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REVISION OF THE BERNE
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RECORDS OF THE PARIS
CONFERENCE

1971



GENEVA

**RECORDS
OF THE
DIPLOMATIC CONFERENCE
FOR THE REVISION
OF THE BERNE CONVENTION**

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**WORLD INTELLECTUAL
PROPERTY ORGANIZATION
(WIPO)**

**RECORDS
OF THE
DIPLOMATIC CONFERENCE
FOR THE REVISION
OF THE BERNE CONVENTION**

(Paris, July 5 to 24, 1971)



**GENEVA
1974**

EDITOR'S NOTE

These *Records* of the Diplomatic Conference for the Revision of the Berne Convention (Paris, 1971) contain all the official documents distributed before and during the Conference by the World Intellectual Property Organization (WIPO), either as organizer of the Conference or as Secretariat of the Conference.

The circular letters of invitation, which are included among the "official documents", and the lists of States and organizations invited, appear under the heading "Invitations to the Conference." The "Conference Documents" are grouped in three series: Main Series "B/DC," Series "B/DC/CR" and Information Series "B/DC/INF".

The Main Series "B/DC" includes: a historical outline of the preparations for the revision of the Berne Convention; the successive drafts of the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works and of the Additional Act of Paris to the Berne Convention (the latter was abandoned in the course of the discussions at the Conference); the observations of governments and organizations on these drafts; amendment proposals; the draft rules of procedure of the Conference and the text of these rules as adopted; the draft general report and the two reports of the Credentials Committee.

The Series "B/DC/CR" contains the drafts of the Paris Act and its Appendix prepared for the Drafting Committee, and observations on these drafts.

The Information Series "B/DC/INF" consists mainly of general information, provisional lists of Conference participants and documents, lists of the officers of the Conference and of some of its bodies, and the list of countries which signed the Paris Act on July 24, 1971.

These *Records* reproduce the documents of the Conference in their numerical order. Each document published is identified first by its number (the serial number under which it was distributed), together with the date and the original language, then by its author and finally by its subject.

The observations of governments and organizations contained in the same document are presented in their respective alphabetical order.

The majority of the documents are reproduced in full. However, where the original document contained long quotations from another document, the version reproduced in these *Records* merely mentions this quotation in order to make the presentation more concise.

Finally, the various lists of documents and participants distributed during the Conference are not published individually, but are combined in final versions under the headings: "Conference Documents [...] List of Documents" and "Participants in the Conference."

The summary minutes were prepared during the Conference, so that interventions made in English, French and Spanish were summarized in those languages. They were distributed during the Conference to the participants, who then had the opportunity to submit any corrections to the Secretariat. Thus the minutes reproduced here differ in two respects from those distributed during the Conference: on the one hand, they contain all the corrections which participants proposed should be made to their interventions; on the other hand, all passages which in the original version of the minutes were in French or Spanish are translated here into English. The translations were prepared after the Conference under the responsibility of WIPO.

The Diplomatic Conferences for the Revision of the Berne Convention and the Universal Convention were convened by WIPO and Unesco respectively, to be held at the same time and place (Unesco House, Paris, July 1971). The deliberations of the two Diplomatic Conferences were very often attended by the same delegates or representatives. The interdependence of the solutions adopted in the course of the two Conferences accounts for and justifies the references (in these *Records*: Conference documents and summary minutes) to documents distributed during the Conference for the Revision of the Universal Convention, and to discussions which

took place at that Conference. In all such cases these *Records* refer to the *Records of the Conference for the Revision of the Universal Copyright Convention*, Paris 1971, published by Unesco.

A general report on the work of the Conference was discussed within the competent bodies of the Conference and approved by the latter.

The 1971 Paris Act of the Berne Convention for the Protection of Literary and Artistic Works, together with its Appendix, was signed in English and French, the French text being authentic in the event of disputes concerning the interpretation of its provisions. Only the English text of the 1971 Paris Act is reproduced in the English edition of these *Records*; the French text appears in the French edition of the same *Records*, which is published separately.

Finally, these *Records* contain indexes: an *index of texts adopted* at the Diplomatic Conference for the Revision of the Berne Convention, based on the numbers of the articles of the Paris Act of the Convention, adopted on July 24, 1971, and of the articles of the Appendix which forms an integral part of the Paris Act; a *subject index*, based on catchwords; and an *index of States, organizations and persons* having taken part in the Conference.

The figures appearing in the indexes relate to the *pages* of these *Records*, with the exception of those indicated in italics in the index of States, organizations and persons, which relate to *paragraphs* of the summary minutes.

Geneva, 1974

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**INVITATIONS
TO THE CONFERENCE**

CIRCULAR LETTER OF INVITATION**Sent
to States Members of the Berne Union**

Geneva, January 28, 1971

Salutations

I have the honor to invite your Government to participate in the Diplomatic Conference for the Revision of the Berne Convention for the Protection of Literary and Artistic Works, which will be held in Paris from July 5 to 24, 1971.

This Conference is being convened on the basis of a resolution adopted by the Permanent Committee of the Berne Union on September 18, 1970, and of decisions taken by the Assembly and Conference of Representatives of that Union at their first ordinary sessions in Geneva from September 21 to 28, 1970.

These bodies of the Union have expressed the wish on several occasions that the Conference for the Revision of the Berne Convention would be held at the same time and place as the Conference for the Revision of the Universal Copyright Convention. The latter will also take place in Paris from July 5 to 24, 1971.

It should be noted that the dates that had been recommended for the two Conferences were from June 21 to July 10, 1971. When the competent French authorities pointed out, however, that there would be great difficulty in accommodating delegates in Paris at the beginning of that period, it was decided, after consultation with Unesco, to choose the dates of July 5 to 24, 1971, for the two Revision Conferences.

Both Conferences will be held at Unesco Headquarters in Paris (Place de Fontenoy).

I have the honor to transmit to you herewith the following preparatory documents:

- (i) the draft Agenda of the Conference (document B/DC/1);
- (ii) the draft Rules of Procedure of the Conference (document B/DC/2);
- (iii) a Report on the preparations for the revision of the Berne Convention (document B/DC/3);
- (iv) the Reports of the Ad Hoc Preparatory Committee (May 1970) and of the Permanent Committee of the Berne Union (September 1970) on the revision of the Berne Convention (document B/DC/4).

Proposals for revision were prepared by the Permanent Committee of the Berne Union and communicated by circular letters C. 269 and C. 270, of October 12, 1970, to the Governments of member countries of the Berne Union and to interested international non-governmental Organizations.

In my circular letters referred to above, I invited those Governments and Organizations to send me, no later than March 15, 1971, their comments on the said proposals. All comments received will be communicated in due course.

As the proposals in question are not complete in so far as the final clauses of the Convention are concerned and, further, as the terminology of these clauses and of some of the texts drafted by the Permanent Committee of the Berne Union seems to require harmonizing, the International Bureau of WIPO is now preparing an additional document, which will contain the complete text of the revision proposals, to serve as a basis for discussion at the Conference. This document, numbered B/DC/5, will be sent to you in the course of the month of March.

The working languages of the Conference will be English, French and Spanish.

I should be grateful if you would inform me by the end of June 1971 at the latest, of the names of the members of your country's delegation. As is customary, and in accordance with the draft Rules of Procedure, members of delegations must present credentials empowering them to participate in the Conference and have full powers to sign the text of the Berne Convention which will be adopted by the Revision Conference.

Compliments

G. H. C. Bodenhausen
Director General of WIPO

STATES MEMBERS OF THE BERNE UNION

Invited

Argentina	Greece	New Zealand
Australia	Holy See	Niger
Austria	Hungary	Norway
Belgium	Iceland	Pakistan
Brazil	India	People's Republic of the Congo
Bulgaria	Ireland	Philippines
Cameroon	Israel	Poland
Canada	Italy	Portugal
Ceylon *	Ivory Coast	Romania
Chile	Japan	Senegal
Congo (Democratic Republic of the) **	Lebanon	South Africa
Cyprus	Liechtenstein	Spain
Czechoslovakia	Luxembourg	Sweden
Dahomey	Madagascar	Switzerland
Denmark	Mali	Thailand
Finland	Malta	Tunisia
France	Mexico	Turkey
Gabon	Monaco	United Kingdom
Germany (Federal Republic of)	Morocco	Uruguay
	Netherlands	Yugoslavia

CIRCULAR LETTER OF INVITATION

Sent

to States not Members of the Berne Union

Geneva, February 2, 1971

Salutations

I have the honor to invite your Government to be represented as observer at the Diplomatic Conference for the Revision of the Berne Convention for the Protection of Literary and Artistic Works, which will be held in Paris from July 5 to 24, 1971, at Unesco Headquarters (Place de Fontenoy).

In accordance with the wish expressed by the competent bodies, the Conference for the Revision of the Universal Copyright Convention will also take place at the same time and place.

I have the honor to transmit to you herewith the following preparatory documents:

- (i) the draft Agenda of the Conference (document B/DC/1);
- (ii) the draft Rules of Procedure of the Conference (document B/DC/2);
- (iii) a Report on the preparations for the revision of the Berne Convention (document B/DC/3);
- (iv) the Reports of the Ad Hoc Preparatory Committee (May 1970) and of the Permanent Committee of the Berne Union (September 1970) on the revision of the Berne Convention (document B/DC/4).

* This State has since changed its name; at the time of publication of these *Records* it is designated as "Sri Lanka."

** This State has since changed its name; at the time of publication of these *Records* it is designated as "Zaire."

Proposals for revision were prepared by the Permanent Committee of the Berne Union and communicated by circular letters C. 269 and C. 270, of October 12, 1970, to the Governments of member countries of the Berne Union and to interested international non-governmental Organizations.

As the proposals in question are not complete in so far as the final clauses of the Convention are concerned and, further, as the terminology of these clauses and of some of the texts drafted by the Permanent Committee of the Berne Union seems to require harmonizing, the International Bureau of WIPO is now preparing an additional document, which will contain the complete text of the revision proposals, to serve as a basis for discussion at the Conference. This document, numbered B/DC/5, will be sent to you in the course of the month of March.

The working languages of the Conference will be English, French and Spanish.

If your Government is in a position to accept this invitation, I should be grateful if you would inform me, by the end of June 1971 at the latest, of the names of the members of your country's delegation.

Compliments

G. H. C. Bodenhausen
Director General of WIPO

STATES NOT MEMBERS OF THE BERNE UNION

Invited in the Capacity of Observers

Afghanistan	Honduras	Republic of China
Albania	Indonesia	Republic of Korea *
Algeria	Iran	Republic of Viet-Nam **
Bahrain	Iraq	Rwanda
Barbados	Jamaica	San Marino
Bolivia	Jordan	Saudi Arabia
Botswana	Kenya	Sierra Leone
Burma	Khmer Republic	Singapore
Burundi	Kuwait	Somalia
Byelorussian SSR	Laos	South Yemen ***
Central African Republic	Lesotho	Soviet Union
Chad	Liberia	Sudan
Colombia	Libya	Swaziland
Costa Rica	Malawi	Syrian Arab Republic
Cuba	Malaysia	Togo
Dominican Republic	Maldives	Trinidad & Tobago
Ecuador	Mauritania	Uganda
El Salvador	Mauritius	United Arab Republic ****
Equatorial Guinea	Mongolia	United Republic of Tanzania
Ethiopia	Nepal	United States of America
Gambia	Nicaragua	Upper Volta
Ghana	Nigeria	Ukrainian SSR
Guatemala	Panama	Venezuela
Guinea	Paraguay	Western Samoa
Guyana	Peru	Yemen
Haiti	Qatar	Zambia

* South Korea.

** South Viet-Nam.

*** This State has since changed its name; at the time of publication of these *Records* it is designated as "People's Republic of Yemen."

**** This State has since changed its name; at the time of publication of these *Records* it is designated as "Egypt."

CIRCULAR LETTER OF INVITATION

Sent to Intergovernmental and International Non-Governmental Organizations

Geneva, February 2, 1971

Salutations

I have the honor to invite your Organization to attend as observer the Diplomatic Conference for the Revision of the Berne Convention for the Protection of Literary and Artistic Works, which will be held in Paris from July 5 to 24, 1971.

This Conference is being convened on the basis of a resolution adopted by the Permanent Committee of the Berne Union on September 18, 1970, and of decisions taken by the Assembly and Conference of Representatives of that Union at their first ordinary sessions in Geneva from September 21 to 28, 1970.

These bodies of the Union have expressed the wish on several occasions that the Conference for the Revision of the Berne Convention would be held at the same time and place as the Conference for the Revision of the Universal Copyright Convention. The latter will also take place in Paris from July 5 to 24, 1971.

It should be noted that the dates that had been recommended for the two Conferences were from June 21 to July 10, 1971. When the competent French authorities pointed out, however, that there would be great difficulty in accommodating delegates in Paris at the beginning of that period, it was decided, after consultation with Unesco, to choose the dates of July 5 to 24, 1971, for the two Revision Conferences.

Both Conferences will be held at Unesco Headquarters in Paris (Place de Fontenoy).

I have the honor to transmit to you herewith the following preparatory documents:

- (i) the draft Agenda of the Conference (document B/DC/1);
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- (iii) a Report on the preparations for the revision of the Berne Convention (document B/DC/3);
- (iv) the Reports of the Ad Hoc Preparatory Committee (May 1970) and of the Permanent Committee of the Berne Union (September 1970) on the revision of the Berne Convention (document B/DC/4).

Proposals for revision were prepared by the Permanent Committee of the Berne Union and communicated by circular letters C. 269 and C. 270, of October 12, 1970, to the Governments of member countries of the Berne Union and to interested international non-governmental Organizations.

In my circular letters referred to above, I invited those Governments and Organizations to send me, no later than March 15, 1971, their comments on the said proposals. All comments received will be communicated in due course.

As the proposals in question are not complete in so far as the final clauses of the Convention are concerned and, further, as the terminology of these clauses and of some of the texts drafted by the Permanent Committee of the Berne Union seems to require harmonizing, the International Bureau is now preparing an additional document, which will contain the complete text of the revision proposals, to serve as a basis for discussion at the Conference. This document, numbered B/DC/5, will be sent to you in the course of the month of March.

The working languages of the Conference will be English, French and Spanish.

I should be grateful if you would inform me, by the end of June 1971 at the latest, of the names of the persons who will represent your Organization at the Conference.

Compliments

G. H. C. Bodenhausen
Director General of WIPO

**INTERGOVERNMENTAL AND INTERNATIONAL
NON-GOVERNMENTAL ORGANIZATIONS
Invited in the Capacity of Observers**

Intergovernmental Organizations

African and Malagasy Industrial Property Office (OAMPI)
Common Afro-Malagasy and Mauritian Organization (OCAM)
Council of Europe (CE)
Food and Agriculture Organization of the United Nations (FAO)
General Agreement on Tariffs and Trade (GATT)
Inter-Governmental Maritime Consultative Organization (IMCO)
International Atomic Energy Agency (IAEA)
International Bank for Reconstruction and Development (IBRD)
International Civil Aviation Organization (ICAO)
International Institute for the Unification of Private Law (UNIDROIT)
International Labour Organisation (ILO)
International Monetary Fund (IMF)
International Telecommunication Union (ITU)
League of Arab States (LAS)
Organization of African Unity (OAU)
Organization of American States (OAS)
Organization of Central American States (OCAS)
United Nations Educational, Scientific and Cultural Organization (Unesco)
United Nations Organization (UN)
Universal Postal Union (UPU)
World Health Organization (WHO)
World Meteorological Organization (WMO)

International Non-Governmental Organizations

Asian Broadcasting Union (ABU)
European Broadcasting Union (EBU)
Inter-American Association of Broadcasters (IAAB)
International Alliance for Distribution by Wire (AID)
International Association for the Protection of Industrial Property (AIPPI)
International Bureau of the Societies Administering the Rights of Mechanical Recording and
Reproduction (BIEM)
International Confederation of Societies of Authors and Composers (CISAC)
International Copyright Society (INTERGU)

International Federation of Actors (FIA)
International Federation of Associations of Film Distributors (FIAD)
International Federation of Film Producers' Association (FIAPF)
International Federation of Journalists (IFJ)
International Federation of Musicians (FIM)
International Federation of Newspaper Publishers (FIEJ)
International Federation of the Phonographic Industry (IFPI)
International Federation of Translators (FIT)
International Federation of Variety Artistes (IFVA)
International Hotel Association (IHA)
International Law Association (ILA)
International Literary and Artistic Association (ALAI)
International Music Council (IMC)
International Publishers' Association (IPA)
International Radio and Television Organization (OIRT)
International Union of Cinematograph Exhibitors (UIEC)
International Writers Guild (IWG)
Union of National Radio and Television Organizations of Africa (URTNA)

**PARTICIPANTS
IN THE CONFERENCE**

STATES MEMBERS OF THE BERNE UNION

ARGENTINA*Head of Delegation*

José M. G. ALVAREZ DE TOLEDO, Ambassador, Permanent Delegate to Unesco.

Delegates

Teresa H. I. FLOURET (Miss), Counsellor of Embassy, Permanent Delegation to Unesco.
José PICO, Secretary of Embassy, Permanent Delegation to Unesco.

Experts

Delia LIPSZYC (Mrs), Attorney-at-Law.
Carlos MOUCHET, Attorney-at-Law.

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Clinton Bryan FERNANDO, Senior Legal Officer, Attorney-General's Department.
Gardner DAVIES, Permanent Delegate to Unesco.

AUSTRIA*Head of Delegation*

Robert DITTRICH, Director, Federal Ministry of Justice.

Delegate

Winfried LANG, Secretary of Embassy, Embassy of Austria, Paris.

Expert

Otto AURACHER, Secretary to the Austrian Chamber of Labour.

BELGIUM*Head of Delegation*

Jean PAPEIANS DE MORCHOVEN, Ambassador, Permanent Delegate to Unesco.

Deputy Head of Delegation

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Albert C. J. G. NAMUROIS, Director of Administration, Radiodiffusion Télévision Belge.

Adviser

Jan VERMEIRE, Head of Section, Radiodiffusion Télévision Belge.

Secretary of Delegation

Arsène VAN DEN DRIESSCHE, Member of the Permanent Delegation to Unesco.

BRAZIL*Head of Delegation*

Everaldo DAYRELL DE LIMA, Ambassador, Permanent Delegate to Unesco.

Delegates

Maria de LOURDES CASTRO E SILVA DE VICENZI (Mrs.), Deputy Permanent Delegate, Permanent Delegation to Unesco.
José Carlos MOREIRA ALVES, Professor, Chairman, Commission for the Revision of the Copyright Code.
Daniel DA SILVA ROCHA, Directeur de la Société brésilienne des auteurs de théâtre.
João Frank DA COSTA, Chef de la coopération intellectuelle du Ministère des relations extérieures.

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Augusto Cesar DE VASCONCELLOS GONÇALVES, Secretary of Embassy.
Ana-Lúcia LYRA TAVARES (Miss), Attorney-at-Law.

Observers

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Claudio DE SOUZA AMARAL, Attorney-at-Law.

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Deputy Head of Delegation

François MOUDOUROU, Cultural Attaché, Embassy of Cameroon, Paris.

Delegate

Jean CALVIN BAHOKEN, Professor of social sciences.

CANADA*Head of Delegation*

René GARNEAU, Ambassador, Permanent Delegate to Unesco.

Deputy Head of Delegation

Finlay WILLIAM SIMONS, Assistant Commissioner of Patents, Patent Office, Ottawa.

Delegate and Secretary of Delegation

Robert G. BLACKBURN, Cultural Affairs Division, Department of External Affairs.

Delegates

Marcel Denis BÉLANGER, Economist, Ministry of Industry and Commerce.
Yvon DES ROCHERS, Secrétariat d'Etat.
Naim KATTAN, Directeur, Service des Lettres, Conseil des Arts.
Andrew A. KEYES, Copyright Consultant, Department of Consumer and Corporate Affairs.
Julian Harris PORTER, Counsel of Canadian Conference of the Arts.

CEYLON **Head of Delegation*

P. M. D. FERNANDO, First Secretary, Embassy of Ceylon, Paris.

CHILE*Head of Delegation*

Jorge HUNEEUS, Chargé d'Affaires, Permanent Delegation to Unesco.

CONGO (DEMOCRATIC REPUBLIC OF THE) ***Head of Delegation*

Léopold LUTÉTÉ, Directeur de Cabinet adjoint au Ministère des Affaires étrangères.

Delegate

José-Baudoin EMANY, Director General, Société nationale des éditeurs, compositeurs et auteurs.

CYPRUS*Head of Delegation*

Criton G. TORNARITIS, Attorney-General.

Delegates

Takis L. CHRISTODOULIDES, Official Receiver and Registrar.
Andreas CHRISTOFIDES, Director General, Cyprus Broadcasting Corporation.

Adviser

Georges STRASCHNOV, Director of Legal Affairs, European Broadcasting Union.

CZECHOSLOVAKIA*Head of Delegation*

Václav TYLNER, Counsellor of Embassy.

Delegate

Milan REINIŠ, Legal Counsellor, Ministry of Culture.

DENMARK*Head of Delegation*

Wilhelm Axel WEINCKE, Head of Department, Ministry of Cultural Affairs.

Delegates

William FRIIS-MØLLER, Secretary of Embassy.
Hans Jacob KJAER, Secretary, Ministry of Cultural Affairs.
Jørgen NØRUP-NIELSEN, Secretary, Ministry of Cultural Affairs.

FINLAND*Head of Delegation*

Ragnar MEINANDER, Counsellor, Ministry of Education.

Deputy Head of Delegation

Lares OSMO, Deputy Director of Legal Affairs, Ministry of Foreign Affairs.

Delegate

Berndt GODENHJELM, Professor, Faculty of Law, University of Helsinki.

FRANCE*Head of Delegation*

Pierre CHARPENTIER, Ambassador, Ministry of Foreign Affairs.

Deputy Head of Delegation

André SAINT-MLEUX, Minister plenipotentiary, Chef des Services de diffusion et d'échanges culturels, Ministry of Foreign Affairs.

Delegates

André KEREVER, Maître des requêtes au Conseil d'Etat.
Marcel BOUTET, Avocat à la Cour, Vice-Président de la Commission de la propriété intellectuelle près le Ministère des affaires culturelles.

Henri DESBOIS, Professor, Université de droit, d'économie et de sciences sociales de Paris.

Paul Bernard NOLLET, Inspecteur général, Ministry of Industrial and Scientific Development.

Jean BUFFIN, Head, Bureau du droit d'auteur, Ministry of Cultural Affairs.

Jean-Loup TOURNIER, Member, Commission de la propriété intellectuelle, Ministry of Cultural Affairs.

Pierre Roger LUNET, Foreign Affairs Counsellor, Ministry of Foreign Affairs.

Experts

Jean ALBERT-SOREL, Former President, Société des Gens de Lettres.

Daniel AVRAM, Legal Advisor, Ministry of Foreign Affairs.

Pierre BÉARN, President, Syndicat des écrivains.

Henri CALEF, President, Association des auteurs de films.

Marcel CAZÉ, Director, Office de Radiodiffusion-Télévision française.

Pierre Louis CHESNAIS, Secretary General, Syndicat national des industries et commerces de publications sonores et audio-visuelles.

Jaques-Louis DUCHEMIN, Secretary General, Société de la propriété artistique des dessins et modèles.

Jaques DURON, Professor, Chef du Service des lettres, Ministry of Cultural Affairs.

Jean FERRATON, Director General, Société pour l'administration du droit de reproduction mécanique des auteurs, compositeurs et éditeurs.

André FRANÇON, Professor, Université de Paris X.

André GÉRANTON, Head of Legal Section, Syndicat national des éditeurs.

Jean MATTYSSENS, Délégué général, Société des auteurs et compositeurs dramatiques.

Françoise RAMOFF (Mrs.), Magistrat.

André SCHAFFHAUSER, Foreign Affairs Counsellor, Ministry of Foreign Affairs.

GABON*Observer*

Simon AUGÉ, Réalisateur de télévision.

GERMANY (FEDERAL REPUBLIC OF)*Head of Delegation from the beginning of the Conference to July 15*

Horst GROEPPER, Ambassador, Federal Ministry of Foreign Affairs.

Head of Delegation from July 16

Rupprecht von KELLER, Ambassador, Federal Ministry of Foreign Affairs.

Deputy Head of Delegation

Eugen ULMER, Professor, University of Munich, Director of the Max-Planck-Institut für ausländisches und internationales Patent-, Urheber- und Wettbewerbsrecht.

* This State has since changed its name; at the time of publication of these *Records* it is designated as "Sri Lanka".

** This State has since changed its name; at the time of publication of these *Records* it is designated as "Zaire".

GERMANY (FEDERAL REPUBLIC OF)*(continued)**Delegates*

Elisabeth STEUP (Mrs.), Ministerialrätin, Federal Ministry of Justice.
 Manfred GÜNTHER, Legationsrat I. Klasse, Federal Ministry of Foreign Affairs.
 Eberhard von PUTTKAMER, First Secretary, Federal Ministry of Foreign Affairs.
 Erhard BUNGEROTH, Staatsanwalt, Federal Ministry of Justice.
 Erich FELDWEG.

Secretary of Delegation

Elisabeth ELTER (Miss), Secretary, Federal Ministry of Foreign Affairs.

GREECE*Head of Delegation*

Georges D. PAPOULIAS, Permanent Delegate a.i. to Unesco.

HOLY SEE*Head of Delegation*

Edoardo ROVIDA, Permanent Observer to Unesco.

Delegates

Louis ROUSSEAU, Avocat au Conseil d'Etat et à la Cour de Cassation.
 Marie-Simone de CHALUS (Mrs.) Secretary, Office of the Permanent Observer to Unesco.

HUNGARY*Head of Delegation*

István TIMÁR, Director General, Hungarian Office for the Protection of Copyright.

Deputy Head of Delegation

Gyula JELENIK, Deputy Chief, Department of International Law, Ministry of Foreign Affairs.

Delegates

Andor JUHÁSZ, Chief of Section, Ministry of Culture.
 Aurél BENÁRD, Deputy Chief of Section, Ministry of Justice.
 János ZAKÁR, Legal Advisor, Hungarian Office for the Protection of Copyright.
 Gábor BÁNRÉVY, Deputy Chief of Section, Ministry of Foreign Trade.

INDIA*Head of Delegation*

Kanti CHAUDHURI, Joint Secretary to the Government of India, Ministry of Education and Social Welfare.

Delegates

Subramanya Iyer BALAKRISHNAN, Joint Secretary to the Government of India, Ministry of Home Affairs.
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* This State has since changed its name; at the time of publication of these *Records* it is designated as "Sri Lanka".

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CONFERENCE DOCUMENTS

DOCUMENTS OF THE MAIN («B/DC/») SERIES
(B/DC/1 to B/DC/39)

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2	WIPO	Draft Rules of Procedure, adopted by the Permanent Committee of the Berne Union (Geneva, September 1970)
3	WIPO	Report (Historical Outline of the Preparation for the Revision of the Berne Convention)
4	WIPO	Information document (Revision of the Berne Convention: Reports of the ad hoc Preparatory Committee and of the Permanent Committee of the Berne Union)
5	WIPO	Proposals for revising the Stockholm Act (prepared by the International Bureau on the basis of the draft adopted by the Permanent Committee of the Berne Union (document B/DC/4))
5/Corr.	WIPO	Corrigendum to Proposals for Revising the Stockholm Act (French version only)
6	WIPO	Information document. Comments of States on the Proposals for revising the Stockholm Act, as adopted by the Permanent Committee of the Berne Union (document B/DC/4)
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8	WIPO	Rules of Procedure, adopted by the Conference on July 5, 1971
9	United Kingdom	B/DC/5, Paris Act, Appendix, Art. II(7)(a)(i), (9)
10	Austria	B/DC/5, Paris Act, Art. 36(2)
11	United Kingdom	B/DC/5, Paris Act, Appendix, Art. III(7); Additional Act of Paris, Art. VI(7)
12	United Kingdom	B/DC/5, Paris Act, Art. 37(1)(a); Additional Act of Paris, Art. XIV(1)(a)
13	United Kingdom	B/DC/5, Paris Act, Arts. 29bis; 34(1); Additional Act of Paris, Arts. III; XII(1)(ii)
14	Credentials Committee	First Report
15	United Kingdom	B/DC/5, Paris Act, Appendix, Art. IV(2); Additional Act of Paris, Art. VII(2)
16	United Kingdom	B/DC/5, Paris Act, Appendix, Art. II(7), (8), (9)
17	Ceylon *	B/DC/5, Paris Act, Appendix, Art. II(4)

* *Editor's Note:* This State has since changed its name; at the time of publication of these *Records* it is designated as "Sri Lanka".

<i>No.</i>	<i>Submitted by</i>	<i>Subject</i>
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20	Argentina	B/DC/5, Paris Act, Appendix, Arts. I(5); II; Additional Act of Paris, Art. IV(5); V
21	Japan	B/DC/5, Paris Act, Appendix, Art. I(2); Additional Act of Paris, Art. IV(2)
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23	Cyprus	B/DC/5, Paris Act, Appendix, Art. II (new paragraph); Additional Act of Paris, Art. V (new paragraph)
24	Secretariat of the Conference	B/DC/5. Amendments to the Draft Text of the Paris Act, Preamble; Arts. 28(1)(c); 29(2)(b); 30(2)(b); 31(3)(a); 34; 36(2); 37(1)(b), (5); Appendix, Arts. I to V
25	Congo (Democratic Republic of the) *, Congo **, Ivory Coast, Niger, Senegal	B/DC/24, Paris Act, Appendix, Art. IV(<i>4bis</i> - new)
26	Brazil	B/DC/24, Paris Act, Appendix, Art. IV (new paragraph)
27	Secretariat of the Conference	Draft Paris Act, prepared according to the instructions of the Drafting Committee, with the Explanatory Notes of the Secretariat
27/Corr. 1	Secretariat of the Conference	Corrigendum to Document B/DC/27 (English version only)
28	Secretariat of the Conference	B/DC/24 and B/DC/27, Table of Correspondences
29	General Rapporteur	Draft General Report
30	Credentials Committee	Second Report
31	Germany (Federal Republic of)	B/DC/27. Paris Act, Appendix, Arts. II(4); III(4); IV(2)
32	Subcommittee of the Joint (Berne-UCC) Working Party	B/DC/29. Draft Text to insert in the Draft General Report
33	Working Group	B/DC/27. Paris Act, Appendix, Drafting Proposal Concerning Articles II(4); III(4); IV(1), (2)
34	Main Commission	Draft of the Paris Act
35	General Rapporteur	B/DC/29. Addendum to the Draft General Report
36	General Rapporteur	General Report. Text adopted
37	Secretariat of the Conference	Decision of the Plenary of the Conference, concerning the official texts of the Paris Act (Spanish version only)
38	Credentials Committee	B/DC/30. Corrigendum to the Second Report of the Credentials Committee
39	Secretariat of the Conference	Paris Act. Text adopted

* This State has since changed its name; at the time of publication of these *Records* it is designated as the "Zaire".

** People's Republic of the Congo.

TEXT OF DOCUMENTS

(B/DC/1 to B/DC/39)

B/DC/1 January 15, 1971 (Original: French)

WIPO

Provisional Agenda

1. Opening of the Conference.
2. Election of the President.
3. Adoption of the Rules of Procedure (document B/DC/2).
4. Adoption of the Agenda (this document).
5. Election of the Vice-Presidents and the General Rapporteur.
6. Election of the Credentials Committee.
7. Election of the Drafting Committee.
8. Examination by the Main Commission of the proposals for revision of the Stockholm Act of the Berne Convention (documents B/DC/3, 4 and 5).
9. Adoption by the Main Commission of the revised draft texts and of the general report.
10. Adoption by the Conference of the texts to be signed.
11. Signature of the texts adopted.
12. Closing of the Conference.

B/DC/2 January 15, 1971 (Original: French)

WIPO

Draft Rules of Procedure, adopted by the Permanent Committee of the Berne Union (Geneva, September 1970)

Editor's Note: *This document contained the text of the draft Rules of Procedure as adopted by the Permanent Committee of the Berne Union at its extraordinary session held in Geneva from September 14 to 18, 1970. It has not been reproduced. In the following, only the differences are indicated between the English text of the draft Rules of Procedure (document B/DC/2) and the Rules of Procedure as adopted by the Conference on July 5, 1971, published under number B/DC/8.*

1. *Foot-note concerning the title of document B/DC/2. The wording of this foot-note was, in the Draft, the following: This Draft was adopted by the Permanent Committee of the Berne Union at its extraordinary session held in Geneva from September 14 to 18, 1970. The words contained in square brackets in Rules 4 and 8 constitute alternatives submitted to the Conference by the Permanent Committee.*

2. *Rule 4(2). The word subsequently and the square brackets enclosing the words "before the last plenary meeting" were omitted in the adopted text.*

3. *Rule 5. The wording of this Rule was, in the Draft, the following: The Conference shall elect its President, Vice-Presidents and a General Rapporteur.*

4. *Rule 8. The wording of the last sentence of this Rule, deleted in the text adopted, was in the Draft the following: [The President and the General Rapporteur of the Conference shall act as Chairman and Rapporteur respectively of the Main Commission].*

5. *Rule 9. The wording of the first sentence of this Rule was, in the Draft, the following: The Bureau shall consist of the President, Vice-Presidents and General Rapporteur of the Conference and the Chairman of the Credentials Committee.*

6. *Rule 10. The wording of this Rule was, in the Draft, the following: The Drafting Committee shall consist of members elected by the Conference on the proposal of the President. The Committee shall elect its Chairman and Vice-Chairman; it is responsible for drawing up the final revised text of the Berne Convention and of the instruments annexed thereto in the two languages of the Convention.*

B/DC/3 January 15, 1971 (Original: French)

WIPO

Report by the Director General of WIPO (Historical outline of the preparations for the revision of the Berne Convention)

I. *The Stockholm Revision (1967)*

1. The "Stockholm Intellectual Property Conference (1967)" was held in the capital of Sweden from June 11 to July 14, 1967.

2. With regard to the Berne Convention, the agenda of the Conference included the revision of the substantive provisions (Articles 1 to 20) and the amendment of the administrative provisions and final clauses, the latter concurrently with the amendment of the administrative provisions and final clauses of the Paris Convention and its Special Agreements (on industrial property), and with the establishment of WIPO.

3. The previous revision of the Berne Convention had taken place in Brussels in 1948 and resulted in the Brussels Act. That of 1967 resulted in the Stockholm Act, which was signed in English and French and was published in "Copyright" (August 1967 issue).

4. The new, or revised, substantive provisions are contained in Articles 2, 2*bis*, 3, 4, 5, 6*bis*, 7, 9, 10, 10*bis*, 11*ter*, 13, 14, 14*bis* and 15 of the Stockholm Act, and in the Protocol Regarding Developing Countries, which forms an integral part of the Act itself. The administrative provisions are contained in Articles 22 to 26, and the final clauses in Articles 27 to 38.

5. Any country which is a member of the Berne Union may, if it has signed the Stockholm Act (39 countries signed within the prescribed period) ratify it, and, if it has not signed it, may accede to it. Instruments of ratification or accession are deposited with the Director General of WIPO. Any country may declare in its instrument that its ratification or accession shall not apply either to the substantive provisions (Articles 1 to 21 and the Protocol Regarding Developing Countries), or to the administrative provisions (Articles 22 to 26). In addition, any country of the Union may declare, before becoming bound by the substantive provisions, either that (by virtue of Article 5(1)(a) of the Protocol) it will apply its provisions to works of which the country of origin is one which accepts such application, if it is itself a developing country, or, if it is not, that (by virtue of Article 5(1)(b)) it will admit the application of the provisions of the Protocol to works of which it is the country of origin.

II. *Acceptance of the Stockholm Revision*

6. As of the date of this document, the Stockholm Act has been accepted as follows:

- (i) Senegal has ratified it in full; Pakistan has acceded to it in full (but without availing itself of the reservations under Article 1(a) of the Protocol); Romania has ratified it in full, with the reservations provided for in Article 7(7) (term of protection) and Article 33(2) (jurisdiction of the International Court of Justice). An instrument of accession to the Act in its entirety has been deposited by the German Democratic Republic.
- (ii) Bulgaria and Sweden have deposited declarations under Article 5(1)(b) of the Protocol; Pakistan and Senegal have deposited declarations under Article 5(1)(a) of the Protocol;
- (iii) the countries listed below have excluded Articles 1 to 21 and the Protocol from their ratification or accession: Canada, Denmark, Finland, Germany (Federal Republic of), Israel, Spain, Sweden, Switzerland, United Kingdom (9);
- (iv) the countries listed below have availed themselves of the possibility provided for in Article 38(2), whereby they may, until five years after the entry into force of the Convention establishing WIPO (that is, until April 26, 1975) exercise the rights provided under Articles 22 to 26 of the Stockholm Act (administrative provisions) and have deposited declarations to this effect: Belgium, Brazil, Bulgaria, Cameroon, Czechoslovakia, Dahomey, France, Gabon, Greece, Holy See, Hungary, Ireland, Italy, Ivory Coast, Japan, Luxembourg, Malta, Morocco, Netherlands, Niger, Norway, Portugal, South Africa, Tunisia, Turkey, Yugoslavia (26).

7. The required minimum number of ratifications has been reached only in respect of Articles 22 to 38 of the Stockholm Act (administrative provisions and final clauses): consequently those Articles entered into force early in 1970. The substantive provisions, on the other hand (Articles 1 to 21 and the Protocol Regarding Developing Countries), have not yet entered into force.

III. *Recommendation No. III of the Stockholm Conference*

8. At the end of its deliberations, the Stockholm Conference adopted several recommendations concerning copyright, among them the following:

"The countries members of the Berne Union for the Protection of Literary and Artistic Works,

In a Conference assembled at Stockholm from June 12 to July 14, 1967,

Recognizing the special economic and cultural needs of developing countries,

Desirous of enabling developing countries to have access to works protected by copyright for their educational requirements,

Having for this purpose adopted the Protocol Regarding Developing Countries,

Recommend the International Bureau to undertake in association with other governmental and non-governmental organizations a study of ways and means of creating financial machinery to ensure a fair and just return to authors."

9. In accordance with this Recommendation, a working group was convened in Geneva in March 1968, for the purpose of collecting data on the problems involved, examining the practical implications of the application of the provisions of the Protocol and endeavoring to evolve solutions in keeping with the Recommendation.

10. The general consensus of the working group was that the final adoption of any solution would be premature, since that solution would necessarily be contingent on the decisions of Governments regarding the application of the Protocol (ratification, accession, declaration of application). The considerations adopted by the working group were published in "Copyright" (April 1968 issue).

IV. *Formulation of Special Provisions for the Benefit of Developing Countries*

11. One of the objectives of the Stockholm revision was to provide, within the Berne Union, a special system of international copyright for certain countries regarded as "developing countries" in conformity with the established practice of the General Assembly of the United Nations. This objective was achieved at a juridical level by the establishment of provisions embodied in a Protocol forming an integral part of the Stockholm Act of the Berne Convention.

12. However, the revision of the Berne Convention was not the only step taken in the interests of developing countries. There were plans for other measures to bring about a revision of the Universal Copyright Convention in order to facilitate the accession of developing countries to that instrument.

13. When the Universal Copyright Convention was concluded, in 1952, it was indicated that the Convention would in no way affect the provisions of the Berne Convention or membership of the Union established by the latter (Article XVII of the Universal Copyright Convention). To this end a Declaration was appended to the Article in question as an integral part of the Convention; it provides for a sort of sanction (tantamount to absence of protection) imposed on countries which abandon the level of the Berne Convention and descend to that of the Universal Copyright Convention. This provision is generally known as the "Berne Convention safeguard clause."

14. Since the Universal Convention is administered by Unesco, the General Conference of that Organization asked, at its fourteenth session in 1966, that a study be undertaken by the competent bodies of the possibility of suspending, in the interests of developing countries, the application of the clause mentioned above (subparagraph (a) of the Appendix Declaration relating to Article XVII).

15. In accordance with the resolution adopted by the General Conference, the Director General of Unesco consulted the States party to the Universal Copyright Convention on the desirability of revising the Convention in the manner indicated above. It should be noted here that, by virtue of Article XII of the Universal Copyright Convention, the Intergovernmental Committee has the responsibility of convening revision conferences "whenever it deems necessary or at the request of at least ten contracting States."

16. In response to this consultation, a certain number of States expressed their views on the subject, and the Intergovernmental Committee met in extraordinary session in Paris in February 1969, when it was decided to convene a conference for the revision of Article XVII of the Universal Copyright Convention and the Appendix Declaration relating to that Article. To this end it set up a subcommittee to examine the problems raised by the suspension of the "safeguard clause" embodied in Article XVII and the Appendix Declaration.

17. This subcommittee met in Paris from June 23 to 27, 1969; previously, however, the Permanent Committee of the Berne Union had been convened in extraordinary session in Geneva on June 20 and 22, in particular to assist the Director of BIRPI in formulating the advice to be given to the subcommittee on the questions included in its terms of reference. The report of this extraordinary session was published in "Copyright" (August 1969 issue).

18. The Stockholm Protocol had attempted to satisfy the requirements of developing countries by specifying a certain number of cases in which they would have the right not to apply the minimum provisions of the Berne Convention. The fact that the Protocol has been accepted only by a very small number of States, and the likelihood that it will not be accepted by industrialized countries whose works are most used in developing countries, induced member States, desiring to maintain their mutual international copyright relations, to look for alternative solutions.

19. Moreover, the fact that the Universal Copyright Convention was undergoing revision, for the precise purpose of satisfying the needs of developing countries, made it appear necessary to undertake an overall examination of the position of those countries within the framework of international copyright relations.

20. At its ordinary session in Geneva in December 1967,—in other words only six months after the Stockholm Conference—the Permanent Committee of the Berne Union, meeting jointly with the Intergovernmental Committee set up by the Universal Copyright Convention, emphasized that necessity. Both Committees expressed the wish that a joint study group (that is, a study group common to the two Convention systems) be set up to undertake the examination in question. The resolution adopted to this effect was published in "Copyright" (February 1968 issue).

V. *The Washington Recommendation*

21. In Paris in February 1969, the same two Committees, assembled in extraordinary session, gave effect to this wish and established, by a joint resolution, a group "for the study of the entire situation of international relations in the field of copyright, to be called the International Copyright Joint Study Group." The text of this resolution was published in "Copyright" (March 1969 issue).

22. This body, composed of representatives of 26 States and some observers, was given a mandate to deal with the following subjects as a matter of priority:

- (a) the establishment of an international mechanism for permitting developing countries a greater degree of access to protected works while respecting the rights of authors;
- (b) the needs of developing and developed countries in the international copyright field, particularly that of education, the effect of the régime of international copyright relations on the satisfaction of these needs, as well as any improvements that could be made in this respect, taking into account the interests of authors with a view to encouraging the creation of intellectual works;
- (c) the problems arising from the existence of two copyright conventions of world-wide scope and possible methods of providing links between them.

23. The Joint Study Group met in Washington from September 29 to October 3, 1969. With regard to the revision of the Berne Convention and that of the Universal Copyright Convention, it adopted a recommendation, known as the "Washington Recommendation," the text of which is reproduced as an annex to this document.

VI. *The Preparation of a New Revision of the Berne Convention*

24. The Permanent Committee of the Berne Union, at the end of its ordinary session held in Paris in December 1969, adopted, after having noted the results of the Washington deliberations, a resolution establishing the "timetable" for the preparation of a new revision of the Berne Convention. The text of that resolution was published in "Copyright" (February 1970 issue).

25. In general, the Permanent Committee expressed the view that the "preparation for the revision of the Berne Convention should be made in accordance with the considerations stated in the Preamble to the Washington Recommendation and the specific recommendations contained therein." It also expressed the wish that, with regard to the revision of the Universal Copyright Convention, the Intergovernmental Committee take the same Recommendation into account. Finally it hoped that the Conference for the Revision of the Berne Convention would be held around May-June 1971, at the same place and time as the Conference for the Revision of the Universal Copyright Convention.

26. The Permanent Committee requested the Director of BIRPI, in preparation for the revision of the Berne Convention, to invite member States of the Berne Union and international non-governmental organizations to submit draft texts or comments to him by March 15, 1970.

27. In addition, the Permanent Committee set up an Ad Hoc Preparatory Committee, to prepare a draft version of the proposals for revision on the basis of these draft texts and comments and of documentation supplied by BIRPI.

28. The Ad Hoc Preparatory Committee met in Geneva from May 19 to 21, 1970. The final report on its deliberations was published in "Copyright" (August 1970 issue), and is also reproduced for information in document B/DC/4. Nevertheless it would seem useful to give some information here on the draft text of the proposals for revision as prepared by the Committee.

29. The Committee proposed that the special provisions for the benefit of developing countries be embodied in an Additional Act which would form an integral part of the Berne Convention. The Protocol annexed to the Stockholm Act would be replaced by this Additional Act in the new, revised Act. Consequently all references to the Protocol in the Stockholm Act would need to be replaced by references to the Additional Act.

30. The Additional Act would consist of five articles. The first would deal with the mechanism of reservations, the second with the conditions in which a system of non-exclusive and nontransferable licenses granted by the competent authority could be substituted for the exclusive right of translation, the third with the conditions in which such a system could be substituted for the exclusive right of reproduction, and the fourth with common provisions governing the grant of such licenses. The fifth Article (taken from Article 5 of the Stockholm Protocol) would make possible the anticipated application of the Additional Act, that is, its application prior to ratification of or accession to the new Act of the revised Berne Convention.

31. Some of the provisions were presented with alternatives among which a choice could be made later. The Preparatory Committee proposed that the reservations be permitted without the possibility of material reciprocity. In other words, the fact that reservations have been notified would not permit another country of the Union to give less protection to works of which the country of origin is the country availing itself of the reservations than is provided for in the substantive provisions of the Convention (Articles 1 to 20).

32. In addition, taking the Washington Recommendation into account, the Preparatory Committee proposed that the entry into force of the new, revised Act of the Berne Convention should not take place before the revised Universal Copyright Convention has been accepted by France, Spain, the United Kingdom and the United States of America, and has itself entered into force.

33. The Preparatory Committee further proposed that countries should no longer be allowed, after the entry into force of the new Act, to ratify or accede to previous Acts or to make declarations applying or admitting the application of the Stockholm Protocol.

34. The results of the work of the Preparatory Committee were communicated in early June 1970 by the Director of BIRPI to the member States of the Berne Union and to interested organizations; at the same time the Director invited them to submit their comments by August 1, 1970.

35. The Permanent Committee of the Berne Union met again in extraordinary session in Geneva from September 14 to 18, 1970. Its task was to examine the draft text of the proposals for revision prepared by the Ad Hoc Preparatory Committee, draft Rules of Procedure for the Revision Conference and any other matters relating to it.

36. The draft Rules of Procedure for the Revision Conference, as adopted by the Permanent Committee, appear in document B/DC/2. The final report on the Permanent Committee's deliberations, which was published in "Copyright" (October 1970 issue), is also reproduced for information in document B/DC/4.

37. In the resolution adopted by it at the above-mentioned extraordinary session, the Permanent Committee recommended that the Conference for the Revision of the Berne Convention be convened at the same place and time as the Conference for the Revision of the Universal Convention. Subject to certain conditions which have now been met, the place will be Paris at the premises of Unesco. The desired dates were June 21-July 10, 1971. However, since the French Government announced that there would be great difficulty, at the beginning of that period, in the accommodation of delegates, the two Revision Conferences were postponed to July 5 to 24, 1971.

38. In the resolution mentioned above, the Permanent Committee also made certain recommendations concerning invitations to the Revision Conference and the consultation of member States of the Berne Union and interested international non-governmental organizations on the revision proposals.

39. Finally, after having studied the texts prepared by the Ad Hoc Preparatory Committee, the Permanent Committee formulated proposals for the revision of the Berne Convention in 1971.

40. On the whole, these proposals are based on the system elaborated in May 1970 and summarized in paragraphs 29 to 33 of this document.

41. It should be noted, however, that there are no longer alternatives for certain points, since the Permanent Committee gave its approval to single texts for the draft Additional Act and for the amendments to be made to certain articles of the Stockholm Act.

42. There are, in addition, certain substantive differences in relation to the draft text of the Ad Hoc Preparatory Committee. They may be summarized as follows.

43. The draft Additional Act no longer contains provisions limiting its application to countries which are members of the Berne Union at the time of its entry into force or to countries becoming members within a specified period.

44. With regard to both the right of translation and the right of reproduction, the proposals submitted determine precisely the duration of the exclusive right; there exists almost complete parallelism between the license system provided for those two rights and that proposed for the revision of the Universal Convention for the benefit of developing countries.

45. For the translation right, it is proposed that developing countries have an irrevocable choice between the compulsory license system provided for in the Additional Act and the possibility of reservations under Article 30(2)(a) and (b) of the Convention (the "ten-year" system—Paris Act 1896), without the possibility of combining the two. In addition, when the latter system has been chosen, reciprocity may not

be applied to developing countries. If, however, a country ceases to be a developing country and wishes to make use or continues to make use of the "ten-year" system, reciprocity may then be applied to it.

46. For the reproduction right, it is proposed that the reservations permitted to developing countries on the conditions laid down by the Additional Act apply also to the reproduction of audio-visual works, but only to those of such works which are prepared and published for the sole purpose of being used in connection with systematic instructional activities.

47. The Permanent Committee also altered the draft text of the Ad Hoc Preparatory Committee on certain other points in order to take into account the proposals for the revision of the Universal Copyright Convention drawn up by the Intergovernmental Committee at its extraordinary session held in Paris from September 2 to 11, 1970, and to achieve similarity of the provisions on translation and reproduction rights which are to be incorporated in both Conventions for the benefit of developing countries.

VII. *Approval by the Bodies of the Berne Union*

48. Following the entry into force, in the course of 1970, of the Convention establishing WIPO and of the administrative provisions of the Stockholm Act of the Berne Convention (as well as other texts adopted at Stockholm), the new bodies of WIPO and of the Unions administered by WIPO and BIRPI held a series of meetings in Geneva, from September 21 to 28, 1970.

