsory license would not apply to the rights mentioned in paragraph (1).

in paragraph 300 (numbered 301), the text was: The Federal Republic of Germany proposed (document S/92): (i) to mention the right to broadcast the work among the rights provided in paragraph (1); (ii) to exclude the application of Article 11*bis*, paragraph (2) but to maintain the application of Article 11*bis*(3).

in paragraph 301 (numbered 302), the words following "(document S/195)" were: to adopt the text; *rather than:* the adoption of the text; *and the words following "new paragraph (4) of Article 11bis" were:* (see above regarding Article 11*bis; rather than:* (see paragraph 222 above regarding Article 11*bis*).

in paragraph 302 (numbered 303), the words following "the Working Group's proposal and" were: decided not to follow the second part of the proposal; *rather than:* finally decided not to accept the second part of the proposal.

in paragraph 303 (numbered 304), the text was: Paragraph (2) of the Brussels text provides in a single sentence that a cinematographic work, that is to say the work of "modern" authors, is to be protected as an original work. The Programme retained the sentence but added a second one stating that "modern" authors were to enjoy the same rights as the author of an original work including the right referred to in the previous paragraph. No proposal on this point was submitted to the Committee.

in paragraph 304 (numbered 305), the text was: The Committee adopted the Working Group's proposal (document S/195) to accept the text of the Programme, but to place it in paragraph (1) of the new Article 14*bis* dealing with "modern" authors.

in paragraph 305 (numbered 306), the text of the first sentence was: The Brussels text of paragraph (3) provides that adaptations of cinematographic productions derived from pre-existing works shall, without prejudice to the authoriza-

tion of the "modern" authors, remain subject to the authorization of the "classical" authors.

in paragraph 306 (numbered 307), the text of sub-paragraph (i) was: This rule would apply to both "modern" and "classical" authors, but a country could, according to paragraph (7), exclude "classical" authors from its application. This should be notified to the Director of the new Organization intended to replace BIRPI.

in paragraph 306 (numbered 307), the text of sub-paragraph (ii) was: This interpretation rule presupposed that the author agreed to assign certain rights to the maker. "Classical" authors should have authorized the cinematographic adaptation and reproduction of their works, whereas "modern" authors should have undertaken to bring literary or artistic contributions to the making of the cinematographic work.

in paragraph 306 (numbered 307), the text of sub-paragraph (iii) was: The consent of the authors should concern the fixation of their works in some material form.

in paragraph 306 (numbered 307), the text of sub-paragraph (iv) was: The consent should have been given in the manner prescribed by the legislation of the country of origin.

in paragraph 306 (numbered 307), the text of sub-paragraph (v) was: The countries of the Union could provide that the consent should be given by a written agreement or something having the same force.

in paragraph 306 (numbered 307), the words following "the interpretation rule should" were: not apply; *rather than:* not.

in paragraph 308 (numbered 309), the text was: As to paragraphs (4) to (7) as a whole: Yugoslavia proposed (document S/107) to delete paragraphs (4) to (7) and, therefore, in principle to maintain the Brussels text. The United Kingdom proposed (document S/101) to exclude from the application of the interpretation rule countries whose legislation grants copyright in a cinematographic work to its maker. Monaco proposed (document S/115), inter alia, to reserve expressly the right for countries whose systems differ from that on which Article 14(4) was based, although having similar effects to the interpretation rule, to maintain their systems for example the "film copyright" system in force in the United Kingdom and several other countries and the "*cessio legis*" system in force in Italy and Austria.

in paragraph 309 (numbered 310), the text was: (2) As to point (i) above: Japan proposed (document S/111) to delete paragraph (7), which would mean that "classical" authors could not be excluded by national legislation from the interpretation rule. Belgium proposed (document S/144) to exclude all pre-existing works from the interpretation rule, except for dialogues and scenarios which could, however, also be excluded under certain conditions.

in paragraph 311 (numbered 312) the words preceding "above, France proposed" were: In regard to item (v) mentioned; *rather than:* with regard to item (v); *and the words following "to demand" were:* a written form for the authorization or undertaking should be deleted; *rather than:* that the authorization or undertaking should be in writing be deleted.

in paragraph 312 (numbered 313) the word preceding "regard to" was: in; *rather than:* with; *and the text ended with:* any previous assignment.

in paragraphs: 313 (numbered 314), 314 (numbered 315) and 315 (numbered 316), the word preceding "regard to" was: in; *rather than:* with.

in paragraph 316 (numbered 317), the text was: The Working Groups proposed (document S/195) a more modest regulation than that in the Programme. It suggested that Article 14 should be kept exclusively for pre-existing works, and that these should be completely excluded from the interpretation rule, or rather from the "presumption of legitimation," to use the term generally employed in the Committee, as opposed to the term "presumption of assignment." Article 14*bis* would group all the provisions concerning the cinematographic work itself and its "modern" authors. Paragraph (1) would reproduce paragraph (2) of the Programme without modification. Paragraph (2) would include, in a sub-paragraph (a), a rule for the determination of the ownership of copyright, while a sub-paragraph (b) would deal with the presumption of legitimation, a sub-paragraph (c) would contain a provision dealing with written agreements and a sub-paragraph (d) would contain a definition of the contrary or special stipulation. Paragraph (3) would contain provisions concerning certain authors constituting borderline cases between Article 14 and 14*bis*.

in paragraph 317 (numbered 318), the words in sub-paragraph (ii), preceding "the making of the cinematographic work" were: musical works specially created in; *rather than:* musical works created for.

in paragraph 317 (numbered 318), the text of sub-paragraph (i) was: the presumption should be limited to "modern" authors.

in paragraph 317 (numbered 318), the text of sub-paragraph (iii) was: according to a general principle of the Berne Convention, ownership of copyright in a cinematographic work should (according to paragraph (2)(a)) be a matter for legislation in the country where protection is claimed. This means, for instance, the English law applies to the person who is regarded as the author of the cinematographic work when the work is utilized in the United Kingdom and that French law applies to the person who is regarded as the author when the work is utilized in France. Taking as an example the director of a film, he is not regarded as an author under the system of "film copyright." Under the system of "legal assignment" the ownership of copyright is considered in this regard as belonging to the maker, as paragraph (2)(a) applies not only in cases where the copyright as a whole belongs to a particular person, but also to cases where some elements of copyright are assigned, like the right of economic exploitation under the system of "legal assignment."

in paragraph 317 (numbered 318), the text of sub-paragraph (iv) was: the presumption would apply only in countries which regard "modern" authors as the owners of copyright in the cinematographic work. Hence those countries which use the system of "film copyright" or that of "legal assignment" would fall outside the scope of this application. Nevertheless, these systems have the same effects in their application, taken as a whole, as the presumption of legitimation provided for in paragraph (2)(b).

in paragraph 317 (numbered 318), the words in sub-paragraph (vi), following "a written agreement or" were: something having the same force; *rather than:* a written act of the same effect.

in paragraph 317 (numbered 318), the words in sub-paragraph (vii) following the words "if conditions specified above are fulfilled" were: the "modern" authors; *rather than:* the authors of contributions.

in paragraph 317 (numbered 318), the last sentence of the sub-paragraph (viii) was: This formula is, except for some amendments in wording, the same as that used in the Programme.

in paragraph 319 (numbered 320), the words preceding "placed in the same situation" were: shall be; *rather than:* will be; *and the words preceding "of the Organisation" were:* the Director; *rather than:* the Director General.

in paragraph 320 (numbered 321), the text was: The second amendment refers to point (vi) above. The form of the undertaking shall be governed by the legislation of the country where protection is claimed instead of the legislation of the country where the maker has his headquarters or habitual residence.

in paragraph 321 (numbered 322), the text was: It has been requested that the following statements be inserted in the report. The presumption of legitimation prescribed in paragraph (2) shall be mandatory for the countries. It is not possible for those countries of the Union which consider the "modern" authors as owners of copyright in the cinematographic work to maintain or introduce legislation that does not include a presumption of legitimation in accordance with Article 14*bis*(2).

in paragraph 322, there was no corresponding text in the draft report.

in paragraph 323, the word: thirdly *preceding "the presumption of legitimation is added in the final text, and the word following "in the receipts" was:* accruing; *rather than:* resulting.

in paragraph 324, the text was: The right of the maker to make, even without the consent of the authors, changes in the cinematographic work is a matter for national legislation and subject to the interpretation of the contract between the authors and the maker. The moral right referred to in Article 6*bis* of the Convention must, however, be respected.

in paragraph 326, the word preceding in the last sentence "to the Union" was: acceding; *rather than:* adhering.

in paragraph 327, the text was: The Programme (document S/9, Article 25*ter*) proposed to delete the reservation regarding the right of translation. Questions relating to reservations come under Main Committee IV. After asking the opinion of Main Committee I, the majority of whom voted to maintain the reservation in favor not only of Union countries but also of countries acceding to the Stockholm Act, Main Committee IV took its decision on those lines.

in paragraph 328 the words following "in accordance with" were: this proposal; *rather than:* that proposal; *and the text of the last sentence was:* Nevertheless, this system applies only to cases where the reservation was made by a country outside the Union; the principle of reciprocity cannot be applied with regard to countries of the Union availing themselves of the reservations in question.

in paragraph 329, the words following "the Committee adopt" were: the wish; *rather than:* the recommendation; *and the words preceding "proposed by the Drafting Committee" were:* with certain modifications; *rather than:* with some amendments.

in paragraph 330, the words following "(document S/147)" were: to include; *rather than:* the insertion.

in paragraph 331, the words following "the Committee decided" were: to express the wish; *rather than:* to recommend; *and the words following "including provisions relating" were:* to them; *rather than:* thereto.

in paragraph 332, the words following "(document S/223)" were: to insert; *rather than:* the insertion of.

in paragraph 333, the text was: On this matter the Committee expressed the same wish as it had done on the above-mentioned Austrian proposal.

in paragraph 334, the words following "(document S/196)" were: to include; *rather than:* the insertion; *and the word following "for purposes" was:* belonging; *rather than:* relevant.

in paragraph 337, the wording of the last sentence was: The Committee accordingly decided to delete that Protocol.

in paragraph 341, the words preceding "of this Report" were: the preparation; *rather than:* the drafting.

S/271/Corr. RAPPORTEUR, MAIN COMMITTEE I. Berne Convention. *The following corrections should be made to the English text only of document S/271:*

1. Insert the following text after paragraph 205 [*Note: paragraph 206 in the final text*]:

"*Draft text to replace the Addendum to document S/269.*

206. As regards the right of translation in cases where a work may, in accordance with the provisions of the Convention, be lawfully used without the consent of the author, a lively debate took place in the Committee and gave rise to certain statements on general principles of interpretation. While it was generally agreed that Articles 2*bis*(2), 9(2), 9(3), 10(2) and 10*bis* virtually imply the possibility of using the work not only in the original but also in translation, subject to the same conditions, in particular that the use is in conformity with fair practice, and that here, as in all cases where the work is used, the rights given to an author under Article 6*bis* (moral rights) are reserved, different opinions were expressed regarding the lawful uses provided in Articles 11*bis* and 13. Some delegations considered that these articles also apply to the translated work provided the above conditions are fulfilled. Other delegations, including Belgium, France and Italy, considered that the wording of these Articles in the Stockholm text does not permit of the interpretation that the possibility of using a work without the consent of the author also includes, in these cases, the possibility of translating it. In this connection, these delegations pointed out, on the level of general principles, that a commentary on the discussion could not result in an amendment or extension of the provisions of the Convention."

2. Insert the following title between paragraphs 295 and 296 [*Note:* paragraphs 294 and 295 in the final text]: "*Article 14 (Articles 14 and 14*bis*)*".

S/272 DRAFTING COMMITTEE OF MAIN COMMITTEE II. Berne Convention. [*Editor's Note:* This document contains the complete text of the Protocol Regarding Developing Countries and a Draft Resolution as prepared by the Drafting Committee both in French and in English. In the following, only the differences between the English text of the resolution prepared by the Drafting Committee and the English text of the Protocol Regarding Developing Countries as signed on July 14, 1967, are indicated. The use of the past tense refers to document S/272.]

in the beginning of Article 1, the words following "by a notification deposited with" were: the ... at the time of making a ratification or accession, which includes Article 20*bis*; *rather than:* the Director General, at the time of making a ratification or accession which includes Article 21.

in Article 1(c)(i), the words following "the proprietor of the right" were: to produce; *rather than:* to reproduce.

in Article 1(c)(vii), the words following "should the author publish or cause" were: his work to be published; *rather than:* to be published his work.

in Article 2, the text ended with: notification deposited with the...; *rather than:* notification deposited with the Director General.

in Article 4, the words following "as a developing country" were: the ..., shall give notification; *rather than:* the Director General shall give notification.

in Article 5(1), the sub-paragraphs were numbered: (i) and (ii); *rather than:* (a) and (b).

in Article 5(1) the words following "becoming bound by" were: Articles 1 to 20*bis* of this Convention and of this Protocol; *rather than:* Articles 1 to 21*bis* of this Convention and by this Protocol.

in Article 5(1)(b), the words following "becoming bound by" were: Articles 1 to 20*bis* of this Convention and by this Protocol, or on making a declaration of application of this Protocol by virtue or the provision of item (i); *rather than:* Articles 1 to 21 of this Convention and by this Protocol, or on making a declaration of application of this Protocol by virtue of the provision of sub-paragraph (a).

in Article 5(2), the words following "shall be deposited with" were: the ... The declaration shall become; *rather than:* the Director General. The declaration shall become.

in Article 6, the words following "Any country" were: which has made a declaration or notification under Article 26, paragraph (1); *rather than:* which is bound by the provisions of this Protocol and which has made a declaration or notification under Article 31(1); *and the words following "Article 1 of this Protocol, may notify" were:* the ..., that the provisions; *rather than:* the Director General that the provisions.

in Draft Resolution, the text began with: The Intellectual Property Conference of Stockholm; *rather than:* The countries members of the Berne Union for the Protection of Literary and Artistic Works, in a Conference assembled at Stockholm from June 12 to July 14, 1967; *and the words following "Protocol Regarding Developing Countries" were:* Recommends the International Bureau of the Berne Union; *rather than:* Recommend the International Bureau.

S/273 RAPPORTEUR, MAIN COMMITTEE V. WIPO Convention. [*Editor's Note:* This document, as prepared by the Rapporteur of Main Committee V, contains the draft report of the Committee's work. In the following, only the differences

between the English text of the draft report and the English text of the final report are included. The English text of the final report can be found in Volume II. The use of the past tense refers to document S/273.]

In the beginning of the final text of the Report, there was no corresponding text of the Contents in the Draft Report (document S/273).

The title was: I. Preamble; *rather than:* I. Introduction.

in paragraph 1, the text was: When the Unions of Paris and Berne were set up in 1883 and 1886 they were provided with Secretariats possessing limited functions: their main task was to gather information, carry out studies respecting intellectual property and to make the results of their work available to the members of the Unions. In accordance with the then usage, a Government, in the event the Government of the Swiss Confederation, assumed the duties of administering the Conventions. Further, the Secretariats were placed under its authority and it was entrusted with their organization and the supervision of their operations. The Swiss Government, wishing to make the administrative services of the Unions function as efficiently and economically as possible, later combined the two Secretariats, which thereafter became the "United International Bureau for the Protection of Industrial, Literary and Artistic Property" (BIRPI) under one Director. That situation has continued until the present.

in paragraph 2, the words following "to exercise" were: a more decided influence; *rather than:* a greater degree of influence.

in paragraph 2, the words following "established" were: consultative organs; *rather than:* advisory bodies.

in paragraph 3, the words following "recommended in 1962" were: carrying out a study; *rather than:* that a study be carried out; *and the word preceding "drawn up" was:* projects; *rather than:* plans.

in paragraph 3, the word following "it was the texts" was: decided; *rather than:* drafted.

in paragraph 4, the sub-paragraphs were numbered: (a), (b), (c) and (d); *rather than:* (i), (ii), (iii), and (iv) *and the text began with the words:* The general lines of; *rather than:* The general features of.

in paragraph 4(i), the word following "their own" was: functions; *rather than:* tasks.

in paragraph 4(ii), the text was: A new organization, the World Intellectual Property Organization (WIPO) shall be set up alongside the Unions; all States members of a Union, and States that satisfy certain conditions indicated in the Convention, shall be eligible for membership. This Organization is entrusted essentially with coordination of the administrative activities of the Unions and the promotion of the protection of intellectual property throughout the world.

in paragraph 4(iii), the text was: The Secretariat of the Unions and of the Organization shall be taken over by a joint body, the International Bureau for the Protection of Intellectual Property, which is a continuation of BIRPI. The Director General of that Bureau shall be invested with new rights enabling him to represent the Organization and the Unions at the international level.

in paragraph 4(iv), the text was: In accordance with its activities, the International Bureau shall be placed under the authority of the organs of the Unions and those of the Organization. Nevertheless, it shall be the General Assembly of the member States of the Unions that shall exercise the necessary supervision.

in paragraph 5, the text was: The execution of the reform necessitates alteration of the administrative provisions and final clauses of all the Conventions and Agreements in force. That task was entrusted to Main Committee IV. In addition it was necessary to prepare a Convention to establish and make rules for the new Organization (WIPO Convention). That duty was entrusted to Main Committee V.

in paragraph 6, the text was: Main Committee V met under the chairmanship of Mr. Braderman (United States) on June 19, 20, 21, 23 and 28 and on July 4, 1967. It held a joint meeting with Main Committee IV on July 5, 1967, under the chairmanship of Mr. Savignon (France) to settle a number of matters common to the two Committees. Main Committee V also set up a Working Group to study the conditions of admission to WIPO; this Working Group met on June 21, 22 and 27, 1967, under the chairmanship of Mr. Bogsch (BIRPI). Lastly, the Drafting Committee of Main Committee V finalized the texts at its meetings of June 27, 28, 29 and July 3, 1967, under the chairmanship of Mr. Kellberg (Sweden).

in paragraph 7, the text was: Main Committee V initially devoted its general discussions to the problem of the establishment of the Organization.

in paragraph 8 (numbered 9), the text was: The Delegations of France and Italy noted that, in the view of their Governments, the modernization that was needed could be achieved within the framework of the Unions without the need to set up a complicated and costly new Organization; nevertheless, they would not oppose the setting up of the Organization since it seemed to be desired by the great majority of the member States of the Unions.

in paragraph 9 (numbered 8), the text was: Other Delegations, namely those of Bulgaria, Cuba, Czechoslovakia, Germany (Fed. Rep.), Hungary, Ireland, Israel, Japan, the Netherlands, the Union of Soviet Socialist Republics and the United States, said that their Governments welcomed the establishment of the new Organization which would, in particular, make possible a better coordination of the activity of the Unions and constitute a more efficient contribution to the economic prosperity of the developing countries by assisting them to create a system for the protection of intellectual property.

in paragraph 10, the words following "intergovernmental organizations" were: spoke in the same sense; *rather than:* also spoke in favor of the creation of the new Organization *and the text ended with the words:* it could not renounce; *rather than:* it could not decline.

in paragraph 11, the text was: As it was therefore apparent that there was no opposition or fundamental objection to the establishment of the new Organization, Main Committee V was able to proceed to consideration of the various points of the draft Convention submitted to the Conference of Stockholm.

in paragraph 12, the words following "should be called" were: "International Organization" or "World Organization"; *rather than:* "International" or "World"; *and the words following "of the world and extend over" were:* the five continents. It did not therefore seem over pretentious; *rather than:* all five continents. It did not therefore seem pretentious.

in paragraph 14, the words following "same provision contains a" were: specimen list; *rather than:* non-exhaustive list.

in paragraph 16, the words following "without in any way" were: derogating from; *rather than:* prejudicing.

in paragraph 17, the words following "the Delegation of Rumania" were: it was sought; *rather than:* the Committee sought.

in paragraph 18, the word preceding "functions" was: essential; *rather than:* main.

in paragraph 20, the text was: Furthermore, the Organization is to carry out various administrative tasks. It will perform the administrative tasks of the existing Unions (Article 4(ii)) and, if so requested by competent bodies, it can agree to assume, either alone or in cooperation with other international organizations, the administration required for the implementation of any other treaty, convention or arrangement falling within the field of intellectual property (Article 4(iii)). It will itself maintain services facilitating the international protection of intellectual property at the administrative level, in particular international registration services (Article 4(vii)).

in paragraph 22, the text was: Last but not least, it will offer its cooperation to States requesting legal-technical assistance (Article 4(v)). This latter term gave rise to some discussion in Main Committee V. It was suggested that the term should be replaced by the expression "technical assistance," which is normally used to describe the aid granted to

developing countries. It was pointed out, however, that what was involved was legal assistance, either as to legislation or administration, as WIPO is clearly not in a position to provide any other kind of aid to these countries. Such legal-technical assistance may consist, for instance, in the organization of seminars and courses, the supply of experts, the drafting of model laws for the developing countries, etc.

in paragraph 23, the words following "In order to avoid" were: any appearance of discrimination; *rather than:* even the appearance of any discrimination; *and the text ended with the words:* the USSR; *rather than:* the Soviet Union.

in paragraph 24, the text ended with the words: alternatives put forward by BIRPI; *rather than:* alternatives referred to by BIRPI.

in paragraph 25, the words following "essentially a political one" were: of which a technical organization should not take cognizance; they therefore thought that it could only accept States recognized as such by international political organizations; *rather than:* which a technical organization should not decide; they therefore thought that one should only admit States recognized as such by other international organizations.

in paragraph 26, the words preceding "the proposal of BIRPI" were: the Working Group returned essentially to; *rather than:* the Working Group, in essence, took over; *and the words following "the General Assembly of WIPO" were:* or if it is a member; *rather than:* to become a party or if it is a member.

in paragraph 27, the words following "composed of all the Member States of" were: the WIPO, the Coordination Committee and, finally; *rather than:* WIPO, the Coordination Committee; *and the words following "Certain objections" were:* have been encountered; *rather than:* were raised.

in paragraph 28, the text was: The Delegations of Czechoslovakia, Hungary, the Netherlands, Poland and the USSR, have in fact proposed that the organ called the "Conference" should not be established. In their opinion, it would be simpler and more equitable if States outside the Union were admitted to the General Assembly, but solely in an advisory capacity as regards matters which concerned only the Member States of a Union.

in paragraph 29, the word preceding "the Unions" was: between; *rather than:* among.

in paragraph 30, the text following "general compromise" was: from which it would be difficult for certain delegations to depart.

*Before paragraph 30*bis*, the title was:* Powers and Functions; *rather than:* (a) Functions.

