

RECORDS
OF THE DIPLOMATIC CONFERENCE
ON THE REVISION OF THE NICE AGREEMENT
1977



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION
(WIPO)**

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1977**



GENEVA

1981

EDITOR'S NOTE

The Records of the Diplomatic Conference on the Revision of the Nice Agreement contain the most important documents relating to that Conference, which were issued before, during and after it.

The Diplomatic Conference was held on May 4 to 13, 1977, at the headquarters of the International Labour Organisation (ILO) in Geneva.

The final text--that is the text as adopted and signed--of the Geneva Act of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks appears on the right-hand (odd-numbered) pages of the first part of this volume (up to page 39). On the opposite, left-hand (even-numbered) pages (up to page 38) appears the text of the draft revised Act of the Nice Agreement as presented to the Diplomatic Conference. In order to facilitate the comparison between the draft text and the final text, these pages do not contain the full text of the draft but merely indicate where the texts are identical or specify the differences that exist between the draft and the final text.

Page 43 contains the text of the Final Act adopted and signed by the Diplomatic Conference.

The Rules of Procedure of the Diplomatic Conference appear on pages 47 to 50.

The part entitled "Conference Documents" (pages 61 to 91) contains three series of documents distributed before and during the Diplomatic Conference: "N/CD" (29 documents), "N/CD/CR" (3 documents) and "N/CD/INF" (8 documents). The said documents contain, in particular, all the written proposals for amendments submitted by the delegations. Such proposals are frequently referred to in the summary minutes (see below) and are indispensable for the understanding of the latter.

The part entitled "Minutes" (pages 95 to 155) contains the summary minutes of the Diplomatic Conference. These minutes were established in provisional form by the International Bureau on the basis of transcripts of the tape recordings which were made of all interventions. The transcripts are preserved in the archives of the International Bureau. The provisional summary minutes were made available to all speakers, with the invitation to make suggestions for changes where desired. The final minutes published in this volume have taken such suggestions into account.

The part entitled "Participants" (pages 159 to 169) contains the list of participants in the Diplomatic Conference and the list of officers and members of subsidiary bodies of this Conference.

The report of the Credentials Committee is reproduced on pages 79 and 80.

The part entitled "Post-Conference Document" (page 17) contains a reference to the only document published after the Diplomatic Conference, which contains the provisional summary minutes referred to above.

Finally, the last part (pages 177 to 218) contains five different indexes: the first two (pages 179 to 201) relate to the subject matter of the Nice Agreement; the third (pages 203 to 207) is an alphabetical list of States which participated in the Diplomatic Conference and/or which signed the Geneva Act; the fourth (page 209) is an alphabetical list of organizations which participated in the Diplomatic Conference; and finally, the fifth (pages 211 to 218) is an alphabetical list of participants in the Diplomatic Conference. Page 178 of these Records contains a detailed explanatory note concerning the use of the indexes.

TABLE OF CONTENTS

	<u>Page</u>
NICE AGREEMENT CONCERNING THE INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES FOR THE PURPOSES OF THE REGISTRATION OF MARKS	
Text of the Draft Revised Act of the Nice Agreement as presented to the Diplomatic Conference	(even-numbered pages 10 to 38)
Text of the Geneva Act of the Nice Agreement as adopted by the Diplomatic Conference	(odd-numbered pages 11 to 39)
Signatories	39
FINAL ACT OF THE DIPLOMATIC CONFERENCE ON THE REVISION OF THE NICE AGREEMENT	
Signatories	43
RULES OF PROCEDURE ADOPTED BY THE DIPLOMATIC CONFERENCE	
	47
CONFERENCE DOCUMENTS	
Conference Documents "N/CD" (N/CD/1.Rev. to N/CD/29)	61
Conference Documents "N/CD/CR" (N/CD/CR/1 to N/CD/CR/3)	86
Conference Documents "N/CD/INF" (N/CD/INF/1 to N/CD/INF/8)	89
MINUTES	95
PARTICIPANTS	
List of Participants	159
Officers, Credentials Committee and Drafting Committee	169
POST-CONFERENCE DOCUMENT	173
INDEXES	177

**NICE AGREEMENT
CONCERNING THE INTERNATIONAL CLASSIFICATION
OF GOODS AND SERVICES
FOR THE PURPOSES OF THE REGISTRATION OF MARKS**

**TEXT OF THE DRAFT REVISED ACT OF THE NICE AGREEMENT
AS PRESENTED TO THE DIPLOMATIC CONFERENCE**

**TEXT OF THE GENEVA ACT OF THE NICE AGREEMENT
AS ADOPTED BY THE DIPLOMATIC CONFERENCE**

SIGNATORIES

DRAFT REVISED ACT OF THE NICE AGREEMENT
CONCERNING THE INTERNATIONAL CLASSIFICATION
OF GOODS AND SERVICES FOR THE PURPOSES
OF THE REGISTRATION OF MARKS

List of Articles

- Article 1: Establishment of a Special Union; Adoption of an International Classification; Definition and Languages of the Classification
- Article 2: Legal Scope and Use of the Classification
- Article 3: Committee of Experts
- Article 4: Notification, Entry Into Force and Publication of Changes
- Article 5: Assembly of the Special Union
- Article 6: International Bureau
- Article 7: Finances
- Article 8: Amendment of Articles 5 to 8
- Article 9: Ratification and Accession; Entry Into Force
- Article 10: Duration
- Article 11: Revision
- Article 12: Denunciation
-
- Article 13: Signature; Languages; Depositary Functions; Notifications

NICE AGREEMENT
CONCERNING THE INTERNATIONAL CLASSIFICATION
OF GOODS AND SERVICES FOR THE PURPOSES
OF THE REGISTRATION OF MARKS
of June 15, 1957,
as revised at Stockholm on July 14, 1964,
and at Geneva on May 13, 1977

List of Articles*

- Article 1: Establishment of a Special Union; Adoption of an International Classification; Definition and Languages of the Classification
- Article 2: Legal Effect and Use of the Classification
- Article 3: Committee of Experts
- Article 4: Notification, Entry Into Force and Publication of Changes
- Article 5: Assembly of the Special Union
- Article 6: International Bureau
- Article 7: Finances
- Article 8: Amendment of Articles 5 to 8
- Article 9: Ratification and Accession; Entry Into Force
- Article 10: Duration
- Article 11: Revision
- Article 12: Denunciation
- Article 13: Reference to Article 24 of the Paris Convention
- Article 14: Signature; Languages; Depositary Functions; Notifications

* This List of Articles does not appear in the original text.
It was added in order to facilitate consultation of the text.

Article 1

Establishment of a Special Union;
Adoption of an International Classification;
Definition and Languages of the Classification

(1) [*Same as in the final text.*]

(2) The Classification consists of:

(i) a list of classes;

(ii) an alphabetical list of goods and services (hereinafter designated as "the alphabetical list") with an indication of the class into which each of the goods or services falls;

(iii) explanatory notes.

(3) The Classification comprises:

(i) the classification published in 1971 in French by the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention Establishing the World Intellectual Property Organization (hereinafter designated as "the Organization");

(ii) the amendments and additions which have entered into force, pursuant to Article 4(1) of the Nice Agreement of June 15, 1957, and of the Act revised at Stockholm on July 14, 1967, prior to the entry into force of the present Act;

(iii) any changes to be made in accordance with Article 3 of this Act and which enter into force pursuant to Article 4(1) of this Act.

(4) The Classification shall be established in the English and French languages, both texts being equally authentic. The Committee of Experts referred to in Article 3 shall establish the English text.

Article 1Establishment of a Special Union;
Adoption of an International Classification;
Definition and Languages of the Classification

(1) The countries to which this Agreement applies constitute a Special Union and adopt a common classification of goods and services for the purposes of the registration of marks (hereinafter designated as "the Classification").

(2) The Classification consists of:

(i) a list of classes, together with, as the case may be, explanatory notes;

(ii) an alphabetical list of goods and services (hereinafter designated as "the alphabetical list") with an indication of the class into which each of the goods or services falls.

(3) The Classification comprises:

(i) the classification published in 1971 by the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention Establishing the World Intellectual Property Organization, it being understood, however, that the explanatory notes to the list of classes included in that publication shall be regarded as provisional and as recommendations until such time as explanatory notes to the list of classes are established by the Committee of Experts referred to in Article 3;

(ii) the amendments and additions which have entered into force, pursuant to Article 4(1) of the Nice Agreement of June 15, 1957, and of the Stockholm Act of July 14, 1967, of that Agreement, prior to the entry into force of the present Act;

(iii) any changes to be made in accordance with Article 3 of this Act and which enter into force pursuant to Article 4(1) of this Act.

(4) The Classification shall be in the English and French languages, both texts being equally authentic.

[Article 1, continued]

[In the draft, there is no provision corresponding to Article 1(5) of the final text.]

(5) The International Bureau shall establish, in consultation with the interested Governments, official texts of the Classification in such other languages as the Assembly referred to in Article 5 may designate.

(6) The alphabetical list shall mention, opposite each indication of goods or services, a serial number that is specific to the language in which the said list is established, together with:

(i) in the case of the alphabetical list established in either English or French, the number mentioned in respect of the same indication in the alphabetical list established in the other of the two languages;

(ii) in the case of the alphabetical list established, pursuant to paragraph (5), in a language other than English or French, the number mentioned in respect of the same indication in the alphabetical list established in English or in the alphabetical list established in French.

[Article 1, continued]

(5) (a) The classification referred to in paragraph (3)(i), together with those amendments and additions referred to in paragraph (3)(ii) which have entered into force prior to the date this Act is opened for signature, is contained in one authentic copy, in the French language, deposited with the Director General of the World Intellectual Property Organization (hereinafter designated respectively "the Director General" and "the Organization"). Those amendments and additions referred to in paragraph (3)(ii) which enter into force after the date this Act is opened for signature shall also be deposited in one authentic copy, in the French language, with the Director General.

(b) The English version of the texts referred to in subparagraph (a) shall be established by the Committee of Experts referred to in Article 3 promptly after the entry into force of this Act. Its authentic copy shall be deposited with the Director General.

(c) The changes referred to in paragraph (3)(iii) shall be deposited in one authentic copy, in the English and French languages, with the Director General.

(6) Official texts of the Classification, in Arabic, German, Italian, Portuguese, Russian, Spanish and in such other languages as the Assembly referred to in Article 5 may designate, shall be established by the Director General, after consultation with the interested Governments and either on the basis of a translation submitted by those Governments or by any other means which do not entail financial implications for the budget of the Special Union or for the Organization.

(7) The alphabetical list shall mention, opposite each indication of goods or services, a serial number that is specific to the language in which the said list is established, together with:

(i) in the case of the alphabetical list established in English, the serial number mentioned in respect of the same indication in the alphabetical list established in French, and vice versa;

(ii) in the case of any alphabetical list established pursuant to paragraph (6), the serial number mentioned in respect of the same indication in the alphabetical list established in English or in the alphabetical list established in French.

Article 2Legal Scope and Use of the Classification

(1) [Same as in the final text, except that the draft contains, instead of the word "effect," the word "scope."]

(2) [Same as in the final text.]

(3) [Same as in the final text, except that the draft contains the word "competent" before the word "Offices."]

(4) [Same as in the final text.]

Article 3Committee of Experts

(1) [Same as in the final text.]

(2)(a) The Director General of the Organization (hereinafter designated as "the Director General") may, and, if requested by the Committee of Experts, shall invite countries not members of the Special Union which are members of the Organization or party to the Paris Convention for the Protection of Industrial Property to be represented by observers at meetings of the Committee of Experts.

(b) The Director General shall invite intergovernmental organizations specialized in the field of marks, and of which at least one of the member countries is party to this Agreement, to be represented by observers at meetings of the Committee of Experts.

(c) [Same as in the final text.]

Article 2Legal Effect and Use of the Classification

(1) Subject to the requirements prescribed by this Agreement, the effect of the Classification shall be that attributed to it by each country of the Special Union. In particular, the Classification shall not bind the countries of the Special Union 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 countries of the Special Union reserves the right to use the Classification either as a principal or as a subsidiary system.

(3) The competent Offices of the countries of the Special Union shall include in the official documents and publications relating to registrations of marks the numbers of the classes of the 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 in no way affects any rights which might subsist in such a term.

Article 3Committee of Experts

(1) A Committee of Experts shall be set up in which each country of the Special Union shall be represented.

(2)(a) The Director General may, and, if requested by the Committee of Experts, shall, invite countries outside the Special Union which are members of the Organization or party to the Paris Convention for the Protection of Industrial Property to be represented by observers at meetings of the Committee of Experts.

(b) The Director General shall invite intergovernmental organizations specialized in the field of marks, of which at least one of the member countries is a country of the Special Union, to be represented by observers at meetings of the Committee of Experts.

(c) The Director General may, and, if requested by the Committee of Experts, shall, invite representatives of other intergovernmental organizations and international non-governmental organizations to participate in discussions of interest to them.

[Article 3, continued]

(3) The Committee of Experts shall:

(i) [Same as in the final text.]

(ii) [Same as in the final text.]

(iii) [Same as in the final text, except that, in the draft, the words "other measures" are preceded by the word "the."]

(iv) [Same as in the final text.]

(4) [Same as in the final text.]

(5) [Same as in the final text.]

(6) Each country member of the Committee of Experts shall have one vote.

(7) The decisions of the Committee of Experts shall require a simple majority of the countries represented and voting. However, decisions concerning the adoption of amendments to the Classification shall require a majority of [three-fourths] [five-sixths] of the countries represented and voting. "Amendment" shall mean any transfer of goods or services from one class to another or the creation of any new class entailing such transfer.

(8) [Same as in the final text.]

{Article 3, continued}

(3) The Committee of Experts shall:

- (i) decide on changes in the Classification;
- (ii) address recommendations to the countries of the Special Union for the purpose of facilitating the use of the Classification and promoting its uniform application;
- (iii) take all other measures which, without entailing financial implications for the budget of the Special Union or for the Organization, contribute towards facilitating the application of the Classification by developing countries;
- (iv) have the right to establish subcommittees and working groups.

(4) The Committee of Experts shall adopt its own rules of procedure. The latter shall provide for the possibility of participation in meetings of the subcommittees and working groups of the Committee of Experts by those intergovernmental organizations referred to in paragraph (2)(b) which can make a substantial contribution to the development of the Classification.

(5) Proposals for changes in the Classification may be made by the competent Office of any country of the Special Union, the International Bureau, any intergovernmental organization represented in the Committee of Experts pursuant to paragraph (2)(b) and any country or organization specially invited by the Committee of Experts to submit such proposals. The proposals shall be communicated to the International Bureau, which shall submit them to the members of the Committee of Experts and to the observers not later than two months before the session of the Committee of Experts at which the said proposals are to be considered.

(6) Each country of the Special Union shall have one vote.

(7)(a) Subject to subparagraph (b), the decisions of the Committee of Experts shall require a simple majority of the countries of the Special Union represented and voting.

(b) Decisions concerning the adoption of amendments to the Classification shall require a majority of four-fifths of the countries of the Special Union represented and voting. "Amendment" shall mean any transfer of goods or services from one class to another or the creation of any new class.

(c) The rules of procedure referred to in paragraph (4) shall provide that, except in special cases, amendments to the Classification shall be adopted at the end of specified periods; the length of each period shall be determined by the Committee of Experts.

(8) Abstentions shall not be considered as votes.

Article 4Notification, Entry Into Force and Publication
of Changes

(1) Changes decided upon by the Committee of Experts and recommendations of the Committee of Experts shall be notified to the Offices of the countries of the Special Union by the International Bureau. Amendments shall enter into force six months after the date of dispatch of the notification; other changes shall enter into force as soon as the notification is received.

(2) The International Bureau, as the depositary of the Classification, shall incorporate therein the changes which have entered into force. Announcements of those changes shall be published in such periodicals as may be designated by the Assembly referred to in Article 5.

Article 5Assembly of the Special Union

(1)(a) The Special Union shall have an Assembly consisting of those countries which have ratified or acceded to the Act revised at Stockholm on July 14, 1967, or the present Act.

(b) [*Same as in the final text.*]

(c) Any intergovernmental organization referred to in Article 3(2)(b) may be represented by an observer in the meetings of the Assembly, and, if the Assembly so decides, in those of such committees or working groups as may have been established by the Assembly.

(d) [*Same as in Article 5(1)(c) of the final text.*]

(2)(a) Subject to the provisions of Article 3, the Assembly shall:

(i) [*Same as in the final text.*]

(ii) [*Same as in the final text, except that the draft contains, instead of the words "conferences of revision" and "have not ratified or acceded to this Act," the words "revision conferences" and "are not members of the Assembly," respectively.*]

Article 4Notification, Entry Into Force and Publication
of Changes

(1) Changes decided upon by the Committee of Experts and recommendations of the Committee of Experts shall be notified to the competent Offices of the countries of the Special Union by the International Bureau. Amendments shall enter into force six months after the date of dispatch of the notification. Any other change shall enter into force on a date to be specified by the Committee of Experts at the time the change is adopted.

(2) The International Bureau shall incorporate in the Classification the changes which have entered into force. Announcements of those changes shall be published in such periodicals as may be designated by the Assembly referred to in Article 5.

Article 5Assembly of the Special Union

(1) (a) The Special Union shall have an Assembly consisting of those countries which have ratified or acceded to this Act.

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

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

(2) (a) Subject to the provisions of Articles 3 and 4, the Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Agreement;

(ii) give directions to the International Bureau concerning the preparation for conferences of revision, due account being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Act;

[Article 5(2)(a), continued]

(iii) review and approve the reports and activities of the Director General concerning the Special Union, and give him all necessary instructions concerning matters within the competence of the Special Union;

(iv) *[Same as in the final text.]*

(v) *[Same as in the final text.]*

(vi) establish such committees and working groups as it deems appropriate to achieve the objectives of the Special Union;

(vii) determine, subject to paragraph (1)(c), which countries not members of the Special Union and which intergovernmental and international non-governmental organizations shall be admitted as observers to its meetings and to those of any committee or working group established by it;

(viii) *[Same as in the final text.]*

(ix) *[Same as in the final text.]*

(x) *[Same as in the final text.]*

(b) *[Same as in the final text.]*

(3) (a) *[Same as in the final text.]*

(b) *[Same as in the final text.]*

(c) *[Same as in the final text.]*

[Article 5(2)(a), continued]

- (iii) review and approve the reports and activities of the Director General of the Organization (hereinafter designated as "the Director General") concerning the Special Union, and give him all necessary instructions concerning matters within the competence of the Special Union;
- (iv) determine the program and adopt the triennial budget of the Special Union, and approve its final accounts;
- (v) adopt the financial regulations of the Special Union;
- (vi) establish, in addition to the Committee of Experts referred to in Article 3, such other committees of experts and working groups as it may deem necessary to achieve the objectives of the Special Union;
- (vii) determine which countries not members of the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- (viii) adopt amendments to Articles 5 to 8;
- (ix) take any other appropriate action designed to further the objectives of the Special Union;
- (x) perform such other functions as are appropriate under this Agreement.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) (a) Each country member of the Assembly shall have one vote.

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

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

[Article 5(3), continued]

(d) [*Same as in the final text.*]

(e) [*Same as in the final text.*]

(f) [*Same as in the final text.*]

(g) [*Same as in the final text.*]

(4) (a) [*Same as in the final text.*]

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

(c) [*Same as in the final text.*]

(5) [*Same as in the final text.*]

Article 6International Bureau

(1) (a) [*Same as in the final text.*]

(b) [*Same as in the final text, except that the draft contains, instead of the words "other committee of experts and," the words "committees or."*]

(c) [*Same as in the final text.*]

(2) [*Same as in the final text, except that the draft contains, instead of the words "other committees of experts or working groups," the words "committees or working groups."*]

[Article 5(3), continued]

(d) Subject to the provisions of Article 5(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

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

(g) Countries of the Special Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(1) (a) The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the countries members of the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

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

Article 6International Bureau

(1) (a) Administrative tasks concerning the Special Union shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly, the Committee of Experts, and such other committees of experts and working groups as may have been established by the Assembly or the Committee of Experts.

(c) The Director General shall be the chief executive of the Special Union and shall represent the Special Union.

(2) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Committee of Experts, and such other committees of experts or working groups as may have been established by the Assembly or the Committee of Experts. The Director General, or a staff member designated by him, shall be *ex officio* secretary of those bodies.

[Article 6, continued]

(3) (a) [Same as in the final text, except that the draft contains, instead of the words "conferences of revision of the provisions of the Agreement other than Articles 5 to 8," the words "revision conferences."]

(b) [Same as in the final text, except that the draft contains, instead of the words, "conferences of revision," the words "revision conferences."]

(c) [Same as in the final text, except that the draft contains, instead of the words "those conferences," the words "revision conferences."]

(4) [Same as in the final text.]

Article 7Finances

(1) [Same as in the final text.]

(2) [Same as in the final text.]

(3) [Same as in the final text.]

[Article 6, continued]

(3) (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of the provisions of the Agreement other than Articles 5 to 8.

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

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

(4) The International Bureau shall carry out any other tasks assigned to it.

Article 7Finance

(1) (a) The Special Union shall have a budget.

(b) The budget of the Special Union shall include the income and expenses proper to the Special Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Special Union shall be financed from the following sources:

- (i) contributions of the countries of the Special Union;
- (ii) fees and charges due for services rendered by the International Bureau in relation to the Special Union;
- (iii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;
- (iv) gifts, bequests, and subventions;
- (v) rents, interests, and other miscellaneous income.

[Article 7, continued]

(4) [Same as in the *final text.*]

(5) [Same as in the *final text.*]

(6) [Same as in the *final text.*]

(7) [Same as in the *final text.*]

[Article 7, continued]

(4) (a) For the purpose of establishing its contribution referred to in paragraph (3)(i), each country of the Special Union shall belong to the same class as it belongs to in the Paris Union for the Protection of Industrial Property, and shall pay its annual contributions on the basis of the same number of units as is fixed for that class in that Union.

(b) The annual contribution of each country of the Special Union shall be an amount in the same proportion to the total sum to be contributed to the budget of the Special Union by all countries as the number of its units is to the total of the units of all contributing countries.

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

(d) A country which is in arrears in the payment of its contributions may not exercise its right to vote in any organ of the Special Union if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Special Union may allow such a country to continue to exercise its right to vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

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

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Special Union shall be established, and shall be reported to the Assembly, by the Director General.

(6) (a) The Special Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7) (a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

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

[Article 7, continued]

(8) [Same as in the final text.]

Article 8Amendment of Articles 5 to 8

(1) [Same as in the final text, except that the draft has the words "may be initiated by any country member of the Assembly" between commas and the words "countries members" instead of "member countries."]

(2) [Same as in the final text, except that, in the draft, there is no comma after the words "Article 5" and "present paragraph."]

(3) [Same as in the final text, except that the draft contains the words "the amendment was adopted" instead of the words "it adopted the amendment."]

Article 9Ratification and Accession; Entry Into Force

(1) [Same as in the final text.]

(2) Same as in the final text, except that the draft contains, before the words "of the Special Union," the word "member" instead of "country."]

(3) [Same as in the final text.]

[Article 7, continued]

(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 8Amendment of Articles 5, 6, 8

(1) Proposals for the amendment of Articles 5, 6, 7, and the present Article, may be initiated by any country member of the Assembly, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 5, and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Special Union shall bind only those countries which have notified their acceptance of such amendment.

Article 9Ratification and Accession; Entry Into Force

(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 country of the Special Union.

(3) Instruments of ratification and accession shall be deposited with the Director General.

[Article 9, continued]

(4)(a) With respect to the first five countries which have deposited their instruments of ratification or accession, this Act shall enter into force three months after the fifth such instrument was deposited.

(b) With respect to any other country, this Act shall enter into force three months after the date on which its ratification or accession was notified by the Director General, unless a subsequent date has been indicated in the instrument of ratification or accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(5) [*Same as in the final text.*]

(6) [*Same as in the final text.*]

Article 10

Duration

[*Same as in the final text.*]

Article 11

Revision

(1) [*Same as in the final text.*]

(2) [*Same as in the final text.*]

(3) [*Same as in the final text.*]

[Article 9, continued]

(4) (a) This Act shall enter into force three months after both of the following conditions are fulfilled:

(i) six or more countries have deposited their instruments of ratification or accession;

(ii) at least three of the said countries are countries which, on the date this Act is opened for signature, are countries of the Special Union.

(b) The entry into force referred to in subparagraph (a) shall apply to those countries which, at least three months before the said entry into force, have deposited instruments of ratification or accession.

(c) With respect to any country not covered by subparagraph (b), this Act shall enter into force three months after the date on which its ratification or accession was notified by the Director General, unless a subsequent date has been indicated in the instrument of ratification or accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(5) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

(6) After the entry into force of this Act, no country may ratify or accede to an earlier Act of this Agreement.

Article 10

Duration

This Agreement shall have the same duration as the Paris Convention for the Protection of Industrial Property.

Article 11

Revision

(1) This Agreement may be revised from time to time by a conference of the countries of the Special Union.

(2) The convocation of any revision conference shall be decided upon by the Assembly.

(3) Articles 5 to 8 may be amended either by a revision conference or according to Article 8.

Article 12Denunciation

(1) [Same as in the final text.]

(2) [Same as in the final text.]

(3) [Same as in the final text.]

In the draft, there is no provision corresponding to Article 13 of the final text.

Article 13Signature; Languages; Depositary Functions; Notifications

(1)(a) [Same as Article 14(1)(a) of the final text.]

Article 12Denunciation

(1) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of the earlier Act or Acts of this Agreement which the country denouncing this Act may have ratified or acceded to, and shall affect only the country making it, the Agreement remaining in full force and effect as regards the other countries of the Special Union.

(2) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(3) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a country of the Special Union.

Article 13Reference to Article 24 of the Paris Convention

The provisions of Article 24 of the Stockholm Act of 1967 of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement, provided that, if those provisions are amended in the future, the latest amendment shall apply to this Agreement with respect to those countries of the Special Union which are bound by such amendment.

Article 14Signature; Languages; Depositary Functions; Notifications

(1)(a) This Act shall be signed in a single original in the English and French languages, both texts being equally authentic, and shall be deposited with the Director General.

[Article 13(1), continued]

(b) [Same as Article 14(2) of the final text.]

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

(3) [Same as Article 14(3) of the final text.]

(4) [Same as Article 14(4) of the final text.]

(5) [Same as Article 14(5) of the final text.]

[Article 14(1), continued]

(b) Official texts of this Act shall be established by the Director General, after consultation with the interested Governments and within two months from the date of signature of this Act, in the two other languages, Russian and Spanish, in which, together with the languages referred to in subparagraph (a), authentic texts of the Convention Establishing the World Intellectual Property Organization were signed.

(c) Official texts of this Act shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian and Portuguese languages, and such other languages as the Assembly may designate.

(2) This Act shall remain open for signature until December 31, 1977.

(3)(a) The Director General shall transmit two copies, certified by him, 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.

(b) The Director General shall transmit two copies, certified by him, of any amendment to this Act to the Governments of all countries of the Special Union and, on request, to the Government of any other country.

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

(5) The Director General shall notify the Governments of all countries party to the Paris Convention for the Protection of Industrial Property of:

- (i) signatures under paragraph (1);
- (ii) deposits of instruments of ratification or accession under Article 9(3);
- (iii) the date of entry into force of this Act under Article 9(4)(a);
- (iv) acceptances of amendments to this Act under Article 8(3);
- (v) the dates on which such amendments enter into force;
- (vi) denunciations received under Article 12.

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

DONE at Geneva, this thirteenth day of May, one thousand nine hundred and seventy-seven.*

AUSTRALIA, December 21, 1977 (F.J. Blakeney); AUSTRIA, December 30, 1977 (Erik Nettel); BELGIUM, October 11, 1977 (P. Noterdaeme); FINLAND (Erkki Wuori); FRANCE (P. Fressonnet); GERMAN DEMOCRATIC REPUBLIC, November 24, 1977 (J. Hemmerling)**; GERMANY (FEDERAL REPUBLIC OF) (C.W. Sanne, Elisabeth Steup); HUNGARY (E. Tasnádi); IRELAND, December 29, 1977 (Sean Gaynor); ITALY (Italo Papini); LUXEMBOURG, December 1, 1977 (Jean Rettel); MONACO (J.-M. Notari); MOROCCO, October 28, 1977 (Ali Skalli); NETHERLANDS (C.A. van der Klaauw); NORWAY, November 14, 1977 (Johan Cappelen); PORTUGAL (Ruy Álvaro Costa da Morais Serrão); SOVIET UNION (V. Bykov)***; SPAIN (Antonio Villalpando Martínez, L.G. Cerezo); SWEDEN, October 3, 1977 (Claës Ugglä); SWITZERLAND (P. Braendli); TUNISIA (Mohamed Ben Fadhel); UNITED KINGDOM (Ivor Davis, Ronald Moorby); UNITED STATES OF AMERICA (Roger A. Sorenson).

* Editor's Note: All the signatures were affixed on May 13, 1977, unless otherwise indicated.

** Editor's Note: When signing this Agreement, the Government of the German Democratic Republic made the following declaration:

"The position of the German Democratic Republic on the provisions of Article 13 of the Nice Agreement as revised at Geneva, so far as the application of the Agreement to colonial and other dependent territories is concerned, is governed by the provisions of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514(XV) of December 14, 1960) proclaiming the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations."

*** Editor's Note: When signing this Agreement, the Government of the Union of Soviet Socialist Republics made the following declaration:

"The Union of Soviet Socialist Republics considers it necessary to declare that the provisions of Article 13 of the Agreement providing for the possibility of its application to colonies and dependent territories are in contradiction with Resolution 1514(XV) of December 14, 1960, of the General Assembly of the United Nations."

**FINAL ACT
OF THE DIPLOMATIC CONFERENCE**

**TEXT OF THE FINAL ACT
AS ADOPTED BY THE DIPLOMATIC CONFERENCE**

SIGNATORIES

FINAL ACT
of the
DIPLOMATIC CONFERENCE
ON THE REVISION OF THE NICE AGREEMENT

In accordance with the decision of the Assembly of the Special (Nice) Union for the International Classification of Goods and Services for the Purposes of the Registration of Marks in September/October 1976, and following preparations by member States of the Nice Union and by the International Bureau of the World Intellectual Property Organization, the Diplomatic Conference on the Revision of the Nice Agreement was held from May 4 to 13, 1977, at Geneva.

The Diplomatic Conference on the Revision of the Nice Agreement adopted the Geneva Act of May 13, 1977, revising the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as revised at Stockholm on July 14, 1967.

The Geneva Act of the Nice Agreement was opened for signature at Geneva on May 13, 1977.

IN WITNESS WHEREOF, the undersigned, being Delegates of the States members of the Special (Nice) Union for the International Classification of Goods and Services for the Purposes of the Registration of Marks participating in the Diplomatic Conference on the Revision of the Nice Agreement, have signed this Final Act.

DONE at Geneva, this thirteenth day of May, one thousand nine hundred and seventy-seven.

ALGERIA (F. Bouzid); AUSTRALIA (G. Henshilwood); AUSTRIA (Gudrun Mayer);
CZECHOSLOVAKIA (J. Prošek); DENMARK (Rigmor Carlsen); FINLAND (Erkki Wuori);
FRANCE (P. Fressonnet); GERMANY (FEDERAL REPUBLIC OF) (C.W. Sarne,
Elisabeth Steup); HUNGARY (E. Tasnádi); ITALY (Italo Papini); MONACO
(J.-M. Notari); MOROCCO (M. Chraïbi); NETHERLANDS (C.A. van der Klaauw);
NORWAY (Arne Gerhardsen); POLAND (Andrej Olszówka); PORTUGAL
(Ruy Álvaro Costa da Morais Serrão); SOVIET UNION (V. Bykov); SPAIN
(Antonio Villalpando Martínez, L.G. Cerezo); SWEDEN (Claës Ugglå);
SWITZERLAND (P. Braendli); TUNISIA (M. Ben Fadhel, B. Fathallah);
UNITED KINGDOM (Ivor Davis, Ronald Moorby); UNITED STATES OF AMERICA
(Roger A. Sorenson)



**RULES OF PROCEDURE
ADOPTED BY THE DIPLOMATIC CONFERENCE**

RULES OF PROCEDURE
ADOPTED BY THE DIPLOMATIC CONFERENCE

Contents

CHAPTER I: OBJECTIVE; COMPOSITION; SECRETARIAT

- Rule 1: Objective
- Rule 2: Composition
- Rule 3: Secretariat

CHAPTER II: REPRESENTATION

- Rule 4: Representation of Governments
- Rule 5: Representation of Observer Organizations
- Rule 6: Credentials and Full Powers
- Rule 7: Letters of Appointment
- Rule 8: Presentation of Credentials, etc.
- Rule 9: Examination of Credentials, etc.
- Rule 10: Provisional Participation

CHAPTER III: COMMITTEES AND WORKING GROUPS

- Rule 11: Credentials Committee
- Rule 12: Drafting Committee
- Rule 13: Working Groups

CHAPTER IV: OFFICERS

- Rule 14: Officers
- Rule 15: Acting President or Acting Chairman
- Rule 16: Replacement of President or Chairman
- Rule 17: Presiding Officer Not Entitled to Vote

CHAPTER V: SECRETARIAT

- Rule 18: Secretariat

CHAPTER VI: CONDUCT OF BUSINESS

- Rule 19: Quorum
- Rule 20: General Powers of the Presiding Officer
- Rule 21: Speeches
- Rule 22: Precedence
- Rule 23: Points of Order
- Rule 24: Time Limit on Speeches
- Rule 25: Closing of List of Speakers
- Rule 26: Adjournment of Debate
- Rule 27: Closure of Debate
- Rule 28: Suspension or Adjournment of the Meeting
- Rule 29: Order of Procedural Motions
- Rule 30: Basic Proposal and Proposals for Amendments
- Rule 31: Withdrawal of Procedural Motions and Proposals for Amendments
- Rule 32: Reconsideration of Matters Decided

CHAPTER VII: VOTING

- Rule 33: Voting Rights
- Rule 34: Required Majorities
- Rule 35: Meaning of the Expression "Present and Voting"
- Rule 36: Requirement of Seconding; Method of Voting
- Rule 37: Conduct During Voting
- Rule 38: Division of Proposals
- Rule 39: Voting on Proposals for Amendments
- Rule 40: Voting on Proposals on the Same Question
- Rule 41: Elections on the Basis of Proposals Made by the President of
the Conference
- Rule 42: Equally Divided Votes

CHAPTER VIII: LANGUAGES AND MINUTES

- Rule 43: Languages of Oral Interventions
- Rule 44: Summary Minutes
- Rule 45: Languages of Documents and Minutes

CHAPTER IX: OPEN AND CLOSED MEETINGS

- Rule 46: Meetings of the Conference
- Rule 47: Meetings of Committees and of Working Groups

CHAPTER X: OBSERVERS

- Rule 48: Observers

CHAPTER XI: AMENDMENTS TO THE RULES OF PROCEDURE

- Rule 49: Amendments to the Rules of Procedure

CHAPTER XII: FINAL ACT

- Rule 50: Final Act

CHAPTER I: OBJECTIVE; COMPOSITION; SECRETARIAT

Rule 1: Objective

(1) The objective of the Diplomatic Conference (Geneva, May 4 to 13, 1977) on the Revision of the Nice Agreement (hereinafter referred to as "the Conference") is to negotiate and conclude, on the basis of the draft contained in document N/CD/3.Rev., a revised Act (hereinafter referred to as "the revised Act") of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, in such languages as the Conference determines.

(2) The Conference may also:

(i) adopt any recommendation or resolution whose subject matter is germane to the revised Act;

(ii) adopt any final act of the Conference;

(iii) deal with all other matters referred to it by these Rules of Procedure (hereinafter referred to as "Rules") or appearing on its agenda.

Rule 2: Composition

(1) The Conference shall consist of Delegations (see Rule 4) of the States members of the International Union for the Protection of Industrial Property (hereinafter referred to as "the Paris Union") and representatives of inter-governmental and non-governmental organizations invited by the Director General of the World Intellectual Property Organization (WIPO).

(2) Delegations of States which are members of the Special Union for the International Classification of Goods and Services for the Purposes of the Registration of Marks (hereinafter referred to as "the Nice Union") shall have the right to vote. They are referred to hereinafter as "Member Delegations."

(3) Delegations of States members of the Paris Union other than those mentioned in paragraph (2) (hereinafter referred to as "Observer Delegations") and representatives of intergovernmental and non-governmental organizations invited by the Director General of WIPO (hereinafter referred to as "Observer Organizations") may, as specified in these Rules, participate in the Conference.

(4) The term "Delegations," as hereinafter used, shall, unless otherwise expressly indicated, include both Member Delegations and Observer Delegations. It does not include the representatives of Observer Organizations.

(5) The Director General of WIPO and any other official of WIPO designated by him may participate in the discussions of the Conference as well as in any committee or working group thereof and may submit in writing statements, suggestions and observations to the Conference and any committee or working group thereof.

Rule 3: Secretariat

The Conference shall have a Secretariat provided by WIPO.

CHAPTER II: REPRESENTATION

Rule 4: Representation of Governments

(1) Each Delegation shall consist of one or more delegates and may include alternates and advisors. Each Delegation shall have a Head of Delegation.

(2) The term "delegate" or "delegates," as hereinafter used, shall, unless otherwise expressly indicated, include both member delegates and observer delegates. It does not include representatives of Observer Organizations.

(3) Each alternate or advisor may act as delegate upon designation by the Head of his Delegation.

Rule 5: Representation of Observer Organizations

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

Rule 6: Credentials and Full Powers

(1) Each Member Delegation shall present credentials.

(2) Full powers shall be required for signing the revised Act adopted by the Conference. Such powers may be included in the credentials.

(3) Credentials and full powers shall be signed by the Head of State or the Head of Government or the Minister responsible for external affairs.

Rule 7: Letters of Appointment

(1) Each Observer Delegation shall present a letter or other document appointing the delegate or delegates as well as any alternate and any advisor. Such letter or document shall be signed as provided in Rule 6(3) or by the Ambassador accredited to the Government of the Swiss Confederation or the Head of Mission accredited to WIPO or to the Office of the United Nations at Geneva.

(2) The representatives of Observer Organizations shall present a letter or other document appointing them. It shall be signed by the Head (Director General, Secretary General, President) of the Organization.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 should be presented to the Secretary General of the Conference not later than at the time of the opening of the Conference.

Rule 9: Examination of Credentials, etc.

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

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

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and representatives shall be entitled to participate provisionally.

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

- (1) The Conference shall have a Credentials Committee.
- (2) The Credentials Committee shall consist of nine members elected by the Conference from among the Member Delegations.
- (3) The officers of the Credentials Committee shall be elected by, and from among, its members.

Rule 12: Drafting Committee

- (1) The Conference shall have a Drafting Committee.
- (2) The Drafting Committee shall consist of nine members elected by the Conference from among the Member Delegations.
- (3) The officers of the Drafting Committee shall be elected by, and from among, its members.
- (4) The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Conference. It shall review the drafting of all texts provisionally adopted by the Conference and shall submit the texts so reviewed for final adoption by the Conference.

Rule 13: Working Groups

- (1) The Conference may establish such working groups as it deems useful.
- (2) The number of the members of any working group shall be decided by the Conference, which shall elect them from among the Member Delegations.
- (3) The officers of any working group shall be elected by, and from among, its members.

CHAPTER IV: OFFICERS

Rule 14: Officers

- (1) The Conference shall, in a meeting presided over by the Director General of WIPO, elect its President, and, in a meeting presided over by its President, elect four Vice-Presidents.
- (2) The Credentials Committee and the Drafting Committee shall each have a Chairman and two Vice-Chairmen.
- (3) Precedence among the Vice-Presidents and between the Vice-Chairmen shall depend on the place occupied by the name of the State of each of them in the list of Member Delegations established in the French alphabetical order.

Rule 15: Acting President or Acting Chairman

- (1) If the President of the Conference or any Chairman is absent from any meeting of a body (Conference, committee or working group), such meeting shall be presided over, as Acting President or Acting Chairman, by that Vice-President

[Rule 15(1) continued]

or Vice-Chairman of that body who, among the Vice-Presidents or Vice-Chairmen present, has precedence over the others.

(2) If both the President and the Vice-Presidents or both the Chairman and the Vice-Chairmen are absent from any meeting of a body (Conference, committee or working group), an Acting President or Acting Chairman, as the case may be, shall be elected by that body.

Rule 16: Replacement of President or Chairman

If the President or any Chairman is, for the rest of the duration of the Conference, unable to perform his functions, a new President or Chairman shall be elected by the body concerned (Conference, committee or working group).

Rule 17: Presiding Officer Not Entitled to Vote

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

CHAPTER V: SECRETARIAT

Rule 18: Secretariat

(1) The Director General of WIPO shall, from among the staff of WIPO, designate the Secretary General of the Conference, the Assistant Secretary General of the Conference, the Secretary of the Credentials Committee, the Secretary of the Drafting Committee and a Secretary for each working group.

(2) The Secretary General shall 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; and the general performance of all other work required for the Conference.

(4) The Director General of WIPO shall be responsible for the custody and preservation in the archives of WIPO of all documents of the Conference; the publication of the summary minutes (see Rule 44) of the Conference after the Conference, and the distribution of the final documents of the Conference to the participating Governments.

CHAPTER VI: CONDUCT OF BUSINESS

Rule 19: Quorum

(1) A quorum shall be required in the meetings of the Conference and shall be constituted by a majority of the Member Delegations.

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

Rule 20: General Powers of the Presiding Officer

In addition to exercising the powers conferred upon him elsewhere by these Rules, the Presiding Officer shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. He shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat. The Presiding Officer may propose the limiting of time to be allowed to speakers, the limiting 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. He may also propose the suspension or the adjournment of the meeting, or the adjournment of the debate on the question under discussion.

Rule 21: Speeches

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

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

Rule 22: Precedence

(1) Member Delegations may be accorded precedence over Observer Delegations, and either may be accorded precedence over representatives of Observer Organizations.

(2) The Chairman of a committee or working group may be accorded precedence for the purpose of explaining the conclusions arrived at by his committee or working group.

(3) The Director General of WIPO or his representative may be accorded precedence for making observations or proposals relevant to the subject under discussion.

Rule 23: Points of Order

During the discussion of any matter, any Member Delegation may rise to a point of order, and the point of order shall be immediately decided by the Presiding Officer in accordance with these Rules. Any Member Delegation may appeal against the ruling of the Presiding Officer. The appeal shall be immediately put to the vote, and the Presiding Officer's ruling shall stand unless overruled by a majority of the Member Delegations present and voting. A Member Delegation rising to a point of order may not speak on the substance of the matter under discussion.

Rule 24: Time Limit on Speeches

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

Rule 25: Closing of List of Speakers

During the discussion of any matter, the Presiding Officer may announce the list of speakers and, unless the Member Delegations object, 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 it desirable.

Rule 26: Adjournment of Debate

During the discussion of any matter, any Member Delegation may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, one Member Delegation may speak in favor of the motion, and two against, after which the motion shall immediately be put to the vote. The Presiding Officer may limit the time to be allowed to speakers under this Rule.

Rule 27: Closure of Debate

Any Member 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 to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote. If the vote is in favor of closure, the Presiding Officer shall declare the debate closed. The Presiding Officer may limit the time to be allowed to Member Delegations under this Rule.