49. The tasks assigned to the Assembly of the Berne Union by the Stockholm Act include that of giving directions to the International Bureau concerning the preparation for revision conferences (Article 22(2)(a)(ii)).

50. However, in view of the possibility that certain member countries of the Berne Union may not be bound by the texts adopted at Stockholm, because they have not deposited instruments of ratification or accession, or may not have made use of the five-year privilege provided for in Article 38(2), which is at present the case, the Stockholm Act (in the provision mentioned above) provides that the directions are to be given by the Assembly, "due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26."

51. On a proposal by the Director of BIRPI, the countries in this category decided, at the meetings referred to above, to set up a Conference of Representatives which, like the Assembly of the Berne Union, held its first ordinary session on the dates mentioned above.

52. After having noted the state of preparatory work for the revision of the Berne Convention, these two bodies approved the triennial program (1971-1973) of the Berne Union, which includes the convening of the appropriate Revision Conference.

53. At the said session of the Berne Union Assembly, the Delegation of Japan drew attention to a difficulty which might arise in connection with the manner in which the Stockholm Act would be revised. It recalled that, pursuant to Article 14(2) of the Convention establishing WIPO, States party to the Berne Convention alone might only become parties to the Convention establishing WIPO by simultaneously becoming, or after having become, party to the Stockholm Act of the Berne Convention in its entirety, or at least to its administrative provisions and final clauses (Articles 22 to 38). It pointed out that, if new accessions to the Stockholm Act were no longer allowed after the entry into force of the 1971 revised text, countries which had not acceded to the said Act in the meantime would be deprived of any possibility of accession to WIPO.

54. It was agreed that this problem would be examined closely, and that proposed solutions would be submitted to the Diplomatic Conference in 1971.

55. On the basis of the foregoing, the Director General of WIPO has convened a Conference for the Revision of the Stockholm Act of the Berne Convention in Paris from July 5 to 24, 1971. Pursuant to Article 24(7)(a) of that Act, proposals for limited revision have been prepared by the International Bureau. These are presented in document B/DC/5.

Annex

WASHINGTON RECOMMENDATION

1. The International Copyright Joint Study Group,
2. Having met in its First Session in Washington from September 29 to October 3, 1969,
3. On the basis of an extensive and thorough exchange of views in the matter of "The Study of the Entire Situation of International Relations in the Field of Copyright" (see Resolutions of February 7, 1969),
4. Recalling that the Protocol Regarding Developing Countries included in the Stockholm Act of the Berne Convention has been accepted only by a small number of countries and that there are no indications from the major developed countries that they intend to accept the said Protocol,
5. Recalling once more the most urgent need of developing countries to find satisfactory solutions in the field of copyright in respect of their requirements for education, science and promotion of culture,
6. Recognizing the need for avoiding a situation in which countries long associated with the Berne Union could virtually be compelled to leave the said Union for the purpose of availing themselves of the concessions to be accorded to developing countries,
7. Recognizing also the fact that when any developing country party to the Berne Convention becomes a developed country it should have no difficulty in reviving its rights and obligations under the said Convention,
8. Recommends, as a matter of first priority, that the Universal Copyright Convention and the Berne Convention be simultaneously revised in revision conferences to be held at the same time and place so as to achieve the following:

I. In the Universal Copyright Convention:

- (1) Suspension of Article XVII and the Appendix Declaration for the benefit of developing countries;
- (2) Inclusion of author's basic rights of reproduction, of broadcasting, and of public performance;
- (3) Inclusion of rules permitting relaxation of those rights, as well as the right of translation, for the benefit of developing countries, without material reciprocity.

II. In the Berne Convention:

- (1) Revision of Article 21 of the Stockholm Act to separate the Protocol Regarding Developing Countries from that Act;
- (2) Provision under which the revision of Article 21 can become effective only upon ratification of the revised Universal Copyright Convention by France, Spain, the United Kingdom and the United States of America;
- (3) Provision to allow developing countries members of the Berne Union to apply in their relations with other countries members of that Union the revised text of the Universal Copyright Convention;
- (4) Suspension of the obligation of paying contributions to the Berne Union by developing countries having chosen Class VI or VII for the purposes of contributions.

* * *

B/DC/4

January 15, 1971 (Original: French)

WIPO

Information presented by the Director General of WIPO (Revision of the Berne Convention. Reports of the Ad Hoc Preparatory Committee and of the Permanent Committee of the Berne Union)

1. The Permanent Committee of the Berne Union, by a resolution adopted at its extraordinary session held in Geneva in September 1970, specifically requested the Director General of WIPO to send, with the invitations to the Revision Conference, the proposals for revision, the provisional Rules of Procedure of the Conference and all other documents which might be necessary.

2. Among these documents are:

- (i) the Report of the Ad Hoc Preparatory Committee which met in Geneva from May 19 to 21, 1970, the draft text prepared by the Committee as well as the working document presented by the Director of BIRPI and taken by the Committee as a basis for discussion;
- (ii) the Report of the Permanent Committee of the Berne Union which met in Geneva from September 14 to 18, 1970, the draft texts for the revision of the Berne Convention and the resolutions adopted by the Permanent Committee.

3. The texts of these documents follow.

Ad Hoc Preparatory Committee for the Revision of the Berne Convention

(Geneva, May 19 to 21, 1970)

Report

Introduction

1. The Ad Hoc Preparatory Committee for the revision of the Berne Convention, hereinafter referred to as the "Preparatory Committee", established by Resolution No. 1 adopted by the Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) at its fourteenth ordinary session in Paris from December 15 to 19, 1969, met in Geneva, at BIRPI Headquarters, from May 19 to 21, 1970.

2. The following eight States, members of the Preparatory Committee, were represented: France, Germany (Federal Republic of), India, Italy, Mexico, Tunisia, the United Kingdom and Yugoslavia.

3. The Chairman of the Permanent Committee of the Berne Union participated in the meeting; Kenya and the United States of America were represented by observers and representatives of the Director-General of Unesco also attended.

4. Representatives of eleven States members of the Berne Union or party to the Universal Copyright Convention, other than those listed in paragraphs 2 and 3, attended the meeting as non-participating observers, as well as two persons representing the authors' organizations, one person representing the publishers' organizations, one person representing the organizations of legal circles working for copyright protection and three persons representing the organizations of users of copyright works, who had been appointed at the information meeting convened by the Director of BIRPI on March 16, 1970, in implementation of Resolution No. 1, paragraph 7(b)(v) adopted by the Permanent Committee of the Berne Union.

5. The list of participants is appended to this report.

Opening of the Meeting

6. The meeting was opened by Professor G. H. C. Bodenhausen, Director of BIRPI, who addressed a cordial welcome to the participants.

Election of the Chairman

7. On a proposal by the Delegation of Mexico, supported by the Delegations of France, India, Tunisia, the United Kingdom and Yugoslavia, Professor Eugen Ulmer, Head of the Delegation of the Federal Republic of Germany, was elected unanimously Chairman of the Preparatory Committee.

Adoption of the Rules of Procedure

8. The Preparatory Committee adopted the draft Rules of Procedure contained in document DA/31/2.

9. On the suggestion of the Chairman, it was agreed that representatives of States and of international non-governmental organizations attending the meeting as non-participating observers should be able to make statements at the invitation of the Chairman.

Election of the Vice-Chairman

10. At the proposal of the Delegation of India, supported by the Delegations of France, the Federal Republic of Germany, the United Kingdom and Yugoslavia, the Preparatory Committee unanimously elected M. Arturo González Cosío, Head of the Delegation of Mexico, Vice-Chairman.

Adoption of the Agenda

11. The Preparatory Committee adopted its agenda as proposed in document DA/31/1.

Preparation of a Draft Text of the Proposals for Revision of the Berne Convention

12. The Secretariat presented the documentation prepared by BIRPI and gave detailed information on the procedure used to establish the working document DA/31/8 presented to the Preparatory Committee.

13. The Director of BIRPI added certain points for clarification and indicated that, in his view, paragraphs (3), (4) and (5) of Article B contained in the annex to document DA/31/8 might not need to be taken into consideration, in view of the fact that they did not appear to fit the general scheme of the provisions of the Berne Convention.

14. The Delegations of the Federal Republic of Germany, the United Kingdom, India, Yugoslavia, Mexico, France and Tunisia recommended that document DA/31/8 be considered as a basis for discussion, subject to amendments and clarifications which could be inserted during the course of the debates.

15. Several delegations, particularly those of France, the United Kingdom and Tunisia, expressed the view that the question as to whether the provisions relating to developing countries should be inserted into the text of the Convention itself or into an Additional Act could be dealt with only when the contents of these provisions had been established.

Article A, paragraph 1 (the system of reservations)

16. Mr. Saba, the representative of the Director-General of Unesco, drew the attention of the members of the Preparatory Committee to the fact that the concept of reservations could give rise to conflicting interpretations according to the principles of international law. Referring to the Vienna Convention on the Law of Treaties, adopted on May 23, 1969, he observed that the word "reservation" implied reciprocity and that, if it was desired to exclude this, a different word might be preferable.

17. The Delegation of Yugoslavia stated that the Vienna Convention could be invoked only in the absence of specific provisions on the question and suggested, together with the Delegation of India, that it be stipulated expressly in the draft text that reciprocity should not be permitted in relations with States making reservations, so that no ambiguity could arise.

18. The Preparatory Committee approved the suggestion made by the Delegations of India and of Yugoslavia, and after a discussion in which the Delegations of France, Tunisia, the United Kingdom and Mexico took part noted that with such an express stipulation it would be possible to use the words "reservation" and "réserve" in the English and French texts respectively, while in the Spanish text a different word (e.g. "excepción") might be preferable.

19. In the course of the discussion on Article A, dealing with the system of reservations open to developing countries, modifications in the drafting were made in paragraph 1 (deletion of the final sentence: "declare that it will" to "are contained in the said Articles"; replacement of the words: "declare that it will avail itself" by "may, by a notification deposited . . . declare, that it will avail itself of any or all . . .").

20. In the third line of paragraph 2 of the same Article, the words "with respect to the country concerned" were deleted.

21. In paragraph 3, the sentence beginning with the word "However" was altered to the following wording: "However, any copies of a work already made under the reservation provided for in Articles B and C may continue . . .".

22. The Preparatory Committee, noting a difference of terminology between the Berne Convention and the Universal Copyright Convention, approved the replacement of the words "contracting State" by the word "country".

23. When this Article was discussed, the Delegation of France raised the general problem, apart from questions of drafting, whether the relaxations proposed in favor of developing countries should or should not be made available only to developing countries already members of the Berne Union. It stressed that the absence of any limitation would amount to allowing developing countries to adhere at any time to the Berne Union without respect for its essential clauses. It expressed the view that certain limitations could well be established without the Berne Convention ceasing, for that reason, to be an open convention and it indicated, moreover, that nothing hindered the developing countries from adhering to it a present, if they wished to do so.

24. The Delegation of Kenya emphasized that developing countries not yet parties to the Berne Convention could not adhere to it before it was revised. As the earlier versions of the Convention provided for no relaxations in favor of developing countries and the Stockholm version had not been ratified by those developed countries whose artistic heritages are of chief interest to developing countries, the latter are compelled to await the future revision of the Berne Convention before being able to adhere thereto. If they adhered to it now, they would have to accept a régime of copyright protection going beyond their financial resources and amend their national legislation beforehand. It would be surprising if a developing country were to do this merely to become a member of the Berne Union and thus enjoy the advantages which will be offered to developing countries by the Berne Convention as revised in 1971, though fully aware that such advantages, to take practical effect, will require a further revision of national legislation.

25. The Delegation of the United Kingdom shared the point of view of the Delegation of France; it said that to some extent, however, the answer to the question whether developing countries which were not yet members of the Berne Union should be treated in the same way as the present members would depend on the extent of the reservations allowed in the Berne Convention for developing countries. It suggested therefore that the question should be left in abeyance for the moment.

26. The Delegations of Mexico, Tunisia, the Federal Republic of Germany, Yugoslavia, the United States of America and Kenya stated that they were in favor of a solution which would permit the application of the same system to developing countries members of the Berne Union as to those which might subsequently adhere. The Delegation of Kenya emphasized, moreover, that the four developing countries represented in this meeting could not enter into any commitments on behalf of all such countries, that there was no valid reason for closing the Berne Convention after its revision and that no menace to the interests of developed countries could result from future accessions in view of the rule of unanimity written into the Convention for the adoption of modifications.

27. The delegation of Senegal declared that the eighteen developing countries at present members of the Berne Union had adhered to it with full knowledge of the situation, that they did not see any reason to go back on this decision and that it would not be logical to continue waiting forever for the decision of those who have not as yet declared their intentions. It suggested, as a compromise solution, that a supplementary period of three or five years after the entry into force of the new Act should be allowed for those developing countries which until then had stayed outside the Berne Union.

28. The Delegation of India stated that it could not accept the idea of a "closed door" for certain developing countries and that it could not declare itself in favor of discriminations between developing countries on the one hand on the basis of national and world languages and on the other hand on a distinction between full members and half members.

29. The Delegation of France pointed out that the idea was not to close the possibilities of adherence, that the Berne Convention would remain an open convention and that the only question to be solved was whether concessions should be made to countries which had not yet adhered to the Convention. The proposal submitted by the Delegation of Senegal was acceptable, provided that the period was reasonable.

30. In order to take into account the opinions voiced during this debate, the Preparatory Committee decided to insert the suggestion made by Senegal in the form of an alternative, combined with that of the Delegation of France, so that the States should be given an opportunity to settle their positions on this point.

31. In relation to the period within which the non-Union developing countries could avail themselves of the intended relaxations, the delegations of France and Italy declared themselves in favor of a period of two years after the entry into force of the new Act of the Berne Convention. The Delegation of Tunisia and the observer of Senegal expressed the hope that the duration of that period would not give rise to differences of opinion and that a reasonable solution would be found.

32. The Delegation of Kenya, after discussion with the representatives of other developing countries, declared that the idea of a certain period to be accorded to developing countries, at present not members of the Union, to avail themselves of the new régime of reservations had not been considered in Washington, that it did not appear in the Washington Recommendation and that consequently the delegations of these countries had no instructions from their governments on either the principle itself or the duration of the period. The countries would make their position known at the meeting of the Permanent Committee of the Berne Union in September 1970.

Article B (reservations on the right of translation)

33. Drafting corrections were made in the text of this Article and particularly the repetitions of the words "non-exclusive and non-transferable" were deleted. The words "languages of that country" were substituted for "national languages of that country".

34. The Delegation of India stated that it was in favor of a general license applicable seven years after the first publication of the work, analogous to that provided for in Article V of the Universal Copyright Convention.

35. The Delegation of France declared that it agreed to exceptional licenses to be granted after one, three or five years for purposes of teaching, scholarship or research. On the other hand, it could not accept a term of seven years for a license the purpose of which was commercial and not educational, for which there was no place in the Berne Convention and which could pervert the spirit of that Convention. To insert into that Convention the basic provisions of the Universal Copyright Convention would lead to an amalgamation of the two Conventions, which was an idea to which France was opposed. It was for this reason that paragraphs 3, 4 and 5 of Article B should not be maintained.

36. The Delegation of Kenya, recalling the Washington Recommendation, emphasized that the exceptions in favor of developing countries should be expressed in such a way that the level of protection should be the same in both Conventions. It recalled the conditions under which a compromise had been reached at the Ad Hoc Preparatory Committee for the revision of the Universal Copyright Convention, and declared that the deletion of paragraphs (3), (4) and (5) would create a new situation.

37. Moreover, the Delegation of Kenya observed that there was no incompatibility between the reservation of ten years (Article 30(2) of the Stockholm Act) and the proposed system as the new countries adhering to the Berne Union could make their choice between the two solutions. It repeated that, if the Washington Recommendation were to materialize, it would be necessary to maintain the principle of paragraphs (3), (4) and (5), since the Berne Convention would otherwise contain conditions less favorable to developing countries than the Universal Copyright Convention. Finally, it stated that the developing countries, while giving preference to Alternative A, reserved for themselves the possibility of presenting a fourth alternative to the Permanent Committee in September.

38. The Delegation of the United Kingdom concurred in the views expressed by the Delegation of Kenya as far as the choice between the two systems of reservations was concerned, while stressing that the reservation provided for in Article 30(2) of the Stockholm Act could be made use of only by countries which had made the reservation at the moment of adhering to earlier Acts or by newly adhering countries. It suggested, however, as a possible compromise solution that the choice be made available to all developing countries, including existing members of the Union, so that any such country would be able to avail itself either of the general reservation provided for in Article 30(2) or of the system of compulsory licenses for specific purposes contained in Alternatives A, B, or C in document DA/31/8. It wished to know which provisions were really needed by developing countries as far as the languages, the terms and possibility of exportation were concerned.

39. The Delegation of Mexico declared its opposition to the possibility of exportation of works translated under the license system.

40. The Delegation of France expressed its interest in the solution advocated by the delegation of the United Kingdom consisting of a possible choice between the reservation provided for in Article 30(2) and the proposed new system. It wondered, however, whether the educational aim of the Washington Recommendation, namely to accord to developing countries facilities in the field of education, would not be exceeded by the provisions proposed in paragraphs (3), (4) and (5) of Article B.

41. The Chairman of the Preparatory Committee then drew up a short list of outstanding problems, namely: the difficulties which could arise if the licensing systems under the Universal Copyright Convention and under the Berne Convention were not identical, the method of inserting the

system into the Berne Convention, the possible choice between the reservation of ten years and the new system, the different treatment of translation licenses in relation to so-called "world" languages and national languages, the problem of exportation in these different cases, the purposes of the licenses before and after the term of seven years computed from the date of first publication of the original work. The Preparatory Committee decided to return to consideration of these points at a later stage.

Article C (reservation in respect of the right of reproduction)

42. The Preparatory Committee decided to maintain the text as proposed, based on the solution adopted by the Ad Hoc Preparatory Committee for the revision of the Universal Copyright Convention.

43. It was understood that this report would reflect the same positions as those adopted during the previous week in Paris, with regard to exceptions to the right of reproduction to be inserted into the Universal Copyright Convention, namely:

- (i) the developing countries declared themselves to be ready to accept the deletion of the right to export on condition that the term provided for and to be computed after the first publication of a given literary and artistic work should not exceed three years;
- (ii) the Delegation of the United Kingdom felt that the term provided for should be seven years and that there should be no right to export;
- (iii) the Delegation of France considered that the term of three years was too short, but that, on the other hand, the term of seven years proposed by the delegation of the United Kingdom could be slightly reduced.

44. After an adjournment of the meeting, the Delegation of Kenya reaffirmed that the developing countries agreed that reproductions produced under the régime of licenses should not be exported, on condition that the term did not exceed three years.

Article D (provisions common to both reservations)

45. The Preparatory Committee felt it was advisable to maintain, in paragraph 2, the reference to the diplomatic or consular services of the country of which the owner of the original right is a national, as an additional guarantee.

46. After a discussion in which the Delegations of France, the United Kingdom, Kenya and the United States of America participated, it was decided that the license should be permitted if copies of the original edition had not been on sale for at least six months at a price corresponding to that which is normally charged in the country concerned for works of the same kind.

Relationship between the present version of the Berne Convention and the new Act under consideration

47. The Preparatory Committee noted that a certain analogy existed between the provisions of Article IX as proposed for the revision of the Universal Copyright Convention and Article 32 of the Stockholm Act of the Berne Convention.

48. The Delegation of the United Kingdom however emphasized that the differences between the systems of the Universal Copyright Convention and the Berne Convention could render difficult a simple transposition from the former into the latter. At the same time, anxious to open the way for the proposed relaxations in favor of developing countries in the shortest possible time, the Delegation of the United Kingdom suggested the adoption of a provision analogous to that of Article 5 of the Stockholm Protocol.

Renewal of deliberations on the reservations to the right of translation

49. The Preparatory Committee returned to the problem of the application of the reservation of ten years to the right of translation according to Article 30(2)(a) and (b) of the Stockholm Act and of the reservations provided for in Article B of document DA/31/8.

50. The Delegation of France declared its opposition to the introduction of a translation license after seven years, as provided for in the Universal Copyright Convention, and it felt that the transposition of this provision into the Berne Convention was not helpful. Emphasizing that the Preparatory Committee was charged with the drafting of a range of possible solutions, it suggested that these should be presented in the form of alternatives. It reserved, however, the final decision of France until the competent authorities had made their decision following consultation with the interested professional circles.

51. The Delegation of Kenya declared that the developing countries would accept a compromise solution in respect of licenses granted after the expiry of seven years from the date of first publication of the work, to the effect that the export of copies of the work translated into a "world" language should not be permitted, provided that the purposes for which the license could be granted should not be limited to education, scholarship and research. The compromise solution proposed by the Delegation of the United Kingdom, to the effect that all developing countries, including existing members of the Union, should have the choice between the general reservation provided for in Article 30(2) and a limited system of compulsory licenses, offered no real advantage to the developing countries, who were more concerned with the question of quick access to works than with that of reduction of royalties; however, so far as new members of the Union were concerned, developing countries considered that they should be able to avail themselves either of the provisions of Article 30(2) or of the compulsory licensing system, but not of both.

52. The Director of BIRPI suggested stipulating explicitly that after seven years translation licenses may be granted for any purpose into the national language of a developing country, but that export will not be permitted if the said language is a so-called "world" language also.

53. The Chairman of the Preparatory Committee suggested that these were questions of drafting and that a small committee could cope with them.

Term of protection

54. Speaking on behalf of the developing countries represented at the Preparatory Committee, the Delegation of Kenya declared that the provisions of the Stockholm Protocol relating to the possibility of shortening the term of protection could be abandoned at the revision of the Berne Convention.

55. The Chairman of the Preparatory Committee indicated his appreciation of this contribution to the spirit of international cooperation and the Delegation of France associated itself with his words.

Additional Act to the Convention

56. After having considered different solutions, the Preparatory Committee decided to propose that the provisions containing the relaxations for developing countries should be included in an Additional Act, forming an integral part of the Convention itself. In consequence, the provisions of Article 32(3) should be maintained. Moreover, reference to the Protocol should be replaced in all Articles concerned by a reference to the Additional Act.

57. In reply to a request for clarification made by the Delegation of Kenya, the Delegation of the United Kingdom stated that, in its view, no legislation would be required in order to permit the United Kingdom to admit the application of the Additional Act in relation to its works. Legislation would however be required in order to allow the United Kingdom to ratify Articles 1 to 20 of the Convention itself. The Preparatory Committee decided that a provision similar to Article 5 of the Stockholm Protocol should be inserted into the Additional Act.

58. Mr. Saba, representative of the Director-General of Unesco, recalling the difference between the acceptance of reservations and the procedure of ratification of the text of a convention, stated that the proposed solution appeared to him to be in conformity with international law.

Contributions of developing countries to the Berne Union

59. The Delegation of the United Kingdom stated that it did not appear to be equitable that countries exempted from contributions should nevertheless have an influence on the adoption of the general budget; it felt, however, that this was not a problem of paramount importance.

60. The Delegation of France pointed out that a total exemption of developing countries was contrary to the practices of international organizations in similar cases. A token contribution, of e.g. about 0.04% of the total budget (the minimum contribution to the United Nations), might be considered so that no precedent should be created.

61. The Delegation of Kenya recalled that this provision had been inserted into the Washington Recommendation without any initiative on the part of developing countries and that they did not insist on this point.

62. The Director of BIRPI pointed out that some of the developing countries were in arrears with their payments, minimal as they might be, and that it would be desirable not to take a final decision before the opinion of a greater number of countries was known.

63. The Preparatory Committee felt it would be appropriate to study the question as to what extent special contributions with reduced financial obligations could be maintained for the benefit of developing countries.

Final clauses

64. The Preparatory Committee decided to replace in the final clauses of the Stockholm Act references to the Protocol by references to the Additional Act. In another connection, on a proposition by the Delegation of the United Kingdom, the Preparatory Committee suggested that a provision should be included in the Additional Act referring to the reservation to the right of translation, to the effect that a country making a declaration according to Article 30(2) could not make a reservation pursuant to the Additional Act.

65. Consideration of a new text of Article 34, to prevent accessions to the Stockholm Act or to earlier Acts after entry into force of the revision Act, was entrusted to the Drafting Committee.

Miscellaneous questions

66. An observer of the organizations representing the users of works protected by copyright drew the attention of the Preparatory Committee to the urgent problem of piracy in the field of sound recording and suggested that measures should be considered to prohibit the production and imports of infringing copies.

67. The Chairman of the Preparatory Committee pointed out that neither the Berne Convention, nor the Universal Copyright Convention appeared to be the appropriate instrument to deal with this problem. He suggested, however, the possibility of preparing a special agreement, and stated that this question could in any case become the subject of further deliberations at the September meetings.

Drafting Committee

68. On a motion of the Chairman of the Preparatory Committee a Drafting Committee composed of the representatives of the Delegations of France, the United Kingdom, Mexico and Kenya was entrusted with the drafting of the texts for the revision of the Berne Convention. The Delegation of Kenya, attending the meeting of the Preparatory Committee as an observer, also attended the meeting of the Drafting Committee in this capacity.

69. The result of the deliberations of the Drafting Committee, of which Mr. William Wallace, Head of the Delegation of the United Kingdom, acted as Chairman, was presented to the Preparatory Committee as document DA/31/9.

Closing of the Session

70. After having carried out an examination, paragraph by paragraph, and after having heard the explanations given either by the Chairman of the Drafting Committee, by the Chairman of the Preparatory Committee or by the Secretariat, the Preparatory Committee unanimously approved the text of the proposals, including alternative proposals, submitted by the Drafting Committee. The Preparatory Committee expressed the view that the proposed text of Article 1(1)(c) included the sense that a developing country which had withdrawn a declaration made in accordance with Article 30(2)(b) would be free to avail itself of the reservations provided for in Article 2 of the Additional Act.

71. It was agreed that a draft report of the meeting be prepared by the Secretary of the Preparatory Committee and circulated by him to all participants for possible comments, corrections or additions relating to their interventions in the discussion.

72. The Delegation of India, speaking on behalf of all the participants, addressed sincere thanks to the Chairman of the Preparatory Committee, Professor Ulmer, for the competence and skill with which he had conducted the debates and to BIRPI for the preparatory documentation which they had established. The Delegation of the United Kingdom, associating itself with the declaration of the Delegation of India, emphasized the cooperation and the constructive spirit of the developing countries which had been shown throughout the proceedings of the Committee.

73. The Chairman thanked the participants for the goodwill they had displayed during the deliberations and the Secretary of the Preparatory Committee for the work he had accomplished, which had permitted the successful termination of its task. He declared the session closed.

Establishment of the Report

74. In accordance with the decision recorded in paragraph 71, the Secretary of the Preparatory Committee circulated a draft report of the meeting to all participants on June 4, 1970, with a request that comments, corrections or additions be received by June 30, 1970. This report was established taking into account all suggestions received.

Draft Text adopted by the Committee *

I. Modifications to the Text of the Stockholm Act

1. In the Articles mentioned below, any reference to "Protocol Regarding Developing Countries" should be replaced by a reference to "Additional Act".

- Article 21(1) and (2),
- Article 27(3),
- Article 28(1)(b)(i),
- Article 28(1)(c),
- Article 28(2)(a), (c) and (d),
- Article 30(1),
- Article 32(3).

* *Editor's Note:* Document DA/31/9 of May 20, 1970.

2. In Article 22, the following words should be added at the end of both paragraph (1)(a) and paragraph (2)(a)(ii): "[of this Act or of the Stockholm Act]".

3. In Article 28(2)(a), the following words should be added:

"but not before the Universal Copyright Convention as revised at on has been ratified, accepted or acceded to by France, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America and has entered into force".

4. In Article 29(2)(a)(i), the words "including the Additional Act" should be added after the words "Articles 1 to 21". The words "Brussels Act" should be enclosed in square brackets and followed by "[Stockholm Act]".

In Article 29(2)(a)(ii), the words "Articles 21 to 24 of the Brussels Act" should be replaced by the words "Articles 22 to 26 of the Stockholm Act".

5. Article 34 should be drafted as follows:

"After the entry into force of Articles 1 to 21 of this Act including the Additional Act, no ratification of earlier Acts of this Convention or accession thereto will be permissible. In addition, it will not be permissible, after the said date, for a country of the Union which is not bound by Articles 1 to 21 of the Stockholm Act and which has not made a declaration under Article 5(1)(a) or (b) of the Protocol Regarding Developing Countries, to make such a declaration."

II. Draft Text of an Additional Act to the Act of of 1971

Article 1

(1)(a) Any country [of the Union at the date of the entry into force of this Act] regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Additional Act forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act may, by a notification deposited with the Director General at the time of making the said ratification or accession or thereafter, declare that it will avail itself of any or all of the reservations provided for in this Additional Act.

[(b) Any country outside the Union at the date of the entry into force of this Act and fulfilling the conditions provided by paragraph (a) above may also, if it becomes a member of the Union before the expiration of the period of . . . years from the said date, make such a declaration.]

[(c) However, any country which makes or has made a declaration according to Article 30(2)(b) may not avail itself of the reservations provided by Article 2 of this Additional Act.

(2) Any reservation so notified shall be effective for a period of ten years from the date of the entry into force of this Act, or for such part of that period as remains at the date of deposit of the notification, and may be renewed in whole or in part for further periods of ten years each if, during the year preceding the expiration of the relevant ten-year period, the country concerned deposits a further notification with the Director General. Initial notifications may also be made during these further periods of ten years in accordance with the provisions of this paragraph.

(3) Notwithstanding the provisions of paragraph (2) of this Article, a country of the Union which, in conformity with the established practice of the General Assembly of the United Nations, has ceased to be regarded as a developing country shall no longer be entitled to renew the period during which it can avail itself of the reservations referred to in paragraph (1) and, whether or not it formally withdraws them, such State

shall be precluded from availing itself of the said reservations at the end of the current ten-year period, or at the end of three years after it has ceased to be a developing country, whichever period expires later.

(4) Any copies of a work already made under the reservations provided for in this Additional Act may continue to be distributed after the expiration of the period for which notifications under this Article are effective.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1) of this Article, may also deposit notifications of reservations or of renewals thereof with respect to any such territory. During the effective period of such notifications, the provisions of Articles 2, 3 and 4 of this Additional Act shall be applicable to such territory.

(6) The fact that a reservation provided for in this Additional Act has been notified does not permit another country of the Union to give less protection to works of which the country of origin is the country availing itself of the reservation, than is provided for in Articles 1 to 20 of this Act.

Article 2

Any country of the Union to which Article 1 of this Additional Act applies may, so far as printed editions are concerned, substitute for the exclusive right of translation provided for in Article 8 of this Convention a system of non-exclusive and non-transferable licenses, granted by the competent authority, under the following conditions:

[Alternative A]

(1) If, after the expiration of one year from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the country referred to above, a translation of such work has not been published in the language or, as the case may be, in one of the languages of that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to translate the work and publish the work so translated in the said language.

(2) However, in the case of a translation into a language which is of general use in one or more developed countries,

- (a) a period of three years shall be substituted for the period provided for in paragraph (1) above;
- (b) the license shall be granted only for the purpose of teaching, scholarship or research.

[Alternative B]

(1) If, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the country referred to above, a translation of such work has not been published in the language or, as the case may be, in one of the languages of that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to translate the work and publish the work so translated in the said language.

(2) However, in the case of a translation into a language which is of general use in one or more developed countries, the license shall be granted only for the purpose of teaching, scholarship or research.

[Alternative C]

(1) If, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of

the country referred to above, a translation of such work has not been published in the language or, as the case may be, in one of the languages of that country by the owner of the right of translation or with his authorization, any national of such country may obtain a license to translate the work and publish the work so translated in the said language.

- (2) However,
- (a) if the license is requested for the purpose of teaching, scholarship or research, the period of three years provided above shall be reduced to one year;
- (b) in the case of a translation into a language which is of general use in one or more developed countries
- (i) the said period shall be of five years;
 - (ii) the license shall be granted only for the purpose of teaching, scholarship or research.

[Provisions common to the three alternatives]

[(3)] Any license shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for, and no copies of the work so translated and published shall be exported. However, in the case of a translation into a language which is not of general use in one or more developed countries, copies so published may be imported and sold in another developing country member of the Union if the language or, as the case may be, one of the languages of such other country is the same language as that into which the work has been so translated, and if the national law in such other country makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a developing country member of the Union shall be governed by its national law and the provisions of this Convention.

[(4) After the expiry of seven years from the date of the first publication of the said work in the case of a translation into a language which is of general use in one or more developed countries, a license may be granted which is not limited to the purpose of teaching, scholarship or research.]

Article 3

Any country of the Union to which Article 1 of this Additional Act applies may, so far as printed editions are concerned, substitute for the exclusive right of reproduction provided by Article 9 of this Convention a system of non-exclusive and non-transferable licenses granted by the competent authority under the following conditions:

(1) If, after the expiration of [three to seven] years from the date of first publication of a particular edition of a literary or artistic work, or any longer period determined by national legislation of the country referred to above, copies of such edition have not been generally distributed to the public in that country at a price corresponding to that normally charged in the country for comparable works, by the owner of the right of reproduction or with his authorization, any national of such State may obtain a license to publish such edition at that or a lower price for use in connection with systematic instructional activities.

(2) [Subject to the provisions of paragraph (3) of this Article,] the license shall not extend to the export of copies and shall be valid only for publication in the territory of the country of the Union where it has been applied for.

[(3) Any two or more countries of the Union having close cultural relations may, by notifications submitted to the Director General by each of them, declare that they are to be regarded as a single country for purposes of this Article. A license may be granted by the competent authority in one such country on behalf of all countries in the group, provided

that all of the conditions provided by this Article are met by each such country.]

[(4)] Any license granted under this Article shall terminate should the owner of the right cause to be published, in the country where the license has been granted, an edition in the same language, at a comparable price and with substantially the same content as the edition published under the license; however, copies already made before the termination of the license may continue to be distributed until they are out of print.

Article 4

(1) Any license granted under Articles 2 or 3 of this Additional Act may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the proprietor of the right to make and publish the translation or to reproduce the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right.

(2) If the owner of the right cannot be found, the applicant for a license shall send, by airmail, copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization, or to any national or international clearing-house, which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country of which the publisher is believed to be a national. The license shall not be granted before the expiration of a period of three months from the date of dispatch of the copies of the application.

(3) The name of the author and the original title of the work or of the particular edition of the work shall be printed on all copies of the published translation or reproduction.

(4) Due provision shall be made by national legislation

(a) to assure to the owner of the right of translation or of reproduction, as the case may be, just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned;

(b) to assure the payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent;

(c) to assure a correct translation of the work or an accurate reproduction of the particular edition, as the case may be.

(5) All copies published in accordance with a license granted under Article 3 above, and, in the case of a translation into a language which is of general use in one or more developed countries, all copies of the work translated and published in accordance with a license granted under Article 2 above, shall, from the time of first publication, bear notices in the appropriate language stating that the copies are available for distribution only in the country[ies] or territory[ies] to which the said license applies.

(6) Licenses may also be granted in accordance with the conditions of Article 2 above if, in respect of a translation already published in the language concerned, the editions are out of print. Licenses may also be granted in accordance with the conditions of Article 3 above if for a period of six months copies of the edition in question have not been on sale at a price corresponding to that normally charged in the country for comparable works.

(7) A license shall not be granted when the author has withdrawn from circulation all copies of the work.

Article 5

(1) Any country of the Union may declare as from the signature of this Act, and at any time before becoming bound by Articles 1 to 21 of this Act and by this Additional Act,

- (a) in the case of a country referred to in Article 1 of this Additional Act, that it intends to apply any or all of provisions of the latter to works whose country of origin is a country of the Union which admits the application of the reservations provided by this Additional Act, or
- (b) that it admits the application of the reservations provided by this Additional Act to works of which it is the country of origin by countries which, upon becoming bound by Articles 1 to 21 of this Act and by this Additional Act, have notified reservations permitted under the latter, or have made a declaration of application of any or all provisions of this Additional Act.

(2) The declaration shall be made in writing and shall be deposited with the Director General. The declaration shall become effective from the date on which it is deposited.

**Working document submitted
by the Director of BIRPI ***

Introduction

1. In order to assist the deliberations of the Committee within the short time which has been allotted for the fulfilment of its task, the Director of BIRPI submits in this document a draft of provisions concerning the developing countries which could be inserted in the Berne Convention.

2. This draft has been established on the basis of the Stockholm (1967) Act of the Berne Convention, and takes into account on certain points the results of the work of the Ad Hoc Preparatory Committee to prepare a Draft Text of the Proposals for Revision of the Universal Copyright Convention, which met at Paris from May 11 to 16, 1970.

3. The draft is submitted to the Committee as a basis for discussion. The provisions in question are presented in the form of articles listed alphabetically, in order not to prejudice the manner in which their insertion into the Berne Convention may be effected. On this point this document contains certain remarks of a formal nature at the end.

4. At its fourteenth ordinary session held at Paris from December 15 to 19, 1969, the Permanent Committee of the Berne Union expressed the view "that the preparation for the revision of the Berne Convention should be made in accordance with the considerations stated in the Preamble to the Washington Recommendation and the specific recommendations contained therein" (Resolution No. 1). The text of this Resolution and that of the Washington Recommendation are reproduced, for convenience, in Document DA/31/5.

5. The positions of the various delegations on the results of the work of the International Copyright Joint Study Group and on the said Recommendation are mentioned in the report adopted by the Permanent Committee of the Berne Union at the conclusion of its deliberations. This report (Document CP/XIV/17) was sent to all States members of the Berne Union and published also in the BIRPI periodicals *Le Droit d'Auteur and Copyright* (February 1970 issue) and *La Propiedad Intelectual* (No. 1 of 1970).

Revision of Article 21 of the Stockholm Act

6. So far as the Berne Convention is concerned, the first point made in the Washington Recommendation was that there should be a "revision of Article 21 of the Stockholm Act to separate the Protocol Regarding Developing Countries from that Act".

7. Two methods appear to be possible to give effect to point (1) of the Washington Recommendation:

- (i) either, simply to delete Article 21; in this case, the new Act of the Berne Convention would include under the heading "Article 21" simply the word "deleted";
- (ii) or, to write a new Article 21 containing a general formula indicating that the Berne Convention contains particular provisions regarding developing countries and pointing out where these provisions are to be found. This is the method used in the Stockholm Act. Some suggestions on this subject are made in paragraph 25 of this document.

Conditional entry into force of the new Act

8. The second point made in the Washington Recommendation was that there should be a "provision under which the revision of Article 21 can become effective only upon ratification of the revised Universal Copyright Convention by France, Spain, the United Kingdom and the United States of America".

9. The necessary provision would appear in the so-called final clauses of the Berne Convention, more particularly in Article 28(2)(a). It is suggested that this Article would be redrafted as follows:

"Article 28(2)(a). Articles 1 to 21 of this Act shall enter into force, with respect to the first five countries of the Union which have deposited instruments of ratification or accession, three months after the deposit of the fifth such instrument of ratification or accession. However, this entry into force shall not take effect until the date on which the Universal Copyright Convention of September 6, 1952, as revised at on, shall have been ratified by France, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America."

This wording is based upon the concept contained in paragraph (1) of Protocol 3 annexed to the Universal Copyright Convention.

Effects of the deletion of the Stockholm Protocol on the final clauses

10. While consideration is being given to the final clauses of the Berne Convention, it appears to be useful to indicate at this stage what modifications would be needed as a consequence of the revision of Article 21 of the Stockholm Act and of the separation from that Act of the Protocol Regarding Developing Countries.

11. These modifications are purely of a drafting nature; they consist of the deletion of all references to the Protocol. The substantive clauses (Articles 1 to 20) make no mention of the Protocol and therefore require no modification.

12. The following suggestions, therefore, are made in relation to Articles 22 to 38 of the Stockholm Act:

- Articles 22, 23 and 24: no change;
- Article 25: (see paragraph 20 of this document);
- Article 26: no change;
- Article 27(1) and (2): no change;
- Article 27(3): delete the words "including the Protocol Regarding Developing Countries";
- Article 28(1)(b)(i): delete the words "and to the Protocol Regarding Developing Countries";
- Article 28(1)(c): delete;
- Article 28(1)(d): renumber as 28(1)(c); delete the reference to sub-paragraph (c); correct "sub-paragraphs" to "sub-paragraph";
- Article 28(2)(a): new draft (see paragraph 9 above);
- Article 28(2)(b): no change;
- Article 28(2)(c): delete the words "and the Protocol Regarding Developing Countries" and change the reference to "paragraph (1)(d)" to "sub-paragraph (1)(c)";
- Article 28(2)(d): delete;

* *Editor's Note:* Document DA/31/8 of May 19, 1970.

- Article 29: no change, except the inclusion of a reference in paragraph (2)(a)(i) to the provisions concerning developing countries;
- Article 30: delete the words “and in the Protocol Regarding Developing Countries”;
- Article 31: no change;
- Article 32: delete paragraph (3);
- Article 33: no change.

13. Article 34 of the Stockholm Act deals with the closing of earlier Acts. Given that the Protocol Regarding Developing Countries, which forms an integral part of the Stockholm Act, provides for the possibility of depositing declarations relating to the application of the Protocol, it appears to be necessary to take account of this fact in relation to the closing of the Stockholm Act after the entry into force of the new Act.

It is therefore suggested that Article 34 be redrafted as follows:

“After the entry into force of Articles 1 to 21 [and of the provisions regarding developing countries] of this Act, no ratification of the Stockholm Act of this Convention or accession to the said Stockholm Act will be permissible. In addition, it will not be permissible, after the date of this entry into force, for a country of the Union which has signed the Stockholm Act but which is not bound by Articles 1 to 21 of that Act and which has not made a declaration as provided by Article 5(1)(a) or (b) of the Protocol Regarding Developing Countries, to make such a declaration.”

14. It is suggested that Articles 35, 36, 37 and 38 remain unchanged, except for modifications of Article 37 appropriate at the time of revision in respect of references to the Government of Sweden and to the conditions for signature of the Stockholm Act.

Inclusion in the Berne Convention of special arrangements in favor of developing countries

15. The Washington Recommendation provides in point II(3) for the inclusion in the Berne Convention of a “provision to allow developing countries members of the Berne Union to apply in their relations with other countries members of that Union the revised text of the Universal Copyright Convention”.

16. One method of putting this recommendation into effect would be to abandon the system of the Stockholm Protocol and, instead of establishing the permitted reservations in detail, simply to refer in the new Act of the Berne Convention to the relevant provisions of the revised Universal Copyright Convention. In this case, references to the numbering of certain articles of the revised Universal Copyright Convention would be sufficient. These would be completed by provisions based on Articles 2, 3, 4 and 6 of the Stockholm Protocol.

17. Another method would consist of preparing a complete draft of special provisions in favor of developing countries within the framework of the Berne Convention, without making any reference to the Universal Copyright Convention. As was indicated in the introduction to this document, the Director of BIRPI is submitting a draft to the Committee; this draft is contained in the annex to this document.

18. It should be noted that, by reason of the fact that this draft has been established taking into account discussions which took place in Paris from May 11 to 16, 1970, for the revision of the Universal Copyright Convention, and that these discussions were concerned essentially (apart from questions relating to the Universal Copyright Convention alone) with reservations in relation to the rights of translation and of reproduction, this draft deals only with these questions, as well as with the reservations system itself. Consequently, it contains no suggestions on other questions, such as for example that of the term of protection, which were regulated in the Stockholm Protocol.

Financial contributions of the developing countries

19. The fourth point contained in the Washington Recommendation provided for the “suspension of the obligation of paying contributions to the Berne Union by developing countries having chosen Class VI or VII for the purposes of contributions”.

20. Financial questions relating to the Berne Union are dealt with in Article 25 of the Stockholm Act. It is therefore in this Article that a new provision relating to suspension of contributions would have to be inserted. The following subparagraph (c) to paragraph (4) is suggested:

“Any country of the Union regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, which has chosen, for the purpose of contributions, to belong to Class VI or Class VII and which has ratified this Act or has acceded to it, may announce to the Assembly at one of its ordinary sessions that it wishes to suspend payment of its contributions until further notice or until it ceases, in conformity with the above-mentioned practice, to be considered as a developing country.”

Form and placing of the reservations concerning developing countries

21. Independently of the modification of the administrative and final clauses of the Berne Convention, the question arises of deciding in what form and in which place to provide the special treatment to be established in favor of the developing countries, on the basis of the draft contained in the annex to this document.

22. Two methods appear to be possible. The first would consist of inserting the relevant provisions between the end of the substantive clauses and the beginning of the administrative and final clauses, that is to say between Articles 20 and 22 of the Stockholm Act. In this case, and to avoid having to change in the new Act the numbers of Articles 22 to 38, it would be necessary to make provision for Articles 21bis, 21ter, 21quater, 21quinquies, 21sexies, etc.

23. This method would appear to present some difficulties. The numbering system is complicated and hardly elegant phonetically. It could be a source of error in references, the same number being used throughout with variations only in the Latin. It would to an appreciable extent lengthen the Convention with provisions of substance which, by definition, are temporary and are reserved to certain members of the Union.

24. Another method would consist of placing these provisions in an “Additional Act”, which, however, would form an integral part of the new Act. This is not new in the history of the Berne Union (see the Additional Act of Paris of 1896) and, by using this terminology, it would not run the risk of creating confusion with the Stockholm Protocol.

25. If this second method were to be chosen, Article 21 could be drafted as follows:

“Article 21. Particular provisions concerning developing countries are contained in an Additional Act which forms an integral part of this Act.”

In the other case, the number 21 could be used for Article A of the draft contained in the annex to this document, 21bis for B, and so on.

Annex

Article A

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act [of which this Additional Act forms an integral part] and which, having regard to its economic situation and its

social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided in this Act may, by a notification deposited with the Director General at the time of making the said ratification or accession or thereafter, declare that it will avail itself of any or all of the reservations provided by Articles [of this Additional Act] by applying in its relations with other countries of the Union any or all of the provisions which are contained in the said Articles.

(2) Any reservation so notified shall be effective for ten years from the date of the entry into force of this Act with respect to the country concerned, or for such part of the ten years as remains at the date of deposit of the notification, and may be renewed in whole or in part for further periods of ten years each if, during the year preceding the expiration of the relevant ten-year period, the country concerned deposits a further notification with the Director General. Notifications may also be made during these further periods of ten years in accordance with the provisions of this paragraph.

(3) Notwithstanding the provisions of paragraph (2) of this Article, a country of the Union that has ceased to be a developing country as defined in paragraph (1) shall no longer be entitled to renew the period during which it can avail itself of the reservations provided by the said paragraph (1) and, whether or not it formally withdraws them, such State shall be precluded from availing itself of the said reservations at the end of the current ten-year period, or at the end of three years after it has ceased to be a developing country, whichever period expires later. However, any copies of a work made under the reservation provided by Article C may continue to be distributed after the expiration of the period for which notifications under this Article are effective.

(4) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1) of this Article, may also deposit notifications of reservations or of renewals thereof with respect to any such territory. During the effective period of such notifications, the provisions of Articles B, C and D shall be applicable to such territory.

Article B

Any country of the Union to which Article A applies may substitute for the exclusive right of translation provided by Article 8 of this Act a system of non-exclusive and non-transferable licenses, granted by the competent authority, under the following conditions:

[Alternative A]

(1) If, after the expiration of one year from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the country referred to above, a translation of such work has not been published in that country in the national language or, as the case may be, into one of the national languages of that country by the owner of the right of translation, or with his authorization, any national of such country may obtain from the competent authority a non-exclusive and non-transferable license to translate the work and publish the work so translated in the said language.

(2) However, in the case of a language which is of general use in one or more developed countries,

- (a) a period of three years shall be substituted for the period provided by paragraph (1) above;
- (b) the license shall be granted only for the purpose of teaching, scholarship or research;
- (c) no copies of the work so translated and published shall be exported.

[Alternative B]

(1) If, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the country referred to above, a translation of such work has not been published in that country in the national language or, as the case may be, into one of the national languages of that country by the owner of the right of translation, or with his authorization, any national of such country may obtain from the competent authority a non-exclusive and non-transferable license to translate the work and publish the work so translated in the said language.

(2) However, in the case of a language which is of general use in one or more developed countries,

- (a) the license shall be granted only for the purpose of teaching, scholarship or research;
- (b) no copies of the work so translated and published shall be exported.

[Alternative C]

(1) If, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the country referred to above, a translation of such work has not been published in that country in the national language or, as the case may be, into one of the national languages of that country by the owner of the right of translation, or with his authorization, any national of such country may obtain from the competent authority a non-exclusive and non-transferable license to translate the work and publish the work so translated in the said language.

(2) However,

- (a) if the license is requested for the purpose of teaching, scholarship or research, the period of three years provided above shall be reduced to one year;
- (b) in the case of a language which is of general use in one or more developed countries, the said period shall be of five years, the license shall be granted only for the purpose of teaching, scholarship or research and no copies of the work so translated and published shall be exported.

[Provisions common to the three alternatives]

(3) In addition to the cases provided by the preceding paragraphs of this Article, any national of a country of the Union to which Article A applies may obtain a non-exclusive and non-transferable license to translate the work and publish the work so translated in the national language or, as the case may be, in one of the national languages of the country if, after the expiration of a period of seven years from the date of the first publication of the said work, a translation in that language has not been published in the country.

(4) The license shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another developing country member of the Union if one of the national languages of such other country is the same language as that into which the work has been so translated, and if the national law in such other country makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a developing country member of the Union shall be governed by its national law and its agreements.

(5) Any license granted under this Article shall be governed by the provisions of Article D; however, after the seven year period has expired, the licensee shall be free to apply for a new license. The grant of such a new license shall be governed exclusively by the provisions of paragraphs (3) and (4) of this Article and of Article D and no further license shall be granted under paragraphs (1) and (2) of this Article.