*in paragraph 31 (numbered 30*bis*), the word following "powers and" was:* duties; *rather than:* functions.

in paragraph 32 (numbered 31), the text was: In particular it appoints the Director General upon the nomination of the Coordination Committee (Article 6(2)(i)). If it does not select the candidate proposed by the Coordination Committee, the latter has to nominate another candidate until a final selection is made (Article 8(3)(v)).

in paragraph 33 (numbered 32) the text was: The General Assembly examines and approves the reports and activities of the Coordination Committee as well as the reports of the Director General concerning the Organization; it gives all necessary instructions to both one and the other (Article 6(2)(ii) and (iii)). These latter provisions, added upon the proposal of the Delegation of the Federal Republic of Germany, are intended to indicate more specifically the capacity of the General Assembly as the supreme organ.

in paragraph 34 (numbered 33), the text was: As regards financial matters, Main Committee V has supplemented by two new provisions the statement of the duties of the General Assembly. Upon the joint proposal of France, the Federal Republic of Germany, Hungary, Italy, the United Kingdom, the United States and the USSR, a provision has been included, under the terms of which the General Assembly adopts the triennial budget of expenses common to the Unions (Article 6(2)(iv)). Further, the Committee has adopted a proposal by the Delegation of Austria expressly ruling that the General Assembly shall be competent to adopt the financial regulations of the Organization (Article 6(2)(vi)).

in paragraph 35 (numbered 34), the words following "It is also" were: the duty of the General Assembly to undertake to ensure the administration of the international agreements and approve the arrangements made to; *rather than:* the task of the General Assembly to agree to assume the administration of international agreements and to approve the measures taken to.

in paragraph 36 (numbered 35), the text was: The General Assembly shall admit to its meetings, as observers, States which are not members of any of the Unions (Article 6(5)). It shall, however, have the right to admit to those meetings in such a capacity also other States and organizations (Article 6(2)(ix)).

in paragraph 37 (numbered 36), the texts of the fourth, fifth, eigth, ninth, and last sentences were: The Delegation of Spain has proposed the alternative wording: "determine the working languages of the Secretariat having regard to the practice of the United Nations." This latter text was adopted by the Committee. The General Assembly shall determine the needs of WIPO and its financial possibilities and only in cases where the use of a third or fourth working language is necessary, and the expenses thereby incurred are covered, shall the General Assembly make them working languages of the Secretariat. Meanwhile, as has been the case hitherto, the Secretariat will prepare documents and arrange for interpretation into languages other than French and English in special cases.

in paragraph 38 (numbered 37), the word following "members of" was: the; *rather than:* any.

in paragraph 39 (numbered 38), the words following "by one delegation" were: which shall consist; *rather than:* consisting.

in paragraph 39 (numbered 38), the word following "expenses of" was: representatives; *rather than:* all such representatives.

in paragraph 39 (numbered 38), the words following "internal matter" were: which does not affect; *rather than:* which is irrelevant to.

in paragraph 40 (numbered 39), the words following "the Union" were: that, if several countries were grouped in; *rather than:* that, if a number of countries had.

in paragraph 40 (numbered 39), the words following "vote only" were: on its behalf; *rather than:* in its name.

in paragraph 42 (numbered 41), the words preceding "in extraordinary session" were: it also meets; *rather than:* it meets.

in paragraph 43 (numbered 42), the word following "The BIRPI" was: proposals; *rather than:* Draft.

in paragraph 44 (numbered 43), the text was: In addition, for the case where the required quorum is not attained, but at least one-third of the member States are represented, the solution adopted was identical with that adopted by Main Committee IV in respect of the Assemblies of the Unions: the General Assembly's discussions are deemed to be valid and it can take provisional decisions, by the required majority; these decisions will then be submitted in writing to the member States not represented, which will have a period of three months in which to express an opinion; if the new votes cast within this period make up the required quorum, and provided that the necessary majority is not lost as a result of this supplementary vote, the decision shall be final (Article 6(3)(c)). This rule should, moreover, be completed by the Rules of Procedure of the General Assembly, which will specify, for example, the form in which provisional decisions will be submitted to the member States not represented, the procedure for written voting and the points marking the beginning and end of the three months' period.

in paragraph 45 (numbered 44), the text of the first sentence was: As regards the required majority, the BIRPI proposals provided in principle for a simple majority, and for certain decisions majorities of two two-thirds, three-fourths, or nine-tenths.

in paragraph 45 (numbered 44), the phrase "votes cast" appeared as: votes expressed.

in paragraph 46 (numbered 45), the words following "lastly" were: some decisions; *rather than:* there are some decisions which.

in paragraph 46 (numbered 45), the words preceding "the transfer" were: these include; *rather than:* they concern.

in paragraph 46 (numbered 45), the words following "taken with the" were: required quorum and majority; *rather than:* quorum and majority required under Article 6(3)(d) and (e).

in paragraph 47 (numbered 46), the text of the first sentence was: The Convention governs only broad lines; *and the second sentence ended with the words:* by that Assembly; *rather than:* by that Assembly (Article 6(6)).

in paragraph 49 (numbered 48), the words following "whether or not they are" were: party to a; *rather than:* members of any.

in paragraph 49 (numbered 48), the word following "BIRPI" was: proposal; *rather than:* Draft; *and the words following "the United States" were:* this provision was deleted with the idea that the role of the Conference would be indicated better by; *rather than:* of America, this provision was deleted, in the belief that the role of the Conference would be better indicated by; *and the word preceding "a text submitted" was:* Moreover; *rather than:* On the other hand.

in paragraph 50 (numbered 49), the text of the first sentence was: Secondly, the Conference is the supreme organ for everything relating to legal-technical assistance.

in paragraph 51 (numbered 50), the words following "in order to" were: perform these tasks; *rather than:* exercise its functions.

in paragraph 55 (numbered 53), the words following "France" were: Germany (Fed. Rep.), Hungary, Italy, United Kingdom, United States and USSR; *rather than:* the Federal Republic of Germany, Hungary, Italy, the Soviet Union, the United Kingdom and the United States of America; *and the words following "the quorum" were:* and higher majority; *rather than:* the qualified majority.

in paragraph 56 (numbered 54), the words preceding "Assembly" were: of the; *rather than:* of the General.

in paragraph 57 (numbered 55), the word following "as it had" was: done; *rather than:* submitted; *and the words following "again rejected" were:* resulting in the maintenance of the rule that one delegate can represent only one State (Article 7(3)(f)); *rather than:* and the rule that one delegate can represent only one State (Article 7(3)(f)) was thus left unchanged.

in paragraph 58 (numbered 56) the word preceding "year in ordinary session" was: calendar; *and the words following "these meetings" were:* will be held; *rather than:* are to be held.

in paragraph 60 (numbered 58), the text was: The BIRPI proposals provided that, if the agenda included questions exclusively concerning industrial property or copyright, the Conference would meet as "Industrial Property Conference" or "Copyright Conference". In this way, it was desired to mark the distinction between the two main fields of intellectual property. The Committee considered, however, that this distinction was of little practical interest, that it might give rise to confusion and decided to delete it, on the proposal of the United Kingdom Delegation, while considering that the matter might be included in the Rules of Procedure of the Conference.

in paragraph 61 (numbered 59), the word following "BIRPI" was: proposals; *rather than:* Draft; *and the wording of the last sentence was:* Moreover, as the quorum had thus been maintained at a relatively low level, it was not necessary to provide for subsequent written consultation, should it not be attained as had been done for the General Assembly.

in paragraph 62 (numbered 60), the text was: As in the case of the General Assembly, the required majority was raised to two-thirds of the votes expressed (Article 7(3)(c)). It was therefore possible to delete the special provisions which, in the BIRPI proposals, required a higher majority of two-thirds for certain decisions. The adoption of amendments to the Convention is, however, subject to the triple vote required by Article 17.

in paragraph 63 (numbered 61), the word following "points out" was: governed; *rather than:* regulated.

Before paragraph 64 (numbered 62), the title was: I. Powers and Functions; *rather than:* (a) Functions.

in paragraph 65 (numbered 63), the text preceding the words "in particular regarding" was: The first of the functions listed in Article 8(3) is advisory: the Coordination Committee gives advice to the various organs of the Unions and the Organization on matters of common interest to several Unions or to one or more Unions and the Organization itself.

in paragraph 66 (numbered 64), the word preceding "the draft agenda" was: proposes; *rather than:* prepares.

in paragraph 69 (numbered 67), the text was: The Coordination Committee consists of the States party to this Convention which are members of the Executive Committee of the Paris Union or the Executive Committee of the Berne Union or both. However, in order to ensure the maintenance of the desired equilibrium between the two Unions, this rule applies as such only in so far as each of the two Executive Committees does not consist of more than one-fourth of the number of the countries members of the Union which elected them (Article 8(1)(a)). In addition, the country on the territory of which the Organization has its headquarters is an ex officio member of the Coordination Committee as long as it is under the obligation to grant advances in accordance with Article 11(9)(a).

in paragraph 70 (numbered 68), the words following "In order not to complicate "were: the constitution; *rather than:* the composition.

in paragraph 71 (numbered 69), the word following "BIRPI" was: proposals; *rather than:* Draft.

in paragraph 72 (numbered 70), the words following "The representation of" were: member States on; *rather than:* States members of.

in paragraph 75 (numbered 73), the words following "of the Unions" were: should be completely safeguarded, the Executive Committee of the Paris Union and that of the Berne Union; *rather than:* will be fully safeguarded, the members present of the Executive Committee of the Paris Union and those of the Executive Committee of the Berne Union.

in paragraph 76 (numbered 74), the text of the second sentence was: In accordance with custom, those observers may take part in the debates but will not have the right to vote (Article 8, paragraph (7)).

in paragraph 79 (numbered 77), the text was: It will be directed by a Director General, who will be the chief executive of the Organization (Article 9, paragraph (2) and paragraph (4)(a)). The Director General will be appointed by the General Assembly under the conditions laid down by Article 6, paragraphs (2)(i) and (3)(g) and by Article 8, paragraph (3)(v). It will not be necessary for the Director General to be a national of a State Member of one or more Unions or of the Organization. In that respect, the Delegation of France noted, without submitting an amendment, that its Government would have liked to have seen acceptance of the principle that the Director General should be a national of a State Member of the principal Unions of Paris and Berne.

in paragraph 80 (numbered 78), the text was: The Director General is to be empowered to represent the Organization in its relations with third parties (Article 9, paragraph (4)(b)). He is to conform to the instructions of the General Assembly, to which he shall report; he will prepare the draft budgets and programs and periodical reports on activities and will participate in all meetings of the organs of the Organization or of any other committee or working group, of which he or a staff member designated by him will be the secretary (Article 9, paragraph (4)(c) and paragraphs (5) and (6)).

It goes without saying that all these functions need not necessarily be carried out by the Director General in person; if, for example, he is unable to attend he will be replaced by the deputy designated by him.

in paragraph 81 (numbered 79), the text preceding the words "after his choice" was: The Director General will be assisted by two or more Deputy Directors General, whom he shall appoint himself.

in paragraph 82 (numbered 80), the text was: Furthermore, the Director General will appoint the necessary staff. The conditions of employment will be fixed by the Staff Regulations to be approved by the Coordination Committee (Article 9, paragraph (7)).

in paragraph 83 (numbered 81), the text preceding the words "contains provisions" was: In relation to the recruitment, rights and duties of the executives of the Organization, the Convention.

in paragraph 84 (numbered 82), the wording of the two last sentences was: However, the two-thirds majority needed for this decision to be valid must be attained not only in the General Assembly but also in the Assembly of the Paris Union and in the Assembly of the Berne Union (Article 6(3) (d) and (g). These provisions did not give rise to any discussion and were unanimously adopted.

in paragraph 85 (numbered 83), the text of the first sentence was: Each Union will have its own budget; *and the words following "Delegations of France" were:* Germany (Fed. Rep.), Hungary, Italy, the Soviet Union, the United Kingdom and the United States; *rather than:* the Federal Republic of Germany, Hungary, Italy, the Soviet Union, the United Kingdom and the United States of America.

in paragraph 86 (numbered 84), the text of the first sentence was: The budget of expenses common to the Unions, which is to be adopted by the General Assembly (Article 6, paragraph (2)(iv)) will include provisions for expenses affecting several Unions; *and the word following "and other less important" was:* means; *rather than:* sources.

in paragraph 89 (numbered 86), the words following "budgets of the Unions" were: so that three classes will be sufficient (Article 11, paragraph (4)(a)); *rather than:* consequently, only three classes were provided for (Article 11(4)(a)).

in paragraph 90 (numbered 87), the text was: In other respects, the contributions to the budget of the Conference are to be calculated in accordance with the same provisions as the contributions to the budgets of the Union. Contrary to what has been the case up to the present, the contributions will be due from the first of January of the financial period for which they are due and not only in the course of the following year (Article 11, paragraph (4)(d)). It may be thought that in this way the Organization will have appreciably more liquid assets than BIRPI has had hitherto.

in paragraph 92 (numbered 89), the words following "the Organization" were: will have a working capital fund; *rather than:* is to have a working capital fund.

*in paragraph 93 (numbered 89*bis*), the words following "the Conference" were:* it may be wondered; *rather than:* the question arises; *and the last sentence began with the words:* This point; *rather than:* The point.

in paragraph 94 (numbered 90), the words preceding "to make advances" were: should undertake; *rather than:* would have.

in paragraph 98 (numbered 93), the wording of the first sentence was: To attain its objectives and carry out its functions, the Organization must naturally enjoy, on the territory of each Member State, such legal capacity as may be necessary in accordance with the procedures laid down by the laws of that State (Article 12(1)).

in paragraph 100 (numbered 95), the words following "international agreements" were: will make general provision to ensure that the Organization enjoys; *rather than:* contain a general provision to ensure that the organization they create enjoys.

in paragraph 100 (numbered 95), he word preceding "independence" was: entire; *rather than:* complete.

in paragraph 100 (paragraph 95), the words following "considered that" were: such a general clause was unnecessary for the Organization; *rather than:* the Organization did not require such a general clause.

in paragraph 101 (numbered 96), the words following "privileges and immunities" were: are to be; *rather than:* will be.

in paragraph 101 (numbered 96), the words preceding "on the proposal" were: laid down; *rather than:* specified.

in paragraph 102 (numbered 97), the text of the last sentence was: But such actions will generally be mentioned in the Organization's program and, if they have financial implications, in the budget, so that the General Assembly, the Conference or at all events the Coordination Committee, will have an opportunity to take cognizance of them.

Before paragraph 105 (numbered 100), the title was: XVII. Accession to the Convention; *rather than:* XVII. Becoming Party to the Convention.

in paragraph 105 (numbered 100), the text was: Those States which can become party to the Convention in accordance with Article 5 will accede to it by completing the formalities which are usual in international public law: signature without reservations as to ratification, signature subject to ratification and deposit of an instrument of ratification, or deposit of an instrument of accession (Article 14(1)).

in paragraph 106 (numbered 101), the text was: It would not be appropriate for a State member of a Union to be able to accede to the WIPO Convention without having ratified the administrative provisions of the Stockholm Act of the Paris Convention or the Berne Convention, or without having acceded thereto. Moreover, this is in the interest of the States themselves; for instance, a State member of a Union which had only acceded to the WIPO Convention would be unable to be a member of the Coordination Committee because it could not be a member of the Executive Committee of the Paris or the Berne Union. For this reason, Article 14(b) requires that, when acceding to the WIPO Convention, States members of a Union must simultaneously accept or have already accepted the obligations of the administrative provisions of the Stockholm Act of the Paris Convention, or the Berne Convention. If they are parties to both Conventions, it is sufficient for them to have ratified the administrative provisions of the Stockholm Act of one of them, or to have acceded thereto.

in paragraph 107 (numbered 102), the text was: WIPO being a modern organization provided with organs capable of representing it internationally, the instruments of ratification and accession may be deposited with the Director General, as provided in Article 14(3).

in paragraph 108 (numbered 103), the text was: As is customary, the Convention will enter into force when a certain number of States have ratified it or acceded to it. For this purpose, only ratifications or accessions by States members of a Union will be counted. The Convention will enter into force when ten States parties to the Paris Convention and seven States parties to the Berne Convention have completed one or other of these formalities (Article 15(1)). This number corresponds to the number required for the administrative provisions of the Stockholm Act of the Paris and Berne Conventions. It may therefore be considered that all these texts will enter into force at approximately the same time.

in paragraph 109 (numbered 104), the first word was: Believing; *rather than:* Arguing.

in paragraph 109 (numbered 104), there was an additional sentence at the end which read: In this way the entry into force of the WIPO Convention will coincide with that of the administrative provisions of the Paris Convention or the Berne Convention which will come into force last.

in paragraph 110 (numbered 105), the text was: Article 17 states with admirable succinctness that "no reservations to this Convention are permitted." This text needs no lengthy comments: a State's ratification of or accession to the Convention implies acceptance of all its provisions.

*in section XIX, there was a second paragraph (numbered 105*bis*), the text of which was:* The Delegation of the USSR observed, however, that, while it accepted this provision, it did not wish it to serve as a precedent for other Conventions.

in paragraph 111 (numbered 106), the text following the words "and other Conventions" was: constituting international organizations, the WIPO Convention can be revised by the Conference itself. A strict procedure should however guarantee that amendments are thoroughly studied and accepted by the great majority of member States.

in paragraph 112 (numbered 107), the word preceding "submitted to the Conference" was: being; *rather than:* they are.

in paragraph 113 (numbered 108), the wording of the third and of the last sentences was: In the Conference, the decision is taken by a simple majority of Member States. It will be for the Conference, where appropriate, to determine whether this condition is fulfilled.

in paragraph 114 (numbered 109), the words following "all Member States" were: except if it increases; *rather than:* unless it increases.

in paragraph 116 (numbered 111), the text was: Such a State may of course remain a member of all the organs of the Unions to which it belongs. But it cannot belong to the General Assembly, nor to the Conference nor to the Coordination Committee. If several States which are members of the Executive Committee of one of the principal Unions were in this situation, this would lead to disequilibrium in the membership of the Coordination Committee, but this risk is so slight that it can be disregarded.

in paragraph 119 (numbered 114), the text was: The BIRPI proposals contained no provisions relating to the settlement of disputes. The Delegation of Japan proposed that the WIPO Convention should include a provision whereby any dispute between member States regarding the interpretation or application of the Convention should be referred in the last resort to the International Court of Justice, unless the States in question agreed on another method of settlement.

in paragraph 120 (numbered 115), the words following "would arise" were: which would; *rather than:* that would.

in paragraph 121 (numbered 116), the words following "drawn up in" were: the English, French, Russian and Spanish languages; *rather than:* in English, French, Russian and Spanish; *and the words following "any discrepancy" were:* therefore, it will be necessary to; *rather than:* it will therefore be necessary to.

in paragraph 122 (numbered 117), the text was: The original copy of the Convention will be deposited with the Government of Sweden, but the certified true copies will be distributed by the Director General of the Organization, who will also register the Convention with the Secretariat of the United Nations (Article 20(1)(a), (3) and (4)).

in paragraph 123 (numbered 118), the words preceding "distinguishes" were: Article 25; *rather than:* Article 21; *and the words preceding "from the signing" were:* will be; *rather than:* one last.

in paragraph 124 (numbered 119), the text of the first sentence was: The entry into force of the WIPO Convention will inaugurate a second transitional period, undoubtedly a long one, that will last until all the States members of the Unions have ratified this Convention or acceded thereto.

in paragraph 125 (numbered 120), the word following "a special transitorial period" was: for which Article 21, paragraph (2); *rather than:* concerning which Article 21(2).

in paragraph 126 (numbered 121), the text following the first sentence was: At that moment BIRPI will cease to exist, so that its rights and obligations will necessarily devolve on the International Bureau of Intellectual Property. A provision to this effect is of course already included in the Paris and Berne Conventions (Stockholm Act). It has seemed advisable, however, to repeat in it the WIPO Convention, so that the Organization shall expressly agree that its organs shall be invested with the rights and obligations of BIRPI.

in paragraph 127 (numbered 122), the text was: The Convention creating WIPO, which has been prepared with great care by the Swedish Government, BIRPI and various committees of experts, now appears to be in due and proper form. The functioning of the new Organization will perhaps need a certain period of adjustment. However, even if the legitimate desire to safeguard the independence of each Union has entailed the establishment of many organs, the Stockholm Conference has succeeded in clearly delimiting their respective fields of competence. Similarly, the financial machinery of the Organization seems perfectly adapted to requirements. Of course, it may be that practical problems which cannot be foreseen at present will arise. There is reason to hope, however, that the spirit of international cooperation which was so manifest in the Stockholm Conference will continue to prevail in the new Organization and enable all difficulties to be overcome. Thus animated, WIPO will achieve the noble purpose which has been assigned to it and give effective encouragement to creative activity, thereby contributing to the spiritual enrichment and the material well being of mankind as a whole.

S/274 MAIN COMMITTEE IV. Paris Convention. *The following recommendation concerning a study on priority fees is proposed by the Main Committee:* The countries members of the Paris Union for the Protection of Industrial Property, in a Conference assembled at Stockholm from June 12 to July 14, 1967.

Recommend that: The International Bureau study, in cooperation with committees of experts, the desirability and the feasibility of creating new sources of revenue for the Union, through the collection of a modest fee for each application filed with a national administration whenever, in such application, the right of priority provided for in the Convention of the Union is claimed;

Should the study lead to positive results and should it show that the Paris Convention would require revision to introduce the scheme, concrete proposals be worked out for the Revision Conference of the Paris Union to be held at Vienna.

S/275 MAIN COMMITTEE IV. Paris Convention. *The following observations and decision on the ceiling of contributions for the Paris Union as unanimously approved by the Main Committee is submitted to the Conference of Plenipotentiaries of the Paris Union:*

Observations: As pointed out in paragraphs 24 to 26 of document S/12, the body competent for making the decision is the Conference of Plenipotentiaries of the Paris Union convened by the Swiss Government. The Swiss Government having agreed with the Swedish Government to hold, during the Conference of Stockholm, a Conference of Plenipotentiaries, it is proposed that the said Conference of Plenipotentiaries be presided over by a representative of the Swiss Government which has convened it.

Decision: The countries members of the Paris Union for the Protection of Industrial Property, in a Conference of Plenipotentiaries assembled at Stockholm on July 14, 1967, *Unanimously decide,* That the maximum total amount of the ordinary yearly contributions of the member countries shall be the following:

— for 1968: 1,200,000 Swiss francs
— for 1969: 1,400,000 Swiss francs
— for 1970: 1,600,000 Swiss francs

unless new decisions are made, or enter into force, in the meantime.

S/276 MAIN COMMITTEE IV. Berne Convention. *The following decision on the ceiling of contributions for the Berne Union as unanimously approved by the Main Committee is submitted to the Plenary Assembly of the Berne Union:*

The countries members of the Berne Union for the Protection of Literary and Artistic Works, in a Revision Conference assembled at Stockholm from June 12 to July 14, 1967, *Unanimously decide:* That the maximum total amount of the yearly contributions of the member countries shall be the following:

— for 1968: 800,000 Swiss francs
— for 1969: 900,000 Swiss francs
— for 1970: 1,000,000 Swiss francs

unless new decisions are made, or enter into force, in the meantime.

S/277 SECRETARIAT. Paris Convention. *The following note concerning the Stockholm Act of the Paris Convention is submitted to the plenary meeting of the Paris Union:* The French version of this document contains a copy of the text of the Stockholm Act in the form in which it will be submitted for signature, except for possible errors which may be discovered in the meantime and possible changes decided by the Plenary.