Rule 28: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Member Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote. The Presiding Officer may limit the time to be allowed to the speaker moving the suspension or adjournment.

Rule 29: Order of Procedural Motions

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

- (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 30: Basic Proposal and Proposals for Amendments

(1) Document N/CD/3.Rev. shall constitute the basis of the discussions in the Conference ("basic proposal").

(2) Any Member Delegation may propose amendments.

(3) Proposals for amendments shall, as a rule, be submitted in writing and handed to the Secretary of the competent body (Conference, committee or working group). The Secretariat shall distribute copies to the participants represented on the body concerned. As a general rule, no proposal for amendment shall be discussed or put to the vote in any meeting unless copies of it have been made available not later than three hours before it is called up for discussion. The Presiding Officer may, however, permit the discussion and consideration of a proposal for amendment even though copies have not been distributed or have been made available less than three hours before it is called up for discussion.

Rule 31: Withdrawal of Procedural Motions and Proposals for Amendments

Any procedural motion and proposal for amendment may be withdrawn by the Member Delegation which has made it, at any time before discussion on it has commenced, provided that the motion or proposal has not been amended. Any motion or proposal which has thus been withdrawn may be reintroduced by any other Member Delegation.

Rule 32: Reconsideration of Matters Decided

When any matter has been decided by a body (Conference, committee or working group), it may not be reconsidered by that body, unless so decided by a two-thirds majority of the Member Delegations present and voting. Permission to speak on the motion to reconsider shall be accorded only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the question of reconsideration shall immediately be put to the vote.

CHAPTER VII: VOTING

Rule 33: Voting Rights

Each Member Delegation shall have one vote in each body (Conference, committee or working group) of which it is a member. A Member Delegation may represent and vote in the name of its own Government only.

Rule 34: Required Majorities

(1) Final adoption of the revised Act shall require that no Member Delegation vote against its adoption.

(2) Subject to Rules 32 and 49(2), any other decisions of the Conference and all decisions in any committee or working group shall require a simple majority of the Member Delegations present and voting.

Rule 35: Meaning of the Expression "Present and Voting"

For the purpose of these Rules, references to Member Delegations "present and voting" shall be construed as references to Member Delegations present and casting an affirmative or negative vote. Member Delegations which abstain from voting shall be considered as not voting.

Rule 36: Requirement of Seconding; Method of Voting

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

(2) Voting shall be by show of hands unless any Member Delegation, seconded by another Member Delegation, requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the French alphabetical order of the names of the States, beginning with the Member Delegation whose name is drawn by lot by the Presiding Officer.

Rule 37: Conduct During Voting

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

(2) The Presiding Officer may permit Member Delegations to explain their votes, either before or after the voting. The Presiding Officer may limit the time to be allowed for such explanations.

Rule 38: Division of Proposals

Any Member Delegation, seconded by another Member Delegation, may move that parts of the basic proposal or of proposals for amendments 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 Member Delegation in favor and two Member Delegations against. If the motion for division is carried, all parts separately approved shall again be put to the vote, together, as a whole.

Rule 39: Voting on Proposals for Amendments

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

Rule 40: Voting on Proposals on the Same Question

Subject to Rule 39, where two or more proposals relate to the same question, the body (Conference, committee or working group) concerned shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Rule 41: Elections on the Basis of Proposals Made by the President of the Conference

The President of the Conference may propose a list of candidates for all positions which are to be filled through election by the Conference.

Rule 42: Equally Divided Votes

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

(2) If a vote is equally divided on a proposal for election of officers, the vote shall be repeated until one of the candidates receives more votes than any of the others.

CHAPTER VIII: LANGUAGES AND MINUTES

Rule 43: Languages of Oral Interventions

(1) Subject to paragraph (2), oral interventions shall be in English, French, Russian or Spanish, and interpretation shall be provided by the Secretariat into the other three languages.

(2) Any Member Delegation may make oral interventions in another language, provided its own interpreter simultaneously interprets the intervention into English or French. In such a case, the Secretariat shall provide interpretation from English or French into the other three languages referred to in paragraph (1).

Rule 44: Summary Minutes

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

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

Rule 45: Languages of Documents and Minutes

(1) Any written proposal shall be presented to the Secretariat in English or French.

(2) Subject to paragraph (3), all documents distributed during or after the Conference shall be made available in English and French.

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

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

CHAPTER IX: OPEN AND CLOSED MEETINGS

Rule 46: Meetings of the Conference

The meetings of the Conference shall be open to the public unless the Conference decides otherwise.

Rule 47: Meetings of Committees and of Working Groups

The meetings of any committee or working group shall be open only to the members of that committee or working group and the Secretariat.

CHAPTER X: OBSERVERS

Rule 48: Observers

(1) Any Observer Delegation and any representative of any intergovernmental organization may, upon the invitation of the Presiding Officer, participate without the right to vote in the deliberations of the Conference.

(2) The representative of any non-governmental organization may, upon the invitation of the Presiding Officer, make oral statements in the Conference.

CHAPTER XI: AMENDMENTS TO THE RULES OF PROCEDURE

Rule 49: Amendments to the Rules of Procedure

(1) With the exception of Rule 34(1) and the present Rule, the Conference may amend these Rules.

(2) The adoption of an amendment to these Rules shall require a majority of two-thirds of the Member Delegations present and voting.

CHAPTER XII: FINAL ACT

Rule 50: Final Act

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

CONFERENCE DOCUMENTS

CONFERENCE DOCUMENTS "N/CD"
(N/CD/1.Rev. to N/CD/29)

List of Documents

<u>Document Number</u>	<u>Submitted by</u>	<u>Subject</u>
1.Rev.	The International Bureau of WIPO	Draft Agenda
2.	The International Bureau of WIPO	Draft Rules of Procedure
3.Rev.	The International Bureau of WIPO	Draft Revised Act of the Nice Agreement
4.	The International Bureau of WIPO	Modification of the Draft Rules of Procedure (Rule 49)
5.	Soviet Union	Draft Revised Act of the Nice Agreement (proposal for modification of Article 13(1)(a)) and Draft Rules of Procedure (proposal for modification of Rules 1(1) and 43(2))
6.	The International Bureau of WIPO	Modification of the Draft Rules of Procedure (Rules 1(1) and 43)
7.	Spain	Draft Revised Act (proposal for modification of Articles 1(4) and 13(1)(a))
8.	United Kingdom	Draft Revised Act (proposal concerning Article 13 (new))
9.	Netherlands	Draft Revised Act (proposal concerning a new article)
10.	Norway	Draft Revised Act (proposal for modification of Article 9(4)(a))
11.	The Diplomatic Conference	Rules of Procedure adopted by the Diplomatic Conference on May 4, 1977
12.	Czechoslovakia	Draft Revised Act (proposal for modification of Article 3(7))
13.	France	Draft Revised Act (proposal for amendment of Article 3)
14.	Austria	Draft Revised Act (proposal for modification of Article 1)
15.	Netherlands	Draft Revised Act (proposal for modification of Article 3(6) and (7))
16.	United States of America	Draft Revised Act (proposal for modification of Article 3(7))
17.	United States of America	Draft Revised Act (proposal for modification of Articles 1(6) and 8)
18.	Germany, Federal Republic of	Draft Revised Act (proposal for modification of Articles 1(4) and 13(1)(a))
19.	United States of America	Draft Revised Act (proposal for modification of Article 9(4)(a))
20.	The Credentials Committee	Report prepared by the Secretariat
21.	The Secretariat of the Diplomatic Conference	Draft Revised Act (proposal for modification of Article 13(1) and (2): text containing the so-called Budapest formula)

<u>Document Number</u>	<u>Submitted by</u>	<u>Subject</u>
22.	Soviet Union	Draft Revised Act (proposal for modification of Article 13)
23.	The Drafting Committee	Draft Geneva Act of the Nice Agreement
24.	The Drafting Committee	Draft statements to be included in the Records of the Diplomatic Conference
25.	The President of the Diplomatic Conference	Draft Final Act of the Conference
26.	The Diplomatic Conference	Text of the Geneva Act of the Nice Agreement, as adopted on May 12, 1977, and as presented for signature on May 13, 1977
27.	The Diplomatic Conference	Texts of statements to be included in the Records of the Conference as approved by the Conference on May 12, 1977
28.	The Diplomatic Conference	Text of the Final Act of the Conference as adopted on May 12, 1977, and as presented for signature on May 13, 1977
29.	The Secretariat of the Diplomatic Conference	Signatures. Memorandum by the Secretariat

Text of the Documents

N/CD/1.Rev

November 19, 1976 (Original: French)

THE INTERNATIONAL BUREAU OF WIPO

Draft Agenda

1. Opening of the Conference by the Director General of WIPO
2. Election of the President of the Conference
3. Adoption of the agenda (see the present document)
4. Adoption of the Rules of Procedure (see document N/CD/2)
5. Election of the Vice-Presidents of the Conference
6. Election of the members of the Credentials Committee
7. Election of the members of the Drafting Committee
8. Consideration of the draft of a revised Act of the Nice Agreement (see document N/CD/3.Rev.)
9. Consideration of the report of the Credentials Committee
10. Consideration of the draft of a revised Act of the Nice Agreement submitted by the Drafting Committee and adoption of the said revised Act.
11. Closing of the Conference by the President

N.B. Immediately after the closing of the Conference, the revised Act will be open for signature.

N/CD/2

December 1, 1976 (Original: English)

THE INTERNATIONAL BUREAU OF WIPO

Draft Rules of Procedure

Editor's Note: The text of this Draft is not reproduced in this volume. In the following, only the differences between the text of the draft and that adopted by the Diplomatic Conference (see pages 11 to 39 of these Records) are indicated.

1. Rule 1(1). Same as in the final text except that the words corresponding to "in such languages as the Conference determines" read in the draft as follows: "in the English and French languages."

2. Rule 34(1). The wording of this Rule reads, in the draft, as follows: "Final adoption of the revised Act shall require a majority of ... of the Member Delegations present and voting."

3. Rule 43. The wording of this Rule reads, in the draft, as follows:

"(1) Subject to paragraphs (2) and (3), oral interventions shall be in English, French, Russian or Spanish, and interpretation shall be provided by the Secretariat into the other three languages.

(2) Oral interventions in the Drafting Committee and any working group may be required to be made either in English or in French, and interpretation into the other language shall be provided by the Secretariat.

(3) Any Member Delegation may make oral interventions in another language, provided its own interpreter simultaneously interprets the intervention into English or French. In such a case, the Secretariat shall provide interpretation from English or French into the other three languages referred to in paragraph (1), or the other language referred to in paragraph (2), as the case may be."

4. Rule 49(1). The wording of this Rule reads, in the draft, as follows: "The Conference may amend these Rules."

N/CD/3.Rev

December 1, 1976 (Original: French)

THE INTERNATIONAL BUREAU OF WIPO

Draft Revised Act of the Nice Agreement

Editor's Note: The text of the Draft Revised Act as appearing in this document is reproduced on the even-numbered pages from 10 to 38 of these Records. The "Introduction" and the "Observations" which accompanied the text of the Draft Revised Act are reproduced hereafter as they appeared; the various documents which were referred to are not reproduced in this volume.

INTRODUCTION

1. At its third session, held in Geneva from September 23 to 30, 1975, the Assembly of the Nice Union decided to set up an ad hoc Committee of Experts to examine the amendments which should be made, in particular, to Article 3(3) and (5) of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (hereinafter referred to respectively as "the [Nice] Agreement" and "the [Nice] Classification"). At the same time, the Assembly authorized the Director General to convene a revision conference if, in the light of the preparatory work, he found that the time for such a conference was ripe (document N/A(Extr.)/III/4, paragraph 25).
2. The ad hoc Committee of Experts met in Geneva from March 1 to 5, 1976. All the member States of the Nice Union had been invited and States members of the Paris Union for the Protection of Industrial Property but not members of the Nice Union had been invited in an observer capacity. Fifteen member States of the Nice Union participated in the session.
3. The ad hoc Committee of Experts expressed its opinion on the question of a possible revision not only of paragraphs (3) and (5) of Article 3 of the Agreement, as envisaged by the Assembly of the Nice Union at its September 1975 session, but also of paragraphs (4) and (6) of the same Article. The proposals below relating to the existing Article 3(3) to (6) of the Agreement were formulated in the light of the conclusions adopted by the ad hoc Committee of Experts (document N/CE/I/9, paragraphs 34 to 36).
4. In the course of the discussions, the ad hoc Committee of Experts also suggested that the International Bureau look into the question whether authentic English texts of the Agreement and of the Classification should be provided for in addition to the French texts (document N/CE/I/9, paragraphs 37 to 39).
5. The ad hoc Committee of Experts also asked the International Bureau to study the question of the requirements to be met for the entry into force of the revised Act of the Agreement as far as the number of ratifications or accessions was concerned (document N/CE/I/9, paragraphs 40 to 46).
6. Main Characteristics of the Draft Revised Act. This document contains the full text of the revised Act of the Agreement in both English and French (see comments on Article 13(1)(a)).
7. The draft revised Act not only incorporates the amendments recommended in respect of Article 3 and those which follow therefrom but also endeavors to harmonize the Agreement with more recent Agreements adopted in the field of classification, such as the Strasbourg Agreement Concerning the International Patent Classification, of March 24, 1971 (hereinafter referred to as "the Strasbourg Agreement") and the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, of June 12, 1973 (hereinafter referred to as "the Vienna Agreement"). Thus it is proposed, in particular, to give a title to each Article of the revised Act.
8. Three Articles in the existing text--Articles 12, 14 and 16--have not been maintained in the draft revised Act.
9. Article 12 of the existing text deals with the application of various Acts of the Agreement in relations between countries which have acceded to the revised Act and those which have not acceded to it. In reality, there are no relations other than those of an administrative nature between the contracting countries, whose obligations are basically those resulting from Article 2(3). The rather complicated system which was to be provided for under this Article of the revised Act seems therefore superfluous.
10. Article 14 of the existing text refers to an Article of the Paris Convention which, in all probability, will be deleted at the forthcoming revision of that Convention.
11. Article 16 of the existing text was of a transitional nature and is now obsolete.

12. Procedure To Be Applied by the Committee of Experts After the Entry Into Force of the Revised Act of the Agreement for Some of the Contracting Countries. The ad hoc Committee of Experts invited the International Bureau to propose a solution to the effect that, after the entry into force of the revised Act of the Agreement for a certain number but not all of the contracting States, the revised procedure for decisions on proposals for changes in the Classification would be applied by the Committee of Experts set up under Article 3 of the Agreement (hereinafter referred to as "the Committee of Experts") with respect to all contracting States (document N/CE/I/9, paragraphs 47 to 49).

13. The essential difference between the present procedure and the proposed revised procedure consists in the fact that modifications in the Classification require unanimity under the former and would require only a qualified majority under the latter. As long as a country is not bound by the revised text, it cannot be required to go along with decisions which were not unanimous. However, it may do so voluntarily, on the basis of, for example, appropriate recommendations by the Assembly, the Conference of Representatives or the Committee of Experts. It is believed that the Assembly and the Conference of Representatives of the Nice Union, and not the Diplomatic Conference, would be the proper bodies to deal with this question since it will primarily concern those countries which do not accept the revised Agreement, or, rather, as long as they are not bound by it. Consequently, it is proposed that this question be dealt with in a session of the Assembly and the Conference of Representatives of the Nice Union subsequent to the Diplomatic Conference. If this view is shared by the member States, the Director General will prepare detailed proposals for the solution of the question and submit them to the Assembly and the Conference of Representatives.

Comments on Article 1

Ad (1): It is proposed that paragraphs (1) and (2) of the existing text of the Agreement be combined in one paragraph. Furthermore, the term "common classification" seems preferable to "single classification."

Ad (2)(iii): Although not provided for in the existing text, the Committee of Experts has prepared explanatory notes to accompany most of the 34 classes of goods and eight classes of services in the Classification. These notes are designed to facilitate the use of the Classification and assist in its uniform application. It is proposed that they should be made an integral part of the Classification as in the case of the International Patent Classification (Article 2(1)(b) of the Strasbourg Agreement) and the International Classification of the Figurative Elements of Marks (Article 2(1) of the Vienna Agreement). Naturally, the Committee of Experts may amend or supplement the existing notes, as required, in accordance with Article 3(3)(i) of the present draft.

Ad (3): This provision replaces paragraphs (4) and (5) of the existing text.

Ad (4): As a result of the suggestion made to it by the ad hoc Committee of Experts, the International Bureau has examined whether, in addition to the French text, an authentic English text of the Agreement and the Classification should be established. It concluded in favor of the establishment of such a text both for the Agreement and for the Classification. As regards the Agreement, reference should be made to the comments on Article 13(1)(a). As for the Classification, it should be noted that the Strasbourg and Vienna Agreements, which were both established in English and French, also stipulate that the Classifications set up under those Agreements should be established in those two languages, both texts being equally authentic. In addition, as observed by the ad hoc Committee of Experts, the establishment of an authentic English text of the Nice Classification is of special importance in the context of the future application of the Trade-mark Registration Treaty (Madrid Treaty), an application for international registration of a trademark being possible only if the list of goods and

services to be covered by the mark, which has to accompany each application, should, as far as possible, be based on the alphabetical list of goods and services of the Nice Classification. It will therefore be necessary that applicants submitting their applications for registration in English should have at their disposal not just an official English translation of the alphabetical list but an authentic English text being equally authoritative with the French text.

It is not felt appropriate to submit the draft of an authentic English text of the Classification to the Diplomatic Conference since the Classification is to be systematically reviewed in the near future by the Committee of Experts, as decided by the latter, and will probably be amended, particularly as regards the alphabetical list.

Ad (5): The wording of this provision is modelled on the corresponding provisions of the Strasbourg and Vienna Agreements (Article 3(2)). It should be noted, in particular, that it is proposed to entrust the Assembly of the Special Union with the task of designating the languages in which official texts of the Classification are to be established.

Ad (6): This provision corresponds to the final sentence of the existing Article 1(6), which is thus amended to allow for the fact that under paragraph (4) the Classification is established in two equally authentic English and French texts.

Comments on Article 2

This provision reproduces Article 2 of the existing text subject to the amendments made, in view of the abbreviated terms used in Article 1(1) and (2)(ii) of this draft, to the references to the Classification and the alphabetical list, and the replacement of "contracting country" by "country of the Special Union."

Comments on Article 3

General Remarks

As a rule, and subject to the comments on paragraph (7), the ad hoc Committee of Experts has based its proposals for this Article on the principles generally recognized at the present time in the field of classification, as adopted by such more recent Agreements as the Strasbourg Agreement and the Vienna Agreement. Thus paragraphs (1), (2)(b) and (c), (3), (4), (5), (6), (7), first sentence, and (8) have been taken over practically unchanged from Article 5 of these two Agreements, and paragraph (2)(a) has been taken over from Article 5(2)(a) of the Vienna Agreement.

In addition, the ad hoc Committee of Experts has proposed the deletion of paragraphs (5) and (6) of the existing Article 3, which do not exist in the Strasbourg or Vienna Agreements.

Article 3(5) of the existing text provides experts with the possibility of submitting their opinions in writing and delegating their powers to experts of other countries. This ruling was adopted for reasons of a practical nature: in view of the fact that any amendment of the Classification within the meaning of Article 3(3) of the existing text required the unanimous consent of the contracting countries for its adoption, the Nice Conference had sought, by means of those provisions, to make it easier for countries to vote.

As far as voting by correspondence is concerned, it should be pointed out that the expert of a country which intends to oppose proposals submitted to the Committee of Experts is able to cast his vote by correspondence even before the Committee meets. Given the unanimity rule written into the existing Article 3(3), such a vote, if negative, rules out in advance any discussion of the proposed amendments, which must therefore be shelved at the outset regardless of whatever merits they may have and even if they have the support of all the other contracting countries. Undoubtedly, this provision will no longer have the same serious drawbacks if, as proposed in Article 3(7), the requirement of the unanimous consent of the contracting countries is abandoned. It nevertheless appears undesirable, even in the latter case, to allow the expert of one country to oppose any change in the Classification without even having had the opportunity to hear the opinions of the experts of the other countries, particularly in cases where such changes would have been accepted by the great majority, or even all, of the experts of the other countries. Furthermore, this provision will no longer have the same importance for a contracting country if the requirement of the unanimous consent of the contracting countries is abandoned. It would therefore seem desirable to align the Nice Agreement on the Strasbourg and Vienna Agreements in this case also.

The possibility offered to the expert of a country to delegate his powers to the expert of another country would likewise no longer have the same importance if the requirement of the unanimous consent of the contracting countries for amendments to the Classification is abandoned. It would therefore seem desirable to harmonize the Agreement with the Strasbourg and Vienna Agreements on this point also.

Article 3(6) of the existing text provides that a country which had not appointed an expert (to represent it at a session of the Committee of Experts) would be considered to have accepted any decision of the Committee. This provision will become superfluous if, as proposed under Article 3(7), only the votes of countries represented in the Committee of Experts and voting are taken into consideration.

Article 3(6) of the existing text further provides that a country would also be considered to have accepted the decision of the Committee of Experts in cases where the expert it has appointed has not submitted his opinion within a certain period (fixed at two months in the rules of procedure of the Committee of Experts). It should be noted in this respect that the disadvantage of such a provision may be the fact that it leaves some doubt, so long as the two-month period has not expired, as to whether a decision taken by the Committee of Experts is really a decision; if, in fact, the vote expressed within the said period is negative, it is possible that the required majority may not be obtained. Such a situation will rarely arise, however, once all the decisions of the Committee of Experts are taken by a majority--simple or qualified--of the countries represented and voting. The usefulness of the provision would therefore be very limited and it would be preferable, for the reasons given above, to delete it.

If the existing Article 3(1) is taken in the literal sense, the Committee of Experts would not be competent to make any changes to the Classification other than amendments within the meaning of the existing Article 3(3), or additions. Other changes, however, may prove necessary and have, in fact, already been decided on by the Committee of Experts, such as the deletion of incomprehensible or too vague indications for goods, and changes of a drafting nature. It is therefore proposed that the general term "changes" be adopted to cover the amendments referred to in the existing Article 3(3) and in Article 3(7) of the present draft and all other modifications referred to above.

Ad (1) to (6): See the General Remarks above.

Ad (7): The existing Article 3(3) provides that decisions of the Committee of Experts concerning amendments (by which is to be understood any transfer of goods from one class to another or the creation of any new class entailing such transfer) require the unanimous consent of the contracting countries.

When it provided for this unanimity rule, the Nice Conference considered that amendments to the Classification were liable to affect the rights of owners of marks that had already been registered (Actes de la Conférence de Nice, page 229); moreover, as pointed out by the United Kingdom prior to the opening of the Nice Conference, amendments were likely to create difficulties of a practical nature in countries whose legislation required that a search for similar marks be made before the mark was registered (Actes de la Conférence de Nice, page 156).

The unanimity rule provided for in the existing Article 3(3) has serious drawbacks, however. Some amendments may become necessary as a result of the development of technology or because of commercial requirements or practices, for instance. Amendments may also be necessary to remove contradictions, to ensure the consistent application of the classification principles accepted by the Committee of Experts and stated in the General Note preceding the Explanatory Notes, or simply to make it easier to classify certain goods and services. In its present form, Article 3(3) allows a single country to oppose the adoption of such amendment proposals, even if they are desired by a large majority or indeed by all of the other members of the Committee of Experts, and thus to prevent permanently any amendment in the Classification. Experience has shown that such fears are not hypothetical.

The ad hoc Committee of Experts was unanimous in proposing that the unanimity rule be replaced by that of a qualified majority and that such majority should no longer be a majority of the contracting countries but a majority of the countries represented in the Committee of Experts and voting.

Furthermore, some experts observed that the Strasbourg and Vienna Agreements could not be regarded (in all respects) as a precedent since, unlike the Nice Classification, neither of the Classifications established under those Agreements was liable to affect the rights of holders of titles of protection. The ad hoc Committee of Experts was therefore of the opinion that the provision under Article 5(6)(c) of both Agreements should not be taken over purely and simply but that a qualified majority should be required in all cases of amendment of the Classification and not only in the special conditions provided for under the above-mentioned provision, that is to say, in cases where one-fifth of the countries represented and voting considered that the amendment would give rise to a modification of the basic structure of the Classification or entail a substantial amount of reclassification.

As for the degree of qualification of the required majority, opinions in the ad hoc Committee of Experts were divided. For that reason, the ad hoc Committee of Experts recommended the International Bureau to submit two alternatives to the Diplomatic Conference, one requiring a majority of three-fourths of the votes of the countries represented and voting and the other a majority of five-sixths of the votes of the countries represented and voting; the ad hoc Committee of Experts added that, in presenting those alternatives, the International Bureau would be free to state its opinion on the system of qualified majority that seemed preferable to it.

The International Bureau is of the opinion that any majority higher than three-fourths of the countries represented and voting would be of no great practical value. It shares the view expressed by some of the experts in the ad hoc Committee of Experts that any majority higher than three-fourths of the countries represented and voting would not provide the necessary flexibility to attain the required objective, since, in view of the small number of countries party to the Agreement, compared, for example, with that of the countries party to the Paris Convention,* and the even smaller number of those which may be expected to participate in a vote, the results would not be very different from those that would be obtained if the unanimity rule were maintained. It should be noted, in this connection, that the number of countries represented in the Committee of Experts has never, to date, been more than 17. In recent sessions, for example, it has been 13 (in 1973), 17 (in 1974) and 16 (in 1975). In addition, it appears that only a three-fourths majority is likely to allow, at least for some considerable time, the needs and wishes of those countries which have only recently accepted the Agreement or which will accept it in the future to be taken into consideration.

* Because of the great difference in the number of members of the Paris Union and the Nice Union, the requirements for majorities in these two Unions are not comparable.

It should be noted in this context that the Agreement is capable of attracting a number of countries that are not yet party to it, particularly developing countries. A three-fourths majority of the countries represented and voting would ensure a certain balance between the interests of the "older" contracting countries and those of countries which have only recently accepted the Agreement or will accept it in the future, and it would allow the latter countries to have the amendments they might wish to make to the Classification adopted more easily by the Committee of Experts, while affording the older contracting countries particularly attached to the principle of the stability of the Classification sufficient assurance of their ability to prevent the adoption of proposals that seemed unreasonable to them.

It should also be noted, with regard to those countries that are particularly attached to the principle of the stability of the Classification and fear that the amendments made to it might affect the rights of trademark owners, that under Article 2(1) of the Agreement the effect of the International Classification is that attributed to it by each contracting country; in particular, it does not bind the contracting countries in respect of the evaluation of the extent of the protection afforded to any given mark. Nor is there any provision in the Agreement that amendments to the Classification decided upon by the Committee of Experts must have retroactive effect. There is nothing, therefore, to prevent a contracting country whose legislation attributes a legal effect to the Classification from evaluating, at any time, the rights deriving from registration in relation to the Classification that was in force at the time of registration, so that the rights of the trademark owner would not be affected by amendments made to the Classification after the registration of the mark. This would apply especially in cases where, at the time of registration of the mark, the extent of protection claimed has been determined simply by indicating one or more numbers of classes of goods or services.

Finally, the difficulties that amendments to the Classification may create for anticipation search services will be diminished considerably by the fact that the Committee of Experts decided in its November 1975 session that the Classification would no longer be subject to frequent revisions of detail, made as the occasion arises, but rather to a systematic revision at longer intervals. Without taking a final decision on the matter, it was thought that such intervals should be not less than five years and not more than ten years.

As far as the definition of "amendment" is concerned, it is proposed that it be expanded to cover any transfer, from one class to another, not only of goods--as provided in the existing Article 3(3)--but also of services. This is merely a question of repairing an omission. The reasons in favor of a qualified majority are just as valid for the transfer of services from one class to another as for a similar transfer of goods. In practice, the Committee of Experts has always considered the present procedure to be equally applicable to transfers of services from one class to another.

As regards additions to the Classification, the existing Article 3(4) provides that decisions of the Committee of Experts shall require a simple majority of the contracting countries. The ad hoc Committee of Experts unanimously proposed that the Committee of Experts' decisions on the adoption of changes other than amendments should require a majority not of the contracting countries but of the countries represented in the Committee of Experts and voting, and that the required majority should remain a simple one. This proposal is in line with the provisions of Article 5(6)(b) of the Strasbourg and Vienna Agreements.

Comments on Article 4

This Article, subject to the comments below, corresponds to the existing Article 4 with a number of drafting changes.

Ad (1): The reference to the recommendations of the Committee of Experts, which does not appear in the existing text, is taken over from Article 6(1) of the Strasbourg and Vienna Agreements (see Article 3(3)(11) of the present draft).

Ad (2): It is proposed that the designation of the periodicals in which changes made in the Classification are to be published should no longer be made in the Agreement itself but should be left to the Assembly of the Nice Union, a solution which corresponds to that adopted in the Strasbourg and Vienna Agreements (Article 6(2)).

Comments on Article 5

This provision is identical to the existing Article 5, subject to the following reservations.

Ad (1)(a) and (2)(a)(ii): These provisions allow for the fact that the Assembly is to be composed of States bound by the Act revised at Stockholm in 1967 or by the new revised Act, including, of course, those bound by both Acts.

Ad (1)(c): This new provision results from Article 3(2)(b), which is also new.

Ad (2)(a): The reference to Article 4 is deleted since it seems superfluous and in any case there is no equivalent in the Strasbourg and Vienna Agreements (Article 7(2)(a)).

Ad (2)(a)(iii): There is no longer any need to define "Director General" here since it is already defined in the proposed Article 3(2)(a).

Ad (2)(a)(vi) and (vii): The wording of these provisions is identical to that of Article 7(2)(a)(vii) and (viii) of the Strasbourg and Vienna Agreements.

Ad (4)(b): This provision, which allows the Director General to take the initiative in convening the Assembly in extraordinary session, corresponds to Article 32(7)(b) of the Trademark Registration Treaty.

Comments on Article 7

This provision is identical to the existing Article 7 subject to a purely formal amendment to paragraph (4)(a).

Comments on Article 6

This provision is identical to the existing Article 6 subject to drafting changes in paragraphs (1)(b), (2) and (3)(c), and paragraph (3)(a), which has been amended as a result of the new wording proposed for Article 11.

Comments on Article 8

This provision is identical to the existing Article 8.

Comments on Article 9

Ad (1) to (3), (4) (b) and (5): These provisions are identical to the existing text.

Ad (4)(a): In response to the invitation of the ad hoc Committee of Experts, the International Bureau studied the question of the requirements to be met for the entry into force of the revised Act of the Agreement as far as the number of ratifications or accessions is concerned.

In the course of the discussions, a minority of the experts remarked in the ad hoc Committee of Experts that the changes envisaged in the Agreement were of a purely administrative character and that the revised Act of the Agreement could therefore probably be ratified by many countries without the need for domestic legislation or parliamentary approval. They were of the opinion that in the circumstances the number of ratifications or accessions required for the entry into force of the revised Act of the Agreement could and should be set higher than five. The same experts said that they were however ready to accept any solution proposed by the International Bureau after further consideration.

The majority of the experts expressed the opinion that, under their respective constitutional systems, parliamentary approval was necessary before ratification of an international instrument of the kind envisaged.

One expert suggested that the possibility be studied of providing for a solution similar to that of the Patent Cooperation Treaty, requiring a certain number of countries with a certain minimum number of registrations of marks with effect on their territory to be among those whose ratification or accession was a necessary condition for entry into force.

It should be pointed out that the normal minimum number of instruments of ratification or accession required for the entry into force of an agreement like the Nice Agreement is five. A higher figure or any other special conditions are necessary only where special circumstances so require, such as, for example, the particular importance of the instrument in question, or the special legislative, administrative or other measures required for the preparation of its entry into force. This applied, for instance, to the Patent Cooperation Treaty, the Paris Convention as revised at Stockholm and the Strasbourg Agreement. In the case of the last-mentioned text, and in view of the fact that the administration of the International Patent Classification was to be ensured thenceforth by WIPO and no longer by the Council of Europe, it was apparent that the Strasbourg Agreement could not reasonably enter into force until it had been ratified by a certain number of countries not members of the Council of Europe and by a large number of countries which were members of the Council of Europe and which denounced the European Convention on the International Classification of Patents for Invention.

In the present case, the International Bureau sees no special reason for departing from the normal rule requiring five instruments of ratification or accession for entry into force. The revised Act of the Agreement will certainly be no more important than the Agreement itself adopted at Nice and revised at Stockholm or than the Trademark Registration Treaty, both of which require five instruments of ratification or accession for entry into force. Furthermore, the application of the revised Act of the Nice Agreement will not require any special legislative or administrative measures on the part of the contracting countries and, contrary to the situation in the case of the Strasbourg Agreement, will not involve any change in the organization entrusted with the administration of the Classification.

The fact that the revised Act is purely administrative in character, far from justifying a greater number of ratifications or accessions, is another reason for observing the normal rule of five instruments of ratification or accession required for its entry into force. Moreover, the purely administrative character of the instrument in question is not necessarily, as experience has shown, likely to facilitate ratifications or accessions. The Strasbourg Agreement, for example, which is also purely administrative in character and which, for the special reasons given above, required 13 ratifications or accessions for its entry into force, took more than four and a half years to come into force after its adoption.

Finally, in view of the relatively limited importance and the purely administrative character of the revised Act, there seems to be no justification for requiring ratification or accession by a certain number of countries qualified by reason of the number of registrations of marks with effect on their territory.

The Director General therefore proposes to maintain in the revised Act the system under the existing Article 9(4)(a) whereby the revised Act will enter into force three months after the deposit of the fifth instrument of ratification or accession.

Ad (6): The proposed provision amends the existing paragraph (6) to take account of the 1967 Stockholm Act.

Comments on Article 10

This provision is identical to the existing Article 10, except that it omits the notion of the "force" of the Agreement, which is not to be found in any of the treaties recently concluded under the aegis of WIPO, including, in particular, the Strasbourg and Vienna Agreements (Article 14).

Comments on Article 11

This provision has been amended to bring it into line with Article 10 of the Strasbourg and Vienna Agreements and to take account of the opinion expressed by the Assembly of the Paris Union at its session held from September 27 to October 5, 1976 (see document AB/VII/23, paragraphs 117 and 128(iii)).

Comments on Article 12

Subject to an amendment in paragraph (1) to take account of the 1967 Stockholm Act, this provision is identical to the existing Article 13.

Comments on Article 13

This Article, which corresponds to the existing Article 15, has been completely recast on the lines of Article 17 of the Vienna Agreement. In substance, it differs from the existing Article 15 in three respects, which are explained below.

Ad (1)(a): As regards the establishment of an authentic English text of the revised Act, it should be noted that, since the Locarno Conference in October 1968 for the Establishment of an International Classification for Industrial Designs, all texts of treaties, conventions and agreements adopted under the aegis of WIPO have been established in English and French, the texts in both languages being equally authentic. As far as industrial property is concerned--and in addition to the Locarno Agreement Establishing an International Classification for Industrial Designs, of October 8, 1968--this is true for the Patent Cooperation Treaty, of June 19, 1970, the Strasbourg Agreement, the Trademark Registration Treaty, of June 12, 1973, and the other two Agreements adopted on the same date by the Vienna Conference, that is to say, the Agreement for the Protection of Type Faces and their International Deposit and the Vienna Agreement as well as the Protocol of Geneva to the Hague Agreement Concerning the International Deposit of Industrial Designs, of August 29, 1975. Furthermore, the Director General intends to propose that authentic texts be established at least in English and French for every new

treaty envisaged for the future, including texts proposed for the revision of existing treaties, conventions or agreements. This applies in particular to the Paris Convention for the Protection of Industrial Property, which is currently being revised. It is therefore proposed that, in accordance with a tradition established for almost ten years now, the revised Act should be established in English and French, both texts being equally authentic.

Ad (3)(b): This new provision corresponds to Article 17(3)(b) of the Vienna Agreement.

Ad (5)(iv): This new provision corresponds to Article 17(5)(viii) of the Vienna Agreement.

N/CD/4

February 11, 1977 (Original: English)

THE INTERNATIONAL BUREAU OF WIPO

Modification of the Draft Rules of Procedure (Rule 49)

The following text is substituted for the text of Rule 49 as appearing in document N/CD/2:

Rule 49: Amendments to the Rules of Procedure

(1) With the exception of Rule 34(1) and the present Rule, the Conference may amend these Rules.

(2) The adoption of an amendment to these Rules shall require a majority of two-thirds of the Member Delegations present and voting.

N/CD/5

May 2, 1977 (Original: French)

SOVIET UNION

Draft Revised Act of the Nice Agreement (proposal for modification of Article 13(1)(a)) and Draft Rules of Procedure (proposal for modification of Rules 1(1); 43(2))

This document contains proposals for the modification of the Draft Revised Act (document N/CD/3.Rev.) and Draft Rules of Procedure (documents N/CD/2 and 4), communicated by telex to the Director General of WIPO, on April 27, 1977, by Mr. Y. Maksarev, Chairman of the State Committee for Inventions and Discoveries of the USSR Council of Ministers.

Text of communication addressed to the Director General of WIPO

[Translation by the Secretariat]

We send you our proposals concerning the modification of Article 13(1)(a) of the Draft Revised Act of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

The proposed wording: "This Act shall be signed in a single copy in the English, French and Russian languages, these texts being equally authentic, and shall be deposited with the Director General."

A corresponding modification will be made to Rules 1(1) and 43(2) of the Rules of Procedure.

Yours respectfully,

Y. Maksarev

Moscow, 27.04.77

N/CD/6

May 3, 1977 (Original: English/French)

THE INTERNATIONAL BUREAU OF WIPO

Modification of the Draft Rules of Procedure (Rules 1(1) and 43)

In addition to the amendment contained in document N/CD/4, document N/CD/2 is modified as follows:

1. In Rule 1(1), last line, the words "in the English and French languages" are replaced by "in such languages as the Conference determines."

2. In Rule 43(1), first line, the words "paragraphs (2) and (3)" are replaced by "paragraph (2)." Paragraph (2) of Rule 43 is deleted; paragraph (3) becomes paragraph (2), and in the last two lines of that paragraph the words ", or the other language referred to in paragraph (2), as the case may be" are deleted.

N/CD/7

May 4, 1977 (Original: French)

SPAIN

Draft Revised Act (proposal for modification of Articles 1(4) and 13(1)(a))

1. Article 1(4) of the Draft should be worded as follows:

"The Classification shall be established in the English, French and Spanish languages, all three texts being equally authentic. The Committee of Experts referred to in Article 3 shall establish the English and Spanish texts."

2. Article 13(1)(a) of the Draft should be worded as follows:

"This Act shall be signed in a single original in the English, French and Spanish texts, all three texts being equally authentic, and shall be deposited with the Director General."

N/CD/8

May 4, 1977 (Original: English)

UNITED KINGDOM

Draft Revised Act (proposal concerning Article 13 (new))

1. It is proposed that a new Article 13 be inserted the text of which would be identical to that of Article 14 of the text now in force.
2. The proposed Article 13 in document N/CD/3.Rev. would be renumbered Article 14.

N/CD/9

May 4, 1977 (Original: English/French)

NETHERLANDS

Draft Revised Act (proposal concerning a new article)

The following Article should be inserted in the revised Act of the Nice Agreement:

"If a country of the Special Union has two or more territorial units which have their own rules of law in respect of the protection of industrial property, it may, at the time of signature, ratification or accession, declare that this Agreement shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time."

N/CD/10

May 4, 1977 (Original: English)

NORWAY

Draft Revised Act (proposal for modification of Article 9(4)(a))

Article 9(4)(a) should read:

"With respect to the first ten countries which have deposited their instruments of ratification or accession, this Act shall enter into force three months after the tenth such instrument was deposited."

N/CD/11

May 4, 1977 (Original: English/French)

THE DIPLOMATIC CONFERENCE

Rules of Procedure. Text adopted by the Diplomatic Conference
on May 4, 1977

Editor's Note: This document contains the text of the Rules of Procedure as adopted by the Diplomatic Conference on May 4, 1977, and reproduced on pages 47 to 58 of these Records.

N/CD/12

May 4, 1977 (Original: English/French)

CZECHOSLOVAKIA

Draft Revised Act (proposal of modification of Article 3(7))

Article 3(7) should read as follows:

"The decisions of the Committee of Experts shall require a simple majority of the countries represented and voting. However, decisions concerning the adoption of amendments to the Classification shall be adopted on condition that at least one half of the countries of the Special Union vote in favor of such amendments. "Amendment" shall mean any transfer of goods and services from one class to another or the creation of any new class entailing such transfer. If, in any session of the Committee of Experts, the proposals for amendments to the Classification do not obtain a sufficient number of votes, the International Bureau shall communicate the said proposals to the countries of the Special Union 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 communication. If, at the expiration of the said period, the number of votes required for adoption of proposed amendments to the Classification has been reached, such decisions shall take effect."

N/CD/13

May 4, 1977 (Original: French)

FRANCE

Draft Revised Act (proposal for amendment of Article 3)

Article 3: Add a paragraph 5bis:

"The Classification shall undergo revision every eight years; during the period between two revisions, no amendment within the meaning of paragraph (7) below may be made to it."

Reasoned observations

The addition of this provision, the spirit of which was accepted by the ad hoc Committee of Experts, responds to two necessities. The first necessity is that of keeping the Classification up to date; owing to the appearance of new goods on the market, it frequently has to be brought up to date by means of

additions. Such additions could be made at any time according to the procedure provided for to this end. The second necessity has to do with the stability of the Classification in the interests of both the owners of trademarks and of the legal security of third parties. Moreover, the reliability of anticipation searches, especially if they are carried out by computer, calls for a certain permanency of the Classification, and in any case rules out too frequent amendments. Such amendments should therefore occur at intervals of a minimum duration. An interval of eight years appears reasonable in the light of the figures that were produced by the ad hoc Committee of Experts.

N/CD/14

May 4, 1977 (Original: English)

AUSTRIA

Draft Revised Act (proposal for modification of Article 1)

In Article 1 the following two new paragraphs should be added after paragraph (3):

"(4) The text referred to in paragraphs (2) and (3)(i) and (ii) is contained in one authentic copy, in the English and French languages, deposited with the Director General of the World Intellectual Property Organization (hereinafter respectively designated "Director General" and "Organization") established by the Convention of July 14, 1967.

(5) The changes referred to in paragraph (3)(iii) shall be deposited in one authentic copy, in the English and French languages, with the Director General."

Paragraphs (4), (5) and (6) are to be renumbered as paragraphs (6), (7) and (8).

N/CD/15

May 4, 1977 (Original: English/French)

NETHERLANDS

Draft Revised Act (proposal for modification of Article 3(6) and (7)):

1. Article 3(6) should be worded as follows:

"Each country of the Special Union represented in the Committee of Experts shall have one vote."

2. Article 3(7) should be changed as follows:

- (a) Insert "of the Special Union" after "countries" in the second and fourth lines.
- (b) Delete "entailing such transfer" in the sixth line.

N/CD/16

May 5, 1977 (Original: English)

UNITED STATES OF AMERICA

Draft Revised Act (proposal for modification of Article 3(7))

It is proposed that the second sentence of paragraph (7) of Article 3 be amended to read as follows:

"However, a decision concerning the adoption of amendments to the classification shall require a majority of three-fourths of the countries represented and voting, provided that any amendment shall not enter into force if, within a period of 30 days from the date of dispatch of the notification of such amendment, more than one-fifth of the countries of the Special Union communicate in writing to the International Bureau negative votes on such amendment."