Article C

Any country of the Union to which Article A applies may, so far as printed editions are concerned, substitute for the exclusive right of reproduction provided by Article 9 of this Act a system of non-exclusive and non-transferable licenses granted by the competent authority under the following conditions:

(1) If, after the expiration of [three to seven] years from the date of first publication of a particular edition of a literary or artistic work or any longer period determined by national legislation of the country referred to above, copies of such edition have not been generally distributed to the public in that country at a price corresponding to that normally charged in the country for comparable works, by the owner of the right of reproduction or with his authorization, any national of such State may obtain a non-exclusive license from the competent authority to publish such edition at that or a lower price for use in connection with systematic instructional activities.

(2) [Subject to the provisions of paragraph (3) of this Article], the license shall not extend to the export of copies and shall be valid only for publication in the territory of the country of the Union where it has been applied for.

(3) Any two or more countries of the Union having close cultural relations may, by notifications submitted to the Director General by each of them, declare that they are to be regarded as a single country for purposes of this Article. A license may be granted by the competent authority in one such country on behalf of all countries in the group, provided that all of the conditions provided by this Article are met by each such country.]

Article D

(1) Any license granted under Articles B or C may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the proprietor of the right to make and publish the translation or to reproduce the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right.

(2) If the owner of the right cannot be found, the applicant for a license shall send, by airmail, copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization or any national or international clearing-house which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country of which the publisher is believed to be a national. The license shall not be granted before the expiration of a period of three months from the date of dispatch of the copies of the application.

(3) The original title and the name of the author of the work or of the particular edition of the work, as the case may be, shall be printed on all copies of the published translation or reproduction.

(4) Due provision shall be made by national legislation

(a) to assure to the owner of the right of translation or of reproduction, as the case may be, just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned;

(b) to assure the payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent;

(c) to assure a correct translation of the work or an accurate reproduction of the particular edition, as the case may be.

(5) In the case of a translation into a language which is of general use in one or more developed countries any copies of the work translated and published in accordance with a license granted under Article B, and all copies published in accordance with a license granted under Article C, shall, from the time of first publication, bear notices in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6) Licenses may be granted in accordance with the conditions of Article B if, in respect of a translation already published in the language concerned, the editions are out of print. Licenses may be granted in accordance with the conditions of Article C if no copy of the edition in question is on sale at a price corresponding to that normally charged in the country for comparable works.

(7) A license shall not be granted when the author has withdrawn from circulation all copies of the work.

(8) Any license granted under Article C shall terminate should the owner of the right cause to be published, in the country where the license has been granted, an edition in the same language and with the same content as the edition published under the license; however, copies already made before the termination of the license may continue to be distributed until they are out of print.

List of Participants

Editor's Note: *The list of participants in the Ad Hoc Preparatory Committee for the Revision of the Berne Convention met at Geneva, from May 19 to 21, 1970, has not been reproduced here.*

Extraordinary Session of the Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union)

(Geneva, September 14 to 18, 1970)

Report*Introduction*

1. The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) met in extraordinary session from September 14, to 18, 1970, at Geneva.

2. Eleven of the countries members of the Permanent Committee were represented: Belgium, Brazil, Denmark, France, Germany (Federal Republic), India, Italy, Portugal, Spain, Switzerland, United Kingdom.

3. Representatives of the following countries, members of the Berne Union, were represented by observers: Argentina, Australia, Austria, Canada, Ceylon, Congo (Democratic Republic), Czechoslovakia, Finland, Japan, Mexico, Morocco, Netherlands, Norway, Philippines, Senegal, Sweden, Tunisia, Yugoslavia.

4. With the agreement of the Chairman of the Permanent Committee, Kenya and the United States of America were invited to be represented by observers and were so represented; these countries, not members of the Union, are members of the Intergovernmental Copyright Committee and took part in the extraordinary session of that Committee held in Paris from September 2 to 11, 1970.

5. Two intergovernmental organizations and twenty international non-governmental organizations were represented by observers.

6. The list of participants is reproduced hereinafter.

7. In accordance with Rule 7, paragraph (3), of the Internal Rules of the Permanent Committee, the International Bureau of the Berne Union (BIRPI) provided the Secretariat for the debates.

Opening of the session

8. In the absence of Mr. Jorge Carlos Ribeiro (Brazil), the Chairman of the Permanent Committee, the session was opened by Mr. William Wallace (United Kingdom) in his capacity as Vice-Chairman of the Permanent Committee, who also presided over the meeting.

Adoption of the agenda

9. The provisional agenda contained in document DA/33/1 Rev. was unanimously adopted.

Examination of the proposals for revision of the Berne Convention

10. The Permanent Committee expressed the opinion that, as a basis for discussion, a certain parallelism was desirable between the proposals made by the Intergovernmental Copyright Committee for the revision of the Universal Copyright Convention and the proposals to be made for the revision of the Berne Convention. The delegation of France, however, recalling that it had not accepted the Washington Recommendation on this point, declared that while it did not have any objection to a similarity of the provisions concerning the rights of translation and reproduction, it continued to oppose any mixing of the two Conventions.

11. The Permanent Committee examined the proposals contained in document DA/33/2, resulting from the work of the Ad Hoc Preparatory Committee for the revision of the Berne Convention at its meeting held in Geneva from May 19 to 21, 1970, the comments received thereon contained in documents DA/33/5, DA/33/5 Add. 1, DA/33/5 Add. 2 and DA/33/6, and the further modifications proposed by the Director of BIRPI in document DA/33/9, which took into account the work of the Intergovernmental Copyright Committee at its extraordinary session held in Paris from September 2 to 11, 1970.

12. The delegation of India proposed that the provisions of Article 2 of the proposed Additional Act concerning the right of translation should apply also to audio-visual works. The Permanent Committee expressed the view that the effect of this proposal could be achieved by a modification of Article 3(7) concerning the right of reproduction of such works.

13. After a full exchange of views upon the question whether the benefit of the relaxations provided for in the Additional Act should be reserved for countries already members of the Berne Union at a certain date, and upon the possible introduction into the Berne Convention of a system of compulsory licences for translation seven years after the first publication of the work, the Permanent Committee decided to refer these matters to an informal Working Group composed of the delegations of certain members of the Permanent Committee (Brazil, France, Germany (Federal Republic), India, Italy, Spain, United Kingdom) and of certain observers (Kenya, Tunisia, United States of America).

14. At the end of its deliberations, the Working Group proposed to the Permanent Committee the following solutions:

- (i) that Article 1 of the Additional Act should contain no provisions limiting its application to the existing members of the Berne Union at the date of its entry into force, or to countries becoming members within a fixed period of time;

- (ii) that the proposed paragraph (7) of Article 2, relating to translation licenses after seven years, be deleted;

- (iii) that the developing countries should have an irrevocable choice, so far as the right of translation is concerned, between the system of compulsory licenses provided for in the Additional Act and the facility provided for in Article 30(2)(a) and (b) (which refers to Article 5 of the Paris Act of 1896), without the possibility of applying both alternatives;

- (iv) that in the case of developing countries the possibility of reciprocity provided for in Article 30(2)(b) should not apply;

- (v) that a country ceasing to be regarded as a developing country should be able to make a declaration according to Article 30(2)(b), in which case reciprocity could be applied to it.

15. The delegations of Belgium, France, Germany (Federal Republic), India, Kenya, Spain, Tunisia and the United Kingdom declared in turn that they were ready, in a spirit of compromise, to recommend the adoption of these solutions.

16. The delegation of Yugoslavia declared that it could not at this stage approve the solution referred to in paragraph 14(iii) above, which, in view of the fact that Yugoslavia, a developing country, had already made a declaration of the sort permitted by Article 30(2) would deprive it of the possibility of applying some of the reservations provided for in the Additional Act.

17. On a proposal of the delegation of India, speaking on behalf of the developing countries attending this session, it was agreed to recommend that the special problem for developing countries which had already made declarations of the sort permitted by Article 30(2) should be studied with a view to a solution being agreed at the Revision Conference.

18. The delegation of Italy recalled its proposal to permit developing countries, members of the Berne Union, to apply temporarily the revised text of the Universal Copyright Convention in accordance with the system proposed in the Washington Recommendation; in view of the fact that this system, which in the opinion of the Italian Government would be more flexible and more favourable to the developing countries, had been abandoned, the Italian delegation, while continuing to collaborate with the other delegations in the work of drafting the proposed text of an Additional Act, emphasized the complexity of its provisions. It added that it was not opposed in principle to the proposed text, but that it could not commit the Italian Government before the Diplomatic Conference.

19. The Permanent Committee then appointed a Drafting Committee composed of representatives of France, Germany (Federal Republic), India and the United Kingdom, with observers from Kenya and Tunisia. The Drafting Committee was presided over by Professor Ulmer (Germany (Federal Republic)).

20. Draft texts submitted by the Drafting Committee were examined article by article and, after certain modifications, approved by the Permanent Committee, subject to the inclusion in this Report of the following reservations and explanations:

- (i) in relation to Article 2 of the proposed Additional Act, the delegation of Italy said that it could not accept as short a period as one year as the period after which compulsory licenses might be granted; the delegation of Brazil objected to a distinction being drawn between certain developing countries and others on the basis of their languages; the delegation of France expressed the view that the word "research" did not include the meaning of research for industrial or commercial purposes;

- (ii) in relation to Article 4(6)(c), the Permanent Committee expressed the view that the words "a correct translation of the work or an accurate reproduction

of the particular edition" do not exclude the possibility of minor adaptations made for the purpose of conformity with local usage, such as changes in references to units of currency;

- (iii) the delegation of Brazil drew attention to problems posed in the case where the exclusive right of translation in a language had been reserved, if such a language was in current use in another country; it emphasized the difficulties encountered in such cases and the serious consequences to the development of the culture of the country. It expressed the hope that the Revision Conference should find an equitable solution for this situation.

21. The draft texts for the revision of the Berne Convention adopted by the Permanent Committee are reproduced below.

22. After the approval of the draft texts, the following declarations were made:

- (i) the delegation of Portugal expressed the opinion that, in the discussions which had taken place mainly between developing countries and highly developed countries, the interests of countries in an intermediate situation had not been taken into account; whilst accepting in general the proposals for the revision of the Berne Convention, it emphasized the need to take into account all the interests concerned;
- (ii) the delegation of Canada expressed its understanding of the problems of revising the two conventions and congratulated both Committees on the results achieved and stated its sympathy with the needs of developing countries; stating that Canada is an intermediate country, the delegation of Canada expressed the hope that the needs of such countries could be considered at the appropriate time; the delegation of Canada informed the meeting that Canadian copyright legislation is being revised, and declared the intention of Canada to take a more active role in international copyright;
- (iii) the delegation of Australia considered that the primary purpose of the revision was the satisfaction of the needs of the developing countries; it was inevitable therefore that the present discussion should have been led by those developed countries which were the main exporters of works under consideration and the developing countries which were seeking to modify the Convention; the delegation of Australia considered that there were countries which did not easily fall into these two groups, and that it was important that these countries should have the opportunity to express their views in the most effective and opportune way;
- (iv) the delegation of Czechoslovakia expressed its regret that the Stockholm Protocol had not achieved wide support; it was prepared to support the new steps being taken to remedy this situation and to meet the needs of the developing countries; it reserved the position of its Government on the question of any further modification to the Berne Convention.

*Examination of the draft Rules of Procedure
of the Conference for the revision
of the Berne Convention*

23. The draft Rules of Procedure prepared by BIRPI in accordance with Resolution No. 1 of the fourteenth ordinary session of the Permanent Committee, contained in document DA/33/3, were considered by the Permanent Committee. However, in view of the fact that the Conference for the revision of the Berne Convention would be held at the same time and place as the Conference for the revision of the Universal Copyright Convention, the Permanent Committee decided that it would be desirable that the Rules of Procedure of the two Conferences should be as similar as possible. It approved, with certain modifications, the draft prepared for this purpose by the Director of BIRPI, con-

tained in document DA/33/8, which was based on the draft Rules of Procedure of the Conference for the revision of the Universal Copyright Convention.

24. The draft Rules of Procedure adopted by the Permanent Committee are contained in document DA/33/13.

Date and place of the Revision Conference

25. The Permanent Committee adopted unanimously Resolution No. 1, reproduced hereinafter, recommending that a Conference for the revision of the Berne Convention be held from June 21 to July 10, 1971, and authorizing the Director General of the World Intellectual Property Organization (WIPO) to fix, within certain limits, the place of the meeting of the Conference.

Invitations to the Revision Conference

26. By paragraph 7 of its Resolution No. 1, the Permanent Committee recommended that the States, the intergovernmental organizations and the international non-governmental organizations listed in document DA/33/4 be invited to the Conference for the revision of the Berne Convention.

27. The delegation of France stated that in its view the Central People's Government of the People's Republic of China was the only one authorized to represent China, and consequently it objected to an invitation being sent to the Taiwan régime. This view was supported by the delegation of Yugoslavia.

28. At the suggestion of the Chairman, it was agreed not to proceed to a formal vote on a recommendation in this connection, but to take note of the fact that it was desirable that the invitations to the Conference for the revision of the Berne Convention and the Conference for the revision of the Universal Copyright Convention should be the same, and that the established practices of the United Nations and of organizations of the United Nations system would be followed by the Director-General of Unesco.

Protection of phonograms

29. The proposal made by the United Kingdom, to include the question of the protection of phonograms in the agenda of the Conference for the revision of the Berne Convention, contained in document DA/33/7, was considered by the Permanent Committee.

30. The representative of the International Federation of the Phonographic Industry (IFPI) emphasized that the problem was urgent and that it affected the interests not only of producers of phonograms but also of authors and performers. The delegation of Denmark, whilst agreeing that further study of the problem by governmental experts was desirable, reserved its Government's position in relation to the establishment of any new international instrument at this stage and emphasized the need to protect the interests of broadcasting organizations and of performers by means of establishing some link with the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. The delegation of Italy also reserved the position of its Government. The representative of the International Federation of Musicians (FIM), speaking also for other international federations of performers, suggested that it was necessary that performers' organizations should be invited to take part in any preparatory work, and that any new instrument should take account of the interests of performers in a separate substantive article.

31. The Permanent Committee adopted unanimously Resolution No. 2 reproduced hereinafter.

Adoption of the Report

32. The Permanent Committee adopted unanimously this Report of its discussions.

Closing of the session

33. The delegation of Germany (Federal Republic), speaking on behalf of all the participants, expressed sincere thanks to the Chairman of the Permanent Committee for the manner in which he had conducted the debates which had contributed in a large measure to their success, and expressed appreciation also for the work of the Director and staff of BIRPI.

34. The Chairman thanked the participants for their willingness to understand the positions adopted during the discussions and their readiness to reach agreement. In his opinion, the preparatory work now accomplished should assist in the achievement of a successful Revision Conference. The Chairman thanked the Secretariat for the high quality of its work. He declared the session closed.

Draft Texts for the Revision of the Berne Convention adopted by the Permanent Committee*I. Modifications to be made to certain Articles of the Stockholm Act*

1. In the Articles mentioned below, any reference to "Protocol Regarding Developing Countries" should be replaced by a reference to "Additional Act".

- Article 21(1) and (2),
- Article 27(3),
- Article 28(1)(b)(i),
- Article 28(1)(c),
- Article 28(2)(a), (c) and (d),
- Article 30(1),
- Article 32(3).

2. In Article 32(3), the words "in ratifying or acceding to the present Act" should be omitted.

3. In Article 22, the following words should be added at the end of both paragraph (1)(a) and paragraph (2)(a)(ii):
"[of this Act or of the Stockholm Act]".

4. In Article 28(2)(a), the following words should be added:

"but not before the Universal Copyright Convention as revised at on has been ratified, accepted or acceded to by France, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America and has entered into force".

5. In Article 29(2)(a)(i), the words "including the Additional Act" should be added after the words "Articles 1 to 21". The words "Brussels Act" should be enclosed in square brackets and followed by "[Stockholm Act]".

In Article 29(2)(a)(ii), the words "Articles 21 to 24 of the Brussels Act" should be replaced by the words "Articles 22 to 26 of the Stockholm Act".

6. Article 34 should be drafted as follows:

"After the entry into force of Articles 1 to 21 of this Act including the Additional Act, no ratification of earlier Acts of this Convention or accession thereto will be permissible. In addition, it will not be permissible, after the said date, for a country of the Union which is not bound by Articles 1 to 21 of the Stockholm Act and which has not made a declaration under Article 5(1)(a) or (b) of the Protocol Regarding Developing Countries to make such a declaration."

*II. Draft Text of an Additional Act to the Act of of 1971**Article 1*

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Additional Act forms an integral part, and which, having regard to its economic situation and its social

or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act may, by a notification deposited with the Director General at the time of making the said ratification or accession or thereafter, declare that it will avail itself of any or all of the reservations provided for in this Additional Act.

(2) Any reservation so notified shall be effective for a period of ten years from the date of the entry into force of this Act, or for such part of that period as remains at the date of deposit of the notification, and may be renewed in whole or in part for further periods of ten years each if, during the year preceding the expiration of the relevant ten-year period, the country concerned deposits a further notification with the Director General. Initial notifications may also be made during these further periods of ten years in accordance with the provisions of this paragraph.

(3) Notwithstanding the provisions of paragraph (2) of this Article, a country of the Union which, in conformity with the established practice of the General Assembly of the United Nations, has ceased to be regarded as a developing country shall no longer be entitled to renew the period during which it can avail itself of the reservations referred to in paragraph (1) and, whether or not it formally withdraws them, such country shall be precluded from availing itself of the said reservations at the end of the current ten-year period, or at the end of three years after it has ceased to be a developing country, whichever period expires later.

(4) Any copies of a work already made under the reservations provided for in this Additional Act may continue to be distributed after the expiration of the period for which notifications under this Article are effective.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1) of this Article, may also deposit notifications of reservations or of renewals thereof with respect to any such territory. During the effective period of such notifications, the provisions of this Additional Act shall be applicable to such territory.

(6) (a) The fact that a reservation provided for in this Additional Act has been notified does not permit another country of the Union to give less protection to works of which the country of origin is the country availing itself of the reservation than is provided for in Articles 1 to 20 of this Act.

(b) The right of reciprocity provided for in Article 30(2)(b) of this Act cannot be exercised in relation to works the country of origin of which remains a country to which paragraph (1) of this Article applies.

Article 2

(1) Any country of the Union to which Article 1 of this Additional Act applies may, so far as works published in printed or analogous forms of reproduction are concerned, substitute for the exclusive right of translation provided for in Article 8 of this Convention a system of non-exclusive and non-transferable licenses, granted by the competent authority, under the following conditions and subject to the provisions of Article 4 of this Additional Act.

(2) If, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the country referred to above, a translation of such work has not been published in the language or in one of the languages of that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to translate the work and publish the work so translated in the said language in printed or analogous forms of reproduction.

(3) However, in the case of a translation into a language which is not in general use in one or more developed countries, a period of one year shall be substituted for the period of three years provided for in paragraph (2) above.

(4) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.

(5) Licenses obtainable after three years shall not be granted under this Article until a further period of six months has elapsed, and licenses obtainable after one year until a further period of nine months has elapsed, from the date of the application for permission to translate mentioned in paragraph (1), or of the dispatch of the copies of the application mentioned in paragraph (2), as the case may be, of Article 4 of this Additional Act.

(6) For works which are composed mainly of illustrations, a license to translate the text and to reproduce the illustrations may be granted only if the conditions of Article 3 of this Additional Act are also fulfilled.

(7) Any country to which Article 1 of this Additional Act applies, whether or not it is already a member of the Union, may, instead of availing itself of the reservations provided for by this Article, make, in ratifying or acceding to this Act, the declaration provided for in Article 30(2)(a) or (b) of this Act. However, any country making such a declaration may not subsequently avail itself of the reservations provided for in this Article, even if it withdraws its declaration.

(8) A country which has availed itself of the reservations provided for in paragraphs (1) to (6) of this Article may not subsequently make a declaration in accordance with Article 30(2)(a) or (b) of this Act.

(9) Any country which has ceased to be regarded as a developing country may, within three months from the expiry of the period provided for in paragraph (3) of Article 1 of this Additional Act, make a declaration according to Article 30(2)(b) of this Act.

Article 3

(1) Any country of the Union to which Article 1 of this Additional Act applies may substitute for the exclusive right of reproduction provided for in Article 9 of this Convention a system of non-exclusive and non-transferable licenses granted by the competent authority under the following conditions and subject to the provisions of Article 4 of this Additional Act.

(2) If, after the expiration of

(i) the relevant period specified in paragraph (3) of this Article commencing from the date of first publication of a particular edition of a literary or artistic work referred to in paragraph (7) of this Article, or

(ii) any longer period determined by national legislation of the country referred to above,

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works, by the owner of the right of reproduction or with his authorization, any national of such country may obtain a license to publish such edition at that or a lower price for use in connection with systematic instructional activities.

(3) The period referred to in sub-paragraph (i) of paragraph (2) above shall be five years, except that

(i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;

(ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4) Licenses obtainable after three years shall not be granted under this Article until a period of six months has elapsed from the date of the application for permission to reproduce mentioned in paragraph (1), or of the dispatch of the copies of the application mentioned in paragraph (2), as the case may be, of Article 4 of this Additional Act. Licenses obtainable after other periods shall not be granted until a period of three months has elapsed from the date of the dispatch of copies of the application.

(5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following case:

(i) where the translation was not published by the owner of the right or with his authorization; or

(ii) where the translation is not in a language that is the language or one of the languages of the country granting the license.

(6) Whenever copies of an edition of a work are distributed in the country referred to above to the general public or in connection with systematic instructional activities, by the owner of the right or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and is substantially the same in content as the edition published under the license. However, any copies already made before the license is terminated may continue to be distributed.

(7) The literary or artistic works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction. However, the reservations permitted by this Article shall also apply to the reproduction of audio-visual works and to the translation into the language or one of the languages of the country concerned of any accompanying text, in which case the reservations shall be limited to audio-visual works prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities.

Article 4

(1) Any license granted under Articles 2 or 3 of this Additional Act may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the proprietor of the right to make and publish the translation or to reproduce the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right.

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization, or to any national or international information centre, which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country of which the publisher is believed to be a national.

(3) The name of the author and the original title of the work or of the particular edition of the work shall be printed on all copies of the published translation or reproduction.

(4) No license granted under Articles 2 or 3 of this Additional Act shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country of the Union where it has been applied for.

(5) All copies published in accordance with such a license shall, from the time of first publication, bear notices in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6) Due provision shall be made by national legislation to assure

- (a) that the license provides, in favour of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned; and
- (b) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent; and
- (c) a correct translation of the work or an accurate reproduction of the particular edition, as the case may be.

(7) Licenses may also be granted in accordance with the conditions of Article 2 of this Additional Act, if, in respect of a translation already published in the language concerned, the editions are out of print. Licenses may also be granted in accordance with the conditions of Article 3 of this Additional Act if for a period of six months no authorized copies of the edition in question have been on sale in the country concerned to the public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works.

(8) A license shall not be granted when the author has withdrawn from circulation all copies of the edition of the work.

Article 5

(1) Any country of the Union may declare as from the signature of this Act, and at any time before becoming bound by Articles 1 to 21 of this Act and by this Additional Act,

- (a) in the case of a country referred to in Article 1 of this Additional Act, that it intends to avail itself of any or all of the reservations provided for in the latter in relation to works whose country of origin is a country of the Union which admits the application of the reservations provided for in this Additional Act, or
- (b) that it admits the application of the reservations provided for in this Additional Act to works of which it is the country of origin by countries which, upon becoming bound by Articles 1 to 21 of this Act and by this Additional Act, have notified reservations permitted under the latter, or have made a declaration of application of any or all provisions of this Additional Act.

(2) The declaration shall be made in writing and shall be deposited with the Director General. The declaration shall become effective from the date on which it is deposited.

Resolutions adopted by the Permanent Committee

Resolution No. 1: Revision of the Berne Convention

The Permanent Committee of the Berne Union,

1. Recalling the resolutions adopted by it at its extraordinary session in February 1969 (Resolution No. 1)¹ and at its fourteenth ordinary session in December 1969 (Resolution No. 1)²;

2. Considering the report of the Ad Hoc Preparatory Committee which met in May 1970 to prepare a draft text of the proposals for the revision of the Berne Convention³;

¹ See *Copyright*, 1969, p. 52.

² *Ibid.*, 1970, p. 26.

³ *Ibid.*, pp. 144 *et seq.*

3. Acting in application of the provisions of Rule 5 of its Internal Rules;

4. Recommends that a Conference for the revision of the Berne Convention be held from June 21 to July 10, 1971;

5. Authorizes the Director General of the World Intellectual Property Organization (WIPO) (which expression, in this resolution, shall include the Director of BIRPI) to fix the place of the meeting of the Conference for the revision of the Berne Convention, it being understood that in the absence of an invitation by a country member of the Berne Union submitted before October 15, 1970, the Conference shall be held in Paris at the premises of Unesco;

6. Calls upon the Director General of WIPO to make, in consultation with the Director-General of Unesco, the necessary arrangements for the Conference to be held at the same time and place as the Conference for the revision of the Universal Copyright Convention;

7. Recommends that the States, the intergovernmental organizations and the international non-governmental organizations listed in document DA/33/4 be invited to the Conference for the revision of the Berne Convention;

8. Requests the Director General of WIPO to:

- (a) send the necessary invitations as well as the draft for the revised Berne Convention, as prepared by the Permanent Committee, the provisional Rules of Procedure of the Conference for the revision of the Berne Convention approved by the Permanent Committee, and such other documents as may be necessary;
- (b) invite all countries of the Union and all interested international non-governmental organizations to present comments with respect to this draft text for the revision of the Berne Convention no later than March 15, 1971;
- (c) communicate such comments to the States and organizations specified in paragraph 7 of this resolution as soon as possible after they are received;

9. Requests the Director General of WIPO to provide the secretariat for the Conference for the revision of the Berne Convention and to take all the necessary administrative steps and undertake the material arrangements for the preparation and the holding of this Conference.

Resolution No. 2: Protection of Phonograms

The Permanent Committee of the Berne Union, Dismayed at the widespread, and increasing piracy of phonograms and the damage which this is occasioning to the interests of authors, performers and producers of phonograms;

Noting that the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations has so far been ratified by a limited number of States;

Recognizing also that the protection of phonograms is, for many countries, not a matter of copyright but that the interests of authors and performers require the protection of the means by which their works and performances are reproduced;

Expresses the wish that the Director General of the World Intellectual Property Organization (WIPO) (and therefore also the Director of BIRPI), together with the Director-General of Unesco, should invite countries members of the Berne Union and/or of the Paris Union for the Protection of Industrial Property or parties to the Universal Copyright Convention to nominate governmental experts to attend, together with the appropriate observers, a meeting to be held some months in advance of the Diplomatic Conferences to revise the Berne and Universal Copyright Conventions, with the tasks:

- (a) of studying any comments on or proposals for a draft instrument to protect producers of phonograms against unauthorized reproduction of their phonograms, which governments may formulate, and

(b) of preparing a draft instrument on this subject to serve as the basis for the negotiation of an appropriate instrument which will be ready, so far as possible, for adoption and signature at a Diplomatic Conference to be held at the same time and place as the Diplomatic Conferences for the revision of the Berne and Universal Copyright Conventions.

List of Participants

Editor's Note: *The list of participants in the extraordinary Session of the Permanent Committee of the Berne Union which met at Geneva from September 14 to 18, 1970, has not been reproduced here.*

B/DC/5 February 24, 1971 (Original: English)

WIPO

Proposals for revising the Stockholm Act (prepared by the International Bureau on the basis of the Draft adopted by the Permanent Committee of the Berne Union (document B/DC/4))

Introductory Observations

Purpose of this Document
Basis of this Document
New Act or Additional Act?
Objective of the Revision

Draft Paris Act

Title and Introductory Paragraphs

Articles 1 to 20: Substantive Provisions
Article 21: Reference to the Appendix
Articles 22 to 26: Administrative Provisions
Article 27: Revisions
Article 28: Ratification or Accession by Countries of the Union; Entry Into Force for the Same Countries
Article 29: Accession by Countries Outside the Union; Entry Into Force for the same Countries
Article 29bis: Reference to Article 14 of the WIPO Convention
Article 30: Reservations
Article 31: Territories
Article 32: Earlier Acts
Article 33: Disputes
Article 34: Closing of Earlier Acts
Article 35: Denunciation
Article 36: Domestic Legislation
Article 37: Signature, etc.
Article 38: Transitional Provisions

Appendix: Provisions Regarding Developing Countries

Article I: Entitlement to Make Certain Substitutions; Continued Use of Copies Produced Under Articles II or III; Territories; No Reciprocity
Article II: Right of Translation: Licenses; Ten-Year Exclusive Right
Article III: Right of Reproduction: Licenses
Article IV: Certain Conditions Concerning Licenses Under Articles II and III
Article V: Early Application of Articles I to IV

Draft Additional Act of Paris

Title
Article I: Ratification or Accession by Countries of the Union
Article II: Accession by Countries Outside the Union
Article III: Reference to Article 14 of the WIPO Convention

Article IV: Entitlement for Developing Countries to Make Certain Substitutions; Continued Use of Copies Reproduced Under Articles V or VI; Territories; No Reciprocity

Article V: Substitution by Developing Countries for the Provisions on the Right of Translation: Licenses; Ten-Year Exclusive Right

Article VI: Substitution by Developing Countries for the Provisions on the Right of Reproduction: Licenses

Article VII: Certain Conditions Concerning Licenses Under Articles V and VI

Article VIII: Entry Into Force for Countries of the Union

Article IX: Entry Into Force for Countries Outside the Union

Article X: Reservations

Article XI: Earlier Acts

Article XII: Closing of Earlier Acts

Article XIII: Denunciation

Article XIV: Signature, etc.

Article XV: Early Application of Articles V to VII

Introductory Observations

Purpose of this Document

1. This document is intended to serve as a basis for the discussions of the Diplomatic Conference.

Basis of this Document

2. This document closely follows the draft texts prepared by the Permanent Committee of the Berne Union (see document B/DC/4). As far as the substantive provisions are concerned, those portions which concern rights and obligations have been reproduced word for word, whereas the other portions have undergone some stylistic changes in order to improve the wording. As far as the final clauses are concerned, the document presents a text which is believed to be more complete and which takes into account the fact that the administrative provisions and final clauses of the Stockholm Act have meanwhile been accepted by a large number of States members of the Berne Union.

3. In the case of the said final clauses, the Permanent Committee's draft consists mainly of summary indications. It was therefore found necessary to re-examine the drafting of those clauses. The same applies—and the same has been done—with regard to the non-substantive passages of the five articles of what in the Permanent Committee's draft is called the Additional Act. It is emphasized that in both cases only the drafting has been changed while the Permanent Committee's intentions have been strictly followed.

New Act or Additional Act?

4. In considering the best form to give to the intended revision a preliminary question arises, namely, whether the revision conference should sign a text which repeats all the unchanged clauses of the Stockholm Act or whether it should merely specify the changes that will be made in the Stockholm Act.

5. Before deciding on the question, account should be taken of the fact that the Paris Diplomatic Conference is asked to replace the Stockholm Protocol by new provisions concerning developing countries and to make some consequential changes in the final clauses.

6. This represents changes in approximately 20% of the Stockholm Act. The other 80%—comprising all the substantive provisions (Articles 1 to 20) not specially concerned with developing countries and all the administrative provisions (Articles 22 to 26)—is not scheduled for revision.

7. Another factor to be taken into consideration is the existence of two precedents in the history of the Berne Convention for adopting and signing at a diplomatic conference of revision, instead of an all-inclusive Act, a text which modifies the preceding Act without repeating the unmodified parts thereof. The two precedents are the Additional Acts of Paris and Berne signed on May 4, 1896, and March 20, 1914, respectively.

8. A text containing both the unchanged and the changed provisions will be referred to in this document as "the Paris Act" or "the Act", and another text containing only the changed provisions (including both the provisions regarding developing countries and the changes in the final clauses) will be referred to in this document as "the Additional Act of Paris" or "the Additional Act."

9. The advantages and disadvantages of either solution seem to be equally divided.

10. An "Act" would be convenient because it contains all the provisions in one text. It would be inconvenient because it is unnecessarily long, repeating, as it does, some 80% of the previous Act which has not changed. Furthermore, it necessitates reproducing and presenting for signature a bulky document. Finally, it does not show clearly the changes, which can only be discovered by comparing with the Stockholm Act.

11. An "Additional Act" would have the great advantage of making such a comparison unnecessary. The differences between the new text and the Stockholm Act would be obvious at a glance. It would not be necessary to reproduce and sign a bulky text. But for anyone wishing to consult the latest text of the Berne Convention, it would be necessary to look at two texts, the Stockholm Act and the Additional Act of Paris.

12. Since the arguments for and against either solution seem to carry the same weight, this document contains *both* solutions, in other words, it presents both a draft "Act" and a draft "Additional Act" and leaves the choice to the Diplomatic Conference.

13. In the draft "Act", the provisions regarding developing countries are grouped in what is called an Appendix. This expression—rather than the expression "Additional Act" used by the Permanent Committee—was chosen for two reasons. One is that "Appendix" expresses more clearly than probably any other word that the provisions contained therein can be accepted only together with the text to which it is attached. The other is that in the history of the Berne Union—and also according to the usual terminology of general treaty law—the expression "Additional Act" refers to a text later in date than the text to which it is an addition, or to a text which allows or requires acceptance independently of acceptance of the text to which it is an addition.

14. In the draft "Additional Act"—which is brief, thereby placing the emphasis on the relatively long provisions regarding developing countries, which thus became the "heart" of the text—the said provisions are part of the normal sequence of articles. They are preceded by three articles bringing out the "Additional Act" character of the text and followed by

the final clauses. Thus, the provisions regarding developing countries are in the center and clearly indicate the purpose of the new text, which is to enact new provisions concerning such countries.

Objective of the Revision

15. The objective of the revision is the adoption of new provisions regarding developing countries. These provisions appear in the Appendix of the draft Act and as Articles IV to VII of the draft Additional Act.

16. Among the acts which, under the Berne Convention, are lawful only if authorized by the copyright owner of the work are the acts of translating the work and reproducing (that is, making copies of) the work. The resulting rights of the copyright owner are called exclusive rights of authorization. Articles 8 and 9 of the Berne Convention guarantee to the copyright owner the exclusive rights of translation and reproduction, respectively. Both are normally to be protected for at least 50 years after the death of the author of the work.

17. The proposed revision would enable developing countries to exempt—in certain cases and subject to certain conditions—the translation and/or the reproduction of protected works from the requirement of the authorization of the owner of the copyright.

18. As far as the right of translation is concerned, any developing country not desiring to adopt a system guaranteeing an exclusive right for at least 50 years after the author's death could choose between two systems: under the one, its governmental authorities may themselves authorize translation; under the other, no authorization whatsoever (either by the copyright owner or by a government authority) is required after 10 years from the date of publication of the work.

19. As far as the right of reproduction is concerned, any developing country not desiring to adopt a system guaranteeing an exclusive right for at least 50 years after the author's death may institute a system under which reproduction may be authorized by its government authorities.

20. It is to be noted that the availability of the special systems referred to above is subject to certain conditions and limitations, of which the most important are the following: in the case of the right of translation, the government license can be obtained only if 3 years (in certain cases, 1 year) have elapsed since the first publication of the work without its having been translated; in the case of the right of reproduction, the government license can be obtained only if 3 or 5 or 7 years (depending on the nature of the work) have elapsed since the first publication of the work, during which copies have not been made available at a certain price; in the case of the right of translation, the system allowing freedom of translation after 10 years may be applied only if no translation in the desired language has been published during the said 10 years; both of the special translation systems can be applied only to the languages of the developing country applying the special system. A number of other important conditions and limitations are also provided for in the drafts but are not mentioned here in order not to make these introductory remarks too long.

*[End of the Introductory Observations.
Document B/DC/5 continued on page 55:
Commentary on the Proposed Text
and Draft Paris Act.]*

COMMENTARY ON THE PROPOSED TEXT

DRAFT PARIS ACT

BERNE CONVENTION

**for the Protection
of Literary and Artistic Works
of September 9, 1886,
completed at Paris on May 4, 1896,
revised at Berlin on November 13, 1908,
completed at Berne on March 20, 1914,
revised at Rome on June 2, 1928,
at Brussels on June 26, 1948,
at Stockholm on July 14, 1967,
and at Paris on July 24, 1971**

The title and the introductory paragraphs are the same as in the Stockholm Act, except that the title refers also to the Paris revision and the second introductory paragraph refers also to the Stockholm revision.

The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works,

Have resolved to revise and to complete the Act signed at Berne on September 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, revised at Rome on June 2, 1928, revised at Brussels on June 26, 1948, and revised at Stockholm on July 14, 1967.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:

ARTICLES 1 TO 20

[SUBSTANTIVE PROVISIONS] *

[No change]

The text submitted for signature at the end of the Paris Diplomatic Conference will contain the full text of these Articles as it appears in the Stockholm Act.

N.B. The text of these twenty Articles will be copied here from the Stockholm Act.

ARTICLE 21

[REFERENCE TO THE APPENDIX]

This Article is the same as Article 21 of the Stockholm Act, except that it refers to the Appendix rather than the Protocol Regarding Developing Countries and to Article 28(1)(b) rather than Article 28(1)(b)(i) and (c) since Article 28(1)(b) now covers what was contained in Article 28(1)(b)(i) and (c) in the Stockholm Act.

(1) Special provisions regarding developing countries are included in the Appendix.

(2) Subject to the provisions of Article 28(1)(b), the Appendix forms an integral part of this Act.

ARTICLES 22 TO 26

[ADMINISTRATIVE PROVISIONS]

[No change]

The text submitted for signature at the end of the Paris Diplomatic Conference will contain the full text of these Articles as it appears in the Stockholm Act.

N.B. The text of these six Articles will be copied here from the Stockholm Act.

* The Articles have been given titles for the reader's convenience. It is not proposed to write them into the text that will be prepared for signature.

COMMENTARY

Paragraphs (1) and (2) are the same as in the Stockholm Act.

Paragraph (3) is the same as in the Stockholm Act except that the reference in that Act to the Protocol Regarding Developing Countries is replaced by a reference to the Appendix.

The Appendix contains the new provisions regarding developing countries.

1. It is not proposed to maintain the possibility (provided for in the Stockholm Act) of excluding the new administrative provisions from the effects of the ratification or accession. The Stockholm Act provided for that possibility in order to permit the new substantive clauses to enter into force even if the new administrative structure (as foreseen in the WIPO Convention and the administrative provisions of the Stockholm Acts of the Paris and Berne Conventions) failed for lack of sufficient ratifications or accessions. This reason no longer exists as the administrative provisions of the Stockholm Act of the Berne and Paris Conventions as well as the WIPO Convention entered into force in 1970.

2. The proviso expresses in simpler terms the provisions of Article 28(1)(c) of the Stockholm Act.

3. The first thirteen words of Article 28(2)(a) of the Stockholm Act ("Subject to the provisions of Article 5 of the Protocol Regarding Developing Countries") are not reproduced as they are believed to be inaccurate: Article 5 of the said Protocol does not modify or qualify the rules laid down in Article 28(2)(a) of the Stockholm Act. The purpose of these words is merely to serve as a reminder that there is a possibility of applying, or undergoing the application of, reservations by developing countries even before the substantive clauses of the Stockholm Act enter into force. The corresponding purpose is now served by paragraph (2)(d).

4. The draft of the Permanent Committee speaks of entry into force "with respect to the first five countries of the Union." The initial entry into force will, however, apply to a higher number of countries if, by the time the second condition (namely, the condition concerning the Universal Copyright Convention) is fulfilled, additional countries will (at some earlier date) have ratified or acceded to the substantive clauses of the Paris Act. Furthermore, the said draft seems to assume that the ratification of or accession to the revised Universal Copyright Convention by the four specified countries and the entry into force of such revision will necessarily occur on the same date. However, the two events may occur on different dates. The proposed text tries to take care of these two problems: item (i) speaks of "at least five countries", whereas item (ii) speaks about the four countries which have become "bound" by the revision of the Universal Copyright Convention.

DRAFT TEXT

ARTICLE 27

[REVISIONS]

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

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

(3) Subject to the provisions of Article 26 which apply to the amendment of Articles 22 to 26, any revision of this Act, including the Appendix, shall require the unanimity of the votes cast.

ARTICLE 28

[RATIFICATION OR ACCESSION
BY COUNTRIES OF THE UNION; ENTRY
INTO FORCE FOR THE SAME COUNTRIES]

(1)(a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification or accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply to Articles 1 to 21 and the Appendix,¹ * provided that, if such country has previously made a declaration under Article V(1) of the Appendix, then it may declare in the said instrument only that its ratification or accession shall not apply to Articles 1 to 20.²

(c) Any country of the Union which, in accordance with subparagraph (b), has excluded certain provisions from the effects of its ratification or accession may at any later time declare that it extends the effects of its ratification or accession to those provisions. Such declaration shall be deposited with the Director General.

(2)(a) Articles 1 to 21 and the Appendix shall enter into force³ three months after both of the following two conditions are fulfilled:⁴

(i) at least five countries of the Union have ratified or acceded to this Act without making a declaration under paragraph (1)(b),

* Notes refer to the corresponding paragraphs of the commentary.

COMMENTARY

5. The number of countries covered by this provision may be five or more, as explained in the preceding note.

6. For these countries, the substantive clauses and the administrative provisions and final clauses will enter into force on the same day (see paragraph (3) and the last sentence of the following note).

7. This provision means that, for any country, the administrative provisions and final clauses will enter into force three months after the notification of the ratification or accession, which, it is recalled, cannot exclude the said clauses. The fact that this provision applies also to countries having excluded the substantive clauses is emphasized by the words "with or without a declaration made under paragraph (1)(b)." The provision applies also during the time the substantive clauses are not yet in force. There is no minimum number (as there was in Article 28(2)(b) of the Stockholm Act, where the minimum was seven) for the initial entry into force of the administrative provisions since they are identical with those of the Stockholm Act, which are already in force. Consequently, for countries which accept the new substantive clauses and are among those which will bring them initially into force (i.e., the five or more countries covered by paragraph (2)(b)), the administrative provisions (and the final clauses) will enter into force earlier than the substantive clauses: the former, three months after the notification of the deposit of the instrument; the latter, three months after the two conditions of paragraph (2)(a) have been fulfilled. As to countries which accept the new substantive clauses but are not among those which will bring those clauses initially into force (i.e., the countries covered by paragraph (2)(c)), the substantive clauses, administrative provisions and final clauses will all enter into force at the same time since the term fixed in paragraph (2)(c) is the same as that fixed in paragraph (3), and since they necessarily coincide because they have to be counted from the same event (i.e., the notification of the deposit of the instrument).

DRAFT TEXT

(ii) France, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America have become bound by the Universal Copyright Convention as revised at Paris on July 24, 1971.

(b) The entry into force referred to in subparagraph (a) shall apply to those countries of the Union which have deposited instruments of ratification or accession not containing a declaration under paragraph (1)(b) three months before the said entry into force.⁵

(c) With respect to any country of the Union not covered by subparagraph (b) and which ratifies or accedes to this Act without making a declaration under paragraph (1)(b), Articles 1 to 21 and the Appendix shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession,⁶ unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 1 to 21 and the Appendix shall enter into force with respect to that country on the date thus indicated.

(d) The provisions of subparagraphs (a) to (c) do not affect the application of Article V of the Appendix.

(3) With respect to any country of the Union which ratifies or accedes to this Act with or without a declaration made under paragraph (1)(b), Articles 22 to 38 shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession,⁷ unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 22 to 38 shall enter into force with respect to that country on the date thus indicated.

ARTICLE 29

[ACCESSION BY COUNTRIES OUTSIDE
THE UNION; ENTRY INTO FORCE
FOR THE SAME COUNTRIES]¹

1. This Article is a simplified version of Article 29 of the Stockholm Act. The simplification is due to the fact that the entry into force of the administrative provisions does not require a certain number of ratifications or accessions.

2. The texts in brackets are alternatives meaning the same thing. If the short formula is chosen ("in the meantime"), it might be useful if the Report of the Diplomatic Conference showed that it meant the same as what the long formula ("during... Article 28(2)(a)") spells out in detail.

(1) Any country outside the Union may accede to this Act and thereby become party to this Convention and a member of the Union. Instruments of accession shall be deposited with the Director General.

(2)(a) Subject to subparagraph (b), this Convention shall enter into force with respect to any country outside the Union three months after the date on which the Director General has notified the deposit of its instrument of accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, this Convention shall enter into force with respect to that country on the date thus indicated.

COMMENTARY

DRAFT TEXT

(b) If the entry into force according to subparagraph (a) precedes the entry into force of Articles 1 to 21 and the Appendix according to Article 28(2)(a), the said country shall, [in the meantime] [during the period between the entry into force according to subparagraph (a) and the entry into force of Articles 1 to 21 and the Appendix according to Article 28(2)(a)],² be bound, in substitution for Articles 1 to 21 and the Appendix, by Articles 1 to 20 of the Brussels Act of this Convention.

ARTICLE 29bis^{1, 2}[REFERENCES TO ARTICLE 14
OF THE WIPO CONVENTION]

1. This Article is numbered "bis" in order to leave, unchanged the numbers of the subsequent Articles as they appear in the Stockholm Act.

2. This Article is intended to take care of the problem pointed out by the Japanese Delegation in the September 1970 session of the Assembly of the Berne Union. The problem is the following. The WIPO Convention provides that a State party to the Berne Convention without being party to the Paris Convention (for the Protection of Industrial Property) may become party to the WIPO Convention only if it concurrently ratifies or accedes to, or only after it has ratified or acceded to, the *Stockholm Act* of the Berne Convention in its entirety or at least the administrative provisions (and final clauses) of that Act (see WIPO Convention, Article 14(2)). Now, Article 34 of the Paris Act of this (the Berne) Convention proposes to "close" the Stockholm Act, i.e., to disallow ratification thereof or accession thereto once the Paris Act has entered into force in its entirety. Thus, it would be impossible, once Article 34 becomes applicable, for the countries in question to become party to the Stockholm Act and, consequently, to the WIPO Convention. To avoid this manifestly undesirable result, this Article resorts to a legal fiction: ratification of or accession to the Paris Act "implies" ratification of the administrative provisions and final clauses of the Stockholm Act.

3. The words "with the limitation set forth in Article 28(1)(b)(i)" are taken over from Article 14(2) of the WIPO Convention and mean, in effect, that only the administrative and final clauses of the Stockholm Act were accepted. This is the minimum that is needed to qualify for adherence to WIPO. (Acceptance of the substantive clauses of the Stockholm Act not being required for qualifying for adherence to WIPO, it was not necessary to reproduce also the words "in its entirety" appearing in Article 14(2) of the WIPO Convention and that is why the proposed provision does not reproduce those words.)

Whereas the Paris Act takes over without any modification the administrative provisions of the Stockholm Act (Articles 22 to 26) and part of the Stockholm Act's final clauses (Articles 33, 35 and 36), it does modify others (Articles 27, 28, 29, 30, 31, 32, 34, 37 and 38). The final clauses of the latter category of the Stockholm Act will, in reality, not be applied by a country accepting the Paris Act because they are replaced, from the outset, by the corresponding Articles of the Paris Act. That is why the proposed Article 29bis says that what are in effect the administrative provisions and final clauses of the Stockholm Act are accepted "for the sole purposes of Article 14(2)," that is, in order to be able to accept the WIPO Convention, whereas for all other purposes only as much of the Stockholm Act will apply as is not modified by the Paris Act.

Ratification of or accession to this Act by any country not bound by Articles 22 to 38 of the Stockholm Act of this Convention shall, for the sole purpose of Article 14(2) of the Convention Establishing the World Intellectual Property Organization, imply ratification of or accession to the said Stockholm Act with the limitation set forth in Article 28(1)(b)(i) thereof.³

COMMENTARY

1. Paragraph (1) differs from the Stockholm Act in that it refers to the Appendix rather than the Protocol and that the last word is "Convention" rather than "Act" since the tendency in the instrument is to speak of the *Convention* whenever the emphasis is on the substance of protection, and to speak of the *Act* when something specifically concerning the Act—for example, its ratification—is involved.

2. Paragraph (2) is the same as in the Stockholm Act, except that it refers in subparagraphs (a) and (b) to Article II(8) of the Appendix, and in subparagraph (b) to Article I(6)(b) of the Appendix.

Reference to Article II(8) of the Appendix seems to be necessary because, if the country is a developing country and makes use of the faculties provided for in Article II(1) to (6) of the Appendix, it cannot, as far as the right of translation is concerned, make use of the 1886/1896 Acts.

Reference to Article I(6)(b) of the Appendix is necessary because that provision excludes reciprocity vis-à-vis developing countries using the Appendix.

Paragraphs (1) to (3) are the same as in the Stockholm Act. Paragraph (4) is new. It is modelled on Article 62(4) of the Patent Cooperation Treaty of June 19, 1970. It may facilitate the acceptance of the first three paragraphs. There are many countries which are of the opinion that it is anachronistic to speak of countries being responsible for the external relations of territories.

DRAFT TEXT

ARTICLE 30

[RESERVATIONS]

(1) Subject to the possibilities of exceptions provided for in paragraph (2), in Article 28(1)(b), in Article 33(2), and in the Appendix, ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Convention.¹

(2)(a) Any country of the Union ratifying or acceding to this Act may, subject to Article II(8) of the Appendix, retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession.

(b) Any country outside the Union may declare, in acceding to this Convention and subject to Article II(8) of the Appendix, that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into the language or languages of the said country. Subject to Article I(6)(b) of the Appendix, any country has the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country.

(c) Any country may withdraw such reservations at any time by notification addressed to the Director General.²

ARTICLE 31

[TERRITORIES]

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

COMMENTARY

DRAFT TEXT

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

(4) This Article shall in no way be understood as implying the recognition or tacit acceptance by a country of the Union of the factual situation concerning a territory to which this Convention is made applicable by another country of the Union by virtue of a declaration under paragraph (1).

ARTICLE 32

[EARLIER ACTS]

This Article is an adaptation of Article 32 of the Stockholm Act.