According to Article 28(1)(a) of the proposed Stockholm Act, that Act will be signed in French only.

An official English text will be established after the Stockholm Conference (see Article 28(1)(b) of the proposed Stockholm Act).

As far as Article 4-1 is concerned, reference is made to document S/209, and as far as Articles 13 to 30 are concerned, reference is made to documents S/251-S/252 and the corresponding provisions in the Berne Convention (document S/278). The English texts appearing in those documents will doubtless constitute a solid basis for the preparation of the official English text.

S/278 MAIN COMMITTEES I, II, and IV. Berne Convention. [*Editor's Note:* This text contains the complete text of the Berne Convention as approved by the Main Committees both in English and in French. In the following, only the differences between the English text approved by the Main Committees and the text as signed on July 14, 1967, are indicated. The English text of the final report can be found in Volume II. The use of the past tense refers to document S/278.]

*in Article 6*bis *(3) of the final text, there was no corresponding text in the Draft Convention (document S/278).*

in Article 7(4), the word following "works of applied" was: arts; *rather than:* art.

*in Article 14*bis *(2) (c), the text was:* The question whether the form of the undertaking referred to above should be in a written agreement or a written act of the same effect, shall be a matter for the legislation of the country where protection is claimed.

*in Article 14*bis, *the text of paragraph (3) ended with the words:* to all the countries of the Union; *rather than:* to all the other countries of the Union.

in Article 17, the text was: The provisions of this Convention shall not in any way prejudice the right of each country of the Union to control or to prohibit, by the measures provided by the legislation of that country, the distribution, performance, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

in Article 28(2)(c), the words preceding "and the Protocol Regarding Developing Countries" were: Articles 1 to 21; *rather than:* Articles 1 to 26.

in Article 32(2), the words following "has made a declaration pursuant to" were: Article 25(1)(b)(i); *rather than:* Article 28(1)(b)(i).

in Article 1 of the Protocol, the first sentence, the words following "which includes" were: Article 2 of the Act; *rather than:* Article 21 of the Act.

in Article 5(1) of the Protocol, the sub-paragraphs were numbered: (i) and (ii); *rather than:* (a) and (b).

in Article 5(1)(ii), the reference was to "the provision of item (i)"; rather than: the provision of sub-paragraph (a).

in Article 6, the words following "Any country" were: which has made a declaration or notification under Article 31(1); *rather than:* which is bound by the provisions of this Protocol and which has made a declaration or notification under Article 31(1).

S/279 SECRETARIAT. Madrid (TM) Agreement. *The following information on the text of the Stockholm Act of the Madrid (TM) Agreement is submitted to the Plenary Assembly of the Madrid Union:* The French version of this document contains a copy of the text of the Stockholm Act in the form in which it will be submitted for signature, except for possible errors which may be discovered in the meantime and possible changes decided by the Plenary.

According to Article 17(1)(a) of the proposed Act, that Act will be signed in French only.

An official English text will be established after the Stockholm Conference (see Article 17(b) of the proposed Act).

The parallel provision in the Berne Convention (see document S/278) will doubtless constitute a good basis for the preparation of the English text.

S/280 SECRETARIAT. Madrid (FIS) Agreement. *The following information on the text of the Additional Act of Stockholm of the Madrid (FIS) Agreement is submitted to the Plenary Assembly of the Madrid Union:* The French version of this document contains a copy of the text of the Stockholm Additional Act in the form in which it will be submitted for signature, except for possible errors which may be discovered in the meantime and possible changes decided by the Plenary.

According to Article 6(1) of the proposed Additional Act, that Act will be signed in French only.

Reference is made to document S/255, the English text of which will doubtless constitute a good basis for the preparation of an English translation.

S/281 SECRETARIAT. Hague Agreement. *The following information on the text of the Complementary Act of Stockholm of the Hague Agreement is submitted to the Plenary Assembly of the Hague Union:*

The French version of this document contains a copy of the text of the Stockholm Complementary Act in the form in which it will be submitted for signature, except for possible errors which may be discovered in the meantime and possible changes decided by the Plenary.

According to Article 11(1)(a) of the proposed Complementary Act, that Act will be signed in French only.

Since this Union has no English-speaking members, all the previous working documents, as well as the present document, were established only in French.

S/282 SECRETARIAT. Nice Agreement. *The following information on the text of the Stockholm Act of the Nice Agreement is submitted to the Plenary Assembly of the Nice Union:* The French version of this document contains a copy of the text of the Stockholm Act in the form in which it will be submitted for signature, except for possible errors which may be discovered in the meantime and possible changes decided by the Plenary.

According to Article 15(1)(a) of the proposed Additional Act, that Act will be signed in French only.

Reference is made to document S/257, the English text of which will doubtless constitute a good basis for the preparation of an English translation.

S/283 SECRETARIAT. Lisbon Agreement. *The following information on the text of the Stockholm Act of the Lisbon Agreement is submitted to the Plenary Assembly of the Lisbon Union:* The French version of this document contains a copy of the text of the Stockholm Act in the form in which it will be submitted for signature, except for possible errors which may be discovered in the meantime and possible changes decided by the Plenary.

According to Article 17(1)(a) of the proposed Act, that Act will be signed in French only.

Reference is made to document S/258, the English text of which will doubtless constitute a good basis for the preparation of an English translation.

S/284 MAIN COMMITTEE V. WIPO Convention. [*Editor's Note:* This document contains the complete text of the WIPO Convention as approved by the Main Committee

both in French and in English. In the following, only the differences between the English text of the Main Committee and the text as signed on July 14, 1967, are indicated. The use of the past tense refers to document S/284.]

in Article 4(i), the word following "national" was: legislations; *rather than:* legislation.

in Article 12(4), the words following "shall conclude" were: the agreement referred to in paragraphs (2) and (3); *rather than:* and sign on behalf of the Organization the agreements referred to in paragraphs (2) and (3).

S/285 UNITED STATES. Berne Convention. *Statement made by Mr. A. Kaminstein on behalf of the United States Delegation on the Berne Convention:*

Mr. Chairman, on behalf of the United States Delegation I should like to express my appreciation for this opportunity to speak once more near the close of this historic Conference. I have never attended an international conference that had better advance preparation, a more efficient secretariat, or warmer and more generous hosts. This has been an unforgettable experience, not only in the accomplishments of the Conference and the beautiful surroundings, but especially in the friends we have made here.

As others have observed, the issue at Stockholm has been nothing less than the future of international copyright law. To our regret the United States does not yet belong to the Berne Union, but as members of the international copyright community we are deeply interested and concerned in the decisions you are taking.

You all know how long we have been working on a complete revision of our own 1909 law. Many of you who knew and worked with my predecessor, Arthur Fisher, are aware that he was responsible for undertaking the revision program, and that one of his goals was a truly unified system of international copyright law. My hope is that by the end of 1968 we will see the enactment of a completely new copyright law in the United States, although we still have serious problems to overcome. Once that happens we will be in a position to consider adherence to the Berne Union, although here too it is no secret that we have some serious problems. The spirit of cooperation shown at Stockholm gives me every reason to hope that the accommodations necessary to overcome these problems on both sides will be made when the time comes.

It is sometimes forgotten today, in my own country as well as in others, that for more than 150 years the United States was a colonial dependency, that it gained its independence through a violent revolution, and that during the next century it was a developing country with many of the special needs and wants we have heard expressed here. Throughout most of the nineteenth century we were very little concerned as a nation with the encouragement of individual authors. Instead, the emphasis was on agricultural and later on industrial growth, and on efforts to increase literacy and promote free public education. We gave no protection to foreign authors until 1891, and when we finally did we attached rigid manufacturing requirements aimed at forcing the publication of American editions.

The result was that throughout our formative years as a nation Americans read English books and American authors were unable to make a living at writing. True, you can say, we had our Melville and our Poe, our Hawthorne and our Whitman. But anyone who knows the lives of those authors knows how they suffered just to *be* authors. And who can say what potential Poes and Hawthornes we had who never published anything because they had to support their families.

While all this was understandable and perhaps inevitable, there was a very high price attached. A country that denies copyright protection to works from other countries will benefit its own citizens by making those works freely available to them, especially for educational purposes. But our own experience proves that these benefits are not free. Aside from the long-range cultural dependency that is certain to result, there is a serious and irretrievable loss of national authorship that may not become apparent for a century or more. A country at a certain stage of development is faced with alternatives, and the immediate needs and demands of its citizens obviously have to take first place. It is often hard to see that in the long run a country's books and art and music are its most precious and valuable national resources.

I cannot blame you if you evaluate what I am saying in the light of our clear commercial interest in what is happening at Stockholm. We have now become an exporter of cultural goods, and the producers of those goods naturally want to be paid for them. But at the same time I hope you will remember that we once went through what the developing countries are now experiencing, and we are still paying the price for our mistakes. It is in the light of this experience that I am generally encouraged by what is happening here.

The choice now facing the developing countries is the same one that faced the United States some decades ago: whether to join with other countries in a Union accommodating differences in national laws but following a consistent and evolving pattern, or whether to go it alone in copyright matters. The United States took the latter course, and the result was as bad as it was predictable. The provisions of our law and the practices of our publishing, motion picture, broadcasting, and other industries became fixed and hardened without regard to what was happening in other countries and in international copyright law. This meant that when the United States began to shift over from an importing to an exporting nation in copyrighted materials, we found that our system was basically inconsistent with the system that has evolved throughout the rest of the world. It has become essential to our own interests to bridge this gap, but this has proved an extraordinarily difficult task and one which we are still some way from accomplishing.

This is why I look on what you are doing here as fundamentally sound. The developed countries have seen the need to accommodate the urgent needs of the newly developed nations to an international system developed to meet different needs, and have done so in a way that preserves the Berne Convention as a dynamic, vital instrument that will continue to provide a real cultural link throughout the world. I am also glad to see that for their part the developing countries are not repeating our mistake. By making themselves active partners in the international copyright community they will have three important advantages that we did not: they will be able to participate directly in the evolution of international copyright law, they will be induced to offer their own authors more encouragement and better protection than we did, and they will have more flexibility in adjusting their laws to changing conditions in their own countries.

Fears have been expressed that the Stockholm Conference may represent a step backward in international copyright law. I disagree. In my opinion the course of events in Stockholm has been constructive and healthy, and I only wish the United States were an integral part of it. But at the same time I see a trend here that concerns me, and that I think deserves a great deal of careful thought. As a developing country, the United States responded to international copyright protection by imposing a rigid manufacturing requirement which, despite endless controversy, we have found impossible to amputate completely from our law. The world moves but ideas come round again in different forms: the compulsory licenses you have been discussing at this Conference seem to resemble the US manufacturing clause in changed and possibly less objectionable forms.

Compulsory licenses are certainly better than no protection at all, and can be very useful in solving certain problems. But a compulsory license ultimately implies some sort of central collecting agency to collect and pay out money. The author no longer negotiates with the user, but must deal with a bureaucracy to obtain remuneration for uses of his works, and as the fabric becomes more complex the bureaucracy becomes larger and more powerful. I hardly need to add that, if an author must go to a large central bureaucracy to obtain money on which to live, there are likely to be consequences in loss of independence and artistic integrity that have chilling implications.

During the last two years, we in the United States have seen the beginnings of a social revolution brought on by the increasing use of computers, otherwise known as information storage and retrieval systems or data processing devices. It seems clear that the United States, and indeed every

country in the world, is on the threshold of the computer age. We have already found that the demands of computers, or rather of those who control computers, upon copyright works are enormous. It may seem far-fetched to you now, but I believe that we will realize all too soon that the computer will bring the most far-reaching changes in individual authorship and independent expression since the Renaissance.

Copyright as it now exists combines two elements: control and remuneration. Take away the first and you no longer have copyright; you have patronage. Within the next few generations I feel sure that there will be strenuous efforts in every country, developed as well as developing, to take the author's control over his work away from his copyright, or to restrict it sharply, leaving him with rights of remuneration on which limits are also placed. The International Copyright Union and the Universal Copyright Convention would both do well to prepare for this challenge and consider ways of meeting it.

To my mind, the true way that copyright benefits the public is by encouraging, stimulating, and rewarding individual authors to create works of literature, art, and music, completely independent of any control except their own artistic conscience. The Stockholm Conference is indeed a turning point in world copyright law. My hope is that, while demonstrating the flexibility and vigor necessary to accommodate very different situations in member countries, the Berne Convention also continues to display the strength necessary to preserve the purpose of copyright itself.

S/286 CZECHOSLOVAKIA. Berne Convention. *In Article 25(2) (document S/9), as sub-paragraph (d), add:* The Protocol may be applied, within the meaning of its Article 5, three months after the signature of this Act.

S/287 MAIN COMMITTEE II. Berne Convention. *The following resolution was proposed by the Main Committee:*

The Intellectual Property Conference of Stockholm,

Recognizing the special economic and cultural needs of developing countries,

Desirous of enabling developing countries to have access to works protected by copyright for their educational requirements,

Having for this purpose adopted the Protocol Regarding Developing Countries,

Recommends the International Bureau of the Berne Union to undertake in association with other governmental and non-governmental organizations a study of ways and means for creating financial machinery to ensure a fair and just return to authors.

S/288 RAPPORTEUR, MAIN COMMITTEE IV. Paris and Berne Conventions. *The following Draft Report is submitted to the Main Committee:*

1. The tasks entrusted by the Programme of the Conference and by the Rules of Procedure to Main Committee IV were somewhat complex.

It was required not only to consider and discuss the proposals for revising the administrative and structural provisions of the International Convention for the Protection of Industrial Property (Paris Union, document S/3), the International Convention for the Protection of Literary and Artistic Works (Berne Union, document S/9), and the other Conventions and Agreements concerned with industrial property: Madrid Agreements (International Registration of Trademarks), Repression of False or Misleading Indications of Source on Goods), the Hague Agreement (International Deposit of Industrial Designs), the Nice Agreement (International Classification of Goods and Services), the Lisbon Agreement (Protection of Appellations of Origin and Their International Registration) (documents S/4, S/5, S/6, S/7 and S/8); it was also required to examine proposals for the final clauses of the various Conventions, the provisions regarding the adoption of any transitional measures and, lastly, decisions to be taken regarding the ceiling of contributions of States. While the structural and administrative provisions of the Unions are connected with the proposed new Intellectual Property Organization, the final clauses and transitional measures appear to be related to questions also concerning other Main Committees of the Conference, so that constant coordination, in particular through the holding of joint meetings, was established during our work.

2. The Plenary of the Conference held on its opening accepted the Swedish Government's proposals to entrust the Chairmanship of Main Committee IV to France and the duties of Rapporteur to the writer of this Report.

3. Under the Chairmanship of Mr. Savignon (Vice-Chairman: Mr. Lule, Uganda) the work of the Committee began on June 13 and ended on July 10, 1967. In the course of its meetings, the Committee set up a Drafting Committee consisting of the Delegates of Brazil, France, Federal Republic of Germany, Netherlands, South Africa, Spain, Sweden, Tunisia, United Kingdom, United States of America, Union of Soviet Socialist Republics. The Chairmanship of this Committee was entrusted to Mr. Labry (France) and the Vice-Chairmanship to Miss Nilsen (United States of America).

Working Groups were set up as and when the work of the Committee required, for prior consideration of certain questions.

4. In the general debate on the structural and administrative reform of the Unions, opened by the Chairman at the first meeting of the Committee, all delegations declared themselves ready to adopt, in principle, the proposals, which had been the subject of lengthy preparatory work, in particular in Committees of Governmental Experts.

The creation of new permanent organs for each Union which would be representative of the joint wishes of Members and the independence of each Union in particular in respect of its own budget are the basic features of the new administrative structure elaborated by the Committee and proposed to the Conference.

In a statement, the Head of the Swiss Delegation recalled that the Federal Council considered its supervisory functions an honor, but was prepared to accept the transfer of those functions to member States if they so desired, on the understanding that the Swiss Government would continue to exercise them in respect of States not yet members of the new Intellectual Property Organization. This statement was deeply appreciated by all delegations.

5. It was also agreed in the course of the general debate that references to the new organization appearing in the texts adopted by the Committee might be regarded as approved subject to the decisions taken by Main Committee V. In view of the fact that the draft leaves it open to States to choose between several alternatives at the time of ratifying or acceding to the Stockholm Acts (accepted by the Committee notwithstanding certain proposals to limit this possibility), some delegations recommended that such references should be limited to the absolute minimum; this was taken into account when preparing the new texts.

6. The study of the provisions contained in the Programme regarding the membership and functions of the Assembly and the Executive Committee of each Union gave rise to numerous proposals on the part of several delegations. Even when they were accepted by the Committee, these proposals did not change the structure of the new organs as provided in the Programme. It should merely be pointed out that efforts were made to strengthen the existing parallelism between the various Unions in this respect too, while trying not to over-complicate the organization of certain agreements dealing with industrial property.

7. The Assembly thus remains the sovereign organ of each Union by reason of the fact that it is composed of all the countries of the Union, and Main Committee IV sought to strengthen its powers. The Executive Committee is still made up of countries elected by the Assembly from amongst its members, as in the Programme.

The constitution of the Assembly is, of course, the key feature of the administrative reform of the Unions, and the Committee made this the starting point for its work. The Assembly enables the member States of each Union to exercise their sovereign powers, even though they may be grouped in a Union. Moreover, from the point of view of the development of international cooperation in the field

of intellectual property, the Assembly provides a possibility for a continuing dialogue, whereas the existing organization of the Union only allows for meetings which may sometimes take place at intervals of more than 20 years, at a time in which culture and technology are developing at an unprecedented rate.

8. With reference to the membership and functions of the new organs of each Union, I should merely like to draw attention to a question relating to the representation of member States in the Assembly raised in regard to a specific case, in a proposal by the Delegations of Madagascar and Senegal. As a result of the very serious apprehensions expressed by certain delegations, which feared that the provisions proposed might prejudice a fundamental general principle, namely that each delegation to the Assembly can represent only one country and vote only on its behalf, a compromise decision resulting from lengthy debates in the Committee and in an ad hoc Working Group was adopted on the basis of a proposal by the Netherlands Delegation to restrict the provision to the Paris Convention only and in favor only of certain countries of that Union grouped under an agreement in a common office—having the character for each of them of a special national service of industrial property (referred to in the same Convention)—and which can be jointly represented by one of their number in discussions in the Assembly. It is also understood that one delegation can vote by proxy only for one country and only for exceptional reasons.

A proposal submitted during the discussions by some delegations (document S/189) to extend the proposal of the Delegations of Madagascar and Senegal was rejected by a majority after a roll-call vote. The inclusion of such a general possibility would have been contrary to a general principle stated elsewhere in the draft and would have threatened to distort considerably the structure of the Assembly and any other organ of the Union in respect of voting and quorum requirements.

9. The question of the quorum of the Assembly of each Union was the subject of a study by a working group established for the purpose by the Committee which felt that the quorum of one-third specified in a paragraph of the Draft was too low. The provisions adopted by the Committee on this point, based on a proposal by the Delegations of Austria and Poland, were designed to raise the quorum to one-half, on the understanding, however, that the Assembly could take decisions, even if the number of countries represented at a session was less than one-half, provided that it was equal to or more than one-third of the member countries. Decisions adopted in such a case would, however, be enforceable only following a procedure which involved notification of such decisions to the countries that had not been represented at the Assembly, thereby attaining the quorum by correspondence. The arrangement adopted for this purpose may seem somewhat complicated, but there is no obstacle to its application, where necessary, being clarified and simplified by clauses of the rules of procedure of the Assembly.

10. A certain interdependence exists between the question of the quorum of the Assembly and the question of the majority required in the Assembly for amending the administrative clauses of the two Conventions. According to the Programme, only amendments to administrative clauses are within the jurisdiction of the Assembly. On the other hand, as regards substantive provisions, their revision is entrusted to Conferences of the States of the Union. The majority required according to the text adopted by the Committee as regards administrative clauses is three-quarters of the votes cast, except where amendments to articles relating to the composition and the functions of the Assembly are concerned, where a majority of four-fifths of the votes cast is required.

The discussion of these questions was somewhat lively, especially as regards the conferences of revision of substantive clauses. The condition of unanimity was reaffirmed as regards the Berne Convention, including the Protocol which is an integral part thereof. Proposals designed to substitute a qualified majority for unanimity, submitted by certain delegations, were rejected. As regards the substantive provisions of the Paris Convention, the present situation has been maintained.

11. The administrative tasks with respect to each Union will be performed, under the new structural organization of the Union, by the International Bureau. This is a continuation of the Bureaux of the Paris Union and the Berne Union united in 1892 by virtue of a decree of the Swiss Federal Council. The Committee made no important change in substance to the proposals contained in the Programme. The replacement of the formula used in the Programme by the expression "the administrative tasks with respect to the Union shall be performed by the International Bureau which is a continuation of the Bureau of the Union" does not alter the substance. It is in fact a continuation in the same functions, whereas the new wording confirms that, as a transitional measure, as long as all countries of the Unions have not become members of the Organization, the International Bureau of the Organization also acts as the Bureau of each Union.

The International Bureau shall provide the Secretariat of the various organs of each Union.

This duplication of functions in the same organ—like a two-faced Janus—is not merely characteristic of the new structural organization established at Stockholm in the International Bureau; it is also found in the person of the Director General. The Director General remains the highest official of the new Organization and at the same time of each of the Unions; he also represents all these various international bodies which are moreover individually independent.

12. In regard to finances, the text adopted by the Committee stipulates that each Union shall have its own budget. This provision also expresses the concept of the independence of each Union, which is reflected in the new structural organization of the Unions.

On the basis of a joint proposal by France, Germany (Federal Republic), Italy and the United States of America, some amendments were made to the original text (documents S/3 and S/9) concerning the finances of the Unions. In this connection, the Committee reached agreement on a text stating that the budget of the Union should include the expenses proper to the Union itself, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization. Certain consequent modifications were made to other provisions of the original texts. In connection with this clause, the Delegations of France, Germany (Federal Republic), Hungary, Italy, the United Kingdom, the United States of America and the Union of Soviet Socialist Republics submitted proposals to Main Committee V seeking to insert the following words in the list of powers of the General Assembly of the Organization: "...adopt the budget of expenses common to the Unions" (documents S/62 and S/93).

Still on the subject of finances, the Delegation of Spain had thought of including among the sources of finance for the budget of the Paris Union a percentage on the fees to be charged by national offices where the right of priority is claimed, and put forward a proposal in the form of an amendment to the Article of the Paris Convention dealing with finances. This proposal was subsequently withdrawn and changed by the Committee into a resolution addressed to the Conference requesting it to invite the International Bureau to study the question and to submit the result of its work to the next Revision Conference of the Paris Union, at Vienna.

13. Also in connection with finances, the Committee adopted draft decisions regarding the maximum annual amount of ordinary contributions of countries members of the Paris Union and the Berne Union (ceiling of contributions) for the years 1968, 1969 and 1970.