N/CD/17

May 5, 1977 (Original: English)

UNITED STATES OF AMERICA

Draft Revised Act (proposal for modification of Articles 1(6) and 8)

1. In Article 1 it is proposed that the following be substituted for the text of paragraph (6):

"Indications of the goods and services in the French and English alphabetical lists shall be cross-referenced to each other by serial numbers and indications in lists established in other languages shall be cross-referenced by serial numbers to either the French or English text."

2. It is proposed that Article 8 be amended so that the power to propose and vote on amendments to Articles 5 to 8 will be limited to those members of the Assembly which have acceded to or ratified the revised Act.

N/CD/18

May 5, 1977 (Original: English)

FEDERAL REPUBLIC OF GERMANY

Draft Revised Act (proposal for modification of Articles 1(4) and 13(1)(a))

Upon instruction of its Government, the Delegation of the Federal Republic of Germany to the Diplomatic Conference on the Revision of the Nice Agreement has the honor to propose to include the German language in Article 1(4) and in Article 13(1)(a) of the draft revised Act of the Nice Agreement.

N/CD/19

May 5, 1977 (Original: English)

UNITED STATES OF AMERICA

Draft Revised Act (proposal for modification of Article 9(4)(a))

It is proposed to insert at the end of Article 9(4)(a) the following text:

"..., provided that at least three of those countries each fulfill either of the following conditions:

- (i) the number of registrations in force in the national or inter-governmental Office responsible for the registration of marks for the country at the end of the year 1975 has exceeded 50,000,
- (ii) the number of applications for the registration of marks received by such national or intergovernmental Office during the year 1975 exceeded 4000;

and further provided that determinations as to the fulfillment of the said conditions shall be made by the Director General based on statistics supplied to him for publication, or by declarations of the countries which have not yet supplied statistics for the said year."

N/CD/20

May 6, 1977 (Original: English)

THE CREDENTIALS COMMITTEE

Report (prepared by the Secretariat)

1. The Credentials Committee (hereinafter referred to as "the Committee"), established by the Diplomatic Conference on the Revision of the Nice Agreement (hereinafter referred to as "the Conference"), on May 4, 1977, met on May 6, 1977.

Composition

2. The delegations of the following States members of the Committee attended the meeting: Austria, Belgium, Denmark, Hungary, Morocco, Netherlands, Norway, Portugal, Spain.

Opening of the Meeting

3. The President of the Conference, Mrs. E. Steur (Federal Republic of Germany) opened the meeting.

Officers

4. On the proposal of the President of the Conference, the Committee unanimously elected Mr. F. Nettel (Austria) as Chairman and Mr. A. Villalpando Martinez (Spain) and Mr. E. Traut (Morocco) as Vice-Chairmen.

Examination of Credentials, etc.

5. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Conference on May 4, 1977 (hereinafter referred to as "the Rules of Procedure"), the Committee examined the credentials, full powers, letters or other documents presented for the purposes of Rules 6 and 7 by the Member Delegations, the Observer Delegations and the representatives of the Observer Organizations.

Member Delegations

6. The Committee found in due form, in accordance with Rule 6 of the Rules of Procedure, the credentials and full powers presented by the Member Delegations of the following States members of the Special Union for the International Classification of Goods and Services for the Purposes of the Registration of Marks (hereinafter referred to as "the Nice Union"): Belgium, Denmark, Finland, France, Germany (Federal Republic of), Monaco, Netherlands, Portugal, Soviet Union, Spain, Switzerland, United Kingdom, United States of America.

7. (a) The Committee found in due form, in accordance with Rule 6 of the Rules of Procedure, the credentials presented by the Member Delegations of the following States members of the Nice Union: Australia, Austria, Czechoslovakia, Hungary, Norway, Sweden.

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

Observer Delegations

8. The Committee found in due form, in accordance with Rule 7(1) of the Rules of Procedure, the documents of appointment presented by the Observer Delegations of the following States members of the International (Paris) Union for the Protection of Industrial Property, invited to participate in the Conference as observers in accordance with Rule 2(2) of the Rules of Procedure: Ghana, Libya, Philippines, Trinidad and Tobago.

Observer Organizations

9. The Committee found in due form, in accordance with Rule 7(2) of the Rules of Procedure, the letters or documents of appointment presented by the representatives of the following international non-governmental organizations, invited to participate in the Conference as observers: Committee of National Institutes of Patent Agents (CNIPA), Council of European Industrial Federations (CEIF), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Federation of Patent Agents (FICPI), Union of Industries of the European Community (UNICE).

Further Procedure

10. The Committee expressed the wish that the Secretariat should bring Rule 6 ("Credentials and Full Powers"), 7 ("Letters of Appointment") and 10 ("Provisional Participation") of the Rules of Procedure to the attention of delegations not having presented credentials or letters of appointment.

Report

11. The Committee authorized the Secretariat to prepare the report of the Committee for submission to the Conference, and authorized the Chairman to examine and to report to the Conference upon any further credentials, full powers, letters and other documents which might be presented by delegations after the close of its meeting.

N/CD/21

May 9, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Draft Revised Act (proposal for modification of Article 13(1) and (2):
text containing the so-called Budapest formula)

Article 13Signature; Languages; Depository Functions; Notifications

(1)(a) This Act shall be signed in a single original in the English and French languages, both texts being equally authentic, and shall be deposited with the Director General.

(b) Official texts of this Act shall be established by the Director General, after consultation with the interested Governments and within two months from the date of signature of this Act, in the other languages in which the Convention Establishing the World Intellectual Property Organization was signed.

(c) Official texts of this Act shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian and Portuguese languages, and such other languages as the Assembly may designate.

(2) This Act shall remain open for signature until December 31, 1977.

(3) to (5) [No change]

N/CD/22

May 9, 1977 (Original: English)

SOVIET UNION

Draft Revised Act (proposal for modification of Article 13)

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

(b) The Director General shall establish, taking into account technical difficulties, authentic texts in Russian and Spanish languages after consultation with the Governments of the States participants of this Conference. These texts shall be open for signature until a date fixed in subparagraph (2) of this Article.

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

(3) This Act shall remain open for signature until December 31, 1977.

N/CD/23

May 11, 1977 (Original: English/French)

THE DRAFTING COMMITTEE

Draft Geneva Act of the Nice Agreement

Editor's Note: This document contains the text of the Draft Geneva Act of the Nice Agreement prepared and submitted to the Diplomatic Conference by the Drafting Committee meeting under the chairmanship of Mr. I. Davis (United Kingdom) on the basis of the decisions of the Conference meeting under the presidency of Mrs. E. Steup (Federal Republic of Germany). It is not reproduced in this volume. In the following, only the differences between the text of this draft and that adopted by the Diplomatic Conference (see the odd-numbered pages from 11 to 39 of these Records) are indicated.

1. Article 3(2)(b). Same as in the final text except that, in this draft, the words "of which" are preceded by the word "and."
2. Article 4(1). The wording of this Article reads in this Draft, as follows: "Changes decided upon by the Committee of Experts and recommendations of the Committee of Experts shall be notified to the competent Offices of the countries of the Special Union by the International Bureau. Amendments shall enter into force six months after the date of dispatch of the notification; other changes shall enter into force on a date to be specified by the Committee of Experts at the time it adopts them."

N/CD/24

May 11, 1977 (Original: English/French)

THE DRAFTING COMMITTEE

Draft statements to be included in the Records of the Diplomatic Conference

Editor's Note: This document contains the text of the draft statements prepared and submitted to the Diplomatic Conference by the Drafting Committee meeting under the chairmanship of Mr. I. Davis (United Kingdom) on the basis of the decisions of the Conference meeting under the presidency of Mrs. E. Steup (Federal Republic of Germany). It is not reproduced here. In the following, the only difference between the text of these draft statements and that approved by the Diplomatic Conference on May 12, 1977 (see document N/CD/27 which is reproduced on page 83 of these Records), is indicated.

This document contains a draft statement which does not appear in document N/CD/27 and the wording of which reads as follows:

6. Paragraph 13: "When adopting Article 13, the Diplomatic Conference understood that the term 'amendment' means any modification of the provisions of Article 24 of the Paris Convention, including their deletion."

N/CD/25

May 12, 1977 (Original: English)

THE PRESIDENT OF THE DIPLOMATIC CONFERENCE

Proposal concerning the Final Act of the Conference

Editor's Note: This document contains the text of the draft Final Act as proposed by the President of the Diplomatic Conference. It is identical to the text of the Final Act as signed by the participating States and reproduced on page 43 of these Records. Only the introductory note which appears on the first page of the document is reproduced hereafter.

1. It is proposed that a Final Act of the Conference be presented for signature at the same time as the Geneva Act adopted by the Conference, that is, on Friday, May 13, 1977, at 11.00 a.m., in the Conference Room of the WIPO Headquarters Building.
2. The Final Act would contain no obligations for Governments; it would merely record that the Conference was held and that it adopted the Geneva Act revising the Nice Agreement, and would refer to the preparatory work for the Conference.
3. All Member Delegations may sign the Final Act, as provided in Rule 50 of the Rules of Procedure adopted by the Conference.
4. A draft Final Act, submitted to the Conference, is annexed to this document.

N/CD/26

May 13, 1977 (Original: English/French)

THE DIPLOMATIC CONFERENCE

Text of the Geneva Act of the Nice Agreement as adopted on May 12, 1977, and as presented for signature on May 13, 1977

Editor's Note: This document contains the full text of the Geneva Act of the Nice Agreement as adopted on May 12, 1977, and as presented for signature on May 13, 1977. It is reproduced on the odd-numbered pages from 11 to 39 of these Records.

N/CD/27

May 13, 1977 (Original: English/French)

THE DIPLOMATIC CONFERENCE

Texts of statements to be included in the Records of the Conference as approved by the Conference on May 12, 1977

1. Ad Article 1(2)(a) and (3)(i): "When adopting Article 1(2)(i) and (3)(i) concerning the explanatory notes to the list of classes, the Diplomatic Conference understood that an explanatory note would have no effect if, and to the extent, that there was a discrepancy between that note and either the list of classes or the alphabetical list of goods and services."

2. Ad Article 3(2)(b): "When adopting Article 3(2)(b), the Diplomatic Conference understood that the fact that an organization is specialized in several fields of industrial property, including marks, or has general competence, including a specialization in the field of marks, does not preclude it from being regarded as specialized in the field of marks within the meaning of the said Article."

3. Ad Article 3(3), (5) and (7)(b): "When adopting Article 3(3), (5) and (7)(b), the Diplomatic Conference understood that the term 'change' is a general one and includes an amendment as referred to in Article 3(7)(b), an addition or a deletion or a change of a drafting nature, etc."

4. Ad Article 3(7)(c): "When adopting Articles 3(7)(c) and 9(4)(a), and with reference to the periods referred to in Article 3(7)(c), the Diplomatic Conference understood that the first such period would not end earlier than five years from the date on which the Geneva Act is opened for signature."

5. Ad Articles 5 to 8: "While the Diplomatic Conference realized that it might be desirable to make certain amendments to Articles 5 to 8 of the Geneva Act, it decided to retain the said Articles in a wording identical to Articles 5 to 8 of the Stockholm Act of July 14, 1967. The Diplomatic Conference expressed the view that, after the entry into force of the Geneva Act, any necessary amendments should be made, pursuant to Article 8 of the Stockholm and Geneva Acts, to Articles 5 to 8 of the said Acts, in particular to clarify that the Assembly referred to in Article 5 of the said Acts is one and the same and to harmonize the said Articles in both Acts with the corresponding provisions of the latest versions of the conventions, agreements and treaties adopted within the framework of the Paris Union."

N/CD/28

May 13, 1977 (Original: English/French)

THE DIPLOMATIC CONFERENCE

Text of the Final Act of the Conference as adopted on May 12, 1977, and as presented for signature on May 13, 1977

Editor's Note: This document contains the full text of the Final Act of the Conference as adopted on May 12, 1977, and as presented for signature on May 13, 1977. It is reproduced on page 43 of these Records.

N/CD/29

May 13, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Signatures. Memorandum by the Secretariat

The following States signed, on May 13, 1977, the following instruments adopted at the Diplomatic Conference on the Revision of the Nice Agreement:

1. NICE AGREEMENT CONCERNING THE INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES FOR THE PURPOSES OF THE REGISTRATION OF MARKS of June 15, 1957, as revised at Stockholm on July 14, 1967, and at Geneva on May 13, 1977

Finland, France, Germany (Federal Republic of), Hungary, Italy, Monaco, Netherlands, Portugal, Soviet Union, Spain, Switzerland, Tunisia, United Kingdom,

2. FINAL ACT

Algeria, Australia, Austria, Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic of), Hungary, Italy, Monaco, Morocco, Netherlands, Norway, Poland, Portugal, Soviet Union, Spain, Sweden, Switzerland, Tunisia, United Kingdom, United States of America.

CONFERENCE DOCUMENTS "N/CD/CR"
(N/CD/CR/1 to N/CD/CR/3)

List of Documents

<u>Document Number</u>	<u>Submitted by</u>	<u>Subject</u>
1.	The Secretariat of the Diplomatic Conference	Draft Revised Act of the Nice Agreement
2.	The Secretariat of the Diplomatic Conference	Draft statements to be included in the Records of the Diplomatic Conference
3.	The Secretariat of the Diplomatic Conference	Draft Revised Act of the Nice Agreement (supplement to document N/CD/CR/1)

Text of Documents

N/CD/CR/1

May 9, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Draft Revised Act of the Nice Agreement

Editor's Note: This document contains the full text of the draft submitted by the Secretariat of the Diplomatic Conference to the Drafting Committee, except the provisions of Articles 1(4) to (7) and 13(1) and (2) which appear in document N/CD/CR/3. It is not reproduced here. Only the differences between the text of this draft and that adopted by the Diplomatic Conference (see the odd-numbered pages from 11 to 39 of these Records) are indicated hereafter.

1. Article 1(3)(ii). The wording of this Article reads, in this draft, as follows: "the amendments and additions which have entered into force, pursuant to Article 4(1) of the Nice Agreement of June 15, 1957, and of the Act revised at Stockholm on July 14, 1967, prior to the entry into force of the present Act;"

2. Article 3(2)(b). Same as in the final text, except that, in this draft, the words "of which" are preceded by the word "and."

3. Article 3(7)(c). The wording of this Article reads, in this draft, as follows: "The rules of procedure referred to in paragraph (4) shall provide that, except [for urgent reasons] [where necessary for practical considerations], all the amendments to the Classification considered by the Committee of Experts during any period, to be specified in the said rules, be adopted at the same time, at the end of the said period."

4. Article 4(1). The wording of this Article reads, in this draft, as follows: "Changes decided upon by the Committee of Experts and recommendations of the Committee of Experts shall be notified to the competent Offices of the countries of the Special Union by the International Bureau. Amendments shall enter into force six months after the date of dispatch of the notification; other changes shall enter into force on a date to be specified by the Committee of Experts at the time it adopts them."

5. Article 9(4)(i). The wording of this Article reads, in this draft, as follows: "six countries have deposited their instruments of ratification or accession;"

N/CD/CR/2

May 9, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Draft statements to be included in the Records of the Diplomatic Conference

Editor's Note: This document contains the text of the draft statements submitted by the Secretariat of the Diplomatic Conference to the Drafting Committee. It is not reproduced here. Only the differences between the text of these draft statements and that approved by the Diplomatic Conference on May 12, 1977 (see document N/CD/27 which is reproduced on page 83 of these Records), are indicated hereafter.

1. The wording of Statement 1 reads, in this draft, as follows:

Ad Article 1(2)(1) and (3)(1): "When adopting Article 1(2)(i) and (3)(i) concerning the explanatory notes to the list of classes, the Diplomatic Conference understood that if there should be a discrepancy between the said notes, on the one hand, and the list of classes or the alphabetical list of goods and services, on the other hand, the latter two would prevail."

2. The title of Statement 4 reads, in this draft, as follows: "Ad Articles 3(7)(c) and 9(4)(a)."

N/CD/CR/3

May 9, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Draft Revised Act of the Nice Agreement (submitted to the Drafting Committee) (supplement to document N/CD/CR/1)

Editor's Note: This document, which is a supplement to document N/CD/CR/1, contains the text of draft Articles 1(4) to (7), 13 (new) and 14(1) and (2) submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference. It is not reproduced here. Only the differences between the text of these draft Articles and the text of the Articles as adopted by the Diplomatic Conference (see the odd-numbered pages from 11 to 39 of these Records) are indicated hereafter.

1. Article 1(6). The wording of this Article reads, in this draft, as follows: "Official texts of the Classification, in German, Portuguese, Russian, Spanish and in such other languages as the Assembly referred to in Article 5 may designate, shall be established by the International Bureau, in consultation with the interested Governments and either on the basis of a translation submitted by those Governments or by any other means which do not entail financial implications for the budget of the Special Union or for the Organization."

2. Article 13. Same as in the final text, except that this draft contains, instead of the words "most recent," the word "latest."

3. Article 14(1)(b). The wording of this Article reads, in this draft, as follows: "Official texts of this Act shall be established by the Director General, after consultation with the interested Governments and within two months from the date of signature of this Act, in the other languages in which the Convention Establishing the World Intellectual Property Organization was signed."

CONFERENCE DOCUMENTS "N/CD/INF"
(N/CD/INF/1 to N/CD/INF/7)

List of Documents

<u>Document Number</u>	<u>Submitted by</u>	<u>Subject</u>
1.	The Secretariat of the Diplomatic Conference	First provisional list of participants
2.	The Secretariat of the Diplomatic Conference	Officers and Committees
3.	The Secretariat of the Diplomatic Conference	Secretariat
4.	The Secretariat of the Diplomatic Conference	Second provisional list of participants
5.	The Secretariat of the Diplomatic Conference	Documents of the Diplomatic Conference on the Revision of the Nice Agreement (issued until May 6, 1977)
6.	The Secretariat of the Diplomatic Conference	Officers
7.	The Secretariat of the Diplomatic Conference	Final list of participants
8.	The Secretariat of the Diplomatic Conference	Final list of documents of the Diplomatic Conference on the Revision of the Nice Agreement

Text of Documents

N/CD/CR/1

May 4, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

First provisional list of participants

Editor's Note: This document contains the first provisional list of participants in the Diplomatic Conference. It is not reproduced here. For the full list of participants in the Conference, see pages 159 to 168 of these Records.

N/CD/INF/2

May 4, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Officers and Committees

Editor's Note: This document contains the list of the officers and members of the Committees. It is not reproduced here. For the full list of officers and members of the Committees, see page 169 of these Records.

N/CD/INF/3

May 4, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Secretariat

Editor's Note: This document contains the list of the members of the Secretariat. It is not reproduced here. For the composition of the Secretariat, see page 169 of these Records.

N/CD/INF/4

May 6, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Second provisional list of participants

Editor's Note: This document contains the second provisional list of participants. It is not reproduced here. For the full list of participants in the Diplomatic Conference, see pages 159 to 168 of these Records.

N/CD/INF/5

May 6, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Documents of the Diplomatic Conference on the Revision of the Nice Agreement (issued until May 6, 1977)

Editor's Note: This document contains the list of all the documents issued for the the Diplomatic Conference on the Revision of the Nice Agreement until May 6, 1977. It is not reproduced here. For the full lists of the Conference documents, see pages 61 and 62, 86 and 89 of these Records.

N/CD/INF/6

May 10, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Officers

Editor's Note: This document contains a list of officers. It is not reproduced in this volume. For the full list of officers, see page 169 of these Records.

N/CD/INF/7

May 12, 1977 (Original: English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Final list of participants

Editor's Note: This document contains the final list of participants in the Conference. It is not reproduced here. For the full list of participants in the Diplomatic Conference, see pages 159 to 168 of these Records.

N/CD/INF/8

May 13, 1977 (Original : English/French)

THE SECRETARIAT OF THE DIPLOMATIC CONFERENCE

Final list of documents of the Diplomatic Conference on the Revision of the Nice Agreement

Editor's Note: This document contains the final list of documents of the Diplomatic Conference, which is reproduced on pages 61 and 62, 86 and 89 of these Records.

MINUTES

DIPLOMATIC CONFERENCE
ON THE REVISION OF THE NICE AGREEMENT

President: Mrs. E. STEUP (Federal Republic of Germany)

Vice-Presidents: Mr. H. REDOUANE (Algeria)
Mr. R. SORENSON (United States of America)
Mr. C. UGGLA (Sweden)
Mr. V. BYKOV (Soviet Union)

Secretary General: Mr. L. BAEUMER (WIPO)

Assistant Secretary General: Mr. L. EGGER (WIPO)

<u>First Meeting</u> <u>Wednesday, May 4, 1977</u> <u>Morning</u>

Opening of the Conference, Election of the President of the Conference and Adoption of the Agenda

1. Mr. BOGSCH (Director General of WIPO) opened the Diplomatic Conference on the Revision of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. Referring to document N/CD/L.Rev. of December 19, 1976, containing the Draft Agenda of the Conference, he invited delegates to submit proposals for the election of the President of the Conference.
2. Mr. SORENSON (United States of America) proposed as President of the Conference Mrs. Elisabeth Steup, Delegate of the Federal Republic of Germany, Head of the Intellectual Property Division of the Ministry of Justice, referring to her experience and her great professional ability.
3. Mr. UGGLA (Sweden) supported, on behalf of the Delegation of Sweden, the proposal made by the Delegation of the United States of America.
4. Mr. MARRO (Switzerland) also supported, on behalf of the Delegation of Switzerland the proposal made by the Delegation of the United States of America.
5. Mr. REDOUANE (Algeria) also supported the candidature of Mrs. Steup.
6. Mr. BYKOV (Soviet Union) spoke in favor of the candidature of Mrs. Steup.
7. Mr. SERRÃO (Portugal) stated that his Delegation supported the candidature of the Delegate of the Federal Republic of Germany.
8. Mr. GERHARDSEN (Norway) also spoke in favor of that candidature.
9. Mr. NETTEL (Austria) supported the proposal.
10. Mr. BOGSCH (Director General of WIPO) noted that there was only one proposal, supported by a number of delegations. He therefore declared that Mrs. Elisabeth Steup, Delegate of the Federal Republic of Germany, was unanimously elected President of the Diplomatic Conference. He requested her to take the Chair.

11.1 Mrs. STEUP (Federal Republic of Germany) took the floor as President of the Conference, thanked the Delegates for having elected her to that post and stated that she would do her best to fulfill her task. The President congratulated and thanked the Director General of WIPO and his staff for the excellent preparation of the Conference and noted that the documents drawn up by the International Bureau would do much to facilitate the work of the Conference.

11.2 The President noted that, at first view, the Conference did not appear to have a significance comparable with that of some other conferences held in the past or to be held in the future. Nevertheless, the influence it could have on international cooperation within the Nice Union was not to be underestimated, nor were the consequences for trademark owners and for the daily work of the national industrial property offices. The Nice Union, compared with other Unions, still had but a small number of members, and one of the aims of the Conference was to give States not yet members of the Union an incentive to join the Union by improving the procedure for introducing amendments into the Classification which members--particularly new members--might deem appropriate. It was also the purpose of the Conference to guarantee that every proposed amendment would be examined and discussed in depth. On the other hand, a common Classification had to be based on a broad consensus and had to be very stable. The President considered that it was therefore necessary to strike a balance between the need for a stable Classification and the need to adapt and improve the Classification in accordance with technical development and changes in industry and trade.

11.3 The President moved to the next item on the draft agenda, which was the adoption of the Agenda of the Conference.

12. The Agenda was adopted as it appears in draft in document N/CD/1.Rev.

13. The PRESIDENT remarked that the debates in diplomatic conferences organized by WIPO were generally preceded by a meeting of Heads of Delegations participating in the conferences. She wished to continue this habit, which she considered a very good one, and therefore proposed that the meeting be adjourned to enable the Heads of Delegations to meet and discuss, in particular, the question of Conference Officers and a number of organizational questions.

14. It was so decided.

[Suspension]

Adoption of the Rules of Procedure

15.1 The PRESIDENT moved to the following item on the agenda, which was the adoption of the Rules of Procedure (document N/CD/2). She pointed out that three documents submitted, respectively, by the Secretariat (documents N/CD/4 and N/CD/6) and by the Delegation of the Soviet Union (document N/CD/5) contained proposals for changes to the draft Rules of Procedure, and she proposed that the draft be examined, chapter by chapter, referring only to those rules for which an amendment had been submitted.

15.2 The President moved to Rule 1, in respect of which one proposal had been submitted by the Delegation of the Soviet Union and another by the Secretariat, and pointed out that the matter had been discussed at the meeting of the Heads of Delegations. She noted that no objections were forthcoming to the proposal by the Secretariat, contained in document N/CD/6, nor were there further proposals for amendments to other Rules in Chapter I. She declared Chapter I, and also Chapters II to VI, to have been adopted.

15.3 The President then moved to Chapter VII and pointed out that Rule 34 was incomplete. She advised the Conference that the Heads of Delegations proposed that the Conference should insert the unanimity rule into Rule 34 and read out the proposed wording for Rule 34(1) of the Rules of Procedure, viz. "Final adoption of the revised Act shall require that no member Delegation vote against its adoption."

16. Mr. BYKOV (Soviet Union) asked that the proposal be distributed in writing to enable his Delegation to study it in more depth and that the final decision with respect thereto not be taken for the moment.
17. The PRESIDENT asked the Secretariat when the proposal could be ready in writing.
18. Mr. PFANNER (WIPO) replied that the proposal would be ready in the afternoon.
19. Mr. BOGSCH (Director General of WIPO) wondered whether it would not be simpler to dictate the proposal, which was very short, and suspend the plenary meeting for five minutes to enable the Delegation of the Soviet Union to consider it and if, despite that, the Delegation still wished to have more time, a document could then be drawn up.
20. The PRESIDENT asked the Delegate of the Soviet Union whether he agreed to the proposal by the Director General of WIPO.
21. Mr. BYKOV (Soviet Union) would have preferred to see the written text but did not wish to hold up the discussion.
22. The PRESIDENT requested the Secretariat to dictate the text.
23. Mr. PFANNER (WIPO) read out the proposed wording of Rule 34(1) of the Rules of Procedure in English and then in French.
24. The PRESIDENT suspended the meeting for 15 minutes.

[Suspension]

25. The PRESIDENT asked whether there were objections to the wording as proposed and noted that there were none.
26. The text of Rule 34(1) was adopted.
27. Chapter VII was adopted.
28. The PRESIDENT moved to Chapter VIII of the draft Rules of Procedure. Two proposals had been submitted for changes to Rule 43. The Heads of Delegations proposed adopting the proposal for amendment contained in document N/CD/6, drawn up by the Secretariat.
29. Since no objection was forthcoming, the proposed amendment of Rule 43 was adopted.
30. Chapters IX and X were adopted.
31. The PRESIDENT noted that a proposal for amendment of Rule 49 in Chapter XI had been made by the Secretariat and was contained in document N/CD/4.
32. Since no objection was forthcoming, the proposed amendment of Article 49 was adopted.
33. Chapter XII was adopted.
34. The Rules of Procedure as a whole were adopted unanimously.

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

35. The PRESIDENT moved to items 5, 6 and 7 of the Agenda, i.e., the election of the Vice-Presidents of the Conference and of the members of the Credentials Committee and the Drafting Committee. In compliance with Rule 14 of the Rules of Procedure, the Conference was to elect four Vice-Presidents. In compliance with Rules 11 and 12, the Credentials Committee and the Drafting Committee were each to comprise nine members. The President observed that, with the assistance of the Secretariat, she had drawn up a proposal in respect of the elections and that the proposal had been discussed in the meeting of Heads of Delegations.

For the posts of Vice-President, the Heads of the Delegations of the following States were proposed: Algeria, Soviet Union, Sweden and the United States of America. For the Credentials Committee, the Delegations of the following States were proposed: Austria, Belgium, Denmark, Hungary, Morocco, Netherlands, Norway, Portugal, Spain. For the Drafting Committee, the Delegations of the following States were proposed: Algeria, Australia, Czechoslovakia, France, Germany (Federal Republic of), Spain, Switzerland, United Kingdom, United States of America. The President asked whether the Conference had any objections and noted that none were forthcoming. She pointed out that the Officers of the Credentials Committee and of the Drafting Committee would be elected, in compliance with the Rules of Procedure, by, and from among, the members of the Committees.

36. The four Vice-Presidents and the members of the Credentials Committee and the Drafting Committee were elected as proposed.

Consideration of the Draft of a Revised Act of the Nice Agreement

General Debate

37. The PRESIDENT moved to item 8 on the Agenda: "Consideration of the Draft of a Revised Act of the Nice Agreement" (document N/CD/3.Rev.). She proposed beginning with a general debate before examining the draft article by article.

38. Mr. SORENSON (United States of America), after having congratulated on behalf of his Delegation the Director General of WIPO and all the staff of the Organization on the excellent preparation of the Diplomatic Conference on the Revision of the Nice Agreement, stated that the system of international classification greatly simplified the procedures for the registration and protection of marks internationally and, consequently, was of great importance to his country, a party to the Nice Agreement since 1972. He observed that the International Classification was used by the United States Patent and Trademark Office as its main system of classification. The Delegation of the United States of America was in favor of revising certain details of the Nice Agreement and considered that the proposals for amendments contained in the draft submitted for consideration constituted an excellent basis for the work of the Conference. The Delegate of the United States of America acknowledged that his Delegation held differing views on a number of points in the draft revised Act and that it would have some proposals to submit in respect of specific articles. It was nevertheless convinced that discussions would lead to satisfactory conclusions.

39. Mr. UGGLA (Sweden) observed that Sweden had been a member of the Nice Union since its inception. It had signed the Agreement at the Nice Conference in 1957 and had deposited its instruments of ratification in 1961, simultaneously with the entry into force of its national legislation on trademarks. Under the previous Swedish trademark law, no classification of goods had been required. It had been possible to register a trademark for all sorts of goods, subject to payment of a single fee. That state of affairs had led to a situation in which the Trademark Register was cluttered up with registrations making access to the Register very difficult for new marks. It was hoped that the introduction of a classification system would remedy that situation, and the fifteen years of practical experience that had followed had proved those hopes to be justified. At the time, Sweden had studied the various classification systems used in different countries throughout the world. The impression had been obtained that each system had its defects and that no classification in fact existed which was one hundred percent good. The international system appeared just as good as any other or perhaps slightly better. That was why the International Classification was chosen, and there had been no reason to regret that decision. In Sweden, the Classification had proved adequate despite the fact that it had its quirks and imperfections like any other classification. The functioning of the Agreement had also given satisfaction. The Delegate of Sweden confessed that the Agreement was particularly dear to his heart because he himself had attended the Nice Conference as a one-man delegation and had signed the Agreement on behalf of his country. He was aware that no instrument was perfect or resisted proof against time and that there were good reasons to undertake a revision of the Nice Agreement. It was therefore with a positive attitude that the Delegation of Sweden was participating in the Diplomatic Conference. It hoped that the Conference would be able to adopt texts achieving a fair balance and enabling new countries to become members of the Union and current members to remain within the Union. In this respect, the Delegate of Sweden pointed out

that it was possible to use the International Classification as it stood without at the same time being a member of the Nice Union. Finally, the Delegate of Sweden stated that the main concern of his Delegation was to safeguard the stability of the Classification, which was essential.

40. Mr. VILLALPANDO MARTÍNEZ (Spain) cordially congratulated the President on her election to the Chair of the Conference, emphasizing her personal qualities, and the Director General of WIPO and his staff on the presentation of a complete draft text of the revised Act of the Nice Agreement. The Delegation of Spain approved the idea of harmonizing the provisions of the Nice Agreement with the provisions of the Strasbourg Agreement Concerning the International Patent Classification and the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks. The Delegation also agreed that a number of concepts that had become useless under present circumstances could be deleted from the current text of the Nice Agreement. The Delegation of Spain accepted the draft on the whole but reserved its right to intervene in the discussions on practical aspects of the draft, related to Articles 1 and 13, dealing with the question of languages, and Article 3, dealing with required majorities for adopting decisions in the Committee of Experts. The Delegate of Spain was convinced that it would be possible during the deliberations to find formulas that were acceptable to all Delegations.

41. Mr. GERHARDSEN (Norway) stated that Norway had been using the International Classification since 1952. Fifty-five thousand Norwegian trademark registrations had already been classified in accordance with that system of classification. Therefore, the revision of the Nice Agreement was of great importance to Norway. The Delegate of Norway congratulated WIPO on proceeding with the modernization of the Agreement. It welcomed the introduction of the English text as an authentic text alongside the French text. The Norwegian trademark law required registration of trademarks by whole classes, simply by reference to the class numbers. Amendment of the Classification would have consequences for trademark owners in Norway since, to a certain extent, it would be difficult to notify amendments affecting previously registered marks. Although it was recognized that the Classification itself did not oblige the countries party to the Agreement to give a substantial effect to the Classification as regards the scope of protection of marks, amendment of the Classification could affect the rights of trademark owners. For that reason, the Delegation of Norway held that the rule of unanimity in Article 3, if amended, should be replaced by a very highly qualified majority. Furthermore, the minimum number of instruments of ratification or accession normally required for the entry into force of an agreement such as the Nice Agreement was five, unless special circumstances required a higher figure or other special conditions. The Delegation of Norway felt that, under the circumstances, a higher number of instruments of ratification or accession than that included in the draft should be required. In addition, the Delegation of Norway believed that the problem that would face the Committee of Experts when it had to take decisions on the basis of two differing voting systems would have to be resolved before Norway could ratify or accede to the new Act.

42. Mr. DAVIS (United Kingdom), after having offered the congratulations of his Delegation to the President on her election to the Chair of the Conference, explained that the basic aim of the Conference was to consider whether the rule of unanimity for adopting amendments to the Classification should be changed. He wondered why such a change was necessary in view of the fact that the Nice Agreement had been such a success over the years. Hundreds of thousands of marks had been registered all over the world under that system of classification, and it was to the credit of the founding fathers of the International Classification, who had drawn up the 1935 Répertoire des produits, to note that the system of 34 classes of goods on which the Classification provided for by the Nice Agreement had been based, had so well stood the test of time. The Delegate of the United Kingdom recognized that an international classification could not stand still, although the maintenance of a degree of stability in the system of classification was in the interests of proprietors of marks and of national offices. Account had to be taken of advances in technology and in commercial practices which required, if the Classification was to be up to date, amendments and additions to the list of goods and services. Amendment of the Classification raised problems which could best be resolved in meetings of experts. The Delegate of the United Kingdom stated the position of his Delegation by concluding that although, on the one hand, it was reasonable to do away with the right of veto, on the other hand, it was equally reasonable to retain a very high majority. Before closing, the Delegate of the United Kingdom wished to pay tribute to the work done over the years by the Committee of Experts, by the International Bureau of WIPO and, particularly, by the Temporary Working Group that had to examine some 20,000 items of the Classification in order to eliminate ambiguities and outdated expressions.

43. Mrs. AÚZ CASTRO (Federal Republic of Germany) joined the preceding speakers in expressing the thanks of her Government to the Director General of WIPO and his staff for the excellent preparation of the Diplomatic Conference. The Delegate of the Federal Republic of Germany pointed out that in her country, which had been a party to the Nice Agreement since 1962, the current Classification had proved a satisfactory instrument for registering trademarks. Nevertheless, she recognized the need to improve the Classification. By securing a balance between the need for stability, which was essential for trademark owners, and the need for flexibility, which was necessary in order to adapt to new developments, it should be possible to stimulate the interest of countries not yet party to the Agreement, particularly the developing countries, and encourage them to accede to that instrument. The Delegation of the Federal Republic of Germany felt the wording of the draft to be balanced and well thought out. The Delegation agreed to replace the rule of unanimity by a qualified majority and expressed its conviction that, on the basis of such excellent preparation, a well-balanced solution could be found which was acceptable to all Delegations.

44. Mrs. BOGNÁR (Hungary), after having offered her congratulations to the President on her election and to the Director General of WIPO and the Secretariat for the excellent quality of the preparatory work, admitted that the International Classification required modernizing. The current procedural rules did not serve well the aims of the Committee of Experts or of the Agreement as a whole. That was why the Delegation of Hungary supported the proposals for amendment.

45. Mr. BYKOV (Soviet Union) wished, first of all, to congratulate the President on her election and to emphasize the excellent quality of the work done by the Director General of WIPO and his staff responsible for the preparation of the Conference. The Delegate of the Soviet Union then explained that during its 20 years of existence, the Nice Agreement had indisputably acquired great importance at the international level. Advances in science and technology required a periodical adaptation of the Classification to new realities, which was difficult to carry out at the right time as a result of certain provisions of the Agreement then in force. The proposed revision of the Agreement submitted by the International Bureau was therefore fully justified. The main problem facing the delegates was that of the choice between unanimity and a qualified majority for adopting solutions that would give the text of the Agreement both the flexibility and the stability required. The Delegate of the Soviet Union hoped that the work of the Diplomatic Conference would be fruitful and that the text of the revised Act of the Nice Agreement would take into account all the proposals submitted, including those submitted by the Delegation of the Soviet Union.

46. Mr. VAN-ZELLER GARIN (Portugal), after having congratulated the President on her election and the Director General of WIPO and the Secretariat for the excellent preparatory work, stated that his country, a party to the Nice Agreement since its beginnings, was in favor of legal security and a degree of stability. He approved the draft as a whole, although reserving the right to intervene in the detailed debates.

47. Mr. HENSHILWOOD (Australia) congratulated the President on her election, wished her every success in presiding over the debates and thanked the Director General and the Secretariat of WIPO for the very efficient preparation of the Conference. The Government of Australia realized that the unanimity rule could cause problems when a speedy amendment of the Classification was desired but, at the same time, it felt that the rights of existing registrants had to be safeguarded at as high a level as possible since it appeared that the rule of unanimity was destined to be abandoned.

48. Mrs. HIANCE (France) assured the President of the full confidence placed in her by the Delegation of France to successfully guide the work of the Conference and emphasized the high quality of the preparatory work done by the Director General of WIPO and the Secretariat. The Delegate of France noted that the draft revised text met with the very broad agreement of her Delegation and expressed her conviction that the adoption of a majority rule for amending the Classification would facilitate the functioning of the Union and provide greater flexibility for adapting the Classification to the rapid development of needs, the development of new goods and the growing complexity of goods. Nevertheless, the Delegation of France was also concerned for the stability of the Classification. Although wishing that amendments to the Classification be facilitated by the adoption of a high majority, but without being made too easy, the Delegation expressed the wish that the Classification should not be amended too frequently. That was

why it had drawn up a proposal which would soon be submitted to the Secretariat. Furthermore, the Delegation of France fully approved the amendment proposal to place the English text on the same footing as the French text, both as regards the Classification and the Agreement, making both texts authentic, and stated that this position did not, however, prejudge the position the Delegation may take in respect to other conventions within the framework of WIPO.

49. Mr. van WEEL (Netherlands) stated that his Government attached great importance to maintaining the provision requiring a very highly qualified majority within the Committee of Experts and explained that in the Benelux countries the Classification was used not only for calculating fees, but also for searching, which was done by classes. He hoped that the new Act would safeguard the desired stability.

50. Mr. PROŠEK (Czechoslovakia), after having presented his best wishes to the President on her election and his congratulations to the Director General of WIPO and his staff, observed that his country had been party to the Nice Agreement since 1961 and attached very great importance to this international instrument which played a considerable part in the field of international trade relations. The Delegation of Czechoslovakia was prepared to participate actively in the work of the Conference to improve the text of the Nice Agreement and shared the opinion expressed by the President when she stated that the main aim of the Conference was to facilitate accession of new countries to that international instrument. The Delegate of Czechoslovakia spoke in favor of a highly qualified majority in Article 3(7) and expressed his hope that the outcome of the Diplomatic Conference would contribute to strengthening and developing peaceful international cooperation.

51. Mr. DEGAVRE (Belgium), after having joined those Delegations that had offered their congratulations to the President and to the International Bureau, stated that the proposals for amendment of the Agreement gave his Delegation entire satisfaction, although he emphasized that the need for stability of the system was primordial.

52. Mr. REDOUANE (Algeria) congratulated the President on her election and gave her the assurance that his Delegation would do all in its power to ease her task, which was to successfully complete the debates. He emphasized the quality of the preparatory work done by the Director General of WIPO and his staff. The Delegate of Algeria explained that his country had experienced no difficulty in applying the Nice Agreement in its present form. He expressed the opinion that the introduction of a qualified majority constituted an element of flexibility which would make it easier to use a technical instrument, while taking into account advances made in science and technology.

53. The PRESIDENT thanked all the Delegations for the congratulations they had addressed to her and for the expression of their confidence. As regards the general debate, the President felt that the delegations were in agreement with the revision of the Nice Agreement and, on the whole, accepted the proposals submitted by WIPO. She hoped that such an open-minded spirit would also prevail in the detailed debates.

[The meeting was closed]

<p>Second Meeting Wednesday, May 4, 1977 Afternoon</p>
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54. The PRESIDENT opened the second meeting and gave the floor to the Delegation of Austria that wished to make a general statement.

55. Mrs. MAYER (Austria), after having congratulated the President on her election and the Director General of WIPO and his staff for the preparatory work they had done, explained that the Classification established by the Nice Agreement was used in her country not only for goods but also for services. Her country attached great importance to the Nice Agreement. Consequently, the harmonization of its provisions with those of more recent instruments concerning international classifications, adopted at Strasbourg and Vienna, should be favorably received. As regards the adoption of amendments to the Classification, the Delegation of Austria was in favor of replacing unanimity by a qualified majority, possibly supplementing that rule with a quorum provision as laid down in Article 5(3)(b) in respect of the Assembly. The Delegate of Austria felt that when deliberating on the draft it was necessary to take into account not only the needs of modern economic life but also the experience of States that had recently become party to the Agreement and of those that might accede to it in the future.

Article 1

56. The PRESIDENT noted that no other delegation wished to make a general statement and moved to consideration of Article 1 of the draft revised Act of the Nice Agreement given in document N/CD/3.Rev. She requested the Secretariat to present that Article.

57.1 Mr. PFANNER (WIPO) referred to the comments given on the left-hand pages of document N/CD/3.Rev. As regards Article 1(1), he explained that the provisions contained in paragraphs (1) and (2) of the current text of the Nice Agreement had been combined in the draft into one paragraph and that the wording had been slightly changed. All the amendments that were to be debated were based on the aim of harmonizing the Nice Agreement with more recent and more modern instruments concerning other classifications, such as the Strasbourg Agreement Concerning the International Patent Classification of March 25, 1971, and the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks of June 12, 1973.

57.2 Article 1(2) of the draft clarified the character of the explanatory notes.

57.3 According to Article 1(3), the "Classification" was comprised of the existing classification with all the amendments already in force and all the future amendments to be adopted by the Committee of Experts under the procedure laid down in Article 3.

57.4 Mr. Pfanner left aside Article 1(4), (5) and (6), which concerned the question of languages, since it had been decided at the meeting of Heads of Delegations to defer discussion of that matter.

58. The PRESIDENT pointed to a further change in that the draft revised Act gave titles to each Article. She felt that a discussion should first be held to decide whether it was wished to have titles at the head of each Article.