(1) This Act shall, as regards the relations between the countries of the Union, and to the extent that it applies, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable, in their entirety or to the extent that this Act does not replace them by virtue of the preceding sentence, in relations with countries of the Union which do not ratify or accede to this Act.

(2) Countries outside the Union which become party to this Act shall, subject to paragraph (3), apply it with respect to any country of the Union not bound by this Act or which, although bound by this Act, has made a declaration pursuant to Article 28(1)(b). Such countries recognize that the said country of the Union, in its relations with them:

- (i) may apply the provisions of the most recent Act by which it is bound, and
- (ii) subject to Article I(6) of the Appendix, has the right to adapt the protection to the level provided for by this Act.

COMMENTARY

DRAFT TEXT

(3) Any country which has availed itself of the faculty provided for in Articles II and IV of the Appendix, or of the faculty provided for in Articles III and IV of the Appendix, or of both of these faculties, may apply Articles I to IV of the Appendix in its relations with any other country of the Union which is not bound by this Act, provided that the latter country has accepted the application of the said Articles.

ARTICLE 33

[DISPUTES]

This Article is the same as in the Stockholm Act.

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

ARTICLE 34

[CLOSING OF EARLIER ACTS]

(1) Subject to Article 29bis, no country may accede, once Articles 1 to 21 and the Appendix have entered into force, to earlier Acts of this Convention.¹

1. The reference to Article 29bis seems to be necessary since an "implied" accession to the Stockholm Act's administrative provisions and final clauses may be necessary even after the entry into force of the Paris Act for the reasons explained in the comments on draft Article 29bis.

The Stockholm Act spoke about that Act's entry into force "in its entirety" whereas, in the Paris Act, it is proposed to speak about the entry into force of its substantive provisions only (Articles 1 to 21 and the Appendix). Under the Stockholm Act, the substantive clauses and the administrative provisions could enter into force independently of each other. (In fact, so far the substantive clauses have not entered into force). However, under the proposed Paris Act, the administrative provisions will enter into force as soon as one country ratifies or accedes to that Act (see Article 28(3)) so that the entry into force of the entirety of the Paris Act depends only on the entry into force of the substantive clauses.

COMMENTARY

2. Paragraph (2) corresponds to the second sentence of Article 34 as drafted by the Permanent Committee.

This Article is the same as in the Stockholm Act.

This Article is the same as in the Stockholm Act.

This Article is an adaptation of Article 37 of the Stockholm Act. The Director General would be depositary after the time limit for signatures expires.

DRAFT TEXT

(2) As from the same event, no country may make a declaration under Article 5 of the Protocol Regarding Developing Countries attached to the Stockholm Act.²

ARTICLE 35

[DENUNCIATION]

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

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

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

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

ARTICLE 36

[DOMESTIC LEGISLATION]

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

(2) It is understood that, at the time a country deposits its instrument of ratification or accession, it will be in a position under its domestic law to give effect to the provisions of this Convention.

ARTICLE 37

[SIGNATURE, ETC.]

(1)(a) This Act shall be signed in a single copy in the French and English languages and, subject to paragraph (2), shall be deposited with the Director General.

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

COMMENTARY

DRAFT TEXT

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

(2) This Act shall remain open for signature until January 31, 1972. Until that date, the copy referred to in paragraph (1)(a) shall be deposited with the Government of the French Republic.

(3) The Director General shall certify and transmit two copies of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

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

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Articles 28(1)(c), 30(2)(a) and (b), and 33(2), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 30(2)(c), 31(1) and (2), and 33(3).

ARTICLE 38

[TRANSITIONAL PROVISIONS]

Paragraph (1) is an adaptation of paragraph (2) of the Stockholm Act. Paragraph (1) of the Stockholm Act is omitted since the event referred to therein (assuming of office by the first Director General) has taken place in the meantime.

Paragraphs (2) and (3) are the same as paragraphs (3) and (4) of the Stockholm Act.

(1) Countries of the Union which have not ratified or acceded to this Act and which are not bound by Articles 22 to 26 of the Stockholm Act of this Convention may, until April 26, 1975, exercise, if they so desire, the rights provided under the said Articles as if they were bound by them. Any country desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such countries shall be deemed to be members of the Assembly until the said date.

(2) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.

(3) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

COMMENTARY

DRAFT TEXT

APPENDIX

(PROVISIONS REGARDING
DEVELOPING COUNTRIES)

ARTICLE I

This Article corresponds to Article I of the draft Additional Act prepared by the Permanent Committee. It differs from that draft only in formal respects.

[(1) Entitlement for Developing Countries to Make Certain Substitutions; (2) Duration of the Entitlement; (3) Automatic Loss of the Entitlement; (4) Continued Use of Copies Produced Under Articles II or III; (5) Territories; (6) No Reciprocity]

Paragraph (1) determines which countries will be entitled to avail themselves of the faculties provided for in the Appendix concerning the right of translation and the right of reproduction. These will be countries regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations and which, by a notification, declare that they intend to avail themselves of such faculties. This, generally speaking, is the system of the Stockholm Protocol.

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article II(7)(b), at any time thereafter, declare that it will avail itself of the faculty provided for in Articles II and IV, or of the faculty provided for in Articles III and IV, or of both of those faculties.

Paragraph (2) establishes the period of validity of the declaration by a country that intends to avail itself of these faculties: ten years from the date of entry into force of the Paris Act. The declaration may, however, be renewed, in whole or in part, for further periods of ten years.

(2) Any declaration so notified shall be effective for a period of ten years from the date of the entry into force of this Act, or for such part of that period as remains at the date of deposit of the notification, and may be renewed in whole or in part for further periods of ten years each if, during the year preceding the expiration of the relevant ten-year period, the country concerned deposits a further notification with the Director General. Initial notifications may also be made during these further periods of ten years in accordance with the provisions of this paragraph.

COMMENTARY

Paragraph (3) governs the case of countries which, in conformity with the established practice of the General Assembly of the United Nations, have ceased to be regarded as developing countries. Such countries will automatically (that is to say, whether or not they formally withdraw the declaration they have previously made) lose the possibility of continuing to avail themselves of the said faculties, either three years after they have ceased to be developing countries or at the end of the ten-year period then in force where there are more than three years of that period still to run.

Paragraph (4) is intended to protect acquired rights. It provides that any copies of a work that have been made under a license granted by virtue of the Appendix may continue to be distributed until the stock of such copies is exhausted.

Paragraph (5) governs the case of territories to which the Convention may be declared applicable by certain countries of the Union (Article 31) and which might find themselves in the same position as that of developing countries. In such cases, those countries of the Union may, by a notification, allow such territories to avail themselves of the faculties provided for in the Appendix. This provision corresponds to Article 6 of the Stockholm Protocol.

The purpose of paragraph (6) is to eliminate the possibility of applying reciprocal treatment to countries availing themselves of the faculties referred to in paragraph (1) of this Article or in Article 30(2)(b) concerning the right of translation.

DRAFT TEXT

(3) Notwithstanding the provisions of paragraph (2), a country of the Union which, in conformity with the established practice of the General Assembly of the United Nations, has ceased to be regarded as a developing country shall no longer be entitled to renew its declaration made under paragraph (1), and, whether or not it formally withdraws the said declaration, such country shall be precluded from availing itself of the faculties referred to in that paragraph from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.

(4) Any copies of a work already made under a license granted by virtue of this Appendix may continue to be distributed until their stock is exhausted.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

(6)(a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than is provided for in Articles 1 to 20.

(b) The right to apply reciprocal treatment provided for in Article 30(2)(b), second sentence, shall not be exercised in respect of works the country of origin of which is a country which has availed itself of any of the faculties referred to in paragraph (1).

COMMENTARY

DRAFT TEXT

ARTICLE II

This Article corresponds to Article 2 of the draft Additional Act prepared by the Permanent Committee. It differs from that draft only in formal respects.

[TRANSLATION: (1) *Licenses Instead of Exclusive Right*; (2) *General Condition: Three Years Without Translation*; (3) *Shorter Term (One Year) if the Translation is Not Into the Language of a Developed Country*; (4) *Objective: Study, Etc.*; (5) *License Grantable Six or Nine Months After Request*; (6) *Where Many Illustrations, Article III Applies*; (7) *Ten-Year Exclusive Right, an Alternative Possibility; Once Exercised, No Return to Licenses*; (8) *No Possibility of Ten-Year Limitation Once License Possibility Used*; (9) *Any Country which Ceases to Be Developing may Make "Ten-Year Exclusive Right" Reservation even if Previously a "License" Country*]

Paragraph (1) provides for the possibility which is reserved for countries entitled to avail themselves of the faculties provided for under the Appendix of substituting for the exclusive right of translation provided for in Article 8 of the Convention, under certain circumstances, a system of compulsory licenses. The works concerned, however, are only those which have been published in printed or analogous forms of reproduction (for example, offset). Furthermore, the licenses are non-exclusive and non-transferable.

(1) Any country entitled to and availing itself of the faculties provided for under this Appendix may, so far as works published in printed or analogous forms of reproduction are concerned, substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority, under the following conditions and subject to the provisions of Article IV.

Paragraph (2) governs the conditions for obtaining such licenses. First, they are obtainable only after the expiration of a period of three years (or of any longer period determined by national legislation) from the date of the first publication of a work in the category provided for in paragraph (1). Secondly, the owner of the right of translation of the work must not have published or authorized the publication of a translation in the language or, where appropriate, in one of the languages of the developing country concerned. Thirdly, the person obtaining the license must be a national of that country. If those conditions are fulfilled, that person may approach the competent authority of his country and obtain from it—after complying with certain formalities indicated in Article IV—a license to translate the work in question into the language referred to above and to publish the translation in printed or analogous forms of reproduction.

(2) If, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the country referred to above, a translation of such work has not been published in the language or in one of the languages of that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to translate the work and publish the work so translated in the said language in printed or analogous forms of reproduction.

Paragraph (3) provides for an exception to one of the conditions in the preceding paragraph. If the language into which the translation is to be made is not a language which is in general use in one or more developed countries (for example, if it is not English, French or Spanish), the period of the exclusive right reserved for the owner of the right of translation will be one year instead of three years. In other words, the national of the developing country will be able, in such cases, to start proceedings for the obtaining of a license at the end of a period of one year from the date of the first publication of the work concerned.

(3) However, in the case of a translation into a language which is not in general use in one or more developed countries, a period of one year shall be substituted for the period of three years provided for in paragraph (2) above.

Paragraph (4) establishes an important limitation which applies to all cases. The license can be granted only for the purposes of teaching, scholarship or research. During the preparatory work it was generally agreed that the word "research" should not be understood in the sense of research for industrial or commercial purposes.

(4) Any license under the preceding paragraphs shall be granted only for the purpose of teaching, scholarship or research.

COMMENTARY

DRAFT TEXT

Paragraph (5) provides that, before a license can be obtained, a further period must have elapsed since the date of the application for permission to translate made to the owner of the right of translation by the national of the developing country concerned, or since the dispatch by the latter of the copies of his application to the persons specified in Article IV. The said period will be six months where the waiting period is three years and nine months where the license may be obtained at the end of one year because the language in question is not in general use in one or more developed countries.

Paragraph (6) governs the special case of works which are composed mainly of illustrations. In such cases, where a license is applied for, the conditions laid down in Article III must be fulfilled not only for the translation of the text but also for the reproduction of the illustrations.

The purpose of paragraph (7) is to offer developing countries a choice in the matter of translation. Any country entitled to avail itself of the faculties provided for under the Appendix may, if it is a country of the Union (subparagraph (a)(i)), choose between the special system defined in the Appendix for the right of translation and the "ten-year system" to which Article 30(2)(a) of the Stockholm Act refers, on condition that it makes a declaration to that effect at the time of depositing its instrument of ratification or accession. If it is a country outside the Union (subparagraph (a)(ii)), it may choose between the system under the Appendix and that provided for in Article 30(2)(b), first sentence, the so-called "ten-year system" (that is to say, a ten-year limitation from the date of the first publication of the original work on the exclusive right of translation, if during that period the author has not availed himself of that right by having a translation published in the language for which protection will be sought). Subparagraph (b) makes the choice irrevocable: a country choosing the so-called ten-year system cannot later avail itself of the system under the Appendix as far as the right of translation is concerned. It should be recalled here that the right to apply reciprocal treatment provided for in Article 30(2)(b) cannot be applied to developing countries (Article I(6)(b)).

Paragraph (8) makes the choice irrevocable also in the inverse case: a developing country having chosen the system applicable under the Appendix as far as the right of translation is concerned may not later avail itself of the so-called ten-year system. See, however, paragraph (9).

The purpose of paragraph (9) is to permit a country to which the criterion of developing country is no longer applicable to avail itself of the so-called ten-year system (or to continue to avail itself of that system if it has already chosen to apply it). In such cases, however, the right to apply reciprocal treatment provided for in Article 30(2)(b) may be exercised against such country by other countries.

(5) Licenses obtainable after three years shall not be granted under the preceding paragraphs until a further period of six months has elapsed, and licenses obtainable after one year until a further period of nine months has elapsed, from the date of the application for permission to translate mentioned in Article IV(1), or of the dispatch of the copies of the application mentioned in Article IV(2), as the case may be.

(6) For works which are composed mainly of illustrations, a license to translate the text and to reproduce the illustrations may be granted only if the conditions of Article III are also fulfilled.

(7)(a) Any country entitled to avail itself of the faculties provided for under this Appendix may, instead of availing itself of the faculties provided for in paragraphs (1) to (6), at the time of ratifying or acceding to this Act:

(i) if it is a country of the Union, avail itself of the faculty provided for in Article 30(2)(a), even if it has not earlier availed itself of the said faculty;

(ii) if it is a country outside the Union, avail itself of the faculty provided for in Article 30(2)(b), first sentence.

(b) Any country which has availed itself of the faculty referred to in subparagraph (a) may not subsequently avail itself of the faculties provided for in paragraphs (1) to (6) even if it withdraws its declaration made under Article 30(2)(a), or Article 30(2)(b), first sentence, or equivalent provisions of earlier Acts.

(8) Subject to paragraph (9), any country which has availed itself of the faculties provided for in paragraphs (1) to (6) may not subsequently avail itself of the faculties provided for in Article 30(2)(a) or Article 30(2)(b), first sentence.

(9) Any country which has ceased to be regarded as a developing country in conformity with the practice referred to in Article I(1) may, within three months from the expiration of the period provided for in Article I(3), avail itself of the faculty provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union.

COMMENTARY

DRAFT TEXT

This Article corresponds to Article 3 of the draft Additional Act prepared by the Permanent Committee. It differs from that draft only in formal respects.

Paragraph (1) provides for the possibility which is reserved for countries entitled to avail themselves of the faculties provided for under the Appendix of substituting for the exclusive right of reproduction provided for in Article 9 of the Convention a system of compulsory licenses. The formula is similar to that used in the case of the right of translation (non-exclusive and non-transferable licenses).

The Director General of WIPO calls the attention of the Diplomatic Conference to the following. This paragraph speaks of the substitution to be made for Article 9 of the Convention. *It is believed that it should speak only of the substitution for Article 9(1) and (2)*. Paragraph (3) of that Article assimilates the act of making sound recordings or visual recordings to the act of reproduction. Thus, if the Appendix were to be used in substitution also for paragraph (3) it could be interpreted as meaning that the license system provided for in the Appendix would also apply to the making of phonograms, motion pictures and other sound or visual recordings of written (including musical) works. This was not the intention of those responsible for the preparatory work. All that was intended was that the reproduction of writings (and the notion includes text, musical notations, illustrations) resulting in writings should be covered (see paragraph (7), first sentence), as well as the reproduction, in certain cases, of audio-visual works resulting in audio-visual copies (for example, a talking motion picture for systematic instructional activities; see paragraph (7), second sentence), but not, for example, the making of a motion picture of a novel, or the making of a record of a musical work (the latter is at any rate subject to the possibility of compulsory licensing under Article 13).

Paragraph (2) governs the conditions for obtaining such licenses. The first condition requires the expiration of a certain period (defined below), or of any longer period determined by national legislation, after the date of the first publication of a particular edition of a work belonging to the category defined in paragraph (7). In the second place, the owner of the right of reproduction of the work must not have distributed or authorized the distribution of copies of such edition in the developing country concerned to the general public or in connection with systematic instructional activities. Thirdly, the work must not have been distributed at a price reasonably related to that normally charged in the said country for comparable works. Fourthly, as in the case of the system for the right of translation, the person obtaining the license must be a national of that country. If these conditions are fulfilled, that person may approach the competent authority of his country and obtain from it—after complying with certain formalities indicated in Article IV—a license to publish the edition at that price or a lower price. But another limitation is imposed: such publication must be for the purpose of being used in connection with systematic instructional activities.

ARTICLE III

[REPRODUCTION: (1) *Licenses Instead of Exclusive Right*; (2) *General Condition: Certain Period Without Adequate Publication*; (3) *The Period: Science, Three Years; Fiction, Seven Years; Other, Five Years*; (4) *License Grantable After Three or Six Months After Request*; (5) *No Licenses for Reproducing Translations Not Authorized by the Owner of the Copyright or Translations Not in the Language of the Country*; (6) *License Ceases when Copies at Fair Price Available thanks to Copyright Owner*; (7) *Article Applies to Printed Version; to Audio-Visual Versions Only if for School Use*]

(1) Any country entitled to and availing itself of the faculties provided for under this Appendix may substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses granted by the competent authority under the following conditions and subject to the provisions of Article IV.

(2) If, after the expiration of

- (i) the relevant period specified in paragraph (3) commencing from the date of first publication of a particular edition of a literary or artistic work referred to in paragraph (7), or**

COMMENTARY

DRAFT TEXT

Paragraph (3) specifies the duration of the period of the exclusive right reserved to the owner of the right of reproduction. It varies according to the type of work: three years for works of the natural and physical sciences, including mathematics, and of technology; seven years for works of fiction and art books; five years for all other works.

Paragraph (4) provides that, before a license can be obtained, a further period must have elapsed, as for the right of translation. The said period will be six months in the case of a work of the natural and physical sciences, including mathematics, and of technology. It will be three months in other cases. It starts to run from the date of the application for permission to reproduce or of the dispatch of the copies of the application, as in the case of licenses to translate.

Paragraph (5) specifies two cases in which the system established under the Appendix for the right of reproduction cannot be applied. A license to reproduce and publish a translation of a work will not be granted if the translation was not published (for the first time) by the owner of the right or with his authorization (it may, for example, be an unlawful translation or one that has been published under a compulsory license). The same applies—and this is the second case—if the translation is not in a language that is the language or one of the languages of the developing country in which the license is applied for.

(ii) any longer period determined by national legislation of the country referred to above, copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works, by the owner of the right of reproduction or with his authorization, any national of such country may obtain a license to publish such edition at that or a lower price for use in connection with systematic instructional activities.

(3) The period referred to in paragraph (2)(i) shall be five years, except that

(i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;

(ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4) Licenses obtainable after three years shall not be granted under this Article until a period of six months has elapsed from the date of the application for permission to reproduce mentioned in Article IV(1), or of the dispatch of the copies of the application mentioned in Article IV(2), as the case may be. Licenses obtainable after other periods shall not be granted until a period of three months has elapsed from the date of the dispatch of copies of the application.

(5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

(i) where the translation was not published by the owner of the right or with his authorization; or

(ii) where the translation is not in a language that is the language or one of the languages of the country granting the license.

COMMENTARY

Paragraph (6) gives the owner of the right the possibility of terminating the license. In order to do so, the said owner of the right, or a third party with his authorization, must distribute copies of an edition of the work in the developing country concerned. Four conditions, however, must be fulfilled: distribution must be to the general public or in connection with systematic instructional activities; it must be at a price reasonably related to that normally charged in that country for comparable works; the edition must be in the same language as the edition published under the license; and, finally, it must be substantially the same in content as the edition published under the license.

This provision offers protection for acquired rights by providing that copies made under the license may continue to be distributed until the stock is exhausted. A similar provision appears in paragraph (4) of Article I in relation to the distribution of copies after the expiration of the period during which the faculties provided for under the Appendix may be availed of.

Paragraph (7) determines the categories of works to which the license system established by the Appendix may apply. The works in question are literary or artistic works published in printed or analogous forms of reproduction. The formula is the same as for the system relating to the right of translation. One special case, however, has been provided for: that of audio-visual works (a new expression in the Convention, but in view of the importance of such works to developing countries they have been specially mentioned). The preferential system (license system) also applies to the reproduction of such works and to the translation of any accompanying text into the language of the country concerned.

There is one restriction, however: they must be audio-visual works prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities.

This Article corresponds to Article 4 of the draft Additional Act prepared by the Permanent Committee. It differs from that draft only in formal respects.

Paragraph (1) sets a prior condition to the grant of any license in respect of translation or reproduction. The applicant must establish that he has requested and been denied authorization by the owner of the right, or that after due diligence on his part he has been unable to find the owner of the right. For the application of this provision, reference is made to the procedure of the country where the request is made. It is therefore a matter for legislation in the countries concerned to determine the requirements which the applicant must comply with in establishing proof of his actions.

DRAFT TEXT

(6) Whenever copies of an edition of a work are distributed in the country referred to above to the general public or in connection with systematic instructional activities, by the owner of the right or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and is substantially the same in content as the edition published under the license. However, any copies already made before the license is terminated may continue to be distributed.

(7) The literary or artistic works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction. However, the faculties provided for in this Article shall also apply to the reproduction of audio-visual works and to the translation into the language or one of the languages of the country concerned of any accompanying text, in which case the substitutions permitted by this Article shall be limited to audio-visual works prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities.

ARTICLE IV

FORMALITIES AND CONDITIONS AS TO LICENSES:

(1) Attempt to Obtain Contractual License; (2) If Unsuccessful: Communication to Publisher, Diplomatic Representative, Certain Organizations; (3) Moral Rights; (4) No Exportation or Manufacture Abroad; (5) Notice of Territorial Limitation; (6) Remuneration; Moral Rights; (7) Licenses where Edition is Sold Out; (8) No Licenses where Work Withdrawn by Author]

(1) Any license granted under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right.

COMMENTARY

Paragraph (2) deals further with the case where the applicant has been unable to find the owner of the right. By virtue of this provision, the applicant is required to send copies of his application to certain persons or to certain bodies specifically referred to.

Paragraph (3) is intended to safeguard moral rights. The Diplomatic Conference might wish to consider making the text of this paragraph somewhat clearer. The following text is proposed: "the name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies."

Paragraph (4) excludes the possibility of any export of copies made on the basis of a license to translate or to reproduce granted under Article II or Article III. The substitutions available to developing countries are mainly for the purpose of being used in connection with systematic instructional activities; they would not be compatible with activities of a strictly commercial nature, which would be the case if the export of copies were permitted.

Paragraph (5) follows on from the preceding paragraph. The license being valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country where it has been applied for, the users must be informed of this fact. For that purpose, a special notice is prescribed which must appear on any copy published under the license.

Paragraph (6) leaves it to the developing country concerned to make provision by national legislation to assure to the owner of the right of translation or of reproduction just compensation and the payment and transmittal of such compensation. The national legislation must also ensure that the moral rights are respected by making due provision to assure a correct translation of the work or an accurate reproduction, as the case may be. It was generally agreed, however, during the preparatory work that this did not exclude the possibility of minor adaptations made for the purpose of conformity with local usage, such as changes in references to units of measurement in a work of the natural and physical sciences.

DRAFT TEXT

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization, or to any national or international information center, which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country of which the publisher is believed to be a national.

(3) The name of the author and the original title of the work or of the particular edition of the work shall be printed on all copies of the published translation or reproduction.

(4) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country of the Union where it has been applied for.

(5) All copies published in accordance with such a license shall, from the time of first publication, bear notices in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6) Due provision shall be made by national legislation to assure

- (i) that the license provides, in favor of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned; and
- (ii) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent; and
- (iii) a correct translation of the work or an accurate reproduction of the particular edition, as the case may be.

COMMENTARY

Paragraph (7) governs two particular cases. The first concerns the license to translate: such a license may be granted if, in respect of a translation already published in the language concerned, the editions are out of print. The second case concerns the license to reproduce: such a license may be granted if, for a period of six months, no authorized copies of the edition in question have been on sale at a price reasonably related to that normally charged in the country concerned for comparable works.

Paragraph (8) takes account of the author's right to disown his work (*droit de repentir*) by providing that if he has withdrawn from circulation all copies of the edition of his work a license cannot be granted.

This Article corresponds to Article 5 of the draft Additional Act prepared by the Permanent Committee. It differs from that draft only in formal respects.

DRAFT TEXT

(7) Licenses may also be granted in accordance with the provisions of Article II if, in respect of a translation already published in the language concerned, the editions are out of print. Licenses may also be granted in accordance with the provisions of Article III if for a period of six months no authorized copies of the edition in question have been on sale in the country concerned to the public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works.

(8) A license shall not be granted when the author has withdrawn from circulation all copies of the edition of the work.

ARTICLE V

[Early Application of Articles I to IV]

(1) Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:

- (i) if it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article I(1), that it shall apply the provisions of Articles II and IV, or of Articles III and IV, or of Articles II to IV, to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix,
- (ii) that it admits the application of Articles II and IV, or of Articles III and IV, or of Articles II to IV, to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.

(2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.

COMMENTARY

DRAFT ADDITIONAL ACT OF PARIS

ADDITIONAL ACT

of Paris, of July 24, 1971,

As to the expression, "Additional Act", see paragraph 11 of the Introductory Observations.

to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, revised at Rome on June 2, 1928, at Brussels on June 26, 1948, and at Stockholm on July 14, 1967

ARTICLE I

*[Ratification or Accession
by Countries of the Union]*

1. At the present time, no country is bound by the entirety of the Stockholm Act or by that Act without its administrative provisions. However, it is not impossible that there will, in the future, be countries so bound. Item (i) covers this possibility.

2. More precisely, Article 21 and the Protocol are replaced by Articles IV to VII and XV; Articles 28 and 29, by Articles VIII and IX; Article 30, by Article X; Article 32, by Article XI; Articles 34 and 35, by Articles XII and XIII; Article 37, by Article XIV.

3. It follows from Article XI(1)—which is similar to Article 32(1) of the Stockholm Act—that any country coming under item (i) will continue to be bound by Article 21 and the Stockholm Protocol in its relations with any other country bound by those provisions until such time as the latter also becomes bound by the Additional Act.

4. This provision means that the countries already bound by the administrative provisions and final clauses of the Stockholm Act will, upon accepting the Additional Act: (i) be bound by Articles 1 to 20 of the Stockholm Act; (ii) continue not to be bound by Article 21 and the Protocol Regarding Developing Countries of the Stockholm Act; (iii) cease to be bound by Articles 28 and 29 (entry into force of the Stockholm Act), 30 (reservations), 32 (relations under earlier Acts), 34 (closing of earlier Acts), 35 (denunciation), and 37 (signature, etc.), of the Stockholm Act since the Additional Act contains corresponding provisions (*see* Articles VIII, IX, X, XI, XII, XIII, and XIV, respectively).

5. It follows from Article XI(1)—which is similar to Article 32(1) of the Stockholm Act—that any country coming under item (ii) will continue to be bound by Articles 22 to 38 of the Stockholm Act in its relations with any other country bound by those provisions until such time as the latter also becomes bound by the Additional Act.

6. This provision means that countries not bound by any provisions of the Stockholm Act will, upon accepting the Additional Act: (i) be bound by the substantive clauses (Articles 1 to 20) of the Stockholm Act but continue not to be bound by Article 21 and the Stockholm Protocol; (ii) be bound by the administrative provisions (Articles 22 to 26) of the Stockholm Act; (iii) be bound by those final clauses—Articles 27 (Revision), 31 (Territories), 33 (Disputes) 36 (Domestic Legislation), and 38 (Transitional Provisions)—of the Stockholm Act which have no corresponding clause in the Additional Act but continue not to be bound by those final clauses (Articles 28, 29, 30, 32, 34, 35 and 37) of the Stockholm Act which have a corresponding clause (Articles VIII, IX, X, XI, XII, XIII, and XIV, respectively) in the Additional Act.

(1) Any country of the Union established by the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as "the Union") which has signed this Additional Act may ratify it, and, if it has not signed it, may accede to it.

(2) Ratification of or accession to this Additional Act by a country of the Union:

- (i) which is bound by the entirety of the Stockholm Act of July 14, 1967, of the Berne Convention (hereinafter referred to as "the Stockholm Act"), or which is bound by the Stockholm Act with the exception of Articles 22 to 26 thereof,¹ shall have the effect of replacing Articles 21, 28, 29, 30, 32, 34, 35 and 37 of that Act and the Protocol Regarding Developing Countries attached to that Act;^{2,3}
- (ii) which has ratified or acceded to the Stockholm Act with the limitation set forth in Article 28(1)(b)(i) thereof shall imply ratification of or accession to Articles 1 to 20 of the Stockholm Act and the replacing of Articles 28, 29, 30, 32, 34, 35 and 37 thereof;^{4,5}
- (iii) which is not bound by any provision of the Stockholm Act shall imply ratification of or accession to Articles 1 to 20, 22 to 27, 31, 33, 36 and 38 of the Stockholm Act.⁶

COMMENTARY

DRAFT TEXT

ARTICLE II

*[Accession by Countries
Outside the Union]*

1. It goes without saying that, until the Additional Act enters into force, a country outside the Union may accede to either the Brussels Act or the Stockholm Act, except that if, in the meantime, the Stockholm Act enters into force in its entirety, it may accede only to the Stockholm Act.

2. See note 6 under Article I.

(1) Any country outside the Union may become party to the Berne Convention, and thus a member of the Union, by acceding to this Additional Act.¹

(2) Such accession shall imply accession to Articles 1 to 20, 22 to 27, 31, 33, 36, and 38, of the Stockholm Act.²

ARTICLE III

*[Reference to Article 14
of the WIPO Convention]¹*

1. This Article is intended to take care of the problem pointed out by the Japanese Delegation in the September 1970 session of the Assembly of the Berne Union. The problem is the following. The WIPO Convention provides that a State party to the Berne Convention without being party to the Paris Convention (for the Protection of Industrial Property) may become party to the WIPO Convention only if it concurrently ratifies or accedes to, or only after it has ratified or acceded to, the *Stockholm Act* of the Berne Convention in its entirety or at least the administrative provisions (and final clauses) of that Act (see WIPO Convention, Article 14 (2)). Now, Article XII (1) (ii) of this Additional Act of Paris of the (Berne) Convention proposes to "close" the Stockholm Act to countries outside the Union, i.e., to refuse to allow them to accede thereto once this Additional Act of Paris has entered into force. Thus, it would be impossible, once Article 34 becomes applicable for the countries in question to become party to the Stockholm Act and, consequently, to the WIPO Convention. To avoid this manifestly undesirable result, this Article resorts to a legal fiction: ratification of or accession to the Additional Act of Paris "implies" ratification of the administrative provisions and final clauses of the Stockholm Act.

2. The words "with the limitation set forth in Article 28 (1) (b) (i)" are taken over from Article 14 (2) of the WIPO Convention and mean, in effect, that only the administrative provisions and final clauses of the Stockholm Act have been accepted. This is the minimum that is needed to qualify for adherence to WIPO. (Acceptance of the substantive clauses of the Stockholm Act not being required in order to qualify for adherence to WIPO, it was not necessary to reproduce also the words "in its entirety" appearing in Article 14 (2) of the WIPO Convention and that is why the proposed provision does not reproduce those words.)

Whereas the Additional Act of Paris takes over without any modification the administrative provisions of the Stockholm Act (Articles 22 to 26) and part of the Stockholm Act's final clauses (Article 27, 31, 33, 36 and 38), it does make some modifications in others (Articles 28, 29, 30, 32, 34, 35 and 37). The final clauses of the latter category of the Stockholm Act will, in reality, not be applied by a country accepting the Additional Act of Paris because they are replaced, from the outset, by the corresponding Articles of that Additional Act (Articles VIII, IX, X, XI, XII, XIII and XIV). That is why the proposed Article III says that the provisions which are in effect the administrative provisions and final clauses of the Stockholm Act are accepted "for the sole purposes of Article 14 (2)," that is, in order to be able to accept the WIPO Convention, whereas for all other purposes as much of the said clause will apply as is provided in Articles I and II.

Ratification of or accession to this Additional Act by any country not bound by Articles 22 to 38 of the Stockholm Act of this Convention shall, for the sole purposes of Article 14(2) of the Convention Establishing the World Intellectual Property Organization, imply ratification or accession to the said Stockholm Act with the limitation set forth in Article 28(1) (b) (i) thereof.²

COMMENTARY

This Article corresponds to Article 1 of the draft Additional Act prepared by the Permanent Committee. It differs from that draft only in formal respects.

Paragraph (1) determines which countries will be entitled to avail themselves of the faculties provided for in the Additional Act concerning the right of translation and the right of reproduction. Those faculties may be used only by countries regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations and which, by a notification, declare that they intend to avail themselves of such faculties. This, generally speaking, is the system of the Stockholm Protocol.

Paragraph (2) establishes the period of validity of the declaration by a country that intends to avail itself of these faculties: ten years from the date of entry into force of the Additional Act of Paris. The declaration may, however, be renewed, in whole or in part, for further periods of ten years.

Paragraph (3) governs the case of countries which, in conformity with the established practice of the General Assembly of the United Nations, have ceased to be regarded as developing countries. Such countries will automatically (that is to say, whether or not they formally withdraw the declaration they have previously made) lose the possibility of continuing to avail themselves of the said faculties, either three years after they have ceased to be developing countries or at the end of the ten-year period then in force where there are more than three years of that period still to run.

DRAFT TEXT

ARTICLE IV

[(1) Entitlement for Developing Countries to Make Certain Substitutions; (2) Duration of the Entitlement; (3) Automatic Loss of the Entitlement; (4) Continued Use of Copies Produced Under Articles V or VI; (5) Territories; (6) No Reciprocity]

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Additional Act and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Additional Act may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(7)(b), at any time thereafter, declare that it will avail itself of the faculty provided for in Articles V and VII, or of the faculty provided for in Articles VI and VII, or of both of those faculties.

(2) Any declaration so notified shall be effective for a period of ten years from the date of the entry into force of this Additional Act, or for such part of that period as remains at the date of deposit of the notification, and may be renewed in whole or in part for further periods of ten years each if, during the year preceding the expiration of the relevant ten-year period, the country concerned deposits a further notification with the Director General. Initial notifications may also be made during these further periods of ten years in accordance with the provisions of this paragraph.

(3) Notwithstanding the provisions of paragraph (2), a country of the Union which, in conformity with the established practice of the General Assembly of the United Nations, has ceased to be regarded as a developing country shall no longer be entitled to renew its declaration made under paragraph (1), and, whether or not it formally withdraws the said declaration, such country shall be precluded from availing itself of the faculties referred to in that paragraph from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.

COMMENTARY

Paragraph (4) is intended to protect acquired rights. It provides that any copies of a work that have been made under a license granted by virtue of this Additional Act may continue to be distributed until the stock of such copies is exhausted.

Paragraph (5) governs the case of territories to which the Convention may be declared applicable by certain countries of the Union (Article 31 of the Stockholm Act) and which might find themselves in the same position as that of the developing countries. In such cases, those countries of the Union may, by a notification, allow such territories to avail themselves of the faculties provided for in the Additional Act. This provision corresponds to Article 6 of the Stockholm Protocol.

The purpose of paragraph (6) is to eliminate the possibility of applying reciprocal treatment to countries availing themselves of the faculties provided for in paragraph (1) or in Article X (2) (b) concerning the right of translation (subparagraph (b)).

DRAFT TEXT

(4) Any copies of a work already made under a license granted by virtue of this Additional Act may continue to be distributed until their stock is exhausted.

(5) Any country which is bound by the provisions of this Additional Act and which has deposited a declaration or a notification in accordance with Article 31(1) of the Stockholm Act with respect to the application of Articles IV to VII and XV of this Additional Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the said provisions of this Additional Act shall be applicable to the territory in respect of which it was made.

(6)(a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than is provided for in Articles 1 to 20 of the Stockholm Act.

(b) The right to apply reciprocal treatment provided for in Article X(2)(b), second sentence, shall not be exercised in respect of works the country of origin of which is a country which has availed itself of any of the faculties referred to in paragraph (1).

COMMENTARY

DRAFT TEXT

ARTICLE V

This Article corresponds to Article 2 of the draft Additional Act prepared by the Permanent Committee. It differs from that draft only in formal respects.

[TRANSLATION: (1) *Licenses Instead of Exclusive Right*; (2) *General Condition: Three Years Without Translations*; (3) *Shorter Term (One Year) if the Translation is Not Into the Language of a Developed Country*; (4) *Objective: Study, Etc.*; (5) *License Grantable Six or Nine Months After Request*; (6) *Where Many Illustrations, Article VI Applies*; (7) *Ten-Year Exclusive Right, an Alternative Possibility*; (8) *Once Exercised, No Return to Licenses*; (9) *No Possibility of Ten-Year Limitation Once License Possibility Used*; (9) *Any Country which Ceases to Be Developing may Make "Ten-Year Exclusive Right" Reservation even if Previously a "License" Country*]

Paragraph (1) provides for the possibility which is reserved for countries entitled to avail themselves of the faculties provided for in Articles IV to VII of substituting for the exclusive right of translation provided for in Article 8 of the Stockholm Act, under certain circumstances, a system of compulsory licenses. The works concerned, however, are only those which have been published in printed or analogous forms of reproduction (for example, offset). Furthermore, the licenses are non-exclusive and non-transferable.

(1) Any country entitled to and availing itself of the faculties provided under Articles IV to VII may, so far as works published in printed or analogous forms of reproduction are concerned, substitute for the exclusive right of translation provided for in Article 8 of the Stockholm Act a system of non-exclusive and non-transferable licenses, granted by the competent authority, under the following conditions and subject to the provisions of Article VII.

Paragraph (2) governs the conditions for obtaining such licenses. First, they are obtainable only after the expiration of a period of three years (or of any longer period determined by national legislation) from the date of the first publication of a work belonging to the category provided for in paragraph (1). Secondly, the owner of the right of translation of the work must not have published or authorized the publication of a translation in the language or, where appropriate, in one of the languages of the developing country concerned. Thirdly, the person obtaining the license must be a national of that country. If those conditions are fulfilled, that person may approach the competent authority of his country and obtain from it—after complying with certain formalities indicated in Article VII—a license to translate the work in question into the language referred to above and to publish the translation in printed or analogous forms of reproduction.

(2) If, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the country referred to above, a translation of such work has not been published in the language or in one of the languages of that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to translate the work and publish the work so translated in the said language in printed or analogous forms of reproduction.

Paragraph (3) provides for an exception to one of the conditions in the preceding paragraph. If the language into which the translation is to be made is not a language which is in general use in one or more developed countries (for example, if it is not English, French or Spanish), the period of the exclusive right reserved for the owner of the right of translation will be one year instead of three years. In other words, the national of the developing country will be able, in such cases, to start proceedings for the obtaining of a license at the end of a period of one year from the date of the first publication of the work concerned.

(3) However, in the case of a translation into a language which is not in general use in one or more developed countries, a period of one year shall be substituted for the period of three years provided for in paragraph (2) above.

Paragraph (4) establishes an important limitation which applies to all cases. The license can be granted only for the purposes of teaching, scholarship or research. During the preparatory work it was generally agreed that the word "research" should not be understood in the sense of research for industrial or commercial purposes.

(4) Any license under the preceding paragraphs shall be granted only for the purpose of teaching, scholarship or research.

COMMENTARY

DRAFT TEXT

Paragraph (5) provides that, before a license can be obtained, a further period must have elapsed since the date of the application for permission to translate made to the owner of the right of translation by the national of the developing country concerned, or since the dispatch by the latter of the copies of his application to the persons specified in Article VII. The said period will be six months where the waiting period is three years and nine months where the license may be obtained at the end of one year because the language in question is not in general use in one or more developed countries.

Paragraph (6) governs the special case of works which are composed mainly of illustrations. In such cases, where a license is applied for, the conditions laid down in Article VI must be fulfilled not only for the translation of the text but also for the reproduction of the illustrations.

The purpose of paragraph (7) is to offer developing countries a choice in the matter of translation. Any country fulfilling the conditions of Article IV of the Additional Act may, if it is a country of the Union (subparagraph (a) (i)) choose between the special system defined in the Additional Act for the right of translation and the "ten-year system" to which Article 30 (2) (a) of the Stockholm Act refers, on condition that it makes a declaration to that effect at the time of depositing its instrument of ratification or accession. If it is a country outside the Union (subparagraph (a) (ii)), it may choose between the system under the Additional Act for the right of translation and the system already existing in the Berne Convention known as the "ten-year system" (that is to say, a ten-year limitation from the date of the first publication of the original work on the exclusive right of translation, if during this period the author has not availed himself of that right by having a translation published in the languages for which protection will be sought). But, as subparagraph (b) shows, this choice is irrevocable: a country choosing the so-called ten-year system cannot later avail itself of the system of the Additional Act as far as the right of translation is concerned. It should be recalled here that the right to apply reciprocal treatment provided for in Article X (2) (b) cannot be applied to developing countries (Article IV (6) (b)).

Paragraph (8) makes the choice irrevocable also in the inverse case: a developing country having chosen the system applicable under the Additional Act as far as the right of translation is concerned may not later avail itself of the so-called ten-year system. See, However, paragraph (9).

The purpose of paragraph (9) is to permit a country to which the criterion of developing country is no longer applicable to avail itself of the so-called ten-year system (or to continue to avail itself of that system if it has already chosen to apply it). In such cases, however, the right to apply reciprocal treatment provided for in Article X (2) (b) may be exercised against such country by other countries.

(5) Licenses obtainable after three years shall not be granted under the preceding paragraphs until a further period of six months has elapsed, and licenses obtainable after one year until a further period of nine months has elapsed, from the date of the application for permission to translate mentioned in Article VII(1), or of the dispatch of the copies of the application mentioned in Article VII(2), as the case may be.

(6) For works which are composed mainly of illustrations, a license to translate the text and to reproduce the illustrations may be granted only if the conditions of Article VI are also fulfilled.

(7)(a) Any country entitled to avail itself of the faculties provided for in Articles IV to VII may, instead of availing itself of the faculties provided for in paragraphs (1) to (6), at the time of ratifying or acceding to this Additional Act:

- (i) if it is a country of the Union, avail itself of the faculty provided for in Article X(2)(a), even if it has not earlier availed itself of the said faculty.
- (ii) if it is a country outside the Union, avail itself of the faculty provided for in Article X(2)(b), first sentence.

(b) Any country which has availed itself of the faculty referred to in subparagraph (a) may not subsequently avail itself of the faculties provided for in paragraphs (1) to (6) even if it withdraws its declaration made under Article X(2)(a), or Article X(2)(b), first sentence, or equivalent provisions of earlier Acts.

(8) Subject to paragraph (9), any country which has availed itself of the faculties provided for in paragraphs (1) to (6) may not subsequently avail itself of the faculties provided for in Article X(2)(a) or Article X(2)(b), first sentence.

(9) Any country which has ceased to be regarded as a developing country in conformity with the practice referred to in Article IV(1) may, within three months from the expiration of the period provided for in Article IV(3), make use of the faculty provided for in Article X(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union.

COMMENTARY

DRAFT TEXT

This Article corresponds to Article 3 of the draft Additional Act prepared by the Permanent Committee. It differs from that draft only in formal respects.

Paragraph (1) provides for the possibility which is reserved for countries entitled to avail themselves of the faculties provided for in Articles IV to VII of substituting for the exclusive right of reproduction provided for in Article 9 of the Stockholm Act a system of compulsory licences. The formula is similar to that used in the case of the right of translation (non-exclusive and non-transferable licences).

The Director General of WIPO calls the attention of the Diplomatic Conference to the following. This paragraph speaks of the substitution to be made for Article 9 of the Stockholm Act. *It is believed that it should speak only of the substitution for Article 9 (1) and (2).* Paragraph (3) of that Article assimilates the act of making sound recordings or visual recording to the act of reproduction. Thus, if the Additional Act were to be used in substitution also for paragraph (3) it could be interpreted as meaning that the license system provided for in the Additional Act would also apply to the making of phonograms, motion pictures and other sound or visual recordings of written (including musical) works. This was not the intention of those responsible for the preparatory work. All that was intended was that the reproduction of writings (and the notion includes text, musical notations, illustrations) resulting in writings should be covered (see paragraph (7), first sentence), as well as the reproduction, in certain cases, of audio-visual works resulting in audio-visual copies (for example, a talking motion picture for systematic instructional activities; see paragraph (7), second sentence), but not, for example, the making of a motion picture of a novel, or the making of a record of a musical work (the latter is at any rate subject to the possibility of compulsory licensing under Article 13 of the Stockholm Act).

Paragraph (2) governs the conditions for obtaining such licenses. The first condition requires the expiration of a certain period (defined below), or of any longer period determined by national legislation, after the date of the first publication of a particular edition of a work belonging to the category defined in paragraph (7). In the second place, the owner of the right of reproduction of the work must not have distributed or authorized the distribution of copies of such edition in the developing country concerned to the general public or in connection with systematic instructional activities. Thirdly, the work must not have been distributed at a price reasonable related to that normally charged in the said country for comparable works. Fourthly, as in the case of the system for the right of translation, the person obtaining the license must be a national of that country. If these conditions are fulfilled, that person may approach the competent authority of his country and obtain from it—after complying with certain formalities indicated in Article VII—a license to publish the edition at that price or a lower price. But another limitation is imposed: such publication must be for the purpose of being used in connection with systematic instructional activities.

ARTICLE VI

[REPRODUCTION: (1) *Licenses Instead of Exclusive Right*; (2) *General Condition: Certain Period without Adequate Publication*; (3) *The Period: Science, Three Years; Fiction, Seven Years; Other, Five Years*; (4) *License Grantable after Three or Six Months after Request*; (5) *No Licenses for Reproducing Translations Not Authorized by the Owner of the Copyright or Translations Not in the Language of the Country*; (6) *License Ceases when Copies at Fair Price Available thanks to Copyright Owner*; (7) *Article Applies to Printed Version; to Audio-Visual Versions Only if for School Use*]

(1) Any country entitled to and availing itself of the faculties provided under Articles IV to VII may substitute for the exclusive right of reproduction provided for in Article 9 of the Stockholm Act a system of non-exclusive and non-transferable licenses granted by the competent authority under the following conditions and subject to the provisions of Article VII.

- (2) If, after the expiration of**
- (i) the relevant period specified in paragraph (3) commencing from the date of first publication of a particular edition of a literary or artistic work referred to in paragraph (7), or**
 - (ii) any longer period determined by national legislation of the country referred to above,**

COMMENTARY

DRAFT TEXT

Paragraph (3) specifies the duration of the period of the exclusive right reserved to the owner of the right of reproduction. It varies according to the type of work: three years for works of the natural and physical sciences, including mathematics, and of technology; seven years for works of fiction and art books; five years for all other works.

Paragraph (4) provides that, before a license can be obtained, a further period must have elapsed, as for the right of translation. The said period will be six months in the case of a work of the natural and physical sciences, including mathematics, and of technology. It will be three months in other cases. It starts to run from the date of the application for permission to reproduce or of the dispatch of the copies of the application, as in the case of licenses to translate.

Paragraph (5) specifies two cases in which the system established under the Additional Act for the right of reproduction cannot be applied. A license to reproduce and publish a translation of a work will not be granted if the translation was not published (for the first time) by the owner of the right or with his authorization (it may, for example, be an unlawful translation or one that has been published under a compulsory license). The same applies—and this is the second case—if the translation is not in a language that is the language or one of the languages of the developing country in which the license is applied for.

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works, by the owner of the right of reproduction or with his authorization, any national of such country may obtain a license to publish such edition at that or a lower price for use in connection with systematic instructional activities.

(3) The period referred to in paragraph (2)(i) shall be five years, except that

- (i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;
- (ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4) Licenses obtainable after three years shall not be granted under this Article until a period of six months has elapsed from the date of the application for permission to reproduce mentioned in Article VII(1), or of the dispatch of the copies of the application mentioned in Article VII(2), as the case may be. Licenses obtainable after other periods shall not be granted until a period of three months has elapsed from the date of the dispatch of copies of the application.

(5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

- (i) where the translation was not published by the owner of the right or with his authorization; or
- (ii) where the translation is not in a language that is the language or one of the languages of the country granting the license.

COMMENTARY

Paragraph (6) gives the owner of the right the possibility of terminating the license. In order to do so, the said owner of the right, or a third party with his authorization, must distribute copies of an edition of the work in the developing country concerned. Four conditions, however, must be fulfilled: distribution must be to the general public or in connection with systematic instructional activities; it must be at a price reasonably related to that normally charged in that country for comparable works; the edition must be in the same language as the edition published under the license; and, finally, it must be substantially the same in content as the edition published under the license.

This provision offers protection for acquired rights by providing that copies made under the license may continue to be distributed until the stock is exhausted. A similar provision appears in paragraph (4) of Article IV in relation to the distribution of copies after the expiration of the period during which the faculties provided for under that Article may be availed of.

Paragraph (7) determines the categories of works to which the license system established by the Additional Act may apply. The works in question are literary or artistic works published in printed or analogous forms of reproduction. The formula is the same as for the system relating to the right of translation. One special case, however, has been provided for: that of audio-visual works (a new expression in the Convention, but in view of the importance of such works to developing countries they have been specially mentioned). The preferential system (license system) also applies to the reproduction of such works and to the translation of any accompanying text into the language of the country concerned.

There is one restriction, however: they must be audio-visual works prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities.

This Article corresponds to Article 4 of the draft Additional Act prepared by the Permanent Committee. It differs from that draft only in formal respects.

Paragraph (1) sets a prior condition to the grant of any license in respect of translation or reproduction. The applicant must establish that he has requested and been denied authorization by the owner of the right, or that after due diligence on his part he has been unable to find the owner of the right. For the application of this provision, reference is made to the procedure of the country where the request is made. It is therefore a matter for legislation in the countries concerned to determine the requirements which the applicant must comply with in establishing proof of his actions.