14. At this point in my report, I realize that if I were to discuss in detail each of the questions studied by the Committee, my report would be unjustifiably lengthy, not only in view of the existence of the minuted and other documents of the Committee, but above all because no complex problems arose regarding the administrative organization of the Union. The Committee accepted the proposals on these matters contained in the draft texts of the Programme of the

Conference almost in their entirety. It was therefore a question of settling technical matters and drafting points. In this connection I should like to recall here the really impressive work done by the Drafting Committee, which was responsible in particular for preparing the text of the Agreements on industrial property connected with the Paris Convention, taking account of the parallelism to be achieved between these various instruments.

I shall therefore confine myself to discussing two or three questions concerning the final and transitional clauses.

15. Within the framework of the final clauses of the Paris Convention and the Berne Convention, the Committee paid special attention to the proposals of the Programme concerning the application of the earlier Acts of the Union Conventions (Article 18, Paris; Article 27, Berne) which refer to the relations between States members of the Unions having acceded to different earlier Acts, and particularly to the relations between a country acceding solely to the Act of Stockholm and other countries members of the Unions that have not acceded thereto.

Because alterations to the proposals on this matter to be found in the original Programme affected other provisions, to some extent related to the same question (in particular Article 25*quater* (Berne) originally proposed in relation to the expected application of the Protocol Regarding Developing Countries), these problems were also considered at joint meetings of Main Committees II and IV, where consideration was also given to other problems, especially those raised by Article 20*bis* (Berne) on the Protocol Regarding Developing Countries. The joint meeting of these two Committees referred the preliminary examination of these matters to a Working Group under the chairmanship of Mr. Voyame, which submitted its conclusions following a thorough discussion. Furthermore, after the conclusions of the Working Group had been approved, the matter was once again raised in the Committee, solely in relation to paragraph (3) of Article 27 (Berne), at the instigation of the Delegation of Switzerland, and it was decided to reopen discussion on the point.

16. The solution of problems relating to the application of previous Acts within the framework of a Union Convention, may differ according to which view of the effect of international treaties on the reciprocal obligations of States arising from the successive Acts of a Union Convention is adopted in public international law. In this respect, the discussions reflected the different legal concepts that exist on this subject, and differences of opinion concerning possible means of settling the matter were naturally revealed. Furthermore, the question is also bound up with the basic principles of Article 2 (Paris) and Article 4 (Berne), relating either to the concept of equality of treatment (assimilation clause), or to the obligation of States to observe the rights specially granted by the Convention (minimum rights), as well as with the principle of the enjoyment and exercise of rights independently of protection in the country of origin of the work. These problems of a general nature, which have in the past been the subject of various doctrinal discussions, were once again raised in the Committee. From among the fairly divergent views—according to one of which a State should be bound only by the Act to which it is a party and only in regard to States that are also parties, and according to another of which the obligations of a State of the Union with respect to all the other countries of the Union and, therefore, even with respect to countries members of the Union that are not parties to the said Act, shall be defined by the provisions of the most recent Act to which it accedes—there emerged in the Committee a view that had regard in reciprocal relations to certain interests of a country that has not acceded to a later Act (in the case in point the Act of Stockholm).

17. The solution envisaged in the Committee was inspired by the following general principle: since it is not different treaties that are concerned, but the successive Acts of a Union of States, a relationship must always exist between all the countries of the Union, even if they are not bound by a common Act. Furthermore, the successive Acts of a Union Convention have more or less parallel provisions, so that, from a practical standpoint, the question arises solely in regard to the clauses that differ and, in particular, when the later Act to which a country of the Union has not acceded contains provisions somewhat far removed from the level of protection guaranteed by the previous Act. In that case only it appeared equitable and legally correct that the countries parties to the Stockholm Act, in accordance with the above-mentioned Swiss proposal, should apply this Act in their relations with all countries of the Union, even in respect of those that have not acceded to the Stockholm Act, while the latter countries should apply in their relations with them the provisions of the most recent Act to which they are parties, while nevertheless having the right to adapt the level of protection therein to the level guaranteed by the Act of Stockholm. Wordings based on these principles were adopted by the Committee.

18. There is some connection between the conception regarding the general question of the application of earlier Acts and the decision taken by the Committee on the accession of a country outside the Union which accedes to the Stockholm Act and to the earlier Acts at the same time. This decision extended to the Paris Convention the provision already contained in Article 28(3) of the Berne Convention. Accordingly, after the entry into force of the Stockholm Act in its entirety, a country will not be able to accede to the earlier Acts of the Paris Convention. Only after lengthy discussion did the Drafting Committee agree on this extension of the principle stated in the text of the Berne Convention. As was pointed out in the Committee, a distinction must be made between *accession* to the earlier Acts and the *application* of these Acts. A country cannot accede to the earlier Acts of a Union Convention. since they are replaced by the most recent Act; but owing to the links existing between countries outside the Union which accede to the most recent Act and countries already members of the Union which do not accede to it, relations which also derive from the content of earlier Acts are established between these two categories of countries. Moreover, nothing prevents a country acceding for the first time to the Unions, and in particular to the Paris Union, from making an express declaration on the application of earlier Acts.

The new wording adopted by the Committee introduces a further element of parallelism between the two texts of the Convention.

19. Another question also arose in connection with relations between Union countries within the framework of the unitary system of the Unions. This was the provision of Article 25*quater* of the original text of the Programme, dealing with the anticipated voluntary application of reservations made under the Protocol Regarding Developing Countries, at any time after the date of signature of the Stockholm Act relating to the revision of the Brussels Convention, by any country of the Union not yet bound by the substantive provisions of that Act, including the Protocol which forms an integral part of it. A provision which was discussed at length in the Working Group and was in conformity with Article 25*quater* was included in an Article of the Protocol proposed to Main Committee II by its Drafting Committee.

20. At the Brussels Conference for the revision of the Berne Convention, a clause concerning the settlement of disputes was inserted in the text of the Convention (Article 27*bis*) making it compulsory to accept the jurisdiction of the International Court of Justice in the case of any dispute between two or more countries of the Union concerning the interpretation or application of the Convention which could not be settled by negotiation. On the other hand, there is no clause of this nature in the Paris Convention.

The Committee gave repeated consideration to this question on the basis of the proposal in the Programme, which reproduced the existing Berne provision, together with various alternatives. This proposal, which, moreover, was limited to the Berne Convention, made some delegations afraid that any alteration in that provision might weaken the Convention in regard to the compulsory jurisdictional protection which had been achieved with such difficulty at the Brussels Conference. From another point of view, some delegations expressed apprehension lest such a clause might constitute an obstacle to the ratification of the Brussels Act by various Union countries. Finally, the Committee endeavored all

the time to retain a certain parallelism between the Conventions (Paris and Berne) in regard to the administrative clauses, that is to say those which do not affect the substantive provisions of the two Conventions. A compromise proposal submitted by the Delegations of the Netherlands and Switzerland, which would make it possible to insert the same provision on the settlement of disputes in both Conventions, finally succeeded in securing acceptance by the Committee. The regulation proposed provides for the insertion of the said jurisdictional clause in the text of the Conventions of both the Unions, but any Union country will have the option of declaring, when signing or ratifying the Stockholm Act, that it does not regard itself as bound by this clause, in which case reciprocity will apply in respect of any Union country not availing itself of this option.

21. The general question of reservations in regard to certain provisions of the Berne Convention had been settled in Article 25*ter* of the Programme of the Conference (document S/9). It therefore fell to the Committee to consider this matter. The question of reservations in regard to the right of translation had, however, been examined in its substantive aspects by Main Committee I, which had expressed itself in favor of retaining in the Stockholm Act the provision contained in Article 25(3) of the Brussels Convention; that clause states that notification of accession to the new Act by countries outside the Union could specify that the acceding countries wished to substitute, provisionally at least, for the provisions relating to the exclusive right of translation those of Article 5 of the Convention of the Union revised at Paris in 1896.

A proposal in this connection had been submitted previously by the Italian Delegation to Main Committee I, seeking to combine the possible maintenance of the right of reservation in favor of countries outside the Union which might have acceded to the Stockholm Act with an option by which States not entering a reservation could apply, in this connection, the principle of material reciprocity in their relations with States intending to avail themselves of such a right of reservation. At a joint session of the two Main Committees I and IV, under the chairmanship of Mr. Ulmer, the question was reconsidered, and the above compromise proposal was accepted, so that a provision to this effect was added to Article 25*ter*(2) of the Programme. On the other hand, the situation in regard to reservations in respect of translation will remain unchanged as far as those Union countries are concerned which have already made reservations (Article 27(2) under the Berne Convention; Article 25*ter*(2)(a) of the Programme) and which, when ratifying the Stockholm Act, may still wish to avail themselves of reservations formulated previously.

22. Some draft resolutions concerning certain transitional measures in the field of administrative reforms (document S/11) and concerning, firstly, the Paris Union, secondly, the Berne Union, thirdly, the General Assembly and the Coordination Committee of the proposed new Intellectual Property Organization as well as certain joint questions were withdrawn by BIRPI. Mr. Braderman, the Chairman of Main Committee V, announced in the course of a joint meeting with Main Committee IV that he had been asked to take the Chair. As no delegation took up these proposals, our Committee had no other opportunity to continue their discussion. It is therefore understood that until the various Conventions enter into force, the administrative position of the Unions will remain as at present determined by the Acts now in force and by their application in practice. As soon as the new structural regulations of the Unions enter into force, some of the institutions of the Unions at present existing, such as the Conferences of Representatives established by Article 14(5) of the Lisbon Act for the Paris Convention, and the Permanent Committees of the Union set up by a resolution of the Brussels Revision Conference for the Berne Convention, will obviously cease to exist.

23. As we have already noted in this report, the Swiss Government will continue to exercise its supervisory functions not only until the entry into force of the various Conventions signed at Stockholm but, beyond that date, in respect of the States members of the Unions that are still not members of the World Intellectual Property Organization, in parallel with the Assemblies of both Unions. In that respect the joint meeting paid further tribute to Switzerland which, after having exercised with the greatest dignity for nearly a century functions that have enabled the Unions to be wisely administered, now accepts a further, though slightly reduced, role in this field.

S/288/Rev. [*Editor's Note:* This document in the French Series contains the new wording of the Draft Report of the Main Committee IV. It was not prepared in English and no document with this number was issued in the English series.]

S/289 SECRETARIAT. Berne Convention. *The following texts are proposed to the Drafting Committee as an addendum to document S/269:*

Article 9: (1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

*Article 10*bis*:* It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press or the broadcasting of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction or the broadcasting thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

Article 13: (1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(2) *no change.*

(3) *no change.*

*Article 14*bis*:* (1) *no change.*

(2) *up to (c), no change.*

(c) The form of the undertaking referred to above, which any country of the Union may require to be in a written agreement or something having the same force, shall be governed by the legislation of the country where protection is claimed.

(3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work nor to the principal director thereof. However, those countries of the Union whose legislation contains provisions excluding such director from the application of the said paragraph (2)(b), shall notify the ... by means of a written declaration which will be immediately communicated by him to all the countries of the Union.

Draft Resolution (II): Up to last paragraph: no change.

Last paragraph: Expresses the wish that the International Bureau of the Berne Union should undertake a study of the above questions, in order to consider the inclusion of provisions relating to them in a future revision of the Convention.

S/290 DRAFTING COMMITTEE OF MAIN COMMITTEE I. Berne Convention. *The following texts, as an addendum to document S/269, are submitted to the Main Committee:*

Article 9: (1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

*Article 10*bis*:* It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire, of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

Article 13: (1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(2) *no change.*

(3) *no change.*

*Article 14*bis*:* (1) *no change.*

(2) *up to (c), no change.* (c) The form of the undertaking referred to above, which any country of the Union may require to be in a written agreement or something having the same force, shall be governed by the legislation of the country where protection is claimed.

(3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work nor to the principal director thereof. However, those countries of the Union, whose legislation does not contain provisions applying the said paragraph to such director, shall notify the ... by means of a written declaration which will be immediately communicated by him to all the countries of the Union.

S/291 DRAFTING COMMITTEE OF MAIN COMMITTEE IV. Paris Convention. *In Article 27 (Article 18 as proposed in document S/265), as paragraph (3), add:* Countries outside the Union, which become parties to this Act, shall apply it with respect to any country of the Union not a party to this Act or which, although a party to this Act, has made a declaration pursuant to Article 20(1)(b)(i). Such countries recognize that the said country of the Union may apply, in its relations with them, the provisions of the most recent Act to which it is a party.

S/292 DRAFTING COMMITTEE OF MAIN COMMITTEE IV. Berne Convention. *In Article 32 (Article 27 in document S/265), renumber paragraph (2) as paragraph (3) and, as paragraph (2), insert:* Countries outside the Union, which become parties to this Act, shall, subject to the provisions of paragraph (3), apply it with respect to any country of the Union not a party to this Act or which, although a party to this Act, has made a declaration pursuant to Article 28(1)(b)(i). Such countries recognize that the said country of the Union, in its relations with them: (i) may apply the provisions of the most recent Act to which it is a party, and (ii) has the right to adapt the protection to the level provided for by this Act.

S/293 DRAFTING COMMITTEE OF MAIN COMMITTEE IV. Berne Convention. *In Article 25(2) (document S/9), as a new sub-paragraph (d), add:* The Protocol may be applied, pursuant to its Article 5, from the date of signature of this Act.

S/294 [*Editor's Note:* This document in the French series contains the proposal of the Working Group of Main Committee IV concerning Article 12 of the Madrid (TM) Agreement, Article 8*bis* of the Nice Agreement, and Article 13 of the Lisbon Agreement. Since, however, the Working Group did not prepare a text in English, no document with this number was issued in the English series.]

S/295 CREDENTIALS COMMITTEE. All Unions. *The following reports are submitted to the Plenary Assemblies:*

1. The Credentials Committee established in accordance with Rule 9 of the Rules of Procedure of the Conference, and composed of the following States: Bulgaria, France, Ireland, Italy, Japan, Mexico, the Netherlands, Sweden, Switzerland, United States of America, Union of Soviet Socialist Republics and Venezuela, held three meetings, on June 17, July 6 and July 10, 1967.

2. In conformity with Rule 15, paragraph (5) of the aforesaid Rules of Procedure, the Committee, at its first meeting, elected its officers.

3. On a proposal submitted by the Delegate of Italy and supported by the Delegates of the Netherlands and the Union of Soviet Socialist Republics, H.E. Mr. Bernard de Menthon, Head of the Delegation of France, was unanimously elected Chairman of the Committee.

4. On a proposal submitted by the Delegate of the United States of America and supported by the Delegates of Sweden and the Soviet Union, H.E. Mr. Michitoshi Takahashi, Head of the Delegation of Japan, was unanimously elected Vice-Chairman of the Committee.

5. The Delegate of the Netherlands raised the question whether a distinction should be made between credentials conferring in a general way the right of representation at or participation in the Conference and credentials making express mention of the right to sign the Acts of Conventions and Agreements.

6. The Committee expressed the opinion that its duties were confined to ascertaining whether the credentials submitted were in order, that is to say whether they had been issued by the Head of the State or Government, or by the Minister for Foreign Affairs (Rule 6 of the Rules of Procedure of the Conference). It considered that it was for each Head of Delegation to determine whether the credential conferring a general right of representation or participation implied, or not, all the prerogatives deriving therefrom: the right to speak, the right to vote, up to and including the right to sign.

7. After examining the credentials that had been communicated to the Secretary General of the Conference, the Committee, in conformity with Rule 8, paragraph (1) of the Rules of Procedure of the Conference, submits the following separate reports for each Plenary.

Plenary of the Conference

8. The Committee recognized as valid the credentials communicated by the following States: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Central African Republic, Congo (Brazzaville), Congo (Kinshasa), Cuba, Czechoslovakia, Denmark, Ecuador, Finland, France, Gabon, Germany (Federal Republic), Greece, Guatemala, Holy See, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Kenya, Korea, Liechtenstein,

Luxembourg, Madagascar, Mexico, Monaco, Morocco, Netherlands, Nicaragua, Niger, Norway, Peru, Philippines, Poland, Portugal, Rumania, Senegal, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yugoslavia.

Plenary of the Berne Union

9. The Committee recognized as valid the credentials communicated by the following States: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Congo (Brazzaville), Congo (Kinshasa), Czechoslovakia, Denmark, Finland, France, Gabon, Germany (Federal Republic), Greece, Holy See, Hungary, India, Ireland, Israel, Italy, Ivory Coast, Japan, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Philippines, Poland, Portugal, Rumania, Senegal, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, Uruguay, Yugoslavia.

Plenary of the Paris Union

10. The Committee recognized as valid the credentials communicated by the following States: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Denmark, Finland, France, Gabon, Germany (Federal Republic), Greece, Holy See, Hungary, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Kenya, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Philippines, Poland, Portugal, Rumania, Senegal, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia.

Plenary of the Madrid Union (Trademarks)

11. The Committee recognized as valid the credentials communicated by the following States: Austria, Belgium, Czechoslovakia, France, Germany (Federal Republic), Hungary, Italy, Liechtenstein, Luxembourg, Monaco, Morocco, Netherlands, Portugal, Rumania, Spain, Switzerland, Tunisia, Yugoslavia.

Plenary of the Madrid Agreement (Indications of Source)

12. The Committee recognized as valid the credentials communicated by the following States: Brazil, Cuba, Czechoslovakia, France, Germany (Federal Republic), Hungary, Ireland, Israel, Italy, Japan, Liechtenstein, Monaco, Morocco, Poland, Portugal, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland.

Plenary of the Union of The Hague

13. The Committee recognized as valid the credentials communicated by the following States: Belgium, France, Germany (Federal Republic), Holy See, Indonesia, Liechtenstein, Monaco, Morocco, Netherlands, Spain, Switzerland, Tunisia.

Plenary of the Nice Union

14. The Committee recognized as valid the credentials communicated by the following States: Australia, Belgium, Czechoslovakia, Denmark, France, Germany (Federal Republic), Hungary, Ireland, Israel, Italy, Monaco, Morocco, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, Yugoslavia.

Plenary of the Lisbon Union

15. The Committee recognized as valid the credentials communicated by the following States: Cuba, Czechoslovakia, France, Hungary, Israel, Mexico, Portugal.

Plenary of IPO

16. The Committee recognized as valid the credentials communicated by the following States: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Central African Republic, Congo (Brazzaville), Congo (Kinshasa), Cuba, Czechoslovakia, Denmark, Ecuador, Finland, France, Gabon, Germany (Federal Republic), Greece, Guatemala, Holy See, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Kenya, Korea, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Netherlands, Nicaragua, Niger, Norway, Peru, Philippines, Poland, Portugal, Rumania, Senegal, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America. Uruguay, Venezuela, Yugoslavia.

17. The Committee observed that three States (Chile, Dominican Republic and Ethiopia) were taking part in the Conference only in the capacity of observers and were therefore not required to submit credentials.

18. Finally, at its last meeting, the Committee noted that credentials had not yet been submitted by the following States: Colombia, Iceland, Lebanon, Uganda, United Arab Republic, Togo.

S/296 MAIN COMMITTEE I. Berne Convention. *The following text of a resolution is submitted to the Plenary Assembly of the Berne Union:* The intellectual Property Conference of Stockholm,

Considering that certain countries have expressed a desire for the general term of protection of literary and artistic works to be extended,

that certain countries already grant a term of protection in excess of 50 years after the death of the author,

that, moreover, several countries of the Union have extended the term of protection for reasons resulting from the war,

that negotiations have already taken place at international level with the object of providing for an extension of the term of protection by a special agreement,

that in addition, bilateral agreements have already been concluded between certain countries for the reciprocal application of extension of terms of protection, for reasons resulting from the war,

Expresses the wish that negotiations should be pursued between the countries concerned for the conclusion of a multilateral agreement on the extension of the term of protection in countries parties to that agreement.

S/297 MAIN COMMITTEE I, Berne Convention. *The following text of a resolution is submitted to the Plenary Assembly of the Berne Union:* The Intellectual Property Conference of Stockholm,

Having before it proposals to insert in the Berne Convention provisions under which

(i) the publisher of a literary, dramatico-musical or musical work published in a country of the Union should be under an obligation to deposit with the national library of that country, or with some other similar establishment, a facsimile of the earliest and most authentic copy of such work in the form approved by its author;

(ii) it should be a matter for the legislation of the countries of the Union to provide that, where a dramatico-musical or musical work has been made available to the public with the consent of the author thereof, the graphic copies of the said work should also be made accessible to the public without restrictions contrary to fair practice;

Considers sympathetically the spirit and purpose of these proposals, subject always to the protection of the rights of authors of such works; and

Expresses the wish that the International Bureau of the Berne Union should undertake a study of the above questions, in order that consideration may be given to the possibility of including provisions relating to them in a future revision of the Convention.

S/298 SECRETARIAT. All Unions. *The following comment is made on and the following text is proposed as the "Final Act" of the Conference:*

Comment: It is customary, in larger Diplomatic Conferences, to draw up a "Final Act."

Several delegations, not having powers to sign the Conventions and Agreements, have asked the host Government and the Secretariat to draw up a "Final Act."

Such a "Final Act" does not contain any obligation for the Governments. Consequently, it is customary for all delegations participating in the Conference to sign it.

The "Final Act" will be presented for signature at the same time as the Conventions and Agreements, that is, on Friday, July 14, at 3 p.m. at the Royal Ministry for Foreign Affairs.

Proposed text:

1. *The "Intellectual Property Conference of Stockholm, 1967,"*

Prepared by the Government of Sweden and the United International Bureaux for the Protection of Intellectual Property (BIRPI),

Convened by the Government of Sweden,

Was held at Stockholm from June 11 to July 14, 1967, in the building of the Swedish Riksdag.

2. *The States* party to the Berne and Paris Conventions and the Special Agreements concluded under the latter revised the said Conventions and Agreements, made various decisions, and adopted several recommendations.

3. *The Conference* adopted the Convention establishing the World Intellectual Property Organization.

In Witness Whereof, the undersigned, being Delegates of States invited to the Conference, have signed this Final Act.

Done at Stockholm, on July 14, 1967, in the French, English, Spanish and Russian languages, the original to be deposited with the Government of Sweden.

S/299 CHAIRMAN MAIN COMMITTEE I. Berne Convention. *In Article 14*bis*(2) (document S/278), sub-paragraph (c) should read:* The question whether or not the form of the undertaking referred to above should, for the application of the preceding sub-paragraph (b), be in a written agreement or a written act of the same effect, shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. The countries whose legislation so provides shall notify the Director General by means of a written declaration which will be immediately communicated by him to all the other countries of the Union.

S/300 ARGENTINA, BRAZIL, CAMEROON, CENTRAL AFRICAN REPUBLIC, COLOMBIA, CONGO (KINSHASA), DOMINICAN REPUBLIC, ECUADOR, GUATEMALA, IRAN, MADAGASCAR, MEXICO, MOROCCO, NIGER, PERU, SENEGAL, TOGO and URUGUAY. All Unions. *The following joint statement is made to the Stockholm Conference:*

The Delegations of Argentina, Brazil, Cameroon, Central African Republic, Colombia, Congo (Kinshasa), Dominican Republic, Ecuador, Guatemala, Iran, Madagascar, Mexico, Morocco, Niger, Peru, Senegal, Togo and Uruguay.