59. Mr. PFANNER (WIPO) explained that the most recent tendency, dating from the Stockholm Diplomatic Conference in 1967, was to adopt international instruments with titles at the head of the various articles. In WIPO publications, the International Bureau, under its own responsibility, had inserted titles (usually within square brackets) even for those instruments which did not have them in their original to facilitate identification of the provisions. The titles did not therefore constitute a complete innovation in the draft under examination. They were in fact almost identical with those that had been inserted some years previously in the brochure containing the text of the Nice Agreement.

60. The PRESIDENT noted that there were no objections to the principle of giving titles to the Articles.

61. The title of Article 1 and the contents of Article 1(1) were adopted.

62. The PRESIDENT opened discussions on Article 1(2).

63. Mr. ALLEN (United States of America) expressed reservations as regards Article 1(2)(iii) in which the explanatory notes were made a part of the Classification. The Delegate of the United States of America explained that he was not speaking against the explanatory notes and that the only question was whether or not they should be a part of the Classification. He felt that the fact of considering the explanatory notes to be a part of the Classification would lead to problems, particularly within national offices, as a result of differences in interpreting the Classification and, in addition, it would increase the work of the Committee of Experts which, it seemed, was already overloaded. The notes established by the Committee of Experts were very brief. Certain countries, particularly those newly party to the Agreement, whose examiners were not yet familiar with the Classification, might wish to have explanatory notes that were more precise and detailed or a little different. This would be inconvenient if the notes were to form part of the Classification.

64. Mr. UGGLA (Sweden) stated that his Delegation also felt some hesitation at the explanatory notes becoming an integral part of the Classification, for the same reasons as the Delegation of the United States of America. In view of the manner in which international treaties were applied in Sweden, it would possibly be necessary, if the explanatory notes were to be an integral part of the Classification, to promulgate national regulations in some form or other. However, the form such regulations were to take was difficult to envisage. In addition, Article 3(7), which provided for the way in which amendments and additions were to be carried out, would also apply to the explanatory notes. All that could lead to certain difficulties, particularly if a difference were instituted between simple additions and amendments, for something proposed as an addition could be interpreted by some countries as an amendment.

65. Mr. POLYCARPE (France) stated that his Delegation appreciated the arguments put forward by the Delegation of the United States of America, particularly in view of the example given in respect of Article 3(7) by the Delegation of Sweden. It fully approved the point of view of those two Delegations.

66. Mr. van WEEL (Netherlands) remarked that the Delegation of the Netherlands had the same problem with the explanatory notes as the Delegate of the United States of America. He was not altogether sure of the way in which the explanatory notes were to be adopted by the Committee of Experts and did not see what category the notes were to be placed in under Article 3(7).

67. The PRESIDENT asked Mr. Pfanner to give the opinion of the International Bureau as author of the proposal under discussion.

68.1 Mr. PFANNER (WIPO) explained that the adoption and amendment of the notes were decided by the Committee of Experts. However, such decisions were not decisions on the adoption of amendments to be made to the Classification. They therefore required a simple majority under the first sentence of Article 3(7).

68.2 Mr. Pfanner explained that the major argument in favor of incorporating the notes as an integral part of the Classification was that the notes had been added for the purpose of clarification and interpretation and in order to facilitate uniform application of the Classification. If the explanatory notes had no obligatory nature, it was difficult to imagine that the notes would help in arriving at uniform application of the Classification since anyone would be free to act in direct opposition to the notes.

69. Mr. ALLEN (United States of America) did not consider that the notes currently achieved their aim, which was to establish uniformity. They existed primarily to give people a brief outline of the general characteristics of the classes and their division. If they were to be made more precise, their value would probably be destroyed. As regards the adoption of amendments to the notes, he was not sure that only the first sentence of Article 3(7) was applicable. For example, if a note saying that a given product belonged in a given class were amended to say that such product belonged in a different class, that in fact would be tantamount to amending the Classification, which would require a qualified majority.

70. Mrs. AÜZ CASTRO (Federal Republic of Germany) considered that, in her opinion, it was impossible to change the explanatory notes without making a change in the list of classes itself and in the alphabetical list since the explanatory notes simply constituted a clarification of the list of classes and the alphabetical list.

71. Mr. ALLEN (United States of America) was in full agreement with the Delegate of the Federal Republic of Germany but wished to emphasize that the draft revised Act did not say anything to that effect. Therefore, if the explanatory notes were to become an integral part of the Classification, it would be necessary to add a provision to the effect of what had been said by the Delegate of the Federal Republic of Germany.

72. Mr. MOORBY (United Kingdom) felt that it was right for the Committee of Experts to deal with the explanatory notes and to be able to decide what was to be inserted in those notes, in accordance with the voting procedure under Article 3.

73. Mr. VILLALPANDO MARTÍNEZ (Spain) stated that his Delegation preferred the notes to constitute an integral part of the Classification since it was firmly convinced of the wisdom of giving them a legal value by incorporating them in the very concept of the Classification and by placing them on an equal footing with the list of classes and the alphabetical list of goods and services.

74. Mrs. CARLSEN (Denmark) spoke in favor of including the explanatory notes as an integral part of the Classification subject to amendments to them being decided in accordance with Article 3(7).

75. Mr. DEGAVRE (Belgium) stated that for the reasons already clearly set out by the Delegates of the United States of America and of Sweden, the Delegation of Belgium was against including the explanatory notes as an integral part of the Classification.

76. Mr. PFANNER (WIPO) considered that the danger underlined by numerous delegations could easily be avoided by means of a formula clearly establishing that, in the event of a conflict between the explanatory notes and the other two parts of the Classification, those other two parts would prevail.

77. The PRESIDENT noted that Mr. Pfanner's proposal seemed capable of alleviating the fears of those Delegations that had spoken against including the explanatory notes in the Classification. She wished to hear from those same Delegations whether, on the basis of that proposal, they could accept the inclusion of the explanatory notes or whether they maintained their opposition.

78. Mr. HENSHILWOOD (Australia) stated that, if a formula as proposed by Mr. Pfanner was added, his Delegation would be in favor of including the explanatory notes.

79. Mr. TOROVSKY (Austria) supported the proposal by Mr. Pfanner but wished at the same time to point to a further difficulty. Although, in general, the Delegation of Austria did not have any objection to the incorporation of the explanatory notes as an integral part of the Classification with the aim of harmonizing the present Agreement with more recent international instruments in the field of classification, it did, however, harbor serious doubts as to the possibility of incorporating the notes in their present form. If the delegates deemed it possible, the Delegation of Austria would propose setting up a provisional committee of experts to bring the existing explanatory notes up to date.

80. Mr. DAVIS (United Kingdom) understood the fears expressed by some of the Delegates that amendments could be made to the Classification by means of changes to the explanatory notes. In some cases, the Classification was sufficiently vague to enable it to be interpreted in the explanatory notes in one way or the other without either of the two interpretations clashing with the basic Classification. The Delegate of the United Kingdom felt that the suggestion by Mr. Pfanner--under which, in the event of a conflict, the other elements of the Classification would prevail--did not seem to provide any assistance in such a case.

81. Mr. ALLEN (United States of America) generally shared the opinion expressed by the Delegate of the United Kingdom. He added that, by stipulating that certain elements of the Classification would prevail over others in the event of a conflict, there was a risk of creating some confusion in the courts as regards the matter of attributing legal effect, since Article 2 said that the Classification did not have legal effect. The Delegate of the United States of America felt that the explanatory notes would continue to be useful even if they stayed outside the Classification and suggested simply to delete Article 1(2)(iii).

82. Mr. SERRAO (Portugal) spoke in favor of including the explanatory notes with or without the qualification proposed by Mr. Pfanner.

83. Mr. PFANNER (WIPO) felt that the problem was rather one of the quality of the notes. In view of the high quality of the work of the Committee of Experts, it was difficult to imagine there being very frequent cases of contradiction. It could be assumed that if such a case arose a remedy would be found very rapidly. A matter that was more worrying was that of an unintentional mistake requiring immediate remedy before the Committee of Experts was able to meet. Such an eventuality could be regulated by a provision that, in the event of conflict, the list of classes or the alphabetical list of goods and services would prevail. It was not a matter of the courts. The question was of the administrative application of the Classification by the offices. The latter, on discovering such a discrepancy, could even not apply a conflicting note and could base themselves on the list of classes and the alphabetical list. If all reference to the explanatory notes were to be omitted in the Agreement, whereas their existence and their legal status were laid down in other classification agreements, there was the risk of arriving at the conclusion that the notes should not exist and that the Committee of Experts should no longer deal with them. No one was contesting their usefulness, however. Mr. Pfanner suggested that the Secretariat reflect again on a possible solution and that the decision be deferred.

84. The PRESIDENT considered that Mr. Pfanner's offer should be taken up and the Secretariat should be allowed to submit a somewhat amended proposal the following day capable of finding the approval of all delegations. Consequently, the President proposed that discussion of paragraphs (2) and (3) of Article 1 be postponed.

85. Mr. TOROVSKY (Austria) informed the Diplomatic Conference that his Delegation wished to submit a proposal for amendment of Article 1 by adding two new paragraphs after paragraph (3), whereby the current paragraphs (4), (5) and (6) would become paragraphs (6), (7) and (8), respectively. The Delegate of Austria read out the proposal.

86.1 The PRESIDENT requested the Delegate of Austria to submit his proposal in writing to the Secretariat for it to be distributed to the delegates.

86.2 The President noted that the Conference agreed to suspend discussion of Article 1. (Continuation: see paragraph 179.)

Article 2

87. Mr. PFANNER (WIPO) explained that Article 2 had been taken from the Stockholm Act of the Nice Agreement with a number of minor changes in the terminology.

88. Mr. MOORBY (United Kingdom), referring to the English version of Article 2 as given in document N/CD/3.Rev., stated that his Delegation preferred to maintain the words "legal effect" used in the Stockholm Act of the Nice Agreement, both in the title and in paragraph (1). He observed that in English the words "effect" and "scope" did not have the same meaning. The intention of Article 2 was to convey that no legal consequences flowed from the use of the Classification by virtue of the Agreement. If the word "scope" were used, this would give the impression that each country could attribute a different delimitation to the various items in the Classification.

89. The PRESIDENT felt that it was necessary to compare the English and French wording of Article 2.

90. Mr. PFANNER (WIPO) observed that, in the case of the French version, the wording of the Stockholm Act and that of the draft revised Act were identical and, since the French text of the Nice Agreement was the only authentic one, the English text was simply a translation. That translation had been changed. Mr. Pfanner felt that it was primarily up to the English-speaking delegations to decide whether they preferred a different term, on the understanding of course that the term should comply with that of "portée juridique" used in the French text.

91. Mr. ALLEN (United States of America) considered, on the contrary, that it was for the French-speaking delegations to express their opinion since he felt the word "portée" could be translated both by "scope" and by "effect."

92. The PRESIDENT considered that the term "legal scope" could be interpreted in different ways and that it was therefore preferable to use the word "effect," as proposed by the Delegate of the United Kingdom.

93. Mr. UGGLA (Sweden) stated that the use of the word "effect" or the word "scope" mattered but little to him but, under the Swedish system, it would seem that the Classification did have a certain legal effect.

94. Mr. PFANNER (WIPO) explained that the proposal to use the word "scope" aimed at harmonizing the wording of the revised Act of the Nice Agreement with that of the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks in which the term "scope" was used in the English text of the Agreement, which was, in that case, equally authentic. Personally, he considered the word "effect" to be better, but the term "scope" had been chosen in order to comply with the most recent decision of a Diplomatic Conference.

95. Mr. MOORBY (United Kingdom) continued to advocate the use of the word "effect" in the draft revised Act. He considered that there was a difference between the Nice Agreement and the Vienna Agreement since classification of goods and services served to delimit the monopoly of trademark owners when they registered them, which was not the case for the classification of figurative elements of marks.

96. Mr. ALLEN (United States of America) supported the proposal by the Delegate of the United Kingdom. Referring to the statement by the Delegate of Sweden, he stated that Article 2 did not say that the Classification should have no legal effect but only that the legal effect of the Classification should be that attributed to it by each country.

97. Mr. HENSHILWOOD (Australia) supported the view of the Delegate of the United Kingdom.

98. Mrs. HIANCE (France) explained that there was a difference between the French terms "portée juridique" of a text and "effets juridiques." The "portée" concerned the value attributed to a text within a legal order. As far as "effets" were concerned, these were the consequences of an act at the legal level.

99. Mr. TOROVSKY (Austria) spoke in favor of the English word "effect" to translate the French word "portée."

100. The PRESIDENT noted that almost all Delegates that had spoken in respect of the English wording had considered the English expression "legal effect" to be preferable. She further noted that the expression "portée juridique" was to be maintained in French.

101. It was so decided.

102. Mrs. MAYER (Austria) pointed out that in her country difficulties had arisen in interpreting the wording of classes and that it was going to take a long time to complete the revision of the alphabetical list. The Delegate of Austria therefore proposed adding to Article 2 a new paragraph stating that countries were free to determine the meaning and content of terms included in the alphabetical list, explaining that decisions of Austrian courts were the basis for this proposal.

103. The PRESIDENT requested all Delegations that had drawn up proposals to deposit them as soon as possible with the Secretariat, with a view to a better organization of the work, so that they could be translated and distributed to delegates, thereby facilitating discussion.

104. Mr. PFANNER (WIPO) noted that the proposal by the Delegation of Austria was very far reaching since it appeared to take away practically all legal weight from the alphabetical list.

105. Mr. UGGLA (Sweden) raised a minor question which he felt did not need submitting in writing in view of its purely editorial nature. Article 2(3) spoke of "Offices." It should be specified which offices were meant.

106.1 The PRESIDENT assured the Delegate of Sweden that the matter would be looked into by the Drafting Committee.

106.2 She asked whether other delegations wished to take the floor on the proposal by the Delegation of Austria or whether the Diplomatic Conference preferred to wait to continue its discussion until the Secretariat had distributed the proposal.

107. Mr. PFANNER (WIPO) suggested that Article 2 be adopted subject to any amendment which may result from the proposal by the Delegation of Austria. In his view, the proposal related more to Article 1 than to Article 2.

108. The PRESIDENT fully approved the proposal made by Mr. Pfanner.

109. Mr. ALLEN (United States of America) confessed that he was less concerned about the wording of the proposal by the Delegation of Austria than about the reason behind the proposal. He had not altogether understood the intentions of the Delegate of Austria.

110. The PRESIDENT felt that it would be preferable to discuss the proposal by the Delegation of Austria after it had been submitted in writing. She urged the Delegation of Austria to explain its proposal in more detail at that time. (Continuation: see paragraph 192.)

Article 3

111. The PRESIDENT proposed to move to discussion of Article 3. She requested Mr. Pfanner first to present paragraphs (1) to (4).

112. Mr. PFANNER (WIPO) observed that the main reason for the amendments to paragraphs (1) to (4) had been the desire for harmonization with the more recent agreements in the field of classifications, that is to say the Strasbourg and Vienna Agreements. That was particularly the case of the provisions on the invitations to sessions of the Committee of Experts, which made a distinction between the member countries of the Committee of Experts and those that could be invited as observers. As far as intergovernmental organizations were concerned, they were subdivided into those specialized in the field of marks, which had an ex officio right to be represented by observers, and the remaining intergovernmental organizations which, just as the international non-governmental organizations, could be invited to participate at sessions as observers but did not have an ex officio observer status.

113. The PRESIDENT decided to proceed, paragraph by paragraph, with the adoption of Article 3(1) to (4).

114. Article 3(1) was adopted.

115. Article 3(2)(a) was adopted.

116. Mr. ALLEN (United States of America) observed that the adjective "specialized" used in Article 3(2)(b) appeared to mean that the intergovernmental organizations in question were dealing solely with marks. He asked whether such was really the case. He felt that those intergovernmental organizations that had some experience in the field of marks but also in other fields should also be covered.

117. Mr. PFANNER (WIPO) replied that the intention of the draft was not to exclude those organizations that dealt with other fields but it was necessary that they be specialized in the field of marks.

118. Mr. ALLEN (United States of America), after having referred to the Benelux Office, considered that the word "specialized" would have to be replaced by a different expression.

119. Mr. SERRÃO (Portugal) proposed that a wording such as "or having a considerable interest in that field" should be added after the words "specialized in the field of marks."

120. The PRESIDENT was of the opinion that the proposal by the Delegate of Portugal greatly widened the scope of Article 3(2)(b) since a considerable number of organizations could exist that had a considerable interest in the field of marks but which were not specialized, as for example, the Common Market and other European organizations. She presumed that the matter had been also discussed at the Strasbourg Diplomatic Conference and asked Mr. Pfanner whether there had been a debate on the matter at Strasbourg.

121.1 Mr. PFANNER (WIPO) explained that the same wording was used in Article 5(2)(a) of the Strasbourg Agreement, with the exception of the word "marks" which was replaced by "patents." The matter had been discussed in detail at the Strasbourg Diplomatic Conference and an attempt had been made to find a narrower formula which would reduce the circle of organizations that could claim ex officio observer status, on the understanding that all other organizations could be invited by the Director General or, if the Committee of Experts so requested to the Director General, had to be invited by the latter, even if they were not specialized in the field concerned.

121.2 Mr. Pfanner pointed out to the Delegate of Portugal that, if a formula were used which differed greatly from that currently contained in the Strasbourg and Vienna Agreements, there was a risk of provoking a contrario arguments and added that in practice the formula had given full satisfaction in the existing Agreements on classifications.

121.3 Mr. Pfanner felt that the Benelux Office, which had been instanced by the Delegate of the United States of America, was not a good example since it in fact comprised two separate entities, the Benelux Trademark Office and the Benelux Designs Office. Likewise, the future European Patent Office and the future European Trade Mark Office would be distinct and the member States would not be the same. If the problem arose in relation to an organization dealing with both patents and marks and which was specialized in both fields, the organization would be deemed "specialized in the patent field" under the Strasbourg Agreement and "specialized in the field of marks" under the Vienna and Nice Agreements.

122. Mr. DEGAVRE (Belgium) did not believe that the Benelux Office could be placed among those bodies referred to in Article 3(2)(b) since it was the national office of each of the three Benelux countries. The Delegate of Belgium further explained that, although it was true that there existed two legal entities, in practice there was a single Benelux Office for which the currently used expression was "United Trademark and Designs Offices."

123. The PRESIDENT felt that the minutes should reflect the Conference's opinion that if an organization was specialized in various fields, including the field of marks, that organization would certainly fall under Article 3(2)(b).

124. Mr. ALLEN (United States of America) considered the solution proposed by the President to be excellent and that it resolved all the problems.

125. Mr. SERRÃO (Portugal) supported the proposal by the President.

126. The proposal by the President as regards the record of the opinion of the Diplomatic Conference in the minutes was accepted.

127. The PRESIDENT noted that Article 3(2)(c) gave rise to no comments and moved to consideration of Article 3(3).

128. Mr. DAVIS (United Kingdom) observed that the spirit behind Article 3(3)(iii), that is to say, the design to facilitate application of the Classification by the developing countries, met with the full approval of his Delegation. Nevertheless, in the English version, the words "take all the other measures" should, in his opinion, be replaced by the words "take other measures."

129. Mr. PFANNER (WIPO) observed that the Strasbourg Agreement, in Article 5(3)(iv), said "take all other measures" but that in the text of the draft revised Act of the Nice Agreement, the definite article, "the," had been added to follow Article 5(3)(iii) of the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks. Mr. Pfanner proposed deleting the definite article in the draft to align the text of the Nice Agreement on that of the Strasbourg Agreement. As regards the proposal submitted by the Delegate of the United Kingdom, Mr. Pfanner stated that it would be rather difficult to depart from the formula used in the Strasbourg and Vienna Agreements and delete the word "all" particularly if the fact was taken into account that this was a most important point for the developing countries.

130.1 Mr. UGGLA (Sweden) asked what types of measures were envisaged in Article 3(3)(iii).

130.2 In addition, returning to Article 3(3)(ii), in which it was stipulated that the Committee of Experts shall address "recommendations ... for the purpose of facilitating the use of the Classification and promoting its uniform application," the Delegate of Sweden observed that, if the explanatory notes were deleted in Article 1, they would find a suitable vehicle in Article 3(3)(ii).

131.1 Mr. PFANNER (WIPO), replying to the Delegate of Sweden as regards Article 3(3)(iii), emphasized that the Article contained a very general formula but was subject to an important limitation in that there should be no financial implications for the budget of the Special Union or for WIPO. The measures envisaged were basically measures permitting legal and technical assistance to developing countries for the introduction and application of the Classification, for example, by choosing experts whose costs would be covered by the host country.

131.2 As regards Article 3(3)(ii), Mr. Pfanner stated that he agreed with the Delegate of Sweden, but the recommendations by the Committee of Experts could have a much more general scope than the explanatory notes, for example in relation to special training courses for staff who, in their own offices, would apply the Classification.

132. Mr. UGGLA (Sweden) thanked Mr. Pfanner for his explanations and confirmed that he had no objection to the provisions concerned.

133. Mr. van WEEL (Netherlands) felt that the explanatory notes should be specifically mentioned in Article 3(3)(ii).

134. The PRESIDENT proposed that the matter of the definite article in the phrase "all (the) other measures," be submitted to the Drafting Committee and closed the discussion on Article 3(3), with the exception of the question of a possible reference to the explanatory notes in sub-paragraph (iii), which depended on the reflections the Secretariat was to devote to the matter of explanatory notes in general.

[The meeting was closed]

Third Meeting

Thursday, May 5, 1977

Morning

Article 3 (continued from paragraph 134)

135.1 The PRESIDENT opened the third meeting and informed the Conference that a number of proposals concerning Article 3 had been distributed. According to the Rules of Procedure of the Conference, it was not possible to discuss them immediately, to give delegates the time to study them. Consequently, the President adjourned discussion of the proposals to the afternoon.

135.2 The President noted that neither proposals nor comments had been made in respect of the provisions of Article 3(4), (5) and (8).

136. The provisions of Article 3(4), (5) and (8) were adopted. (Continuation: see paragraph 191.)

Article 4

137. The PRESIDENT moved to discussion of Article 4.

138. Mr. PFANNER (WIPO) explained that, in substance, Article 4 of the draft corresponded to the existing Article 4 and that only a few editorial changes had been made.

139. Mr. TOROVSKY (Austria) stated that his comments concerned the complete Article 4 and, to a certain extent, Article 3. In both Articles, the word "amendments" was used but also the word "changes" could be found. The Delegation of Austria had difficulty in interpreting this latter term which, contrary to "amendments," was not defined. The Delegation further pointed out that the term "amendments" was used in the draft with a double meaning and asked whether there was a possibility of defining the term "changes."

140. The PRESIDENT felt that the term "change" had a broader meaning than "amendment," which referred to a specific change and which was defined in Article 3(7).

141. Mr. PFANNER (WIPO) agreed with what had just been said by the President. The Secretariat had attempted to simplify the terminology but had not dared to touch the term "amendment" which, for the Nice Agreement Experts, had a meaning quite different to that normally attributed to the word, which was very general and signified rather what the Nice Agreement calls a "change." From a linguistic point of view, Mr. Pfanner admitted that the Delegate of Austria was right in pointing out the fact that the two terms "amendment" and "change", taken out of their context and without the definition of the term "amendment" contained in Article 3(7), would not seem distinguishable. Mr. Pfanner pointed out that it was of course possible to remove any differentiation in the terminology and use solely the word "amendment," specifying in Article 3(7) that a certain type of amendment, to be defined, would be subject to special voting rules. However, the Secretariat had not wished to make too many innovations, in order to achieve the aims of the revision without creating more difficulties than necessary. All additional definitions had been avoided and the terms simply taken from the existing text. The very clear definition given in Article 3(7) should suffice, it being understood that in this case the word "amendment" had a special meaning and was not used in its usual general sense.

142. Mr. TOROVSKY (Austria) stated that his Delegation was fully satisfied with the explanations given by Mr. Pfanner. Without wishing to prolong the discussion, the Delegate of Austria nevertheless wished to point out that in Article 13 the word "amendment" was also used but in a quite different sense since it concerned an "amendment to this Act." The Delegate of Austria hoped that his Delegation's doubts had been understood and that the debate would be reflected in the minutes of the Diplomatic Conference.

143. Mr. PFANNER (WIPO) thanked the Delegate of Austria for his understanding. He explained again that the use of the word "amendment" in Article 8 of the draft could have led to confusion if the word "amendment" alone had been used but such was not the case, since the phrase read as follows: "amendment of Articles 5, 6, 7 and the present Article." That which was called "amendment" in Article 8 was therefore in no way connected with that which was called and defined as an amendment to the Classification in Article 3(7).

144. The PRESIDENT noted that the Diplomatic Conference agreed that those explanations should be recorded in the minutes of the Conference.

145. Mr. van WEEL (Netherlands) asked the Secretariat whether the word "changes" also covered changes to the explanatory notes. He noted that there could be changes to the list of classes, the alphabetical list and also the explanatory notes. If it was wished not to cover changes to the explanatory notes, it could first be specified that "decisions by the Committee of Experts shall be notified" and subsequently speak of "amendments and changes to the classes on the alphabetical list."

146. Mr. PFANNER (WIPO) remarked that the matter of explanatory notes was still under discussion. He could therefore only explain the intention of the drafters which was to assimilate the changes to the explanatory notes to the changes to the Classification since, according to the structure of the draft, the explanatory notes were an integral part of the Classification. Whatever the Conference's decision on the explanatory notes, there was no need for all decisions of the Committee of Experts to be notified, but only those affecting the text of the Classification itself. Mr. Pfanner therefore felt that the word "changes" should be maintained in Article 4, on the understanding that the matter of explanatory notes was still pending.

147. Mr. POLYCARPE (France) observed that the current Article 4 said "every amendment and addition" whereas Article 4 of the draft no longer referred to the "additions." The Delegate of France presumed that "changes" was probably understood to refer to both additions and deletions.

148.1 The PRESIDENT confirmed that "changes" was to be understood as additions and deletions and also changes in terminology, since the meaning of that term was broader than that of "amendments" and covered all changes made to the Classification.

148.2 The President noted that no more comments were forthcoming on Article 4.

149. Article 4 was adopted. (Continuation: see paragraph 523.)

Article 5

150. The PRESIDENT moved to discussion of Article 5.

151. Mr. PFANNER (WIPO) observed that, in a general way, Article 5 was similar to the provisions on the assemblies of the Special Unions in the texts adopted in Stockholm in 1967. However, Article 5 of the draft contained provisions, in paragraphs 1(a) and 2(a)(ii), to allow for the fact that the Assembly set up by the Stockholm Act would constitute in future a body comprising both the States party to the Stockholm Act and the States party to the future Geneva Act.

152. The PRESIDENT noted that no comments were forthcoming on Article 5.

153. Article 5 was adopted. (Continuation: see paragraph 221.)

Article 6

154. The PRESIDENT moved to consideration of Article 6.

155. Mr. PFANNER (WIPO) informed the Diplomatic Conference that Article 6 and other Articles would have to be subjected to slight editorial changes to take into account the solutions adopted in April 1977 at the Budapest Diplomatic Conference. Mr. Pfanner suggested that those matters be dealt with by the Drafting Committee.

156. It was so decided.

157. Article 6 was adopted. (Continuation: see paragraph 221.)

Article 7

158. The PRESIDENT moved to Article 7 and noted that no comments were forthcoming on that Article.

159. Article 7 was adopted. (Continuation: see paragraph 221.)

Article 8

160. The PRESIDENT opened discussion on Article 8.

161. Mr. TOROVSKY (Austria) asked, in respect of Article 8(3), whether the one-month period for the entry into force of the amendments could be extended, particularly in view of the complicated constitutional procedures in his country.

162. Mr. PFANNER (WIPO) stated that he understood the problems which Austria, and probably other States, had to face in respect of the time limit for the entry into force of amendments but the situation was not more difficult under the Nice Agreement, which was relatively simple, than under other conventions and agreements which had stipulated, since the Stockholm Diplomatic Conference in 1967, the same one-month period.

163. The PRESIDENT added that, if the same provisions were to be amended in the various conventions and if the time limits concerned were different in those conventions, it would create problems for the States.

164. Mr. TOROVSKY (Austria) felt that the short time limit laid down in Article 8(3) would give rise to less difficulties if his Delegation's proposal in respect of depositories were accepted by the Conference.

165. Mr. ALLEN (United States of America) pointed out that Article 5(1) created a new situation in which the Assembly of the Nice Union comprised not only the countries bound by the revised Act but also countries not bound by that Act. When the subject of amendments adopted by the Assembly (Article 8) was reached, it seemed to the Delegate of the United States of America that it would be excessive to permit a country not bound by the revised Act to decide on the amendment of that Act. The faculty of proposing an amendment to Articles 5 to 8 and of voting on such amendment should be limited to the members of the Assembly that had ratified the revised Act or had acceded to it.

166. Mr. PFANNER (WIPO) was of the opinion that unnecessary difficulties would result if the suggestion made by the Delegate of the United States of America were to be adopted. Formally, there would be a single Assembly but, in order to accomplish one of the most important tasks of that Assembly, it would be divided into two sub-assemblies, one comprising the countries party to the Geneva Act and the other comprising those party to the Stockholm Act. The two sub-assemblies, which would discuss and vote on identical provisions, would be able to take differing decisions on the same question and as a result would split the unity of the Assembly. Mr. Pfanner also remarked that the present Diplomatic Conference comprised delegations representing States bound by the original text of the Nice Agreement and delegations representing States bound by the Stockholm Act. Those delegations were in the process of amending the most recent Act, that was to say the Stockholm Act, and at the same time, for themselves, the Act that bound them. That state of affairs, although much more important, had never given rise to objections since the Conference was carrying out a substantive revision of the Agreement and not merely an amendment of its administrative provisions.

167. Mr. DAVIS (United Kingdom) felt that Article 5 contained an illogicality inasmuch as it stipulated that the Special Union should have an Assembly comprising countries not party to the Geneva Act. In order to be more logical, it would have been necessary to say that the countries party to the Geneva Act could admit to the Assembly, if they so wished, countries not party to that Geneva Act. The situation created by Article 5 could be tolerated but in the case of Article 8 a situation arose in which countries which were not party to the

revised Act could impose their will on countries party to that Act. The Delegate of the United Kingdom pointed out that since Stockholm all the WIPO Conventions and Agreements provided for two classes of members since the member States that were not party to the Stockholm Act did not have the right to participate in the decisions concerning the Stockholm Act although they participated in the Assembly.

168. The PRESIDENT observed that a similar situation must exist within the International Union for the Protection of Literary and Artistic Works (Berne Union).

169. Mr. PFANNER (WIPO) explained that, in accordance with the new system introduced at the Stockholm Diplomatic Conference, only the members of the Assembly could decide to amend the provisions of a Stockholm Act. That was quite different from the situation to be faced at present and which would arise more and more frequently in future. In that situation, there existed various Acts in force within the Stockholm system and those Acts differed more by their substantive provisions than by their administrative provisions. The case was the same when a diplomatic conference revised a convention or an agreement in its entirety. In the present case, all the member States of the Nice Union which were represented at the present Conference had full voting rights and were in the process of amending the administrative provisions of the Stockholm Act of the Nice Agreement. It was Mr. Pfanner's opinion that the Assembly, which had lesser powers, ought not to be subjected to a different or more complicated system of decision-making than that applying for the Diplomatic Conference.

170. The PRESIDENT considered that account had to be taken of the fact that a State was not bound by a text revised during a diplomatic conference unless it ratified or acceded to the new text, which was not the case under the provisions being examined. The President visualized the curious case of the five countries which were the first to be party to the new text pronouncing against the amendment of a given Article but of the Article being amended nevertheless by dint of the Assembly having a broader composition.

171. Mr. SERRÃO (Portugal) shared the point of view expressed by the Delegate of the United States of America.

172. Mr. ALLEN (United States of America) added that one of the provisions that could be amended under the Article 8 procedure was in fact the very Article that set up the Assembly. It seemed curious to him that countries not having ratified the new Act or not having acceded to it could amend the provision that set up the Assembly.

173. Mr. GERHARDSEN (Norway) referred to the preparatory documents for the Stockholm Diplomatic Conference and quoted comments from page 40 of document S/3 concerning the main differences between the procedure for amending the administrative provisions and the procedure for revising other provisions, viz: "Amendments are discussed in and adopted by the Assembly, whereas revisions are discussed in and adopted by the Conferences of Revision. The Assembly consists of member countries which are bound by the provisions to be amended ... since they are the only interested parties. Any conference of revision consists of all countries of the Union, even if they are only bound by acts earlier than the one to be revised."

174.1 Mr. PFANNER (WIPO) stated that there existed within a Union a basic difference between the rights of States party to an Act prior to the Stockholm Act and the rights of States party to that latter Act in respect of the administrative provisions that had been established for the first time by the Stockholm Act, since only the member States of the Assembly, created by the Stockholm Act, could exercise the powers conferred upon that Assembly. The stage currently reached in the development of the system of Unions was, however, a different one. Each Union had an Assembly and within that Assembly, which grouped the countries party to two different Acts of the same Agreement (the Stockholm Act and a subsequent Act), decisions on the administrative provisions would be taken by all members of the Assembly, all having the same rights. It was possible that differences could arise occasionally in respect of a specific administrative provision, between the States party to the Act subsequent to the Stockholm Act and the countries party to the Stockholm Act. In general, however, it was probable that the administrative provisions would not differ fundamentally for as long as they were not substantially revised by a Diplomatic Conference.

Mr. Pfanner mentioned that a restrictive tendency existed in the more recent international instruments (compared with those of the Stockholm Diplomatic Conference) as regards the number of provisions subject to the special procedure for amending administrative provisions.

174.2 The situation within the Berne Union was the same and had worked very well for a number of years without there having been protests so far. The Assembly had met a number of times at sessions in which States party to the Paris Act and States party to the Stockholm Act of the Berne Convention had participated. All decisions had been taken without any problems arising.

175.1 Mr. DAVIS (United Kingdom) stated that, as regards the Paris Revision of the Berne Convention, which had concerned only substantive provisions, the problem did not arise since the administrative provisions of the Stockholm Act and the Paris Act were identical.

175.2 The Delegate of the United Kingdom well understood that the wording under discussion could create difficulties for some countries as regards ratification. In order to remedy the situation, a possible solution would be to reserve the proposing of amendments to the articles in question to the States party to the revised Act. A further solution would be to require the support of a certain number of States party to the revised Act.

176. The PRESIDENT, after having noted that a large number of delegations had doubts in respect of the system proposed by the International Bureau, pointed to a further problem. Article 8(3) stipulated that "any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force...", thus including the members of the Assembly not bound by the new text. This could create the impression that the amended Articles of the new text were binding on member States of the Assembly who were party only to the Stockholm Act. The President felt that the matter needed looking into further.

177. Mr. PFANNER (WIPO) promised that the Secretariat would re-examine the matter and asked the President to adjourn the decision on Article 8 until the afternoon.

178. The PRESIDENT postponed the decision on Article 8 until the afternoon. (Continuation: see paragraph 221.)

Article 1 (continued from paragraph 86)

179. The PRESIDENT resumed the meeting and opened the discussion on the inclusion of the explanatory notes in the Classification. She requested the Secretariat to give its opinion on that matter.

180.1 Mr. PFANNER (WIPO) stated that the Secretariat had endeavored to find a solution permitting both to retain the concept of the explanatory notes as an element of the Classification and to give to the notes a provisional nature until such time as the Committee of Experts established a revised version. Consequently, the Secretariat found that it would suffice to make a few amendments to paragraphs (2) and (3) of Article 1 and to leave the rest of the wording of the Agreement intact.

180.2 As regards the matter raised, in particular, by the Delegate of Sweden, as to the danger of the explanatory notes possibly having the indirect character of an amendment, Mr. Pfanner stated that, after having attempted to find a formula avoiding that state of affairs, the Secretariat had arrived at the conclusion that it was preferable to say nothing specifically in the text of the Agreement. The very words "explanatory note" showed clearly enough that such a note could never have the character of an amendment and that if a note did appear to constitute an amendment, then it was a mistake and the note was invalid, since a change in the explanatory notes could not entail an amendment to the list of classes. Consequently, Mr. Pfanner proposed that the following statement be entered in the minutes of the Conference: "It is understood that an explanatory note, however drafted, can never affect the contents of the list of classes and that, in the event of a discrepancy between the contents of a note and of the list of classes, it is automatically the list of classes that prevails."

180.3 Mr. Pfanner then went on to present orally the amendments that the Secretariat proposed be made to Article 1 of the draft revised Act. In respect of paragraph (2), the Secretariat proposed that item (iii) be deleted and that a reference to the explanatory notes be included in item (i), of which the wording would become the following: "(i) a list of classes, together with, as the case may be, explanatory notes." Mr. Pfanner observed that such a wording was not new since it had been taken from the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks. As regards paragraph (3), Mr. Pfanner pointed out that the amendment concerned only item (i) and that the remainder of the paragraph remained unchanged. It was proposed to add to the existing paragraph (3)(i), after a comma, the words: "it being understood, however, that the explanatory notes to the list of classes included in that publication* shall be regarded as provisional and as recommendations until such time as explanatory notes to the list of classes are established by the Committee of Experts." The explanatory notes would, of course, be established once their revision was completed, but it was not necessary to add that information since everyone knew that a systematic revision was in progress.

181. The PRESIDENT felt that, since the contents of the proposals were clear, discussions could concern those contents without analyzing for the moment the wording of those proposals.

182. Mr. ALLEN (United States of America) thanked the Secretariat for the excellent solution to the problems raised by the draft text and stated that his Delegation fully supported the proposals submitted.

183. Mr. MOORBY (United Kingdom) also supported those proposals.

184. Mr. SERRÃO (Portugal) agreed with the proposals made by the Secretariat.

185. Mr. UGGLA (Sweden) stated that his Delegation was able to accept the solutions proposed by Mr. Pfanner.

186. Mrs. CARLSEN (Denmark) stated that her Delegation could also go along with those proposals.

187. The PRESIDENT, noting that no objections were forthcoming, congratulated Mr. Pfanner on having presented the proposals that had permitted this difficult matter to be solved.

188. Mr. PFANNER (WIPO) accepted her congratulations on behalf of the staff of the International Bureau that had produced the solution as a team.

189. The PRESIDENT was of the opinion that the amendment to Article 1(3) had also settled the question raised the previous day by the Delegate of Austria since it had become clear that the explanatory notes were provisional. She noted that no further objections were forthcoming in respect of Article 1(3).

190. Article 1(3) was adopted. (Continuation of Article 1: see paragraph 277.)

Article 3 (continued from paragraph 136)

191. The PRESIDENT returned to a reservation that had been made in respect of Article 3(3)(ii) as to whether a reference to the explanatory notes should also be inserted therein. Since the solution proposed by the Secretariat had been accepted, the President felt that it was clear that the explanatory notes were covered by the broader term "recommendations" and that the matter would be deemed resolved. (Continuation: see paragraph 232.)

* Editor's Note: that is to say the Classification published in 1971 by the International Bureau.

Article 2 (continued from paragraph 110)

192. Mrs. MAYER (Austria) stated that her Delegation would not press for an amendment of Article 2. She nevertheless expressed her wish that the minutes should state that adoption of a term in the alphabetical list did not exclude national authorities from being entitled to require from an applicant using that term in his application that he provide further information on the term used.

193.1 The PRESIDENT observed that as far as she was aware, all offices asked for further information on certain terms in the alphabetical list when they were used in an application and that the International Bureau did likewise under the Madrid Agreement Concerning the International Registration of Marks. The matter raised by the Delegate of Austria could therefore be considered settled and it would suffice to enter a relevant remark in the minutes.

193.2 The President concluded that Article 2 had been considered in full.

194. Article 2 was adopted. (Continuation: see paragraph 513.)

Article 9

195. The PRESIDENT commented that the discussion on Article 8 had been postponed and moved to consideration of Article 9. She requested Mr. Pfanner to present the Article.

196. Mr. PFANNER (WIPO) pointed out that the only provision requiring introduction by the Secretariat was that contained in Article 9(4). It was of considerable importance for the possibility of the new system entering into force within the foreseeable future. Mr. Pfanner stated that, after close study, the International Bureau had kept to five, in the draft submitted to the Conference, the number of countries for the entry into force of the Geneva Act of the Nice Arrangement, which was the usual number. The Strasbourg Agreement was a special case resulting from the fact that administration of the International Patent Classification was to be transferred from the Council of Europe, a regional organization, to WIPO, a worldwide organization. Moreover, four-and-a-half years had gone by before the Strasbourg Agreement had entered into force. Mr. Pfanner was convinced that if similar requirements to those governing the entry into force of the Strasbourg Agreement were now introduced there would be a danger of delaying considerably the entry into force of the new Act of the Nice Agreement.

197. The PRESIDENT proposed that the first three paragraphs of Article 9 should be examined first.

198. Mr. DAVIS (United Kingdom) wished to put a question to the Secretariat in order to clear up a few doubts concerning Article 1 and the words "this Agreement." Were these words to be understood as meaning the revised Act or the Nice Agreement as a whole?

199. Mr. PFANNER (WIPO) replied that, since Article 1 spoke of the constitution of the Special Union and since there was a principle of unity of the Union, the words "this Agreement" were to be taken to mean the Nice Agreement as a whole, independently of its various Acts.

200. Mr. DAVIS (United Kingdom) concluded that if it were assumed that the Special Union to which Article 1 made reference was constituted by all the countries of the Nice Union, that would mean, under Article 9(1), that all countries party to the existing Nice Agreement could sign a new Act, to the exclusion of any other country.

201.1 The PRESIDENT noted that no more comments were forthcoming on paragraphs (1) to (3) of Article 9 and moved to consideration of paragraph (4).

201.2 She drew attention to a proposal by the Delegation of Norway (document N/CD/10) to replace the five country requirement contained in Article 9(4) by a ten country requirement.

202. Mr. GULDHAV (Norway) stated that his Delegation was aware that the minimum number of instruments of ratification or accession required for the entry into force of agreements such as the Nice Agreement was five, unless special circumstances required a greater number of instruments or other special conditions. The Delegation of Norway was of the opinion that such special conditions existed. The main reasons for the existence of the Nice Agreement were the advantages that international trade could derive from a common classification system. As long as there were two systems of voting, there would also be two classification systems. Splitting that unity would be, in the opinion of the Delegate of Norway, a step backwards in the work towards establishing a common classification system. The interval between the moment of the entry into force and the moment at which more or less all the members were bound by the new text should be as short as possible. That is why the number of instruments of ratification or accession required should be more than five.

203. Mr. UGGLA (Sweden) supported the proposal by the Delegation of Norway.

204. Mr. WUORI (Finland) likewise supported the proposal by the Delegation of Norway.

205. Mr. van WEEL (Netherlands) stated that, in order to ensure a degree of balance between the old countries and the new countries, the Delegation of the Netherlands was willing to support the proposal by the Delegation of Norway, supplemented by inserting after the word "countries" the words "five of which are members of the Special Union at the time of signature of this new Act," so that Article 9(4)(a) would read as follows: "With respect to the first ten countries, five of which are members of the Special Union at the time of signature of this new Act, . . .," etc.

206. The PRESIDENT explained that the wish of the Delegate of the Netherlands was that those ten countries should not all be new members but that five of them should be "old members" at the date of signature of the revised Act.