DRAFT TEXT

(6) Whenever copies of an edition of a work are distributed in the country referred to above to the general public or in connection with systematic instructional activities, by the owner of the right or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and is substantially the same in content as the edition published under the license. However, any copies already made before the license is terminated may continue to be distributed.

(7) The literary or artistic works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction. However, the faculties provided for in this Article shall also apply to the reproduction of audio-visual works and to the translation into the language or one of the languages of the country concerned of any accompanying text, in which case the substitutions permitted by this Article shall be limited to audio-visual works prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities.

ARTICLE VII

[FORMALITIES AND CONDITIONS AS TO LICENSES: (1) *Attempt to Obtain Contractual License*; (2) *If Unsuccessful: Communication to Publisher, Diplomatic Representative, Certain Organizations*; (3) *Moral Rights*; (4) *No Exportation or Manufacture Abroad*; (5) *Notice of Territorial Limitation*; (6) *Remuneration; Moral Rights*; (7) *Licenses where Edition is Sold Out*; (8) *No Licenses where Work Withdrawn by Author*]

(1) Any license granted under Article V or Article VI may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right.

COMMENTARY

Paragraph (2) deals further with the case where the applicant has been unable to find the owner of the right. By virtue of this provision, the applicant is required to send copies of his application to certain persons or to certain bodies specifically referred to.

Paragraph (3) is intended to safeguard moral rights. The Diplomatic Conference might wish to consider making the text of this paragraph somewhat clearer. The following text is proposed: "The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article V or Article VI. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies."

Paragraph (4) excludes the possibility of any export of copies made on the basis of a license to translate or to reproduce granted under Article V or Article VI. The substitutions available to developing countries are mainly for the purpose of being used in connection with systematic instructional activities; they would not be compatible with activities of a strictly commercial nature, which would be the case if exporting were permitted.

Paragraph (5) follows on from the preceding paragraph. The license being valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country where it has been applied for, the users must be informed of this fact. For that purpose, a special notice is prescribed which must appear on any copy published under the license.

Paragraph (6) leaves it to the developing country concerned to make provision by national legislation to assure to the owner of the right of translation or of reproduction just compensation and the payment and transmittal of such compensation. The national legislation must also ensure that the moral rights are respected by making due provision to assure a correct translation of the work or an accurate reproduction, as the case may be. It was generally agreed, however, during the preparatory work that this did not exclude the possibility of minor adaptations made for the purpose of conformity with local usage, such as changes in references to units of measurement in a work of the natural and physical sciences.

DRAFT TEXT

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization, or to any national or international information center, which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country of which the publisher is believed to be a national.

(3) The name of the author and the original title of the work or of the particular edition of the work shall be printed on all copies of the published translation or reproduction.

(4) No license granted under Article V or Article VI shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country of the Union where it has been applied for.

(5) All copies published in accordance with such a license shall, from the time of first publication, bear notices in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6) Due provision shall be made by national legislation to assure

- (i) that the license provides, in favor of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned; and**
- (ii) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent; and**
- (iii) a correct translation of the work or an accurate reproduction of the particular edition, as the case may be.**

COMMENTARY

Paragraph (7) governs two particular cases. The first concerns the license to translate: such a license may be granted if, in respect of a translation already published in the language concerned, the editions are out of print. The second case concerns the license to reproduce: such a license may be granted if, for a period of six months, no authorized copies of the edition in question have been on sale at a price reasonably related to that normally charged in the country concerned for comparable works.

Paragraph (8) takes into account the author's right to disown his work (*droit de repentir*). It provides that if the author has withdrawn from circulation all copies of the edition of his work a license cannot be granted.

1. The draft of the Permanent Committee speaks of entry into force "with respect to the first five countries of the Union." The initial entry into force will, however, apply to a higher number of countries if, by the time the second condition (namely, the condition concerning the Universal Copyright Convention) is fulfilled, additional countries will (at some earlier date) have ratified or acceded to the Additional Act of Paris. Furthermore, the said draft seems to assume that the ratification of or accession to the revised Universal Copyright Convention by the four specified countries and the entry into force of such revision will necessarily occur on the same date. However, the two events may occur on different dates. The proposed text tries to take care of these two problems: item (i) speaks of "at least five countries", whereas item (ii) speaks about the four countries which become "bound" by the revision of the Universal Copyright Convention.

2. The number of countries covered by this provision may be five or more, as explained in the preceding note.

DRAFT TEXT

(7) Licenses may also be granted in accordance with the provisions of Article V if, in respect of a translation already published in the language concerned, the editions are out of print. Licenses may also be granted in accordance with the provisions of Article VI if for a period of six months no authorized copies of the edition in question have been on sale in the country concerned to the public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works.

(8) A license shall not be granted when the author has withdrawn from circulation all copies of the edition of the work.

ARTICLE VIII

*[Entry Into Force for
Countries of the Union]*

(1) This Additional Act shall enter into force three months after both of the following conditions are fulfilled¹:

- (i) at least five countries of the Union have ratified or acceded to this Additional Act,
- (ii) France, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America have become bound by the Universal Copyright Convention as revised at Paris on July 24, 1971.

(2)(a) The entry into force referred to in paragraph (1) shall apply to those countries of the Union which have deposited their instruments of ratification or accession before this Additional Act enters into force under that paragraph.²

(b) With respect to any country of the Union not covered by subparagraph (a), this Additional Act shall enter into force three months after the date on which the Director General of the World Intellectual Property Organization (hereinafter referred to as "the Director General") has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument. In the latter case, this Additional Act shall enter into force in respect of that country on the date thus indicated.

(3) The provisions of paragraphs (1) and (2) do not affect the application of Article XV(1).

COMMENTARY

1. This Article is a simplified version of Article 29 of the Stockholm Act. The simplification is due to the fact that there are no administrative provisions in the Additional Act.

2. "In the meantime" means "during the period between the entry into force according to paragraph (1) and the entry into force of Articles 1 to 20 of the Stockholm Act."

1. This Article corresponds to Article 30 of the Stockholm Act. However, paragraph (1) differs from the Stockholm Act in that it refers to Articles IV to VII of the Additional Act rather than to the Protocol attached to the Stockholm Act, and that it does not refer to Article 28 of the Stockholm Act, since both the Stockholm Protocol and Article 28 of the Stockholm Act no longer apply under the Additional Act.

2. Paragraph (2) is the same as in the Stockholm Act, except that it refers in subparagraphs (a) and (b) to Article V(8), and in subparagraph (b) to Article IV(6)(b).

DRAFT TEXT

ARTICLE IX

*[Entry Into Force for
Countries Outside the Union]*¹

(1) Subject to paragraph (2), this Additional Act shall enter into force in respect of any country outside the Union three months after the date on which the Director General has notified the deposit of its instrument of accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, this Additional Act shall enter into force with respect to that country on the date thus indicated.

(2) If the entry into force according to paragraph (1) precedes the entry into force of Articles 1 to 20 of the Stockholm Act pursuant to that Act or pursuant to the entry into force of this Additional Act according to Article VIII(1), the said country shall, in the meantime,² be bound, in substitution for Articles 1 to 20 of the Stockholm Act, by Articles 1 to 20 of the Brussels Act of this Convention.

ARTICLE X

*[Reservations]*¹

(1) Subject to the possibilities of exceptions provided for in paragraph (2), in Articles IV to VII, and in Article 33(2) of the Stockholm Act, ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Additional Act.²

(2)(a) Any country of the Union ratifying or acceding to this Additional Act may, subject to Article V(8), retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession.

(b) Any country outside the Union may declare in acceding to this Additional Act, and subject to Article V(8), that it intends to substitute, temporarily at least, for Article 8 of the Stockholm Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into the language or languages of the said country. Subject to Article IV(6)(b), any country has the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country.

COMMENTARY

3. Reference to Article V(8) seems to be necessary because, if the country is a developing country and makes use of the faculties provided for in Article V(1) to (6), it cannot, as far as the right of translation is concerned, make use of the 1886/1896 Acts.

Reference to Article IV(6)(b) seems to be necessary because that provision excludes reciprocity vis-à-vis developing countries using the faculties offered by Articles IV to VII.

This Article is an adaptation of Article 32 of the Stockholm Act.

DRAFT TEXT

(c) Any country may withdraw such reservations at any time by notification addressed to the Director General.³

ARTICLE XI

[Earlier Acts]

(1) This Additional Act shall, as regards the relations between the countries of the Union, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable in relations with countries of the Union which are not bound by this Additional Act.

(2) Countries outside the Union which are bound by this Additional Act shall, subject to paragraph (3), apply it with respect to any country of the Union not bound by this Additional Act. Such countries recognize that the said country of the Union, in its relations with them:

- (i) may apply the provisions of the most recent Act by which it is bound, and
- (ii) subject to Article IV(6), has the right to adapt the protection to the level provided for by this Additional Act.

(3) Any country which has availed itself of the faculty provided for in Articles V and VII, or of the faculty provided for in Articles VI and VII, or of both of those faculties, may apply Articles IV to VII in its relations with any other country of the Union which is not bound by this Additional Act, provided that the latter country has accepted the application of the said Articles.

ARTICLE XII

[Closing of Earlier Acts]

(1) After the entry into force of this Additional Act according to Article VIII(1):

- (i) a country of the Union may not ratify or accede to earlier Acts of this Convention, except the Stockholm Act and provided that it does so with the limitation set forth in Article 28(1)(b)(i) thereof,
- (ii) a country outside the Union may accede to this Convention only through accession to this Additional Act.

Paragraph (1) is an adaptation of Article 34 of the Stockholm Act.

COMMENTARY

Paragraph (2) corresponds to the second sentence of Article 34 as drafted by the Permanent Committee.

This Article is an adaptation of Article 35 of the Stockholm Act.

This Article is an adaptation of Article 37 of the Stockholm Act. The Director General would be depositary after the time limit for signatures expires.

DRAFT TEXT

(2) As from the same event, no country may make a declaration under Article 5 of the Protocol Regarding Developing Countries attached to the Stockholm Act.

ARTICLE XIII

[Denunciation]

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

(2) Any country may denounce this Additional Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

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

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

ARTICLE XIV

[Signature, Etc.]

(1)(a) This Additional Act shall be signed in a single copy in the French and English languages and, subject to paragraph (2), shall be deposited with the Director General.

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

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

(2) This Additional Act shall remain open for signature at Paris until January 31, 1972. Until that date, the copy referred to in paragraph (1)(a) shall be deposited with the Government of the French Republic.

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

COMMENTARY

DRAFT TEXT

(4) Instruments of ratification or accession shall be deposited with the Director General.

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

(6) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession, any declarations or notifications deposited with him, and the entry into force of this Additional Act in respect of any country.

ARTICLE XV

*[Early Application
of Articles V to VII]*

This Article corresponds to Article 5 of the draft Additional Act prepared by the Permanent Committee. It differs from that draft only in formal respects.

(1) Any country of the Union may declare as from the date of this Additional Act, and at any time before becoming bound by it:

- (i) if it is a country which, were it bound by this Additional Act, would be entitled to avail itself of the faculties referred to in Article IV(1), that it shall apply the provisions of Articles V and VII, or of Articles VI and VII, or of Articles V to VII, to all works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by this Additional Act,
- (ii) that it admits the application of Articles V and VII, or of Articles VI and VII, or of Articles V to VII, to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article IV.

(2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.

B/DC/5/Corr. May 10, 1971 (Original: French only)

CAMEROON

WIPO

Proposals for revising the Stockholm Act (prepared by the International Bureau on the basis of the draft adopted by the Permanent Committee of the Berne Union (document B/DC/4)). Corrigendum to the French version of document B/DC/5.

Editor's note: *This document contained the text of paragraph 3 (Introductory Observations) of document B/DC/5, omitted by mistake in the French version only.*

B/DC/6
May 10, 1971 (Original language indicated in each case)

WIPO

Information document submitted by the Director General of WIPO. Observations of governments on proposals for a revision of the Berne Convention as adopted by the Permanent Committee of the Berne Union (document B/DC/4)

*Information document submitted
By the Director General of WIPO*

At its extraordinary session held in Geneva from September 14 to 18, 1970, the Permanent Committee of the Berne Union requested the Director General of WIPO, in particular, to invite all the countries of the Union to present comments with respect to the draft text for the revision of the Berne Convention no later than March 15, 1971 (see paragraph 8 of Resolution No. 1, reproduced in document B/DC/4).

The Director General of WIPO sent such an invitation by Circular C.269 dated October 12, 1970.

At the time of preparing this document, replies have been received from the Governments of the following countries: Austria, Cameroon, Cyprus, Denmark, Germany (Federal Republic), Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom. The replies are reproduced in this document, with an indication of the authority which sent them. [...]

It should be noted that the comments refer to the draft texts for the revision of the Berne Convention as adopted by the Permanent Committee of the Berne Union, which are contained in document B/DC/4. They do not, therefore, concern the texts contained in document B/DC/5, which was distributed later.

(Original: English, French)

OBSERVATIONS OF GOVERNMENTS ON PROPOSALS FOR A REVISION OF THE BERNE CONVENTION

AUSTRIA

The competent Austrian authorities very warmly welcome the proposals concerning a renewed revision of the Berne Convention for the Protection of Literary and Artistic Works.

A short comment is made by the competent Austrian authorities concerning the *Acte additionnel*. In this instrument the Berne Convention is referred to as *cet Acte* ("this Act") which in the opinion of the Austrian authorities does not seem to be the right expression, because the title of this Convention, as adopted at Stockholm, is as follows:

"Convention de Berne pour la protection des œuvres littéraires et artistiques ... révisée à Stockholm le 14 juillet 1967."

In the text of the Convention—for example in Articles 1, 3, 4 and 7 (1)—the Convention is mostly referred to as "la présente Convention".

(Original: English)

On the whole, close study of the draft texts for the revision of the Convention, and in particular those of the Additional Act, does not give rise to any fundamental objection on our part, as those draft texts correspond in principle to the objectives of the Federal Republic of Cameroon in respect of international copyright.

However, the examination of the following articles gives rise to some remarks as to detail:

Article 1 (3) of the Draft Additional Act, which deals with the case where a member of the Berne Union ceases to be a developing country, in conformity with the established practice of the General Assembly of the United Nations, thereby losing the eligibility for the advantages introduced by the Additional Act, makes no mention of a procedure for the notification to member States of the change in status of the country concerned, in order to remove all possibility of doubt in that respect; such procedure was provided for in Article 4 of the Stockholm Protocol.

Under Article 2 (6) of the Additional Act (compulsory licenses for translation), the grant of a license, in respect of works composed mainly of illustrations, to translate the text and to reproduce the illustration is subject also to fulfillment of the conditions of Article 3 of the Additional Act (compulsory licenses for reproduction). In our opinion, this is tantamount to providing that the grant of any license under the above-mentioned Article 2 (6) is possible only if the license is to be used in connection with systematic instructional activities (as provided in Article 3), and not for the purpose of teaching, scholarship or research (as provided in Article 2). It is advisable, therefore, to determine more precisely this restriction of application in the case of Article 3.

(Original: French)

CYPRUS

I. The revision proposals drawn up by the Permanent Committee of the Berne Union reflect a realistic awareness of the important role played by culture in the emergence of developing countries, and are manifestly designed to stimulate the cultural development of those countries' populations by facilitating the use of copyright works for teaching or research.

No one to-day will deny that broadcasting is a predominant factor in this process of cultural development. It makes up for the shortage of books and teachers, dispenses culture beyond normal school and university teaching hours, and contributes to post-school training and adult education. The instruction it offers ranges from the most elementary levels (literacy) to the most advanced type of course, and it thus supplements all educational curricula from primary school to university. Hence it is unthinkable that the advantages it has been agreed to confer on developing countries should not be applicable to broadcasting in these countries.

II. Scrutiny of the revision proposals makes it clear, however, that broadcasting is not covered and is indeed implicitly, if not explicitly, excluded.

Article 2 (2) of the Additional Act states unambiguously that a translation licence will be granted only with a view to publishing the work "in printed or analogous forms of reproduction", and this excludes translation either for broadcasting or for purposes of recording for broadcasting, since broadcasting does not constitute publication under the Berne Convention as revised in Stockholm (Article 3 (3)) and recording for broadcasting purposes, though deemed a reproduction within the meaning of the Convention (Article 9 (3)), is certainly not a form of reproduction "analogous" to the printed form.

The unavoidable conclusion is that Article 2 of the Additional Act does not apply to broadcasting and it is considered that this omission, which was perhaps not intended by the Permanent Committee and merely results from the present wording of Article V of the Universal Convention, should be remedied.

III. To be precise, what is needed is that the system of licences allowed by Article 2 (1) of the Additional Act should be extended to broadcasting organizations which, though they have a vital need for foreign works for their schools broadcasts, do not "publish" those works within the meaning of Article 2. However, before pursuing this line of argument and making proposals, it is worth enquiring whether broadcasting organizations can, in performing their teaching function in the developing countries, avail themselves of other provisions of the Berne Convention dealing with the right of translation, assuming that national legislation has taken advantage of the possibilities opened up by the Berne Convention.

1. The first provision which comes to mind in this connection is Article 11*bis*(2), which allows compulsory licenses in the broadcasting field. It must be admitted, however, that a national legislation which had instituted compulsory licensing under this provision of the Convention would still not have settled the problem of translation. The broadcasting organization can of course make its broadcast unhampered by the obstacles which might exist in the absence of a compulsory license, but the work broadcast must undoubtedly be such as it was created, i.e., in particular, in its original language. The question was raised at the Stockholm Diplomatic Conference and the discussion is summarized in paragraph 205 of the Report on the Work of Main Committee I. This states that "different opinions were expressed regarding the lawful uses provided for in Articles 11*bis* and 13" for, although "some delegations considered that those Articles also applied to translated works ... other delegations ... considered that the wording of those Articles in the Stockholm text did not permit of the interpretation that the possibility of using a work without the consent of the author also included, in those cases, the possibility of translating it." These same delegations "pointed out, on the level of general principles, that a commentary on the discussion could not result in an amendment or extension of the provisions of the Convention".

It would definitely be unwise to stretch the meaning which some delegations may have attached to the scope of Article 11*bis* in regard to the broadcasting under compulsory license of a work translated without the consent of the owner of the translation right, and caution is necessary in interpreting Article 11*bis* (2). It means that if national legislation provides for a compulsory license in favour of broadcasting, the broadcasting organization will be able, subject to the provisions of Article 11*bis*, to make use of the work either in its original language or in translation if the translation already exists and the compulsory broadcasting license thus covers both the original and the already available translation. On the other hand, if no translation yet exists, the compulsory license instituted nationally by virtue of Article 11*bis* of the Convention will not enable the licensee broadcasting organization to translate the work it wishes to broadcast, or cause it to be translated, without the consent of the owner of the translation right. It follows that a broadcasting organization in a developing country, whose role is often far more important than that of a publisher, will be less favourably placed than the publisher as far as the right of translation is concerned, unless the Additional Act undergoes certain changes to remove this imbalance.

2. With regard to teaching it may also be enquired whether Article 10(2) of the Stockholm version of the Convention is not sufficient to provide the broadcasting organization with the translation license it needs. Two observations are in order here:

(a) Article 10(2) gives national legislation a free hand only with regard to the utilization of works in broadcasts and for sound or visual recordings "by way of illustration for teaching". Although the words quoted are not easy to construe and the Report on the Work of Main Committee I affords scope for various interpretations, it must surely be admitted that "by way of illustration for teaching" means something and is not to be equated with other forms of words which the Stockholm Conference might have chosen,

e.g. "for teaching purposes". If this had been the final wording it would have been arguable that Article 10(2) allows the utilization of works where the purpose of a broadcast is teaching. The much more restrictive wording eventually chosen suggests that the work may be used only to illustrate teaching by radio or television, and that it would in any case be impossible under this provision merely to utilize a school or university text book and read it out as it stands, perhaps with comments, since in this event it would no longer be used "by way of illustration for teaching" but as the principal subject-matter of the teaching itself. This interpretation of Article 10(2) leads to the conclusion that broadcast courses and lessons to schools and universities cannot simply utilize written works for these purposes, and to render such complete use lawful without the author's consent, as the case may be, it would be necessary to institute a compulsory license (subject to remuneration) within the meaning of Article 11*bis*.

At the same time this raises the problem of the translation right, in the terms outlined in 1 above. If Article 10(2) were sufficient in itself for the needs of broadcast instruction the problem would not arise, as the Stockholm Conference was unanimous in considering that this provision, as well as others, "virtually imply the possibility of using the work not only in the original form but also in translation". As has just been demonstrated, however, Article 10(2) does not meet the real needs of broadcast teaching, especially in developing countries, and thus, however liberally it is interpreted with regard to translation of the work, it does not grant the broadcasting organization the same facilities as those contemplated by the Additional Act proposals for the benefit of graphic publishers. Once again, to maintain balance, and having regard to the specific role of broadcasting in the educational life of developing countries, the Additional Act requires supplementary provisions.

(b) The same line of argument applies to the reference to sound or visual recordings in Article 10(2). National legislation may license such recordings for broadcasting purposes, provided that the works concerned are designed to illustrate teaching. Arguments designed to show that this limitation is incompatible with the place of broadcasting in the educational structure of developing countries were developed in (a) above and apply equally to recordings intended for broadcasting since, after all, recording in this case is a mere technical medium of broadcasting. Hence Article 10(2) will not allow national legislation to license the prerecording of schools broadcasts in the wider sense, in which works are used not simply as illustrations but form the actual substance of the teaching. Still less can this provision be invoked to legalize the use of works in translation, notwithstanding paragraph 205 of the Report on the Work of Main Committee I of the Stockholm Conference, since so liberal an interpretation could hardly be placed on a text which itself demands restrictive construction. Other provisions will therefore be required to enable broadcasting organizations to record works of the mind for the purpose of schools broadcasts and not merely to illustrate such broadcasts.

It may be objected that this difficulty can be overcome by the institution of ephemeral recording in national legislation. This seems unlikely, however, for ephemeral recording within the meaning of Article 11*bis*(3) certainly means recording of the work in its existing form and in no way authorizes, in addition, the making of a translation for the purpose of the recording. This is confirmed by paragraph 205 of the above-mentioned Report and the quotations reproduced from it. In other words, Article 11*bis*(3) allows national legislation to make an exception to the right of reproduction under Article 9 and not to the right of translation under Article 8 of the Berne Convention as revised in Stockholm. It scarcely needs adding that Article 13 is unlikely to prove of assistance here, since it refers exclusively to musical works, which are of secondary importance in the educational field.

Once again, specific provisions are necessary to enable broadcasting organizations in developing countries to operate within a legal framework comparable to that available to graphic publishers.

IV. It is now possible to establish a clear outline of the régime which should be applicable to broadcasting organizations in developing countries if they are to assume their proper role in the general educational field and not be at a disadvantage compared with book publishers.

Steps should be taken to ensure that broadcasting organizations in developing countries are able

1. to obtain a translation license for the purpose of broadcasting intended for teaching, scholarship or research without the need for publication within the meaning of Article 3 of the Convention,
2. to obtain a translation license for the purpose of sound or visual recording for broadcasts intended for teaching, scholarship or research,

on the understanding that the conditions of Articles 2 and 4 of the Additional Act will apply where they do not expressly refer to the existence of copies. In other words, a broadcasting organization in a developing country will be able to obtain either of the licenses in question only after the periods specified in Article 2 of the Additional Act and subject to the procedure and remuneration laid down in Article 4 of the Act, the only provisions which they are not required to observe being those, such as paragraphs 3, 4 and 5 of Article 4, which are applicable only where physical copies of the work are distributed.

V. Article 2(1) of the Additional Act specifies that the régime which it institutes for the right of translation concerns only works published in printed or analogous forms of reproduction. Accordingly, the rules regarding the right of translation instituted for the benefit of developing countries do not concern the text accompanying an audio-visual work. However, under Article 3(7) the translation of such a text may be licensed on the same terms (and no doubt at the same time) as reproduction of the audio-visual work itself.

Audio-visual works prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities play a predominant role in the schools television broadcasting of developing countries. Very often these works are of foreign origin and the text requires translation, whereas reproduction of the audio-visual work is not necessary and the operation may merely consist, before or during the broadcast, in subtitling or the injection of a commentary in the national language, or one of the national languages, of the developing country.

It is arguable that neither Article 2, nor Article 3(7) permits a television organization to perform the very simple operation just described, which involves the screening of an audio-visual work intended for teaching in a programme having the same object, but with a text translated into the language or one of the languages of the country. Article 2 refers only to works reproduced in printed or analogous form, and Article 3(7) appears to combine translation with reproduction and moreover involves very long periods (much longer than Article 2) which are understandable where it is a question of reproducing audio-visual works, but unjustified where it is merely a matter of translating an accompanying text.

An additional provision is therefore necessary to cater for this need, particularly as television is, and will remain, the biggest consumer of audio-visual works for teaching purposes, until schools in developing countries begin to acquire equipment for viewing non-televised audio-visual works, e.g. films specially made for schools or video cassettes containing schools programmes. It is surely logical that the translation of a text accompanying an audio-visual work should, where it is intended solely to accompany the televising of this work and no reproduction occurs, obey the rules of Article 2 rather than of Article 3. Should reproduction be necessary, however, it is natural that the rules governing translation should be the same as for reproduction since, if reproduction is indispensable, a different régime for translation of the text would be of no practical use.

VI. Having regard to the foregoing, it is proposed that a new article should be inserted in the Additional Act between the present Articles 4 and 5 which could, by way of example, be worded as follows:

1. A license to translate a literary or artistic work may be granted, on the conditions laid down in Articles 2 and 4 of this Additional Act, as far as those conditions are applicable, to a broadcasting organization having its headquarters in a country of the Union to which Article 1 of this Additional Act applies, for its broadcasts intended for teaching, scholarship or research and for sound or visual recording for such broadcasts.
2. A license under this Article may also be granted to a broadcasting organization, on the same conditions and for the same purpose, in respect of the text accompanying an audio-visual work prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities."

VII. As regulated in the Additional Act, the right of translation calls for the following further observations.

Under Article 2(2) and (3), the period which must elapse from the date of first publication until a translation can be published under license is three years in the case of "world" languages and one year for any other language. A "world" language is understood as being a language in general use in one or more developed countries (Article 2(3)).

This definition is felt to be too wide, in the sense that it embraces not only countries of the Union but also countries outside the Union. Now it is scarcely logical to show concern for countries outside the Union, which are under no obligation to protect Union works and can thus make use of them as they please both for translation and other purposes, yet whose interests there seems to be a desire to safeguard. Supposing that for teaching purposes a developing country desires a translation of an English or French work into Chinese, this being a language in use in many developing countries, why should a period of three years be required to elapse before such a translation can be made (the People's Republic of China is not a developing country in conformity with the established practice of the General Assembly of the United Nations) when the same work could be translated in China itself, where it is not protected, without any lapse of time whatsoever after the first publication? It is felt that in this respect Article 2(3) is too broadly conceived, and it is proposed that, in deciding whether a given language is a world language or not, only Union countries should be considered and the words "of the Union" added after "which is not in general use in one or more developed countries".

VIII. Even if circumscribed in this way, however, the difference of régime between world languages and other languages still has serious implications for certain developing countries, including Cyprus. The problem has already been raised at the various meetings leading up to the drafting of the Berne Convention revision proposals, particularly by Brazil, which in this context is in a similar position to Cyprus. The Cyprus Government does not dispute the justice of discriminating between world and other languages, but it feels that a means should be found of mitigating the consequences to some extent. It believes that such a means would be to provide in the Additional Act that, even for world languages, a shorter period may be substituted for the three-year period if the developing country which uses a world language concludes an agreement for this purpose with all the developed countries of the Union in which the same language is in general use. What the Cyprus Government has in mind is an arrangement whereby a developing country whose national language is in general use in one or more developed countries of the Union would sign a treaty with all these countries under which they allow the developing country to substitute a shorter period for the three-year period at present required for the purpose of a licence for translation into the language in question. The Cyprus Government considers that if all the developed countries of the

Union concerned agree to such a substitution, having regard to the interests of their publishers and authors, there is no further need to maintain the present rigid differentiation between the two categories of language.

IX. To sum up the considerations set forth in VII and VIII above, it is proposed that the above-mentioned addition be made to Article 2(3) of the Additional Act, and that a new paragraph *3bis* be inserted which could, by way of example, be worded as follows:

“(3bis) By agreement between a country of the Union to which Article 1 of this Additional Act applies and all the developed countries of the Union where the same language is in general use, the former country may substitute for the period of three years provided for in paragraph (2) above another period as determined by such agreement but not shorter than one year.

Notification of any such agreement shall be deposited with the Director General.»

(Original: English)

DENMARK

1. The main purpose of the proposed new Additional Act to the Berne Convention is to provide for special relaxations in the field of copyright for the benefit of developing countries. The provisions of the draft text being as a whole less far-reaching than those of the Stockholm Protocol regarding Developing Countries, the Danish Government will have no difficulty in accepting the general contents of the draft.

2. Article 3, paragraph (5), of the draft Additional Act provides that a reproduction license may be issued, not only in connection with original works but with certain restrictions also in the case of translations of such works. In the latter case two rights seem to be involved: the copyright in the original work and the copyright in the translation. Article 3 of the draft Additional Act is an exception from Article 9, paragraph (1), of the Stockholm Act of the Berne Convention. This paragraph seems to provide that both the author of the original work and the translator of such work have an exclusive right of authorizing the reproduction of such a translation. It is, however, not quite clear to what extent Article 3 and Article 4 of the draft Additional Act, concerning, *inter alia*, the compensation to be paid, are applicable to both of the two owners of rights that may be involved. In the opinion of the Danish Government, this matter ought to be reconsidered at the diplomatic conference with a view to suitable clarification.

3. At the Stockholm Conference, a resolution was adopted according to which the International Bureau of the Berne Union was asked to undertake, in association with other governmental and non-governmental organizations, a study of the ways and means for creating financial machinery to ensure a fair and just return to authors for the use of their works in developing countries. The Danish Government finds it desirable that this study should be pursued even after the Stockholm Protocol has been replaced by the new Additional Act.

(Original: English)

GERMANY, FEDERAL REPUBLIC OF

The Government of the Federal Republic of Germany approves, in principle, that the Berne Convention should be revised in order to replace the Protocol Regarding Developing Countries adopted at Stockholm, which has not obtained the approval of all developing countries, by new provisions. These provisions must, on the one hand, like the Stockholm Protocol, take into account the special needs of developing countries in the field of education and research and, on the other hand, guarantee the protection of authors in all member States, whether developing or developed, by means of a more detailed and more differentiated system than that provided by the Stockholm Protocol.

The Government of the Federal Republic of Germany considers it absolutely essential, as it has continually emphasized in the past, that the special needs of developing countries in the field of education and research be taken into account in the organization of copyright on an international scale. It is pleased, therefore, that it has been possible to overcome the differences of opinion among member States of the Berne Union concerning the relaxations provided for in the Stockholm Protocol in favor of developing countries, and to prepare new revision proposals elaborated jointly, in various committees of the Union, by representatives of both developing and developed countries.

The new proposals, resulting from exhaustive discussions during which problems and divergent interests were openly and carefully discussed, represent, in the opinion of the Government of the Federal Republic of Germany, an appropriate and well-balanced reconciliation of the interests involved. The Government of the Federal Republic of Germany is prepared to accept the proposed solution. It hopes that other member States of the Berne Union—both developing and developed countries—will also be able to approve the proposals, and that the new revision will form a basis on which it will be possible to carry on fruitful international cooperation within the Berne Union.

The Government of the Federal Republic of Germany does not wish to adopt a definite position on the details of the revision proposals presented. It reserves the opportunity to take up certain points at the Conference which concern, *inter alia*, the concordance between the proposed revision of the Berne Convention and the proposed revision of the Universal Copyright Convention. The Government of the Federal Republic of Germany wishes to point out, however, that it is not expressly provided in the new provisions that the owner of the right has the possibility, when a compulsory license is issued, of expressing his opinion to the issuing authority, or of obtaining information on the issue of the license and the procedure according to which it is effected (in particular, the number of copies and the fixing and mode of payment of remuneration), or of forwarding to it the customary complimentary copies. In view of the fact that Article V of the Universal Copyright Convention, which also provides for the issue of compulsory licenses in the field of copyright, does not contain express rules to this effect either, since such measures are self-evident, the Government of the Federal Republic of Germany considers that express mention is not necessary in the new provisions of the Berne Convention. However, since the wish expressed by copyright owners to have the question clarified is not unjustified in the opinion of the Government of the Federal Republic of Germany, it would like to see a reference in the General Report of the Conference to the fact that, in the unanimous opinion of the member States, such measures are self-evident and require no special ruling.

(Original: French)

ITALY

The Italian Administration expresses its approval, in principle, of the proposals for the revision of the Universal Copyright Convention and the Berne Convention, adopted respectively by the Intergovernmental Copyright Committee (Paris, September 2 to 11, 1970) and by the Permanent Committee of the Berne Union (Geneva, September 14 to 18, 1970). Nevertheless, the Italian Administration considers it necessary to draw attention to the following points:

I. Concerning the Universal Copyright Convention:

(1) Article Vter, paragraph (1):

As has already been pointed out during the meetings of the Intergovernmental Committee (document IGC/XR/2/21, paragraph 36), the Italian Administration expresses dismay, with respect to the translation license, at the adoption of a period of one year from the first publication of the original work, as provided in the paragraph mentioned above, for application for a license for translation into a language which is not in general use in a developed country.

The Italian Administration furthermore points out that such a period is shorter than the one which is indicated in a similar provision contained in the Stockholm Protocol Regarding Developing Countries.

In any event it does not appear desirable, still with respect to translation, to provide for difference of treatment depending on the language—whether in general use or not—into which the work is translated.

It is considered, therefore, that a period of three years should be adopted, whatever may be the language of the country in which the license is applied for.

(2) *Article Vquater, paragraph (3):*

It is considered appropriate to confirm that the reservations contained in this paragraph should be regarded as concerning only works in printed form. Consequently, their extension to audio-visual works should be interpreted in the sense that such works are those whose mode of expression is the image, whether or not accompanied by sounds, to the exclusion, in any event, of phonograms or any other exclusively aural fixation of sounds.

(3) As for the special provisions on translation and reproduction licenses, it is wondered whether it would not be appropriate to combine these in an Additional Act forming an integral part of the Universal Convention, which would correspond to the proposals for the revision of the Berne Convention in respect of the provisions in favor of developing countries: the provisions are indeed almost identical in both drafts and have the same objective and the same transitional and exceptional character.

II. *Concerning the Berne Convention:*

(1) *Article 2(3) of the draft Additional Act:*

See paragraph (1) of the comments on the proposals for the revision of the Universal Copyright Convention.

(2) *Article 3(7) of the draft Additional Act:*

See paragraph (2) of the comments on the proposals for the revision of the Universal Copyright Convention.

III. Finally, concerning both Conventions, the Italian Administration wishes to emphasize strongly the desirability of studying a form of link between the Conventions themselves.

(Original: French)

JAPAN

I. The Japanese Government favours in general the draft text for the revision of the Berne Convention (document DA/33/17) adopted by the Permanent Committee which met in Extraordinary Session in Geneva from September 14 to 18, 1970.

II. With respect to the proposed provisions of Articles 28, 34 and Articles 1, 2 and 3 of the Additional Act, the Japanese Government wishes to make the following comments:

1. *Article 28(2)(a)*

The proposed modification, which is assumed to be based upon the Washington Recommendation II(2) and (3), would seem to be unnecessary in view of the fact that both the Berne and the Universal Copyright Conventions will be revised respectively to contain almost the same provisions for the benefit of developing countries as the proposed modification.

2. *Article 34, first sentence*

It would be appropriate to redraft the proposed provisions to contain the following exception; because, by the proposed modification, after the entry into force of the 1971 revised text, countries members of the Berne Union which had not

acceded to the Stockholm Act in the meantime would be deprived of any possibility to accede to WIPO (Article 14 of its Convention):

“After the entry into force of Articles 1 to 21 of this Act including the Additional Act, no ratification of earlier Acts of this Convention or accession thereto, except ratification of, or accession to, the Stockholm Act in accordance with Article 28(1)(b)(i), will be permissible.”

3. Draft Text of an Additional Act... of ... 1971

(1) *Article 1*

(i) *Paragraph (3)*

By the proposed provision of paragraph (3), the period during which a developing country can avail itself of the reservations referred to in paragraph (1) of this Article would vary between three to ten years according to the date on which it has ceased to be a developing country; therefore it would be appropriate to reconsider the provision.

(ii) *Paragraph (6)(b)*

Considering the purport of paragraph (3) of this Article and in view of a balance with the provisions of Article 2(9) of the Additional Act, the proposed provisions of this sub-paragraph should be modified as follows:

“The right of reciprocity provided for in Article 30(2)(b) of this Act cannot be exercised in relation to works the country of origin of which is or has been a country to which paragraph (1) of this Article applies, within a period during which such country remains a developing country, and for a period of three months after the expiration of the period provided for in paragraph (3) of this Article.”

(2) *Article 2, paragraph (3)*

The clause “a language which is not in general use in one or more developed countries” is quite ambiguous and is likely to cause difficulties in the application of the Convention; it would be appropriate to mention definitely, for example, “a language other than the English, French, Spanish... languages.”

(3) *Article 3, paragraph (7)*

For the sake of clear interpretation, it would be appropriate to add the following clause at the end of the paragraph:

“it being understood that for the purposes of the application of paragraph (3) of this Article, the period referred to in paragraph (2)(a) of this Article shall be five years for such works.”

(Original: English)

NETHERLANDS

Objections have been raised in various quarters concerning Article 1(4) of the draft text of the Additional Act. In terms of this provision, copies of a work which are made under the reservations provided for in the Additional Act may continue to be distributed after expiration of the period for which the reservation was made. Certain interested organizations have drawn attention to the fact that it would be extremely difficult, as a result, for the author to ensure that his right of reproduction is respected after expiration of the period in question. The same remark could be made with regard to Article 3(6), last sentence, of the same draft text.

The Government of the Netherlands considers that this objection should be met by inserting, in Articles 1(4) and 3(6), a time limit within which the distribution of copies made under license must be effected.

(Original: French)

SWEDEN

1. In its comments of 7th July, 1970, the Swedish Government stated its views on the draft text for the revision of the Berne Convention which was adopted in May, 1970 by the Ad hoc Preparatory Committee for the Revision of the Berne Convention. On some points, the text was subsequently amended by the Permanent Committee in a manner which seemed satisfactory to the Swedish Government. On other points, however, the views of the Swedish Government were not shared by the Permanent Committee. The Swedish Government finds it desirable, in the following parts of these comments, to revert to some of the issues which were already raised in the comments of 7th July, 1970 and at the same time to deal with certain new points.

2. The main purpose of the new Additional Act to the Berne Convention is to specify the relaxations which, in regard to copyright protection, are to be given to developing countries. Generally speaking these relaxations are less far-reaching than those of the Stockholm Protocol regarding Developing Countries. Since Sweden has already admitted the application of that Protocol to works of which Sweden is the country of origin, it follows that Sweden has no difficulty in accepting the provisions of the new Additional Act.

It could be argued that in some respects certain further relaxations ought to be given to the developing countries. On the other hand, it might in some respects seem desirable to safeguard the interests of authors by restricting the exceptions from normal copyright protection which are laid down in the draft Additional Act. The Swedish Government, however, refrains from making any specific suggestions of this kind since it is clear that the present text is in substance, the result of a compromise between diverging interests and that difficulties might easily arise, if the balance of this compromise was disturbed.

3. In the new Additional Act, certain criteria have a particular importance. According to Article 2, paragraph (3), a special time-limit is applicable in regard to "a translation into a language which is not in general use in one or more developed countries". Article 2, paragraph (4), provides that a translation license can be granted only "for the purpose of teaching, scholarship or research". According to Article 3, paragraphs (2), (6) and (7), it is decisive whether or not copies of a work have been distributed "in connection with systematic instructional activities".

It is obviously difficult to define the exact scope of these different expressions. On the other hand, it is essential that those who are to benefit from the Additional Act should know to what concrete cases its provisions apply. It is therefore desirable that further attention should be given to the new concepts introduced in the Additional Act, so that in the future their interpretation can be facilitated by an elucidating discussion recorded in the *travaux préparatoires*.

4. According to Article 2, paragraphs (2) and (3), of the Additional Act, a translation license can only be issued if the owner of the right of translation has not within a period of three years or in some cases one year published a translation in the language of the developing country concerned. It is added in paragraph (5) of the same Article that such licenses shall not be granted until a further period of six or nine months has elapsed from the date of the application for a license or of the dispatch of certain documents. It is not clear, however, whether or not a translation license can still be granted if during the said period of six or nine months the owner of the translation right publishes a translation in the language concerned. It would seem logical to refuse a translation license in such cases, but the wording of paragraphs (2) and (3), according to which the right to obtain a license is only related to the three or one year period, may be invoked in favour of a different conclusion.

The same ambiguity exists in regard to reproduction licenses according to Article 3, paragraphs (2), (3) and (4). The question which arises in regard to these paragraphs is whether distribution of copies by the owner of the right of reproduction after the expiry of the three, five or seven

year period but within the six month period dealt with in paragraph (4) precludes the right to obtain a reproduction license in the same way as distribution during the three, five or seven year period.

5. Article 2, paragraph (6), of the Additional Act provides that for works which are composed mainly of illustrations, a license to translate the text and to reproduce the illustrations may be granted only if the conditions of Article 3 are also fulfilled. This seems to imply, *a contrario*, that if a literary work is illustrated but the illustrations are not the main part of the work, it is not necessary to observe the provisions of Article 3 (regarding reproduction licenses) but merely those of Article 2 (regarding translation licenses). The Swedish Government has some doubts as to this solution, in particular since it may be difficult to determine whether or not a work consists mainly of illustrations.

6. The Swedish Government has observed that Article 2 contains no provision regarding the case where the copyright owner, after a translation license has been granted, publishes his own translation of the work in the country concerned. A provision regarding this situation is to be found in Article 1 (b)(vii) of the Stockholm Protocol. As regards reproduction, this case is dealt with in Article 3, paragraph (6), and it should be considered further whether there are sufficient reasons to treat the two cases differently.

7. According to Article 3, paragraph (2), of the Additional Act, the right to obtain a reproduction license in a developing country relates to a particular edition of a work and depends on whether copies of that edition have been distributed in that country to the general public or in connection with systematic instructional activities. This seems to imply that, even if one edition of a book has been published in a developing country, a license can be obtained for a different edition of the same work which has not been distributed in that country to the general public or in connection with systematic instructional activities. It is not, however, clear how the term "edition" should be interpreted in this context.

It is interesting to make a comparison with Article 3, paragraph (6), which provides that a reproduction license shall terminate if the owner of the reproduction right distributes copies of an edition of the same work and such edition is in the same language and is substantially the same in content as the edition published under the license. A logical consequence of this provision must be that two editions in the same language and of substantially the same contents should be considered to be one single edition for the purposes of paragraph (2) of Article 3. In so far as paragraph (6) of that Article is concerned, they are, however, two different editions. It follows that the term "edition" does not have the same meaning throughout the Additional Act, and this may no doubt create confusion.

8. Article 3, paragraph (7), of the Additional Act introduces the term "audio-visual works". The introduction of this term is an important novelty in international copyright agreements. It is therefore important that some attention should be devoted to the definition of this term. It should be clarified, for instance, whether the term includes not only works whose original form is a film, a tape etc., but also any other work which has been transferred from its original form to a film, a tape etc., for instance a filmed choreographic work.

It further seems that the drafting of Article 3, paragraph (7), could be improved. Indeed, it does not seem satisfactory to state in the first sentence that the works concerned are "limited to works in printed or analogous forms of reproduction" and then to add a second sentence which makes it clear that certain other works are also included.

9. According to Article 4, paragraph (1) of the Additional Act, a person who wishes to obtain a translation or reproduction license must, as a general rule, establish that he has requested, and has been denied, authorization by the proprietor of the right to make and publish the translation or to reproduce the edition. It is not required that,

when requesting an authorisation, he should have indicated for what purpose he desired to translate or to reproduce the work, and it is conceivable, in some cases, that a voluntary agreement would have been reached, if the copyright owner had known that the translation was intended to serve the purpose of teaching, scholarship or research or that a new edition of the work would be used in connection with systematic instructional activities.

It may therefore be reasonable to add a further requirement in Article 4, paragraph (1), namely, that the copyright owner has been asked to agree to translation or reproduction for the specific purpose for which a license can be granted according to Article 2 or 3.

It should be recalled, in this regard, that Article 1, paragraph (c) (i), of the Stockholm Protocol provides for the right to obtain a reproduction license for educational or cultural purposes. The person who wishes to obtain such license should, however, first have requested and been denied authorisation by the proprietor of the right to produce and publish the work "for educational or cultural purposes".

10. In the same way as in regard to the Stockholm Protocol, the question arises if it is possible to elaborate a suitable system of compensation to authors for the use of their works in developing countries. At the Stockholm Conference, a resolution was adopted by which the International Bureau of the Berne Union was asked to undertake in association with other governmental and non-governmental organizations a study of ways and means for creating financial machinery to ensure a fair and just return to authors. It is the opinion of the Swedish Government that this study should be pursued even after the Stockholm Protocol has been replaced by the Additional Act.

(Original: English)

SWITZERLAND

It is becoming ever more apparent that the Protocol adopted at Stockholm for developing countries should be detached from the Convention, in order to enable the greatest possible number of States to ratify in its entirety the Convention as revised at Stockholm, or to accede to it.

The Federal authorities wholeheartedly approve of the efforts made by the organs of WIPO to assist developing countries in the field of education, culture and research. There is reason to wonder, however, whether the Additional Act intended to replace the Protocol as an integral part of the Convention is adequate to meet the social and cultural needs peculiar to each of those countries.

We feel, therefore, that it would be preferable to maintain the Berne Convention in its present form and to give States which consider themselves developing countries the possibility of leaving the Berne Union if they find that they are currently unable to protect works from other countries of the Union in accordance with the rules of the Convention. In view of the fact that the effect of subparagraph (a) of the Appendix Declaration relating to Article XVII of the Universal Copyright Convention is to be suspended for developing countries, the Universal Convention would be the legal bond between those countries and the others, and each State would be obliged to assimilate the authors of other contracting countries to its own nationals.

In our opinion, and as was proposed by the Washington Joint Study Group, an international information center should be established as soon as possible under the auspices of either Unesco or WIPO; that center would serve as the intermediary between the authors and publishers of educational, cultural and scientific works in industrialized countries on one hand, and the competent public or private bodies of developing countries on the other. The establishment of the international center seems to us a practical means of giving the latter countries easier access to works which are necessary for their advancement in the fields of education, culture and science.

However, if the revision of the Berne Convention in the form proposed to the countries of the Union met with the

approval of developing countries members of that Union, the Swiss authorities would accept the principle of the replacement of the Stockholm Protocol by an Additional Act.

The substance of the draft Additional Act gives rise to no comment on our part.

(Original: French)

UNITED KINGDOM

As regards the draft proposals for the revision of the Convention, ..., the United Kingdom has participated in all stages of the preparation of those proposals and considers that they represent an equitable solution to the problem of reconciling the needs of developing countries with legitimate protection of the rights of copyright proprietors. The United Kingdom stresses moreover that these proposals and the corresponding proposals prepared by the Inter-governmental Copyright Committee are closely inter-linked and have been arrived at after protracted and difficult discussion. It follows that any attempt to vary the substance of either draft will affect the other and could jeopardise the whole structure of the proposals.

(Original: English)

B/DC/7

May 10, 1971 (Original: English, French)

WIPO

Information document submitted by the Director General of WIPO. Comments of international non-governmental Organizations on proposals for a revision of the Berne Convention as adopted by the Permanent Committee of the Berne Union (document BD/C/4)

Information document submitted by the Director General of WIPO

At its extraordinary session held in Geneva from September 14 to 18, 1970, the Permanent Committee of the Berne Union requested the Director General of WIPO, in particular, to invite all interested international non-governmental organizations to present comments with respect to the draft text for the revision of the Berne Convention no later than March 15, 1971 (*see*: paragraph 8 of Resolution No. 1. reproduced in document B/DC/4).

The Director General of WIPO sent such an invitation by Circular C. 270 dated October 12, 1970.

At the time of preparing this document, replies have been received from the following organizations:

- European Broadcasting Union (EBU)
- International Confederation of Societies of Authors and Composers (CISAC)
- International Federations of Actors, Variety Artistes and Musicians (FIA-IFVA-FIM)
- International Federation of Film Producer's Associations (FIAPF)
- International Copyright Society (Internationale Gesellschaft für Urheberrecht (INTERGU))
- International Literary and Artistic Association (ALAI)
- International Publishers Association (IPA)
- International Writers Guild (IWG)
- Union of National Radio and Television Organizations of Africa (URTNA)

The replies are reproduced in this document. The customary introductions and compliments have been omitted, however.

It should be noted that the comments refer to the draft texts for the revision of the Berne Convention as adopted by the Permanent Committee of the Berne Union, which are contained in document B/DC/4. They do not, therefore, concern the texts contained in document B/DC/5, which was distributed later.

**COMMENTS OF INTERNATIONAL
NON-GOVERNMENTAL ORGANIZATIONS
ON PROPOSALS FOR A REVISION OF THE
BERNE CONVENTION**

EUROPEAN BROADCASTING UNION (EBU)

I. The revision proposals drawn up by the Permanent Committee of the Berne Union reflect a realistic awareness of the important role played by culture in the emergence of developing countries, and are manifestly designed to stimulate the cultural development of those countries' populations by facilitating the use of copyright works for teaching or research.

No one today will deny that broadcasting is a predominant factor in this process of cultural development. It makes up for the shortage of books and teachers, dispenses culture beyond normal school and university teaching hours, and contributes to post-school training and adult education. The instruction it offers ranges from the most elementary levels (literacy) to the most advanced type of course, and it thus supplements all educational curricula from primary school to university. Hence it is unthinkable that the advantages it has been agreed to confer on developing countries should not be applicable to broadcasting in these countries.