Trusting in the will expressed to open new horizons to the full participation of developing countries in the field of intellectual property, which would in its turn permit the attainment of the universality indispensable to its protection;

Wishing to express a similar spirit of cooperation so as to ensure that the legitimate interests of the main holders of intellectual property are protected;

Considering that a valid dialogue between holders and users of intellectual property depends, in particular, on the immediate and fair accomplishment by the International Bureau of certain provisions of the Acts adopted at Stockholm;

Express the wish that the International Bureau, in the exercise of its tasks and functions, take into account as of now the following cardinal principles:

(1) The recruitment of personnel and the distribution of posts within the Secretariat must necessarily follow the rule of equitable geographical distribution. This rule must apply not only to the existing structure but especially to the new structure which has been approved; further, it must apply to the levels known as "professional" and the "direction."

(2) In the field of technical-legal assistance, a program should be established, the scope of which is to be approved by the Executive Committee of the Unions within the limits of their budgets, and which should focus on the training of Government officials by means of a system of scholarships and training periods and also through convening regional and inter-regional seminars in accordance with the practice of the United Nations and its Specialized Agencies.

(3) Due to the close relationship which intellectual property, in its dual aim of protection and propagation, has with the objectives of certain other international organizations, it is of the utmost importance that the International Bureau immediately conclude agreements for cooperation with these organizations. In addition, the International Bureau should regularly send representatives to attend their meetings. Apart from the already established coordination with UNESCO in the field of copyright, it is essential that the International Bureau should establish close ties with UNCTAD and UNIDO in the field of the transfer of technology to developing countries.

S/301 RAPPORTEUR MAIN COMMITTEE II. Berne Convention. *The following Draft Report (final version) is submitted to the Main Committee:*

1. The protection of authors' rights in countries that have recently gained independence is one of the problems that has solicited the attention of the Swedish Government as the host country of the Revision Conference and that of BIRPI for several years. The history of the preparatory studies and proceedings is to be found in document S/1 (pages 67 to 74).

2. After the publication of document S/1, there was an important event in this domain, whose influence has been apparent both on the discussion and on the results of the Conference. We refer to the East Asian Seminar on Copyright, which was held at New Delhi in January, 1967.

3. At the proposal of the Government of Sweden, a Main Committee was set up to produce a definitive text on the basis of document S/1. This Main Committee—referred to in the Conference documents as Main Committee II—met ten times. It appointed two Working Groups for certain special problems, one to consider basic matters (Chairman: Mr. Hesser (Sweden); members: Czechoslovakia, France, India, Ivory Coast, Tunisia, United Kingdom), and the other to consider the definition of the criterion of countries that would have the right to avail themselves of this Protocol (Chairman: Mr. Lennon (Ireland); members: Brazil, Congo (Kinshasa), Czechoslovakia, France, India, Italy, Ivory Coast, Senegal, Sweden, Tunisia, United Kingdom).

4. Several amendments were submitted with respect to the *definition* of countries beneficiaries of the Protocol mentioned in the Preamble to the first article of the Protocol with a view to the clarification of the general formula: the object of a proposal by France (document S/176) was to make countries that acceded to the Berne Union only after the signing and entry into force of the Brussels Convention beneficiaries of the provisions of the Protocol; a proposal by Italy (document S/213) introduced technical criteria (illiteracy, school attendance) into the idea of a developing country; two proposals, one by the United Kingdom (document S/149), and the other by Denmark, Finland, Norway and Sweden (document S/253), suggested as a solution an international authority competent to decide in each case (the Executive Committee of the Berne Convention in the former and the General Assembly of the United Nations in the latter proposal). After discussion the Working Group proposed

to Main Committee II a text referring to Resolution No. 1897 (XVIII) adopted by the General Assembly of the United Nations at its eighteenth session on November 13, 1963, for application to any country subsequently designated a developing country. A proposal of the Ivory Coast (document S/234) brought that list up to date by adding seven new African States to it.

5. The Committee dealt with the question and, while accepting the idea that the countries listed in the Annexes to document S/249 should be beneficiaries of the additional Protocol, it noted that simple reference to the decisions of the United Nations would entail a delay for countries that had recently gained their independence that would prevent them from acceding to the Convention and the Protocol immediately or at least before a decision by the United Nations. A more flexible wording was sought. A joint proposal of the Delegations of Denmark, Finland, Norway and Sweden submitted in document S/253 stipulated that a developing country would be considered to be any country designated as such under the established practice of the General Assembly of the United Nations, it being understood that the term "established practice" implies that the country concerned receives assistance from the United Nations Development Programme through the United Nations or its Specialized Agencies. The country which considers that it is in a position to have recourse to the Protocol shall notify the Director General of . . . , who shall, if necessary, after consultation with the organs of the United Nations, communicate the notification to the other countries Members of the Union together with his observations. The final text was produced by the Drafting Committee of Main Committee II under the chairmanship of Mr. Essen (Sweden) (members: Mr. Abi-Sad (Brazil), Mr. Strnad (Czechoslovakia), Mr. Desbois (France), Mr. Krishnamurti (India), Mr. Ciampi (Italy), Mr. Amon d'Aby (Ivory Coast), Mr. Goundian (Senegal), Mr. Fersi (Tunisia), Miss White (United Kingdom)). The text was adopted by Main Committee II at its final meeting.

6. *The substantive provisions* were also examined on the basis of document S/1 submitted by the Government of Sweden and BIRPI. The order of the items included in the Protocol was altered by the Drafting Committee so that the provisions concerning the period of protection—following the system of the Convention itself—were put before the substantive questions; the others were inserted after the latter. In the course of the proceedings of the Conference they underwent the following changes.

7. As an outcome of the insertion of Article 9, paragraph (2) of the Rome Convention of 1928 and the Brussels Convension of 1948 in a new draft of the text of the Convention itself, in which it appears as Article 10*bis*(1), this article mentioned in paragraph (c) in Article 1 of document S/1, became superfluous in the Protocol and was deleted.

8. A group of countries Congo (Brazzaville), Congo (Kinshasa), Gabon, India, Ivory Coast, Madagascar, Morocco, Niger, Senegal and Tunisia) submitted a new drafting of the text of the Protocol (document S/160), stemming from document S/1 and adopting its scheme, but adding certain new features.

9. *The term of protection* has been decided without change in the manner proposed by the Government of Sweden with the assistance of BIRPI. The term of protection may therefore be fixed by domestic legislation at a period less than the compulsory term of fifty years referred to in Article 7 of the Convention.

10. *The translation license* combines the translation license referred to in Articles 25 and 27 of the Convention (Brussels text) and traditional in the Berne Union with certain elements of the license referred to in Article 5 of the Universal Copyright Convention; the definition of the languages into which the translation may be made has been clarified.

11. Several proposals were submitted for regulating the regime of published works on the basis of a legal license (the proposals of Italy, document S/162; of Denmark, document S/146; of Greece, document S/181; and of Israel, document S/199). Japan made a proposal in document S/127 for simplification of the translation license by simply taking over the system as it existed in the Berne Convention.

12. The result of the proceedings of the Working Group and of Main Committee II, which is set out in document S/249, corresponds with certain slight alterations to the desire to replace the text of Article 5 of the Paris Convention of 1896 quoted in paragraph (a) of Article 1 of the Protocol by an up-to-date wording without basically affecting even the provisions in force.

13. The principles of the Universal Copyright Convention (see Article 5(2) and (5)), which enter into the system of the translation license provided for by the Protocol (Article 1, paragraph (b)(iv)) have also undergone modification: the compensation stipulated should be just and the explicit reference to international usage in this matter was deleted; the transmittal of such compensation, also referred to in the above article of the Universal Copyright Convention, is made subject to national currency regulations by the text of the additional Protocol.

14. It should be noted that neither of the International Conventions that might be regarded as having served as a model for paragraph (b) of the first article of the Protocol stipulates precisely where a translation must be published by the author himself if he does not wish a legal license to come into force. Article 5 of the Paris Convention of 1896 merely stipulates that the publication of such a translation must take place in a country of the Union. The additional Protocol adds an important clarification: the translation must be published in the country invoking the reservation concerning the translation license. Publication does not mean printing in the strict sense; this is an essential distinction for countries that do not possess even the technical means needed to publish translations or reproductions under the conditions laid down by the additional Protocol.

15. The proposals on the right of reproduction contained in paragraph (1) (e) of document S/1, corresponding to paragraph (1) (c) of the final text, have undergone profound modification. After discussion and examination of the various proposals (see the proposal of the United Kingdom, document S/149, paragraph (3) and the joint proposal of ten developing countries, document S/160), the Working Group proposed the text contained in document S/249, Article 1, paragraph (d). The final solution adopted for this reproduction license is a copy of the translation license to the extent that the analogy is possible. It provides for the possibility of the introduction of a reproduction license for educational or cultural purposes—the wording should not be interpreted in a restrictive manner, given that the addition "exclusively for . . . purposes . . ." was intentionally deleted.

16. On the other hand, restriction of the right of reproduction to educational or cultural purposes excludes from the field of application of this reservation all works whose educational or cultural purpose is not evident; as an example, detective and adventure stories were mentioned in the discussion.

17. The procedure to be followed in order to obtain such a license, the conditions concerning payment of the compensation, the place of publication, respect for the right of the author to change his mind, and the possibility of having recourse to such a license even after the copies of the original edition of the work are out of print have been established on the same basis as for translations.

18. Paragraph (d) of the first article of the additional Protocol, which concerns the radio-diffusion of literary and artistic works, permits the countries beneficiaries of the Protocol to substitute for paragraph (1) and paragraph (2) of Article 11*bis* of this Convention the text of the Rome Convention of 1928 with two changes. The first, which represents a modernization of the text, is to replace the words "communication by radio-diffusion" of the Rome Convention of 1928 by the word "radio-diffusion". The second change settles a basic matter: the public communication of broadcast works for profit-making purposes shall not be permitted except on payment of equitable remuneration fixed, in the absence of agreement, by competent authority. That addition

takes over the wording of the proposal by the Delegation of the United Kingdom (document S/149, paragraph (2)).

19. A new possibility for restriction open to domestic legislation has been adopted for uses destined exclusively for *teaching, study and research in all fields of education*. It should be noted that that reservation does not apply solely to the right of translation and reproduction; it may also be invoked equally for the other uses of literary and artistic works. A new formula has been inserted for the determination of compensation, by which the latter shall "conform to standards of payment made to national authors". The addition of the words "in all fields of education" and the exclusivity of the purposes for which the reservation can be utilized indicate that industrial or commercial research or research of the same nature is outside the scope of this reservation.

20. In the case of copies of works translated and reproduced on the basis of the reservations in a country availing itself of the additional Protocol, the general principle adopted is that their export and sale are not permitted in a country not availing itself of these reservations. The prohibition does not apply if the legislation of a country which cannot avail itself of the additional Protocol, or the agreements concluded by that country, authorize such importation. The reference to national legislation and to agreements concluded has been replaced, in the case of the works mentioned in Article 1(e), by the condition of the agreement of the author. In the same paragraph it has been made clear that only copies of a work published in a country for the said educational purposes may be imported and sold in other countries availing themselves of the reservations; the effect, therefore, is that such copies will be in a language relevant to the educational needs of that country. An example quoted in the discussions was that of a translation made in India which could be imported into Ceylon but not into Japan.

21. The above reservations may be maintained for ten years from the time of ratification by the country concerned (see paragraph (1) (*in fine*)); countries that do not consider themselves in a position to withdraw the reservations made under this Protocol, may continue to maintain them until they accede to the Act adopted by the next Revision Conference; the "maintaining of reservations" therefore implies that it will be essential for a declaration in that sense to be addressed to the Director General by the country concerned, and that in default thereof the reservations shall cease to be applicable. The country concerned would then be bound by the Convention itself. Various proposals made in the course of the Conference by the Delegations present, and concerning one or other of the problems mentioned above, have either been incorporated in the final text or withdrawn (see for example publication of serials, abridgements or translations in newspapers or periodicals, document S/160, or the provisions for the institution of certain measures of control over the application of the additional Protocol submitted by the Delegation of Israel, document S/199, or have found their place in a resolution (for example the creation of a fund intended for the authors of works affected by the reservations stipulated in the Protocol, as proposed by the Delegation of Israel, document S/228)).

22. Article 4 was added to the text as the result of a proposal by the United Kingdom which was adopted by Committee II at its eighth meeting. Even a developing territory judged by the same principles as sovereign countries which has not acceded to independence by the day on which the Convention is signed may enjoy the benefits of the additional Protocol.

23. With regard to this article, the Delegations of Czechoslovakia, India, Israel and Tunisia made statements evidencing their opposition in principle to clauses of this kind in Conventions. In a plenary Assembly of the Berne Union this article was expanded to indicate that the declaration referred to in this paragraph could be made only by a country bound by the Protocol.

24. The reference to the practice established by the United Nations made it necessary to solve the problem of the legal consequences of a contrary situation, namely to deal with the case of a country to which the status of developing country ceases to be applicable. The solution proposed by the Drafting Committee is that this country will no longer be able to avail itself of the Protocol at the expiry of a period of six years from the appropriate notification.

25. To provide a possibility for developing countries to benefit immediately from the additional Protocol, an Article 5 has been added to the text, offering this possibility even before the text of the Convention itself has been ratified within the meaning of Article 25(1)(b)(i).

26. Another question that was the subject of consideration by the developing countries in the course of the preparatory proceedings, that of the protection of folklore, was resolved by Article 15, paragraph (3) of the Convention itself.

S/302 SECRETARIAT. Paris Convention. [*Editor's Note:* This document in the English series contains the text of a provisional translation of Article 4-I and Articles 13 to 30 of the Paris Convention. In the following, only the differences between the provisional English translation and the official translation are indicated. The use of the past tense refers to document S/302.]

in document S/302, there were no corresponding titles of Articles.

in Article 13(2)(viii), the words following "working groups" were: as may be necessary for the work of the Union; *rather than:* as it deems appropriate to achieve the objectives of the Union.

in Article 13(2)(xii), the word preceding "such other functions" was: exercise; *rather than:* perform.

in Article 13(3)(a), the words following "may represent" were: only one country; *rather than:* one country only.

in Article 13(4)(c), the words following "shall take effect only if" were: the following conditions are fulfilled; *rather than:* the conditions set forth hereinafter are fulfilled.

in Article 13(5)(b), the last sentence began with the words: This power; *rather than:* Such power.

in Article 13(6), the words following "admitted to" were: its meetings; *rather than:* the meetings of the latter.

in Article 14(5)(b), the words following "may be re-elected" were: but not more than two-thirds of them; *rather than:* but only up to a maximum of two-thirds of such members.

in Article 14(6)(a)(ii), the word following "Assembly" was: respecting; *rather than:* in respect to.

in Article 14(6)(a)(v), the phrase "in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly" appeared at the beginning of the item.

in Article 15(1)(a), the words preceding "shall be performed" were: The administrative tasks with respect to the Union; *rather than:* Administrative tasks concerning the Union.

in Article 15(2), the wording of the third and fourth sentences was: It shall furnish to the International Bureau all the publications of its industrial property service of direct concern to the protection of industrial property and which the International Bureau may find useful in its work.

in Article 15(4), the text was: The International Bureau shall, on request, furnish information to any country of the Union on matters concerning the protection of industrial property.

in Article 16(3)(ii), the word following "charges due for services" was: performed; *rather than:* rendered.

in Article 16(4)(b), the word following "must announce" was: it; *rather than:* such change; *and the words following "the calendar year following" were:* the session; *rather than:* the said session.

in Article 16(4)(e), the words following "of its contributions" were: shall have no vote; *rather than:* may not exercise its right to vote; *and the words preceding "in that organ" were:* its vote; *rather than:* its right to vote.

in Article 16(4)(f), the words following "the previous year" were: in accordance with; *rather than:* as provided in.

in Article 16(6)(a), the words following "becomes insufficient" were: an increase shall be decided by the Assembly; *rather than:* the Assembly shall decide to increase it.

in Article 16(6)(b), the words following "the fund is established or" were: the increase decided; *rather than:* the decision to increase it is made.

in Article 17(2), the words following "any amendment" were: of Article 13 and of the present paragraph; *rather than:* to Article 13 and to the present paragraph.

in Article 18(2), the word "conferences" was preceded by: For this purpose; *rather than:* For that purpose.

in Article 20(2)(a) and (b), the words following "the declaration permitted" were: by paragraph; *rather than:* under paragraph.

in Article 24(3)(a), the word following "ratification or accession" was: in; *rather than:* in the instrument of.

in Article 30(2), the words following "written notification" were: to this effect to the Director General; this notification shall be effective on the date of its receipt; *rather than:* to that effect to the Director General; such notification shall be effective from the date of its receipt.

in Article 30 of the final text, there were no corresponding paragraphs (3) and (4) in the Draft Convention.

CONFERENCE DOCUMENTS OF THE INFORMATION ("INF") SERIES

(S/INF/1 to S/INF/32)

LIST OF DOCUMENTS

No.	*Submitted by*	*Distribution*	*Subject*
1	BIRPI	General	General information.
2	BIRPI	General	List of States and Organizations.
3	BIRPI	General	List of documents.
4	Secretariat	General	Program.
5	Secretariat	Main Committee I	Working schedule.
6	Secretariat	General	List of documents.
7	Secretariat	General	List of documents.
8	Secretariat	General	Closing of Conference services (June 23).
9	Secretariat	General	List of participants, corrections.
10	Secretariat	General	List of documents.
11*	—	—	—
12	Secretariat	General	List of documents.
13	Secretariat	Working Group V	Notice of meeting.
14	Secretariat	General	List of documents.
15	Secretariat	General	List of documents.
16	Secretariat	General	List of documents.
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18	Secretariat	General	List of documents.
19	Secretariat	General	List of documents.
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22	Secretariat	General	List of documents.
23	Secretariat	General	List of documents.
24	Secretariat	General	List of documents.
25	Secretariat	General	List of documents.
26	Secretariat	General	Program for July 11 and 12.
27	Secretariat	General	Program for July 14.
28	Secretariat	General	List of documents.
29	Secretariat	General	List of documents.
30	Secretariat	General	List of documents.
31	Secretariat	General	Press release.
32	Secretariat	General	Signatures.

* This number was not used.

TEXT OF DOCUMENTS S/INF/1 TO 32

S/INF/1 BIRPI, SWEDEN. All Unions. *The following general information on the Stockholm Conference is given:*

Agenda and Documents. The Intellectual Property Conference of Stockholm, 1967 (hereinafter referred to as "the Conference"), will deal with the revision of the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, and the Special Agreements concluded under the Paris Convention, and with the adoption of a new Convention establishing a new international Organization, tentatively called "the International Intellectual Property Organization" (abbreviated as "IPO").

The work of the Conference will be based on 12 documents prepared by the Government of Sweden, with the assistance of BIRPI, or by BIRPI. These documents bear the numbers S/1 to S/12. They have been transmitted by BIRPI to all the invited Governments and international organizations. Copies are available to the general public and are on sale at BIRPI.

Interested Governments and organizations have been asked to communicate their observations, if any, on certain of these documents. Observations so communicated to BIRPI before April 1, 1967, will be communicated in turn by BIRPI to the invited Governments and organizations, in several instalments, during the months of February, March, and April, 1967. Observations received by BIRPI after April 1, 1967, will be distributed at the Conference itself.

Invitations. The Conference is a diplomatic or negotiating conference, also called a conference of plenipotentiaries. In other words, it is a conference of States represented by their Government delegations, having credentials. The composition of each delegation is matter for each Government. All expenses are borne by the appointing Government.

Invitations were issued through diplomatic channels by the Ministry for Foreign Affairs of Sweden to the Ministries for Foreign Affairs of the 129 invited States. All invited States will be able to vote on the adoption of the proposed IPO Convention. On the revision of any of the existing Conventions and Agreements, only those States will be able to vote which are parties thereto, the other States being invited to participate in the deliberations as observers.

Forty-one intergovernmental and non-governmental organizations were invited to the Conference by the Government of Sweden or, on its behalf, by BIRPI. These organizations will be able to attend most of the meetings as observers.

Acceptance of Invitations and Credentials. Governments and organizations invited by the Government of Sweden which have not yet replied are requested to do so without delay through the diplomatic representatives of Sweden.

Organizations which have been invited by BIRPI and which have not yet replied are requested to do so without delay direct to BIRPI.

Replies should indicate the expected number of members of the delegations.

The names and titles of the members of the delegations should be communicated if possible not later than April 1, 1967.

The credentials of delegates and the names of alternate delegates and advisors must be handed over to the Secretary General of the Conference on June 11 or 12, 1967, in Stockholm. Such credentials must be signed, either by the Head of the State or Government, or by the Minister for Foreign Affairs, and should specify the names of the delegates entitled to sign the Conventions or Agreements to be revised or adopted at the Conference.

Representatives of any invited observer organization must be appointed in a note or letter signed by the Head of the organization, which should be handed over to the Secretary General of the Conference.

Organization of Meetings. The Conference will meet as such—that is as a body of all the invited Governments—at the beginning and at the end of the time allotted: at the beginning, for the adoption of the rules of procedure and the election of certain officers; at the end, for the signing of all the instruments adopted.

Otherwise, work will be carried out mainly in "Plenaries" and "Main Committees."

There will be as many Plenaries as there are Conventions and Agreements to be revised, and one for the proposed IPO Convention. It is expected that the Plenaries will meet at the beginning and towards the end of the time allotted: at the beginning, for electing certain officers; at the end, for a final vote on the texts submitted to them by the Main Committees concerned.

There will be five Main Committees, each of them dealing with the following subjects:

Main Committee I will consider the proposals for the revision of the substantive provisions of the Berne Convention contained in Articles 1 to 20 of that Convention. It will work on the basis of document S/1, with the exception of those parts thereof which relate to the proposed Protocol regarding developing countries (pages 67 to 74, and 95 and 96).

Main Committee II will consider the proposals for the establishment of a Protocol to the Berne Convention regarding developing countries. It will work on the basis of the proposals reproduced on pages 67 to 74, and 95 and 96, of document S/1.

Main Committee III will consider the proposals concerning the amendment of Article 4 of the Paris Convention, relating to inventors' certificates. It will work on the basis of document S/2.

Main Committee IV will consider the proposals concerning the revision of the administrative provisions and the final clauses of the existing Conventions and Agreements, and related matters. It will work on the basis of documents S/3, S/4, S/5, S/6, S/7, S/8, S/9, S/11, and S/12.

Main Committee V will consider the proposals concerning the establishment of IPO. It will work on the basis of document S/10.

Any State which has the right to vote in a Plenary will be an ex-officio voting member of the Main Committee which prepares the work of such Plenary.

There will also be drafting committees and working groups, according to the requirements of the work as it develops.

Rules of Procedure. The Rules of Procedure will be adopted by the Conference. A draft will be proposed by the Government of Sweden and communicated by BIRPI to the invited Governments several weeks before the opening of the Conference.

S/INF/2 [*Editor's Note:* This document contained a list of States and international organizations invited to the Conference as well as a list of members of the Unions. It has not been reproduced. The list of States and international organizations and the list of members of the Unions can be found in this Volume.]