207. Mr. UGGLA (Sweden) stated that his Delegation would support that proposal.

208. Mr. PFANNER (WIPO) read out the English wording of the proposed amendment to Article 9(4)(a). Instead of saying "this new Act," he proposed that "this Act" be written.

209. The PRESIDENT requested delegations to submit comments on the proposal.

210. Mrs. CARLSEN (Denmark) supported the proposal by the Delegation of Norway, as amended by the proposal of the Delegation of the Netherlands.

211. Mr. MOORBY (United Kingdom) felt that the proposal by the Delegation of Norway had been submitted to avoid having a Committee of Experts composed, under the new Act, of only five members. All countries of the Union were, however, members of the Committee of Experts. The only problem which could arise was that of amendments voted by the Committee of Experts which a country not bound by the new Act was not willing to accept. The solution appeared to reside in a speedy ratification of the new Act by all member countries of the Union, maintaining five countries for the entry into force, rather than in the adoption of the proposal by the Delegation of Norway.

212. Mrs. AÚZ CASTRO (Federal Republic of Germany) felt that the aim of the Diplomatic Conference was to improve the Classification and, consequently, it was necessary to avoid a long time elapsing before the new Act entered into force. To avoid the danger of two different classifications, the Delegate of the Federal Republic of Germany proposed, as a compromise, that a country not yet party to the new Act should be able to state that a given amendment relating to certain goods was not applicable on its territory.

213. Mr. ALLEN (United States of America) announced that he had prepared an alternative solution which, in a way, was between the two positions put forward. That solution consisted in maintaining the formula of five countries but requiring that a certain number of those countries, three for example, possessed offices having a significant activity. The idea of that formulation had been taken from the Patent Cooperation Treaty and seemed capable of application in the present case.

The Delegate of the United States of America thought of a formula stating that each of the three countries concerned would have to fulfill one of the following two conditions: either the number of registrations in force in the national (or inter-governmental) office responsible for the registration of marks for the country had exceeded, at the end of the year 19.. (year to be specified), 50,000; or the number of applications for registration of marks received by that office during the year 19.. (year to be specified) had exceeded 5,000. It would be at the discretion of the Director General of WIPO to determine whether those conditions had been fulfilled on the basis of the statistics submitted to him or declarations by those countries that had not yet supplied statistics. In that way, one could avoid having amendments of little importance binding countries with a heavy workload in terms of numbers of registrations and applications.

214. The PRESIDENT emphasized the need to clarify that the problem of the interval between the time of entry into force of the new text and the accession to that text of all member States could not be resolved by legal measures. During that interval, the Committee of Experts, comprising representatives of all the member States of the Union would have to endeavor to find a common procedure and would have to ensure that the Classification remained a unified one. From a legal point of view, it was not possible to force any country that had not ratified the new Act or had not acceded to it to accept an amendment adopted on a majority of votes and not by unanimity. However, it was to be hoped that, once the new Act was in force, the countries would voluntarily accept decisions taken on a majority and that only in exceptional cases would they make a declaration that they were unable to accept a given amendment. The President admitted that the number of deposited instruments required for the new Act to enter into force was important, but that did not resolve the real problem of having two procedures existing side by side. That problem could only be solved by a consensus within the Committee of Experts, and the President was convinced that the Committee of Experts would find the means of achieving such a consensus. Moreover, the President observed that, in her opinion, the proposal by the Delegation of Norway, as amended by the proposal of the Delegation of the Netherlands, would not encourage new members to accede since they would have to wait for five "old States" to have deposited their instruments before the new procedure could enter into force.

215. Mr. MAK (UNICE) emphasized that the point currently under discussion was of great practical importance to European industry. The great advantage of the present situation was that a single international classification existed. The emergence of two versions of the Classification would constitute a grave danger for industry. There was not at present any legal means of preventing that situation but the creation of such a situation should be made difficult. Seen from that point of view, it was strongly advocated to give positive consideration to the proposal submitted by the Delegation of Norway, as amended by the Delegation of the Netherlands, which would guarantee the stability of the Classification.

216.1 Mr. PFANNER (WIPO) stated that a clear distinction had to be made, as very rightly emphasized by the President and the Delegate of the United Kingdom, between the conditions for entry into force of the new Act and the question of the procedure to be applied by the Committee of Experts--which was the sole Committee of Experts for the entire Nice Union--once the new Act had entered into force. A part of the members of the Committee would not be bound by the new Act whereas the remaining part would be. To know where the majority was was irrelevant since the problem would remain the same for as long as a country party to the original Nice Agreement or to the Stockholm Act was not a party to the new Act. Even the most stringent conditions providing for a high number of instruments of ratification or accession would not solve the problem. No solution was possible at a legal level, but only with the aid of consensus. Mr. Pfanner explained that the International Bureau had at one time considered submitting a resolution to the Diplomatic Conference that would deal with this question but had given up the idea since various States had had legal hesitations as to whether the Diplomatic Conference was empowered to say anything at all on what the Assembly or Committee of Experts were to decide once the new Act had entered into force. However that may be, the matter could not be resolved in the new Act, which could not have effect for States that were not party thereto.

216.2 Mr. Pfanner felt that the time of the entry into force of the new Act was of little relevance. What was important was that, once the new Act had entered into force, the two groups of States should agree on the procedure to be applied by the Committee of Experts. In the opinion of Mr. Pfanner, it would be natural to decide to apply the new procedure, subject to the understanding that the members of the Committee of Experts not bound by the new procedure would voluntarily accept the majority system with, however, the possibility of entering a kind of reservation in cases where a decision to amend would create a specific problem. But that case was more theoretical than practical since, in the past, numerous situations had arisen in which agreement had been reached without having recourse to a vote and it could be expected that the same would happen in the future and that the two groups within the Committee of Experts would frequently find common solutions without any one wishing to enter a dissenting opinion.

217. Mr. KAARHUS (Norway) stated his Delegation's opinion that there was no need for haste. He pointed out that the comments on Article 3 of the draft revised Act said that the difficulties that amendments to the Classification could create for anticipation search services would be diminished considerably by the fact that the Committee of Experts had decided in its November 1975 session that the Classification would no longer be subject to frequent revisions of detail, made as the occasion arose, but rather to a systematic revision at longer intervals which should be not less than five years and not more than ten years. The Strasbourg Agreement, which had required 13 deposits, had entered into force in less than five years. In a spirit of compromise, the Delegation of Norway proposed the number of ten deposits. At the same time, it supported the amendments proposed by the Delegation of the Netherlands.

218. Mr. van WEEL (Netherlands) felt that above all a practical solution had to be looked for since it appeared that a legal solution was excluded. He emphasized that it was in everyone's interest to have a uniform Classification and he noted that with differing majority rules it would be difficult to maintain such uniformity. A compromise would have to be found within the Committee of Experts, which would be all the easier if a large number of States became a party to the new Act. For that reason, he maintained the proposal by his Delegation.

219. Mr. DEGAVRE (Belgium) felt that in order to overcome the difficulties that had been pointed out it was possible to follow two paths. One was set out in the proposal by the Delegation of Norway, supplemented by the Delegation of the Netherlands; the other had been described by the Delegation of the United States of America. Since the latter proposal had not yet been formulated in writing and distributed to the delegates, it was difficult to say for the moment whether a compromise could be achieved between the two proposals. The Delegate of Belgium wished to give more consideration to the proposal by the Delegation of the United States of America.

220. The PRESIDENT informed the Conference that the said proposal would be available at 3.00 p.m. and proposed to adjourn the debates until the afternoon. (Continuation: see paragraph 348.)

[The meeting was closed]

<u>Fourth Meeting</u>
<u>Thursday, May 5, 1977</u>
<u>Afternoon</u>

Articles 5, 6, 7 and 8 (continued from paragraphs 153, 157, 159 and 178)

221. The PRESIDENT opened the fourth meeting. She reopened discussions on Articles 5 to 8 and explained that the Secretariat had prepared a new proposal on this matter during the midday break.

222. Mr. PFANNER (WIPO) stated that the Secretariat had come to the conclusion that the best solution was to withdraw all the amendments to Articles 5, 6, 7 and 8 that had been proposed in document N/CD/3.Rev., and to leave those Articles exactly as they were in the Stockholm Act. In the opinion of Mr. Pfanner, it could reasonably be hoped that the Assembly, under the powers conferred upon it by Article 8 to modify the administrative provisions, would take the necessary steps in good time, which would surely consist in making adaptations at the same time to the Geneva Act and to the Stockholm Act of the Nice Agreement.

223. The PRESIDENT wished to emphasize that the solution proposed by the Secretariat was exactly the same as that adopted for the Berne Convention. If the Diplomatic Conference were able to accept the solution proposed by the Secretariat, that would avoid a very complicated and very long debate.

224. Mrs. HIANCE (France) drew attention to the fact that Article 8(2) of the draft and of the Stockholm Act gave the Assembly itself the possibility of amending its own majority rules. The Delegation of France felt that the amendment of such an important rule as that of the majority should be the preserve of a Diplomatic Conference. She had already advanced this argument recently at the Budapest Diplomatic Conference and the corresponding Article of the draft Budapest Treaty had been amended. The Delegation of France proposed that the words "and to the present paragraph" be deleted in Article 8(2) of the Stockholm Act and of the draft and that a corresponding amendment be made to Article 11 in order to delete the reference to paragraph (2) of Article 8.

225. The PRESIDENT felt that in the case of the Budapest Treaty, which was a new international instrument, it had been easier to introduce such provisions than in a revised Act.

226. Mr. PFANNER (WIPO) wished to make the same comment in reply to the Delegation of France. In addition, he remarked that the proposal by the Delegation of France would not achieve its purpose, unless the words "and the present Article" were deleted in Article 8(1). However, to avoid reopening the debate on the thorny problems of law discussed at great length that morning, Mr. Pfanner urged the Delegates to leave it to the Assembly to amend the Articles concerned at the appropriate time.

227. Mrs. HIANCE (France) thanked Mr. Pfanner for the explanations he had given and which her Delegation appreciated. The purpose of the proposal had been to achieve coherence with the provisions of the Budapest Treaty, which was the most recent instrument adopted within the WIPO framework. The Delegate of France simply wished that the fact should be reflected in the records of the Diplomatic Conference.

228. The PRESIDENT assured the Delegation of France that her Delegation's position would be entered in the minutes and stated that the proposal could be submitted to the Assembly when it met after entry into force of the revised Act of the Nice Agreement. In that way the amendment would apply to the two Acts, and not only to the new Act, which would be of great advantage.

229. Mr. DAVIS (United Kingdom) stated that the solution proposed by the Secretariat generally met with the full approval of his Delegation but he nevertheless wished to reserve his position until the next day.

230. The PRESIDENT stated that all Delegations would have the possibility of returning to Articles 5 to 8 the next day.

231. Subject to the preceding paragraph, Articles 5, 6, 7 and 8 were adopted with the exact wording that those Articles had in the Stockholm Act. (Continuation: see paragraph 529.)

Article 3 (continued from paragraph 191)

232.1 The PRESIDENT moved to the next item, which was the question of the required majority within the Committee of Experts for the adoption of amendments (Article 3(7)). She pointed out that two proposals had been submitted, one by the Delegation of Czechoslovakia (document N/CD/12) and the other by the Delegation of the United States of America (document N/CD/16). A further proposal had been submitted, also for paragraph (7), by the Delegation of the Netherlands (document N/CD/15) but which did not refer to the same question and, therefore, would be examined subsequently.

232.2 The President invited the Delegates of Czechoslovakia and the United States of America to present their proposals respectively.

233. Mr. PROŠEK (Czechoslovakia) considered that the principle of unanimity currently required by Article 3(7) was not practical. The solution proposed in the draft (document N/CD/3.Rev.) was not one of the most felicitous either since it created a situation in which a small number of countries could take important decisions and that was far from facilitating the accession of new countries to the Nice Agreement. The Delegate of Czechoslovakia drew the attention of the Conference to the difficulties experienced by some countries, particularly the geographically distant countries, as regards participation of their delegates in meetings of the Committee of Experts, particularly in view of the travelling costs. That was why the Delegate of Czechoslovakia felt that the question of the quorum should be envisaged in a similar way to that provided for by Article 5, in respect of the Assembly for the Special Union. The proposal made by his Delegation, contained in document N/CD/12, had precisely that aim.

234. Mr. ALLEN (United States of America) was of the opinion that a rule requiring a very high majority for voting within the Committee of Experts would lead, from a practical point of view, to the same result as the existing unanimity rule since frequently only a small number of countries participated in the meetings of the Committee of Experts. The Delegate of the United States of America explained that his intention in submitting an amendment to the voting requirements was to make sure that only reasonable amendments could be adopted. The voting procedure could comprise two steps, whereby decisions on the adoption of amendments to be made to the Classification could be taken on a majority of three-quarters of the countries represented and voting, but no amendment would enter into force if, within 30 days following the dispatch of the relevant notification, more than one-fifth of the countries of the Special Union communicated negative votes in writing to the International Bureau in respect of that amendment. The Delegate of the United States of America emphasized that his Delegation had submitted the proposal in a spirit of compromise.

235. The PRESIDENT invited the Delegates to comment on the two proposals.

236. Mr. UGGLA (Sweden) explained that the statement on this point, which was crucial for his Delegation, would be made by Mr. Lundberg. Before that, he wished to make a few remarks. Of the three proposals submitted to the Diplomatic Conference, that of the International Bureau was the simplest, in his opinion, but an acceptable majority had to be found. The Delegate of Sweden explained that during the preparatory work his Delegation had favored a more highly qualified majority than in the alternatives currently submitted, viz. a majority of nine-tenths. Since then, the Delegation had gradually come down and now supported a majority of five-sixths, but felt that it could not go below that. The Delegation of Sweden wished to let it be known that it was not in agreement with the comments on Article 3(7) given on page 14 of document N/CD/3.Rev. The Delegate of Sweden added that the differing opinions stemmed from the fact that whereas some countries apply a system of pre-examination of marks, other countries do not apply it. Apparently, the countries having pre-examination attached primary importance to the stability of the Classification. As for the countries that did not have such an examination, they were more interested in the so-called flexibility of the Classification. The Delegate of Sweden considered that it was probable that more countries would introduce a pre-examination system in the field of trademarks. There was no great difficulty, in his opinion, to examine trademark applications, i.e., to search for similar marks that had been previously registered, and experience showed that those concerned valued the system of pre-examination for the security which it gave them before launching a new trademark on the market. The countries that would adopt such a system would probably stop advocating the flexibility of the Classification and become countries favoring the stability of the Classification.

237. Mr. LUNDBERG (Sweden) recalled that Sweden had taken an active part in the work of the Committee of Experts for many years. It had supported, for example, the decision taken in 1974 to carry out a general revision of the Classification. It was of great interest for users of the Classification to take note of the discrepancies found by countries having long experience. However, that did not mean that all shortcomings in the Classification should be corrected by amendments. In the opinion of the Delegate of Sweden, only such amendments should be made as were adopted unanimously or by a highly qualified majority

within the Committee of Experts. All other observations should be taken care of in the explanatory notes or in recommendations which the Committee of Experts could make under Article 3(3)(ii) of the draft revised Act. As far as the highly qualified majority was concerned, it should not be less than the five-sixths. The Delegation of Sweden saw no advantage in a lower majority, three-quarters for example, and did not believe the argument that a lower majority would encourage non-member countries to accede to the Union to be well founded. If a new country was particularly interested in a product not yet included in the Classification, that product could be inserted without it being necessary to carry out an "amendment" to the Classification.

238. Mr. BYKOV (Soviet Union) stated that his Delegation accepted the solution contained in the draft, under which unanimity would be replaced by a majority. It considered, however, that account should be taken of the proposal by the Delegation of Czechoslovakia, which was based on the experience and practice of the Committee of Experts. The Delegate of the Soviet Union gave his support to that proposal and emphasized that the minimum number of votes expressed had to remain in a reasonable relationship to the number of members of the Union.

239. Mr. PFANNER (WIPO) stated that after having made a first analysis of the proposal by the Delegation of Czechoslovakia, he had reached the conclusion that adoption of that proposal would create a much more complicated situation than that under the Stockholm Act of the Nice Agreement since the proposal required the explicit consent, in writing, of at least half of the member States of the Union. Article 3 of the Stockholm Act did not contain such a stringent requirement. Although that Article required the unanimous consent of the member countries, its paragraph (6) stipulated that each time a country did not appoint an expert or did not submit its opinion within a period prescribed by the Regulations, that country was to be considered to have accepted the decision taken by the members present and voting within the Committee. In practice, there had been no difficulties under the current arrangements except where a country had expressed its disagreement on a proposal in writing prior to a meeting or orally during a meeting since in such cases there was not a unanimous agreement. The proposal by the Delegation of Czechoslovakia suggested that, for a decision to be taken, an express positive statement be obtained from at least half of the countries of the Union, which was more than the number of countries that, under the current arrangements, expressed their opinion on a proposal. Under the system proposed by the Delegate of Czechoslovakia, it would be almost impossible to obtain a majority for any amendment.

240. The PRESIDENT stressed that account also had to be taken of the fact that, normally, when States were requested to submit comments on any matter whatsoever, the result was very meager. Mostly, comments were sent only by a small number of countries and the remaining countries remained silent.

241. Mr. ALLEN (United States of America) stated that the cost of amendments to the Classification should not only be considered from the administrative point of view but that account also had to be taken of the costs resulting for users from a bad classification of goods. The Delegate of the United States of America gave an example of conflicts between users being caused by a bad classification, which an amendment of the Classification would obviate.

242. Mr. UGGLA (Sweden) shared the opinion of the Delegate of the United States of America but explained that he had not raised the question of cost.

243. Mr. KAARHUS (Norway) recalled that Norway, which had signed the Nice Agreement in 1957 and had used the Classification since 1959, had always maintained that as few amendments as possible should be made to the Classification. Frequent changes would create uncertainty for trademark owners, for competitors, for the public and for the authorities carrying out the registration. The Delegate of Norway stated that his country's Office had been able to work quite satisfactorily on the basis of the existing classification system. He acknowledged that the unanimity rule could have unfavorable effects since it could, for example, prevent the necessary adaptations to technical developments or lead to unintended contradictions in the Classification. That was why his Delegation accepted a highly qualified majority of five-sixths.

244. Mr. FOLYCARPE (France) stated that his Delegation approved the wording of Article 3(7) proposed by the International Bureau. It would like a qualified majority to be adopted and willingly supported the proposals by the Delegations of Sweden and of Norway for a five-sixths majority.

245. Mr. BALLEYS (Switzerland) stated that the Delegation of Switzerland had always spoken, during the preparatory work, in favor of a highly qualified majority guaranteeing the stability of the Classification and explained that it had not changed that opinion. The Delegate of Switzerland had appreciated the argument put forward by the Delegate of Sweden, Mr. Ugglä, since Switzerland did not yet have an ex officio examination of marks but its introduction was envisaged.

246. Mr. VILLALPANDO MARTÍNEZ (Spain) regretted that his Delegation could not support the proposals submitted by the Delegations of Czechoslovakia and of the United States of America, partly due to their excessive complexity and partly because all member States had the possibility of participating in the meetings of the Committee of Experts and of putting forth their opinions in that body. The Delegation of Spain, that had already accepted the replacement of the unanimity rule by the majority system, was in favor of the wording proposed by the Secretariat with a highly qualified majority of five-sixths.

247. Mr. VAN-ZELLER GARIN (Portugal) spoke in favor of a qualified majority of five-sixths.

248. Mr. WUORI (Finland) was also in favor of a five-sixths majority.

249. Mr. DAVIS (United Kingdom) spoke in favor of the five-sixths majority.

250. Mr. CARLSEN (Denmark) also supported the proposal for a five-sixths majority.

251. Mr. van WEEL (Netherlands) was also for a majority of five-sixths.

252. Mrs. AÚZ CASTRO (Federal Republic of Germany) stated that her Delegation was also in favor of the five-sixths majority but was equally able to accept, as a compromise and taking into account the position of the Delegation of the United States of America, a majority of four-fifths.

253. Mr. MAK (UNICE) stated on behalf of European industry that the interests of trade and industry were best safeguarded by the highest possible majority but that he was able to accept a five-sixths majority. He expressed the hope that the decision would not go below that limit.

254. The PRESIDENT noted that the greater part of the Delegations had spoken in favor of five-sixths with three exceptions; the Delegations of the United States of America, of Czechoslovakia and of the Soviet Union. She asked those Delegations whether they were able to accept the five-sixths majority or whether they maintained their views.

255. Mr. ALLEN (United States of America) wished to know the opinion of the delegations that had not yet spoken.

256. The PRESIDENT requested the Delegations of Algeria, Australia, Austria, Belgium, Hungary and Italy to take the floor in turn.

257. Mr. REDOUANE (Algeria) recalled that his Delegation had already taken a stand on the abandonment of the rule of unanimity in favor of a qualified majority. He noted that the three proposals under discussion all had their merits. The Delegate of Algeria explained that the special situation of the developing countries had to be taken into consideration since they could not always send experts to the meetings of the Committee of Experts. The Delegate of Algeria wondered whether it would not be possible to combine the three proposals under discussion and find a solution providing for decisions taken with a given qualified majority at the meetings of the Committee of Experts, followed by the notification of such decisions by the International Bureau to all countries party to the Agreement; the member countries of the Union that had not replied to the notification within a certain time limit would be considered to have given their consent.

258. Mr. HENSHILWOOD (Australia) explained that he had not asked for the floor since he felt that the trend of the debate was conclusive. He stated that his Delegation was in favor of a five-sixths majority.

259. Mrs. MAYER (Austria) spoke in favor of a three-quarters majority but could, as a compromise, accept the four-fifths majority.

260. Mr. DEGAVRE (Belgium) was in favor of the five-sixths majority.

261. Mr. TASNÁDI (Hungary) did not feel that it would be reasonable to choose a solution requiring unanimity or even a very highly qualified majority that would have the same effect as unanimity. He stated that his Delegation was able to accept a compromise and spoke in favor of a majority higher than a simple majority but which, at the same time, would not be too high.

262. Mr. ASLAN (Italy) went along with the proposal for a five-sixths majority but was willing, as a compromise, to accept the four-fifths majority.

263. The PRESIDENT noted that no other delegation had asked for the floor. She proposed that the meeting be suspended for a coffee break, thus giving her, and the Secretariat, a chance to assess the situation before resuming the discussion.

[Suspension]

264. The PRESIDENT reopened the meeting and asked whether any delegations wished to take the floor.

265. Mr. ALLEN (United States of America) stated that he had examined the matter together with various other delegations during the suspension of the meeting and admitted that the proposal he had submitted in a spirit of compromise had some defects of which the major one was the complexity of the formula. The Delegate of the United States of America felt that the problem should be solved by adopting an intermediary position between his Delegation's proposal, which did not seem to have received strong support, and the five-sixths formula. Consequently, he withdrew the compromise proposal made by his Delegation (document N/CD/16) and went along with the four-fifths majority.

266. Mr. PROŠEK (Czechoslovakia) was in favor of a four-fifths majority.

267. Mr. REDOUANE (Algeria) stated that, after having listened to the statements by the Delegate of the United States of America and the Delegate of Czechoslovakia, his Delegation also went along with the four-fifths majority.

268. Mrs. HIANCE (France) was in favor of the four-fifths majority.

269. Mr. SERPÃO (Portugal) also went along with the four-fifths majority.

270. Mr. VILLALPANDO MARTÍNEZ (Spain) stated that, although his Delegation had supported the five-sixths majority some moments earlier, it had no objections to the four-fifths majority.

271. Mrs. GORLENKO (Soviet Union) also spoke in favor of the four-fifths majority.

272. Mr. ASLAN (Italy) confirmed that his Delegation agreed with the majority of four-fifths.

273. The PRESIDENT asked whether, in a spirit of compromise, the delegations could immediately accept the four-fifths majority or whether they needed to reflect again and preferred to postpone the discussion to the following day.

274. Mr. UGGLA (Sweden) emphasized that his Delegation had come to the Diplomatic Conference with strict instructions on that particular question, since it was felt that a compromise had already been achieved during the preparatory work. Since discussions had shown that many delegations were willing to compromise further, the Delegation of Sweden would like to be able to contact the competent authorities of its country.

275. Mr. DAVIS (United Kingdom) stated that his Delegation wished to think again until the following day.

276. The PRESIDENT announced that the final decision was postponed until the following day to enable those delegations that so needed to contact their competent authorities and to receive instructions. (Continuation: see paragraph 282.)

Article 1 (continued from paragraph 190)

277. The PRESIDENT moved to the proposal by the Delegation of Austria (document N/CD/14) concerning Article 1 and asked the Delegate of Austria to introduce the proposal.

278. Mrs. MAYER (Austria) observed that the proposal by her Delegation was the result of Austrian constitutional law under which, in principle, it was compulsory to make official publication in Austria of the Classification and any change to it, which represented a considerable work load and led to numerous difficulties. The inclusion in Article 1 of the revised Act of the Nice Agreement of two new paragraphs based on the provisions of the Strasbourg Agreement would enable Austria to avoid the need to make such official publication and would thus facilitate ratification of the new Act.

279. The PRESIDENT drew the attention of the Diplomatic Conference to the fact that the proposal by the Delegation of Austria also touched upon the language question, which ought not to be taken into consideration for the moment. After the question of languages was resolved as a whole, those provisions would be correspondingly adapted. The aim now was to decide whether the Diplomatic Conference would accept for the Nice Agreement a provision which had already been included in the Strasbourg and Vienna Agreements.

280. Mr. PFANNER (WIPO) stated that the Secretariat had studied the proposal in question and considered it to be fully justified since, in fact, the situation was the same as under the Strasbourg and Vienna Agreements. As far as the exact place of those two provisions was concerned, that question should be left to the Drafting Committee to decide. Mr. Pfanner shared the view on the matter of languages.

281. The PRESIDENT noted that no objection was forthcoming to the proposal by the Delegation of Austria and therefore declared it to have been accepted in principle. She repeated that the Drafting Committee would decide on the appropriate place for inserting the new paragraphs and would take charge of making the necessary changes after the languages question had been solved. (Continuation of Article 1: see paragraph 324.)

Article 3 (continued from paragraph 276)

282. The PRESIDENT then moved to the proposal by the Delegation of France in respect of Article 3, contained in document N/CD/13.

283. Mr. POLYCARPE (France) explained that his Delegation wished to add a paragraph (5bis) to Article 3, after paragraph (5), concerning the frequency of revisions of the Classification. It was felt that the Classification ought to be revised every eight years and that, in the interval, no amendment within the meaning of Article 3(7) should be made to it. The Delegate of France pointed out that this provision, at least in spirit, had been accepted by the Committee of Experts. It pursued a twofold objective. The first was to update the Classification which, owing to the arrival of new goods on the market, frequently had to be brought up to date by means of additions or deletions, and such changes could be made at any time. The second need had to do with the stability of the Classification in the interests of both the trademark owners and the legal security of third parties. Moreover, the reliability of anticipation searches, particularly if carried out by computer, required a certain permanency of the Classification and, in any event, excluded too frequent amendments. Such amendments should therefore occur at intervals of a minimum duration. Eight-year intervals appeared reasonable.

284. Mr. MOORBY (United Kingdom) wished to have some clarification from the Delegate of France on his proposal. He asked whether the Committee of Experts would not meet at all during the eight-year interval or whether it would meet during that period but only to deal with changes other than amendments.

285. Mr. POLYCARPE (France) replied that the eight-year interval referred to amendments. It was therefore obvious that the Committee of Experts could take decisions during the eight-year interval on additions or deletions or on any other change that was not an amendment within the meaning of Article 3(7).

286. Mrs. AÚZ CASTRO (Federal Republic of Germany) wondered whether such a provision should be inserted in the Agreement or whether that question should be left to the Assembly. As far as she was aware, there was no precedent in either the Strasbourg or Vienna Agreements.

287. Mr. PFANNER (WIPO) confirmed that there was no precedent in the other agreements on classifications. He wondered whether the right of the Committee of Experts to freely establish its own Rules of Procedure should be so drastically limited in the text of the Agreement itself. It was certain that the Committee of Experts, when setting up its Rules of Procedure, would continue its prudent policy of avoiding too frequent revisions. Mr. Pfanner also wondered whether every possibility of carrying out a particular amendment resulting from a very urgent and unanimously recognized necessity should be suppressed. It would be useful, in his opinion, to have a little more flexibility and, since the Committee of Experts itself was to establish its own Rules of Procedure, it would be preferable to leave that question to its decision.

288. Mrs. HIANCE (France) stated that her Delegation was not opposed to easing the rule it had proposed and that it placed trust in the Rules of Procedure of the Committee of Experts. Nevertheless, flexibility should not permit amendments to be made at any time, in view of the legal security of third parties and the stability of anticipation searches done by computer. That was the problem the Delegation of France wished to solve by fixing a minimum period between amendments.

289. Mr. ALLEN (United States of America) agreed on the principle of the proposal. He emphasized that the question went together with the voting requirements since it could be considered that if amendments were subject to a less rigid voting system than unanimity, the meetings at which the amendments were to be proposed would have to be prepared in more depth and would have to comprise more participants. However, the Delegate of the United States of America wondered whether this principle should be contained in the Agreement itself and whether the eight-year period was appropriate.

290. Mr. PFANNER (WIPO), referring to the wording of the proposal by the Delegation of France (document N/CD/13), which contained the sentence, "the Classification shall undergo revision every eight years," wondered whether that expression would not be interpreted as an obligation on the Committee of Experts to carry out a complete revision of the Classification every eight years.

291. The PRESIDENT asked the Conference whether it would not be adequate for the minutes to record the understanding of the Conference that the revisions of the Classification would be periodical and that it would be for the Rules of Procedure of the Committee of Experts to fix the periods.

292. Mr. DAVIS (United Kingdom) felt that the principle concerned was not that of periodical revisions but in fact that, if revisions of the Classification were decided, they should only enter into force at certain intervals.

293. The PRESIDENT explained that she had not wanted to say that revisions were compulsory, but only that proposals for amendments should be grouped together and that the decision to revise the Classification should be taken at regular intervals.

294. Mrs. HIANCE (France) reassured the delegates that it was not a question of imposing a systematic revision every eight years but of grouping together the revisions so that they would enter into force in a spaced-out fashion. As regards the increased flexibility, the Delegate of France repeated that her Delegation was open to all proposals and, in particular, it was willing to discuss the eight-year period, but it felt it necessary that a provision appear in the text of the Agreement itself, since a declaration in the Records of the Diplomatic Conference was not enough.

295. The PRESIDENT invited those Delegations that had not yet spoken to give their opinion on whether the proposed provision should be inserted in the Agreement itself.

296. Mr. van WEEL (Netherlands) wondered whether it would not be possible to entrust to the Director General of WIPO the task of inviting the countries every five years, or in any event at regular intervals, to submit proposals. He recalled that, in the framework of the Strasbourg Agreement, the Committee of Experts had decided not to touch the Classification for a period of four years, and he considered that that system worked very well.

297. Mr. PROŠEK (Czechoslovakia) agreed, in principle, with the proposal by the Delegation of France and gave it his support.

298. Mrs. CARLSEN (Denmark) was somewhat hesitant about the proposal and felt it preferable for the provisions in question to appear in the Rules of Procedure of the Committee of Experts.

299. Mr. DEGAVRE (Belgium) supported the Delegation of France in considering that the principle of periodicity was sufficiently important for it to be entered in the Agreement itself. As far as the wording and the proposed period were concerned, he had no very fixed views and could go along with a compromise proposal.

300. Mrs. AÜZ CASTRO (Federal Republic of Germany) suggested that the Agreement should simply state that the Classification was to be revised periodically and that it should be left to the Committee of Experts to choose the time for such revisions.

301. The PRESIDENT observed that the proposal coincided to a certain extent with the idea of the Delegate of the Netherlands, who had suggested a provision stipulating that the Director General of WIPO should periodically invite the countries to submit their proposals for amendments.

302. Mr. ALLEN (United States of America) agreed with that excellent proposal.

303. Mr. BALLEYS (Switzerland) stated that he also could support the proposal submitted by the Delegate of the Netherlands.

304. Mr. MOORBY (United Kingdom) was uneasy about the proposals that had been submitted since, in his view, any country should at any time have the possibility of submitting an addition, deletion, or amendment to the Classification. If a country had doubts as to the classification of a product, it would be obliged, should the proposals that had just been submitted be accepted, to decide by itself on where to classify the product and continue to classify in that way for perhaps seven years, until such time as the Committee of Experts met and, perhaps, took a different decision. The Delegate of the United Kingdom felt that this would be contrary to the spirit of the Nice Agreement.

305. Mr. ALLEN (United States of America) thought that there was a misunderstanding. The feeling of the Delegate of the United States of America was that the Delegation of France had proposed that the periodic revisions would be meetings devoted solely to amendments, to the exclusion of any other change, but that the Committee of Experts would continue to function as it had done until then in respect of the additions and other changes not involving a change of class.

306. The PRESIDENT proposed the following formula to the Conference for insertion in the Agreement, subject to the wording to be finalized by the Drafting Committee: "Amendments to the Classification should, as far as possible, be grouped together and set into force at periodic intervals."

307. Mr. GERHARDSEN (Norway) fully shared the President's point of view.

308. Mrs. HIANCE (France) stated that her Delegation could go along with the spirit of the proposal by the President and would defer the final elaboration of the wording to the Drafting Committee.

309. Mr. ALLEN (United States of America) gave his support.

310.1 The PRESIDENT asked whether any delegations opposed the proposal she had submitted and noted that such was not the case. She repeated that the Drafting Committee would finalize the exact wording of the provision.

310.2 The President suggested moving to the proposal by the Delegation of the Netherlands, given in document N/CD/15, and invited the Delegate of the Netherlands to introduce the proposal.

311.1 Mr. van WEEL (Netherlands) pointed out that the proposal by his Delegation comprised two elements. The first element was intended to clarify the wording of Article 3(6) and (7). The Agreement contained no definition of what was meant by "member country." There were, in fact, two categories of country in the Committee of Experts: the countries of the Special Union and the observer countries. In the opinion of the Delegate of the Netherlands, it was excluded that the observer countries could vote but that was not expressed very clearly. That is why his Delegation had suggested, in document N/CD/15, that the provisions of Article 3(6) and (7) be supplemented.

311.2 The second element of the proposal concerned Article 3(7) alone. It was proposed that the words "entailing such transfer" be deleted because, in the opinion of the Delegation of the Netherlands, any creation of a new class was a decision of great importance which had to be taken on a qualified majority even if it did not entail a transfer.

312. The PRESIDENT stated that, as far as the first element of the proposal by the Delegation of the Netherlands was concerned, the provision contained in the draft revised Act proposed by the International Bureau was the same as that contained in the Strasbourg and the Vienna Agreements. He felt that there was no doubt that only the members of the Union could vote and not the observers.

313. Mr. PFANNER (WIPO) confessed that such a doubt had never crossed his mind nor that of anyone participating in the meetings of the Committee of Experts under the Strasbourg Agreement. In his opinion, it was clear from the context of Article 3 taken as a whole that only members of the Special Union could be members of the Committee of Experts. Although the word "member" was not used in Article 3(1), which spoke of a "Committee of Experts... in which each country of the Special Union shall be represented," Article 3(1) obviously meant, a contrario, that observers could not be considered members. Certainly, that provision could have been better formulated, for example, by saying that "each country of the Special Union shall have one vote in the Committee of Experts," but if the Nice Agreement were to be amended in that way there was a danger of provoking the a contrario argument that the other agreements had intended to say something else. Consequently, Mr. Pfanner wished to retain the old formula, even if it was not perfect.

314. The PRESIDENT noted that all delegations agreed on the substance, that is to say that the voting right belonged solely to member countries of the Special Union. Thus, the problem was more of an editorial one and could be covered by a clarification in the minutes. The President asked the Delegate of the Netherlands if he was able to accept that proposal.

315. Mr. van WEEL (Netherlands) replied that he preferred the matter to be clarified in the actual text of the Agreement.

316. Mr. PFANNER (WIPO), speaking of the formula proposed by the Delegation of the Netherlands, felt that it was not very clear inasmuch as it seemed to make a distinction between the countries of the Special Union represented in the Committee of Experts and those not represented, whereas Article 3(1) clearly stated that all countries of the Union were represented in the Committee of Experts. It would be preferable to use the formula he had used some time earlier, that is to say that each country of the Special Union would have one vote in the Committee of Experts.

317.1 The PRESIDENT pointed out that it was simply an editorial matter since all delegates had agreed that voting rights belonged to members of the Special Union only. She proposed asking the Drafting Committee to find the most appropriate formula.

317.2 The President moved to the second element in the proposal by the Delegation of the Netherlands which was to delete the words "entailing such transfer." She asked whether it was possible to create a new class without taking some goods out of an existing class.

318. Mr. EGGER (WIPO) explained that, theoretically, it was conceivable to create a new class to place in that new class goods which did not as yet come under any existing class. He thought, however, that despite the development of technology and the almost daily creation of new products, all new goods, in practice, already belonged to the existing classes.

319. Mr. van WEEL (Netherlands) recalled that at one point classes had been created for services. He felt that decisions of such importance had to be taken by a highly qualified majority.

320. Mr. ALLEN (United States of America) pointed out that, in his country, a special class existed for collective and certification marks. It was not impossible to rule out the possibility of the Committee of Experts considering other forms of classification of marks and, in such a case, the qualified majority voting should be applied.

321. The PRESIDENT noted that the proposal by the Delegation of the Netherlands (document N/CD/15) was supported and that no one had opposed the deletion of the words "entailing such transfer" from Article 3(7).

322. The proposal by the Delegation of the Netherlands was adopted. (Continuation: see paragraph 348.)

323. The PRESIDENT noted that the discussion the following morning would concern the matter of languages.

[The meeting was closed]

<u>Fifth Meeting</u>
<u>Friday, May 6, 1977</u>
<u>Morning</u>

Article 1 (continued from paragraph 281) and Article 13 (Article 14 in the signed text)

324. The PRESIDENT opened the fifth meeting and announced that, as had been decided at the meeting of Heads of Delegations, that meeting would be devoted to all aspects of the languages question. She recalled that the draft submitted by the International Bureau set forth that the texts of the Agreement (Article 13(1)(a)) and of the Classification (Article 1(4)) would be established in English and French. Three proposals for amendments had been submitted, by the Delegation of the Soviet Union (document N/CD/5), by the Delegation of Spain (document N/CD/7) and by the Delegation of the Federal Republic of Germany (document N/CD/18), respectively. She invited those Delegations to introduce their proposals successively.

325. Mr. BYKOV (Soviet Union), presenting the proposal by his Delegation (document N/CD/5), pointed out that Russian, which had long enjoyed widespread use at the international level, was an official and working language of the United Nations and of many of the specialized agencies. The Convention Establishing WIPO had also been signed in that language. The existence of a Russian text of international instruments could but contribute to mutual understanding and facilitate the search for solutions to many problems. The Delegate of the Soviet Union stated that he was well aware of the amount of effort and the means required to produce a translation of a text in a foreign language. That was why his Delegation had taken care to prepare a Russian version of the draft revised Act of the Nice Agreement even before submitting its proposal on the languages question. The Delegation of the Soviet Union was very interested in having the International Classification translated into Russian as well but, for the reasons already mentioned, had not submitted a formal proposal with respect thereto. It nevertheless wondered whether it would not be possible to produce a translation into Russian at the same time as the translations into Spanish and German since that would make use of the Classification easier for the member countries of the Council for Mutual Economic Assistance. The Delegation requested the International Bureau to take this possibility into account if the circumstances permitted.

326. Mr. VILLALPANDO MARTÍNEZ (Spain) pointed out that the proposal made by his Delegation comprised two amendments; one to Article 1(4) of the draft, dealing with the languages of the International Classification, and the other to Article 13(1)(a) of the same draft, dealing with the languages of the Agreement. The Delegate of Spain observed that Spanish was the language of 22 sovereign countries and was spoken by more than 250 million people throughout the world. An authentic text of the Classification in Spanish would be of capital importance for the Spanish-speaking countries since, although a large number of those countries were not yet members of the Special Union, many of them applied the International Classification set up by the Nice Agreement. The Delegate of Spain emphasized that his country, which participated most actively in the work within WIPO's technical assistance program, attached very great importance to the question of the Spanish language, which was one of the official languages of the United Nations and one of the languages in which the Convention Establishing WIPO had been signed and in which the present Conference was being held. The question of Spanish should therefore be approached both from the point of view of strict equity and for practical reasons.

327. Mr. SANNE (Federal Republic of Germany) stated that, in proposing the inclusion of German in Articles 1(4) and 13(1)(a) of the draft revised Act, his Government had not been inspired by reasons of prestige. In fact, there were practical reasons that had led his country to make that proposal since it was well known that the German language was widely used and that German industrial, scientific and technical achievements had led to a great part of the marks classified under the Nice Agreement. The Delegate of the Federal Republic of Germany was aware of all the drawbacks of introducing more and more languages as authentic languages of the Agreement. Consequently, he wished to emphasize that, if it were decided to maintain the wording of Articles 1(4) and 13(1)(a) as given in the draft (document N/CD/3.Rev.), the Government of his country would be willing to accept that solution.

328. The PRESIDENT opened the discussion on the three proposals.

329. Mr. VAN-ZELLER GARIN (Portugal) stated that he had not intended to take part in the discussion on the matter of languages but that the course of the debates and the three proposals under discussion had incited him to remind the Diplomatic Conference of the worldwide dimensions of the Portuguese language which was spoken by several million people in nine countries. He therefore felt that he should also propose the adoption of the Portuguese language.

330. Mr. BALLEYS (Switzerland) stated that his Delegation had carefully examined the proposals submitted by the three Delegations for amendment of Articles 1 and 13. The Delegate of Switzerland remarked that, so far, agreements of a rather technical nature such as that being discussed by the Conference had not been signed in languages other than French and English. No text in German, Spanish, Portuguese or Russian had been submitted to the participants at the Conference before it had begun. The Delegation of Switzerland was not in favor of such proposals that could open the way to further claims. It would not be able to adopt the revised Act or to sign it if such proposals were to be accepted since they went beyond the instructions received from its Government.

331. Mr. PROŠEK (Czechoslovakia) stated that his Delegation supported the proposal by the Delegation of the Soviet Union in view of the importance of the Russian language, which was spoken by several hundred million people and which was an official and working language of the United Nations.

332. Mr. DAVIS (United Kingdom) stated that, since English was one of the privileged languages, it was difficult for him to speak on the subject. He felt that the proposals touched upon two different matters, one concerning the Committee of Experts and the other the Agreement itself. He intended to concern himself with the first matter only. A number of delegates had put forward the argument that their language was widely used throughout the world. From a practical point of view, Article 1(5) solved, in his opinion, the problem for those countries by laying down that "The International Bureau shall establish, in consultation with interested Governments, official texts of the Classification in such other languages as the Assembly referred to in Article 5 may designate." The multiplication of authentic texts deprived each of them of a part of their authenticity.

333. Mr. DEGAVRE (Belgium) stated that his Delegation, following the instructions from its Government, was in favor of a linguistic status quo.