II. Scrutiny of the revision proposals makes it clear, however, that broadcasting is not covered and is indeed implicitly, if not explicitly, excluded.

Article 2 (2) of the Additional Act states unambiguously that a translation license will be granted only with a view to publishing the work "in printed or analogous forms of reproduction", and this excludes translation either for broadcasting or for purposes of recording for broadcasting, since broadcasting does not constitute publication under the Berne Convention as revised in Stockholm (Article 3 (3)) and recording for broadcasting purposes, though deemed a reproduction within the meaning of the Convention (Article 9 (3)), is certainly not a form of reproduction "analogous" to the printed form.

The unavoidable conclusion is that Article 2 of the Additional Act does not apply to broadcasting and the EBU considers that this omission, which was perhaps not intended by the Permanent Committee and merely results from the present wording of Article V of the Universal Convention, should be remedied.

III. To be precise, what is needed is that the system of licenses allowed by Article 2(1) of the Additional Act should be extended to broadcasting organizations which, though they have a vital need for foreign works for their schools broadcasts, do not "publish" those works within the meaning of Article 2. However, before pursuing this line of argument and making proposals, it is worth enquiring whether broadcasting organizations can, in performing their teaching function in the developing countries, avail themselves of other provisions of the Berne Convention dealing with the right of translation, assuming that national legislation has taken advantage of the possibilities opened up by the Berne Convention.

1. The first provision which comes to mind in this connection is Article 11bis(2), which allows compulsory licenses in the broadcasting field. It must be admitted, however, that a national legislation which had instituted compulsory licensing under this provision of the Convention would still not have settled the problem of translation. The broadcasting organization can of course make its broadcast unhampered by the obstacles which might exist in the absence of a compulsory license, but the work broadcast must, undoubtedly be such as it was created, i.e., in particular, in its original language. The question was raised at the Stockholm Diplomatic Conference and the discussion is summarized in paragraph 205 of the Report on the Work of Main Committee I. This states that "different opinions were expressed regarding the lawful uses provided for in Articles 11bis and 13" for, although "some delegations considered that those Articles also applied to translated

works ... other delegations ... considered that the wording of those Articles in the Stockholm text did not permit of the interpretation that the possibility of using a work without the consent of the author also included, in those cases, the possibility of translating it." These same delegations "pointed out, on the level of general principles, that a commentary on the discussion could not result in an amendment or extension of the provisions of the Convention."

It would definitely be unwise to stretch the meaning which some delegations may have attached to the scope of Article 11bis in regard to the broadcasting under compulsory license of a work translated without the consent of the owner of the translation right, and caution is necessary in interpreting Article 11bis(2). It means that, if national legislation provides for a compulsory license in favor of broadcasting, the broadcasting organization will be able, subject to the provisions of Article 11bis, to make use of the work either in its original language or in translation if the translation already exists and the compulsory broadcasting license thus covers both the original and the already available translation. On the other hand, if no translation yet exists, the compulsory license instituted nationally by virtue of Article 11bis of the Convention will not enable the licensee broadcasting organization to translate the work it wishes to broadcast, or cause it to be translated, without the consent of the owner of the translation right. It follows that a broadcasting organization in a developing country, whose role is often far more important than that of a publisher, will be less favorably placed than the publisher as far as the right of translation is concerned, unless the Additional Act undergoes certain changes to remove this imbalance.

2. With regard to teaching it may also be enquired whether Article 10(2) of the Stockholm version of the Convention is not sufficient to provide the broadcasting organization with the translation license it needs. Two observations are in order here:

(a) Article 10(2) gives national legislation a free hand only with regard to the utilization of works in broadcasts and for sound or visual recordings "by way of illustration for teaching". Although the words quoted are not easy to construe and the Report on the Work of Main Committee I affords scope for various interpretations, it must surely be admitted that "by way of illustration for teaching" means something and is not to be equated with other forms of words which the Stockholm Conference might have chosen, e.g. "for teaching purposes." If this had been the final wording it would have been arguable that Article 10(2) allows the utilization of works where the purpose of a broadcast is teaching. The much more restrictive wording eventually chosen suggests that the work may be used only to illustrate teaching by radio or television, and that it would in any case be impossible under this provision merely to utilize a school or university textbook and read it out as it stands, perhaps with comments, since in this event it would no longer be used "by way of illustration for teaching" but as the principal subject-matter of the teaching itself. This interpretation of Article 10(2) leads to the conclusion that broadcast courses and lessons to schools and universities cannot simply utilize written works for these purposes, and to render such complete use lawful without the author's consent, as the case may be, it would be necessary to institute a compulsory license (subject to remuneration) within the meaning of Article 11bis.

At the same time this raises the problem of the translation right, in the terms outlined in 1. above. If Article 10(2) were sufficient in itself for the needs of broadcast instruction the problem would not arise, as the Stockholm Conference was unanimous in considering that this provision, as well as others, "virtually imply the possibility of using the work not only in the original form but also in translation." As has just been demonstrated, however, Article 10(2) does not meet the real needs of broadcast teaching, especially in developing countries, and thus, however liberally it is interpreted with regard to translation of the work, it does not grant the broadcasting organization the same facilities as those contemplated by the Additional Act proposals for the benefit of graphic publishers. Once again, to maintain balance, and

having regard to the specific role of broadcasting in the educational life of developing countries, the Additional Act requires supplementary provisions.

(b) The same line of argument applies to the reference to sound or visual recordings in Article 10(2). National legislation may license such recordings for broadcasting purposes, provided that the works concerned are designed to illustrate teaching. Arguments designed to show that this limitation is incompatible with the place of broadcasting in the educational structure of developing countries were developed in (a) above and apply equally to recordings intended for broadcasting since, after all, recording in this case is a mere technical medium of broadcasting. Hence Article 10(2) will not allow national legislation to license the prerecording of schools broadcasts in the wider sense, in which works are used not simply as illustrations but form the actual substance of the teaching. Still less can this provision be invoked to legalize the use of works in translation, notwithstanding paragraph 205 of the Report on the Work of Main Committee I of the Stockholm Conference, since so liberal an interpretation could hardly be placed on a text which itself demands restrictive construction. Other provisions will therefore be required to enable broadcasting organizations to record works of the mind for the purpose of schools broadcasts and not merely to illustrate such broadcasts.

It may be objected that this difficulty can be overcome by the institution of ephemeral recording in national legislation. This seems unlikely, however, for ephemeral recording within the meaning of Article 11*bis*(3) certainly means recording of the work in its existing form and in no way authorizes, in addition, the making of a translation for the purpose of the recording. This is confirmed by paragraph 205 of the above-mentioned Report and the quotations reproduced from it. In other words, Article 11*bis*(3) allows national legislation to make an exception to the right of reproduction under Article 9 and not to the right of translation under Article 8 of the Berne Convention as revised in Stockholm. It scarcely needs adding that Article 13 is unlikely to prove of assistance here, since it refers exclusively to musical works, which are of secondary importance in the educational field.

Once again, specific provisions are necessary to enable broadcasting organizations in developing countries to operate within a legal framework comparable to that available to graphic publishers.

IV. It is now possible to establish a clear outline of the regime which should be applicable to broadcasting organizations in developing countries if they are to assume their proper role in the general educational field and not be at a disadvantage compared with book publishers.

Steps should be taken to ensure that broadcasting organizations in developing countries are able:

1. to obtain a translation license for the purpose of broadcasting intended for teaching, scholarship or research without the need for publication within the meaning of Article 3 of the Convention,
2. to obtain a translation license for the purpose of sound or visual recording for broadcasts intended for teaching, scholarship or research,

on the understanding that the conditions of Articles 2 and 4 of the Additional Act will apply where they do not expressly refer to the existence of copies. In other words, a broadcasting organization in a developing country will be able to obtain either of the licenses in question only after the periods specified in Article 2 of the Additional Act and subject to the procedure and remuneration laid down in Article 4 of the Act, the only provisions which they are not required to observe being those, such as paragraphs 3, 4 and 5 of Article 4, which are applicable only where physical copies of the work are distributed.

V. Article 2(1) of the Additional Act specifies that the regime which it institutes for the right of translation concerns only works published in printed or analogous forms of reproduction. Accordingly, the rules regarding the right of

translation instituted for the benefit of developing countries do not concern the text accompanying an audio-visual work. However, under Article 3(7) the translation of such a text may be licensed on the same terms (and no doubt at the same time) as reproduction of the audio-visual work itself.

Audio-visual works prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities play a predominant role in the schools television broadcasting of developing countries. Very often these works are of foreign origin and the text requires translation, whereas reproduction of the audio-visual work is not necessary and the operation may merely consist, before or during the broadcast, in subtitling or the injection of a commentary in the national language, or one of the national languages, of the developing country.

It is arguable that neither Article 2 nor Article 3(7) permits a television organization to perform the very simple operation just described, which involves the screening of an audio-visual work intended for teaching in a program having the same object, but with a text translated into the language or one of the languages of the country. Article 2 refers only to works reproduced in printed or analogous form, and Article 3(7) appears to combine translation with reproduction and moreover involves very long periods (much longer than Article 2) which are understandable where it is a question of reproducing audio-visual works, but unjustified where it is merely a matter of translating an accompanying text.

An additional provision is therefore necessary to cater for this need, particularly as television is, and will remain, the biggest consumer of audio-visual works for teaching purposes, until schools in developing countries begin to acquire equipment for viewing non-televised audio-visual works, e.g. films specially made for schools or video cassettes containing schools programmes. It is surely logical that the translation of a text accompanying an audio-visual work should, where it is intended solely to accompany the televising of this work and no reproduction occurs, obey the rules of Article 2 rather than of Article 3. Should reproduction be necessary, however, it is natural that the rules governing translation should be the same as for reproduction since, if reproduction is indispensable, a different regime for translation of the text would be of no practical use.

VI. Having regard to the foregoing, it is proposed that a new article should be inserted in the Additional Act between the present Articles 4 and 5 which could, by way of example, be worded as follows:

"1. A license to translate a literary or artistic work may be granted on the conditions laid down in Articles 2 and 4 of this Additional Act, as far as those conditions are applicable, to a broadcasting organization having its headquarters in a country of the Union to which Article 1 of this Additional Act applies, for its broadcasts intended for teaching, scholarship or research and for sound or visual recording for such broadcasts.

"2. A license under this Article may also be granted to a broadcasting organization, on the same conditions and for the same purpose, in respect of the text accompanying an audio-visual work prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities."

This proposal calls for few comments, since it arises from the preceding remarks. However, in case the suggested text should have failed to express correctly the considerations which dictated it, the following observations may be added:

1. The sole object of paragraph 1 is to enable a broadcasting organization in a developing country to secure, either for its broadcasts or for its recordings and the recording which their production may require, a license to translate a work originally published in printed or analogous forms of reproduction on the same financial and other terms as a publisher in the same country. Accordingly, the licensee organization would be bound by the same restrictions and obligations as the publisher, which means *inter alia* that it is forbidden to supply its recording to a third party and above

all to export it, it must make the same payments to the owner of the translation right and respect the author's moral rights by including his name and the title of the work among the program credits.

2. Under paragraph 2 of the above proposal, it would be possible, also on the terms laid down in Articles 2 and 4, to grant a license to a broadcasting organization in a developing country for translation of a text accompanying an audio-visual work for schools if the broadcasting organization can use the work as it stands and merely add the translation of the text. However, if reproduction of the work is necessary for technical or other reasons, the right of translation will be as under Article 3(7) of the Additional Act.

3. Neither of the two paragraphs of the proposed text should be construed as encroaching on the broadcasting right or the reproduction right, which remain completely unaffected thereby. The text is intended solely to permit translation under license, and the right to broadcast the translated text or to record it for broadcasting is governed by other provisions of the Convention, particularly Articles 9 and 11*bis*. The suggested new article of course concerns a situation where two or even three rights may be involved—the right of translation, the broadcasting right and the right of reproduction—but its purpose is to regulate only the first.

The EBU considers that without a further provision of the kind suggested above the Additional Act would fail to have the expected effects and would do less than justice to the dominant role played by schools broadcasting in developing countries. It also feels that this proposal would not be detrimental to the interests of authors and publishers, since the advantages sought thereby will apply to ephemeral broadcasts and in no way reduce the market for sales of tangible copies of works.

(Original: English)

INTERNATIONAL CONFEDERATION
OF SOCIETIES OF AUTHORS AND COMPOSERS (CISAC)

CISAC, recalling its doctrine and fundamental principles respecting the revision of the International Copyright Conventions, can only recognize and draw attention once again to the fact that the specific relaxations envisaged in favor of the developing countries by the draft revision text have for consequence that the assistance rendered to these countries will be furnished solely by the authors and their legal successors.

The important concessions which the authors are thus going to find themselves led to grant must not in any way be put to purposes of profit, either directly or indirectly, in the service of commercial interests entirely foreign to the satisfaction of the specific needs advanced by the developing countries in relation to teaching and scholarship.

The present solution contained in the draft revision text being the outcome of a strong conciliatory effort, any further prejudice to authors' rights would endanger a compromise reached only with so much difficulty. *

Article 1 of the draft Additional Act

The just compensation provided in paragraph (6)(a) of Article 4 should be specifically "*consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned.*"

International professional practice in this matter would thus be required to serve as a measure of the payment, particularly as regards reprints. In this context it could eventually facilitate an evaluation of the *available stock* of copies which, in accordance with paragraph (4) of Article 1, may continue to be distributed after the expiration of the period for which the notifications deposited under the conditions of that Article are effective.

* *Editor's Note:* Reference is made to the Additional Act as adopted by the Permanent Committee of the Berne Union document B/DC/4).

Article 2

In the context of the option, which, be it noted, is irrevocable, provided in paragraphs (7) and (8) of this Article, particular attention should be given to the date of commencement of the period of 10 years referred to in Article 5 of the Union Convention of 1886, revised at Paris in 1896, and to the serious consequences which it may entail for authors as a result of the way in which the application of that Article is interpreted.

Article 3

The expression "audio-visual works" used in paragraph (7) of this Article is apt to arouse certain doubts about the content of Article 2 of the Convention.

It would, therefore, be desirable that, in accordance with the terms thought to be the most appropriate, the precise significance of this expression be clarified, more especially since, as such, it figures for the first time in a Convention text as part of the draft Additional Act. Perhaps it would even be better to replace this expression by "audio-visual recordings," so as to emphasize in particular that the concept "audio-visual," which is moreover a generic one, covers exclusively certain technical processes of communication and not a new or special category of works in the scope of the aforesaid Article 2.

Article 4

Having regard to the precise conditions attaching to the licenses provided for under Articles 2 and 3, the notice specified in paragraph (5) of this Article might also lay down that the distribution in question may only be made for purposes of teaching and scholarship and, if such is the case, research within that scope.

In practice, that might be expressed simply by including the symbol E (Education) in the aforesaid notice.

(Original: English)

INTERNATIONAL FEDERATIONS
OF ACTORS, VARIETY ARTISTES AND COMPOSERS
(FIA-IFVA-FIM)

The three international Federations of Actors (FIA), of Musicians (FIM) and of Variety Artistes (FIAV) forming a loose association of interests (known as the FFF) attach great importance to the protection that is granted to authors of literary and artistic works, not only because in addition to performers the FFF also organize many authors and arrangers of musical, literary and dramatic works, but considering furthermore that any protection of authors inevitably reflects itself on the protection of performers.

In this connection, it may be recalled that the FFF in their comments concerning the revision proposals submitted to the member States of the Berne Union for the Revision Conference held in Stockholm (in 1967), had expressed serious concern in respect of the Protocol Regarding Developing Countries.

The proposals for the revision of the Berne Convention and an Additional Act to the Act of Paris drafted by the Preparatory Committee and reviewed by the Permanent Committee of the Berne Union in principle meet with the approval of the FFF, because they afford developing countries the alleviations required without imposing one-sided sacrifices on the authors whose works are translated into the languages of the developing countries and disseminated in them.

However, the draft text of the Additional Act as revised by the Permanent Committee of the Berne Union (Document DA/33/17) * comprises two formulations that are of special interest to the FFF and would require clarification:

* *Editor's Note:* See document B/DC/4, Extraordinary Session of the Permanent Committee of the Berne Union (Geneva, September 14 to 18, 1970), Draft Texts for the Revision of the Berne Convention adopted by the Permanent Committee, reproduced in these *Records*, pages 50 to 52.

1. In Article 2, reference is made to special arrangements that may be made in respect of "works published in printed or *analogous forms of reproduction*."
2. In Article 3, paragraph (7), the same form of words is used in the first sentence, and the following sentence reads: "However, the reservations permitted by this Article shall also apply to the reproduction of *audio-visual works*..."

When the extraordinary session of the Permanent Committee of the Berne Union was held in Geneva (September, 1970), the statement was made to the representative of the FFF that the above-mentioned formulations did not apply to commercial records, a point which is not covered by the draft texts of the Additional Act as proposed at present. The FFF would therefore welcome clarification in this respect at an appropriate place in this draft.

The FFF regret, moreover, that it has been impossible to devise a simpler system for the assistance to be granted to developing countries under the Additional Act, and that it has been necessary to draft the relevant provisions in a language that is not easy to understand.

(Original: English)

INTERNATIONAL FEDERATION OF FILM PRODUCERS ASSOCIATIONS (FIAPF)

It should be pointed out that this revision was originally intended to concern only literary, scientific and artistic works published in printed form.

The text submitted to the Diplomatic Conference, however, applies also "to the reproduction of audio-visual works and to the translation into the language or one of the languages of the country concerned of any accompanying text," where such audio-visual works are "prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities."

We feel that the maintenance of these restrictions is essential in order to avoid upsetting the balance inherent in cinematographic production between its unquestionably cultural character and the need to take account also of industrial exigencies.

(Original: French)

INTERNATIONAL COPYRIGHT SOCIETY

(*Internationale Gesellschaft für Urheberrecht (INTERGU)*)

While maintaining our essentially different point of view on effective aid to developing countries, we would make the following comments on the draft texts for the revision of the Berne Convention [...]

The solution now proposed, that of an Additional Act in favor of developing countries, is a sound basis for discussion. It contains the following provisions:

- (a) In future, any country of the Union which ceases to be a developing country must automatically cease to be entitled to renew the ten-year period and avail itself of the reservations, either on expiration of the current ten-year period or three years from the date on which it ceases to be a developing country, whichever period is the longer.

The new solution does not seem fair, however: a country for which the conditions for exclusion from the reservations are present at the beginning of the ten-year period has an advantage over another country for which the same conditions are present only at the end of that period. For this reason a uniform period of three years should be established.

- (b) If, in the country to which the license granted applies, copies of an edition of a work are distributed by the owner of copyright himself, that edition being in the same language, substantially identical in content and comparably priced, the compulsory license is terminated. The comparable price is the price normally charged in the country for comparable works.

Such a solution is not free of drawbacks, as it could give rise to abuse.

(Original: French)

INTERNATIONAL LITERARY AND ARTISTIC ASSOCIATION (ALAI)

The General Assembly of ALAI, held in Paris on January 15, 1971, noted with satisfaction that the draft text for the revision of the Berne Convention, in the form which resulted from the deliberations of the Permanent Committee in September 1970, represents a considerable advance towards reconciling the interests of developing countries with the safeguarding of authors' rights. On the whole it is in favor of the adoption of these provisions.

With regard to the exceptions reserved for developing countries, it insists on the following:

- (1) no export should be allowed of copies of a translation or reproduction (Article 4(4));
- (2) just remuneration should be calculated according to the "standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned," at the same time ensuring "transmittal in internationally convertible currency or its equivalent" (Article 4(6)(a) and (b));
- (3) the irrevocability of the choice between the reservations in respect of translation rights and the declaration pursuant to Article 30(2)(a) and (b) of the Stockholm Act should be maintained (Article 2(7), (8) and (9)).

(Original: French)

INTERNATIONAL PUBLISHERS ASSOCIATION (IPA)

The International Publishers Association, representing publishers' organizations in some 30 countries, including both developing and developed countries, wishes to record its members' willingness to accept the revisions of the Berne (Stockholm) and Universal Copyright Conventions proposed by the Permanent Committee of the Berne Union and the Intergovernmental Committee of UCC at their meetings in Paris and Geneva, respectively, in September 1970.

IPA regrets the need for the introduction of systems of compulsory licensing for the publishing in developing countries of reprints or translations of works emanating from developed countries, since it is bound to consider such systems as contrary to the intentions of copyright legislation. It nevertheless accepts that the possibility of such compulsory licensing systems will provide an assurance to developing countries that, should their publishers be unable to obtain licenses to publish reprints or translations of works emanating from developed countries, they will have recourse to compulsory licensing, and thus will not be denied rapid and economic access to such works for educational purposes.

IPA believes that the proposed amendments to the two international copyright conventions will provide an adequate framework within which free negotiation will successfully take place. It affirms the willingness of the publishers in membership of the IPA national associations to continue to cooperate together to this end.

On one point alone, IPA believes that, in equity, further consideration should be given to the proposed Article 2(9) of the Additional Act of the proposed Berne Union Act of 1971, as set out in BIRPI paper DA/33/17 dated September 18, 1970. Under this proposed paragraph, a developing

country which ceases to be such may, within three months from the expiry of the period defined in Article 1(3) of the said Additional Act, make a declaration according to Article 30(2)(b) of the Act. The effect of this would be to enable such a country, now developed and no longer developing, to operate the ten-year limitation of the exclusivity of translation rights dating back to the Paris Convention of 1896.

It was argued on behalf of book publishers at the meeting in Geneva last September that there might be sound commercial and cultural reasons why a copyright proprietor in a developed country might not wish to grant a license for a translation of his work to a particular publisher applicant in a developing country. He might in no way be averse to having such a translation published in that country, but he might prefer to find another publisher to entrust with the task. It was on the basis of this argument that the developing countries at the meetings in both Paris and Geneva last September agreed to an additional period of six months before compulsory licensing of translations could be operated after three years from first publication of the work. In IPA's view it is imperative that copyright proprietors in developed countries should be given a similar 'period of grace' in the event that a no-longer-developing country should take advantage of the provisions of the proposed Article 2(9) of the proposed Additional Act. Because if advantage were taken of this proposed provision, copyright proprietors would face the problem of dealing with the grant of licenses for translation rights in an enormous number of works, the translation rights of which would fall into the public domain in such developing countries where 'voluntary' licenses were not granted, it seems to IPA that it would be no less than equitable to give such copyright proprietors a reasonable opportunity to make satisfactory arrangements for the publication of such translations.

(Original: English)

The Music Publishers of the International Publishers Association consider that the provisions proposed by the Permanent Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention at their various meetings in 1969 and 1970 are not sufficient either to relieve the burden which the compulsory license system imposes on composers, authors and music publishers in developing countries, or to ensure the honest fixing of the just remuneration to be paid to them, or to guarantee, provide for and settle without difficulty the transfer of such remuneration to them.

Ask most insistently that the International Copyright Information Center referred to in Annex A of the Report of the First Session of the International Copyright Joint Study Group be actually created and put into operation by Unesco, that its purpose be not only to inform national information centers and interested parties in developed and developing countries, in particular by publishing and distributing monthly an up-to-date list of developing countries, but also to investigate methods and means of financing the authors' fees relating to the operation of compulsory licenses and to ensure the regular payment of just remuneration.

Consider that the Additional Act, whether or not it is included in the future Paris Act, should not be brought into force until the International Information Center is in a position to operate efficiently.

Finally, if, as has been assured, developed countries have the bounden duty to assist developing countries in overcoming the difficulties and problems which beset them in the fields of education and culture, the most elementary principles of fairness demand that the heavy burden resulting from the accomplishment of this duty should not be borne, in developed countries, solely by authors and composers and their publishers.

Therefore the Music Publishers urge the Governments of States preparing to introduce the system of compulsory licenses in developed countries for the benefit of developing countries not to refuse to compensate, at least in part, for the burden imposed on authors, composers and publishers owning copyright in published works which are reproduced in developing countries by virtue of compulsory licenses, by

exempting from all taxes, fees and bank charges, in developed and developing countries, any payments for licenses granted for translation or reproduction, and also the transfer of such payments to their recipients.

(Original: French)

INTERNATIONAL WRITERS GUILD (IWG)

1. The International Writers Guild is naturally very pleased to observe that the texts proposed to the Conference concerning both the Universal Copyright Convention and the Berne Convention seem to have provided the possibility of overcoming the present deadlock and of solving, in a manner acceptable to all, a problem which it was essential to solve as soon as possible.

2. It notes with satisfaction that the excessive and unjustified measures which made the Stockholm Protocol unacceptable to authors have been removed in the new texts, and that the faculty of making exceptions and reservations, as now envisaged, applies only to the uses legitimately mentioned to motivate such exceptions and reservations, that is, teaching, scholarship and research, and then exclusively within specific territories.

3. It sincerely hopes that the Diplomatic Conference will not question the agreement reached during the preparatory work, and that the reasonable compromise which was achieved will not be subjected to attempts at "underbidding" which would unfailingly result in deadlock once again.

4. The International Writers Guild nevertheless feels obliged to express regret that the texts proposed to the Conference—regardless of the unquestionable improvements they represent in relation to the Stockholm texts—should leave assistance to developing countries in educational and cultural matters to be borne by authors alone.

5. Accordingly, while refraining from pointing out yet again that this illogical and irrational situation has no precedent in any form of assistance, the International Writers Guild expresses the wish that all Governments which take the commendable decision to facilitate access, on the part of other States, to intellectual works created by their nationals, may at the same time be intent on ensuring that those who create such works are justly compensated for the sacrifice imposed on them.

(Original: French)

UNION OF NATIONAL RADIO AND TELEVISION ORGANIZATIONS OF AFRICA (URTNA)

The Union of National Radio and Television Organizations of Africa (URTNA) has taken note of the draft texts prepared by the Drafting Committee and adopted by the Permanent Committee (Geneva, September 14 to 18, 1970) for the revision of the Berne Convention in the early summer of 1971.

In its capacity as a continental organization operating primarily in developing countries, in which radio and television serve as the medium for education and culture as well as information, URTNA expresses satisfaction at the efforts which have been made towards assisting those countries in their promotional work in social, educational and cultural fields, but at the same time wishes to point out that broadcasting does not seem to have been given the importance it deserves in the draft texts.

In many countries of Africa, broadcasting serves to make up for the insufficiency or even the non-existence of books and manuals in African languages, and for the shortage of qualified teaching staff; it imparts advice on hygiene to the populations, provides elementary instruction and helps in the promotion of literacy, supplements primary and secondary education and occasionally backs up university courses. Broadcasting in Africa has the task of completing the education of adults and all those who have not had the opportunity of regular school attendance.

It is essential, therefore, that broadcasting be given the place due to it in the work on the revision of the Berne Convention.

Without commenting on the provisions of Articles 9 and 11bis, which determine the right of reproduction (including recording) and the right of broadcasting respectively, and which are not due to undergo revision, these provisions naturally governing broadcasts and programs in general (in connection with compulsory licenses), URTNA regrets the non-application of the Protocol Regarding Developing Countries, unanimously adopted at Stockholm on July 14, 1967, and expresses the wish that the Additional Act may be as beneficial to radio and television, in connection with educational and instructional broadcasts and programs, as it is for publication in terms of the draft text for the revision.

The advantages thus offered to developing countries, the application of which is also desirable for broadcasting in those countries, concern especially: *the license for the translation and the use of translated texts to accompany audio-visual broadcasts.*

Article 2 of the Additional Act does in fact provide, in its paragraph (2), that "... any national of such country may obtain a license to translate the work and *publish* the work so translated in the said language in printed or analogous forms of reproduction."

This provision concerns publication and offers advantages in the teaching and popularization of works by means of their publication for educational and cultural purposes.

The advantage does not extend to the broadcasting of those works, however, since broadcasting does not constitute "publication" in terms of Article 3 of the Convention, which provides, in its paragraph (3), that:

"The performance of a dramatic ... work, ... the communication by wire or the broadcasting of literary or artistic works ... shall not constitute publication."

This shortcoming must therefore be remedied.

Moreover, Article 3 of the Additional Act provides, in its paragraph (7):

"However, the reservations permitted by this Article shall also apply to the reproduction of audio-visual works and to the translation into the language or one of the languages of the country concerned of any accompanying text, in which case the reservations shall be limited to audio-visual works prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities."

It follows that the authorization or license referred to here could only really be applied in countries having at their disposal educational establishments sufficiently well provided with projection and recording equipment (films, editing laboratories, video apparatus, magnetoscopic tapes, etc.). The present situation is different in the majority of African countries where only radio and television are capable of meeting these requirements. In those countries, radio and television often use texts of foreign origin for their educational broadcasts; they have the texts translated into the language or languages of their listeners for use as commentary or explanation of audio-visual television broadcasts made for the purposes of teaching, education and popularization in the fields of culture and science. It is essential to fill this gap, for African television services make regular and abundant use of texts of this kind, and they should be given a legal basis and encouragement in their constructive and promotional activity.

Consequently, URTNA proposes that a new article be incorporated in the Additional Act to deal with these considerations; it could be worded as follows:

"Broadcasting organizations operating in the countries of the Union defined in Article 1 above may obtain licenses for the translation of literary and artistic works for their own broadcasts intended for school, university or other educational purposes under the conditions listed in Articles 2 and 4 of this Act.

They may, under the same conditions and for the same purposes, obtain a license to translate a text in order to explain or accompany a televised audio-visual broadcast."

The substance of this proposal could be included in the provisions of the existing articles of the Additional Act.

URTNA makes reservations, however, as to the periods of protection in respect of translation and reproduction provided for in Articles 2 (translation) and 3 (reproduction). In addition, URTNA expresses the wish that the language discrimination embodied in the Additional Act be removed.

(Original: French)

B/DC/8

July 6, 1971 (Original: French)

WIPO

Rules of Procedure adopted by the Conference on July 5, 1971

I. Membership of the Conference

Rule 1 — Delegations

Delegations of States members of the International Union for the Protection of Literary and Artistic Works (Berne Union) may participate in the work of the Conference, with the right to vote.

Each delegation may consist of delegates, advisers and experts.

Rule 2 — Observers and representatives

The following may take part in the Conference as observers, without the right to vote:

(a) observers from Member States of the United Nations or of one or more organizations within the United Nations system which are not members of the Berne Union;

(b) representatives of the United Nations Organization and other agencies within the United Nations system;

(c) observers from the intergovernmental organizations listed in the annex to this document;

(d) observers from the international non-governmental organizations listed in the annex to this document.

II. Credentials

Rule 3 — Presentation of credentials

(1) The credentials empowering the delegates to participate in the Conference shall be issued by the Head of State, the Head of Government or the Minister of Foreign Affairs. These credentials shall be communicated to the Secretariat of the Conference. The names of advisers and experts attached to delegations, as well as the names of observers and representatives referred to in Rule 2, shall also be communicated to the Secretariat.

(2) Full powers shall be required for signing the Convention to be adopted by the Conference. Such full powers may be included in the credentials referred to in paragraph (1) above.

Rule 4 — Provisional admission

(1) Any delegation to whose admission an objection has been made shall be seated provisionally with the same rights as other delegations until the Conference has given its decision concerning this objection after hearing the report of the Credentials Committee.

(2) Any delegation which submits credentials not fulfilling the conditions laid down in Rule 3, paragraph (1), may be authorized by the Conference to be seated provisionally with the same rights as other delegations, subject to presenting credentials in proper form before the last plenary meeting.

III. Organization of the Conference

Rule 5 — Elections

The Conference shall elect its President, nine Vice-Presidents and a General Rapporteur.

Rule 6 — Subsidiary bodies

(1) The Conference shall institute a Credentials Committee, a Main Commission, a Bureau and a Drafting Committee.

(2) The Conference and the Main Commission may also establish such working parties as are necessary for the conduct of their work. Each of these bodies shall elect its Chairman and Rapporteur.

Rule 7 — Credentials Committee

The Credentials Committee shall consist of seven members elected by the Conference, on the proposal of the President, from among the States mentioned in Rule 1. The Committee shall elect its own Chairman; it shall examine and report to the Conference without delay on the credentials of delegations; it shall also examine and report on the credentials of observers.

Rule 8 — Main Commission

The Main Commission, in the work of which all delegations are invited to participate, shall make a detailed study of the proposals for revision of those provisions of the Stockholm Act (1967) of the Berne Convention for the Protection of Literary and Artistic Works which concern developing countries, and shall prepare draft texts for submission to the Conference at a plenary meeting.

Rule 9 — Bureau

The Bureau shall consist of the President, Vice-Presidents and General Rapporteur of the Conference, the Chairman and Vice-Chairmen of the Main Commission, the Chairman of the Credentials Committee and the Chairman of the Drafting Committee. Its function is to coordinate the work of the Conference and of its subsidiary bodies and to fix the date, hour and order of business of the meetings.

Rule 10 — Drafting Committee

The Drafting Committee shall consist of eight members elected by the Conference on the proposal of the President. The General Rapporteur of the Conference and the Chairman of the Main Commission are *ex officio* members. The Committee shall elect its Chairman and Vice-Chairman; it is responsible for drawing up the final revised text of the Berne Convention and of the instruments annexed thereto in the two languages of the Convention.

Rule 11 — Duties of the President

The President shall open and close each plenary meeting of the Conference. He shall direct the discussions, ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions. He shall rule on points of order and, subject to the present Rules, shall control the proceedings and the maintenance of order.

The Chairmen and Vice-Chairmen of the subsidiary bodies of the Conference shall have the same rights and duties with regard to the bodies over which they are called to preside.

Rule 12 — Acting President

If the President finds it necessary to be absent during a meeting or any part thereof, the Vice-President designated by him shall replace him as Acting President. A Vice-President sitting as President shall have the same powers and responsibilities as the President.

Rule 13 — The President shall not vote

The President, or a Vice-President acting temporarily as President, shall not vote, but may designate a member of his delegation to vote in his place.

IV. Conduct of business

Rule 14 — Public meetings

All plenary meetings and the meetings of the Main Commission shall, unless the body concerned decides otherwise, be held in public.

Rule 15 — Quorum

(1) At plenary meetings of the Conference, a majority of the States members of the Berne Union shall constitute a quorum.

(2) A quorum is not required for the subsidiary bodies of the Conference.

(3) The Conference cannot deliberate in plenary session without the quorum defined in sub-paragraph (1) above.

Rule 16 — Order and time-limit of speeches

(1) Subject to the provisions of sub-paragraph (2) below, the President shall call upon speakers in the order in which they signify their wish to speak. The Secretariat is responsible for drawing up the list of speakers.

(2) The Chairman or the Rapporteur of a subsidiary body of the Conference may be accorded precedence for the purpose of explaining the conclusions reached by the body of which he is the Chairman or the Rapporteur.

(3) To facilitate the conduct of business the President may limit the time to be allowed to each speaker.

(4) The consent of the President must be obtained whenever an observer of an international non-governmental organization wishes to make a verbal communication.

Rule 17 — Points of order

During a discussion, any delegation may rise to a point of order and such point of order shall be immediately decided by the President. An appeal may be made against the ruling of the President. Such appeal shall be put to the vote immediately, and the President's ruling shall stand unless it is overruled by a majority of the delegations present and voting.

Rule 18 — Suspension, adjournment and closure

(1) In the course of a discussion, any of the delegations referred to in Rule 1 may move the suspension or adjournment of the meeting, or the adjournment or closure of the debate.

(2) Such motions shall be immediately put to the vote. Subject to the provisions of Rule 17, the following motions shall have precedence in the following order over all other proposals or motions:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the item under discussion;
- (d) To close the debate on the item under discussion.

Rule 19 — Resolutions and amendments

Draft resolutions and amendments shall be transmitted in writing to the Secretariat of the Conference, which shall circulate copies to delegations. As a general rule, no resolution or amendment shall be discussed or put to the vote unless it has been circulated sufficiently in advance to all delegations in the working languages.

Rule 20 — Reconsideration of proposals adopted or rejected

When a proposal has been adopted or rejected, it may not be reconsidered unless so decided by a two-thirds majority of the delegations present and voting. Permission to speak on a motion to reconsider shall be accorded only to one speaker supporting the motion and to two speakers opposing it, after which it shall be immediately put to the vote.

V. Voting

Rule 21 — Voting Rights

Each delegation referred to in Rule 1 shall have one vote in the Conference and in each of the subsidiary bodies on which it is represented.

Rule 22 — Majority required

In plenary meetings, the decisions of the Conference shall be taken by the unanimous vote of the delegations present and voting, except in the case of Rules 5, 6, 7, 10, 14, 17, 18 and 34.1, where a simple majority is sufficient. At the meetings of all other bodies of the Conference, decisions shall be taken by a simple majority of the delegations present and voting.

For the purpose of the present Rules, the expression "delegations present and voting" means delegations casting an affirmative or negative vote. Delegations abstaining from voting shall be considered as not voting.

Rule 23 — Method of voting

(1) Voting shall normally be by show of hands.

(2) Vote by roll-call shall be taken if it is requested by not less than two delegations. The request shall be made to the Chairman of the meeting before voting takes place or immediately after a vote by show of hands. The Chairman may also take a second vote by roll-call when the result of a vote by show of hands is in doubt. The names of States having the right to vote shall be called in French alphabetical order, beginning with the delegation the name of which has been drawn by lot by the Chairman. When a vote is taken by roll-call, the vote of each delegation participating shall be recorded in the summary record of the meeting.

(3) Only proposals or amendments submitted by a delegation referred to in Rule 1 and supported by at least one other delegation shall be put to the vote.

Rule 24 — Procedure during voting

Once the Chairman has announced the beginning of voting, it may not be interrupted except by raising a point of order on the voting procedure. The Chairman may allow delegations to explain their votes either before or after voting.

Rule 25 — Voting on proposals

When two or more proposals refer to the same question, the body concerned, unless it decides otherwise, shall vote on the proposals in the order in which they have been submitted.

After each vote, the body concerned may decide whether to vote on the following proposal.

Rule 26 — Division of proposals and amendments

Any delegation may propose that a separate vote be taken on parts of a proposal or of any amendment thereto. When an objection is raised to the motion for a separate vote, the motion shall be put to the vote. Permission to speak on a motion for a separate vote shall be accorded only to one speaker for the motion and two speakers opposing it. If the motion for a separate vote is accepted, the different parts of the proposal or amendment shall be put to the vote separately, after which those parts which have been approved shall be put to a final vote in their entirety. If all the operative parts of the proposal or amendment have been rejected, the proposal or amendment shall also be considered to have been rejected as a whole.

Rule 27 — Voting on amendments

When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved, the Conference shall first vote on the amendment deemed by the President to be furthest removed in substance from the original proposal and then

on the amendment next furthest removed therefrom, and so on. If, however, the adoption of any amendment necessarily implies the rejection of another amendment or of the original proposal, the latter amendment or the proposal shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Rule 28 — Equally divided votes

Subject to Rule 22, if a vote is equally divided, in voting not concerned with elections, the proposal or amendment shall be considered as lost.

VI. Working languages and summary records

Rule 29 — Working languages

English, French and Spanish are the working languages of the Conference. Speakers are free, however, to speak in any other language, provided that they make their own arrangements for the interpretation of the speeches into one of the working languages.

Rule 30 — Summary records

A summary record shall be prepared of plenary meetings and of meetings of the Main Commission of the Conference. The provisional records distributed during the Conference shall be trilingual, each speech being summarized in the original language. The final records shall be translated and published by the World Intellectual Property Organization (WIPO) in English and in French after the Conference.

VII. Secretariat of the Conference

Rule 31 — Secretariat

The Secretariat of the Conference shall be provided by the Director General of the World Intellectual Property Organization (WIPO).

The Director General of WIPO shall appoint the Secretary General of the Conference, an Assistant Secretary General, and the other officers of the Secretariat of the Conference from among the staff of the International Bureau.

Rule 32 — Duties of the Secretariat

It shall be the duty of the Secretariat to receive, translate and distribute documents, reports and resolutions, to provide for the interpretation of speeches made at the meetings, to draft provisional records and to perform all other work necessary for the smooth functioning of the Conference.

Rule 33 — Statements on behalf of WIPO

The Director General of WIPO or his representative, the Secretary General, the Assistant Secretary General, or any other member of the Secretariat of the Conference may make statements, either written or oral, concerning any matter under consideration by the Conference.

VIII. Amendments to the rules of procedure

Rule 34

(1) The present Rules shall be adopted by a simple majority.

(2) The present Rules may be amended by a two-thirds majority.

Annex

A. *The United Nations and other organizations of the United Nations system*

United Nations (UN)
 International Labour Organisation (ILO)
 United Nations Educational, Scientific and Cultural Organization (Unesco)
 Food and Agriculture Organization of the United Nations (FAO)
 World Health Organization (WHO)
 International Bank for Reconstruction and Development (IBRD)
 International Monetary Fund
 International Civil Aviation Organization (ICAO)
 Universal Postal Union (UPU)
 International Telecommunication Union (ITU)
 World Meteorological Organization (WMO)
 Inter-Governmental Maritime Consultative Organization (IMCO)
 General Agreement on Tariffs and Trade (GATT)
 International Atomic Energy Agency (IAEA)

B. *Other intergovernmental organizations*

Council of Europe (CE)
 International Institute for the Unification of Private Law (UNIDROIT)
 Organization of American States (OAS)
 League of Arab States
 Organization of African Unity (OAU)
 Common Afro-Malagasy Organization (OCAM)
 Organization of Central American States (OCAS)

C. *Non-governmental organizations*

Asian Broadcasting Union (ABU)
 European Broadcasting Union (EBU)
 Inter American Association of Broadcasters (AIR)
 International Alliance for Distribution by Wire (AID)
 International Association for the Protection of Industrial Property (IAPIP)
 International Bureau for Mechanical Reproduction (BIEM)
 International Confederation of Societies of Authors and Composers (CISAC)
 International Federation of Actors (IFA)
 International Federation of Associations of Film Distributors (FIAD)
 International Federation of Film Producers' Associations (FIAPF)
 International Federation of Journalists (IFJ)
 International Federation of the Phonographic Industry (IFPI)
 International Federation of Musicians (FIM)
 International Federation of Newspaper Publishers (FIEJ)
 International Federation of Translators (FIT)
 International Federation of Variety Artistes (IFVA)
 International Hotel Association (IHA)
 International Law Association (ILA)
 International Literary and Artistic Association (ALAI)
 International Music Council (IMC)
 International Publishers Association (IPA)
 International Radio and Television Organization (OIRT)
 International Union of Cinematograph Exhibitors (UIEC)
 International Writers Guild (IWG)
 International Copyright Society (Internationale Gesellschaft für Urheberrecht (INTERGU))
 Union of National Radio and Television Organizations of Africa (URTNA)

B/DC/9

July 7, 1971 (Original: English)

UNITED KINGDOM

Proposals concerning Article II (7) (a) (i), (9) of the Appendix to the Draft Paris Act (document B/DC/5) accompanied by comments

The United Kingdom Delegation has studied document B/DC/5 and offers the following comments, which it is suggested might be made available to participants at the start of the Diplomatic Conference.

The revision proposals are presented in two different forms; firstly as a completely new Act in which the special provisions regarding developing countries appear in the form of an appendix, and secondly as an Additional Act which modifies the Stockholm Act and must be read in conjunction with it.

The United Kingdom Delegation prefers the first alternative, as being, in its opinion, more readily comprehensible to later users of the text of the Convention who have not had the advantage of participating in the discussions leading up to it.

Article II (7) (a) (i) of the Appendix to the Draft Paris Act

The provision is not entirely satisfactory because although the Article is concerned exclusively with translations, declarations under Article 30(2)(a) are not restricted to translations alone.

Article II (9)

This provision, which enables a country which has ceased to be regarded as developing to avail itself of the faculty provided in Article 30(2)(b) first sentence, notwithstanding the fact that it is not a country outside the Union, is accepted in principle. We suggest, however, provisions dealing with two consequential matters.

1. Upon the country becoming developed all works which had been published for ten years could lose the translation right notwithstanding that a translation had been published under compulsory license during that period. Bearing in mind that there is no provision in regard to translations by which publication of an authorized translation causes a compulsory translation license to cease, the United Kingdom Delegation suggests that a translation made and published under compulsory license shall for the purpose of Article 5 of the Convention of 1886 as revised in Paris in 1896 be deemed to have been published by the author.

2. In order to allow copyright owners to anticipate the loss of their rights, no exclusive right of translation shall cease in the country concerned by reason of making the declaration until [three] years have elapsed from making the declaration.

If these points are acceptable, the United Kingdom Delegation will be making suggestions in drafting committee for revising the Article. It will also be making a number of the drafting suggestions contained in its observations on the Universal Copyright Convention (document INLA/UCC/5, Annex) *

B/DC/10

July 7, 1971 (Original: English)

AUSTRIA

Proposal concerning Article 36(2) of the Draft Paris Act (document B/DC/5)

Article 36(2) should read: It is understood that, at the date of entering into force for a country, such country shall be in a position under its domestic law to give effect to the provisions of this Convention.

* *Editor's Note:* See Records of the Conference for Revision of the Universal Copyright Convention, Paris 1971, published by Unesco.

B/DC/11

July 7, 1971 (Original: English)

UNITED KINGDOM

Proposal concerning Article III (7) of the Appendix to the Draft Paris Act (or Article VI(7) of the Draft Additional Act of Paris) (document B/DC/5), accompanied by comments

Article III(7) of the Appendix to the Draft Paris Act (or Article VI(7) of the Draft Additional Act of Paris—if the Conference adopts this second system) (document B/DC/5) should read as follows:

- (a) Subject to the provisions of subparagraph (b), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.
- (b) The provisions of this Article shall also apply to reproduction in audio-visual form of audio-visual fixations and any works incorporated therein and to the translation of any incorporated text into the language or one of the languages of the country concerned, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Comments: The Delegation of the United Kingdom considers that the proposals contained in Article III(7) of the Appendix to the Draft Paris Act and the corresponding Article VI(7) of the Additional Act of Paris—both contained in document B/DC/5—are not entirely satisfactory.

Firstly, the Draft does not make it clear that an audio-visual work should be licensed only for reproductions in the same form.

Secondly, the term “audio-visual works” is not used in international instruments and could lead to doubt as to whether an “audio-visual work” is, in fact, a work (cf. “cinematographic works” in Articles 2, 4, 7, and 14*bis* of the Stockholm text).

the World Intellectual Property Organization, and the country concerned makes a declaration to that effect when depositing the relevant instrument.”

2. *If the Additional Act form is adopted, Article XII (1) (ii) should be amended as follows:*

“a country outside the Union may nevertheless ratify or accede to the Stockholm Act, with the limitation set forth in Article 28(1)(b)(i) thereof, provided it is for the sole purpose of complying with the provisions of Article 14 (2) of the Convention establishing the World Intellectual Property Organization, and the country concerned makes a declaration to that effect when depositing the relevant instrument.”

Comments: The Delegation of the United Kingdom supports the substance of Article 29*bis* of the Draft Paris Act (or Article III of the Draft Additional Act of Paris (document B/DC/5). However, by deeming ratification of or accession to the Paris Act (or the Additional Act of Paris) by any country not bound by Articles 22 to 38 of the Stockholm Act to amount to ratification of or accession to the Stockholm Act for the purposes of Article 14(2) of the Convention establishing the World Intellectual Property Organization, these Articles in effect purport to amend said Article 14(2).

Although such a provision might be effective as between those States party to both the Paris Act (or Additional Act of Paris) and the WIPO Convention, it would not be effective in relation to a State not party to both.

The Delegation of the United Kingdom therefore agrees with the proposal of the Japanese Delegation (contained in their observations on proposals for a revision of the Berne Convention (document B/DC/6)), that Article 34 of the Paris Act (or Article III of the Additional Act of Paris (document B/DC/5)) should be amended in order to enable countries which have not ratified or acceded to the Stockholm Act before the entry into force of the Paris Act (or Additional Act of Paris) to ratify, or accede to, the Stockholm Act, with the limitation set forth in Article 28(1)(b)(i) thereof, for the sole purpose of becoming a party to the WIPO Convention.

B/DC/12

July 8, 1971 (Original: English)

UNITED KINGDOM

Proposal concerning Article 37 (1) (a) of the Draft Paris Act (or Article XIV (1) (a) of the Additional Act of Paris) (document B/DC/5)

In Article 37(1)(a) of the Draft Paris Act (or Article XIV(1)(a) of the Additional Act of Paris), after the word Act (Additional Act) should be inserted the following: , which shall be known as the Stockholm/Paris Act 1971, .

B/DC/13

July 8, 1971 (Original: English)

UNITED KINGDOM

Proposal concerning Article 34(1) of the Draft Paris Act (Article XII (1) (ii) of the Draft Additional Act of Paris) (document B/DC/5), accompanied by comments concerning Article 29*bis* and 34(1) of the Draft Paris Act (or Articles III and XII (1)(ii) of the Draft Additional Act of Paris

1. *Article 34(1) of the Paris Act should read as follows:*

“(1) Once Articles 1 to 21 and the Appendix have entered into force, no country may ratify or accede to earlier Acts of the Convention. However, a country may nevertheless ratify or accede to the Stockholm Act with the limitation set forth in Article 28(1)(b)(i) thereof, provided it is for the sole purpose of complying with the provisions of Article 14(2) of the Convention establishing

B/DC/14

July 10, 1971 (Original: French)

CREDENTIALS COMMITTEE

First Report

1. The Credentials Committee, hereinafter referred to as “the Committee”, formed by the Conference in accordance with Rule 7 of the Rules of Procedure, held its first meeting on July 5, 1971.

2. The Committee was composed of delegates from the following States: Czechoslovakia, Germany (Federal Republic of), Italy, Ivory Coast, Japan, Spain, Uruguay.

3. Upon the proposal of the Delegation of Germany (Federal Republic of), the Committee unanimously elected H.E. the Ambassador Yoshihiro Nakayama, Head of the Japanese Delegation, as Chairman, and Mr. Bernard Dadié, Head of the Delegation of the Ivory Coast, as Vice-Chairman.

4. In the absence of its Chairman, retained by other engagements, the Committee held its first meeting under the chairmanship of Mr. Bernard Dadié, Vice-Chairman.