S/INF/3 [*Editor's Note:* This document contained a list of the documents of the Conference published as of April 30, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/4 [*Editor's Note:* This document contained the program for June 12, 1967. It has not been reproduced. The minutes for that day reflect what took place.]

S/INF/5 [*Editor's Note:* This document contained a working schedule for Main Committee I. It has not been reproduced. The minutes reflect the order in which the Articles of the Berne Convention were considered.]

S/INF/6 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 15, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/7 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 16, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/8 SECRETARIAT. All Unions. *The following notice regarding the closing of conference services on June 23, 24, and 25 is given:* Owing to the midsummer holiday, there will be no meeting on the afternoon of Friday, June 23. No services will be operating on Friday afternoon, or on Saturday and Sunday. Delegations that may have proposals or amendments to submit for discussion as from Monday, June 26, are therefore asked to hand them to the Secretaries of the Main Committees concerned not later than 5 p.m. on Thursday, June 22.

S/INF/9 SECRETARIAT. All Unions. *The following notice concerning a new issue of the list of participants is given:* To enable the final list of participants to be prepared, delegations and observers are asked to send in to the Office of the Secretary General of the Conference (Office No. 203), if they have not already done so, those pages of document S/MISC/4 which concern them, with full particulars of the corrections, additions or deletions to be made, not later than 6 p.m. on Wednesday, June 21.

S/INF/10 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 19, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/11 [*Editor's Note:* This number was not used.]

S/INF/12 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 20, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/13 SECRETARIAT. WIPO Convention. *The following notice is given:* The Working Group of Main Committee V on Article 4 of the IPO Convention will be reconvened on June 22, 1967, at 2:30 p.m. in Room 405.

S/INF/14 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 21, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/15 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 22, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/16 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 23, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/17 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 26, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/18 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 27, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/19 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 28, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/20 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 29, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/21 [*Editor's Note:* This document contained a list of the documents of the Conference published as of June 30, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/22 [*Editor's Note:* This document contained a list of the documents of the Conference published as of July 3, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/23 [*Editor's Note:* This document contained a list of the documents of the Conference published as of July 4, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/24 [*Editor's Note:* This document contained a list of the documents of the Conference published as of July 5, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/25 [*Editor's Note:* This document contained a list of the documents of the Conference published as of July 6, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/26 [*Editor's Note:* This document contained the program for July 11 and 12, 1967. It has not been reproduced. The minutes for that day reflect what took place.]

S/INF/27 SECRETARIAT. All Unions. *The following program for Friday, July 14, 1967, is given:* 10 a.m. in Chamber II of the Riksdagshuset—Plenary of the Conference: Closing Meeting. 3 p.m. at the Royal Ministry for Foreign Affairs, Gustaf Adolfs Torg: Signature of Texts.

S/INF/28 [*Editor's Note:* This document contained a list of the documents of the Conference published as of July 10, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/29 [*Editor's Note:* This document contained a list of the documents of the Conference published as of July 11, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/30 [*Editor's Note:* This document contained a list of the documents of the Conference published as of July 13, 1967. It has not been reproduced. The full list of documents can be found in this Volume.]

S/INF/31 SECRETARIAT. All Unions. *The following press release was issued on July 14, 1967:*

Introduction. The Intellectual Property Conference of Stockholm ended its five-week session today (July 14, 1967).

Over four hundred delegates representing 74 States participated.

The Conference established a new intergovernmental agency, the "World Intellectual Property Organization," and revised the 84-year old Paris Convention on the protection of patents, trademarks and other forms of industrial property, and the 81-year old Berne Convention on the protection of copyright.

The Conference was organized by the Swedish Government and the United International Bureaux for the Protection of Intellectual Property (BIRPI) with headquarters at Geneva.

II

General. The Conference was opened on June 11 by Mr. Herman Kling, Minister of Justice of Sweden, and Professor G. H. C. Bodenhausen, Director of BIRPI.

"Intellectual property" includes industrial property, that is, in particular, property in patents for inventions, trademarks and service marks, and industrial designs. Further, it includes copyright property, particularly in writings, music, motion pictures, photographs. It also covers certain proprietary rights of performing artists, broadcasting organizations, and phonograph record manufacturers.

The 74 countries included the United States, the Soviet Union, practically all the European countries, the major Latin American countries and Canada, and a score of African and Asian countries, including India and Japan.

Dr. Arpad Bogsch, Deputy Director of BIRPI, was the Secretary General of the Conference. Mr. Masouyé was the Assistant Secretary General.

Mr. Torwald Hesser, member of the Supreme Court of Sweden, was First Vice-President. The Main Committees were presided over by Professor Ulmer (Federal Republic of Germany), Minister S. Singh (India), Mr. D. Marinete (Rumania), Mr. F. Savignon (France), and Mr. Eugene Braderman (United States).

III

Patents. The Paris (Industrial Property) Convention was revised to give to so-called inventors' certificates the same effect, for certain purposes, as patents have. Inventors' certificates are widely used in the Soviet Union and some other Socialist countries as an alternative form of protection for inventors.

IV

Copyright. The Berne Copyright Convention, the oldest multilateral copyright treaty, first adopted in 1886, has been extensively revised at the Stockholm Conference. This latest text of the Berne Convention guarantees to authors a number of significant new rights which must hereafter be accorded by the national legislation of each of the Berne Union member countries which ratify the Stockholm text.

For the first time authors are expressly granted the exclusive right to authorize reproductions of their works. Also, an author's moral rights must now be protected for the full term of copyright. The rights of authors of works of architecture and other artistic works incorporated in a building are now accorded express recognition. In another significant extension of the scope of authors' rights, it is now provided that an author who is a national of a Berne Union country is guaranteed protection for his works throughout the Berne Union even if the work is first published in a non-Union country.

The Stockholm revision also includes a number of significant provisions relating to the protection of cinematographic works. The term of copyright protection for such works must now be not less than 50 years after having been made available to the public. In order to promote the international utilization of films, it is further provided that under certain circumstances the maker of a cinematographic work will be assured the right to exploit the work in the absence of a contrary stipulation by persons contributing to the work.

One new provision adopted at the Stockholm Conference is of particular interest to the United States, which up to now has not joined the Berne Union. It is provided that hereafter each Berne Union member may determine whether or not under its national law copyright protection will be limited to works which are fixed in some material form. This provision is of importance in enabling the United States to join the Berne Union in view of the US constitutional requirement that copyright must be limited to works which are fixed in some material form.

A great deal of time was devoted at the Stockholm Conference to the copyright needs of developing countries. In the extensive debates on this question it was generally recognized that the educational and cultural advancement of the developing countries requires the application of special provisions for their particular needs. The result has been the adoption of a special Protocol Regarding Developing Countries. Under this Protocol, certain countries whose economic situation and social or cultural needs so require may, under stated conditions, impose compulsory licenses for the translation of works, and for the reproduction of works for educational or cultural purposes. Such countries may further restrict copyright protection if the purpose is exclusively for educational teaching, study or research, provided the author receives compensation according to established national standards.

An additional new provision of the Stockholm text which will be of particular importance to developing countries, but which will have general application, relates to works of folklore. It is now recognized that unpublished works of which the identity of the author is unknown may be protected by a competent authority designated by the legislation of the country of which the author may be presumed to be a national.

V

The New Organization. The new Organization is a modernized continuation of BIRPI. It will be under the direct supervision of the Member States. It will provide the administration of the Paris and Berne Conventions and other international treaties in the intellectual property field.

One of its main aims will be to give technical assistance to developing countries. In this, and it its general structure, it resembles the Specialized Agencies of the United Nations.

S/INF/32 [*Editor's Note:* This document contained a list of the States that affixed their signatures to the instruments signed on July 14, 1967. It has not been reproduced. The list of signatures can be found with the signed instruments in Volume II.]

CONFERENCE DOCUMENTS OF THE MISCELLANEOUS ("MISC") SERIES

(S/MISC/1 to S/MISC/21)

LIST OF DOCUMENTS

No.	*Submitted by*	*Distribution*	*Subject*
1	Sweden	General	Draft Rules of Procedure
1/Rev.	Secretariat	General	Rules of Procedure.
2	Secretariat	General	Opening speech by Mr. H. Kling, Swedish Minister of Justice.
3	Secretariat	General	Address by Prof. G. H. C. Bodenhausen, Director of BIRPI.
4	Secretariat	General	Provisional list of participants (not available).
5	Secretariat	IV	Officers of Main Committee IV.
6	Secretariat	V	Officers of Main Committee V.
6/Rev.	Secretariat	V	Officers of Main Committee V.
7	Secretariat	General	Officers of the Conference.
8	Secretariat	General	Officers of the Plenaries.
8/Rev.	Secretariat	General	Officers of the Plenaries (revised).
9	Secretariat	General	Members of the Credentials Committee.
10	Secretariat	III	Officers of Main Committee III.
11	Secretariat	I	Officers of Main Committee I.
12	Secretariat	III	Members of Drafting Committee III.
13	Secretariat	I	Members of Drafting Committee I.
14	Secretariat	II	Officers of Main Committee II.
15*	—	—	—
16	Secretariat	I	Composition of Working Groups I.
16/Corr.	Secretariat	I	Composition of Working Groups I.
17	Secretariat	I	Composition of Working Groups I (supplement to S/MISC/16 Corr.).
18	Secretariat	II	Composition of Working Groups II.
19	Secretariat	General	List of participants (2nd edition).
20	Secretariat	Spanish Drafting Committee	Notice of meeting of the Spanish Drafting Committee (WIPO). **
21	Secretariat	II	Members of Drafting Committee II.

* This number was not used.

** This document does not exist in English.

TEXT OF DOCUMENTS S/MISC/1 TO 21

S/MISC/1 [*Editor's Note:* This document as prepared by the Government of Sweden contains the Draft Rules of Procedure. This document was replaced by S/MISC/1/Rev. In the following, only the differences between the English text of the Draft Rules of Procedure and the English final text (S/MISC/1/Rev.) are included. The use of the past tense refers to document S/MISC/1.]

in the Contents, Rule 33, the title was: Amendments and Other Proposals; *rather than:* Amendments.

in Rule 4, the words following "shall consist of" were: accredited delegates; *rather than:* delegates.

in Rule 6, the first sentence was: The credentials of delegates and the names of alternate delegates and advisors shall be communicated to the Secretary General of the Conference if possible not later than twenty-four hours after the opening of the Conference.

in Rule 9, the text was: The Credentials Committee shall consist of eight members, each of the Plenaries referred to in Rule 3 appointing one member.

in Rule 14(1), the words following "shall consist of" were: the First Vice-President of the Conference and; *rather than:* the President of the Conference, the First Vice-President of the Conference and.

in Rule 15(1), the words following "a First President and" were: 17 Vice-Presidents; *rather than:* 19 Vice-Presidents.

in Rule 15(4), the words following "presided over by" were: the First Vice-President; *rather than:* the President or the First Vice-President.

in Rule 29, the second sentence was: Permission to speak on the motion for closure of the debate shall be accorded only to one speaker seconding and two speakers opposing the motion, after which, the motion shall immediately be put to the vote.

in Rule 33, the title was: Amendments and Other Proposals; *rather than:* Amendments.

S/MISC/1/Rev. SECRETARIAT. All unions. *The following Rules of Procedure were proposed and adopted on June 12, 1967:*

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Rule 2: Competence of the Plenary of the Conference
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Chapter VIII: Languages and Summary Records
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Rule 47: Summary Records
Rule 48: Languages of Documents and Summary Records

Chapter IX: Open and Closed Meetings
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Chapter I: Objectives and Competence

Rule 1: Objectives. The Intellectual Property Conference of Stockholm, 1967, has been convened for the following purposes: (a) the revision of the International Convention for the Protection of Literary and Artistic Works, signed at Berne in 1886 and last revised at Brussels in 1948 (Berne Convention), as regards the substantive rules of that Convention; (b) the revision of the International Convention for the Protection of Industrial Property, signed at Paris in 1883 and last revised at Lisbon in 1958 (Paris Convention), as regards the introduction into that Convention of provisions on inventors' certificates; (c) the revision of the administrative provisions and the final clauses of the Berne and Paris Conventions, and of the Madrid TM (Trademarks) Agreement of 1891, the Madrid FIS (False or Deceptive Indications of Source) Agreement of 1891, the Hague Agreement of 1925, the Nice Agreement of 1957, and the Lisbon Agreement of 1958; (d) the adoption of a new Convention establishing an International Intellectual Property Organization (hereinafter referred to as "IPO").

Rule 2: Competence of the Plenary of the Conference (1) Delegations of all States invited to the Conference constitute the Plenary of the Conference. (2) The Plenary of the Conference shall meet for the opening and for the closing of the Conference. The Plenary of the Conference shall elect its own officers. (3) Instruments adopted during the Conference in accordance with Rule 3 shall be signed at the close of the Conference.

Rule 3: Competence of the Other Plenaries. (1) Any revision of the Berne Convention, including adoption of any transitional measure concerning the Berne Union and of any decision concerning the ceiling of contributions in that Union, shall be effected by the Delegations of the States members of the Berne Union meeting in plenary session (hereinafter referred to as "the Plenary of the Berne Union"). (2) Any revision of the Paris Convention, including adoption of any transitional measure concerning the Paris Union and of any decision concerning the ceiling of contributions in that Union, shall be effected by the Delegations of the States members of the Paris Union meeting in plenary session (hereinafter referred to as "the Plenary of the Paris Union"). (3) Any revision of any of the Special Agreements referred to in Rule 1(c) shall be adopted by the Delegations of the States parties to the Agreement concerned meeting in plenary sessions (hereinafter referred to as "the Plenaries of the Madrid TM Union, the Madrid FIS Agreement, the Hague Union, the Nice Union, and the Lisbon Union," respectively). (4) The Delegation of any State invited to the Conference may participate in the adoption of the Convention establishing IPO. The interested Delegations, meeting for this purpose, shall constitute the IPO Plenary. (5) The Plenaries referred to in the preceding paragraphs shall each elect its own officers. (6) Coordination of the meetings of the various Plenaries, including the organization of any joint meetings of Plenaries shall be decided by the *Bureau* of the Conference (see Rule 13).

Chapter II: Representation and Credentials

Rule 4: Composition of Delegations. The Delegation of each State participating in the Conference shall consist of delegates and such alternate delegates and advisors as may be required.

Rule 5: Alternates and Advisors. An alternate delegate or an advisor may act as a delegate upon designation by the Chairman of the Delegation.

Rule 6: Submission of Credentials. The credentials of the Chairmen of the Delegations and the names of other delegates, alternate delegates, and advisors shall be communicated to the Secretary General of the Conference if possible not later than twenty-four hours after the opening of the Conference. Credentials shall be issued either by the Head of the State or Government, or by the Minister for Foreign Affairs.

Rule 7: Provisional Participation in the Conference. Pending a decision upon their credentials, delegations shall be entitled to participate provisionally in the Conference.

Rule 8: Decision on Credentials. (1) The Credentials Committee (see Rule 9) shall draw up separate reports for each Plenary. (2) Final decision on credentials shall be within the competence of each Plenary.

Chapter III: Committees and Working Groups

Rule 9: Credentials Committee. The Credentials Committee shall consist of 12 members, each of the Berne and Paris Plenaries appointing two members, each of the other Plenaries referred to in Rule 3 appointing one member, and each of the Delegations of Switzerland and Sweden having an ex officio seat.

Rule 10: Main Committees. (1) Proposals concerning all matters dealt with in documents S/1 to S/12 shall be considered by one of the following Main Committees: (i) *Main Committee I* shall consider the proposals for the revision of the substantive provisions of the Berne Convention, except for the establishment of a protocol regarding developing countries. (ii) *Main Committee II* shall consider the proposals for the establishment of a protocol to the Berne Convention regarding developing countries. (iii) *Main Committee III* shall consider the proposals concerning the revision of the Paris Convention, as described in Rule 1(b). (iv) *Main Committee IV* shall consider the proposals concerning the matters described in Rule 1(c), including the adoption of possible transitional measures and decisions concerning the ceilings of contributions. (v) *Main Committee V* shall consider the proposals described in Rule 1(d). (2) Each Main Committee shall establish draft texts which it will submit to the competent Plenaries. (3) Members of the Main Committees shall be the Delegations specified hereafter: Main Committees I and II: the Delegations to the Plenary of the Berne Union; Main Committee III: the Delegations to the Plenary of the Paris Union; Main Committee IV: the Delegations to the Plenaries of the Conventions and Agreements referred to in Rule 1(c); Main Committee V: the Delegations to the IPO Plenary.

Rule 11: Working Groups. Each Main Committee may establish such Working Groups as it deems desirable.

Rule 12: Drafting Committees. (1) Each Main Committee shall elect, from among its members, a Drafting Committee. (2) Each Drafting Committee shall appoint one or two of its members to sit on a General Drafting Committee, which shall coordinate the texts established by the Main Committees.

Rule 13: "Bureau" of the Conference. The *Bureau* of the Conference shall consist of the President, the First Vice-President, and the other Vice-Presidents of the Conference, and the Presidents of the Plenaries.

Rule 14: Coordination Committee. (1) The Coordination Committee shall consist of the President of the Conference, the First Vice-President of the Conference and the Chairmen of the Main Committees, of the Credentials Committee, and of the General Drafting Committee. (2) The Coordination Committee shall meet from time to time to review the progress of the Conference and to make recommendations for furthering such progress. (3) Coordination of the meetings of all bodies other than the Plenaries, including the organization of any joint meeting, shall be decided by the Coordination Committee.

Chapter IV: Officers

Rule 15: Officers. (1) The Plenary of the Conference shall, in its first meeting, elect a President, a First Vice-President, and 19 Vice-Presidents of the Conference. (2) Each of the Plenaries referred to in Rule 3 shall, in its first meeting, elect a President and a Vice-President. (3) The Plenary of the Berne Union shall elect the Chairman, Vice-Chairman and Rapporteur of Main Committee I and the Chairman, Vice-Chairman and Rapporteur of Main Committee II; the Plenary of the Paris Union shall elect the Chairman, Vice-Chairman and Rapporteur of Main Committee III; a joint Plenary of the delegations of the States parties to any of the Conventions and Agreements referred to in Rule 1(c) shall elect the Chairman, Vice-Chairman and Rapporteur of Main

Committee IV; the IPO Plenary shall elect the Chairman, Vice-Chairman and Rapporteur of Main Committee V. (4) The *Bureau* and the Coordination Committee shall be presided over by the President or the First Vice-President of the Conference. (5) The Credentials Committee, the General Drafting Committee, as well as each Drafting Committee and Working Group, shall elect its Chairman and Vice-Chairman from among its members. (6) Until the election of the officers, the President or the First Vice-President of the Conference shall preside over the Plenaries referred to in Rule 3.

Rule 16: Acting President or Chairman. (1) If the First Vice-President of the Conference is absent from a meeting over which he should preside, the Vice-President appointed by him shall take his place as Acting President. (2) If a President or a Chairman of another body is absent from a meeting of that body, the Vice-President or Vice-Chairman, or in the latter's absence another member of that body appointed by the President or the Chairman, shall take his place as Acting President or Acting Chairman.

Rule 17: Replacement of Officers. If a President, Chairman, or Rapporteur, is unable to perform his functions, a new President, Chairman, or Rapporteur, shall be elected.

Rule 18: Presidents and Chairmen Not Entitled to Vote. No President or Chairman or Acting President or Acting Chairman shall vote, but he may designate another member of his Delegation to vote in his place.

Chapter V: Secretariat

Rule 19: The Secretary General and the Secretaries. (1) The Director of BIRPI shall, from among the staff of BIRPI, designate the Secretary General of the Conference, an Assistant Secretary General, and a Secretary for each of the Plenaries, Committees, and Working Groups. (2) The Secretary General shall, in cooperation with a liaison officer appointed by the Government of Sweden, direct the staff required by the Conference. (3) The Secretariat shall provide for the receiving, translation, reproduction, and distribution, of the required documents; the interpretation of oral interventions; the preparation and circulation of the summary records (see Rule 47); and the general performance of all other Conference work required. (4) The Director of BIRPI shall be responsible for the custody and preservation in the archives of BIRPI of all Conference documents; the publication of the corrected summary records after the Conference; and the distribution of the final documents of the Conference to the participating Governments.

Rule 20: Statements by BIRPI. Subject to the applicable provisions of the Berne and Paris Conventions, the Director of BIRPI and the Secretary General, as well as any member of the BIRPI staff designated by the former for that purpose, may make oral or written statements concerning any question under consideration in any body of the Conference.

Chapter VI: Conduct of Business

Rule 21: Quorum. (1) A quorum shall be required in all Plenaries and shall be constituted by a majority of the delegations in the body concerned. (2) A quorum shall not be required in the other bodies.

Rule 22: General Powers of the Presidents and Chairmen. In addition to exercising the powers conferred upon them elsewhere by these Rules, the Presidents and Chairmen 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. They shall rule on points of order and, subject to these Rules of Procedure, shall have complete control of the proceedings and over the maintenance of order thereat. The Presidents or Chairmen may propose the limitation of time to be allowed to speakers, the limitation of the number of times each delegation may speak on any question, the closing of the list of speakers, or the closing of the debate. They may also propose the suspension or the adjournment of the debate on the question under discussion.

Rule 23: Speeches. No person may speak without having previously obtained the permission of the President or Chairman. Subject to Rules 24 and 25, the President or Chairman shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be responsible for drawing up a list of such speakers. The President or Chairman may call a speaker to order if his remarks are not relevant to the subject under discussion.

Rule 24: Precedence. The Chairman or Rapporteur of a Committee or Working Group may be accorded precedence for the purpose of explaining the conclusion arrived at by his Committee or Working Group.

Rule 25: Points of Order. During the discussion of any matter, any delegation may rise to a point of order, and the point of order shall be immediately decided by the President or Chairman in accordance with the Rules of Procedure. Any delegation may appeal against the ruling of the President or Chairman. The appeal shall be immediately put to the vote and the President's or Chairman's ruling shall stand unless overruled by a majority of the delegations present and voting. A delegation rising to a point of order may not speak on the substance of the matter under discussion.

Rule 26: Time Limit on Speeches. Any meeting may limit the time to be allowed to each speaker and the number of times each delegation may speak on any question. When the debate is limited and a delegation has used up its allotted time, the President or Chairman shall call it to order without delay.

Rule 27: Closing of List of Speakers. During the discussion of any matter, the President or Chairman may announce the list of speakers and, with the consent of the meeting, declare the list closed. He may, however, accord the right of reply to any delegation if a speech delivered after he has declared the list closed makes this desirable.

Rule 28: Adjournment of Debate. During the discussion of any matter, a delegation may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, one delegation may speak in favor of, and two against, the motion, after which the motion shall immediately be put to the vote. The President or Chairman may limit the time to be allowed to speakers under this rule.

Rule 29: Closure of Debate. A delegation may at any time move the closure of the debate on the question under discussion, whether or not any other delegation has signified its wish to speak. Permission to speak on the motion for closure of the debate shall be accorded only to one delegation seconding and two delegations opposing the motion, after which the motion shall immediately be put to the vote. If the session is in favor of closure, the President or Chairman shall declare the debate closed. The President or Chairman may limit the time to be allowed to delegations under this rule.