334. Mrs. HIANCE (France) recalled that her Delegation had already said that it had no objections to an English text having authenticity in the same way as the French text of the Nice Agreement, partly as a result of the precedents constituted by the Strasbourg and the Vienna Agreements, and partly for reasons connected with the technical nature of the Nice Agreement. It appeared, however, extremely regrettable to the Delegation of France, both for reasons of legal security and reasons of cost, to multiply the authentic texts in a greater number of languages. That was why she spoke in favor of the text of the draft revised Act (document N/CD/3.Rev.).

335. Mr. TASNÁDI (Hungary) stated that his Delegation understood the reasons for which various delegations wished to have authentic texts of the Agreement established in various languages. It did not, however, propose that the Hungarian language should also be taken into account since it felt that the text should be established exclusively in the official languages of the United Nations.

336. Mr. GERHARSEN (Norway) was not opposed to the text of the revised Act of the Nice Arrangement being established in a number of languages, with each text being fully authentic. On the other hand, he had serious doubts as to the usefulness of having authentic texts of the Classification in various languages since that would lead to problems of interpretation. English and French were the two languages of the equally authentic texts of the Trademark Registration Treaty (TRT). In view of the fact that the Nice Agreement was to be used within the framework of the TRT, the Delegate of Norway felt it reasonable that the Classification be established in English and in French and that the two texts should be equally authentic.

337. Mr. van WEEL (Netherlands) shared the view expressed by the Delegate of France. He pointed out that French was the only authentic language for the Paris Union. However, in view of the precedents in the field of special agreements, he was willing to accept English.

338. Mr. HENSHILWOOD (Australia) was in favor of the text of the draft (document N/CD/3.Rev.) for the same reasons as expressed by the Delegate of the Netherlands.

339. Mr. NETTEL (Austria) wished to know what would be the financial implications of adopting the proposals concerning the three new languages.

340. Mr. BOGSCH (Director General of WIPO) replied that there were at least three stages for which financial implications had to be taken into consideration. The first stage was that of the deliberations within the Committee of Experts where there could be interpretation into the various languages proposed or, simply, into English and French. The second stage was that of preparing draft translations of amendments. Since the basic text already existed in all the languages proposed, that would not lead to significant costs and, additionally, there would not be very numerous amendments. The third stage, and that constituted the only important problem, was the publication of the Classification in printed form. Current practice was flexible. There already existed an official translation of the Classification in some of the languages concerned, and the printing costs were borne to a very large extent by the States concerned. The Director General of WIPO remarked that the question of the Delegate of Austria was extremely pertinent. He thought that, if agreement could be reached that the publication costs should be borne essentially by the States concerned and that if the deliberations of the Committee of Experts should continue as they were at present, the remaining costs to be covered would be very small.

341. Mr. MAK (UNICE) emphasized that the Classification was of interest not only to the trademark offices of the various countries but also to the users or the owners of trademarks. The owners of trademarks had never asked to have other authentic versions of the Classification than the French version. Under the Madrid Agreement Concerning the International Registration of Marks, all lists of goods and services had always been in French only, although the owners of trademarks, being nationals of the countries party to the Madrid Agreement, spoke between seven and ten different languages. Nevertheless, they had never asked for any other language than French. It was certainly good that English was being proposed in addition to French for the authentic text, but, from the point of view of industry, no other languages were necessary. The introduction of new languages for the authentic texts would put a heavy burden on the International Bureau.

342. Mr. ALLEN (United States of America) wished to draw the attention of the Diplomatic Conference to Article 1(6) since it seemed to him that that paragraph was related to the current discussion. Article 1(6) laid down that there should be a correspondence between the French and the English and also between other languages and one of the authentic languages. The present work on the revision of the Classification was already meeting considerable difficulties in establishing a correspondence between the French and English texts of the alphabetical list. Those efforts were worth it in view of the Trademark Registration Treaty (TRT). Applications filed in French, for example, will be published by the International Bureau in English also. In the comments on the draft revised Act, on the advantage of having English as an authentic language, it is said that "the list of goods and services to be covered by the mark, which has to accompany each application, should, as far as possible, be based on the alphabetical list of goods and services of the Nice Classification." That meant that it would be important for the lists to correspond as much as possible. As an example, countries that relied on the international publication of marks and the list of goods as published would hope that third parties, in reading the language of their choice, would have as good an understanding of the scope of protection sought for the mark as was possible. If languages other than English were to be added, the task of establishing a correspondence would become too complicated. The Delegate of the United States of America concluded that the addition of English in the draft revised Act of the Nice Agreement was justified by the TRT. He was in favor of the solution contained in the draft revised Act.

343. Mr. EYER (CNIPA) recalled that the Director General of WIPO had stated that the costs under the Nice Agreement would not be prohibitive if the proposals submitted were accepted. It was, however, obvious to the Representative of CNIPA that the decision taken at the present Diplomatic Conference would have repercussions on the Madrid Agreement Concerning the International Registration of Marks. He foresaw that in the future an applicant would have to file a list of goods in four, five or six languages and that the review "Les Marques internationales" would also have to be printed in four, five or six languages. All that would lead to absolutely prohibitive costs for applicants.

344. Mr. BYKOV (Soviet Union) stated that, for financial and technical reasons, he was not insisting that the International Classification should also be drawn up in Russian. He pointed out that the proposal by his Delegation concerned only the text of the Nice Agreement.

345. The PRESIDENT proposed that the meeting be suspended to allow delegations to clarify the matter a little further.

[Suspension]

346. The PRESIDENT resumed the meeting and declared that following the discussion she had had with a number of delegations, she felt the best way of proceeding was to set up a smaller group that would examine the language problem. She hoped that thus, it would be possible to try, if not to reach a solution, at least to bring the views closer together. As regards the composition of the group, she proposed the Delegations of the following countries: France, Germany (Federal Republic of), Soviet Union, Spain, Switzerland, United Kingdom, United States of America.

347. Mr. ASLAN (Italy) apologized for not having been able to attend the morning's discussions and to be able to present his Delegation's view at an earlier juncture. His Delegation was in favor of maintaining the French language with the possible adoption of English. (Continuation of Article 1: see paragraph 401; continuation of Article 13: see paragraph 373.)

Articles 3 and 9 (Article 3 continued from paragraph 323 and Article 9 continued from paragraph 320)

348. The PRESIDENT proposed interrupting the discussion on the languages question and moving to two other items on which the Conference had not yet reached agreement, viz. the majority question within the Committee of Experts for adopting amendments to the Classification and the question of the number of instruments of ratification or accession required for the entry into force of the new Act of the Agreement. The President hoped that compromise solutions could be found. As regards the first question, the amendments to the Classification could be adopted on a majority of four-fifths (Article 3(7)). As regards the ratification

or accession instruments, it could be laid down in Article 9(4) that "six instruments, three of which have to be instruments of countries members of the Special Union at the time of signature." In addition, a statement could be entered in the minutes of the Conference to the effect that the first periodical revision would not enter into force before a period of five years from the signature of the new Act of the Nice Agreement had expired.

349. Mr. UGGLA (Sweden) was in favor of the first compromise. After having reflected on the particular question of the majority, his Delegation was prepared to accept a four-fifths majority. He was very satisfied that the question had been linked to that of the number of instruments since there existed a relationship between those two items. The Delegate of Sweden stated that he was also able to accept the second compromise.

350. Mr. GERHARDSEN (Norway) stated that his Delegation could accept the proposal by the President if all points mentioned in the proposal obtained general agreement.

351. Mr. DAVIS (United Kingdom) was able to accept the first two points in the proposal. As for the third point, he confessed that he did not understand it. It seemed to him that it was already included in the preceding points.

352. The PRESIDENT explained that the third point--a statement entered in the minutes specifying the date of entry into force of the first periodical revision of the International Classification--was to allay the fears of some delegations that the first revision of the Classification adopted under the new procedure would enter into force in the very near future.

353. Mr. ALLEN (United States of America) agreed with the compromise proposal submitted by the President, with or without the statement in the minutes.

354. Mr. van WEEL (Netherlands) stated that his Delegation accepted the compromise solution.

355. Mr. VILLALPANDO MARTÍNEZ (Spain) stated that his Delegation was able to accept the three points in the compromise proposal submitted by the President.

356. Mr. BALLEYS (Switzerland) stated that the Delegation of Switzerland was prepared to accept the solutions outlined by the President.

357. Mr. POLYCARPE (France) also went along with the compromise solution.

358. Mrs. AÓZ CASTRO (Federal Republic of Germany) stated that her Delegation was willing to accept the proposed compromise.

359. Mrs. CARLSEN (Denmark) stated that the Delegation of Denmark could also accept the proposal, in a spirit of compromise.

360. Mr. SERRÃO (Portugal) also went along with that solution.

361. Mrs. MAYER (Austria) confirmed that the Delegation of Austria was in favor of the President's proposal.

362. Mr. ASLAN (Italy) spoke in favor of the compromise formula submitted by the President.

363. Mr. HENSHILWOOD (Australia) accepted the compromise.

364. Mrs. BOGNÁR (Hungary) stated that the Delegation of Hungary also accepted the proposal.

365. The PRESIDENT noted that her proposal enjoyed very wide support and that no one had raised objections. She congratulated the delegations on having shown such a spirit of compromise.

366. The proposal by the President referred to in paragraph 348, above, was adopted. (Continuation of Article 3: see paragraph 514.)

367. The PRESIDENT asked the Delegates whether they had further comments to make on Article 9.

368. Mr. UGGLA (Sweden), referring to Article 9(6), pointed out that the Ministry of Foreign Affairs of his country felt that clause to be rather strange. He asked whether it was usual in international instruments on industrial property.

369. The PRESIDENT replied to the Delegate of Sweden that clauses of that kind were contained in many international instruments on industrial property, if not in all of them. It had been included for the first time in the Stockholm texts of the various instruments.

370. Mr. PFANNER (WIPO) confirmed that the principal had been applied since the Stockholm Diplomatic Conference.

371. Article 9 was adopted. (Continuation: see paragraph 532.)

Articles 10, 11 and 12

372. Articles 10, 11 and 12 were adopted.

Article 13 (Article 14 in the signed text) (continued from paragraph 347)

373. The PRESIDENT pointed out that Article 13 was linked to the languages question and noted that no objections were forthcoming, leaving aside the matter of languages.

374. Subject to the question of languages, Article 13 was adopted. (Continuation: see paragraph 401.)

Procedural Remarks

375. Mr. DAVIS (United Kingdom) mentioned that his Delegation had submitted a proposal for a new Article 13 (document N/CD/8).

376. The President announced that, in addition to the above-mentioned proposal by the Delegation of the United Kingdom, there remained the proposals by the Delegation of the Netherlands (document N/CD/9) and the Delegation of the United States of America (document N/CD/17) to be discussed. She was aware that a number of delegations wished to have a little more time to reflect upon those proposals. She therefore proposed that the meeting be closed and that an attempt be made to resolve the languages question during the afternoon meeting.

[The meeting was closed]

Sixth Meeting

Friday, May 6, 1977

Afternoon

Article 13 (new in relation to the draft)

377.1 The PRESIDENT opened the sixth meeting and announced to the Conference that the Working Group on the question of languages had not been able to find a solution for the time being and, in view of the need to obtain further instructions, it had been necessary to postpone the discussion until the afternoon of the following day.

377.2 The President stated that, of the three proposals still remaining to be considered, two relating to the same matter should now be discussed together. Those were the proposals by the Delegation of the United Kingdom (document N/CD/8) and the Delegation of the Netherlands (document N/CD/9). She invited those two Delegations to introduce their proposals.

378. Mr. DAVIS (United Kingdom) stated that his Delegation was against deleting Article 14 of the text of the Nice Agreement currently in force and the "territorial clause" included in it and proposed that such clause be reinserted in the text of the new Act. The International Bureau had explained in document N/CD/3.Rev. that Article 14 referred to an Article of the Paris Convention (Article 24) which, in all probability, would be deleted at the forthcoming revision of the Paris Convention, but it did not seem correct to the Delegation of the United Kingdom to anticipate the decision to be taken by the future Diplomatic Conference on the Revision of the Paris Convention in that respect. The Delegate of the United Kingdom further pointed out that three Agreements concluded during the years 1975/1976, dealing respectively with tin, cocoa and coffee, contained the "territorial clause." He regretted that the question of the "territorial clause" was always approached on a political level whereas it was primarily a practical question. The plain truth was that there existed "dependent territories" and it would be absurd to deprive those territories of the benefits of a given international instrument simply by refusing to include the "territorial clause." The inclusion of the "territorial clause" was essential to enable those territories to enjoy the benefit of the Nice Agreement and, at the same time, to enable the United Kingdom to ratify rapidly the revised Act of the Nice Agreement. The Delegate of the United Kingdom was aware of the fact that the current wording of Article 14 of the Nice Agreement, in which there was a reference to Article 24 of the Paris Convention, could create difficulties for some people. That is why he would be willing to accept other formulas, such as that used in the Patent Cooperation Treaty (PCT) or the Trademark Registration Treaty (TRT) or again that proposed by the Delegation of the Netherlands in document N/CD/9. The simplest would, however, be to revert to the existing text.

379. Mr. van WEEL (Netherlands) explained that the Kingdom of the Netherlands was composed of two territorial units which were on an equal footing. Each of those units had its own industrial property legislation. From a legislative point of view, the units were completely independent. For that reason it was necessary to provide for the possibility of the Kingdom of the Netherlands becoming a party to the revised Act either in its totality or for one of those units. Article 14 of the current text of the Nice Agreement, which was based on the idea of a country being responsible for the external relations of a territory did not altogether correspond to the needs of the Netherlands since the two parts of the Kingdom of the Netherlands together took decisions concerning external relations. That was why the Delegation of the Netherlands had submitted a proposal and it attached importance to it being accepted. The Delegate of the Netherlands explained that he was not opposed to the proposal by the Delegation of the United Kingdom. He was well aware that the situation of the United Kingdom possibly needed a different provision from the one he was proposing. He wished simply that the solution adopted should take into account the special problems of the Kingdom of the Netherlands.

380. The PRESIDENT felt that it would be useful to know how things stood in the context of the revision of the Paris Convention and read out paragraphs 95 and 96 of document PR/GE/III/14, which was the report of the third session (held in Lausanne from June 8 to 15, 1976) of the Ad Hoc Group of Government Experts on the Revision of the Paris Convention. The two paragraphs read as follows:

"95. The Chairman stated that the majority of the Group of Experts were in favor of deleting Article 24 but that this was a highly political question and that therefore some countries preferred to reserve it to the Diplomatic Conference.

"96. In conclusion, in view of the fact that the great majority of the Group of Experts insisted on the deletion of Article 24, the so-called "territorial clause" of the Paris Convention, the Group of Experts decided to invite the Director General to study the problem which, particularly for certain countries and territories, would arise if the said Article was omitted and to study the possibility of resolving such problems."

381. Mrs. HIANCE (France) stated that her Delegation, in the same way as the Delegation of the United Kingdom, felt great reticence as regards the deletion of Article 14 of the current text of the Nice Agreement. That Article in fact proceeded by reference to Article 24 of the Paris Convention which was in the process of revision. The Intergovernmental Preparatory Committee had not pronounced on the revision of Article 24 and, even if it had done so, it would not seem proper to the Delegation of France to anticipate the decision of the Diplomatic Revision Conference. For that reason, inspired by a concern for legal propriety, the Delegation of France was in favor of maintaining Article 14 of the current text of the Nice Agreement, without prejudging the attitude that may be taken on the question of substance at the revision of the Paris Convention.

382. Mr. HENSHILWOOD (Australia) felt it would be premature, at that stage, to judge the question and that rather the outcome of the Paris Convention revision should be awaited. Consequently, the Delegate of Australia supported the proposal by the Delegate of the United Kingdom.

383. Mr. DEGAVRE (Belgium) fully shared the view expressed by the Delegate of France.

384. Mr. BYKOV (Soviet Union) observed that the position of the Delegation of the Soviet Union in that matter was well known and remained unchanged. The draft revised Act of the Nice Agreement (document N/CD/3.Rev.) contained no provision on that matter and there was no reason to reinsert the "territorial clause" in the text under discussion. At a time of liquidation of colonialism, the provision in Article 14 of the current text of the Nice Agreement had lost its meaning. Moreover, it had become contrary to the Resolution taken by the United Nations General Assembly on December 14, 1960.

385. Mr. PROŠEK (Czechoslovakia) gave his support to the position of the Delegation of the Soviet Union in view of the fact that the provision in Article 14 of the current text of the Nice Agreement was outdated.

386. Mr. SANNE (Federal Republic of Germany) stated that the arguments put forward by the Delegate of the United Kingdom were convincing. His Government was not directly involved in the question of dependent territories but it understood the concern of the Governments of the United Kingdom and of the Netherlands, and supported the proposals put by the Delegations of those countries. He could accept either of the two texts.

387. Mr. TASNÁDI (Hungary) energetically opposed the insertion of the "territorial clause" in the text of the new Act of the Nice Agreement.

388. Mrs. BOUZID (Algeria) gave her support to the position of the Delegation of the Soviet Union and added that the proposals under discussion had been submitted very late and it had not been possible to examine them correctly. She pointed out that the Delegation of Algeria had already let its opinion on the "territorial clause" be known at the Vienna Diplomatic Conference and at the meetings devoted to the revision of the Paris Convention and firmly hoped that the clause, which was contrary to the spirit of the United Nations resolutions, would be deleted.

389. Mr. DAVIS (United Kingdom) thought that the matter had to be viewed from a practical angle. He did not agree with the argument that there had not been time to examine his proposal since it meant reverting to the existing text.

390. Mr. van WEEL (Netherlands) explained that the proposal by his Delegation differed from Article 24 of the Paris Convention. It concerned a situation which could arise at any time, that is to say when a number of territorial units united to form a single whole. Its purpose was to give countries the possibility of declaring that the Agreement would extend to all those territorial units or only to one or more of them.

391. The PRESIDENT noted that there was a clear-cut division of opinion and proposed that the meeting be suspended to enable delegations to consult.

[Suspension]

392. The PRESIDENT resumed the meeting and submitted a compromise proposal constituting the outcome of lengthy consultations with various delegations. She read out the text of the proposal in English as follows and requested the Secretariat to then give a provisional translation into French: "The provision of Article 24 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property shall apply to this Act. If the said provisions are revised, they shall apply to this Act in their revised form as from the date of their entry into force."

393. Mr. CURCHOD (WIPO) read out the provisional French wording of the proposal.

394. The PRESIDENT was aware of the great difficulty of discussing such a proposal at once. She therefore proposed to close the meeting.

395. Mr. BYKOV (Soviet Union) asked the President whether it would not be possible to postpone the next meeting of the Conference, preceded by a meeting of the Working Group, from Saturday to Monday morning.

396. The PRESIDENT requested the view of the Diplomatic Conference and noted that there were no objections to the proposal by the Delegate of the Soviet Union. The President therefore postponed the following meeting of the Diplomatic Conference to Monday morning and stated that the meeting would be preceded by a meeting of the Working Group on the question of languages, and that the Drafting Committee would meet on the afternoon of the same day. (Continuation: see paragraph 453.)

[The meeting was closed]

Seventh Meeting

Monday, May 9, 1977

Morning

Report of the Credentials Committee

397. The PRESIDENT opened the seventh meeting. She proposed that the report of the Credentials Committee should first be considered and that discussion should then move to the languages question and to Article 14 of the current text of the Nice Agreement.

398. Mr. NETTEL (Austria), taking the floor as Chairman of the Credentials Committee, presented that Committee's report, prepared by the Secretariat (document N/CD/20).

399. The PRESIDENT thanked the Delegate of Austria and the Secretariat for their work and noted that no objections to the report of the Credentials Committee were forthcoming.

400. The report of the Credentials Committee was adopted.

Article 1 and Article 13 (Article 14 in the signed text) (Article 1 continued from paragraph 347 and Article 13 continued from paragraph 374)

401. The PRESIDENT moved to the languages question and informed the Conference that within the Working Group, that had met just before the present meeting, all Delegations, with one exception, had arrived at the conclusion that they were able, in a spirit of compromise, to accept the "Budapest formula" used in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, that had been opened to signature some ten days previously. The President added that the Delegations of Spain and of the Federal Republic of Germany had stated their willingness to withdraw their proposals should the "Budapest formula" be unanimously accepted, and that the Delegation of the Soviet Union alone, on instructions from its Government, had declared that it needed to maintain its proposal. The President proposed that the discussion be taken up again within the Conference in order to determine the views of the majority.

402. Mr. VILLALPANDO MARTÍNEZ (Spain) confirmed that his Delegation was willing, in a spirit of compromise, to withdraw its proposals for amendment of Articles 1 and 13 (document N/CD/7), on condition that the "Budapest formula" was unanimously accepted. Since such was not the case, the Delegation of Spain did not formally withdraw its proposals but, since it wished to achieve a compromise, it remained willing to accept the formula used in the Budapest Treaty.

403. Mr. BALLEYS (Switzerland) reiterated that his Delegation was not able to accept the proposals made on the subject of languages. Those proposals had been presented at too late a juncture for them to be submitted for consultation to the Swiss authorities and to the interested circles. The more authentic texts there were, the more difficulties would arise in interpreting them. In conclusion, the Delegate of Switzerland emphasized that his Delegation would not be in a position to sign a text providing for authentic languages other than French and English. The "Budapest formula" was, on the other hand, acceptable to his Delegation.

404. Mr. SANNE (Federal Republic of Germany) supported the statement made by the Delegate of Spain.

405. Mr. UGGLA (Sweden) fully understood that the Delegations of the Soviet Union and of Spain wished to see the languages of their countries accepted in accordance with their proposals. Since this was impossible for technical reasons, however, the Delegation of Sweden strongly supported the "Budapest formula."

406. Mr. PAPINI (Italy) also spoke in favor of the "Budapest formula."

407. Mr. GERHARDSEN (Norway) repeated that his Delegation had not opposed the text of the Agreement being established in languages other than French. However, the Delegation understood that difficulties could arise if the Agreement were to be signed in several languages, all texts being equally authentic. The Delegation of Norway therefore considered that the "Budapest formula" constituted a reasonable compromise.

408. Mr. NETTEL (Austria) stated that his Delegation had every understanding for proposals to introduce the language of the country making the proposal, particularly since the nationals of his country had to work in a foreign language in all the organizations. However, since it was necessary to reach a compromise, the Delegation of Austria accepted the "Budapest formula."

409. Mr. ALLEN (United States of America) repeated that his Delegation was in favor, in principle, of the proposal by the International Bureau appearing in the draft. However, in a spirit of compromise, it was willing to accept the "Budapest formula."

410. Mrs. CARLSEN (Denmark) stated that, for technical reasons, the Delegation of Denmark supported the "Budapest formula."

411. Mr. DEGAVRE (Belgium) stated that the Delegation of Belgium was willing, as a compromise, to accept the "Budapest formula."

412. Mr. SERRÃO (Portugal) stated that his Delegation was able to accept the "Budapest formula" but could not accept a solution that would discriminate against the Portuguese language.

413. Mr. van WEEL (Netherlands) stated that, for practical reasons rather than for reasons of principle, the Delegation of the Netherlands was in favor of the "Budapest formula."

414. Mr. MOORBY (United Kingdom) confirmed the position already taken by his Delegation, which supported the "Budapest formula."

415. Mr. BYKOV (Soviet Union) wished to explain once more the position of his Delegation. To prove that it was not a new position, he quoted Article 20 of the Convention Establishing WIPO and pointed out that, since the Stockholm Diplomatic Conference, WIPO had become a specialized agency of the United Nations, one of whose official and working languages was precisely Russian. The Delegation of the Soviet Union had proposed that the Russian text should be simply one of the authentic texts of the revised Act of the Nice Agreement. The proposal did not therefore concern the Classification. In view of the technical difficulties, the Delegation suggested that at the close of the Conference only the authentic texts of the revised Act in English and in French

be signed. The authentic texts in Russian and Spanish could be drawn up subsequently by the International Bureau, after consultation with the governments concerned, and would remain open for signature until December 31, 1977. The Delegate of the Soviet Union repeated that an official Russian text of the Stockholm Act of the Nice Agreement already existed and asked that the Russian text of the draft revised Act drawn up by his Delegation and communicated to the Secretariat be transmitted to the Delegates to their relevant authorities for verification.

416. Mrs. BALOUS (France) stated that her Delegation, that had come to Geneva with instructions to accept the International Bureau's proposal to place French and English on an equal footing as regards the signing of the new Act of the Nice Agreement, was nevertheless willing to align itself on the consensus which appeared to be emerging in favor of the solution found at Budapest but she pointed out that that attitude did not in any way prejudge the position her Government might take in respect of that matter in connection with other agreements administered by WIPO.

417. The PRESIDENT felt that the Conference would need a little time to think over the latest proposal by the Delegation of the Soviet Union.

418. Mr. NETTEL (Austria) wished to put a question in respect of that proposal. If the Delegate of Austria had understood the Delegate of the Soviet Union, the text to be signed would state that the present Act was signed in one original in English, French, Russian and Spanish. Furthermore, an entry would be made in the minutes of the Conference or in the Final Act stating that the two texts not prepared prior to the Conference would be drafted by the Secretariat in consultation with the governments concerned. According to the Delegate of Austria, if the Agreement were to be drafted in four languages, the drafting should be done by the whole Conference in the four languages. Thus, the entry to be made in the minutes of the Conference or in the Final Act should read, "... in consultation with the Governments which took part in the Conference" and not "... in consultation with the interested Governments." It was the opinion of the Delegate of Austria that every country was entitled to take part in the elaboration of all texts, no matter whether the language concerned was its official language or not. After making that point, the Delegate of Austria wished to ask what the legal implications would be if the Delegation of a given country signed the English and French texts of the Agreement immediately following the Conference and then subsequently, after the other two texts had been drawn up in Spanish and Russian, decided not to sign those other two texts.

419. Mr. BOGSCH (Director General of WIPO) requested the President to suspend discussion for a moment to enable him to hold discussions with the Delegate of the Soviet Union.

420. Mr. VILLALPANDO MARTÍNEZ (Spain) apologized for speaking yet again but wished to make it quite clear that the position of the Delegation of Spain corresponded totally with the position of the Delegation of the Soviet Union, but that the Delegation of Spain maintained the offer it had made in its preceding statement.

421. Mr. SANNE (Federal Republic of Germany) regretted to announce that, if the proposal by the Delegation of the Soviet Union was in fact to be discussed, then his Delegation had to maintain its proposal to include the German language in Article 1(4) and Article 13(1)(a).

422. The PRESIDENT felt that all Delegations needed some time to think over the proposal and that the Director General should be given the possibility of speaking with the Delegate of the Soviet Union in order to clarify various points.

423. Mr. BOGSCH (Director General of WIPO) wondered whether a statement of some kind could not be made concerning the status of the Russian, German and Spanish languages as regards the Classification.

424. The PRESIDENT proposed that the text of the Strasbourg Agreement be taken as a basis for the question of the languages of the International Classification. That Agreement stipulated that the Classification was to be established in English and French, those two texts being equally authentic, and that the International Bureau, in consultation with the interested governments, would establish

official texts of the Classification, either on the basis of a translation proposed by those governments or by any other means having no financial implications for the budget of the Special Union or of the Organization, in a number of languages, including German, Spanish, Portuguese and Russian, and in other languages the Assembly might designate. The President felt that that formula could constitute an example for the text submitted to the present Diplomatic Conference.

425. Mr. VILLALPANDO MARTÍNEZ (Spain) stated that he fully approved the proposal by the President.

426. Mr. SANNE (Federal Republic of Germany) likewise accepted the proposal by the President.

427. The PRESIDENT asked if there were any objections to accepting the "Strasbourg formula" as far as the Classification was concerned. She noted that such was not the case and expressed her satisfaction that at least one part of the languages question was settled.

428. Mr. BOGSCH (Director General of WIPO) was delighted with this decision, which should facilitate matters for the countries whose languages are German, Portuguese, Spanish and Russian.

429. The PRESIDENT adjourned the meeting for 15 minutes. (Continuation of Article 1: see paragraph 439; continuation of Article 13: see paragraph 430.)

[Suspension]

Article 13 (Article 14 in the signed text) (continued from paragraph 429)

430. The PRESIDENT resumed the meeting and announced that the discussions during the pause had not led to an agreement. She requested the Delegation of the Soviet Union to introduce its proposal, that would be submitted in writing.

431. Mr. BYKOV (Soviet Union) stated that the Delegation of the Soviet Union had submitted its proposal, drafted in English, to the Secretariat of the Conference and he again explained its position on the question of languages of the revised Act of the Nice Agreement. The Delegate of the Soviet Union repeated that the specialists in his country were very interested to have also a Russian text of the Classification available to them but that he was aware that this would be too difficult to achieve for the moment. To conclude, he repeated his request that the Secretariat should distribute the proposal by his Delegation.

432. The PRESIDENT explained the contents of the new proposal by the Delegation of the Soviet Union since it was not possible to distribute it immediately in writing to the Delegates. Under the proposal, there would be four equally authentic texts, two of which would be open for signature at the end of the Conference and the other two would be established after the Conference by the Director General, in consultation with all governments, and would remain open for signature until December 31, 1977.

433.1 Mr. BOGSCH (Director General of WIPO) felt that a distinction had to be made between two questions, that of the languages which would be authentic and that of the languages in which the Agreement would be signed. He recalled that the same matters had been extensively discussed at the Budapest Conference and that the Convention Establishing WIPO had been signed in Stockholm in four languages, English, French, Spanish and Russian, the four texts being equally authentic. He then remarked that the present Agreement and the Budapest Treaty were not dependent on the Convention Establishing WIPO but on the Paris Convention and that special agreements within the Paris Union had been signed in recent years in English and French. The Director General of WIPO felt it to be in the interest of industrial property in general, and of WIPO in particular, for all treaties and conventions in that field to be signed and to be authentic in the largest possible number of languages. The question was at what moment in the history of the Paris Union the decision should be taken to make such a change. Personally, the Director General of WIPO thought that the change should be made at the time the Paris Convention was revised. He saw no reason why the revised Paris Convention should not also be signed in Spanish and Russian and possibly in further languages. In that way, the precedent would be established in the right place, that is to say, in the mother Convention.

433.2 The Director General of WIPO felt that it would be odd to have texts that were to be signed at the end of the Conference and other texts open for signature after the Conference, particularly if all texts were to be authentic. He did not wish to find himself in a situation where he would be obliged to decide on a linguistic difference of opinion between two States using the same language. The establishment of authentic texts ought to be done at a meeting in which all States could discuss and vote.

433.3 The Director General of WIPO recognized the great value to a country such as Spain or the Soviet Union of having, at the time it decided to ratify the new Act of the Nice Agreement, or even at the time of signing (signature was to take place between the end of the Conference and the end of the year), an official text in Spanish or Russian. In such a case, a sentence could be inserted in the "Budapest formula," in paragraph (1)(b), such as: "These texts" (Spanish and Russian) "shall be included in the copies certified by the Director General." The texts in Spanish and Russian would thus be official texts under paragraph (1)(b) and not authentic texts under paragraph (1)(a) but would nevertheless be included in the certified copies.

434. Mr. DAVIS (United Kingdom) wished to clarify the meaning of the formula, "This Convention shall be signed...in English, French, Russian and Spanish...." Did that mean that the four texts had to exist at the time of signature or did it mean that the Act could be signed in English, in French, in Russian or in Spanish? According to his understanding, anyone signing the English and French texts would not, in fact, sign the English, French, Russian and Spanish texts.

435. Mr. NETTEL (Austria) stated that if a text was signed which said "This Convention shall be signed in a single original in the English, French, Russian and Spanish languages, all four texts being equally authentic," that meant that all four texts were being signed whatever happened afterwards. The Delegate of Austria observed that if it were wished to provide for separate signing of the missing languages, a special provision would be required, specifying that the two missing texts would be signed subsequently.

436. The PRESIDENT noted that "Budapest formula" had received broad support. She felt that the Drafting Committee should be requested to prepare a text based on the "Budapest formula" and to distribute it together with the proposal by the Delegation of the Soviet Union. The President thought that it would be difficult for the Diplomatic Conference to meet that afternoon.

437. Mr. BOGSCH (Director General of WIPO) shared that view. He felt it would be preferable for the next meeting of the Conference to take place the following morning.

438. The PRESIDENT adjourned discussion on the question of languages until the following morning. (Continuation: see paragraph 470.)

Article 1 (continued from paragraph 429)

439. The PRESIDENT then moved to consideration of the proposal by the Delegation of the United States of America in respect of Article 1, contained in document N/CD/17.

440. Mr. ALLEN (United States of America) pointed out that the proposal by his Delegation contained two drafting errors and apologized. In two places, the words "by serial numbers" were to be deleted and the words "pursuant to paragraph (5)" were to be added after the words "lists established." The Delegate of the United States of America explained that the aim of his proposal was to give the text a more general wording than the draft. The text proposed by the International Bureau described very clearly the way in which cross-referencing between the texts was currently done. The present system was a good system, but it would seem that in future there could be more economical and quicker systems, particularly those which were computerized. The Delegate of the United States of America recognized that the term "cross-referencing," used in the proposal by his Delegation, could cause difficulties in French. It was a very common term in English, particularly when dealing with search files.

441. The PRESIDENT felt that a decision should only be taken at that moment on whether it was wished to give the Committee of Experts the freedom to adopt a possible better system of cross-references. The President suggested that if the proposal were accepted, it be left to the Drafting Committee to prepare a text.

442. Mrs. CARLSEN (Denmark) had some hesitation as regards the proposal by the Delegation of the United States of America since she did not see how far-reaching it was. It could be very difficult to make a translation into a given language if it were not possible to return to the two, English and French, texts and there had to be the certainty of always being able to find the original serial number in the French text.

443. Mr. ALLEN (United States of America) did not think that the draft required a reference to be made to the French. As he understood paragraph (6)(ii), reference could be made to one or the other language.

444. The PRESIDENT confirmed what had been said by the Delegate of the United States of America.

445. Mr. PFANNER (WIPO) was of the same opinion and added that it was for those who drew up the text in another language to choose either the French text or the English text. Mr. Pfanner then noted that there was not a great difference of substance between the two texts proposed, except that, in its new version, the proposal by the Delegate of the United States of America was not limited to serial numbers but also left open the possibility of using other reference signs as needed. The Secretariat would accept that point and was therefore willing to propose to the Drafting Committee a text which would not be restricted to serial numbers. The text would be based on the draft given in document N/CD/3.Rev. which, although longer, seemed clearer than the proposal by the Delegation of the United States of America.

446. Mr. UGGLA (Sweden) had gained the impression that the wording of the draft (document N/CD/3.Rev.) would mean that a given product would not have a single serial number but several serial numbers, perhaps as many as there were texts. If such were the case, that would be a rather impractical way of identifying goods. As a layman in classification matters, he asked whether it would not be more practical to decide on a single serial number for the product and that the same serial number be used in all the language versions of the Classification. The Delegate of Sweden gave his preference to the broader and more general proposal submitted by the Delegation of the United States of America since it left it to the Committee of Experts to decide on that very technical question.

447. Mrs. AÜZ CASTRO (Federal Republic of Germany) felt that if it were only a matter of enabling serial numbers to be replaced by other reference signs that could prove to be better, then it was purely a drafting question and could therefore be left to the Drafting Committee.

448. Mr. MOORBY (United Kingdom) wished to be certain that the proposal by the Delegation of the United States of America aimed at replacing the whole of paragraph (6). It seemed to him that the beginning of paragraph (6), which laid down the obligation to put a serial number against each specific product or service, was lost to a certain extent in the proposal, which he regretted. The proposal appeared to cover only items (i) and (ii) and not the whole of paragraph (6).

449. Mr. ALLEN (United States of America) explained that his Delegation had merely wished to avoid that the system of cross-referencing be done necessarily by means of serial numbers.

450. Mr. SAMPERI (Italy) spoke in favor of the draft contained in document N/CD/3.Rev.

451. Mr. BOGSCH (Director General of WIPO) stated that it was difficult to translate the English term "cross-reference" into French and that, in fact, the concept was not in its correct place. Cross-referencing would be done only between the English and French texts. The English text would refer to the serial numbers in the French text and the French text would refer to the serial numbers in the English text, whereas the texts in the other languages would refer to the serial numbers of either the English text or the French text. In the case of these other languages, there was therefore no cross-referencing but only a one-way reference.

As to whether the references could be made by means of signs other than serial numbers, the Director General of WIPO agreed with the Delegation of Denmark that it was preferable to maintain the system of serial numbers for the moment. Even if computerized systems were to be introduced, it would nevertheless be necessary for the human eye to be able to read the references.

452. Mr. ALLEN (United States of America), noting that the proposal by his Delegation was causing difficulties, withdrew the proposal (document N/CD/17). (Continuation: see paragraph 498.)

Article 13 (new in relation to the draft) (continued from paragraph 396)

453. The PRESIDENT moved to the next item, the reinstatement in the draft of Article 14 of the current text of the Nice Agreement. The President recalled that she had read out at the preceding meeting a compromise proposal and requested the Conference to give its views.

454. Mr. DAVIS (United Kingdom) stated that he had studied the compromise proposal and had submitted it to the competent authorities of his country. In his view, it would be preferable to maintain Article 14 as it was in the text of the current Agreement. However, since the compromise proposal meant referring the decision to the future Diplomatic Conference on the Revision of the Paris Convention, the Delegation of the United Kingdom accepted the formula proposed by the President.

455. Mr. HENSHILWOOD (Australia) also supported the proposal submitted by the President.

456. Mr. BYKOV (Soviet Union) considered the proposal unacceptable to his Delegation and insisted that Article 14 be deleted.

457. Mr. van WEEL (Netherlands) stated that his Delegation was willing to forego its own proposal and to support the proposal by the President.

458. Mrs. BOUZID (Algeria) stated that she was still in favor of deleting Article 14. Consequently, she supported the proposal that had been made by the Delegate of the Soviet Union and maintained her opposition to the proposal submitted by the President.

459. Mrs. AÚZ CASTRO (Federal Republic of Germany) stated that her Delegation supported the proposal by the President.

460. Mr. TASNÁDI (Hungary) was against maintaining the "territorial clause" in the text of the revised Act of the Nice Agreement.

461. Mr. DAVIS (United Kingdom) expressed his disappointment. He asked again that the decision to delete the "territorial clause" in the text of the Nice Agreement be left open until the future Diplomatic Conference on the Revision of the Paris Convention, which contained such a clause. He considered it rather unreasonable to wish to settle such an important matter of principle within a relatively restricted forum whereas over 80 countries could participate in the revision of the Paris Convention. The Delegate of the United Kingdom had no alternative but to ask that the matter be put to the vote. He wished the minutes to record that, in his opinion, the proposal to reinstate the "territorial clause" was in the interests of the dependent territories themselves and that the delegations opposing the proposal were putting the interests of those territories in second place.

462. The PRESIDENT stated that the Rules of Procedure of the Conference required procedural motions and proposals for amendment by member delegations to be put to a vote only if seconded by at least one other member delegation.

463. Mr. BOGSCH (Director General of WIPO) stated that there was no doubt that the proposal for amendment had been seconded. The question was whether the procedural motion requesting a vote had been seconded.

464. Mr. HENSHILWOOD (Australia) seconded the procedural motion submitted by the Delegation of the United Kingdom.

465. The PRESIDENT moved to the vote and reminded delegations that voting was by show of hands.

466. The proposal by the President concerning the "territorial clause" (see paragraphs 392 and 453 above) was adopted by 14 votes to 5, with 2 abstentions.

467. Mr. BALLEYS (Switzerland) wished to state in accordance with Rule 37(2) of the Rules of Procedure that his Delegation, in giving its vote, had not been inspired by political considerations, but solely by practical considerations.

468. Mr. BYKOV (Soviet Union) asked that the records of the Conference should state the reasons for his Delegation's negative vote. He announced that he had submitted a statement to the Secretariat for such purpose. The statement was worded as follows: "The Union of Soviet Socialist Republics considers it necessary to declare that the provision of Article 14 of the Agreement, providing for the possibility of its application to colonies and dependent territories, is in contradiction with Resolution 1514(XV) of December 14, 1960, of the General Assembly of the United Nations."

469. The PRESIDENT observed that the text of the proposal would be submitted to the Drafting Committee. She then gave some information on the organization of the work of the Conference. (Continuation: see paragraph 503.)

[The meeting was closed]

<p><u>Eighth Meeting,</u> <u>Tuesday, May 10, 1977</u> <u>Morning</u></p>

Article 13 (Article 14 in the signed text) (continued from paragraph 438)

470. The PRESIDENT opened the eighth meeting and moved to consideration of the proposal by the Delegation of the Soviet Union appearing in document N/CD/22.

471. Mr. BYKOV (Soviet Union) wished to make some drafting changes to the text of his Delegation's proposal (document N/CD/22). In Article 13(1)(a), the words "this Convention shall be signed" should be replaced by the words "this Agreement shall be signed," and, the words "shall be deposited with the Government of Sweden" should be replaced by the words "shall be deposited with the Director General." In Article 13(1)(b), last sentence, the reference should be to "subparagraph (3) of this Article" instead of "subparagraph (2) of this Article." In Article 13(2), "the Conference" should be replaced by "the Assembly."

472. Mr. BALLEYS (Switzerland) said that his Delegation, which had made a careful study of the proposal by the Delegation of the Soviet Union, felt the same doubts as had been expressed by the Delegate of Austria as to the legal possibility of providing for a two-stage signing procedure. In the opinion of the Delegate of Switzerland, it was not only technical difficulties that made the proposal unacceptable; the more authentic texts there were, the more difficulties of interpretation would be encountered. For that reason he declared himself in favor of the "Budapest formula," which was an excellent compromise.

473. Mrs. BOUZID (Algeria) also favored the "Budapest formula."

474. Mr. TOROVSKY (Austria) confirmed the position taken the previous day by his Delegation. He said that he had in the meantime consulted with the Austrian authorities and that his Delegation could not, for legal reasons, accept the version proposed by the Delegation of the Soviet Union, and favored instead the "Budapest formula".

475. Mr. WILLIAMSON (United States of America) recalled that his Delegation intended to support the proposal by the International Bureau as appearing in the draft (document N/CD/3.Rev.). However, in a spirit of compromise, it had pointed out at the previous meeting that it could accept the "Budapest formula." The Delegate of the United States of America said that the authorities of his country had studied the proposal by the Delegation of the Soviet Union and were concerned about the legal problems that it raised, especially those mentioned by the Delegate of Austria. He pointed out that if countries signed the first and second authentic texts and not the third and fourth, an uncertain legal situation would result. It was on account of those problems that the Delegation of the United States of America could not support the proposal by the Delegation of the Soviet Union, and declared itself in favor of the "Budapest formula."

476. Mrs. BALOUS (France) recalled her Delegation's preference for the International Bureau draft which placed English on an equal footing with French. By way of compromise, her Delegation had, at the previous day's meeting, accepted the "Budapest formula." The Delegate of France confirmed this position and said that the Delegation's decision would not bind it in any way with regard to the revision of the Paris Convention.

477. Mr. SAMPERI (Italy) confirmed that he was still in favor of the "Budapest formula."

478. Mr. van WEEL (Netherlands) said that, owing to the difficulties of a legal nature raised by the proposal of the Delegation of the Soviet Union, the "Budapest formula" was preferable.

479. Mrs. CARLSEN (Denmark) said that the Delegation of Denmark was in favor of the "Budapest formula" and could not accept the proposal by the Delegation of the Soviet Union.