5. The Committee, after having heard the information conveyed by the Secretariat (International Bureau of WIPO), noted that the full credentials deposited with the Secretariat by the delegations of the States members of the Berne Union should be classed in two categories: those permitting participation in the work of the Conference (Category A) and those permitting, in addition to such participation, signature of the revised text to be adopted by the Conference (Category B).

6. After having examined the documents deposited, the Committee decided that, in accordance with Rule 3, paragraph (2), of the Rules of Procedure, the credentials of the delegations of the following States could be placed in Category A: Australia, Austria, Cameroon, Congo (Democratic Republic of the) *, Czechoslovakia, Finland, Germany (Federal Republic of), India **, Japan, Norway, Portugal, South Africa.

7. After having examined the documents deposited, the Committee decided that, in accordance with Rule 3, paragraph (2), of the Rules of Procedure, the credentials of the delegations of the following States could be placed in Category B: Cyprus, Denmark, France, Holy See, Hungary, Israel, Italy, Ivory Coast, Liechtenstein, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Senegal, Sweden, Switzerland, Tunisia, United Kingdom.

8. Consequently, the Committee recommended that the delegations of the States listed in paragraphs 6 and 7 above be admitted to participate in the work of the Conference and, as far as the States listed in paragraph 7, above, are concerned, to sign the revised text to be adopted by the Conference.

9. The Committee took note of a telegram sent to the Chairman of the Conference by the Prime Minister and the Minister of Foreign Affairs of Ceylon, announcing the dispatch of the credentials. It therefore recommended the provisional admission of Ceylon.

10. The Secretariat pointed out that the delegations of the States listed below had not yet deposited credentials or else had communicated documents emanating from authorities other than those mentioned in Rule 3 of the Rules of Procedure: Argentina, Belgium, Brazil, Bulgaria, Canada, Greece, Ireland, Lebanon, Niger, People's Republic of the Congo, Spain, Turkey, Uruguay, Yugoslavia.

11. The Committee proposed that these documents be accepted as constituting provisional credentials, subject to the last aspect of the provisions of Rule 4, paragraph (2), of the Rules of Procedure, and that, in the interval, these delegations be admitted to participate in the work of the Conference and be authorized to be seated provisionally with the same rights as the other delegations.

12. The Committee, having noted that a certain number of States members of the Berne Union had not yet sent credentials empowering their delegation, expressed the hope that such credentials be handed over as soon as possible to the Secretariat.

13. The Committee decided to leave to the Secretariat the task of convening its next meeting in due course.

B/DC/15 July 9, 1971 (Original: English)

UNITED KINGDOM

Proposal concerning Article IV(2) of the Appendix to the Draft Paris Act (or Article VII(2) of the Draft Additional Act of Paris (document B/DC/5)

Replace the words of which the publisher is believed to be a national by the words: in which the publisher is believed to have his principal place of business.

Editor's Notes:

* This State has since changed its name; at the time of publication of these *Records*, it is designated at "Zaire".

** See Second Report of the Credentials Committee, paragraph 3, published in these *Records*, page 115.

B/DC/16

July 9, 1971 (Original: English)

UNITED KINGDOM

Proposal concerning Article II (7), (8), (9) of the Appendix to the Draft Paris Act (document B/DC/5)

Article II(7), (8), (9) should read as follows:

(7)(a) Subject to the provisions of paragraph (8), any country entitled to avail itself of the faculties provided for in this Appendix may, instead of availing itself of the faculties provided for in paragraphs (1) to (6), at the time of ratifying or acceding to this Act, make the declaration provided for in Article 30(2)(b), first sentence, whether or not it is a country of the Union.

(b) Any country which has made such a declaration may not avail itself of the faculties provided for in paragraphs (1) to (6) even if it subsequently withdraws the declaration.

(8) Subject to the provisions of paragraph (9), any country which has availed itself of the faculties provided for in paragraphs (1) to (6) may not subsequently make the declaration provided for in Article 30(2)(b), first sentence.

(9) Any country which has ceased to be regarded as a developing country in conformity with the practice referred to in Article I(1) may, within three months from the expiration of the period provided for in Article I(3), make the declaration provided for in Article 30(2)(b), first sentence, notwithstanding that it is not a country outside the Union. In such a case:

(a) any translation which has been made and published by virtue of a license under paragraphs (1) to (6) shall for the purpose of Article 5 of the Convention of 1886 as revised in Paris in 1896 be deemed to have been published by the author; and

(b) an exclusive right of translation shall by reason of the declaration not cease in that country until three years from the making of such declaration.

B/DC/17

July 9, 1971 (Original: English)

CEYLON *

Proposal concerning Article II(4) of the Appendix to the Draft Paris Act, accompanied by comments

Article II(4) should read as follows: Any license under the preceding paragraphs shall be granted only for the purpose of teaching, scholarship, research or promotion of culture.

Comments: The comments on Article II(4) of document B/DC/5 state that this paragraph "...establishes an important limitation which applies to all cases."

Paragraph (5) of the Washington Recommendation of October 1969 reads as follows: "Recalling once more the most urgent need of developing countries to find satisfactory solutions in the field of Copyright in respect of their requirements for education, science and promotion of culture, ..."

Article II(4) of the Appendix to the Draft Paris Act confines the granting of a license for the purpose of "teaching, scholarship or research." While this terminology could cover the fields of education and science, the promotion of culture referred to in the Washington Recommendation has been omitted.

In order to make Article II(4) of the Appendix to the Draft Paris Act more fully reflective of the intentions spelled out by the Washington Recommendation, the Delegation of Ceylon proposes that this Article II(4) of the Draft Paris Act be amended (*see proposal herein above*).

* *Editor's Note:* This State has since changed its name; at the time of publication of these *Records*, it is designated as "Sri Lanka".

B/DC/18 July 9, 1971 (Original: English) B/DC/20 July 10, 1971 (Original: Spanish)
 CEYLON * ARGENTINA

Proposal concerning Article III (5) of the Appendix to the Draft Paris Act (document B/DC/5) accompanied by comments

Article III (5) of the Appendix to the Draft Paris Act should read as follows:

(5) Subject to the preceding provisions of Article III, a license to reproduce and publish a translation of a work shall be granted under this Article in the following cases:

- (i) where the translation was published by the owner of the right or with his authorization or by license under the provisions of Article II; and
- (ii) where the translation is in the language or one of the languages of the country granting the license.

Comments: Article II of the Appendix to the Draft Paris Act deals with the question of licenses for translation and paragraph (2) of that Article governs the conditions for obtaining such licenses.

Article III of the Appendix which deals with reproduction has, in paragraph (5), provisions which appear to nullify some of the effect of Article II(2).

For instance, Article III(5)(i) of the Appendix could preclude the reproduction of a translation obtained by license from the competent authority under the provision of Article II(2) and (3).

To prevent this ambiguity the Delegation of Ceylon proposes that existing paragraph (5) of Article III of the Appendix be deleted and substituted by a new wording.

This amendment would ensure that an authorised translation by the owner of the rights or a translation obtained on a license could be reproduced and published without the need for retranslation.

B/DC/19 July 10, 1971 (Original: English)
 SWEDEN

Proposals concerning Articles II (5)(5bis) (new), III(4) of the Appendix to the Draft Paris Act and Articles V(5)(5bis) (new), VI (4) of the Draft Additional Act of Paris (document B/DC/5)

1. *In Article II(5) of the Appendix to the Draft Paris Act and in Article V(5) of the Draft Additional Act of Paris, add the following sentence:* Licenses shall not be granted if a translation as referred to in paragraph (2) has been published during the said period of six or nine months.

2. *In Article II of the Appendix to the Draft Paris Act and in Article V(5) of the Draft Additional Act of Paris, add as a new paragraph (5bis) the following text:* Whenever a translation of a work is published by the owner of the right of translation or with his authorization, at a price reasonably related to that normally charged for comparable works, any license granted under this Article shall terminate if such translation is in the same language and is substantially the same in content as the translation published under the license. However, any copies already made before the license is terminated may continue to be distributed.

3. *In Article III(4) of the Appendix to the Draft Paris Act and in Article VI(4) of the Draft Additional Act of Paris, add the following sentence:* Licenses shall not be granted if such distribution of copies of the edition as mentioned in paragraph (2) has taken place during the said period of six or three months.

* *Editor's Note:* This State has since changed its name; at the time of publications of these *Records*, it is designated as "Sri Lanka".

Proposals concerning Articles I(5), II of the Appendix to the Draft Paris Act, and Articles IV(5), V of the Draft Additional Act of Paris (document B/DC/5)

1. *In Article I(5) of the Appendix to the Draft Paris Act and in Article IV(5) of the Draft Additional Act of Paris add, at the end, the following text:* In such cases, the provisions of Article VII, paragraphs (4) and (5), shall apply to the relations between that particular territory and the country making the declaration.

2. *In Article II of the Appendix to the Draft Paris Act and in Article V of the Draft Additional Act of Paris add, as paragraph (10) of this Article, a text analogous to that of Article VI(6) of the Draft Additional Act of Paris.*

B/DC/21 July 10, 1971 (Original: English)
 JAPAN

Proposal concerning Article I(2) of the Appendix to the Draft Paris Act and Article IV(2) of the Draft Additional Act of Paris (document B/DC/5)

Replace the words during the year preceding by the words within a period of fifteen to three months before the date of...

B/DC/22 July 12, 1971 (Original: English)
 CYPRUS

Proposal concerning Article II of the Appendix to the Draft Paris Act and Article V of the Draft Additional Act of Paris (document B/DC/5)

1. *In Article II(3) of the Appendix to the Draft Paris Act and in Article V(3) of the Draft Additional Act of Paris include after the words in general use in one or more developed countries the words of the Union.*

2. *In Article II of the Appendix to the Draft Paris Act and in Article V of the Draft Additional Act of Paris insert, after the said paragraph (3), a new paragraph worded as follows:* Notwithstanding the last preceding paragraph, a country of the Union entitled to and availing itself of the faculties provided for under this Appendix (or under Articles IV to VII) may, with the unanimous agreement of all the developed countries of the Union where the same language is in general use, substitute for the period of three years provided for in the last preceding paragraph another period as determined by such agreement but not shorter than one year.

Notification of any such agreement shall be deposited with the Director General.

However, this paragraph does not apply to translations into French, English and Spanish.

B/DC/23 July 12, 1971 (Original: English)
 CYPRUS

Proposal concerning Article II of the Appendix to the Draft Paris Act and Article V of the Draft Additional Act of Paris (document B/DC/5)

In Article II of the Appendix to the Draft Paris Act and in Article V of the Draft Additional Act of Paris, include a new paragraph based mutatis mutandis on the provision as

adopted by the Main Commission of the Conference for revision of the Universal Copyright Convention, following the United States and Kenya proposal, presented in document INLA/UCC/27*.

B/DC/24 July 14, 1971 (Original: English)

SECRETARIAT OF THE CONFERENCE

Amendments to the Draft Text of the Paris Act (document B/DC/5)

Explanatory Note:

On the basis of the discussions which took place in the Main Commissions of the two Diplomatic Conferences, and on the basis of such proposals made to the Berne Revision Diplomatic Conference which are similar to proposals adopted in the Main Commission of the other Diplomatic Conference, the Secretariat submits the following texts amending or replacing the texts presented in document B/DC/5.

The amendments which relate to parts of the text other than the Appendix will be presented to the Drafting Committee and are not presented for discussion in the Main Commission. ** They are included in this document because information on them may be needed when the draft Appendix is discussed.

Parts of the text other than the Appendix

1. *Preamble. Insert between the last two paragraphs, the following paragraph:* Recognizing the importance of the work of the Revision Conference of Stockholm [and maintaining without change Articles 1 to 20 and 22 to 26 adopted at that Conference], and delete the first word consequently of the last paragraph.

2. *Article 28(1)(c). Replace the words* has excluded certain provisions *by the words* has excluded provisions therein referred to.

3. *Article 29(2)(b). Maintain the words* in the meantime and omit the longer alternative: [during the period ... to Article 28(2)(a)].

4. *Article 30(2)(b). The reference to* Article II(8) *should be replaced by reference to* Article II(10).

5. *Article 31(3)(a). Replace the words* under such paragraph *by the words* under that paragraph.

6. *Article 34(1) should read as follows:* Subject to Article 29bis, no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix have entered into force.

7. *Article 3(2). Replace the words* the same event *by the words* the said entry into force.

8. *Article 36(2) should read as follows:* It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention.

9. *Article 37(1)(b). Insert the word* Arabic *before the word* German.

10. *Article 37(5). Delete in the last line the word and before* 33(3), *and add the following text:* and 38(1), as well as Articles ... of the Appendix.

* See Records of the Conference for revision of the Universal Copyright Convention, Paris 1971, published by Unesco.

** Editor's Note: see document B/DC/CR/1.

Appendix

Article I

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, [and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act]¹ may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article II(9)(b), at any time thereafter, declare that it will avail itself of the faculty provided for in Articles II and IV, or of the faculty provided for in Articles III and IV, or of both of those faculties.

(2) Any declaration so notified shall be effective for a period of ten years from the date of the entry into force of this Act, or for such part of that period as remains at the date of deposit of the notification, and may be renewed in whole or in part for further periods of ten years each if, not more than fifteen months and not less than three months before² the expiration of the relevant ten-year period, the country concerned deposits a further notification with the Director General. [Initial notifications may also be made during these further periods of ten years in accordance with the provisions of paragraph (1).]³

(3) [Notwithstanding the provisions of paragraph (2).]³ Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in paragraph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.

(4) Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are still copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed [until their stock is exhausted].³

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

(6)(a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than is provided for in Articles 1 to 20.

(b) The right to apply reciprocal treatment provided for in Article 30(2)(b), second sentence, shall not be exercised in respect of works the country of origin of which is a country which has availed itself of any of the faculties referred to in paragraph (1).

¹ The question arises whether the words between brackets should be retained.

² The words "not more ... before" are based on a proposal of Japan contained in document B/DC/21.

³ The words between brackets appear to be superfluous.

Article II

(1) Any country entitled to and availing itself of the relevant faculty provided for under this Appendix may, so far as works published in printed or analogous forms of reproduction are concerned, substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority, under the following conditions and subject to Article IV.

(2) Subject to paragraph (3), if, after the expiration of a period of three years from the date of the first publication of a work, or of any longer period determined by national legislation of the country referred to in paragraph (1), a translation of such work has not been published in the language or in one of the languages of that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to translate the work and publish the work so translated in the said language in printed or analogous forms of reproduction.

(3)(a) In the case of translations into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2).

(b) Any country entitled to and availing itself of the relevant faculty provided for under this Appendix may, with the unanimous agreement of all the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2) a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it.⁴

(4) Licenses obtainable after three years shall not be granted under the preceding paragraphs until a further period of six months has elapsed, and licenses obtainable after one year until a further period of nine months has elapsed, from the date of the application for permission to translate mentioned in Article IV(1), or of the dispatch of the copies of the application mentioned in Article IV(2), as the case may be. If, during the said period of six or nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under the preceding paragraphs shall be granted.⁵

(5) Any license under the preceding paragraphs shall be granted only for the purpose of teaching, scholarship or research.⁶

(6) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged for comparable works, any license granted under the preceding paragraphs shall terminate if such translation is in the same language and with substantially the same content as the translation published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.⁷

⁴ This provision is based on the proposal of Cyprus (document B/DC/22).

⁵ The first sentence of this paragraph appears as paragraph (5) in document B/DC/5, whereas the second sentence of this paragraph is based on the first proposal of Sweden contained in document B/DC/19.

⁶ This provision appears as paragraph (4) in document B/DC/5.

⁷ This paragraph is based on the second proposal of Sweden and the second proposal of Argentina, contained in documents B/DC/19 and 20 respectively, and parallels Article III(6).

(7) For works which are composed mainly of illustrations, a license to translate the text and to reproduce the illustrations may be granted only if the conditions of Article III are also fulfilled.⁸

(8)(a) A license to translate a work published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in a country entitled to and availing itself of the relevant faculty provided for under this Appendix, upon an application made to the competent authority of that country by the said organization, provided that all of the following conditions are met:

- (i) the translation is made from a copy made and acquired in accordance with the laws of the said country;
- (ii) the translation is for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;
- (iii) the translation is used exclusively for the purposes referred to in item (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;
- (iv) sound or visual recordings of the translation may be exchanged only between broadcasting organizations having their headquarters in the country whose competent authority granted the license in question;
- (v) all uses made of the translation in broadcasting, or in the making or exchange of the said recordings, are without commercial purpose.

(b) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(c) Subject to subparagraphs (a) and (b), the provisions of the preceding paragraphs shall apply to the grant and exercise of the license.⁹

(9)(a) Any country entitled to make a declaration that it will avail itself of the faculties provided for in paragraphs (1) to (8) may, instead, at the time of ratifying or acceding to this Act:

- (i) if it is a country to which Article 30(2)(a) applies, make a declaration under that provision as far as the right of translation is concerned;
- (ii) if it is a country to which Article 30(2)(a) does not apply, and even if it is a country member of the Union, make a declaration as provided for in Article 30(2)(b), first sentence.¹⁰

(b) Any country which has availed itself of the faculty referred to in subparagraph (a) may not subsequently avail itself of the faculties provided for in paragraphs (1) to (8) even if it withdraws its declaration made under Article 30(2)(a), or Article 30(2)(b), first sentence, or equivalent provisions of earlier Acts.¹¹

(10) Subject to paragraph (11), any country which has availed itself of the faculties provided for in paragraphs (1)

⁸ This provision appears as paragraph (6) in document B/DC/5.

⁹ This paragraph is based on the proposal of Cyprus contained in document B/DC/23.

¹⁰ This subparagraph is amended on the basis of an observation of the United Kingdom contained in document B/DC/9.

¹¹ This provision appears as paragraph (7) in document B/DC/5.

to (8) may not subsequently avail itself of the faculties provided for in Article 30(2)(a), or Article 30(2)(b), first sentence.¹²

(11) Any country which has ceased to be regarded as a developing country in conformity with the practice referred to in Article I(1) may, within three months from the expiration of the period provided for in Article I(3), avail itself of the faculty provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union.¹⁸

Article III

(1) Any country entitled to and availing itself of the relevant faculty provided for under this Appendix may substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses granted by the competent authority under the following conditions and subject to Article IV.

(2) If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of

- (i) the relevant period specified in paragraph (3) commencing from the date of first publication of a particular edition of the work, or
- (ii) any longer period determined by national legislation of the country referred to above,

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works, by the owner of the right of reproduction or with his authorization, any national of such country may obtain a license to publish such edition at that or a lower price for use in connection with systematic instructional activities.

(3) The period referred to in paragraph (2)(i) shall be five years, except that

- (i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;
- (ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4)(a) Licenses obtainable after three years shall not be granted under this Article until a period of six months has elapsed from the date of the application for permission to reproduce mentioned in Article IV(1), or of the dispatch of the copies of the application mentioned in Article IV(2), as the case may be. Licenses obtainable after other periods shall not be granted until a period of three months has elapsed from the date of the dispatch of copies of the application.¹⁴

(b) No license shall be granted where, during the six or three months period referred to in subparagraph (a), a distribution as described in paragraph (2) has taken place.¹⁵

(5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

- (i) where the translation was not published by the owner of the right of translation or with his authorization, or,
- (ii) where the translation is not in a language that is the language or one of the languages of the country in which the license is applied for.

¹² This provision appears as paragraph (8) in document B/DC/5.

¹³ This provision appears as paragraph (9) in document B/DC/5.

¹⁴ This subparagraph appears as paragraph (4) of Article III in document B/DC/5.

¹⁵ This subparagraph is based on the third proposal of Sweden contained in document B/DC/19.

(6) If copies of an edition of a work are distributed in the country referred to above to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and is substantially the same in content as the edition published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7)(a) Subject to subparagraph (b), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) This Article shall also apply to the reproduction of works incorporated in audio-visual fixations as well as to the translation of any incorporated text into the language or one of the languages of the country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.¹⁶

Article IV

(1) A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right.

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization, or to any national or international information center, which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.¹⁷

(3) The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of a work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies.¹⁸

(4)(a) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country of the Union where it has been applied for.

(b) For the purposes of subparagraph (a), the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I(5).¹⁹

(c) Where a governmental or other public entity of a country which has granted a license to translate under

¹⁶ This paragraph has been amended on the basis of the proposal of the United Kingdom contained in document B/DC/11.

¹⁷ The last six words are based on a proposal of the United Kingdom contained in document B/DC/15.

¹⁸ This paragraph is based on a proposal made in the comments on Article IV(3) (document B/DC/5) and in order to take care of the two different situations (translation, reproduction) which Article IV covers.

¹⁹ This subparagraph is based on a proposal of Argentina contained in document B/DC/20.

Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of subparagraph (a), be considered to constitute export if all of the following conditions are met:

- (i) the recipients are individuals who are nationals of the country whose competent authority has granted the license, or organizations grouping such individuals;
- (ii) the copies are to be used only for the purpose of teaching, scholarship and research;
- (iii) the sending of the copies and their subsequent distribution to recipients is without the object of financial gain;
- (iv) the country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been notified of the agreement by the Governments which have concluded it.²⁰

(5) All copies published in accordance with such a license shall, from the time of first publication, bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6) Due provision shall be made by national legislation to ensure

- (i) that the license provides, in favor of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned, and
- (ii) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent, and
- (iii) a correct translation of the work or an accurate reproduction of the particular edition, as the case may be.

(7)(a) Licenses to translate may also be granted under the conditions provided for in Article II if all editions of the translations published in the language concerned are out of print.²¹

(b) Licenses to reproduce may also be granted under the conditions provided for in Article III if for a period of six months no authorized copies of the edition for the reproduction of which the license has been applied for have been on sale in the country concerned to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works.²²

(8)(a) A license to translate shall not be granted when the author has withdrawn from circulation all copies of his work.

(b) A license to reproduce shall not be granted when the author has withdrawn from circulation all copies of the edition for the reproduction of which the license has been applied for.²³

²⁰ This subparagraph has been included in anticipation that a corresponding proposal would be made.

²¹ This subparagraph corresponds to the first sentence of paragraph (7) in document B/DC/5.

²² This subparagraph corresponds to the second sentence of paragraph (7) in document B/DC/5.

²³ This paragraph has been divided into two subparagraphs to make it possible to reflect the difference in the provisions concerning translation and reproduction.

Article V

(1) Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:

- (i) if it is a country which, were it bound by Article 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article I(1), that it shall apply the provisions of Articles II and IV, or of Articles III and IV, or of Articles II to IV, to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix,
- (ii) that it admits the application of Articles II and IV, or of Articles III and IV, or of Articles II to IV, to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.

(2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.

B/DC/25 July 15, 1971 (Original: French)

CONGO (DEMOCRATIC REPUBLIC) *, CONGO, IVORY COAST, NIGER, SENEGAL

Proposal concerning Article IV of the Appendix to the Draft Paris Act

In Article IV add a new paragraph (4bis) worded as follows: However, two or more countries having the same language may jointly request and obtain a license for translation or reproduction of a work for the purpose of teaching, scholarship or research.

In this case, circulation among the said countries of copies of the translation or of the reproduction shall not be regarded as export.

B/DC/26 July 15, 1971 (Original: French)

BRAZIL

Proposal concerning Article IV of the Appendix to the Draft Paris Act

*Include in Article IV of the Appendix to the Draft Paris Act a new paragraph based mutatis mutandis on the provision adopted by the Main Commission of the Universal Copyright Convention Revision Conference following the proposal of Brazil contained in document INLA/UCC/26. ***

B/DC/27 July 20, 1971 (Original: French)

SECRETARIAT OF THE CONFERENCE

Draft Paris Act prepared according to the instructions of the Drafting Committee, accompanied by an explanatory note

Explanatory Note:

1. The text which will be presented for signature will also contain the full text of Articles 1 to 20 and 22 to 26 as appearing in the Stockholm Act.

* This State has since changed its name; at the time of publication of these *Records* it is designated as "Zair".

** See Records of the Conference for Revision of the Universal Copyright Convention, Paris 1971, published by Unesco.

2. What used to be, in previous Drafts, the last three paragraphs of Article II of the Appendix appear now as a separate Article bearing the number V. Consequently, former Article V now bears number VI. References have been changed accordingly. The general reference to Article V is constituted by the last (new) sentence of Article I(1).

3. Other changes in the place or numbering of certain provisions are the following:

<i>Old Draft</i>	<i>New Draft</i>
II(2)	II(2)(a)
II(8)	II(9)
III(2)	III(2)(a)
IV(7)(a)	II(2)(b)
IV(7)(b)	III(2)(b)
IV(8)(a)	II(8)
IV(8)(b)	III(4)(c)

4. A full tabulation of correspondences between the numberings appearing in documents B/DC/24 and B/DC/27 appears in document B/DC/28.

5. The Drafting Committee decided to present to the Main Committee alternatives on the following two questions:

- (i) *in Article I(6)*, whether the words "until the date on which the period referred to in Article I(3) expires" should be left in or taken out;
- (ii) *in Article IV(2)*, whether "or" should, in two places, be changed into "and".

6. The Drafting Committee left it to the Secretariat to make such changes in Article VI (new) as are required by Article V (new). In doing so, the Secretariat was not sure whether the intention of the Conference is that developed countries permitting the so-called anticipated application of the Appendix to works originating in their countries should be allowed to limit their permission (i.e., to allow one or two only of the three possibilities contained in Articles II, III and V (new)). The text without brackets allows such limitation and corresponds to the text appearing in document B/DC/5. The alternative text appearing in brackets allows no such limitation and corresponds to the text appearing in document B/DC/4. The effect of the alternative is that a developed country has, in respect of the anticipated application of the Appendix, a choice only between two extremes: either it admits the application of all of such provisions or of none of them.

Draft Paris Act

Editor's Note: This document contained the full text of the Draft Paris Act. Only the text of the Appendix is reproduced here. With regard to the Convention, only two differences are indicated, between the English text of the Draft (document B/DC/27) and the text of the Convention as signed at Paris on July 24, 1971.

1. *In the title, the word and has been added in the signed text, before the words:* revised at Rome.

2. *In Article 28.(1)(b) (document B/DC/27) the reference should be to Article VI(1) (rather than to Article V(1)).*

Appendix

Article I

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the

rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(1)(b), at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V(1).

(2)(a) Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a notification deposited with the Director General not more than fifteen months and not less than three months before the expiration of the ten-year period then running.

(b) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the ten-year period then running. Any such declaration may be renewed as provided for in the second sentence of subparagraph (a).

(3) Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in paragraph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.

(4) Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed until their stock is exhausted.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

(6)(a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than it is obliged to grant under Articles 1 to 20.

(b) The right to apply reciprocal treatment provided for in Article 30(2)(b), second sentence, shall not, until the date on which the period referred to in Article 1(3) expires, be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article V(1).

[*Alternative: (b)* The right to apply reciprocal treatment provided for in Article 30(2)(b), second sentence, shall not be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article V(1).]

Article II

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled, so far as works published in printed or analogous

forms of reproduction are concerned, to substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2)(a) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction.

(b) A license under the conditions provided for in this Article may also be granted if all the editions of the translations published in the language concerned are out of print.

(3)(a) In the case of translations into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2)(a).

(b) Any country referred to in paragraph (1) may, with the unanimous agreement of all the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2)(a) a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it.

(4) Licenses obtainable after three years shall not be granted under this Article until a further period of six months has elapsed, and licenses obtainable after one year until a further period of nine months has elapsed, from the date of the request for authorization mentioned in Article IV(1), or of the dispatch of the copies of the application mentioned in Article IV(2), as the case may be. If, during the said period of six or nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.

(5) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.

(6) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7) For works which are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of Article III are also fulfilled.

(8) No license shall be granted under this Article when the author has withdrawn from circulation all copies of his work.

(9)(a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in a country referred to in paragraph (1), upon an application made to the competent authority of that country by the said organization, provided that all of the following conditions are met:

- (i) the translation is made from a copy made and acquired in accordance with the laws of the said country;
- (ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;
- (iii) the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;
- (iv) all uses made of the translation are without commercial purpose.

(b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph (a) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the country whose competent authority granted the license in question.

(c) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(d) Subject to subparagraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

Article III

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled to substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2)(a) If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of

- (i) the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or
- (ii) any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date,

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a license to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities.

(b) A license to reproduce and publish an edition which has been distributed as described in paragraph (a) may also be granted under the conditions provided for in this Article if, after the expiration of the applicable period, no authorized copies of that edition have been on sale for a period of six months in the country concerned to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works.

(3) The period referred to in paragraph (2)(a)(i) shall be five years, except that

- (i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;
- (ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4)(a) Where licenses are obtainable after three years, no license shall be granted under this Article until a period of six months has elapsed from the date of the request for authorization mentioned in Article IV(1), or of the dispatch of the copies of the application mentioned in Article IV(2), as the case may be. Where licenses are obtainable after other periods and Article IV(2) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.

(b) If, during the period of six or three months referred to in subparagraph (a), a distribution as described in paragraph (2) has taken place, no license shall be granted under this Article.

(c) No license shall be granted if the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.

(5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

- (i) where the translation was not published by the owner of the right of translation or with his authorization, or
- (ii) where the translation is not in a language in general use in the country in which the license is applied for.

(6) If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and with substantially the same content as the edition which was published under the said license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7)(a) Subject to subparagraph (b), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) This Article shall also apply to the reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Article IV

(1) A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right.

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right is known, to the diplomatic or consular representative of the country of which such owner is a national, or [and] to the organization, or to any national or [and] international information center, which may have been designated, in a

notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.

(3) The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies.

(4)(a) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country in which it has been applied for.

(b) For the purposes of subparagraph (a), the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I(5).

(c) Where a governmental or other public entity of a country which has granted a license to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of subparagraph (a), be considered to constitute export if all of the following conditions are met:

- (i) the recipients are individuals who are nationals of the country whose competent authority has granted the license, or organizations grouping such individuals;
- (ii) the copies are to be used only for the purpose of teaching, scholarship or research;
- (iii) the sending of the copies and their subsequent distribution to recipients is without commercial purpose;
- (iv) the country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been notified of the agreement by the Governments which have concluded it.

(5) All copies published under a license granted by virtue of Article II or Article III shall bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6)(a) Due provision shall be made at the national level to ensure

- (i) that the license provides, in favour of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned, and
- (ii) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(b) Due provision shall be made by national legislation to ensure a correct translation of the work, or an accurate reproduction of the particular edition, as the case may be.

Article V

(1)(a) Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II may, instead, at the time of ratifying or acceding to this Act:

- (i) if it is a country to which Article 30(2)(a) applies, make a declaration under that provision as far as the right of translation is concerned;

(ii) if it is a country to which Article 30(2)(a) does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30(2)(b), first sentence.

(b) Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.

(2) Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to paragraph (1).

(3) Any country which has ceased to be regarded as a developing country in conformity with the practice referred to in Article I(1) may, not later than two years prior to the expiration of the period provided for in Article I(3), make a declaration to the effect provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union. Such declaration shall take effect at the date on which the period referred to in Article I(3) expires.

Article VI

(1) Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:

- (i) if it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article I(1), that it will apply the provisions of Article II or of Article III or of both to works whose country of origin is a country which, pursuant to (ii), below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix; such declaration may, instead of referring to Article II, refer to Article V;
- (ii) that it admits the application of Article II or of Article III or of both to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I; such declaration may refer also to Article V or to Article V alone.

[Alternative: (ii) that it admits the application of this Appendix to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.]

(2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.

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

DONE at Paris on July 24, 1971

B/DC/27 corr. 1 July 20, 1971 (Original: English only)

SECRETARIAT OF THE CONFERENCE

Draft Paris Act. Corrigendum to document B/DC/27

Editor's Note: This document contained a corrigendum to the English version of document B/DC/27. It has not been reproduced. The corrections concerning the text of Articles II(4) and III(3) have been inserted in document B/DC/27.

B/DC/28 July 19, 1971 (Original: English/French)

SECRETARIAT OF THE CONFERENCE

Table of Correspondences

B/DC/24	→	B/DC/27	B/DC/27	→	B/DC/24
I(2)		I(2)(a)(b)	I(2)(a)(b)		I(2)
II(2)		II(2)(a)	II(2)(a)		II(2)
(8)		(9)	(8)(b)		IV(7)(a)
(9)(a)(b)		V(1)(a)(b)	(8)		(8)(a)
(10)		(2)	(9)		II(8)
(11)		(3)	III(2)(a)		III(2)
III(2)		III(2)(a)	(b)		IV(7)(b)
IV(6)		IV(6)(a)(b)	(4)(c)		(8)(b)
(7)(a)		II(2)(b)	IV(6)(a)(b)		IV(6)
(b)		III(2)(b)	V(1)(a)(b)		II(9)(a)(b)
(8)(a)		II(8)	(2)		(10)
(b)		III(4)(c)	(3)		(11)
V		VI	VI		V

B/DC/29

July 20, 1971 (Original: French)

GENERAL RAPPORTEUR

Draft Report

Editor's Note: This document contained the text of the Draft Report. In the following, only the differences are indicated between the English text of the Draft and that of the General Report as adopted by the Conference (document B/DC/36) For the text of the General Report, as adopted, see below p. 163.

1. Paragraph 4. In the Draft the wording of this paragraph was as follows: The Delegations of Czechoslovakia and Hungary protested against the fact that the German Democratic Republic had not been invited to take part in the Conference.

2. Paragraph 11. In the Draft, the wording of the second and last sentence of this paragraph was as follows: The final text of the Rules of Procedure of the Conference is contained in document B/DC/8.

3. Paragraph 16. In the Draft, India was omitted by error in the list of members of the Drafting Committee.

4. Paragraph 19(b). The words appearing in the Draft: the unreserved agreement were replaced in the text adopted by the words the unanimous agreement.

5. Paragraph 22. In the Draft, the wording of the first sentence item (iii) of this paragraph was as follows: on a number of amendments presented during the Conference by different delegations (documents B/DC/9 to B/DC/26).

6. Paragraph 32. In the text adopted this paragraph becomes paragraph 32(a). In the Draft, there was no text corresponding to paragraph 32(b) of the Report adopted.

7. Paragraphs 33 and 34 of the text adopted. In the Draft, there was no corresponding text.

8. Paragraphs 33 to 36 of the Draft become, in the text adopted, paragraphs 35 to 39, respectively.

9. Paragraphs 39 to 42 of the text adopted. In the Draft there was no corresponding text.

10. Paragraph 37 of the Draft became, in the text adopted, paragraph 43.

11. The text of the Draft Report ended by the following sentence in brackets: [The rest of this Report will reflect any matters which may arise from the work of the Conference during the concluding days.]

B/DC/30 July 22, 1971 (Original: French)
 CREDENTIALS COMMITTEE

Second Report

1. The Committee held a second meeting on July 22, 1971, under the Chairmanship of His Excellency Ambassador Yoshihiro Nakayama.

2. After having examined the documents deposited with the Secretariat since its first meeting, the Committee decided that, in accordance with Rule 3, paragraphs (1) and (2), of the Rules of Procedure, the credentials of the following States could be placed

- (i) in category A (power to participate in the Conference): Argentina, Belgium, Chile, Greece, Ireland, Niger, Pakistan;
- (ii) in category B (power to participate and to sign): Brazil, Canada, Ceylon, Lebanon, People's Republic of the Congo, Spain, Yugoslavia.

3. After having examined the documents deposited with the Secretariat, the Committee noted that the credentials deposited by the Delegation of India could be interpreted as empowering both participation and signature. * It also took note of a further document deposited by the Delegation of Germany (Federal Republic) containing the power of signature. Accordingly, the Committee decided to place these two States in category B.

4. The Committee noted that the Delegations of the following States had not yet deposited credentials: Bulgaria, Turkey, Uruguay. It authorized the Secretariat to approach these Delegations with a view to drawing their attention to the need to effect such a deposit before the end of the Conference.

5. In reply to a question put by the Delegation of Japan, the Secretariat indicated that it was not intended to establish a "Final Act of the Conference", and that the only document to be submitted for signature would be the Paris Act of the Berne Convention.

6. This report completes the report contained in document B/DC/14.

B/DC/31 July 21, 1971 (Original: English, French)
 GERMANY (FEDERAL REPUBLIC OF)

Drafting proposal concerning Articles II(4); III(4) and IV(2) of the Appendix of the Draft Paris Act (document B/DC/27)

1. *Article II(4) should read as follows:*

- (4)(a) No license obtainable after three years shall be granted under this Article until a further period of six months has elapsed, and no license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed
 - (i) from the date on which the applicant, as provided for in Article IV(1), requests the owner of the right of translation to authorize him to make and publish the translation, or
 - (ii) where such owner is unknown, from the date on which the applicant effects, as provided for in Article IV(2), the sending of the copies of his application submitted to the authority competent to grant the license.

* *Editor's Note:* In the adopted text of the Second Report the words "could be interpreted" were replaced by the words "should be considered". This corrigendum is referred to in document B/DC/38.

(b) [Same as paragraph (4), second sentence, in document B/DC/27.]

2. *Article III(4) should read as follows:*

- (4)(a) No license obtainable after three years shall be granted under this Article until a period of six months has elapsed
 - (i) from the date on which the applicant, as provided for in Article IV(1), requests the owner of the right of reproduction to authorize him to reproduce and publish the edition, or
 - (ii) where such owner is unknown, from the date on which the applicant effects, as provided for in Article IV(2), the sending of the copies of his application submitted to the authority competent to grant the license.

(b) [Same as subparagraph (a), second sentence, in document B/DC/27.]

(c) [Same as subparagraph (b), in document B/DC/27, except replace the words "subparagraph (a)" by the words "subparagraphs (a) and (b)."]

(d) [Same as subparagraph (c) in document B/DC/27.]

3. *The beginning of Article IV(2) should read as follows:*

"If the owner of the right cannot be found, the applicant shall send, by registered airmail, copies of the application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work..."

B/DC/32 July 20, 1971 (Original: English)

SUBCOMMITTEE OF THE JOINT (BERNE-UCC) WORKING PARTY (CYPRUS, (KENYA FOR UCC), IVORY COAST, UNITED KINGDOM, UNITED STATES OF AMERICA)

Draft text (excerpt) of the report, prepared by a Subcommittee of the Joint (Berne-UCC) Working Party on the proposal of the Congo, Congo (Democratic Republic of), Ivory Coast, Niger and Senegal, to be inserted in the Draft Report contained in document B/DC/29).

Editor's Note: The text of this document, reproduced below, was prepared by a Subcommittee of the Joint (Berne-UCC) Working Party, in the first instance, for the revision of the Universal Convention. It was then taken and submitted without change during the work of the Diplomatic Conference for the revision of the Berne Convention. On this text is based the final wording of paragraphs 40 and 42 of the Report; numbers of Articles refer to Articles of the Universal Copyright Convention.

1. It follows from the provisions of Article *Vter* (4)(a) and of Article *Vquater* (1)(f) prohibiting the export of copies and prescribing that the license shall be valid only for publication in the territory of the Contracting State where it has been applied for, that these provisions are considered as prohibiting a licensee from having copies reproduced outside the territory of the Contracting State granting the license. However, it is considered that this prohibition does not apply under the following conditions:

- (a) The Contracting State granting the license has within its territory, no printing or reproduction facilities, or, such facilities exist but are incapable for economic or practical reasons of reproducing the copies;
- (b) the country where the work of reproduction is done is a member of the Berne Union or a party to the Universal Copyright Convention;
- (c) all copies reproduced are returned, in bulk to the licensee for distribution exclusively in the licensee's country and the contract between the licensee and the establishment doing the work of reproduction so requires, and provides further that the establishment guarantees that the work of reproduction is lawful in the country where it is done;

- (d) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a license has been granted under Article *Vter* or Article *Vquater*;
and

- (e) all copies reproduced bear a notice in accordance with Article *Vter* (4)(b), and Article *Vquater* (2)(a).

It is also understood that the foregoing conditions only apply to works published in printed or analogous forms of reproduction and to the incorporation in audio-visual fixations of translated texts.

It was further understood that this paragraph does not require any country to permit what would otherwise be an infringement of copyright.

2. It was generally accepted that nothing in Article *Vter* and *Vquater* prohibited a compulsory licensee from employing a translator in another country, or other compulsory licensees, licensed to publish a translation in the same language in other countries, from using the same translation, assuming, of course, that the translation has not already been published. The same interpretation applies with respect to persons entrusted with doing the preparatory editorial work.

3. It was the unanimous view of the Conference that no license granted under Article *Vter* and Article *Vquater* should be used for commercial purposes.

B/DC/33 July 21, 1971 (Original: English, French)

WORKING GROUP

Drafting proposal concerning Articles II(4); III(4) and IV(1), (2) of the Appendix of the Draft Paris Act (document B/DC/27).

1. *Article II(4) should read as follows:*

- (4)(a) No license obtainable after three years shall be granted under this Article until a further period of six months has elapsed, and no license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed
- (i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or
 - (ii) where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

- (b) [Same as paragraph (4), second sentence, in document B/DC/27.]

2. *Article III(4) should read as follows:*

- (4)(a) No license obtainable after three years shall be granted under this Article until a period of six months has elapsed
- (i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or
 - (ii) where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant effects, as provided for in Article IV(2), the sending of the copies of his application submitted to the authority competent to grant the license.

- (b) [Same as subparagraph (a), second sentence, in document B/DC/27.]

- (c) [Same as subparagraph (b), in document B/DC/27, except replace the words "subparagraph (a)" by the words "subparagraphs (a) and (b)."]

- (d) [Same as subparagraph (c) in document B/DC/27.]

3. *Article IV(1) and (2) should read as follows:*

(1) A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any national or international information center referred to in paragraph (2).

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application to the publisher whose name appears on the work and to any national or international information center, which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.

B/DC/34 July 21, 1971 (Original: English, French)

MAIN COMMISSION

Draft of the Paris Act

Editor's Note: This document contains the complete text of the Paris Act. There is no difference between the English text of the Draft and that of the Paris Act as adopted by the Plenary of the Conference and published below, see p. 175.

B/DC/35 July 21, 1971 (Original: French)

GENERAL RAPPORTEUR

Addendum to the Draft General Report (document B/DC/29)

The following passages are to be inserted in the draft general report contained in document B/DC/29.

Article IV(2)

36bis. It was understood that where a license under Articles II or III is to be granted, the competent authority should take reasonable steps to ensure that the owner of the right has an opportunity to be aware of the application and to take such measures as may seem to him appropriate.

Article IV(4) (a)

36ter. It follows from the provisions of Article IV(4)(a), prohibiting the export of copies and prescribing that the license shall be valid only for publication in the territory of the country where it has been applied for, that these provisions are considered as prohibiting a license from having copies reproduced outside the territory of the country granting the license. However, it is considered that this prohibition does not apply under the following conditions:

- (a) The country granting the license has, within its territory, no printing or reproduction facilities, or such facilities exist but are incapable for economic or practical reasons of reproducing the copies;
- (b) the country where the work of reproduction is done is a member of the Berne Union or a party to the Universal Copyright Convention;

- (c) all copies reproduced are shipped in bulk to the licensee for distribution exclusively in the licensee's country and the contract between the licensee and the establishment doing the work of reproduction so requires and provides further that the establishment guarantees that the work of reproduction is lawful in the country where it is done;
- (d) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a license has been granted under Article II or Article III; and
- (e) all copies reproduced bear a notice in accordance with Article IV(5).

36quater. It was also understood that the foregoing conditions only apply to works published in printed or analogous forms of reproduction and to the incorporation in audio-visual fixations of translated texts.

36quinquies. It was further understood that this paragraph does not require any country to permit what would otherwise be an infringement of copyright.

36sexies. It was generally accepted that nothing in Articles II, III and IV prohibited a compulsory licensee from employing a translator in another country or other compulsory licensees, licensed to publish a translation in the same language in other countries, from using the same translation, assuming, of course, that the translation has not already been published. The same interpretation applies with respect to persons entrusted with doing the preparatory editorial work.

Appendix in General

38. It was understood that, as a general principle, licenses should only be granted for promoting the culture and education of the people of the country in which the license is granted.

B/DC/36 July 23, 1971 (Original: French)

GENERAL RAPPORTEUR

General Report. Text adopted by the Plenary of the Conference

Editor's Note: This document contains the text of the General Report as unanimously adopted by the Plenary of the Conference, on July 22, 1971. It has not been reproduced. For the text of this General Report, see below, p. 163.

B/DC/37 July 23, 1971 (Original: Spanish only)

SECRETARIAT OF THE CONFERENCE

Decision relating to the official Spanish text of the Paris Act, unanimously adopted by the Plenary of the Conference on July 22, 1971

Editor's Note: This document refers to the Spanish version of the Paris Act of the Convention.

B/DC/38 July 23, 1971 (Original: French)

CREDENTIALS COMMITTEE

Corrigendum to the second report of the Credentials Committee (document B/DC/30)

Editor's Note: This document contains the corrigendum to paragraph 3 of the second report of the Credentials Committee; the correction was referred to in the editor's note to paragraph 3 of document B/DC/30.

B/DC/39 July 23, 1971 (Original: French only)

SECRETARIAT OF THE CONFERENCE

Paris Act. Text unanimously adopted by the Plenary of the Conference, July 22, 1971

Editor's Note: This document refers only to the French version of the Paris Act. The French version contains some corrections to the Draft of the Paris Act as presented in document B/DC/34 and which was then adopted by the Plenary of the Conference. The corrections have not been reproduced here. The final text of the Paris Act is reproduced below, see p. 175.

DOCUMENTS OF THE "B/DC/CR" SERIES**(B/DC/CR/1 to B/DC/CR/5)****LIST OF DOCUMENTS**

<i>N°</i>	<i>Submitted by</i>	<i>Subject</i>
1	Secretariat of the Conference	Drafts for the Drafting Committee (Text of the Paris Act, except the Appendix)
2	Secretariat of the Conference	Drafts for the Drafting Committee (Text of the Appendix to the Paris Act)
3	Secretariat of the Conference	Observations on the Drafts presented in document B/DC/CR/2 (Text of the Appendix, Articles I(2), (4), (6)(a); II(2), (4), (7), (8), (11); III(2)(ii), (4), (6); IV(1), (5), (6), (7), (8)(b))
4	Secretariat of the Conference	Drafts for the Drafting Committee (Text of the Appendix, Articles I, II, <i>Iibis</i> (new) and III(1))
5	Secretariat of the Conference	Drafts for the Drafting Committee (Text of the Title and Preamble of the Paris Act)

TEXT OF DOCUMENTS

(B/DC/CR/1 to B/DC/CR/5)

B/DC/CR/1 July 15, 1971 (Original: English, French)

SECRETARIAT OF THE CONFERENCE

Drafts for the Drafting Committee (Text of the Paris Act, except the Appendix)

Editor's Note: *This document contains the Draft of the Paris Act, except the Appendix, prepared by the Secretariat of the Conference for the Drafting Committee. It has not been reproduced. In the following, only the differences are indicated between the English text of the Draft Paris Act, as presented in document B/DC/5, and the text of the Draft for the Drafting Committee, contained in document B/DC/CR/1.*

1. *The titles in square brackets added to the Articles and the foot-notes referring to corresponding paragraphs of the comments of document B/DC/5 were omitted in document B/DC/CR/1.*

2. *Preamble. In the last sentence, the word consequently was replaced by the following text: Recognizing the importance of the work of the Revision Conference of Stockholm [and maintaining without change Articles 1 to 20 and 22 to 26 adopted at that Conference].*

3. *Article 28(1)(c). The words has excluded certain provision from were replaced by the words has excluded provisions therein referred to from*

4. *Article 29(2)(b) in document B/DC/CR/1 reads as follows: If the entry into force according to subparagraph (a) precedes the entry into force of Articles 1 to 21 and the Appendix according to Article 28(2)(a), the said country shall, in the meantime be bound, in substitution for Articles 1 to 21 and the Appendix, by Articles 1 to 20 of the Brussels Act of this Convention.*

5. *Article 30(2)(a)(b). The words Article II(8) were replaced in document B/DC/CR/1 by the words Article II(10)*

6. *Article 31(3)(a). The words such paragraph were replaced in document B/DC/CR/1 by the words that paragraph*

7. *Article 32(3) in document B/DC/CR/1 reads as follows: Any country which has availed itself of any of the faculties provided for in the Appendix may apply the provisions of the Appendix relating to the faculty or faculties of which it has availed itself in its relations with any other country of the Union which is not bound by this Act, provided that the latter country has accepted the application of the said provisions.*

8. *Article 34 in document B/DC/CR/1 reads as follows: (1) Subject to Article 29bis no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix have entered into force. (2) Once Articles 1 to 21 and the Appendix have entered into force, no country may make a declaration under Article 5 of the Protocol Regarding Developing Countries attached to the Stockholm Act.*

9. *Article 36(2). The words deposits its instrument of ratification or accession were replaced in document B/DC/CR/1 by the words becomes bound by this Convention.*

10. *Article 37(1)(b). The word Arabic was added in document B/DC/CR/1 before the word German*

11. *Article 37(5). The words and 33(3) at the end of the paragraph were replaced in document B/DC/CR/1 by the words 33(3) and 38(1), as well as the Appendix*

B/DC/CR/2 July 16, 1971 (Original: English, French)

SECRETARIAT OF THE CONFERENCE

Drafts for the Drafting Committee (Text of the Appendix to the Paris Act) *

Appendix

Article I

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article II(9)(b), at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties.

(2)(a) Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a notification deposited with the Director General not more than fifteen months and not less than three months before the expiration of the ten-year period then running.

(b) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the ten-year period then running. Any such declaration may be renewed as provided for in the second sentence of subparagraph (a).

(3) Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in paragraph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.

* *Editor's Note:* The text of the Draft Appendix to the Paris Act contained in this document is based on the text of document B/DC/24, which was subject to numerous amendments of a purely drafting nature.

(4) Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are still copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

(6)(a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than it is obliged to grant under Articles 1 to 20.

(b) The right to apply reciprocal treatment provided for in Article 30(2)(b), second sentence, shall not be exercised in respect of works the country of origin of which is a country which has availed itself of the faculty provided for in Article II.