Rule 30: Suspension or Adjournment of the Meeting. During the discussion of any matter, a 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. The President or Chairman may limit the time to be allowed to the speaker moving the suspension or adjournment.

Rule 31: Order of Procedural Motions. Subject to Rule 25, the following motions shall have precedence in the following order over all other proposals or motions before the meetings: (a) to suspend the meeting, (b) to adjourn the meeting, (c) to adjourn the debate on the question under discussion, (d) to close the debate on the question under discussion.

Rule 32: Basis of Discussions. (1) As regards the purposes of the Conference referred to in Rule 1(a) and (b), the proposals contained in documents S/1 and S/2, prepared prior to the Conference by the Government of Sweden with the assistance of BIRPI, and communicated to the invited Governments by BIRPI, shall constitute the basic proposals for discussion. (2) As regards the purposes of the Conference referred to in Rule 1(c) and (d), the proposals contained in documents S/3 to S/11 and their corrigenda, prepared prior to the Conference by BIRPI at the request of the Government of Sweden, and document S/12, prepared prior to the Conference by BIRPI, and communicated to the invited Govern-

ments by BIRPI, shall constitute the basic proposals for discussion.

Rule 33: Amendments. Proposals for amending the proposals referred to in Rule 32 shall, as a rule, be submitted in writing and handed to the Secretary General of the Conference or the person designated by him. The Secretariat shall distribute copies to the delegations represented on the body concerned. As a general rule, no proposal shall be discussed or put to the vote in any meeting unless copies of it have been made available to the delegations concerned not later than the day before the meeting. The President or Chairman may, however, permit the discussion and consideration of proposals even though copies have not been distributed, or have been made available only on the day they are considered.

Rule 34: Withdrawal of Motions. A motion may be withdrawn by the delegation which has proposed it at any time before voting on it has commenced, provided that the motion has not been amended. A motion thus withdrawn may be reintroduced by any delegation.

Rule 35: Reconsideration of Proposals Adopted or Rejected. When a proposal has been adopted or rejected, it may not be reconsidered unless so decided by a two-thirds majority of the delegations present and voting. Permission to speak on the motion to reconsider shall be accorded only to one speaker seconding and two speakers opposing the motion, after which it shall immediately be put to the vote.

Chapter VII: Voting

Rule 36: Voting Rights. Each State represented shall have one vote in each of the bodies of which it is a member. A delegation may represent and vote for its own Government only.

Rule 37: Required Majorities. (1) Adoption of any revision or new instrument (Protocol or Additional Act) concerning the Berne, Paris, Madrid TM, Madrid FIS, Hague, Nice, and Lisbon, Conventions and Agreements, respectively, shall require that no State party to the Convention or Agreement vote against the adoption of the revision or of the new instrument in the final vote of the competent plenary meeting. (2) Adoption of the IPO Convention shall require a majority of two-thirds of the delegations present and voting in the final vote in the IPO Plenary. Such majority must include four-fifths of the members of the Paris Union present and voting and four-fifths of the members of the Berne Union present and voting. (3) Decisions on the matters referred to in paragraphs (1) and (2) prior to the final votes referred to in those paragraphs, as well as on any other matters, shall, subject to Rule 35, require a majority of the delegations present and voting.

Rule 38: Meaning of the Expression "Delegations Present and Voting." For the purpose of these rules, the expression "delegations present and voting" means delegations present and casting an affirmative or negative vote. Delegations which abstain from voting shall be considered as not voting.

Rule 39: Method of Voting. (1) Voting shall be by show of hands or by standing, unless any 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 entitled to vote, beginning with the delegation whose name is drawn by lot by the President or Chairman. (2) The preceding paragraph shall also apply to voting for elections, unless in a given case the body concerned decides by a simple majority, at the request of any delegation, that the election be held by secret ballot. (3) Only proposals or amendments proposed by a delegation and seconded by at least one other delegation shall be put to a vote.

Rule 40: Conduct During Voting. After the President or Chairman has announced the beginning of voting, no one shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The President or Chairman may permit delegations to explain their votes, either before or after the voting, except once it is decided that the vote will be by secret ballot. The President or Chairman may limit the time to be allowed for such explanations.

Rule 41: Division of Proposals and Amendments. Any delegation may move that parts of a proposal, or of any amendment thereto, be voted upon separately. If objection is made to the request for division, the motion for division shall be put to a vote. Permission to speak on the motion for division shall be given only to one speaker in favor and two speakers against. If the motion for division is carried, all parts of the proposal, or of the amendment, separately approved shall again be put to the vote, together, as a whole. If all the operative parts of the proposal, or of the amendment, have been rejected, the proposal, or the amendment, shall be considered to have been rejected also as a whole.

Rule 42: Voting on Amendments. When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved, they will be put to a vote in the order in which their substance is removed from the proposal, the furthest removed being put to a vote first and the least removed put to a vote last. If, however, the adoption of any amendment necessarily implies the rejection of any other amendment or of the original proposal, such amendment and proposal shall not be put to a vote. If one or more amendments are adopted, the proposal as amended shall be put to a vote. A motion is considered an amendment to a proposal even if it merely adds to, deletes from, or revises part of, that proposal.

Rule 43: Voting on Proposals. If two or more proposals relate to the same question, the body concerned shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Rule 44: Elections on the Basis of Proposals Made by the Host Government. The delegation of the host Government may propose a list of candidates for all positions to which election is to be voted upon by Plenaries.

Rule 45: Equally Divided Votes. If a vote is equally divided on matters other than elections, the proposal or amendment shall be regarded as rejected.

Chapter VIII: Languages and Summary Records

Rule 46: Languages of Oral Interventions. (1) In deliberations concerning the Paris Convention and the IPO Convention in the competent Plenaries and Main Committees, oral interventions shall be in either English, French, Russian, or Spanish, and interpretation shall be provided for by the Secretariat in the other three languages. (2) In all other cases, oral interventions shall be in either English or French, and interpretation shall be provided for by the Secretariat in the other language.

Rule 47: Summary Records. (1) Summary records shall be drawn up by the Secretariat of all plenary meetings and of the meetings of the Main Committees. (2) Provisional summary records shall be made available as soon as possible to all participants, who shall inform the Secretariat within five days of any suggestions for changes in the summary of their own interventions. In the case of provisional summary records made available during or after the last five days of the Conference, such suggestions shall be communicated to BIRPI within two months from the making available of the provisional summary records.

Rule 48: Languages of Documents and Summary Records. (1)(a) Any delegation may file its proposals and amendments in English or French or, if they relate to the Paris Convention or the IPO Convention, in Russian and Spanish as well. (b) The Secretariat shall distribute such proposals and amendments in English and French and, if filed in Russian or Spanish, also in the language in which it has been filed. (2) Observers may file their observations in English or French or both. The Secretariat shall, whenever possible, distribute such observations in the language or languages in which they were filed. (3) Subject to paragraph (4), all other documents shall be distributed in English and French. (4)(a) Provisional summary records shall be drawn up in the language used by the speaker if the speaker used English or French; if the speaker used Russian or Spanish, his intervention shall be summarized in English or French. (b) The summary records shall be made available in English and French.

Chapter IX: Open and Closed Meetings

Rule 49: Plenary Meetings and Meetings of the Main Committees. All plenary meetings and all meetings of the Main Committees shall be open to the public unless the body concerned decides otherwise.

Rule 50: Meetings of Other Committees and of Working Groups. Meetings of other committees and of working groups shall be closed to the public.

Chapter X: Observers

Rule 51: Observers. (1) The delegation of a State invited to the Conference not being party to a particular Convention or Agreement referred to in Rule 3(1) to (3) may, upon invitation of the presiding officer, make oral statements in the Plenaries and Main Committees on the revision of such Convention or Agreement. It shall not have the right to vote. (2) Representatives of international intergovernmental organizations invited to the Conference may, upon invitation of the presiding officer, make oral statements in the Plenaries referred to in Rule 3 and in the Main Committees. (3) Representatives of international non-governmental organizations invited to the Conference may, upon invitation of the presiding officer, make oral statements in the Main Committees.

[End of Document S/MISC/1/Rev.]

S/MISC/2 MINISTER OF JUSTICE (SWEDEN). All Unions. *The following speech and address of welcome was delivered by the Swedish Minister of Justice, Mr. H. Kling, on June 11, 1967:*

Excellencies, Ladies and Gentlemen,

The Swedish Government, which I have the honor to represent on this occasion, extends to you a most hearty welcome to Stockholm and the 1967 Intellectual Property Conference.

It was a great honor to my country when in 1948, at the Brussels Conference for revision of the Berne Convention for the Protection of Literary and Artistic Works, Sweden obtained the privilege of acting as host of the next revision conference. Today we feel equally proud and happy to have this opportunity to serve an important international cause—one of the few international causes which have an unbroken record of peaceful and fertile work in the interest of progress and understanding.

Originally the intention was to limit the work of the Stockholm Conference to a new revision of the Berne Convention. The Programme of the Conference has, however, later been enlarged. It comprises today not only a revision of the substantive provisions of the Berne Convention but also a partial revision of the substantive provisions of the Paris Convention for the Protection of Industrial Property, a general revision of the structural and administrative parts of the Berne and Paris Conventions and of the Agreements concluded under the latter and, finally, in connection with this structural reform, the adoption of a Convention establishing a new International Intellectual Property Organization. Thus, this Conference will be the first of its kind in history to cover practically the entire field of intellectual property.

We are extremely happy to see that so many countries have accepted our invitation. Many of the States here present have not participated in earlier revision conferences. I may particularly mention the Soviet Union as well as a large number of States having gained independence in recent years. A few countries and a great number of international governmental and non-governmental organizations have sent observers to attend the Conference.

Among the many important items of the Conference Programme the revision of the Berne Convention enters into the foreground. Since the last Conference for revision of the Berne Convention was held in Brussels in 1948, the world has changed more rapidly and more deeply than was expected at that time. In the political field, the growth of new nations —some of them in fact much older than the so-called old world—is perhaps the most significant feature. In the domain of culture and technics we are witnessing a development which rapidly brings nations nearer each other, thus creating a more solid basis for a common world civilization. This evolution has entailed a great many new problems also in the field of copyright and it is the task of this Conference to try and solve at least some of these problems. It should in this context be borne in mind that the Berne Convention assumes an increasing importance not only as an instrument for solving conflicts in the field of copyright on the international level, but also as a kind of model law for Member States which apply the principles of the Convention in their domestic legislation.

At the same time as this evolution I have just referred to has contributed to solve international difficulties and has given us reasons to hope that many new partners will soon join the Berne Union, it has drawn attention to the differences in wealth which still exist between the nations of the world. The Stockholm Conference is expected to take full account of the difficulties which these differences have created in the field of copyright and to find remedies for them in the hope that the future evolution shall in due time make such special measures superfluous.

In some parts of the world new devices have been created for promoting the protection of industrial property. In the light of this development it is generally felt that the Paris Convention should already now undergo a partial revision with a view to enlarging its scope to include the so-called inventors' certificates. Proposals to this effect will accordingly be discussed during this Conference.

The political and economic evolution and the increased intercourse between nations have created an urgent need for strengthening the organizational means by which intellectual property can be promoted on an international level. The present organs of the Berne and Paris Unions have expressed wishes that a machinery be established by which an administrative coordination of the Unions can be achieved. A substantial part of the Conference work will be devoted to the creation of such institutions as will be necessary to meet these demands.

These are the essential points of the Conference Programme that has been presented to you by the Swedish Government. I should like to use this opportunity to express, on behalf of the Swedish Government, our thanks to the prominent international lawyers who in a series of meetings of experts have prepared drafts for various parts of the Programme and who have presented preliminary views of their Governments on the problems involved. I also express our thanks to the United International Bureaux for the Protection of Intellectual Property for their much appreciated and valuable assistance in preparing the Programme.

The Conventions to which we shall devote our efforts in the following weeks were originally signed at a time when those great nations which are entitled to the honor of being their founders were profoundly divided and subsequent revision conferences have taken place in even more troubled periods. Yet, the common aim of defending the interests of intellectual creation united the opponents in common efforts which would have been inconceivable in most other fields. From the superficial observer's point of view our work may seem not to be more than the humble toil of legal technicians in the shadow of those more dramatic events for which the name of history is often reserved. If, however, history be measured in terms of progress we may well assert to be acting on that great scene, and the result of our work can justly claim the same rank as many political treaties which may appear to have a greater bearing upon international development. I wish to recall this tradition in the field of intellectual property not only of "peaceful coexistence", but of what is more: peaceful cooperation.

This state of mind has found several expressions during the many preceding revision conferences, sometimes in the form of *bons-mots*. On this occasion I shall recall only one of them. When the Conference that ultimately resulted in the signature of the original Berne Convention seemed doomed to failure on account of profound disagreement between two important delegations concerning the name to be given to the Convention, the acting President, Mr. Numa Droz, put an end to the strife with the words: "Let us have the *thing*, if we cannot have the *name*." I feel confident that the spirit embodied in these words will reign also at the Stockholm Conference.

Expressing my best wishes for the success of our work I have the honor in the name of the Swedish Government to declare the Stockholm Conference on Intellectual Property opened.

S/MISC/3 DIRECTOR OF BIRPI. All Unions. *The following address was given by the Director of BIRPI on June 11, 1967, at the opening session of the Stockholm Conference:*

Mr. Minister,

I trust that you will allow me to give my address in French so as to maintain the balance between the two working languages of the United International Bureaux, which are also the main working languages of this Conference.

Mr. Minister, Excellencies, Ladies and Gentlemen,

You have told us, Mr. Minister, that if history is to be measured in terms of progress, we may well claim to be acting on its vast stage at this Conference. I am sure that everyone present is fully aware of this. International protection of copyright and industrial property has certainly reached an extremely important stage of its development today, a stage which may be decisive for years to come. We must now assume—and indeed consider it an honor to assume—the responsibility for participating in the establishment of the legal forms of this protection. May the spirit of international cooperation—which has always attended our meetings—lead us once more to the best solutions.

You have also pointed out, Mr. Minister, that this Conference is, in many respects, without precedent. It is true that even for BIRPI, which throughout its long history of more than 80 years has seen quite a number of Diplomatic Conferences, the present Conference poses new problems, but it also provides new satisfactions.

This Conference is without precedent, first because of the circumstances in which it has been prepared. In the past, the proposals submitted to the Diplomatic Conferences of our Unions were drawn up by the host Government, with the assistance of BIRPI, and the other Member States of the Unions had nothing to do with these proposals except to express their opinions in writing and orally, opinions that were sometimes favorable and sometimes not. This time the proposals presented to the Conference have been prepared over a number of years at several meetings of experts of Member States of the Unions, and with the advice of interested international organizations, both intergovernmental and non-governmental. In this way, we have endeavored to provide the Conference with the best possible working conditions and to prepare the final debates at a number of "rehearsals." We are greatly indebted to the Swedish Government for allowing this work to be accomplished.

The new method of preparing for the Conference has not, however, diminished the very important role played by the Swedish Government and its representatives in the preparatory work. It is no secret that the proposals concerning the substantive copyright provisions and the accompanying explanatory commentary are largely their work. But the creative thought and legal insight of the representatives of the Swedish Government have also played a full part in the drafting of the other proposals submitted to the Conference.

Without making an attempt to name all the prominent persons who have participated in this work, I consider it my duty and pleasure to mention here Mr. Hesser, Justice of the Supreme Court, Mr. Kellberg, Head of the Legal Department of the Ministry of Foreign Affairs, Mr. Nordenson, Head of the International Affairs Division of the Ministry of Justice, and Professor Bergström of the University of Uppsala. Despite their many important professional commitments, these men have unhesitatingly devoted hundreds of hours to the preparation of the very substance of this Conference.

The Stockholm Conference is also without precedent from another point of view: its scope. The vast proportions of the Conference are no doubt due partly to the development of Conventions administered by BIRPI to which more than 80 States are now party, but also to the number of international organizations invited to attend. Only a few of these organizations took part in the previous Conferences; today, there are over 40 of them present. It is undoubtedly of the greatest importance that so many States and so many organizations should show their interest in the work to be undertaken here. The number and the eminence of the delegates and observers gathered here today are cause for great satisfaction.

Last, but certainly not least, the Programme of the Stockholm Conference is also without precedent. This Programme includes the revision of seven diplomatic instruments: in fact, of all the Conventions and Agreements administered by BIRPI. It further includes the establishment of an entirely new Convention designed to create the International Intellectual Property Organization and intended to modernize the general framework of international cooperation in the field of industrial property and copyright.

There is no doubt that such a program affects both the duration of the Conference and its cost. As you yourself reminded us, Mr. Minister, this Conference was originally to have been devoted exclusively to the revision of the Berne Convention. When, at my request some four years ago, you agreed to enlarge the program, your Government generously accepted this heavy additional task, which must surely entitle you to the profound gratitude not only of BIRPI but also of all the Member States of the Unions. Such a full Conference program calls, of course, for sacrifices on the part of all Governments participating; it is nevertheless to the advantage of all of us that such closely related questions should be discussed at the same time.

No matter how desirable the enlargement of the program of the Conference, however, we are deeply indebted to the Swedish Government for its generosity in agreeing so readily to accept it.

I might be tempted to dwell on the various items of the Conference agenda, but I shall refrain. Our work is due to begin and from now on only the voices of the Member States must be heard. I should, however, like to add a few words in conclusion.

Intellectual property rights are not separate from other forms of legal, social, and economic activity. Their development has always been associated with these other forms in the past, it still is today, and will continue to be so in the future. Intellectual property must modernize and adapt itself to the changes in living conditions. And how numerous these changes are! One need hardly mention the social transformations, and particularly the spread of culture and the new aspirations towards a higher standard of living; the technological changes, especially in the field of the reproduction and dissemination of literary and artistic works; the advent of new forms of protection of industrial property; changes of a political nature, and especially the newly acquired independence of many countries over the last two decades; and, lastly, the development of the international organizations and their association with the development of the United Nations. Indeed, all this has created new situations to which our Conventions must be adapted if we wish, in protecting intellectual rights, to secure for them wider support and greater respect.

This is, of course, precisely our main objective, and indeed the aim which the industrial property and copyright Unions are striving to achieve. This is the task that the Stockholm Conference has set itself, and it is my fervent hope that, at the end of these five weeks, we shall be able to say that, together, we have accomplished this task to the satisfaction of all concerned.

S/MISC/4 [*Editor's Note:* This document contained a provisional edition of the list of participants (see Vol. I) and has not been reproduced.]

S/MISC/5 SECRETARIAT. All Unions. *The following is a list of the Officers of Main Committee IV:*

Chairman: Mr. F. Savignon (France); *Vice-Chairman:* Mr. A. S. Lule (Uganda); *Rapporteur:* Mr. V. de Sanctis (Italy); *Secretary:* Mr. K. Pfanner (BIRPI).

S/MISC/6 SECRETARIAT. WIPO Convention. *The following is a list of the Officers of Main Committee V:*

Chairman: Mr. Eugene M. Braderman (United States of America); *Vice-Chairman:* Mr. Denis Ekani (Cameroon); *Rapporteur:* Mr. Joseph Voyame (Switzerland); *Secretary:* Mr. Arpad Bogsch (BIRPI).

S/MISC/6/Rev. SECRETARIAT. WIPO Convention. *The following is a revised list of the Officers of Main Committee V:*

Chairman: Mr. Eugene M. Braderman (United States of America); *Vice-Chairman:* Mr. Denis Ekani (Cameroon); *Rapporteur:* Mr. Joseph Voyame (Switzerland); *Secretary:* Mr. Arpad Bogsch (BIRPI); *Deputy Secretary:* Mr. Ivan Morozov (BIRPI).

S/MISC/7 SECRETARIAT. All Unions. *The following is a list of the Officers of the Plenary of the Conference:*

President: Mr. Herman Kling (Sweden); *First Vice-President:* Mr. Torwald Hesser (Sweden); *Vice-Presidents:* Mr. Nadjib Boulbina (Algeria), Mr. Eugene M. Braderman (United States of America), Mr. Joracy Camargo (Brazil), H.E. Tristram Alvise Cippico (Italy), H.E. Akbar Darai (Iran), H.E. Jason Drakoulis (Greece), Mr. Tiburcio S. Evalle (Philippines), Mr. Auguste Gandzadi (Congo (Brazzaville)), Mr. Gordon Grant (United Kingdom), Mr. Paul Gustafsson (Finland), Mr. Abderrahim H'ssaine (Morocco), H.E. Michal Kajzer (Poland), Mr. J. E. Maksarev (Union of Soviet Socialist Republics), Mr. Jean-B. Mbila (Congo-Kinshasa), H.E. Bernard de Menthon (France), Mr. M. K. Mwendwa (Kenya), H.E. Eduardo Tomás Pardo (Argentina), Mr. Sher Singh (India), H.E. Michitoshi Takahashi (Japan).

Secretary General: Mr. Arpad Bogsch (BIRPI); *Assistant Secretary General:* Mr. C. Masouyé (BIRPI).

S/MISC/8 SECRETARIAT. All Unions. *The following is a list of Officers of the Plenaries:*

Plenary of the Conference: See document S/MISC/7.

Plenary of the Berne Union: President: Mr. Gordon Grant (United Kingdom); *Vice-President:* H.E. F. Cogels (Belgium).

Plenary of the Paris Union: President: Mr. J. E. Maksarev (Union of Soviet Socialist Republics); *Vice-President:* Mr. Gottfried Thaler (Austria).

Plenary of the Madrid (Trademarks) Union: President: Mr. József Bényi (Hungary); *Vice-President:* Mr. Adriano de Carvalho (Portugal).

Plenary of the Madrid (Indications of Source) Agreement: President: H.E. Mitchitoshi Takahashi (Japan); *Vice-President:* H.E. Talat Benler (Turkey).

Plenary of the Hague Union: President: H.E. Mostafa Tawfik (United Arab Republic); *Vice-President:* Mr. Jean-Marie Notari (Monaco).

Plenary of the Nice Union: President: Mr. Antonio Fernández Mazarambroz (Spain); *Vice-President:* Mr. Jens Evensen (Norway).

Plenary of the Lisbon Union: President: Mr. Ernesto Rojas y Benvenides (Mexico); *Vice-President:* Mr. Ze'ev Sher (Israel).

"OPI" Plenary: President: Mr. Hans Morf (Switzerland); *Vice-President:* H.E. Jorge Justo Boero-Brian (Uruguay).

Note: Mr. Arpad Bogsch (BIRPI) is the Secretary, and Mr. C. Masouyé (BIRPI) is the Assistant Secretary, of all the Plenaries.

S/MISC/8/Rev. SECRETARIAT. All Unions. *The following is a revision of the list of Officers of the Plenaries:*

Plenary of the Madrid (Indications of Source) Agreement: President: H.E. Mitchitoshi Takahashi (Japan); *Vice-President:* Mr. Ferit Ayiter (Turkey).