480. Mrs. AÚZ CASTRO (Federal Republic of Germany) said that her Delegation had serious misgivings as to the legal aspects of the proposal by the Delegation of the Soviet Union. She did not consider it possible to establish two new authentic texts after the completion of the present Diplomatic Conference. The "Budapest formula" would be a good compromise solution.

481. Mr. CHRAÏBI (Morocco) said that his Delegation was also in favor of the "Budapest formula."

482. Mr. DEGAVRE (Belgium) also shared the misgivings expressed and endorsed the "Budapest formula."

483. Mr. PROŠEK (Czechoslovakia) supported the proposal presented by the Delegation of the Soviet Union, which to him seemed perfectly acceptable.

484. The PRESIDENT noted that the proposal by the Delegation of the Soviet Union, which was supported only by the Delegation of Czechoslovakia, was encountering strong opposition and that the "Budapest formula" was strongly supported.

485. Mr. BYKOV (Soviet Union) said that his Delegation maintained the same position with regard to the problem under discussion but that it was always prepared to continue to work on the text proposed by it, in order that it might be accepted by all.

486. The PRESIDENT pointed out that the time factor had to be considered, there being little time left for the debates of the Conference. In view of the fact that the "Budapest formula" was strongly supported, the President suggested that the text to be presented by the Drafting Committee should contain that formula.

487. Mr. BYKOV (Soviet Union) asked the President to convene the Working Group for the same afternoon to consider his Delegation's proposal.

488. The PRESIDENT proposed suspension of the meeting for 15 minutes.

[Suspension]

489. The PRESIDENT resumed the meeting. She announced that the Delegation of the Soviet Union had to seek instructions from Moscow, but that it was having difficulty in obtaining these instructions, as that day was a public holiday in Moscow. Under the circumstances, the President convened the Working Group for 5.15 pm. and the Conference for 6 p.m. on that same day.

[The meeting was closed]

Ninth Meeting

Tuesday, May 10, 1977,

Afternoon

Article 13 (Article 14 in the signed text) (continued from paragraph 489)

490. The PRESIDENT opened the ninth meeting and announced good news to the Conference. The Working Group had met in the course of the afternoon, and the Delegation of the Soviet Union had submitted a proposal based on the "Budapest formula." The Working Group had studied that proposal, and made some small changes to it, and was about to submit it to the Conference. The proposal had not met with any objections in the Working Group. The President thanked the Delegation of the Soviet Union for the spirit of compromise it had shown. As the proposal was available in writing to the Conference, the President proposed to the Delegates that the meeting be suspended for 15 minutes in order that it might be examined.

[Suspension]

491. The PRESIDENT reopened the meeting. She said that the word "indicated" should be replaced by "referred to" in the English text, the French text remaining unchanged. She asked whether the proposal of the Working Group gave rise to any objections and noted that such was not the case.

492. Article 13 was adopted to the extent that it had not already been adopted (see paragraph 374 above).

493. The PRESIDENT asked the Chairman of the Drafting Committee whether he considered it necessary for the Drafting Committee to hold a meeting on the subject of Article 13.

494. Mr. DAVIS (United Kingdom), speaking as Chairman of the Drafting Committee, said that the text of Article 13 could be incorporated in the Agreement as it stood.

495. The PRESIDENT noted that the Conference agreed with the Chairman of the Drafting Committee.

496. Mr. ZAITSEV (Soviet Union) made a statement on Article 13 on behalf of the Delegation of the Soviet Union. Basing itself on international practice and on the role of Russian in the world--working language and official language of the United Nations, the Council for Mutual Economic Assistance and the majority of international organizations in the United Nations system, language of the Convention establishing WIPO and many other international instruments--the Delegation of the Soviet Union submitted a proposal for the establishment and signature of an authentic Russian text of the Nice Agreement. In view of the fact that certain Delegations participating in the present Conference were unable to sign texts of the revised Act of the Nice Agreement other than the English and French texts, the Delegation of the Soviet Union then proposed that two texts should be signed for the time being and that the signature of the other two texts, namely the Russian and Spanish texts, should be postponed until later. This constructive proposal had not been supported by the Delegations participating in the Diplomatic Conference, which, on pretexts of a technical and legal nature, had opposed the treatment of Russian on an equal footing with the other languages of the Nice Agreement. The Delegation of the Soviet Union, intent on cooperating

in the success of the present Diplomatic Conference, had eventually accepted a compromise formula, while confirming its attitude on the principle of the existence of an authentic text of the Agreement in Russian. The Delegation of the Soviet Union expressed the hope that such a state of affairs would shortly change, and asked the President to have its statement included in the minutes of the Diplomatic Conference.

497. The PRESIDENT said that the Secretariat would see to it that the statement in question was reflected in the minutes. (Continuation: see paragraph 539.)

Article 1 (continued from paragraph 452)

498. Mrs. BOUZID (Algeria) recalled that Article 1 contained provisions on the languages in which official texts of the Classification would be established. She noted that all the States members of the Nice Union agreed that the Classification was a very useful instrument, and that it would be still more practical if it could be used in the language of the country concerned. The International Bureau should therefore be in a position to make the Classification accessible to all those who wished to apply it and to establish official texts of it in the most widely-used languages. The Delegate of Algeria recalled that provision had been made for the establishment of official texts in German, Portuguese, Russian, Spanish and such other languages as might be designated by the Assembly referred to in Article 5. She proposed that Arabic, which was an official language in almost 20 countries, including ten members of the Paris Union, and which had also become an official language of the United Nations, should be taken into consideration for the establishment of official texts without such action requiring a decision on the part of the Assembly.

499. Mr. SAMPERI (Italy) asked for the Classification to be established also in Italian.

500. Mr. FATHALLAH (Tunisia) supported the proposal presented by the Delegation of Algeria.

501. The PRESIDENT asked whether there were any objections to the addition of Arabic and Italian to the languages in which official texts of the Classification would be established. She noted that such was not the case.

502. Article 1 was thus amended. (Continuation: see paragraph 511.)

Article 13 (new in relation to the draft) (continued from paragraph 469)

503. Mr. van WEEL (Netherlands), referring to the withdrawal of the proposal by the Delegation of the Netherlands contained in document N/CD/9, asked for the minutes to record that the revised Act of the Nice Agreement probably would be applicable only to part of the Kingdom of the Netherlands and not to the Kingdom as a whole. (Continuation: see paragraph 533.)

504. The PRESIDENT gave various explanations on the organization of the work.

[The meeting was closed]

Tenth Meeting

Thursday, May 12, 1977

Morning

Remarks on procedure

505.1 The PRESIDENT opened the tenth meeting. She mentioned the items on the agenda. First, the Conference would hear the second report of the Credentials Committee. Then, she would hear the report of the Chairman of the Drafting Committee, the report of the Chairman of the Committee on the Consideration of the Agreement,

parallel with the document containing the statements, whereupon the Final Act as proposed by the President and drawn up by the Secretariat would be discussed. Finally, the floor would be given to any delegation that wished to make a closing remark. The President invited delegations to say in particular whether they intended to sign the Final Act on the following day, and recalled that the Final Act could be signed by all delegations without need for full powers.

505.2 The President invited the Vice-Chairman of the Credentials Committee to take the floor, as the Chairman was absent.

Second report of the Credentials Committee

506. Mr. VILLALPANDO MARTÍNEZ (Spain), speaking as Vice-Chairman of the Credentials Committee, said that the Secretariat had received two communications, from the Italian and Tunisian Governments, announcing the credentials and full powers of the Delegations of Italy and Tunisia.

Draft Geneva Act of the Nice Agreement prepared by the Drafting Committee (document N/CD/23) and draft statements to be included in the Records of the Diplomatic Conference, prepared by the Drafting Committee (document N/CD/24)

507. The PRESIDENT gave the floor to the Chairman of the Drafting Committee.

508. Mr. DAVIS (United Kingdom), speaking as Chairman of the Drafting Committee, announced that, at its meeting on May 10, 1977, the Drafting Committee had drawn up the draft Geneva Act of the Nice Agreement (document N/CD/23) and drafts of the statements to be included in the Records of the Diplomatic Conference (document N/CD/24). He saw nothing in particular to point out, and assured the Delegates that he was at their disposal should any explanations be necessary.

509. The PRESIDENT proposed to the Conference that it should proceed with the consideration and adoption of the draft Geneva Act of the Nice Agreement, and explained that, after the consideration of an Article, she would submit for consideration the statement corresponding to that Article, if such a statement had been proposed.

Title of the Agreement

510. The title of the Agreement was adopted.

Article 1 (continued from paragraph 502)

511. Article 1 was adopted.

512. The first statement, concerning Article 1(2)(i) and (3)(i), was adopted.

Article 2 (continued from paragraph 194)

513. Article 2 was adopted.

Article 3 (continued from paragraph 366)

514. Mr. ALLEN (United States of America), referring to the English version, made a remark on the drafting of Article 3(2)(b). In the phrase: "...organizations specialized in the field of marks, and of which...", the word "and" should be deleted. He had checked that the word "and" did not appear in the Vienna Agreement; moreover, the word "et" did not appear in the French text.

515. Mr. DAVIS (United Kingdom) was entirely in agreement with the Delegate of the United States of America.

516. The PRESIDENT noted that the word "and" was deleted in the English version of Article 3(2)(b), while the French text remained unchanged.

517. Article 3, thus amended, was adopted.

518.1 Mr. FRESSONNET (France) apologized for having been unable to take part until then in the work of the Conference, having been detained in Paris by the procedure for the ratification of the Patent Cooperation Treaty. He announced that the Treaty had just been adopted by both Houses of the French Parliament, and that France would shortly be depositing the instruments of ratification of the Treaty.

518.2 The Delegate of France wondered what was the usefulness of the second statement, which concerned Article 3(2)(b).

519.1 The PRESIDENT wished first to congratulate, on behalf of the Conference, the Delegation of France for the good news that it had just announced on the subject of the Patent Cooperation Treaty.

519.2 She then explained to the Delegate of France that the statements were by way of conclusion to the debates that had taken place in the course of the Diplomatic Conference. In her opinion, if such a conclusion were not formulated, it might seem that one problem or another was still outstanding. She noted that the Delegate of France was satisfied with her reply.

520. The second statement, concerning Article 3(2)(b), was adopted.

521. The third statement, concerning Article 3(3), (5) and (7)(b), was adopted.

522. The fourth statement, concerning Article 3(7)(c), was adopted.

Article 4 (continued from paragraph 149)

523. The PRESIDENT drew the Conference's attention to an amendment made to paragraph (1). During the discussion of the new provision on periodical revision, the Drafting Committee and the Secretariat had noted that a difficulty arose with the entry into force of changes when there were more than one. When a revision was made at the end of a specific period, that revision might relate to amendments as well as other changes, and it would be very difficult for countries that had to publish the changes to sort out the amendments, which would enter into force six months after the date of dispatch of the notification, and the other changes, which would enter into force on receipt of the notification. Consequently, it was proposed that, in the case of changes other than amendments, the Committee of Experts would determine itself the date on which those changes entered into force.

524. Mr. ALLEN (United States of America) said that he agreed on the substance of the change. However, the drafting of the last sentence, after the semicolon, beginning with "other changes . . .," gave rise to some difficulty in his opinion. Because the plural was used, one might think that changes other than amendments had to be adopted collectively. The Delegate of the United States of America proposed that a full stop be placed after "notification" and that the following last sentence should be added: "Any other change shall enter into force on a date to be specified by the Committee of Experts at the time the change is adopted."

525. The PRESIDENT considered that the amendment in question was a very good one, as it gave the text more clarity.

526. Mr. CURCHOD (WIPO) gave the French version of the proposal by the Delegate of the United States of America. After the word "notification," the semicolon would be replaced by a full stop, and the last sentence would read: "Tout autre changement entre en vigueur à la date que fixe le Comité d'experts au moment où le changement est adopté."

527. The PRESIDENT noted that the amendment proposed by the Delegate of the United States of America did not meet with any objections.

528. Article 4, thus amended, was adopted.

Articles 5 to 8 (continued from paragraph 231)

529. The PRESIDENT submitted the above Articles to the Conference at the same time, as they had been taken from the earlier Act without change.

530. Articles 5 to 8 were adopted.

531. The fifth statement, concerning Articles 5 to 8, was adopted.

Articles 9, 10, 11 and 12 (continued from paragraphs 371 and 372)

532. Articles 9, 10, 11 and 12 were adopted.

Article 13 (new in relation to the draft) (continued from paragraph 503)

533. The PRESIDENT pointed out that a statement on Article 13 (document N/CD/23), which appeared in document N/CD/24, had not been discussed at the meeting. According to the discussions that the President had had with certain Delegations, she had felt that such a statement would perhaps help certain Delegations. However, some Delegations had subsequently told the President that they considered that such a statement would reopen the whole subject. In view of the fact that the President did not want such a situation to arise, and she presumed that the Conference shared her opinion, she withdrew the proposal for a sixth statement, which therefore had to be deleted.

534. Mr. BYKOV (Soviet Union) wished to make the attitude of the Delegation of the Soviet Union quite clear once again on the question under discussion. He said that his Delegation was against inclusion of the (new) Article 13 in the text of the revised Act of the Nice Agreement, because it regarded it as an anachronism in the present situation and also in contradiction to the resolution of the United Nations General Assembly of December 14, 1960. The Delegate of the Soviet Union recalled that he had submitted the text of a statement on that subject to the Secretariat and requested its inclusion in the Records of the Conference (see paragraph 468 above).

535. Mr. TASNÁDI (Hungary) gave his support to the statement by the Delegation of the Soviet Union and mentioned that the text of a comparable declaration by his Delegation had been submitted to the Secretariat for insertion in the Records of the Diplomatic Conference. The statement had the following content: "The Delegation of Hungary declares that Article 13 of the revised Act, giving the possibility for any signatory country to declare that the Agreement shall be applicable to all or part of those territories, designated in the declaration, for the external relations of which it is responsible, is in contradiction with Resolution No. 1514(XV), of December 14, 1960, of the United Nations General Assembly on the Granting of Independence to Colonial Countries and Peoples."

536. Mr. PROŠEK (Czechoslovakia) asked for the following statement to be inserted in the Records of the Conference: "The Delegation of the Czechoslovak Socialist Republic considers it necessary to declare that the provisions of Article 13 of the Agreement, which provide for the possibility of the extension of its application by the Contracting States to the territories for the external relations of which they are responsible, are out of date and in contradiction to the Resolution of the General Assembly of the United Nations on the Granting of Independence to Colonial Countries and Peoples (1514(XV)1960)."

537. Mr. OLSZÓWKA (Poland) endorsed the statements of the Delegations that had just expressed their disagreement with the content of the (new) Article 13 and asked for the following statement to be inserted in the Records of the Conference: "The Delegation of Poland states that the provisions of Article 13 of the draft Agreement, providing the possibility of its extension to colonies and dependent territories, are anachronistic and obsolete and in particular contrary to Resolution 1514(XV) of the General Assembly of the United Nations of December 14, 1960, concerning the declaration on the Granting of Independence to Colonial Countries and Peoples."

538. The PRESIDENT recalled that Article 13 had been adopted by a majority and assured the Delegations that had so requested that their statements would appear in the Records of the Conference.

Article 14 (Article 13 of the draft contained in document N/CD/3.Rev.) (continued from paragraph 497)

539. Article 14 was adopted.

Geneva Act of the Nice Agreement

540. The Geneva Act of the Nice Agreement was adopted in its entirety.

Final Act

541.1 The PRESIDENT proceeded to the draft Final Act (document N/CD/25). She mentioned that the question whether the Conference wished to have a Final Act adopted was outstanding. The Rules of Procedure of the Conference contained provisions concerning the Final Act, if any. The President pointed out that it was normal, in a Conference held under the auspices of WIPO, for a Final Act to be adopted. The Final Act could be signed by any Member Delegation, regardless of whether or not it had full powers.

541.2 The President noted that there were no objections to the presence of a Final Act.

542. The text of the Final Act, as proposed, was adopted.

543. Mr. PFANNER (WIPO) gave some information on the organization of the signing ceremony.

Closing statements

544. The PRESIDENT invited the Delegations to present their closing remarks and asked them to state whether they intended to sign the Geneva Act.

545. Mr. HENSHILWOOD (Australia) said that his Delegation had greatly appreciated the patience and skill of the President. Some of the problems had only been resolved at a very late state, and he could imagine the anxious moments that the President must have had. He was pleased that the President's efforts had been crowned with success. The Delegate of Australia commended the Director General of WIPO for his experienced advice, and his staff for their willingness to work at all hours to ensure that the necessary documentation was always promptly available to the delegates.

546. Mr. DAVIS (United Kingdom) wished to emphasize the pleasure he had had in working with the President at many conferences. Once again, her skill had been fully up to his expectations. The Delegate of the United Kingdom thanked the Secretariat, which had proved indefatigable once again.

547. Mr. FRESSONNET (France) was very pleased to note that the countries present at the Conference had agreed on the text that had just been adopted and endorsed what had just been said by the previous speakers. He said that the Delegation of France was particularly grateful to the President for the favorable results that had been obtained, and that his Delegation would affix its signature to the Geneva Act of the Nice Agreement on the following day.

548. Mr. VILLALPANDO MARTÍNEZ (Spain) offered his sincere congratulations to the President for the admirable fashion in which she had performed her task and praised her objectiveness and understanding in relation to the various positions of the Delegations, qualities that had allowed the problems that had arisen to be surmounted, some of which had been difficult to solve. The Delegate of Spain also conveyed his thanks to the Director General of WIPO, to Mr. Pfanner and to all the staff of the Secretariat for the perfect organization of the Conference and for their invaluable contribution. The Delegation of Spain was gratified

that the Geneva Act of the Nice Agreement, even though the demands formulated by some Delegations, including that of Spain, had not been entirely satisfied, would be able to be signed on the following day thanks to the spirit of compromise that had presided over all the debates, which indeed was becoming a principle of conduct in the conferences and meetings convened under the auspices of WIPO. The Delegate of Spain hoped that the revised Act of the Nice Agreement would be of interest to certain countries that were not yet members and that it would, through the increase in the number of member States, contribute to better cooperation in the registration of marks. The Delegate of Spain announced that his Delegation would sign the Geneva Act of the Nice Agreement on the following day.

549. Mrs. MAYER (Austria) expressed her Delegation's satisfaction that the present Diplomatic Conference, in spite of the difficulties that it had had to overcome, had been able, most especially thanks to the work of the President, to adopt the revised Act of the Nice Agreement. The Delegation of Austria approved of the text that had just been adopted, even though it had had to accept certain solutions in a spirit of constructive compromise. It would be able to sign only the Final Act on the following day, in accordance with the legal system of its country. The spirit that had been present throughout the Conference, the experience with which the President had conducted the debates and the excellent work of the WIPO Secretariat had led to the success of the Conference.

550. Mr. BYKOV (Soviet Union) congratulated the President on having succeeded in overcoming all difficulties and ensuring the success of the Conference. While announcing that the Delegation of the Soviet Union was empowered to sign the Final Act of the Conference and the revised Act of the Nice Agreement, he repeated his reservations on the contents of Article 13, and added that, at the time of signature of the Agreement, he would deposit a statement in writing on that question.

551. Mr. SERRAO (Portugal) said that his Delegation was very satisfied with the results of the Conference and that it would sign the revised Act of the Nice Agreement the following day.

552.1 Mr. SORENSON (United States of America), speaking on behalf of his Delegation, expressed his thanks and congratulations to the President for the excellent way in which she had led the Conference to a successful conclusion. He also wished to thank the Secretariat, the interpreters and the entire staff of WIPO for their hard work and efficiency. He also congratulated all the Delegations which had worked successfully to achieve their common goal.

552.2 The Delegate of the United States of America recalled that his Delegation had come to the Conference with strong views regarding certain Articles of the Agreement. Its wishes had not been fully satisfied and, like other Delegations, it had had to accept some compromise solutions. In particular, it had urged a three-fourths voting rule for adoption of amendments to the Classification. It had also hoped that a general revision of the Classification might have been completed by an early date. On those issues, it had accepted as a compromise a four-fifths voting rule and an understanding that the first general revision would be deferred for five years from the date of signing the revised Act. There were other points in which the desires of the Delegation of the United States of America had not been fully satisfied. However, it was almost never possible to negotiate an agreement of that kind without accepting compromises. He was pleased, therefore, that a text had been adopted that was generally satisfactory to everyone.

552.3 The Delegate of the United States of America announced that his Delegation was prepared to sign the Geneva Act of the Nice Agreement the following day.

552.4 The Delegate of the United States of America wished to single out the Delegate of the United Kingdom, Mr. Moorby, for whom the Conference was especially important since he was retiring from his post at the United Kingdom Trade Mark Office after many years of dedicated service. The Delegate of the United States of America hoped that all the participants would join him in wishing Mr. Moorby well on his retirement.

553. Mr. MOORBY (United Kingdom) said that he was bound to say one or two words in reply to the wonderful recommendation from the Delegate of the United States of America. Some 15 years previously, he had had the privilege of chairing one of the first Committee of Experts meetings under the Nice Agreement, when the 20,000 items in the List of Goods were gone through and an alphabetical list produced which had stood the test of time and become a tool of the trade used by registries throughout the world and by professional people. The Delegate of the United Kingdom said that it was a very great satisfaction to him to come in at the present Revision Conference and see the improvement which he was sure was going to take place by providing more flexibility in the future.

554. The PRESIDENT addressed the best wishes of the Conference as a whole to the Delegate of the United Kingdom.

555. Mr. BALLEYS (Switzerland), after having addressed his thanks and congratulations to the President and to the Secretariat on behalf of his Delegation, announced that Switzerland would sign the revised Act of the Nice Agreement the following day.

556. Mr. van WEEL (Netherlands) wished to thank the President for the wisdom with which she had conducted the debates and the Secretariat and the interpreters for their work. He announced that his Government intended to sign the revised Act of the Nice Agreement the following day.

557. Mr. UGGLA (Sweden) endorsed the congratulations and thanks expressed by the other Delegates. He added that, according to a fairly recent practice, powers of signing were not given to Swedish Delegations for instruments such as the Nice Agreement. He would therefore not be able to sign the Geneva Act of the Nice Agreement the following day, which to him personally was somewhat mortifying, because 20 years previously he had had the honor to sign the original text of the Nice Agreement. The Delegate of Sweden wished to declare that his Delegation was perfectly satisfied with the text as adopted and that, on its return to Sweden, it would recommend speedy signature and ratification to the Swedish Government.

558. Mr. PAPINI (Italy) said that, while the Delegation of Italy had not been very active during the work of the Conference, that did not mean that there was no interest in Italy in the revision of the Nice Agreement. He also addressed his congratulations and thanks to the President and to the Secretariat, and announced that his Delegation would sign the revised Act of the Nice Agreement or the Final Act of the Diplomatic Conference the following day.

559. Mrs. BOGNÁR (Hungary) said that it was difficult for her to find anything more to add to the kind and grateful words addressed to the President and the Secretariat. The Delegate of Hungary announced that the following day her Delegation would sign the Geneva Act of the Nice Agreement, which was a positive result of the work of the Conference.

560. Mr. SANNE (Federal Republic of Germany) shared fully the sentiments expressed by the previous speakers and also wished to congratulate the Director General of WIPO and the Secretariat. In some respects the task had not been an easy one, but, with the indefatigable assistance of the Secretariat and the spirit of understanding and compromise that had presided over the deliberations, it had been possible to overcome the obstacles. The Delegation of the Federal Republic of Germany was satisfied with the results achieved, even though not all its wishes had been met, and would sign the Geneva Act of the Nice Agreement the following day. The Delegate of the Federal Republic of Germany added that it was solely because, according to the unwritten rules of conduct of WIPO, one does not thank the President when he or she comes from the same country as oneself, that he did not thank the President for her excellent performance.

561. Mr. GERHARDSEN (Norway) said that his Delegation had followed the debates of the Diplomatic Conference on the revision of the Nice Agreement with great interest. It had the impression that all the Delegations had shown a positive will to reach a compromise in the difficult questions that the Conference had had to face. The Delegation of Norway was satisfied with the Geneva Act as a whole and would sign the Final Act the following day. It was not empowered to sign the Agreement itself, but it would recommend to its Government that the Agreement should be signed and in due course ratified. The Delegate of Norway addressed his congratulations to the President for the excellent way in which she had chaired the Conference and also thanked the Secretariat for its good work.

562. Mr. PROŠEK (Czechoslovakia) expressed his thanks to all those who had contributed to the drafting of the new text of the Agreement, which he considered to be satisfactory with the exception of its Article 13. The Delegate of Czechoslovakia announced that his Delegation would for the moment sign only the Final Act of the Conference, as the text of the revised Act of the Agreement had first to be approved by the Government and the Federal Assembly of the Republic, in accordance with the procedure in force in Czechoslovakia.

563. Mrs. CARLSEN (Denmark) found it difficult to find new words to express her Delegation's admiration and its gratitude for the excellent manner in which the President had accomplished her task and to praise the efficiency of the Secretariat. She could only endorse what had been said by the previous speakers. The Delegation of Denmark considered the Geneva Act of the Nice Agreement to be a considerable improvement on the existing Act, and declared itself satisfied with the new text. However, it would only be able to sign the Final Act on the following day.

564. Mr. WUORI (Finland) fully shared the sentiments expressed by the previous speakers and announced that his Delegation intended to sign the Geneva Act of the Nice Agreement on the following day.

565. Mr. OLSZÓWKA (Poland), on behalf of his Delegation, joined in the congratulations that had already been addressed to the President as well as to the Secretariat, the technical staff, the interpreters and the other persons who had contributed to the success of the Conference. His Delegation did not have full powers to sign the Agreement, so it intended to sign only the Final Act of the Conference on the following day.

566. Mr. de SAMPAIO (ICC) thanked WIPO and the member States of the Nice Union for the invitation received by the International Chamber of Commerce to take part in the Diplomatic Conference as an observer. He expressed his most hearty congratulations to the President and Secretariat and his best wishes for success for the practical implementation of the revised Act of the Nice Agreement.

567. Mr. DAVIS (United Kingdom) apologized for having to ask for the floor again, but he wished to ask for clarification on the subject of the statement made by the Delegate of the Soviet Union. The latter had announced his intention to make a statement on the subject of Article 13. The Delegate of the United Kingdom said that he did not seek to deny any country the right to make such a statement, but he wished to know whether the statement would merely appear in the Records of the Conference or whether it would be made in connection with signature.

568. Mr. PFANNER (WIPO) said that, according to his interpretation of the intention of the Delegate of the Soviet Union, it meant that, in addition to the statement that had been read the same day and would be published in the Records of the Diplomatic Conference, a written statement along the lines of the earlier statement would be handed to the Secretariat at the time of signature of the revised Act. That written statement would be notified.

569. Mr. DAVIS (United Kingdom) completed his earlier remarks by informing the Conference that the United Kingdom would sign the Final Act of the Conference and the revised Act of the Nice Agreement.

570. Mrs. BOUZID (Algeria) joined all the Delegations present in thanking the President. She announced that, owing to the presence of Article 13 in the text, the Delegation of Algeria could not sign the revised Act of the Nice Agreement. On the other hand, it would sign the Final Act of the Diplomatic Conference.

571. Mr. PFANNER (WIPO) was very grateful to the Delegate of the Federal Republic of Germany for having set a precedent, as he was going to take advantage of it immediately to infringe another unwritten rule of WIPO, according to which the Secretariat never made a closing statement. It was a pleasant duty for Mr. Pfanner to address the President, on behalf of the Director General of WIPO, who was unable to be present that day and had asked him to express his congratulations and thanks to the President on his behalf.

572.1 The PRESIDENT said that she was really moved by the avalanche of tributes with which she had been honored. She expressed her gratitude to all the Delegates, being nevertheless convinced that the praise for the President was due and should be extended to the whole Conference for its endeavors to bring the work to a successful conclusion. The President thanked the four Vice-Presidents of the Conference, who had always very willingly lent her their assistance whenever she had asked for it. She also thanked very warmly the Chairman of the Credentials Committee and the Chairman of the Drafting Committee who, with their great experience, had guided the work of their Committees very efficiently. Her gratitude went also to the Delegates who were members of the Committees and the Working Groups and who, while other delegates could enjoy free time, served the Conference by devoting their time and energy to the tasks allotted to them. The President then turned to the Secretariat. Many well-deserved words of praise had been directed to the Director General of WIPO and his collaborators during the Conference, and she could not but subscribe to that praise. The outstanding competence and the great efficiency of the International Bureau of WIPO, as well as its devotion and untiring efforts to promote intellectual property protection and international collaboration in that field deserved admiration and praise. The President conveyed her sincere thanks to the Director General and to the members of the WIPO Secretariat present in the room who, with untiring willingness throughout the Conference, had been at the disposal of the Conference and all the Delegates. Her sincere thanks went also to the WIPO staff members who stood in the wings and who, with great dedication, did all those things without which a Conference would be powerless. Finally, her thanks went to the interpreters, without whom all efforts for mutual understanding would have been in vain, for their skill and the indulgence that they sometimes had to have; they had contributed greatly to the success of the Conference.

572.2 The President had a profound debt of gratitude to all the Delegates, who had done their utmost to lead the Conference to success. A number of Delegations were known to have had real difficulties and strong feelings on certain questions. Nevertheless, in a spirit of understanding and compromise, they had accepted solutions that did not totally fulfill their expectations.

572.3 The President added that the Conference might be satisfied with the results obtained. There was even cause to be proud to have been able to show that, even at the present time, a Conference that chose the unanimity rule for its final decisions was not at the outset bound to fail. The President did not contest the importance of voting rules, but in her opinion what was really decisive was the spirit that pervaded the Conference. A spirit of mutual understanding and compromise and the endeavors of all Delegations to seek a balance of interests were the only guarantee of good results. Such a spirit had prevailed at the present Conference and had enabled it to overcome its difficulties. The President said that, in her opinion, the unanimity rule was an incentive to compromise and an appeal to the honor and the pride of all Delegations in order that they might do their best for the success of the Conference.

572.4 The President announced that the signing ceremony would take place at the headquarters of WIPO at 11 a.m. the following day.

572.5 The President closed the Diplomatic Conference on the Revision of the Nice Agreement.

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<u>Secretary:</u>	Mr. G. LEDAKIS (WIPO)

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* Listed according to the French alphabetical order of the names of the States.

POST-CONFERENCE DOCUMENT

POST-CONFERENCE DOCUMENT "N/PCD"

N/PCD/1

(Original: French)

THE INTERNATIONAL BUREAU OF WIPO

Provisional summary minutes of the Diplomatic Conference on the Revision
of the Nice Agreement

Editor's Note: This document has not been reproduced here since it contains the provisional summary minutes of the Diplomatic Conference which are reproduced with a few amendments proposed by the participants, on pages 95 to 155, above.

INDEXES

LIST OF INDEXES

	<u>Page</u>
Indexes to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as revised at Stockholm on July 14, 1967, and at Geneva on May 13, 1977	
A. Index to the Articles of the Nice Agreement	179
B. Catchword Index	184
Index of States	203
Index of Organizations	209
Index of Participants	211

NOTE CONCERNING THE USE
OF THE INDEXES

The first two indexes are indexes relating to the subject matter of the Nice Agreement; they refer to the articles as they appear in the final text adopted by the Diplomatic Conference. Index A lists by number the articles of the Nice Agreement and indicates, under each of them, the number which the Article had in the draft presented to the Diplomatic Conference, the pages where the written proposals for amendments to the Article are reproduced and, finally, the serial numbers of those paragraphs of the minutes which reflect the discussion on and the adoption of the Article; in addition to the list of these articles, Index A contains an item, "Agreed Statements," concerning the interpretation of certain articles. The second index (Index B) is a catchword (subject matter) index: it lists alphabetically the main subjects dealt with in the Nice Agreement. After each catchword, the number of the article in which the particular subject is dealt with is indicated. By consulting Index A under the article indicated, the reader will find the references to the pages or--in the case of the minutes--the paragraph numbers which contain the discussions on that article.

The third index (Index of States) is an alphabetical list of States showing, under the name of each State, where to find the names of the members of its delegation, the written proposals for amendments submitted, the interventions made on behalf of that State and, as the case may be, details on the signature of the Geneva Act and/or the Final Act of the Diplomatic Conference by that State.

The fourth index (Index of Organizations) is an alphabetical list of organizations showing, under the name of each organization, where to find the names of its representatives as well as the interventions made on its behalf.

The fifth index (Index of Participants) is an alphabetical list of participants indicating, under the name of each participant, the State or organization which he represented as well as the place in these Records where his name appears as a member of his delegation, as an officer of the Diplomatic Conference or of one of its subsidiary bodies, as a speaker at the meetings of the Diplomatic Conference or as a plenipotentiary signing the Geneva Act and/or the Final Act of the Diplomatic Conference.

Throughout the indexes, with the exception of the Catchword Index which cites articles, all numbers refer to page numbers unless they are italicized, in which case the number refers to the paragraph number of the minutes.

INDEXES TO THE NICE AGREEMENT
 CONCERNING THE INTERNATIONAL CLASSIFICATION
 OF GOODS AND SERVICES FOR THE PURPOSES
 OF THE REGISTRATION OF MARKS
 of June 15, 1957,
 as revised at Stockholm on July 14, 1967,
 and at Geneva on May 13, 1977

A. INDEX TO THE ARTICLES OF THE NICE AGREEMENT*

Index of Articles

Article 1: Establishment of a Special Union; Adoption of an International Classification; Definition and Languages of the Classification

Corresponding Article in the draft: Article 1

Text of the Article in the draft: 12

Written proposals for amendments:

- Spain (N/CD/7): 74
- Austria (N/CD/14): 77
- United States of America (N/CD/17): 78
- Germany, Federal Republic of (N/CD/18): 78
- Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
- Secretariat of the Diplomatic Conference (N/CD/CR/2): 87
- Secretariat of the Diplomatic Conference (N/CD/CR/3): 87
- Drafting Committee (N/CD/23): 82
- Drafting Committee (N/CD/24): 82

Discussion: 56-86, 107, 179-190, 198, 200, 277-281, 324-347, 401-428,
 439-452, 498-502, 511-512

Adoption of the text of the Article: 511, 540

Final text of the Article: 13

(See also "Agreed Statements" on page 183.)

Article 2: Legal Effect and Use of the Classification

Corresponding Article in the draft: Article 2

Text of the Article in the draft: 16

Written proposals for amendments:

- Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
- Drafting Committee (N/CD/23): 82

Discussion: 87-110, 192-194

Adoption of the text of the Article: 194, 513, 540

Final text of the Article: 17

* Numbers denote pages except when in italics. Numbers in italics denote paragraphs in the minutes appearing on pages 95 to 155, above.

Article 3: Committee of Experts

Corresponding Article in the draft: Article 3

Text of the Article in the draft: 16

Written proposals for amendments:

- Czechoslovakia (N/CD/12): 76
- France (N/CD/13): 76
- Netherlands (N/CD/15): 77
- United States of America (N/CD/16): 78
- Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
- Secretariat of the Diplomatic Conference (N/CD/CR/2): 87
- Drafting Committee (N/CD/23): 82
- Drafting Committee (N/CD/24): 82

Discussion: 64-69, 72, 74, 111-136, 139-143, 191, 217, 232-276,
282-322, 348-366, 514-522

Adoption of the text of the Article: 517, 540

Final text of the Article: 17

(See also "Agreed Statements" on page 183.)

Article 4: Notification, Entry Into Force and Publication of Changes

Corresponding Article in the draft: Article 4

Text of the Article in the draft: 20

Written proposals for amendments:

- Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
- Drafting Committee (N/CD/23): 82

Discussion: 137-149, 523-528

Adoption of the text of the Article: 149, 528, 540

Final text of the Article: 21

Article 5: Assembly of the Special Union

Corresponding Article in the draft: Article 5

Text of the Article in the draft: 20

Written proposals for amendments:

- Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
- Secretariat of the Diplomatic Conference (N/CD/CR/2): 87
- Drafting Committee (N/CD/23): 82
- Drafting Committee (N/CD/24): 82

Discussion: 150-153, 165, 167, 221-231, 529-531

Adoption of the text of the Article: 153, 231, 530, 540

Final text of the Article: 21

(See also "Agreed Statements" on page 183.)

Article 6: International Bureau

Corresponding Article in the draft: Article 6

Text of the Article in the draft: 24

Written proposals for amendments:

- Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
- Secretariat of the Diplomatic Conference (N/CD/CR/2): 87
- Drafting Committee (N/CD/23): 82
- Drafting Committee (N/CD/24): 82

Discussion: 154, 165, 221-231, 529-531

Adoption of the text of the Article: 157, 231, 530, 540

Final text of the Article: 25

(See also "Agreed Statements" on page 183.)

Article 7: Finances

Corresponding Article in the draft: Article 7

Text of the Article in the draft: 26

Written proposals for amendments:

- Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
- Secretariat of the Diplomatic Conference (N/CD/CR/2): 87
- Drafting Committee (N/CD/23): 82
- Drafting Committee (N/CD/24): 82

Discussion: 158-159, 165, 221-231, 529-531

Adoption of the text of the Article: 159, 231, 530, 540

Final text of the Article: 27

(See also "Agreed Statements" on page 183.)

Article 8: Amendment of Articles 5 to 8

Corresponding Article in the draft: Article 8

Text of the Article in the draft: 30

Written proposals for amendments:

- United States of America (N/CD/17): 78
- Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
- Secretariat of the Diplomatic Conference (N/CD/CR/2): 87
- Drafting Committee (N/CD/23): 82
- Drafting Committee (N/CD/24): 82

Discussion: 143, 160-178, 221-231, 529-531

Adoption of the text of the Article: 231, 530, 540

Final text of the Article: 31

(See also "Agreed Statements" on page 183.)