S/MISC/9 SECRETARIAT. All Unions. *The following lists the members and the secretariat of the Credentials Committee:*

Bulgaria, France, Ireland, Italy, Japan, Mexico, Netherlands, Union of Soviet Socialist Republics, Sweden (ex officio), Switzerland (ex officio), United States of America, Venezuela. Mr. C. Masouyé (BIRPI) is the Secretary, and Mr. I. Morozov (BIRPI) is the Assistant Secretary, of the Credentials Committee.

S/MISC/10 SECRETARIAT. Paris Convention. *The following is a list of the Officers of Main Committee III:*

Chairman: Mr. Lucian Marinete (Rumania); *Vice-Chairman:* Mr. van Benthem (Netherlands); *Rapporteur:* Mr. A. C. King (Australia); *Secretary:* Mr. Ch-L. Magnin (BIRPI); *Assistant Secretary:* Mr. I. Morozov (BIRPI).

S/MISC/11 SECRETARIAT. Berne Convention. *The following is a list of the Officers of Main Committee I:*

Chairman: Professor Eugen Ulmer (Federal Republic of Germany); *Vice-Chairman:* Mr. Mustapha Fersi (Tunisia); *Rapporteur:* Professor Svante Bergström (Sweden); *Secretary:* Mr. Claude Masouyé (BIRPI).

S/MISC/12 SECRETARIAT. Paris Convention. *The following countries and their representatives were elected by Main Committee III at its session on June 13, 1967, to the Drafting Committee. In addition the representative of the United States of America was elected as Chairman, and the representatives of France and Sweden were appointed to sit on a General Drafting Committee:*

Main Committee III at its session on June 13, 1967, elected a Drafting Committee consisting of the following Member States:

Czechoslovakia (represented by Mr. M. Vsetecka), *France* (represented by Mr. R. Gajac), *Germany (Fed. Rep.)* (represented by Mr. R. Singer), *Italy* (represented by Mr. M. Angel-Pulsinelli), *Netherlands* (represented by Mr. E. A. Van N. Helbach), *Spain* (represented by Mr. J. Deligado y Montero Rios), *Sweden* (represented by Mr. C. Uggla), *Switzerland* (represented by Mr. W. Stamm), *United Kingdom* (represented by Mr. E. Armitage), *United States of America* (represented by Mr. E. Brenner), *Union of Soviet Socialist Republics* (represented by Mr. M. Boguslavski).

At its session on June 13, 1967, the Drafting Committee elected Mr. E. Brenner (United States of America) as its Chairman.

At its session on June 14, 1967, the Drafting Committee appointed two of its members to sit on a General Drafting Committee, namely: Mr. R. Gajac (France), Mr. C. Uggla (Sweden).

S/MISC/13 SECRETARIAT. Berne Convention. *The following is a list of the members of the Drafting Committee of Main Committee I:*

Australia (Mr. L. S. Curtis), *Czechoslovakia* (Mr. Voljtech Strnad), *France* (Mr. Marcel Boutet), *India* (Mr. R. S. Gae), *Mexico* (Mr. Rojas y Benavides), *Netherlands* (Mr. S. Gerbrandy), *Rumania* (Mr. T. Preda), *Senegal* (Mr. O. Goundiam), *Sweden* (Mr. Torwald Hesser), *United Kingdom* (Mr. William Wallace), Chairman.

S/MISC/14 SECRETARIAT. Berne Convention. *The following is a list of the Officers of Main Committee II:*

Chairman: Mr. Sher Singh (India), *Vice-Chairman:* Mr. J. A. W. Paludan (Denmark), *Rapporteur:* Dr. Vojtech Strnad (Czechoslovakia), *Secretary:* Mr. Ch. L. Magnin (BIRPI).

S/MISC/15 [*Editor's Note:* This number was not used.

S/MISC/16 SECRETARIAT. Berne Convention. *The following is a list of the Working Groups of Main Committee I and their composition:*

Working Group on Article 9(2) and Article 10(2): Austria, Czechoslovakia, France Italy (Chairman), Ivory Coast, Japan, Sweden, United Kingdom.

Working Group on the Régime relating to Cinematographic Works: Belgium, Brazil, Bulgaria, Congo (Kinshasa), Czechoslovakia, Denmark, France, Germany (Fed. Rep.) (Chairman), Italy, Japan, Monaco, Spain, Sweden, Switzerland, United Kingdom.

Working Group on Folklore: Congo (Brazzaville), Czechoslovakia (Chairman), France, Greece, India, Ivory Coast, Monaco, Netherlands, Sweden, Tunisia, United Kingdom.

S/MISC/16/Corr. SECRETARIAT. Berne Convention. *The following is a corrected list of the Working Groups of Main Committee I and their composition:*

Working Group on Article 9(2) and Article 10(2): Austria, Czechoslovakia, France, Italy (Chairman), Ivory Coast, Japan, Sweden, United Kingdom.

Working Group on the Régime relating to Cinematographic Works: Belgium, Brazil, Bulgaria, Congo (Kinshasa), Czechoslovakia, Denmark, France, Germany (Fed. Rep.) (Chairman), Italy, Japan, Monaco, Spain, Sweden, Switzerland, United Kingdom.

Working Group on Folklore: Brazil, Congo (Brazzaville), Czechoslovakia (Chairman), France, Greece, India, Ivory Coast, Monaco, Netherlands, Sweden, Tunisia, United Kingdom.

S/MISC/17 SECRETARIAT. Berne Convention. *The following is a supplement to the list of Working Groups of Main Committee I and their composition appearing in document S/MISC/16/Corr:*

Working Group on Article 2bis, *paragraph (2):* Bulgaria, France, Germany (Fed. Rep.), Monaco, Sweden, Switzerland (Chairman).

S/MISC/18 SECRETARIAT. Berne Convention. *The following is a list of the Working Groups of Main Committee II and their composition:*

Working Group on questions of translation and reproduction (Article 1, paragraphs (a) and (e)): Czechoslovakia, France, India, Ivory Coast, Sweden (Chairman), Tunisia, United Kingdom.

Working Group on criterion of beneficiaries (Article 1, Introduction): Brazil, Congo (Kinshasa), Czechoslovakia, France, India, Ireland (Chairman), Italy, Ivory Coast, Senegal, Sweden, Tunisia, United Kingdom.

S/MISC/19 [*Editor's Note:* This document contained a provisional list of participants. It has not been reproduced. The final list of participants appears in Vol. I.]

S/MISC/20 [*Editor's Note:* This document contained a notice of the meeting of the Spanish Drafting Committee for the WIPO Convention and does not exist in the English and French series.]

S/MISC/21 SECRETARIAT. Berne Convention. *The following is a list of members of the Drafting Committee of Main Committee II:*

Brazil (Mr. S. Abi-Sad), Czechoslovakia (Mr. V. Strnad), France (Mr. H. Desbois), India (Mr. T. S. Krishnamurti), Italy (Mr. A. Ciampi), Ivory Coast (Mr. F.-J. Amon D'Aby), Senegal (Mr. O. Goudiam), Sweden (Mr. E. Essen), *Chairman*, Tunisia (Mr. M. Fersi), United Kingdom (Miss G. M. E. White).

DATES AND ORIGINAL LANGUAGES OF THE DOCUMENTS

DOCUMENTS OF THE MAIN ("S") SERIES

The dates are those appearing on the documents.
"E" denotes that the original of the document is English, "F" that it is French, "S" that it is Spanish.

1966 [1]

S/1	May 15 (F)
S/2	April 15 (E)
S/3	September 16 (E)
S/3 corr. 1	January 13, 1967 (E)
S/3 corr. 2	April 30, 1967 (F)
S/4	November 22 (E)
S/4 corr. 1	January 13, 1967 (E)
S/5	November 22 (E)
S/6	December 13 (F)
S/7	December 13 (E)
S/7 corr. 1	January 13, 1967 (E)
S/8	December 13 (E)
S/8 corr. 1	January 13, 1967 (E)
S/9	September 16 (E)
S/9 corr. 1	January 13, 1967 (E)
S/9 corr. 2	March 20, 1967 (F)
S/9 corr. 3	April 30, 1967 (F)
S/10	September 16 (E)
S/10 corr. 1	April 30, 1967 (F)

1967 [1]

S/11	January 10 (E)
S/12	January 20 (E)

S/13
January (E and F):
Austria, Federal Ministry of Foreign Affairs, November 14, 1966 (F)
Belgium, Ministry for Foreign Affairs and External Trade, December 30, 1966 (F)
Czechoslovakia, Permanent Mission to the Office of the United Nations at Geneva, November 18, 1966 (F)
Denmark, Ministry of Cu tural Affairs, December, 1966 (E)
France, Ministry of Foreign Affairs, December 1, 1966 (F)
Germany (Federal Republic), Permanent Delegation to the International Institutions at Geneva, November 21, 1966 (F)
Ireland, Office of the Minister for External Affairs, November 22, 1966 (E)
Israel, Permanent Mission to the Office of the United Nations and the International Organizations at Geneva, November 15, 1966 (E)
Italy, Ministry for Foreign Affairs, December 5 and 14, 1966 (F)
Japan, Permanent Delegation to the International Organizations, December 6, 1966 (E)
Madagascar, Ministry of Foreign Affairs, September 5, 1966 (F)
Portugal, Ministry of National Education, November 29, 1966 (F)
South Africa, Permanent Mission at Geneva, November 15, 1966 (E)
United Kingdom, Mission, Geneva, November 28, 1966 (E)

S/14
April 30 (E and F):
Czechoslovakia, Permanent Mission to the Office of the United Nations at Geneva, November 28, 1966 (F)
France, Ministry of Foreign Affairs, December 23, 1966 (F)
Ireland, Ministry for External Affairs, November 22, 1966 (E)
Israel, Permanent Mission to the Office of the United Nations and the International Organizations at Geneva, November 8, 1966 (E)
Italy, Delegation to the Agreements on Intellectual Property, April 11, 1967 (F)
Japan, Permanent Delegation, Geneva, November 9, 1966 (E)
Kenya, Ministry of Foreign Affairs, July 1, 1966 (E)
Luxembourg, Ministry for Foreign Affairs, February 10, 1967 (F)
United Kingdom, Foreign Office, October 31, 1966 (E)
United States of America, Mission to International Organizations, March 23, 1967 (E)

S/15
April 30 (E and F)
Czechoslovakia, Permanent Mission to the Office of the United Nations at Geneva, February 15, 1967 (F)
Finland, Ministry for Foreign Affairs, February 13, 1967 (E)
France, Ministry for Foreign Affairs, February 6, 1967 (F)
Germany (Federal Republic), Permanent Delegation to the International Institutions at Geneva, March 7, 1967 (E)
Ireland, Office of the Minister for External Affairs, February 6, 1967 (E)
Israel, Permanent Mission to the Office of the United Nations and the International Organizations at Geneva, February 16 and April 18, 1967 (E)
Italy, Delegation to the Agreements on Intellectual Property, March 11, February 27 and April 11, 1967 (F)
Japan, Permanent Delegation to the International Organizations, February 22, 1967 (E)
Luxembourg, Ministry for Foreign Affairs, February 10, February 13, 1967 (F)
OAMPI and the twelve States members of OAMPI, OAMPI, March 8, 1967 (F)
South Africa, Permanent Mission at Geneva, January 30, 1967 (E)
United Kingdom, Secretary of State for Foreign Affairs, February 27, 1967 (E)
United States of America, Mission to International Organizations, March 23, 1967 (E)
Western Samoa, New Zealand Permanent Mission, Geneva, January 30, 1967 (E)
Spain, Ministry of Commerce, Industrial Property Registration Office, March 11, 1967 (S)
Switzerland, Federal Bureau of Intellectual Property, April 17, 1967 (F)

S/16
March 23 (E)

S/17
April (E and F):
Bulgaria, Permanent Delegation to the European Office of the United Nations and the International Organizations, January 13, 1967 (F)
Luxembourg, Ministry for Foreign Affairs, January 31, February 13, 1967 (F)
Switzerland, Federal Bureau of Intellectual Property, March 16, 1967 (F)
Turkey, Permanent Delegation to the United Nations Office at Geneva, January 26, 1967 (E)

S/18	April (F)
S/19	June 12 (F)
S/20	June 12 (E)
S/21	June 12 (F)
S/22	June 12 (E)
S/23	June 12 (E)
S/24	June 12 (F)
S/25	June 12 (F)
S/26	June 12 (F)
S/27	June 12 (F)
S/28	June 12 (F)

[1] Unless otherwise indicated below.

S/29	June 13 (F)
S/30	June 13 (F)
S/31	June 13 (F)
S/31/Rev.	June 13 (F)
S/32	June 13 (E)
S/33	June 13 (F)
S/34	June 13 (F)
S/35	June 13 (E)
S/36	June 13 (E)
S/37	June 13 (F)
S/38	June 13 (E)
S/39	June 13 (E and F)
S/40	June 13 (E)
S/41	June 13 (E)
S/42	June 13 (E)
S/43	June 13 (F)
S/44	June 13 (E and F)
S/45	June 13 (F)
S/46	June 13 (F)
S/47	June 13 (E)
S/48	June 13 (E)
S/49	June 13 (F)
S/50	June 13 (F)
S/51	June 13 (F)
S/52	June 13 (E)
S/53	June 13 (E and F)
S/54	June 13 (F)
S/55	June 13 (F)
S/56	June 13 (F)
S/57	(this number was not used)
S/58	June 13 (F)
S/59	June 14 (E)
S/60	June 14 (E and F)
S/61	June 14 (E)
S/62	June 14 (E and F)
S/63	June 14 (F)
S/64	June 14 (F)
S/65	June 14 (F)
S/66	June 14 (E and F)
S/67	June 14 (F)
S/68	June 14 (F)
S/69	June 14 (F)
S/70	June 14 (F)
S/71	June 14 (E)
S/72	June 14 (F)
S/73	June 14 (E)
S/74	June 14 (E and F)
S/75	June 14 (F)
S/76	June 14 (E and F)
S/77	June 14 (E and F)
S/78	June 14 (E and F)
S/79	June 14 (F)
S/80	June 14 (E)
S/81	June 14 (F)
S/82	June 14 (F)
S/83	June 14 (F)
S/84	June 14 (F)
S/85	June 15 (F)
S/86	June 15 (E)
S/87	June 15 (E and F)
S/88	June 15 (E and F)
S/89	June 15 (F)
S/90	June 15 (E)
S/91	June 15 (E)
S/92	June 15 (F)
S/93	June 15 (F)
S/93/Add.	June 16 (E)
S/94	June 16 (F)
S/95	June 16 (E)
S/96	June 16 (E)
S/97	June 16 (E and F)
S/98	June 16 (E)
S/99	June 16 (E)
S/100	June 16 (E)
S/101	June 16 (E)
S/102	June 16 (F)
S/103	June 16 (F)
S/104	June 16 (F)
S/105	June 16 (E)
S/106	June 16 (E and F)
S/107	June 16 (F)
S/108	June 16 (F)
S/109	June 16 (E and F)
S/110	June 17 (F)
S/111	June 17 (E)
S/112	June 17 (E)
S/113	June 17 (F)
S/114	June 19 (E and F)
S/115	June 17 (E and F)
S/116	June 17 (F)
S/117	June 17 (F)
S/118	June 17 (F)
S/119	June 18 (E)
S/120	June 18 (E)
S/121	June 18 (E)
S/122	June 18 (E)
S/123	June 18 (E)
S/124	June 18 (E)
S/125	June 18 (E)
S/126	June 18 (E)
S/127	June 19 (E)
S/128	June 19 (F)
S/128/Corr.	June 19 (F)
S/129	June 19 (F)
S/130	June 19 (F)
S/131	June 19 (E)
S/132	June 19 (E)
S/133	June 19 (E)
S/134	June 19 (E)
S/135	June 19 (E)
S/136	June 19 (F)
S/137	June 19 (E)
S/138	June 19 (F)
S/139	June 19 (E)
S/140	June 19 (F)
S/141	June 19 (E and F)
S/142	June 19 (E and F)
S/143	June 19 (E and F)
S/144	June 19 (F)
S/145	June 19 (E)
S/146	June 19 (E)
S/147	June 19 (E)
S/148	June 19 (F)
S/149	June 19 (E)
S/150	June 19 (E)
S/151	June 19 (F)
S/152	June 19 (F)
S/153	June 19 (F)
S/154	June 19 (F)
S/155	June 19 (S)
S/156	June 19 (E)
S/157	June 19 (E)
S/158	June 19 (E)
S/159	June 19 (E)
S/160	June 20 (E)
S/161	June 20 (F)
S/162	June 20 (F)
S/163	June 20 (F)
S/164	June 20 (E)
S/165	June 20 (E)
S/166	June 20 (F)
S/167	June 20 (F)
S/168	June 20 (F)
S/169	June 20 (E)
S/170	June 20 (F)
S/171	June 20 (E)
S/172	June 20 (E)
S/173	June 20 (F)
S/174	June 20 (F)
S/175	June 20 (F)
S/176	June 20 (F)
S/177	June 20 (F)
S/178	June 20 (F)
S/179	June 20 (F)
S/180	June 21 (E and F)
S/181	June 20 (F)
S/182	June 20 (E)
S/183	June 20 (F)
S/184	June 20 (F)
S/185	June 20 (E and F)
S/186	June 20 (E)
S/187	June 21 (E and F)
S/188	June 21 (E)
S/189	June 21 (F)
S/190	June 21 (F)
S/191	June 21 (E)
S/192	June 21 (E)
S/193	June 22 (E)
S/194	June 22 (F)
S/195	June 22 (E and F)
S/196	June 22 (E)
S/197	June 22 (F)
S/198	June 22 (E)
S/199	June 23 (E)
S/200	June 25 (E and F)
S/201	June 25 (E and F)
S/202	June 25 (F)
S/203	June 25 (E and F)
S/204	June 25 (E and F)
S/205	June 26 (F)
S/206	June 26 (F)
S/207	June 26 (F)
S/208	June 26 (F)
S/209	June 26 (E and F)
S/210	June 26 (F)
S/211	June 26 (E)
S/212	June 26 (F)
S/213	June 26 (F)
S/214	June 26 (E and F)
S/215	June 26 (E)
S/216	June 26 (F)
S/217	June 26 (F)
S/218	June 26 (E)
S/219	June 27 (F)
S/220	June 27 (F)
S/221	June 27 (E)
S/222	June 27 (E and F)
S/223	June 27 (E)
S/224	June 28 (F)
S/225	June 28 (F)
S/226	June 28 (F)
S/227	June 28 (E)
S/228	June 28 (E)
S/229	June 28 (F)
S/230	June 28 (F)
S/231	June 28 (S)
S/232	June 28 (E)
S/233	June 28 (E)
S/234	June 28 (F)
S/235	June 28 (E and F)
S/236	June 28 (F)
S/237	June 29 (F)
S/238	June 29 (E and F)
S/239	June 30 (F)
S/240	June 30 (F)
S/241	July 2 (E and F)
S/242	July 2 (E and F)
S/243	July 2 (E)
S/244	July 2 (E and F)
S/245	July 3 (F)
S/246	July 3 (F)
S/247	July 3 (E and F)
S/248	July 3 (F)
S/249	July 3 (E and F)
S/249/Add.	July 4 (E and F)
S/250	July 1 (E)
S/251	July 1 (F)
S/252	July 1 (F)
S/253	July 4 (E)
S/254	July 5 (F)
S/255	July 4 (E and F)
S/256	July 5 (F)
S/257	July 4 (E and F)

Document	Date
S/258	July 4 (E and F)
S/259	July 4 (F)
S/260	July 5 (F)
S/261	July 5 (F)
S/262	July 5 (F)
S/263	July 5 (E and F)
S/264	July 5 (E)
S/265	July 5 (F)
S/266	July 6 (E and F)
S/267	(this number was not used)
S/268	July 6 (F)
S/269	July 6 (E and F)
S/269/Add.	July 6 (F)
S/270	July 7 (F)
S/270/Add.	July 8 (F)
S/270/Rev.	July 7 (F)
S/270/Rev. Corr.	July 10 (E and F)
S/271	July 7 (F)
S/271/Corr.	July 10 (E)
S/272	July 7 (E and F)
S/273	July 8 (F)
S/274	July 11 (F)
S/275	July 11 (F)
S/276	July 11 (F)
S/277	July 11 (F)
S/278	July 11 (E and F)
S/279	July 11 (E and F)
S/280	July 11 (E and F)
S/281	July 11 (F)
S/282	July 11 (E and F)
S/283	July 11 (E and F)
S/284	July 11 (E and F)
S/285	July 8 (E)
S/286	July 8 (E and F)
S/287	July 9 (E and F)
S/288	July 9 (F)
S/288/Rev.	July 13 (F)
S/289	July 9 (E and F)
S/290	July 9 (E and F)
S/291	July 10 (F)
S/292	July 10 (F)
S/293	July 10 (E and F)
S/294	July 10 (F)
S/295	July 10 (F)
S/296	July 11 (E and F)
S/297	July 11 (E and F)
S/298	July 11 (E)
S/299	July 11 (F)
S/300	July 12 (E and F)
S/301	July 12 (F)
S/302	July 14 (F)

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The dates are those appearing on the documents.
"E" denotes that the original of the document is English, "F" that it is French

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S/INF/12	June 20, 1967 (E/F)
S/INF/13	June 21, 1967 (E)
S/INF/14	June 21, 1967 (E/F)
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S/INF/16	June 23, 1967 (E/F)
S/INF/17	June 26, 1967 (E/F)
S/INF/18	June 27, 1967 (E/F)
S/INF/19	June 28, 1967 (E/F)
S/INF/20	June 29, 1967 (E/F)
S/INF/21	June 30, 1967 (E/F)
S/INF/22	July 3, 1967 (E/F)
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S/INF/24	July 5, 1967 (E/F)
S/INF/25	July 6, 1967 (E/F)
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S/INF/27	July 10, 1967 (E)
S/INF/28	July 10, 1967 (E/F)
S/INF/29	July 11, 1967 (E/F)
S/INF/30	July 13, 1967 (E/F)
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The dates are those appearing on the documents.
"E" denotes that the original of the document is English, "F" that it is French, "S" that it is Spanish.

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S/MISC/4	June 10, 1967 (F)
S/MISC/5	June 12, 1967 (E)
S/MISC/6	June 12, 1967 (E)
S/MISC/6/Rev.	June 14, 1967 (E)
S/MISC/7	June 12, 1967 (E)
S/MISC/8	June 12, 1967 (E)
S/MISC/8/Rev.	June 19, 1967 (E)
S/MISC/9	June 12, 1967 (E)
S/MISC/10	June 13, 1967 (E)
S/MISC/11	June 13, 1967 (E/F)
S/MISC/12	June 14, 1967 (F)
S/MISC/13	June 17, 1967 (E/F)
S/MISC/14	June 14, 1967 (E/F)
S/MISC/15	—
S/MISC/16	June 21, 1967 (F)
S/MISC/16/Corr.	June 27, 1967 (F)
S/MISC/17	June 27, 1967 (F)
S/MISC/18	June 28, 1967 (F)
S/MISC/19	June 28, 1967 (F)
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S/MISC/21	July 8, 1967 (E)

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