Article 9: Ratification and Accession; Entry into Force

Corresponding Article in the draft: Article 9

Text of the Article in the draft: 30

Written proposals for amendments:

- Norway (N/CD/10): 75
- United States of America (N/CD/19): 79
- Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
- Secretariat of the Diplomatic Conference (N/CD/CR/2): 87
- Drafting Committee (N/CD/23): 82

Discussion: 195-200, 348-371, 532

Adoption of the text of the Article: 371, 532, 540

Final text of the Article: 31

Article 10: Duration

Corresponding Article in the draft: Article 10

Text of the Article in the draft: 32

Written proposals for amendments:

- Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
- Drafting Committee (N/CD/23): 82

Discussion: 372, 532

Adoption of the text of the Article: 372, 532, 540

Final text of the Article: 33

Article 11: Revision

Corresponding Article in the draft: Article 11
 Text of the Article in the draft: 32
 Written proposals for amendments:
 - Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
 - Drafting Committee (N/CD/23): 82
 Discussion: 224, 372, 532
 Adoption of the text of the Article: 372, 532, 540
 Final text of the Article: 33

Article 12: Denunciation

Corresponding Article in the draft: Article 12
 Text of the Article in the draft: 34
 Written proposals for amendments:
 - Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
 - Drafting Committee (N/CD/23): 82
 Discussion: 372, 532
 Adoption of the text of the Article: 372, 532, 540
 Final text of the Article: 35

Article 13: Reference to Article 24 of the Paris Convention

Corresponding Article in the draft: [There is no corresponding Article in the draft]
 Text of the Article in the draft: -
 Written proposals for amendments:
 - United Kingdom (N/CD/8): 75
 - Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
 - Secretariat of the Diplomatic Conference (N/CD/CR/3): 87
 - Drafting Committee (N/CD/23): 82
 - Drafting Committee (N/CD/24): 82
 Discussion: 375-396, 453-469, 503, 533-538, 550, 562, 567, 570
 Adoption of the text of the Article: 492, 540
 Final text of the Article: 35

Article 14: Signature; Languages; Depository Functions; Notifications

Corresponding Article in the draft: Article 13
 Text of the Article in the draft: 34
 Written proposals for amendments:
 - Soviet Union (N/CD/5): 73
 - Spain (N/CD/7): 74
 - United Kingdom (N/CD/8): 75
 - Germany, Federal Republic of (N/CD/18): 78
 - Secretariat of the Diplomatic Conference (N/CD/21): 81
 - Soviet Union (N/CD/22): 81
 - Secretariat of the Diplomatic Conference (N/CD/CR/1): 86
 - Secretariat of the Diplomatic Conference (N/CD/CR/3): 87
 - Drafting Committee (N/CD/23): 82
 Discussion: 142, 324-347, 373-374, 401-438, 470-497, 539
 Adoption of the text of the Article: 374, 492, 539-540
 Final text of the Article: 35

Agreed Statements

Agreed statements concerning the interpretation of Articles 1, 3, 5 to 8

Written proposals for statements:

- Drafting Committee (N/CD/24): 82
- Diplomatic Conference (N/CD/27): 83

Discussion: 507-509

Adoption of the statements:

- ad Article 1: 512
- ad Article 3: 518-522
- ad Articles 5 to 8: 531

Final text of the agreed statements (N/CD/27): 83

B. CATCHWORD INDEX TO THE NICE AGREEMENT
CONCERNING THE INTERNATIONAL CLASSIFICATION
OF GOODS AND SERVICES FOR THE PURPOSES
OF THE REGISTRATION OF MARKS

List of Catchwords

ACCESSION

ACCOUNTS

ACT(S)

ADDITIONS

ADOPTION

ADVISOR

AGREEMENT

AMENDMENT

ANNOUNCEMENTS

ASSEMBLY

AUTHENTIC COPY

BUDGET

CHANGES

CLASS(ES) (OF GOODS OR SERVICES)

CLASSIFICATION

COMMITTEE OF EXPERTS

COMMITTEES OF EXPERTS

COMMUNICATION

CONFERENCE(S)

CONFERENCE(S) OF REVISION

CONSULTATION

CONTRIBUTION(S)

CONVENTION ESTABLISHING THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

COORDINATION COMMITTEE OF THE ORGANIZATION

COPY(IES)

COUNTRY(IES)

DATE

DENUNCIATION

DEPOSIT

DEVELOPMENT

DIRECTOR GENERAL
DOCUMENTS
DURATION

ENTRY INTO FORCE
EXPENSES
EXPLANATORY NOTES
EXTENT

FINANCES
FINANCIAL REGULATIONS

GENERAL ASSEMBLY OF THE ORGANIZATION
GENEVA ACT
GOODS

INCOME
INSTRUMENT
INTERNATIONAL BUREAU
INTERNATIONAL BUREAU OF INTELLECTUAL PROPERTY
INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES FOR THE PURPOSES
OF THE REGISTRATION OF MARKS
INVITATION

LANGUAGE (S)
LIST

MAJORITY
MARK (S)
MEMBER (S)

NICE AGREEMENT CONCERNING THE INTERNATIONAL CLASSIFICATION
OF GOODS AND SERVICES FOR THE PURPOSES OF THE REGISTRATION
OF MARKS
NOTIFICATION

OBJECTIVES
OBLIGATIONS
OBSERVERS

OFFICES

ORGANIZATION

ORGANIZATION (S)

ORIGINAL

PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

PERIODICALS

PUBLICATION (S)

QUORUM

RATIFICATION

RECOMMENDATIONS

REFERENCE

REGISTRATION

REVISION

RIGHT

RULES OF PROCEDURE

SECRETARIAT

SECRETARY

SERIAL NUMBER

SERVICE (S)

SESSION

SIGNATURE

SPECIAL UNION

SUBCOMMITTEES

SYSTEM

TASKS

TERM

TEXTS

TRANSLATION

UNION (S)

UNITED NATIONS

USE OF THE CLASSIFICATION

VOTES

WORLD INTELLECTUAL PROPERTY ORGANIZATION

WORKING CAPITAL FUND

WORKING GROUPS

Catchword Index

ACCESSION

- to an Act earlier than the Geneva Act: 9(6)
- to the Geneva Act: 9(1), (2), (4)(c), (5)
- instruments of - : 9(3), (4); 14(5)(ii)

ACCOUNTS

- auditing of the - : 7(8)
- final - : 5(2)(a)(iv)
- see also "budget," "contribution(s)," "expenses," "finances," "income,"
"working capital fund"

ACT(S)

- earlier - of the Agreement: 9(6); 12(1)
- Stockholm - of July 14, 1967, of the Agreement: 1(3)(ii)
- Stockholm - of July 14, 1967, of the Paris Convention for the Protection
of Industrial Property: 13
- see also "Agreement," "Geneva Act"

ADDITIONS

- to the Classification: 1(3)(ii), (5)(a)
- entry into force of the - : 1(5)(a)

ADOPTION

- of amendments to Articles 5 to 8 of the Geneva Act, see "Geneva Act"
- of an international classification, see "Classification"

ADVISOR

- : 5(1)(b)

AGREEMENT

- Acts of the - , see "Act(s)"
- duration of the - : 10
- implementation of the - : 5(2)(a)(i)
- revision of the - : 6(3)(a); 11
- see also "Act(s)," "Geneva Act"

AMENDMENT(S)

- adoption of - to the Classification: 3(7)(b)(c)
- to Articles 5 to 8 of the Geneva Act, see "Geneva Act"
- to the Classification: 1(3)(ii), (5)(a); 3(7)(b)(c)
- to the Geneva Act, see "Geneva Act"
- definition of the word "-" (to the Classification): 3(7)(b)
- entry into force of the - to the Classification: 1(3)(ii), (5)(a); 4(1)

ANNOUNCEMENTS

- published in the periodicals designated by the Assembly: 4(2)

ASSEMBLY

generally: 1(6); 4(2); 5; 6(1)(b), (2), (3)(a); 7(5)
 adoption of amendments to Articles 5 to 8 of the Geneva Act by the - : 8(2)
 committee of experts and working groups established by the - : 5(2)(a)(vi);
 6(1)(b), (2)
 competence of the - : 5(2)
 composition of the - : 5(1)(a)
 convocation of any revision conference by the - : 11(2)
 decisions of the - : 5(3)(c)(d)
 directions of the - given to the International Bureau: 5(2)(a)(ii);
 6(3)(a)
 extraordinary session of the - : 5(4)(b)
 functions of the - : 5(2)(a)(x)
 instructions of the - given to the Director General: 5(2)(a)(iii)
 meetings of the - : 5(2)(a)(vii), (3)(g), (4)(a)(b); 6(1)(b), (2)
 observers admitted to the meetings of the - : 5(3)(g)
 ordinary session of the - : 5(4)(a)
 period and place of the sessions of the - : 5(4)(a)
 periodicals designated by the - : 4(2)
 procedure of the - : 5(3)(c)
 rules of procedure of the - : 5(5)
 secretariat of the - : 6(1)(b)
 secretary of the - , the Committee of Experts and any committee or working
 group established by the - or the Committee of Experts: 6(2)

AUTHENTIC COPY

- of the Classification: 1(5)

BUDGET

in general: 7
 - of expenses common to the Unions: 7(1)(b)
 - of the Conference of the Organization: 7(1)(b)
 - of the Special Union: 1(6); 3(3)(iii); 7(2), (3), (4)(b)(e)
 sources of - financing: 7(3)
 triennial - of the Special Union: 5(2)(a)(iv)
see also "accounts," "contribution(s)," "expenses," "finances," "income,"
 "working capital fund"

CHANGES

- in the Classification: 1(3)(iii); 3(5); 4
- entry into force of - in the Classification: 1(3)(iii); 4
- notification of - in the Classification: 4(1)
- publication of - in the Classification: 4(2)

CLASS(ES) (OF GOODS OR SERVICES)

- creation of any new - : 3(7)(b)
- indication of the - in which each of the goods or services falls: 1(2)(ii)
- list of - : 1(2)(i), (3)(i)
- numbers of the - : 2(3)
- transfer of goods or services from one - to another: 3(7)(b)

CLASSIFICATION

- adoption of a - : 1(1)
- amendments and additions to the - : 1(3)(ii)(iii), (5)(a)(c); 3(7)(b)(c)
- application of the - by developing countries: 3(3)(iii)
- changes in the - decided by the Committee of Experts: 3(3)(i)
- published in 1971 by the International Bureau: 1(3)(i), (5)(a)
- common - of goods or services for the purposes of the registration of marks: 1(1)
- definition of the - : 1(2)
- development of the - : 3(4)
- incorporation in the - of the changes which have entered into force: 4(2)
- languages of the - : 1(4), (6)
- legal effect of the - : 2(1)
- official texts of the - in Arabic, German, Italian, Portuguese, Russian, Spanish and in such other languages as the Assembly may designate: 1(6)
- proposals for changes in the - : 3(5)
- recommendations addressed by the Committee of Experts to the countries of the Special Union for the purpose of facilitating the use of the - and promoting its uniform application: 3(3)(ii)
- substantial contribution of intergovernmental organizations specialized in the field of marks to the development of the - : 3(4)
- text of the - , being authentic: 1(4)
- translation of the - : 1(6)
- uniform application of the - : 3(3)(ii)
- use of the - : 2; 3(3)(ii)

COMMITTEE OF EXPERTS

- generally: 1(3)(i), (5)(b); 3; 4(1); 6(1)(b), (2)
- composition of the - : 3(1), (2)
- decisions of the - : 3(7)(a)(b)
- institution of the - : 3(1)
- measures taken by the - which contribute towards facilitating the application of the Classification by developing countries: 3(3)(iii)
- meetings of the - : 6(2)
- observers at meetings of the - : 3(2)(a)(b), (5)
- recommendations of the - to the countries of the Special Union for the purpose of facilitating the use of the Classification and promoting its uniform application: 3(3)(ii)

representation in the - : 3(1)
 rules of procedure of the - : 3(4), (7)(c)
 secretariat of the - and such other committees or working groups as may have been established by the - : 6(1)(b)
 secretary of the - and of such other committees of experts and working groups established by it: 6(2)
 session of the - : 3(5)
 subcommittees and working groups of the - : 3(3)(iv); 6(1)(b), (2)

COMMITTEES OF EXPERTS

- other than the Committee of Experts referred to in Article 3: 5(2)(a)(vi)
 secretariat of the - : 6(1)(b)

COMMUNICATION

- of the decisions of the Assembly by the International Bureau to the countries members of the Assembly which were not represented: 5(3)(c)
 date of the - : 5(3)(c)

CONFERENCE(S)

- of the countries of the Special Union, see "Special Union"
 - of revision, see "conference(s) of revision"
 - of the Organization: 7(1)(b)

CONFERENCE(S) OF REVISION

- of the provisions of the Agreement other than Articles 5 to 8: 6(3)(a)
 convocation of - : 11(2)
 discussions at the - : 6(3)(c)
 preparation for - : 5(2)(a)(ii); 6(3)

CONSULTATION

- with intergovernmental and international non-governmental organizations by the International Bureau: 6(3)(b)
 - with the interested Governments by the Director General: 1(6); 14(1)(b)(c)

CONTRIBUTION(S)

annual - of the countries of the Special Union to the budget of the Special Union: 7(4)
 class of - : 7(4)(a)
 - of the countries of the Special Union as a source of budget financing: 7(3)
 substantial - of intergovernmental organizations specialized in the field of marks to the development of the Classification: 3(4)
see also "accounts," "budget," "expenses," "finances," "income," "working capital fund"

CONVENTION ESTABLISHING THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

- : 1(3)(i); 14(1)(b)

COORDINATION COMMITTEE OF THE ORGANIZATION

advice of the - : 5(2)(b); 7(6)(c)
see also "Organization"

COPY(IES)

- authentic - of the Classification: 1(5)
- certified - of any amendment to the Geneva Act: 14(3)(a)
- certified - of the signed text of the Geneva Act: 14(3)(b)

COUNTRY(IES)

- application of the Classification by developing - : 3(3)(iii)
- members of the Assembly: 5(3)(a)(b)(c)(g), (4)(b); 8(1)
- members of intergovernmental organizations specialized in the field of marks: 3(2)(b)
- members of the Organization: 3(2)(a)
- not members of the Special Union which shall be admitted to the meetings of the Assembly of the Special Union as observers: 5(2)(a)(vii)
- of the Special Union: 2(1), (2), (3); 3(1), (2)(b), (3)(ii), (5), (6), (7)(a)(b); 4(1); 5(2)(a)(ii), (3)(g); 7(3)(i), (4)(a)(b), (6)(a), (8); 9(1), (2), (4)(a)(ii); 11(1); 12(1), (3); 13; 14(3)(a)(b)
- of the Special Union which have not ratified or acceded to the Geneva Act: 5(2)(a)(ii)
- outside the Special Union which are members of the Organization or party to the Paris Convention: 3(2)(a); 9(2)
- party to the Paris Convention: 3(2)(a); 9(2); 14(5)
- which have ratified or acceded to the Geneva Act: 5(1)(a)

DATE

- of the communication of the decision of the Assembly to the countries members of the Assembly which were not represented: 5(3)(c)
- of the entry into force of the amendments to the Classification decided upon by the Committee of Experts: 4(1)
- of the entry into force of the Geneva Act, see "Geneva Act"
- on which the amendments to the Geneva Act enter into force: 14(5)(v)
- on which the ratification or accession was notified by the Director General: 9(4)(c)
- upon which any country becomes a country of the Special Union: 12(3)
- upon which the Geneva Act is opened for signature: 1(5)(a)

DENUNCIATION

- of the earlier Act(s) of the Agreement: 12; 14(5)(vi)
- of the Geneva Act: 12; 14(5)(vi)
- effect of - : 12(2)
- right of - : 12(3)
- time limit for the exercise of the right of - : 12(3)

DEPOSIT

- of the authentic copy of the Classification: 1(5)(a)(b)(c)
- of the instruments of ratification or accession: 9(3), (4)(b)

DEVELOPMENT

- of the Classification, see "Classification"
- of the Special Union, see "Special Union"

DIRECTOR GENERAL

- generally: 1(5), (6); 3(2); 5(2)(a)(iii), (4); 6(1)(c), (2), (3)(c); 7(5), (6)(c); 8(1), (3); 9(3), (4)(c); 12(1), (2); 14(1)(a)(b)(c), (3)(a)(b), (4), (5)
- approval of the reports and activities of the - by the Assembly of the Special Union: 5(2)(a)(iii)
- convocation of the sessions of the Assembly of the Special Union by the - : 5(4)(a)(b)
- deposit of the authentic copy of the Classification with the - : 15
- deposit of the instruments of ratification and accession with the - : 9(3)
- , the chief executive of the Special Union: 6(1)(c)
- notification addressed to the - : 8(3); 12(1)
- notification by the - : 9(4)(c); 14(5)
- preparation of the agenda of each session of the Assembly of the Special Union by the - : 5(4)(c)
- proposals of the - : 7(6)(c); 8(1)

DOCUMENTS

- official - and publications relating to registrations of marks: 2(3)

DURATION

- of the Agreement: 10
- of the Paris Convention for the Protection of Industrial Property: 10

ENTRY INTO FORCE

- of the amendments and additions to the Classification, see "additions," "amendments"
- of the amendments to the Geneva Act, see "Geneva Act"
- of the changes in the Classification, see "changes"

EXPENSES

- common to the Unions administered by the Organization: 7(1)(b)(c)
 - proper to the Special Union: 7(1)(b)
- see also "accounts," "budget," "contribution(s)," "finances," "income," "working capital fund"

EXPLANATORY NOTES

- to the list of classes established by the Committee of Experts: 1(2)(i), (3)(i)

EXTENT

- of the protection of marks, see "mark(s)"

FINANCES

generally: 7

see also "accounts," "budget," "contribution(s)," "expenses," "income,"
"working capital fund"

FINANCIAL REGULATIONS

- of the Special Union: 5(2)(a)(v); 7(4)(e), (8)

GENERAL ASSEMBLY OF THE ORGANIZATION

- , see "Organization"

GENEVA ACT

acceptance of all the clauses of the - : 9(5)

acceptance of amendments to Articles 5 to 8 of the - : 8(3); 14(5)(iv)

admission to all the advantages of the - : 9(5)

adoption of amendments to Articles 5 to 8 of the - : 5(2)(a)(viii);
8(2), (3)

amendments to Articles 5 to 8 of the - : 5(2)(a)(viii), (3)(d); 8; 11(3);
14(5)(iv)(v)

certified copies of any amendment to the - : 14(3)(b)

certified copies of the signed text of the - : 14(3)(a)

denunciation of the - : 12

entry into force of the - : 9(4), (6); 14(5)(iii)

entry into force of the amendments to Articles 5 to 8 of the - : 8(3)

languages of the - : 14; see also "language(s)"

official texts of the - : 14(1)(b)

original of the - : 14(1)(a)

registration of the - with the Secretariat of the United Nations: 14(4)

signature of the - : 1(5)(a); 9(1), (4)(a)(ii); 14(1)(a)(b), (2), (5)(i)

signed text of the - : 14(3)(a)

see also "Act(s)," "Agreement"

proposals for changes in the Classification made by the - : 3(5)

sale of the publications of the - concerning the Special Union: 7(3)(iii)

secretariat of the Assembly, the Committee of Experts and such other com-
mittees of experts and working groups as have been established by the
Assembly or the Committee of Experts, provided by the - : 6(1)(b)

services rendered by the - : 7(3)(ii)

GOODS

alphabetical list of - and services, see "list"

indication of - or services: 1(7)

International Classification of - and Services, see "Classification"

transfer of - or services from one class to another, see "class(es) (of
goods or services)"

INCOME

- of the Special Union: 7(1)(b)

INSTRUMENT

- of ratification or accession, see "accession," "ratification"

INTERNATIONAL BUREAU

- generally: 1(3)(i); 3(5); 4; 6(1)(a)(b), (3)(a)(b), (4); 7(3)(ii)
- administrative tasks concerning the Special Union, performed by the - :
6(1)(a)(b), (4)
- Classification published in 1971 by the - : 1(3)(i)
- communication of the - , see "communication"

INTERNATIONAL BUREAU OF INTELLECTUAL PROPERTY

- : 1(3)(i)
- see also "International Bureau"

INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES FOR THE PURPOSES
OF THE REGISTRATION OF MARKS

- , see "Classification"

INVITATION

- to be represented by observers at meetings of the Committee of Experts:
3(2)(a)(b)
- to participate in discussions in the Committee of Experts: 3(2)(c)

LANGUAGE(S)

- of the alphabetical list: 1(7)
- of the Classification: 1(4), (5), (6)
- of the Convention Establishing the World Intellectual Property Organization: 14(1)(b)
- of the official texts of the Geneva Act, established by the Director General (Arabic, German, Italian, Portuguese, etc.): 14(1)(c)
- of the official texts of the Geneva Act, established by the Director General (Russian and Spanish): 14(1)(b)
- of the original of the Geneva Act (English and French): 14(1)(a)

LIST

- alphabetical - of goods and services: 1(2)(ii)(7); 2(4)
- of classes: 1(2)(i)

MAJORITY

- of four-fifths of the countries of the Special Union represented and voting: 3(7)(b)
- of four-fifths of the votes cast: 8(2)
- of three-fourths of the votes cast: 8(2)
- of two-thirds of the votes cast: 5(3)(d)
- required - : 5(3)(c)
- simple - of the countries of the Special Union represented and voting: 3(7)(a)
- see also "vote(s)"

MARK(S)

- common classification of goods and services for the purposes of the registration of - : 1(1)
- extent of the protection afforded to a - : 2(1)
- intergovernmental organizations specialized in the field of - , see "organization(s)"
- recognition of service - : 2(1)
- registration of - : 2(3)

MEMBER(S)

- of the Assembly of the Special Union, see "country(ies)"
- of the Committee of Experts, see "Committee of Experts"
- of the Organization, see "country(ies)"

NICE AGREEMENT CONCERNING THE INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES FOR THE PURPOSES OF THE REGISTRATION OF MARKS

- , see "Agreement"
- see also "Act(s)," "Geneva Act"

NOTIFICATION

- addressed by the countries of the Special Union to the Director General: 8(3); 12(1)
- addressed by the Director General to the Governments of all countries party to the Paris Convention: 14(5)
- of the changes of the Classification decided upon by the Committee of Experts: 4(1)

OBJECTIVES

- of the Special Union, see "Special Union"

OBLIGATIONS

- amendment increasing the financial - of countries of the Special Union: 8(3)

OBSERVERS

- admitted to the meetings of the Assembly of the Special Union, see "Assembly"
- at meetings of the Committee of Experts, see "Committee of Experts"

OFFICES

competent - of the countries of the Special Union: 2(3); 3(5); 4(1)

ORGANIZATION

generally: 1(3), (5)(a), (6); 3(2)(a), (3)(iii); 5(2)(a)(iii), (b); 7(1)(c), (2), (6)(c), (7)(a)(b); 14(1)(b)

Coordination Committee of the - : 5(2)(b); 7(6)(c)

countries members of the - : 3(2)(a)

Director General of the - , see "Director General"

General Assembly of the - : 5(4)(a)

period and place of the session of the General Assembly of the - : 5(4)(a)

ORGANIZATION(S)

intergovernmental and international non-governmental - which shall be admitted to the meetings of the Assembly as observers: 5(2)(a)(vii)

intergovernmental - specialized in the field of marks: 3(2)(b), (4), (5); 6(3)(b)

intergovernmental - other than those specialized in the field of marks: 3(2)(c); 6(3)(b)

international non-governmental - : 3(2)(c); 6(3)(b)

ORIGINAL

single - of the Geneva Act in the English and French languages: 14(1)(a)

PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

countries party to the - , see "country(ies)"

duration of the - : 10

notification to countries party to the - : 14(5)

reference to Article 24 of the - : 13

Stockholm Act of 1967 of the - : 13

PERIODICALS

- designated by the Assembly: 4(2)

PUBLICATION(S)

official - relating to registrations of marks: 2(3)

- of the International Bureau concerning the Special Union: 7(3)(iii)

QUORUM

- in the Assembly: 5(3)(b)(c)

RATIFICATION

- generally: 9
- instrument(s) of ratification: 9(3), (4)(a)(b)(c); 14(5)(ii)
- of an Act earlier than the Geneva Act: 9(6)

RECOMMENDATIONS

- explanatory notes regarded as provisional and as - : 1(3)(i)
- addressed by the Committee of Experts to the countries of the Special Union: 3(3)(ii); 4(1)

REFERENCE

- to Article 24 of the Paris Convention: 13

REGISTRATION

- of marks, see "mark(s)"
- of the Geneva Act with the Secretariat of the United Nations: 14(4)

REVISION

- generally: 11
- of the Agreement, see "Agreement"
- see also "conference(s) of revision," "amendment(s)"

RIGHT

- of denunciation, see "denunciation"
- subsisting in a term included in the alphabetical list: 2(4)
- to use the Classification either as a principal or as a subsidiary system: 2(2)
- to vote: 6(2), (3)(c); 7(4)(d)

RULES OF PROCEDURE

- of the Committee of Experts, see "Committee of Experts"
- of the Assembly, see "Assembly"

SECRETARIAT

- of the Assembly, the Committee of Experts and such other committee of experts and working groups as may have been established by the Assembly or the Committee of Experts: 6(1)(b)
- of the United Nations: 14(4)

SECRETARY

- of the Assembly, Committee of Experts and such other committees of experts or working groups as may have been established by the Assembly or the Committee of Experts: 6(1)(b)

SERIAL NUMBER

- specific to the language in which the alphabetical list is established: 1(7)

SERVICE(S)

- alphabetical list of goods and - , see "list"
- indication of goods or - : 1(7)
- International Classification of Goods and - , see "Classification"
- recognition of - marks: 2(1)
- transfer of goods or - from one class to another, see "class(es) (of goods or services)"

SESSION

- of the Assembly, see "Assembly"
- of the Committee of Experts, see "Committee of Experts"

SIGNATURE

- of the Geneva Act, see "Geneva Act"

SPECIAL UNION

- administrative tasks concerning the - : 6(1)(a)
- Assembly of the - , see "Assembly"
- budget of the - , see "budget"
- chief executive of the - ; 6(1)(c); see also "Director General"
- competence of the - : 5(2)(a)(iii)
- conference of the countries of the - : 11(i)
- establishment of a - : 1
- expenses proper to the - : 7(1)(b)
- financial regulations of the - : 5(2)(a)(v); 7(4)'e), (8)
- maintenance and development of the - : 5(2)(a)(i)
- objectives of the - : 5(2)(a)(vi)(ix)
- program of the - : 5(2)(a)(iv)
- publications of the International Bureau concerning the - , see "International Bureau," "publication(s)"

SUBCOMMITTEES

- (established by the Committee of Experts): 3(3)(iv)

SYSTEM

- use of the Classification as a principal - : 2(2)
- use of the Classification as a subsidiary - : 2(2)

TASKS

- administrative - concerning the Special Union, see "Special Union"
- performed by the International Bureau, see "International Bureau"

TERM

- included in the alphabetical list: 2(4)

TEXTS

- authentic - of the Convention Establishing the World Intellectual Property Organization: 14(1)(b)
- authentic - of the Geneva Act: 14(1)(a)
- official - of the Geneva Act: 14(1)(b)
- signed - of the Geneva Act: 14(3)(a)

TRANSLATION

- of the Classification, see "Classification"

UNION(S)

- Paris - for the Protection of Industrial Property: 7(4)(a)
- Special - , see "Special Union"
- administered by the Organization, other than the Special - : 5(2)(b); 7(2)

UNITED NATIONS

- Secretariat of the - : 14(4)

USE OF THE CLASSIFICATION

- : 2
- see also "Classification"

VOTES

- right to - : 6(2), (3)(c); 7(4)(d)
- cast: 5(3)(d); 8(2)
- : 3(6), (8); 5(3)(a)(c)(e)
- see also "majority"

WORLD INTELLECTUAL PROPERTY ORGANIZATION

- , see "Organization"

WORKING CAPITAL FUND

- : 7(6)(a)(b), (7)(a)

see also "accounts," "budget," "contribution(s)," "expenses," "finances,"
"income"

WORKING GROUPS

- established by the Assembly or the Committee of Experts: 3(3)(iv);
5(2)(a)(vi); 6(1)(b)

INDEX OF STATES*

ALGERIA

Composition of the Delegation: 159
Interventions in the Conference: 5, 52, 257, 267, 388, 458, 473,
498, 570
Signature of the Final Act of the Conference: 43

ARGENTINA

Composition of the Delegation: 165

AUSTRALIA

Composition of the Delegation: 159
Interventions in the Conference: 47, 78, 97, 258, 338, 363, 382,
455, 464, 545
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

AUSTRIA

Composition of the Delegation: 159
Written proposal for amendments: 77
Interventions in the Conference: 9, 55, 79, 85, 99, 102, 139,
142, 161, 164, 192, 259, 278, 339, 367, 398, 408, 418,
435, 474, 549
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

BELGIUM

Composition of the Delegation: 160
Interventions in the Conference: 51, 75, 122, 219, 260, 299, 333,
411, 482
Signature of the Geneva Act: 39

BRAZIL

Composition of the Delegation: 165

CAMEROON

Composition of the Delegation: 165

* Numbers denote pages on which in italics. Numbers in italics denote paragraphs in the text.

CZECHOSLOVAKIA

Composition of the Delegation: 160
Written proposal for amendments: 76
Interventions in the Conference: 50, 233, 266, 297, 331, 385, 483, 536, 562
Signature of the Final Act of the Conference: 43

DENMARK

Composition of the Delegation: 160
Interventions in the Conference: 74, 186, 210, 250, 298, 359, 410,
442, 479, 563
Signature of the Final Act of the Conference: 43

EGYPT

Composition of the Delegation: 166

FINLAND

Composition of the Delegation: 160
Interventions in the Conference: 204, 248, 564
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

FRANCE

Composition of the Delegation: 160
Written proposal for amendments: 76
Interventions in the Conference: 48, 65, 98, 147, 224, 227, 244,
268, 283, 285, 288, 294, 308, 334, 357, 381, 416, 476, 518, 547
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

GERMAN DEMOCRATIC REPUBLIC

Signature of the Geneva Act: 39

GERMANY, FEDERAL REPUBLIC OF

Composition of the Delegation: 161
Written proposal for amendments: 78
Interventions in the Conference: 43, 70, 212, 252, 286, 300, 327,
358, 386, 404, 421, 426, 447, 459, 480, 560
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

GHANA

Composition of the Delegation: 166

HUNGARY

Composition of the Delegation: 161
Interventions in the Conference: 44, 261, 335, 364, 387, 460, 535,
559
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

IRAQ

Composition of the Delegation: 166

IRELAND

Signature of the Geneva Act: 39

ITALY

Composition of Delegation: 161
Interventions in the Conference: 262, 272, 347, 362, 406, 450,
477, 499, 558
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

LUXEMBOURG

Signature of the Geneva Act: 39

MONACO

Composition of the Delegation: 162
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

MOROCCO

Composition of the Delegation: 162
Intervention in the Conference: 481
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

NETHERLANDS

Composition of the Delegation: 162
Written proposals for amendments: 75, 77
Interventions in the Conference: 49, 66, 133, 145, 205, 218, 251,
296, 311, 315, 319, 337, 354, 379, 390, 413, 457, 478, 503,
556
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

NORWAY

Composition of the Delegation: 162
Written proposal for amendments: 75
Interventions in the Conference: 8, 41, 173, 202, 217, 243, 307,
336, 350, 407, 561
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

PHILIPPINES

Composition of the Delegation: 166

POLAND

Composition of the Delegation: 163
Interventions in the Conference: 537, 565
Signature of the Final Act of the Conference: 43

PORTUGAL

Composition of the Delegation: 163
Interventions in the Conference: 7, 46, 82, 119, 125, 171, 184,
247, 269, 329, 360, 412, 551
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

Composition of the Delegation: 166

SOVIET UNION

Composition of the Delegation: 163
Written proposals for amendments: 73, 81
Interventions in the Conference: 6, 16, 21, 45, 238, 271, 325,
344, 384, 395, 415, 431, 456, 468, 471, 485, 487, 496, 534,
550
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

SPAIN

Composition of the Delegation: 163
Written proposal for amendments: 74
Interventions in the Conference: 40, 73, 246, 270, 326, 355, 402,
420, 425, 506, 548
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

SWEDEN

Composition of the Delegation: 164
Interventions in the Conference: 3, 39, 64, 93, 105, 130, 132,
185, 203, 207, 236, 237, 242, 274, 349, 368, 405, 446, 557
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

SWITZERLAND

Composition of the Delegation: 164
Interventions in the Conference: 4, 245, 303, 330, 356, 403, 467,
472, 555
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

TRINIDAD AND TOBAGO

Composition of the Delegation: 166

TUNISIA

Composition of the Delegation: 164
Intervention in the Conference: 500
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

UNITED KINGDOM

Composition of the Delegation: 164
Written proposal for amendments: 75
Interventions in the Conference: 42, 72, 80, 88, 95, 128, 167,
175, 183, 198, 200, 211, 229, 249, 275, 284, 292, 304, 332,
351, 375, 378, 389, 414, 434, 448, 454, 461, 494, 508, 515,
546, 553, 567, 569
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

UNITED STATES OF AMERICA

Composition of the Delegation: 165
Written proposals for amendments: 78, 79
Interventions in the Conference: 2, 38, 63, 69, 71, 81, 91, 96,
109, 116, 118, 124, 165, 172, 182, 213, 234, 241, 255, 265,
289, 302, 305, 309, 320, 342, 353, 409, 440, 443, 449, 452,
475, 514, 524, 552
Signature of the Geneva Act: 39
Signature of the Final Act of the Conference: 43

INDEX OF ORGANIZATIONS*

COMMITTEE OF NATIONAL INSTITUTES OF PATENT AGENTS (CNIPA)

Representative: 167

Intervention in the Conference: 343

COUNCIL OF EUROPEAN INDUSTRIAL FEDERATIONS (CEIF)

Representative: 167

INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL
PROPERTY (IAPIP)

Representative: 167

INTERNATIONAL CHAMBER OF COMMERCE (ICC)

Representative: 167

Intervention in the Conference: 566

INTERNATIONAL FEDERATION OF PATENT AGENTS (FICPI)

Representative: 167

UNION OF INDUSTRIES OF THE EUROPEAN COMMUNITY (UNICE)

Representatives: 168

Interventions in the Conference: 215, 253, 341

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Representatives: 168

Documents submitted and written proposals for amendments: 62, 63, 73, 74, 81,
84, 86, 89Interventions in the Conference: 1, 10, 18, 19, 23, 57, 59, 68,
76, 83, 87, 90, 94, 104, 107, 112, 117, 121, 129, 131, 138,
141, 143, 146, 151, 155, 162, 166, 169, 174, 177, 180, 188,
196, 199, 208, 216, 222, 226, 239, 280, 287, 290, 313, 316,
318, 340, 370, 393, 419, 423, 428, 433, 437, 445, 451, 463,
526, 543, 568, 571

* Number denote pages except when in italics. Numbers in italics denote paragraphs in the minutes appearing on page 95 to 155, above.

INDEX OF PARTICIPANTS*

ALLEN, D. (United States of America)

Alternate Head of the Delegation: 165

Minutes: 53, 69, 71, 81, 91, 96, 109, 116, 118, 124,
165, 172, 182, 213, 234, 241, 255, 265, 289, 302,
305, 309, 320, 342, 353, 409, 440, 443, 449, 452,
514, 524

ASLAN, P. (Italy)

Delegate: 162

Minutes: 262, 272, 347, 362

AÚZ-CASTRO, M. (Mrs.) (Germany, Federal Republic of)

Delegate: 161

Minutes: 43, 70, 212, 252, 266, 300, 356, 447, 459, 480

BADEN-SEMPER, T. (Trinidad and Tobago)

Delegate (Observer): 167

BAEUMER, L. (World Intellectual Property Organization (WIPO))

Director, Industrial Property Division: 168

Secretary General of the Conference: 169

BAHADIAN, A. (Brazil)

Head of the Delegation (Observer): 165

BALLEYS, F. (Switzerland)

Delegate: 164

Minutes: 245, 306, 336, 356, 403, 467, 472, 555

BALOUS, S. (Mrs.) (France)

Advisor: 161

Minutes: 416, 476

BANDAR AL-TIKRITI, L. (Iraq)

Head of the Delegation (Observer): 166

BEN FADHEL, M. (Tunisia)

Head of the Delegation: 164

Signatory of the Geneva Act: 39

Signatory of the Final Act of the Conference: 43

BOGNÁR, M. (Mrs.) (Hungary)

Delegate: 161

Minutes: 44, 364, 559

BOGSCH, A. (World Intellectual Property Organization (WIPO))

Director General: 168

Minutes: 1, 10, 19, 340, 419, 423, 428, 433, 437, 451,
463

* Numbers denote pages except when in italics. Numbers in italics denote

- BOUZID, F. (Mrs.) (Algeria)
Delegate: 159
Minutes: 338, 456, 473, 498, 570
Signatory of the Final Act of the Conference: 43
- BÖKEL, W. (Council of European Industrial Federations (CEIF))
Observer: 167
- BRAENDLI, P. (Switzerland)
Head of the Delegation: 164
Signatory of the Geneva Act: 39
Signatory of the Final Act of the Conference: 43
- BRUNSCHVIG, J. (Monaco)
Delegate: 162
- BYKOV, V. (Soviet Union)
Head of the Delegation: 163
Vice-President of the Conference: 169
Minutes: 3, 16, 21, 45, 238, 325, 344, 384, 395, 415, 431,
456, 468, 471, 485, 487, 534, 550
Signatory of the Geneva Act: 39
Signatory of the Final Act of the Conference: 43
- CARLSEN, R. (Mrs.) (Denmark)
Head of the Delegation: 160
Minutes: 74, 186, 210, 250, 298, 359, 410, 442, 479, 563
Signatory of the Final Act of the Conference: 43
- CECIL, D. (United Kingdom)
Delegate: 164
- CEREZO, see "GARCÍA CEREZO"
- CHRAÏBI, M. (Morocco)
Head of the Delegation: 162
Vice-Chairman of the Credentials Committee: 169
Minutes: 487
Signatory of the Final Act of the Conference: 43
- CURCHOD, F. (World Intellectual Property Organization (WIPO))
Head, Special Projects Section, Industrial Property
Division: 168
Secretary of the Drafting Committee: 169
Minutes: 393, 520
- DAVIS, I. (United Kingdom)
Head of the Delegation: 164
Chairman of the Drafting Committee: 169
Minutes: 42, 80, 128, 167, 175, 198, 200, 229, 249, 275,
292, 332, 351, 375, 378, 389, 434, 454, 461, 494, 508,
515, 546, 567, 569
Signatory of the Geneva Act: 39
Signatory of the Final Act of the Conference: 43
- DEGAVRE, J. (Belgium)
Head of the Delegation: 160
Minutes: 51, 75, 122, 219, 200, 299, 533, 583, 411, 482

-
- EGGER, L. (World Intellectual Property Organization (WIPO))
Head, International Registrations Division: 168
Assistant Secretary General of the Conference: 169
Minutes: 318
- EGOROV, S. (Soviet Union)
Delegate: 163
- EL IBRASHI, F. (Egypt)
Head of the Delegation (Observer): 166
- EMBARK, A. (Socialist People's Libyan Arab Jamahiriya)
Head of the Delegation (Observer): 166
- ESPEJO, C. (Philippines)
Head of the Delegation (Observer): 166
- EYER, E. (Committee of National Institutes of Patent Agents (CNIPA))
Observer: 166
Minutes: 343
- FATHALLAH, B. (Tunisia)
Delegate: 164
Minutes: 500
Signatory of the Final Act of the Conference: 43
- FIGGINS, D. (United States of America)
Advisor: 165
- FRESSONNET, P. (France)
Head of the Delegation: 160
Minutes: 518, 547
Signatory of the Geneva Act: 39
Signatory of the Final Act of the Conference: 43
- GARCÍA CERREZO, L. (Spain)
Delegate: 163
Signatory of the Geneva Act: 39
Signatory of the Final Act of the Conference: 43
- GERHARDSEN, A. (Norway)
Head of the Delegation: 162
Minutes: 8, 41, 173, 307, 335, 350, 407, 561
Signatory of the Final Act of the Conference: 43
- GORLENKO, S. (Mrs.) (Soviet Union)
Delegate: 163
Minutes: 271
- GULDHAV, A. (Norway)
Delegate: 162
Minutes: 202
- HENSHILWOOD, G. (Australia)
Head of the Delegation: 159
Vice-Chairman of the Drafting Committee: 169

HIANCE, M. (Mrs.) (France)

Advisor: 161

Minutes: 48, 98, 224, 227, 268, 288, 294, 308, 334, 381

IBRASHI, see "EL IBRASHI"

KAARHUS, A. (Norway)

Delegate: 162

Minutes: 217, 243

KHALIL, K. (Egypt)

Delegate (Observer): 166

KIRKER, G. (International Association for the Protection of Industrial Property (IAPIP))

Observer: 167

KURITTU, A. (Finland)

Delegate: 160

LEBEDEVA, L. (Mrs.) (World Intellectual Property Organization (WIPO))

Consultant, Industrial Property Division: 168

LEDAKIS, G. (World Intellectual Property Organization (WIPO))

Legal Counsel: 168

Secretary of the Credentials Committee: 169

LEWICKI, M. (Poland)

Delegate: 163

LUNDBERG, B. (Sweden)

Delegate: 164

Minutes: 237

MAK, W. (Union of Industries of the European Community (UNICE))

Observer: 168

Minutes: 215, 253, 341

MARRO, J.-L. (Switzerland)

Alternate Head of the Delegation: 164

Minutes: 4

MAYER, G. (Mrs.) (Austria)

Delegate: 159

Minutes: 55, 102, 192, 259, 278, 361, 549

Signatory of the Final Act of the Conference: 43

MOORBY, R. (United Kingdom)

Delegate: 164

Minutes: 72, 88, 95, 183, 211, 284, 304, 414, 448, 553

Signatory of the Geneva Act: 39

Signatory of the Final Act of the Conference: 43

- MVOGO, A. (Cameroon)
Head of the Delegation (Observer): 165
- NETTEL, E. (Austria)
Head of the Delegation: 159
Chairman of the Credentials Committee: 169
Minutes: 9, 339, 398, 408, 418, 435
Signatory of the Geneva Act: 39
- NORRING, B. (Finland)
Delegate: 160
- NOTARI, J.-M. (Monaco)
Head of the Delegation: 162
Signatory of the Geneva Act: 39
Signatory of the Final Act of the Conference: 43
- OHLSON, O. (Sweden)
Delegate: 164
- OKYNE, J. (Ghana)
Delegate (Observer): 166
- OLSZÓWKA, A. (Poland)
Head of the Delegation: 163
Minutes: 537, 565
Signatory of the Final Act of the Conference: 43
- PAPINI, I. (Italy)
Head of the Delegation: 161
Minutes: 406, 558
Signatory of the Geneva Act: 39
Signatory of the Final Act of the Conference: 43
- PFANNER, K. (World Intellectual Property Organization (WIPO))
Deputy Director General: 168
Minutes: 18, 23, 57, 59, 68, 76, 83, 87, 90, 94, 104, 107,
112, 117, 121, 129, 131, 138, 141, 143, 146, 151, 155,
162, 166, 169, 174, 177, 180, 188, 196, 199, 208, 216,
222, 226, 239, 280, 287, 290, 313, 316, 370, 445, 543,
568, 571
- PLASSERAUD, Y. (International Federation of Patent Agents (FICPI))
Observer: 167
- POLYCARPE, M. (France)
Delegate: 161
Minutes: 65, 147, 244, 283, 285, 357
- PRAUN, D. (Germany, Federal Republic of)
Advisor: 161
- PROŠEK, J. (Czechoslovakia)
Head of the Delegation: 160
Vice-Chairman of the Drafting Committee: 169
Minutes: 50, 233, 266, 297, 331, 385, 483, 534, 549

- REDOUANE, H. (Algeria)
 Head of the Delegation: 159
 Vice-President of the Conference: 169
 Minutes: 5, 52, 257, 267
- ROSSIER, H. (World Intellectual Property Organization (WIPO))
 Head, Mail and Documents Section, Administrative Division: 168
- RÖTGER, T. (Germany, Federal Republic of)
 Advisor: 161
- RÚA BENITO, E. (Spain)
 Delegate: 163
- de SAMPAIO, A. (International Chamber of Commerce (ICC))
 Observer: 167
 Minutes: 566
- SAMPERI, S. (Italy)
 Alternate Head of the Delegation: 162
 Minutes: 450, 477, 499
- SANDER, I. (Mrs.) (Denmark)
 Delegate: 160
- SANNE, C.-W. (Germany, Federal Republic of)
 Head of the Delegation: 161
 Minutes: 327, 386, 404, 421, 426, 560
 Signatory of the Geneva Act: 39
 Signatory of the Final Act of the Conference: 43
- SCHROEDER, L. (United States of America)
 Advisor: 165
- SERRÃO, R. (Portugal)
 Head of the Delegation: 163
 Minutes: 7, 82, 119, 125, 171, 184, 269, 360, 412, 551
 Signatory of the Geneva Act: 39
 Signatory of the Final Act of the Conference: 43
- SEY, T. (Ghana)
 Head of the Delegation (Observer): 166
- SORENSEN, R. A. (United States of America)
 Head of the Delegation: 165
 Vice-President of the Conference: 169
 Minutes: 2, 38, 552
 Signatory of the Geneva Act: 39
 Signatory of the Final Act of the Conference: 43
- STEUP, E. (Mrs.) (Germany, Federal Republic of)
 Alternate Head of the Delegation: 161
 Chairman of the Conference: 169
 Minutes (as President of the Conference): 11, 13, 15, 17, 20,
 22, 24, 25, 28, 31, 35, 37, 53, 54, 56, 58, 60, 62, 67, 77,
 84, 86, 89, 92, 100, 103, 106, 108, 110, 111, 113, 120, 123,
 127, 134, 135, 137, 140, 144, 148, 150, 152, 154, 158, 160,
 163, 168, 170, 176, 178, 179, 181, 187, 189, 191, 193, 195,
 197, 201, 206, 209, 214, 220, 221, 223, 225, 228, 230, 232,
 235, 240, 254, 256, 263, 264, 273, 276, 277, 279, 281, 282,
 291, 293, 295, 301, 306, 310, 312, 314, 317, 321, 323, 324,

[STEUP, E. (Mrs.), continued]

430, 432, 436, 438, 439, 441, 444, 453, 462, 465, 469, 470,
 484, 486, 488, 489, 490, 491, 493, 495, 497, 501, 504, 505,
 507, 509, 516, 519, 523, 525, 527, 529, 533, 538, 541, 544,
 554, 572

Signatory of the Geneva Act: 39

Signatory of the Final Act of the Conference: 43

STEWART, G. (Trinidad and Tobago)

Head of the Delegation (Observer): 166

TASNÁDI, E. (Hungary)

Head of the Delegation: 161

Minutes: 261, 335, 387, 460, 535

Signatory of the Geneva Act: 39

Signatory of the Final Act of the Conference: 43

TOROVSKY, R. (Austria)

Delegate: 159

Minutes: 79, 85, 99, 139, 142, 161, 164, 474

UGGLA, C. (Sweden)

Head of the Delegation: 164

Vice-President of the Conference: 169

Minutes: 3, 39, 64, 93, 105, 130, 132, 185, 203, 207, 236, 242,
 274, 349, 368, 405, 446, 557

Signatory of the Geneva Act: 39

Signatory of the Final Act of the Conference: 43

VAN-ZELLER GARIN, J. (Portugal)

Alternate Head of the Delegation: 163

Minutes: 46, 247, 529

VEDERNIKOVA, I. (Miss) (Soviet Union)

Delegate: 163

VERNENGO, M. (Argentina)

Head of the Delegation (Observer): 165

VILLALPANDO MARTINEZ, A. (Spain)

Head of the Delegation: 163

Vice-Chairman of the Credentials Committee: 169

Minutes: 40, 73, 246, 270, 306, 355, 402, 420, 425, 506, 548

Signatory of the Geneva Act: 39

Signatory of the Final Act of the Conference: 43

van WEEL, E. (Netherlands)

Head of the Delegation: 162

Minutes: 49, 66, 133, 145, 205, 218, 251, 296, 311, 315, 319,
 337, 354, 379, 390, 413, 457, 478, 503, 556

WILLIAMSON Jr., I. (United States of America)

Advisor: 165

Minutes: 475

WUORI, E. (Finland)

Head of the Delegation: 160

Minutes: 204, 248, 564

Signatory of the Geneva Act: 39

Signatory of the Final Act of the Conference: 43

ZAITSEV, A. (Soviet Union)

Delegate: 163

Minutes: 496

ZELKO, J. (Czechoslovakia)

Delegate: 160