Article II

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article may, so far as works published in printed or analogous forms of reproduction are concerned, substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in the language or in one of the languages in general use in that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction.

(3)(a) In the case of translations into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2).

(b) Any country referred to in paragraph (1) may, with the unanimous agreement of all the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2) a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it.

(4) Licenses obtainable after three years shall not be granted under this Article until a further period of six months has elapsed, and licenses obtainable after one year until a further period of nine months has elapsed, from the date of the request for authorization mentioned in Article IV(1), or of the dispatch of the copies of the application mentioned in Article IV(2), as the case may be. If, during the said period of six or nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.

(5) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.

(6) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged for comparable works, any license granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7) For works which are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of Article III are also fulfilled.

(8)(a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in a country referred to in paragraph (1), upon an application made to the competent authority of that country by the said organization, provided that all of the following conditions are met:

- (i) the translation is made from a copy made and acquired in accordance with the laws of the said country;
- (ii) the translation is for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;
- (iii) the translation is used exclusively for the purposes referred to in item (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;
- (iv) all uses made of the translation in broadcasting, or in the making or exchange of the said recordings, are without commercial purpose.

(b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes referred to in subparagraph (a) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the country whose competent authority granted the license in question.

(c) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(d) Subject to subparagraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

(9)(a) Any country entitled to make a declaration that it will avail itself of the faculties provided for in paragraphs (1) to (8) may, instead, at the time of ratifying or acceding to this Act:

- (i) if it is a country to which Article 30(2)(a) applies, make a declaration under that provision as far as the right of translation is concerned;
- (ii) if it is a country to which Article 30(2)(a) does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30(2)(b), first sentence.

(b) Any country which has made a declaration under subparagraph (a)(i) or (ii) may not subsequently avail itself of the faculties provided for in paragraphs (1) to (8) even if it withdraws its declaration.

(10) Subject to paragraph (11), any country which has availed itself of the faculties provided for in paragraphs (1) to (8) may not subsequently avail itself of the faculties provided for in Article 30(2)(a), or Article 30(2)(b), first sentence.

(11) Any country which has ceased to be regarded as a developing country in conformity with the practice referred to in Article I(1) may, not later than two years prior to the expiration of the period provided for in Article I(3), make a declaration to the effect provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union.

Article III

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article may substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2) If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of

- (i) the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or
- (ii) any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date,

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a license to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities.

(3) The period referred to in paragraph (2)(i) shall be five years, except that

- (i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;
- (ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4)(a) Where licenses are obtainable after three years, no license shall be granted under this Article until a period of six months has elapsed from the date of the request for authorization mentioned in Article IV(1), or of the dispatch of the copies of the application mentioned in Article IV(2), as the case may be. Where licenses are obtainable after other periods and Article IV(2) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.

(b) No license shall be granted where, during the period of six or three months referred to in subparagraph (a), a distribution as described in paragraph (2) has taken place.

(5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

- (i) where the translation was not published by the owner of the right of translation or with his authorization, or
- (ii) where the translation is not in a language that is the language or one of the languages in general use in the country in which the license is applied for.

(6) If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted

under this Article shall terminate if such edition is in the same language and is substantially the same in content as the edition which was published under the said license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7)(a) Subject to subparagraph (b), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) This Article shall also apply to the reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into the language or one of the languages in general use in the country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Article IV

(1) A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right.

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization, or to any national or international information center, which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.

(3) The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies.

(4)(a) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country in which it has been applied for.

(b) For the purposes of subparagraph (a), the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I(5).

(c) Where a governmental or other public entity of a country which has granted a license to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of subparagraph (a), be considered to constitute export if all of the following conditions are met:

- (i) the recipients are individuals who are nationals of the country whose competent authority has granted the license, or organizations grouping such individuals;
- (ii) the copies are to be used only for the purpose of teaching, scholarship and research;
- (iii) the sending of the copies and their subsequent distribution to recipients is without the object of financial gain;

- (iv) the country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been notified of the agreement by the Governments which have concluded it.

(5) All copies published under a license granted by virtue of Article II or Article III shall, [from the time of first publication,] bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6)(a) Due provision shall be made at the national level to ensure

- (i) that the license provides, in favor of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned, and
- (ii) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(b) Due provision shall be made by national legislation to ensure a correct translation of the work, or an accurate reproduction of the particular edition, as the case may be.

(7)(a) A license to make and publish a translation may also be granted under the conditions provided for in Article II if all editions of the translations published in the language concerned are out of print.

(b) A license to reproduce and publish an edition may also be granted under the conditions provided for in Article III if for a period of six months no authorized copies of that edition have been on sale in the country concerned to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in the country for comparable works.

(8)(a) No license shall be granted under Article II when the author has withdrawn from circulation all copies of his work.

(b) No license shall be granted under Article III when the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.

Article V

(1) Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:

- (i) if it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article I(1), that it shall apply the provisions of Articles II and IV, or of Articles III and IV, or of Articles II to IV, to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix,
- (ii) that it admits the application of Articles II and IV, or of Articles III and IV, or of Articles II to IV, to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.

(2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.

DONE at Paris
on July 24, 1971

B/DC/CR/3 July 16, 1971 (Original: English, French)

SECRETARIAT OF THE CONFERENCE

Observations on the Drafts presented in document B/DC/CR/2 (Text of the Appendix, Articles I(2), (4), (6) (a); II(2), (4), (7), (8), (11); III(2) (ii), (4), (6); IV(1), (5), (6), (7), (8) (b))

Article I(2)

The former draft provided that declarations deposited at any time shall be effective until the expiration of the *first* ten-year period. This is, of course, not possible for declarations deposited after the expiration of the first ten-year period.

The proposed text distinguishes—in subparagraphs (a) and (b)—between declarations made before and after the first ten-year period.

The proposed text also makes it clear when any initial declaration (i.e., a declaration made under Article I(1)) made after the first ten-year period expires, and that the possibility of renewal applies also to such declarations made after the first ten-year period expires.

Article I(4)

It is suggested that this paragraph be transferred to Article IV as the last paragraph of that Article, since it is odd to speak about licenses, copies and stocks, before the Articles concerning these matters. Such transfer seems to be necessary also for the purposes of Article V, which is intended to refer to all the substantive provisions and does so by referring to Articles II to IV. This paragraph is a substantive provision.

If this suggestion is followed, paragraphs (5) and (6) of Article I will become paragraphs (4) and (5), respectively.

Article I(6)(a)

The words “it is obliged to grant under” are intended to take care of the suggestion of France that the rule of the shorter term is still applicable. These words imply that no country is obliged to grant its own term if that in the country of origin is shorter. The matter will also be explained in the Report.

Article II(2)

(i) The words “commencing on the date of the first publication of the work” apply now not only to the period of three years but also to “any longer period.” This seems to be necessary, otherwise a period, although longer than three years, could expire before the three-year period would expire. It could do so if it commences earlier than the date of the first publication. A similar drafting change is proposed for Article III(2)(ii).

(ii) Note the expressions “to make a translation” and “to publish the translation.” The previous drafts used these expressions but used also others, such as “to translate” (without any reference to publication) or “to publish the translated work.” An effort has been made to use consistently both verbs (“to make”, “to publish”) and to use “translation” in the form of a noun since the noun is needed in such contexts as “the correctness of the translation”, etc.

Article II(4)

The words “the application for permission to translate mentioned in Article IV(1)” were changed to “the request for authorization mentioned in Article IV(1)” since the word “application” is used in Article IV(2) (rather than IV(1)) to designate a petition addressed to the competent authority. The petition addressed to the owner of the right—dealt with in Article IV(1)—is designated as a “request” in Article IV(1).

Article II(7)

- (i) See observation (ii) under Article II(2).
- (ii) Since this paragraph in reality deals with both the license under Article II and the license under Article III, it would be logical to transfer it to Article IV. In this case, the paragraph could read as follows: "If a work consists mainly of illustrations, a license to make and publish a translation of the text incorporated in the work may not be granted under Article II unless the conditions of Article III are also fulfilled in respect of the reproduction and publication of the illustrations."

Article II(8)(a)

- (i) The sentence which, in the previous drafts, was item (iv) is now subparagraph (b), since it is not a "condition" but a provision allowing a certain use of the recordings of a translation.
- (ii) Consequently, what was item (v) is now item (iv), and what were subparagraphs (b) and (c) are now subparagraphs (c) and (d).

Article II(8)(b)

- (i) This subparagraph was formerly item (iv) under subparagraph (a) (see observation (i) under Article II(8)(a)).
- (ii) The new wording is intended to carry out a suggestion made by the Chairman of the Main Commission and approved by that Commission.

Article II(8)(c)

This subparagraph was formerly subparagraph (b).

Article II(8)(d)

This subparagraph was formerly subparagraph (c).

Article II(11)

The words "not later than two years prior to" are based on a proposal made by the Delegation of the Federal Republic of Germany.

Article III(2)(ii)

See observation (i) made on Article II(2).

Article III(2), second part

The preceding drafts mentioned first the price, and then the authorization. The preceding drafts of paragraph (6) did the contrary. Paragraph (2) follows now the order of paragraph (6). This seems to be a more logical order since authorization precedes price.

Article III(2), in fine

The expression "a license to publish" was changed into "a license to reproduce and publish", to make it uniform with Article III(5) and Article IV(4)(a). The more complete expression parallels "translate and publish", used in Article II. The more complete expressions seem, in any case, to be more correct since a license to make a translation (or a reproduction) without the license to publish the translation (or the reproduction) seems to be of little value.

Article III(4)(a)

- (i) The observation made under Article II(4) applies here also.
- (ii) In the second sentence, the words "and Article IV(2) is applicable" were added to make it clearer that the provision only applies where the owner of the right cannot be found.

Article III(4)(b)

See the observation on Article III(6).

Article III(6)

The words "are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works" appear first in paragraph (2). Instead of repeating them, paragraph (4)(b) simply provides that "a distribution as described in paragraph (2) has taken place." By following the method of paragraph (4)(b), one could substantially shorten paragraph (6). In any case, there seems to be no good reason to use different expressions in paragraph (4)(b) and in paragraph (6).

Article IV(1)

The words "and publish" were added for the reasons stated in the observation concerning Article III(2) *in fine*.

Article IV(5)

The words in brackets seem to be superfluous.

Article IV(6)

This paragraph was subdivided into two subparagraphs: subparagraph (b) deals with the matters to be provided for by national legislation, subparagraph (a) deals with the matters which do not necessarily require provision in the national legislation.

Article IV(7)(a)

See observation (ii) under Article II(2).

Article IV(7)(b)

See the observation concerning Article III(2) *in fine*.

Article IV(8)(b)

See the observation concerning Article III(2) *in fine*.

B/DC/CR/4 July 18, 1971 (Original: English, French)

SECRETARIAT OF THE CONFERENCE

Drafts for the Drafting Committee. (Text of the Appendix to the Paris Act, Articles I, II, IIbis (new) and III(1))

1. On the basis of the discussions of the Drafting Committee which took place on July 17, 1971, it is proposed to make a separate article (provisionally numbered IIbis) of what used to be paragraphs (9) to (11) of Article II. Consequential changes relate to Articles I(1), (6)(b); IIbis (1)(a)(b), (2).

The Secretariat suggests that Article IIbis be placed between Articles IV and V. Such a solution would leave the three Articles dealing with licenses in one group.

Numerical references in Article 30(2)(a) and (b) and in Article V(1)(i) and (ii) will have to be changed, once the definitive numbering has been decided upon.

2. The change proposed at the beginning of Article I(6)(b) constitutes the alternative which the Drafting Committee invited the Secretariat to prepare. (Its wording follows that of the last sentence of Article IIbis(2)—formerly Article II(11) of the last sentence of Article IIbis(2)—formerly Article II(11)—as adopted by the Drafting Committee.)

3. The other changes concerning Articles I(2)(b), (4); II(1), (2), (6), (8)(a)(b); IIbis(3); III(1) have already been decided by the Drafting Committee. They are reproduced here only for the reader's convenience.

Editor's Note: *This document contains, in addition, the modified text of the Draft Appendix to the Paris Act (Articles I, II, IIbis (new) and III(1)). It has not been reproduced. In the following, only the differences are indicated between the English text of the Draft Appendix to the Paris Act, as presented in document B/DC/CR/2 and the English text as modified in document B/DC/CR/4.*

1. *Article I(1). The sentence added at the end of this Article in document B/DC/CR/4 reads as follows:* It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article IIbis.

2. *Article I(4). The wording of this provision in document B/DC/CR/4 was as follows:* Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed until their stock is exhausted.

3. *Article I(6). The wording of this Article in document B/DC/CR/4 was as follows:* (b) The right to apply reciprocal treatment provided for in Article 30(2)(b) second sentence shall not, until the date on which the period referred to in Article I(3) expires, be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article IIbis.

4. *Article II(1). The words may so far as works published in printed or analogous forms of reproduction are concerned substitute for were replaced in document B/DC/CR/4 by the words shall be entitled, so far as works published in printed or analogous forms of reproduction are concerned, to substitute*

5. *Article II(2). The words in the language or in one of the languages in general use were replaced in document B/DC/CR/4 by the words in a language in general use*

6. *Article II(6). The words in the country were added in document B/DC/CR/4 after the words normally charged*

7. *Article II(8)(a)(ii). The word only was added in document B/DC/CR/4 after the words the translation is*

8. *Article II(8)(a)(iii). The words in item (ii) were replaced in document B/DC/CR/4 by the words in condition (ii)*

9. *Article II(8)(a)(iv). The wording of this provision in document B/DC/CR/4 was as follows:* all use made of the translation are without commercial purpose

10. *Article II(8)(b). The words and subject to the conditions, were added in document B/DC/CR/4 after the words for the purposes*

11. *Article IIbis (new). The wording of this Article which is based on the provisions of Article II(9), (10), (11) (document B/DC/CR/2), in document B/DC/CR/4 was as follows:* (1)(a) Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II, may, instead, at the time of ratifying or acceding to this Act:

- (i) if it is a country to which Article 30(2)(a) applies, make a declaration under that provision as far as the right of translation is concerned;
- (ii) if it is a country to which Article 30(2)(a) does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30(2)(b), first sentence.

(b) Any country which has made a declaration according to this Article may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.

(2) Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to this Article.

(3) Any country which has ceased to be regarded as a developing country in conformity with the practice referred to in Article I(1) may, not later than two years prior to the expiration of the period provided for in Article I(3) make a declaration to the effect provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union. Such declaration shall take effect at the date on which the period referred to in Article I(3) expires.

12. *Article III(1). The words may substitute were replaced in document B/DC/CR/4 by the words shall be entitled to substitute*

B/DC/CR/5 July 18, 1971 (Original: English, French)

SECRETARIAT OF THE CONFERENCE

Drafts for the Drafting Committee (Text of Title and Preamble of the Paris Act)

1. The Drafting Committee at its first meeting, having considered the draft text prepared by the Secretariat and contained in document B/DC/CR/1, page 3, adopted the following text:

"BERNE CONVENTION
for the Protection of Literary and Artistic Works
of September 9, 1886
completed at Paris on May 4, 1896, revised at Berlin
on November 13, 1908, completed at Berne
on March 20, 1914, revised at Rome on June 2, 1928,
at Brussels on June 26, 1948, at Stockholm
on July 14, 1967, and at Paris on July 24, 1971

The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works,

Have resolved to revise and to complete the Act signed at Berne on September 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, revised at Rome on June 2, 1928, revised at Brussels on June 26, 1948, and revised at Stockholm on July 14, 1967.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, recognizing the importance of the work of the Revision Conference of Stockholm and maintaining without change Articles 1 to 20 and 22 to 26 adopted at that Conference, have agreed as follows: "

2. The Secretariat has considered a possible new presentation of the Title and Preamble, which would take into account the fact that in the text set out above (a) the Preamble largely, and apparently unnecessarily, repeats the information given in the Title, and (b) the final paragraph, which traditionally has been and appropriately should remain purely formal, contains matters of substance relating to the intentions of the countries of the Union, rather than to the acts of the Plenipotentiaries.

3. The Secretariat submits the following new text; the changes in relation to the text contained in document B/DC/CR/1 appear in the second and third paragraphs of the Preamble.

"BERNE CONVENTION
for the Protection of Literary and Artistic Works
of September 9, 1886,
completed at Paris on May 4, 1896,
revised at Berlin on November 13, 1908,
completed at Berne on March 20, 1914,
revised at Rome on June 2, 1928,
at Brussels on June 26, 1948, at Stockholm
on July 14, 1967, and at Paris on July 24, 1971

The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works,

Recognizing the importance of the work of the Revision Conference held at Stockholm in 1967,

Have resolved to revise the Act adopted by the Stockholm Conference, while maintaining without change Articles 1 to 20 and 22 to 26 of that Act.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:"

DOCUMENTS OF THE INFORMATION "B/DC/INF" SERIES
(B/DC/INF/1 to B/DC/INF/12)

LIST OF DOCUMENTS

<i>N°</i>	<i>Submitted by</i>	<i>Subject</i>
1	WIPO	General information
2	WIPO	List of documents (published as at June 1, 1971)
3	Secretariat of the Conference	Organization of work
4	Secretariat of the Conference	Provisional list of participants
5	Secretariat of the Conference	Officers of the Conference
6	Secretariat of the Conference	States Members of the Credentials Committee
7	Secretariat of the Conference	States Members of the Drafting Committee
8	Secretariat of the Conference	Notice to Delegations
9	Director General of WIPO	Text of the opening address of the Conference
10	Secretariat of the Conference	Provisional list of documents (continued from document B/DC/INF/2)
11	Secretariat of the Conference	Addendum and Corrigendum to the provisional list of participants (document B/DC/INF/4)
12	Secretariat of the Conference	List of Countries having signed the Paris Act on July 24, 1971

TEXT OF DOCUMENTS

(B/DC/INF/1 to B/DC/INF/12)

B/DC/INF/1 June 4, 1971 (Original: French)
WIPO

General information

Editor's Note: *This document contained general information relating to the organization of the Conference, the documentation and to travel and accommodation. It has not been reproduced.*

B/DC/INF/6 July 6, 1971 (Original: French)
SECRETARIAT OF THE CONFERENCE

States members of the Credentials Committee

Editor's Note: *This document contained a list of States members of the Credentials Committee. It has not been reproduced. For the list of members of the Credentials Committee see p. 28.*

B/DC/INF/2 June 4, 1971 (Original: French)
WIPO

List of documents

Editor's Note: *This document contained the list of documents published as at June 1, 1971. It has not been reproduced. For the full list of Conference Documents, see pages 31, 118, 126.*

B/DC/INF/7 July 6, 1971 (Original: French)
SECRETARIAT OF THE CONFERENCE

States Members of the Drafting Committee

Editor's Note: *This document contained a list of the States members of the Drafting Committee. It has not been reproduced. For the list of members of the Drafting Committee see p. 28.*

B/DC/INF/3 July 5, 1971 (Original: French)
SECRETARIAT OF THE CONFERENCE

Organization of work

Editor's Note: *This document contained the proposals relating to the organization of work, presented by the Secretariat. It has not been reproduced.*

B/DC/INF/8 July 6, 1971 (Original: French)
SECRETARIAT OF THE CONFERENCE

Notice to Delegations

Editor's Note: *This document contained a notice to Delegations on the procedure for submitting to the Secretariat amendments or draft resolutions. It has not been reproduced.*

B/DC/INF/4 July 6, 1971 (Original: French, English, Spanish)
SECRETARIAT OF THE CONFERENCE

Provisional list of participants

Editor's Note: *This document contained a provisional list of participants. It has not been reproduced. For the full list of participants see pages 19 to 28.*

B/DC/INF/9 July 7, 1971 (Original: French)
DIRECTOR GENERAL OF WIPO

Opening Address

Editor's Note: *This document contained the opening address of the Conference by Professor G. H. C. Bodenhausen, Director General of WIPO. It has not been reproduced. For the text of this address see p. 131.*

B/DC/INF/5 July 6, 1971 (Original: French)
SECRETARIAT OF THE CONFERENCE

Officers of the Conference

Editor's Note: *This document contained a list of officers of the Conference. It has not been reproduced. For the list of officers of the Conference see p. 27.*

B/DC/INF/10 July 10, 1971 (Original: French)
SECRETARIAT OF THE CONFERENCE

List of documents (continued from document B/DC/INF/2)

Editor's Note: *This document contained a provisional list of documents. It has not been reproduced. For the full list of documents see pages 31, 118, 126.*

B/DC/INF/11

July 12, 1971 (Original: French, English, Spanish)

SECRETARIAT OF THE CONFERENCE

Addendum and Corrigendum to the provisional list of participants (document B/DC/INF/4)

Editor's Note: This document contained the Addendum and Corrigendum to the provisional list of participants (document B/DC/INF/4). It has not been reproduced. For the full list of participants see pages 19 to 28.

B/DC/INF/12

July 24, 1971 (Original: French, English)

SECRETARIAT OF THE CONFERENCE

List of countries having signed the Paris Act on July 24, 1971

Editor's Note: This document contained a list of the countries having signed the Paris Act. It has not been reproduced. For the full list of countries having signed the Paris Act as on January 31, 1972, see p. 212.

SUMMARY MINUTES

PLENARY ASSEMBLY OF THE CONFERENCE

Chairman: Mr. Pierre CHARPENTIER (France)

Rapporteur General: Mr. Ousmane GOUNDIAM (Senegal)

Secretary General: Mr. Claude MASOUYÉ (WIPO)

FIRST MEETING

Monday, July, 5 1971, 3.15 p.m.

OPENING OF THE CONFERENCE

1. Mr. FOBES (Deputy Director-General of Unesco), speaking on behalf of the Director-General of Unesco, extended a cordial welcome to the delegates to the Conference, and in particular to Professor Bodenhausen, the Director General of the World Intellectual Property Organization. He felt great satisfaction that Unesco had been able to make the necessary arrangements for the holding of two such important Conferences as the Diplomatic Conference for the Revision of the Berne Convention and the Conference for Revision of the Universal Copyright Convention, and hoped that the arrangements would facilitate a successful conclusion to the deliberations of both.

2.1 Mr. BODENHAUSEN (Director General of WIPO) made the following opening address:

2.2 Your Excellencies, Ladies and Gentlemen, the Paris Conference for the Revision of the Berne Convention, the first session of which has been convened this afternoon, is closely linked to the Revision Conference of the Universal Copyright Conference, which opened this morning. The link is shown by, among other things, the proposal—rather rare in international law—according to which the new text of the Berne Convention will not enter into force unless certain States become bound by the revised text of the Universal Convention. But, even apart from that, it is to be foreseen that the debates in each of the two Conferences will have a strong influence on those in the other, and that the two revised texts, adopted by the Conference, will be signed at the same time.

In these circumstances, there is little to add to what was said at the opening of the Revision Conference of the Universal Copyright Convention. At the most one could perhaps remark that, seen from the point of view of the Berne Union, the two Conferences which will take place here will constitute a sequel to the last revision of the Berne Convention, adopted by the Stockholm Conference in 1967.

The Stockholm Conference, although it was, in general, crowned by remarkable success, had a program of work which was perhaps too ambitious. The Conference had to concern itself with important administrative reforms of our Unions and with the establishment of the World Intellectual Property Organization; at the same time it had to deal with a large number of questions of substance in the field of copyright. It tried also to establish a special system aimed at meeting certain needs of the developing countries in the fields of culture and education. This system, created in the form of a protocol forming an integral part of the Stockholm Act of the Berne Convention, has not appeared capable of obtaining the final approval of a large number of States; it has not yet entered into force.

It has therefore become clearly necessary to review this problem after a more thorough preparation and also in relation to a parallel revision of the Universal Copyright Convention. These steps should make it possible to find a general system of international copyright protection which will not be too much out of balance and which will enable the developing countries to choose a solution fitted to their needs, while, at the same time, acceptable to the countries which are the largest producers of literary, scientific and artistic works.

The preparation of these new solutions has been very detailed and I must pay sincere homage to the experts who took part in the preparatory work and who contributed their knowledge and, to an equal extent, the will to reach results acceptable to all. I will not go back over the history of this preparatory work; for you already have full information in this respect in the documentation which has been submitted to you.

Thanks to this preparatory work, we can now hope that the Conferences joined together here will establish the necessary basis for future international collaboration in the field of copyright; such collaboration is a necessity for the interests of humanity.

It is thanks to the hospitality of Unesco that the two Conferences can take place at the same time and place. I am very grateful to the Director-General of Unesco and to his colleagues. The two secretariats will have parallel tasks to accomplish; they are accustomed to this and, thanks to the excellent relations which have existed between them for a long time, this will raise no difficulties.

I welcome with gratitude the presence here of many delegations representing member States of the Berne Union and States which will attend the Conference as observers. I welcome also the representatives of the intergovernmental and non-governmental international organizations which make available to us the points of view of the interested circles. That so much skill, knowledge and experience has been brought together here seems to me to provide a very good augury for the success of your deliberations; these deliberations, I am sure, will be delicate, but they will also be of the greatest importance for the future of the Berne Union.

I declare open the Revision Conference of the Berne Convention.

ELECTION OF THE CHAIRMAN

3. Mr. BODENHAUSEN (Director General of WIPO) asked for nominations for the office of Chairman.

4. Mr. ARMITAGE (United Kingdom) supported by the Delegations of Germany (Federal Republic of), Italy, the Ivory Coast and Spain, said that he had great pleasure in proposing Mr. Charpentier (France) as President of the Conference.

5. *Mr. Charpentier was elected Chairman by acclamation. He took the Chair.*

6.1 The CHAIRMAN thanked the Conference for the honor it had done him—and his country—in appointing him to preside over its work, which he interpreted as a testimony of gratitude towards a country which had always defended intellectual property rights. He himself would spare no efforts to ensure that the difficult task of revising the Berne Convention was successfully completed in the best conditions.

6.2 In a few clear, precise and encouraging words, the Director General of WIPO had enunciated the considerations which should guide the revision of the Convention, which had been rendered necessary by the appearance of so many young countries on the international scene, and he had stressed the fact that the preparatory work had resulted in the elaboration of a text which, while not perfect, had an excellent chance of meeting the wishes of all those concerned. He was glad to have the opportunity of congratulating the WIPO Secretariat on having prepared a set of documents which succeeded in making a particularly complicated subject readily understandable.

6.3 He was confident that the good will of all would enable the goal to be attained.

ADOPTION OF THE RULES OF PROCEDURE (DOCUMENT B/DC/2)

7. The CHAIRMAN drew the attention of the Conference to document B/DC/2 and invited it to consider the Rules one by one.

Rules 1, 2 and 3

8. *Rules 1, 2 and 3 were adopted unanimously.*

Rule 4

9. The CHAIRMAN pointed out that paragraph 2 of the Rule offered a choice between the two expressions in square brackets.

10. Mr. BODENHAUSEN (Director General of WIPO) suggested the adoption of the second formula, which had the advantage of being more specific than the first and of avoiding the difficulties to which the question of submitting credentials at the last plenary meeting was bound to give rise.

11. *Rule 4, with the wording recommended by the Director General of WIPO was adopted unanimously.*

Rule 5

12. The CHAIRMAN suggested that the number of Vice-Chairmen should be fixed at nine.

13. *Rule 5, completed in the manner suggested by the Chairman, was adopted unanimously.*

Rules 6 and 7

14. *Rules 6 and 7 were adopted unanimously.*

Rule 8

15. The CHAIRMAN pointed out that the last sentence of the Rule had been left in square brackets.

16. Mr. BODENHAUSEN (Director General of WIPO) said that most of the views expressed during unofficial discussions seemed to be unfavorable to the retention of the last sentence. He therefore suggested its deletion.

17. *Rule 8, as amended, was adopted unanimously.*

Rule 9

18. Mr. ARMITAGE (United Kingdom) suggested that it would be advisable for the Chairman of the Drafting Committee to be a member of the Bureau.

19. Mr. SAID (Tunisia) supported the proposal by the Delegate of the United Kingdom. He also suggested that it might be useful if the Chairman and Vice-Chairman of the Main Commission were also members of the Bureau.

20. *Rule 9, amended in accordance with the suggestions of the Delegates of the United Kingdom and Tunisia, was adopted unanimously.*

Rule 10

21. The CHAIRMAN proposed that the number of members of the Drafting Committee should be fixed at eight.

22. Mr. DITTRICH (Austria) suggested that it would be advisable for the Chairman and Rapporteur of the Main Commission to be *ex officio* members of the Drafting Committee.

23. The CHAIRMAN said that that was a very sensible suggestion. He proposed, therefore that another sentence should be added to Rule 10, reading: "The General Rapporteur of the Conference and the Chairman of the Main Commission are *ex officio* members."

24. *Rule 10, as amended, was adopted unanimously.*

Rules 11 to 34

25. *Rules 11 to 34 were adopted unanimously.*

26. *The Rules of Procedure as a whole, as completed and amended, were adopted unanimously.*

ADOPTION OF THE AGENDA (DOCUMENT B/DC/1)

27. The CHAIRMAN drew the attention of the Conference to document B/DC/1.

28. Mr. ARMITAGE (United Kingdom), supported by the Lebanese Delegation, proposed that in view of the fact that it had been agreed that the Chairman of the Drafting Committee should be a member of the Bureau, it might be advisable to advance Item 7 of the agenda, the Election of the Drafting Committee, in order that the Chairman might participate from the outset in the work of the Bureau.

29. *The agenda, as amended according to the United Kingdom Delegate's proposal, was adopted.*

ELECTION OF THE VICE-CHAIRMEN OF THE CONFERENCE AND OF THE RAPPORTEUR GENERAL

30. The CHAIRMAN proposed that the Delegates of Australia, Brazil, Ceylon*, Congo (Democratic Republic of the)**, Hungary, Morocco, Sweden, Switzerland and Yugoslavia should be appointed to the office of Vice-Chairman and the Delegate of Senegal to that of Rapporteur General.

31. *It was so decided.*

ELECTION OF THE CREDENTIALS COMMITTEE

32. The CHAIRMAN proposed that the Delegates of Czechoslovakia, Germany (Federal Republic of), Italy, Ivory Coast, Japan, Spain and Uruguay should be elected members of the Credentials Committee.

33. *It was so decided.*

* This State has since changed its name; at the time of publication of these *Records* it is designated as "Sri Lanka".

** This State has since changed its name; at the time of publication of these *Records* it is designated as "Zaire".

ELECTION OF THE DRAFTING COMMITTEE

34. The CHAIRMAN proposed that the Delegates of Argentina, Canada, France, India, the Netherlands, Sweden, Tunisia and the United Kingdom should be elected members of the Drafting Committee.

35. Mr. CHAUDHURI (India) said that while he appreciated the consideration shown in proposing India for membership of the Drafting Committee, he would find it very difficult to accept.

36. The CHAIRMAN said that the Drafting Committee would not have to deal with questions of substance, but only with questions of form; that being the case, he hoped that the Delegate of India would agree to become a member of it in order to ensure the balanced representation of the three official languages and of the developed and developing countries.

37. Mr. CHAUDHURI (India), while thanking the Chairman for his kind explanation, nevertheless requested that India might be allowed to stand down, since there was already an English-speaking country among those proposed.

38. Mr. BODENHAUSEN (Director General of WIPO) suggested that the Delegate of Japan be invited to take the place which the Delegate of India was unable to accept.

39. Mr. NAKAYAMA (Japan) said that he had some hesitation about accepting the place declined by the Delegate of India. He thought, nevertheless, that the Asian countries should be represented on the Drafting Committee.

40. The CHAIRMAN, noting that the Delegate of India had left the Conference Room, said that he thought the Japanese Delegate's statement could be taken as an acceptance. He accordingly proposed that the Delegates of Argentina, Canada, France, Japan, Netherlands, Sweden, Tunisia and the United Kingdom should be elected members of the Drafting Committee.

41. *It was so decided.*

ELECTION OF THE CHAIRMAN AND VICE-CHAIRMEN OF THE MAIN COMMISSION

42. The CHAIRMAN invited the Conference to elect the Chairman and the two Vice-Chairmen of the Main Commission.

43. Mr. CHAUDHURI (India), supported by the Delegations of Canada, France, Italy and the Netherlands, said that he had pleasure in proposing Professor Ulmer (Federal Republic of Germany) as Chairman of the Main Commission.

44. *Mr. Ulmer was elected Chairman of the Main Commission by acclamation.*

45. Mr. GARRIGUES (Spain), supported by the Delegation of the United Kingdom, proposed that members of the Delegation of Mexico and Morocco should be elected Vice-Chairmen of the Main Commission.

46. *The Spanish Delegate's proposal was adopted.*

STATEMENT BY THE RAPPOREUR GENERAL

47. The RAPPOREUR GENERAL thanked the Conference for the honor done to his country and himself in entrusting him with that important post. He emphasized that the feeling of solidarity between developed and developing countries so strikingly displayed at the Stockholm Conference four years ago had been steadily strengthened in the meantime. At a time when human values were tending to be overshadowed by technology, particular vigilance was required to ensure that material progress did not jeopardize moral and intellectual progress. Further, it must not be forgotten that Africa

had a role to play in building the universal civilization of the future. The participation of the developing countries in the present Conference should in no way be construed as being merely passive; all the developing countries would strive to show themselves worthy of the concessions which were about to be introduced in their favor in the Berne Convention.

The meeting rose at 4.30 p.m.

SECOND MEETING

Monday, July, 12, 1971, 10.30 a.m.

REPORT OF THE CREDENTIALS COMMITTEE

48. Mr. DADIÉ (Ivory Coast), speaking as Vice-Chairman of the Credentials Committee, read out the First Report of the Credentials Committee (document B/DC/14) *.

49. The SECRETARY GENERAL informed the Conference that, since the first meeting of the Committee, three of the States mentioned in paragraph 10 of the Report (document B/DC/14)—Brazil, Canada and Lebanon—had deposited credentials in due form. He urged Delegations which had not yet deposited such credentials to do so without delay. He reminded the Conference that the Credentials Committee would hold another meeting on a date to be decided by the Secretariat (*see* document B/DC/14, paragraph 13).

50. Mr. CHAUDHURI (India), pointing out that his Delegation's letter of credentials authorized it to sign the Convention, asked why India had been placed in category A (as mentioned in paragraph 5 of document B/DC/14).

51. The SECRETARY GENERAL said that he would look into the matter and make the necessary changes in the next report of the Committee.

52. The CHAIRMAN invited the Conference to adopt the Report.

53. *The first Report of the Credentials Committee (document B/DC/14) was adopted.*

* *Editor's Note:* The text of the first Report of the Credentials Committee is reproduced on page 104 of these *Records*.

The Delegation of the Hungarian People's Republic handed the following Declaration to the Secretariat of the Conference:

"The Delegation of the Hungarian People's Republic to the Diplomatic Conference for the Revision of the Berne Convention notes with indignation that the German Democratic Republic, a Member State of the Berne Union for the Protection of Literary and Artistic Works, has not been invited to the Diplomatic Conference for the Revision of the Berne Convention. The Hungarian Delegation strongly protests against this flagrant and illegal discrimination.

In this connexion, it must be pointed out that the German Democratic Republic has always scrupulously discharged all its obligations resulting from its membership of the Berne Union despite the illegal way in which the Union's organs have acted.

To have failed to invite the German Democratic Republic to the Diplomatic Conference for the Revision of the Berne Convention constitutes an illegal derogation from the rights of Members of the Berne Union, all the more since it was decided that all Members of the Berne Union were to be invited to this Conference."

FORM OF THE PROPOSED REVISION: NEW ACT OR ADDITIONAL ACT? (*Document B/DC/5*)

Introductory observations (paragraphs 4 to 14)

54. The CHAIRMAN drew the attention of the Conference to the alternative referred to in paragraphs 4 to 14 of document B/DC/5. The question was whether the proposed revision should take the form of an act additional to the Stockholm Act or of a new act. If the second solution was adopted, the new act (which might be called the "Paris Act") would include both the amended and the unamended provisions of the Stockholm Act.

55.1 Mr. WALLACE (United Kingdom), supported by the Delegations of Canada, Brazil, Germany (Federal Republic of), Japan, Cyprus, France, Austria, Hungary, India, Israel, Australia, Netherlands, Finland, Mexico, South Africa, Ireland, Yugoslavia, Ceylon and Switzerland, proposed that the revised text of the Berne Convention as a whole be incorporated in a single Act.

55.2 His Delegation believed, however, that the valuable work carried out in the preparation of the Stockholm Act deserved recognition, and had, therefore, submitted a proposal to the effect that the revised text of the Berne Convention should be known as the "Stockholm/Paris Act 1971" (document B/DC/12).

56. Mr. DE SANCTIS (Italy) said that he was inclined to favor the formula of an Additional Act. That was in fact the formula which had been originally proposed, the essential aim being to make certain amendments to the provisions in the Protocol Regarding Developing Countries which was annexed to the Convention itself.

57. The CHAIRMAN reminded the Delegate of Italy that, under Rule 8 of the Rules of Procedure (document B/DC/8) adopted at the previous meeting, the Main Commission should merely "make a detailed study of the proposals for revision of those provisions of the Stockholm Act ... which concerned developing countries ...".

58. Mr. GARRIGUES (Spain) said that his Delegation had some hesitation, but it would nevertheless support the solution proposed by the United Kingdom Delegation. The Spanish Delegation would accept the majority decision.

59. The CHAIRMAN said that he had the impression that most delegations preferred the adoption of a new act to that of an "additional act". If he heard no objection, he would assume therefore that the Conference favored the formula of a new act.

60. *It was so decided.*

GENERAL DEBATE ON THE REVISION OF THE BERNE CONVENTION

61.1 Mr. GARRIGUES (Spain) said that he agreed in principle with the proposals made by the Permanent Committee of the Berne Union (document B/DC/4), which did not, of course, exclude the possibility of introducing certain changes in the text of document B/DC/4 if the course of the debates showed that to be necessary; he also approved the texts proposed by the Intergovernmental Committee concerning the revision of the Universal Copyright Convention.

61.2 He hoped that the Berne Union would emerge strengthened from the Conference and that it would no longer be regarded as a backward-looking organization which a few young countries, members of it, were leaving it for fear of the famous "sanctions" which had been referred to on more than one occasion.

61.3 The fallacy concerning the opposition between the developing and developed countries, to the effect that the former wished to abolish copyright while the latter defended

it, must be dispelled. That was a false idea, because the only objective of the developing countries was to gain access to all forms of knowledge in order to promote their own creative work, which was demonstrated by their concern about the so-called "brain drain".

61.4 In the opinion of the Delegate of Spain, copyright had nothing to fear from the natural development process of certain countries; its real enemy was a certain ideology, now in fashion, which denied the subject, the person, and consequently the author or creator. That ideology derived its current popularity from a number of—sometimes divergent—philosophical tendencies which tended to downvalue the individual while exalting the system, objectivity, structure. Another factor was the present crisis in the concept of authority which was manifest in the conflict between the generations: the authority of the creator over his work was denied, in the same way as the authority of parents.

61.5 While such general considerations might seem to divert the Conference from its examination of the legal provisions themselves, it should not be forgotten that such provisions, arid as they might seem, should reflect more far-reaching spiritual values. While it was evident that the artist did not create *ex nihilo*, since he was conditioned, *inter alia*, by the society in which he lived and its traditions, it would be a mistake to switch from the romantic conception of an artistic work as an individual challenge on the part of its creator, to the opposite extreme, where the author disappeared behind the text, which, in turn, became merely a part of a joint intellectual effort, a universal continuing discourse.

62. M. TORNARITIS (Cyprus) said he had examined the amendments proposed by the developed and developing countries carefully. He had found that two of the proposals submitted, one by a developed country and one by a developing country, were of a character likely to raise difficulties in reaching agreement on the text.

63.1 Mr. TIMÁR (Hungary) said that Hungary had been a member of the Berne Union for 50 years. As an exporter and an importer of cultural goods, Hungary attached great importance to the revision of the Berne Convention. He had already had the opportunity of stating his Government's position at the previous meeting when it had spoken in the general debate on the revision of the Universal Copyright Convention*. With regard to the revision of the Berne Convention, he was prompted by the same desire to reconcile the just demands of the developing countries with the legitimate interests of authors. He hoped that the text which the Conference would prepare would enable those developing countries which were at present members of the Berne Union to remain so.

63.2 In essentials, the Hungarian Delegation was prepared to accept the international Bureau's proposals (document B/DC/5), though it wished to make certain amendments. Whatever the outcome of the Conference, Hungarian authors were willing to contribute freely to the translation of their works into the national languages of the developing countries; and in such cases the Hungarian authorities would not fail to indemnify Hungarian authors to ensure that the costs, initially met by the authors alone, were shared among all their fellow-citizens.

63.3 From last week's discussions, the Hungarian Delegation had gained the impression that the complexity of the new articles designed to favor the developing countries in the two Conventions under revision might make the texts, once adopted, difficult to apply. In particular, there was a danger of serious problems arising in connection with the transfer of royalties in convertible currencies.

63.4 In those conditions, the Hungarian Delegation wished to draw the attention of all Delegations and of the bodies

* See "Records of the Conference for Revision of the Universal Copyright Convention", Paris 1971, published by Unesco, 1973, page 104.

which would be responsible for the application of the two Conventions to the need to set up an international fund for the indemnification of authors. That was, in its view, the only formula which, without harming the interests of authors, could enable the developing countries to carry out, quickly and easily, all the formalities involved in the translation, reproduction or broadcasting of the works most likely to promote their cultural advancement.

63.5 Unless they were to remain ineffective, the revisions of the Universal Copyright Convention and the Berne Convention should be speedily followed by practical measures. If the two Conferences now in progress were to fail in their purpose, it would soon be necessary to convene another one, which would be fraught with serious difficulty.

64. Mr. GABAY (Israel) said that he felt sure that all Delegations would agree that there must be no contradiction between the safeguarding and recognition of the interests and rights of authors and composers on the one hand and the dissemination of their works in the developing countries on the other. It was indeed in the interests of authors and composers to provide easier facilities for the dissemination of their works, since they would thus make them available to a wider public. His Delegation would be in favor of any proposal likely to provide improved facilities for the developing countries without infringing on the rights of authors and composers. Israel was in a position to understand the needs of the developing countries in that respect since, although it had reached an advanced stage of development in some respects, it still encountered problems in finding the means of providing education to all sections of the population. He hoped very much that the same spirit of mutual understanding which had been displayed during the discussion of the revised text of the Universal Copyright Convention the previous week would prevail during the examination of the suggested revised version of the Berne Convention.

65.1 Mr. ALIHONOU (People's Republic of the Congo) said that his country was one of those which regarded all forms of exploitation as inadmissible even in the field of the reproduction of intellectual works. He therefore welcomed the convening of a Conference for the purpose of meeting the scientific and cultural needs of the developing countries, which were determined to make up their leeway in the shortest possible time.

65.2 Contrary to the view expressed the week before by the Delegation of a State party to the Universal Copyright Convention, the developing countries in general and the People's Republic of the Congo in particular possessed a highly developed culture, despite the baneful influence of colonialism. They, therefore, hoped for the most intensive possible cultural exchange between the developing and the developed countries, which did not prevent them from being fully conscious of the respect due to the legitimate rights of authors.

65.3 The Delegation of the People's Republic of the Congo regretted that the 700 million inhabitants of the People's Republic of China were not represented at the Conference by a delegation which could speak on their behalf.

66.1 Mr. TYLNER (Czechoslovakia) said his country had every sympathy with the needs of the developing countries in the field of copyright and was ready to support proposals for the suitable revision of the Berne Convention. It was not certain, however, that the text proposed in document B/DC/5 would lead to any real improvement in the situation of the developing countries, and hoped that delegations from these countries would express their views on that point.

66.2 He expressed his deep regret that the German Democratic Republic had not been invited to participate in the present Conference. That country had acceded to the WIPO Convention in 1968 and was included in its list of member States issued in January 1971. It fulfilled all its obligations to the Organization, including the payment of its contribution. He protested against the discriminatory measure taken against the German Democratic Republic.

67. Mr. PAPEIANS DE MORCHOVEN (Belgium) said that he approved all the revisions proposed by the International Bureau. He urged delegations not to submit too far-reaching amendments which might upset the delicate balance established in the course of the preparatory work.

68. Mr. DANIELIUS (Sweden) said that Sweden had taken an active part in the revision of the Berne Convention in 1967 because it hoped to find a solution for the exceptionally important problems arising in the matter of copyright, particularly for the developing countries. The text adopted at Stockholm in 1967 was certainly too bold. While Sweden had not hesitated to accept the consequences for itself, a number of other countries had been unwilling to follow it in that course; hence the need to reconsider the question. While recognizing that the Stockholm Conference had not provided final solutions to the problems at issue, it would be too much to say that it had been a failure. On the contrary, it had done some constructive work in preparing for the present Conference in Paris. The Swedish Delegation was fully prepared to contribute to the success of the new Conference.

69. The CHAIRMAN agreed that it would be exaggerated to call the Stockholm Conference a failure. Without it, not only would the Paris Conference have no chance of success, but also it would not even have been convened.

70. Mr. N'DIAYE (Senegal) said that his country had followed up very carefully the work which had preceded the present Conference. It was impossible to disapprove of the objectives aimed at by the Stockholm Conference: to make copyright rules more flexible so as to enable the new countries to become members of the Berne Union; to grant certain privileges to the developing countries; to set up a world organization, WIPO, to handle questions of intellectual property. The fact that the Stockholm Conference had not fully attained those objectives might be attributed to inadequate preparation. The Paris Conference, which had been better prepared, had better chances of success. It was a particularly good sign that the developing countries had taken the initiative in formulating their views in the Washington Recommendation. His Delegation hoped that the present Paris Conference would succeed. It approved of the bulk of the proposed revisions submitted to the Conference and, while it intended to propose a number of amendments, it would try not to upset the balance resulting from the preparatory work. It hoped that the revised Convention would take due account of the needs of the developing countries.

71. Mr. LUTÉTÉ (Democratic Republic of the Congo) hoped that the revised Convention would take into account, not only the interests of the developed countries, but also those of the developing countries which, contrary to what might be believed, were not only importers but also producers of artistic and literary works. It seemed to him fair that the developed countries should open their doors to artistic and cultural productions from the developing countries, just as the latter welcomed works from the developed countries. Culture had no frontiers. Each country and each people made its special contribution to the cultural heritage of mankind.

72. Mr. COHEN JEHOAM (Observer for the International Literary and Artistic Association (ALAI)), speaking on the invitation of the Chairman, recalled that his Organization had been instrumental in bringing about the establishment of the Berne Convention in the nineteenth century and had always defended the rights and interests of authors and composers. His Organization had examined the suggested revised text and found the "package deal" proposed acceptable. The new provisions proposed did not appear to conflict seriously with the interests of authors, on the condition, however, that creators should be remunerated for the sacrifices they were expected to make, not necessarily by the developing countries but more probably by their own governments. In that respect, his Organization hoped that governments might find it possible to set up not merely

national information centers but real financial clearing houses as a preliminary measure, and that in the long term an international financial clearing house might be set up by Unesco and/or WIPO.

The meeting rose at 11.45 a.m.

THIRD MEETING

Thursday, July 22, 1971, 12.30 p.m.

EXAMINATION OF THE DRAFT REPORT SUBMITTED BY THE RAPPORTEUR GENERAL (Document B/DC/29)

73. The CHAIRMAN invited the Conference to examine the draft report submitted by Mr. Goundiam, Head of the Delegation of Senegal and Rapporteur General (document B/DC/29).

74. The RAPPORTEUR GENERAL pointed out that document B/DC/29 was necessarily incomplete because the Conference had not yet finished its work.

Paragraphs 1 to 15 (document B/DC/29)

75. *Paragraphs 1 to 15 were approved without comment.*

Paragraph 16

76. Mr. CHAUDHURI (India) recalled that his Delegation had also been represented on the Drafting Committee. He requested that India be included among the countries listed in paragraph 16 of the English text *.

77. The SECRETARY GENERAL said that the name of India appeared in the French text from which the name of Japan had been omitted. He recalled that the Delegation of India had asked to take part in the work of the Drafting Committee only after the Committee's membership had been fixed by the Conference; in fact, the number of members of the Committee which, according to the Rules of Procedure, ought to have been eight, had thus been increased to nine.

78. Mr. ADACHI (Japan) pointed out that the Conference had decided that Japan should be represented on the Drafting Committee.

79. Mr. BOGSCH (First Deputy Director General of WIPO) said that the solution might be for the Conference to amend its Rules of Procedure by increasing the number of members of the Drafting Committee from eight to nine, which would enable the Delegations of Japan and of India to be mentioned in paragraph 16 of the document under consideration.

80. *It was so decided and paragraph 16—with the proposed amendment was approved.*

Paragraphs 17 and 18

81. *Paragraphs 17 and 18 were approved.*

Paragraph 19

82. Mr. BOUTET (France) proposed that the word "unreserved" at the end of paragraph 19.b) should be replaced by the word "unanimous".

83. *Paragraph 19, as amended, was approved.*

* *Editor's Note:* See Summary Minutes, paragraphs 34 to 41 and 175.2.

Paragraphs 20 to 30

84. *Paragraphs 20 to 30 were approved.*

Paragraph 31

85. Mr. CHAUDHURI (India) suggested that the text would be more accurate if it referred only to the way in which the Indian Delegation interpreted the first sentence of the paragraph in question. He recalled that no discussion had followed the statement made by the Indian Delegation. The reference to general agreement ("it was generally agreed"—paragraph 31 of document B/DC/29) did not, therefore, reflect the facts.

86. Mr. BOGSCH (First Deputy Director General of WIPO) explained that the lack of comment on the Indian Delegation's statement during the discussion by the Main Commission of the Conference for the revision of the Berne Convention had been interpreted as implying general agreement on the lines expressed during discussion of the same point by the Universal Copyright Convention Main Commission.

87. Mr. WALLACE (United Kingdom) believed that the reference to general agreement did in fact reflect the general view of the Main Commission, which was the same as that expressed during discussion of the Universal Copyright Convention.

88. Mr. DA COSTA (Brazil) proposed that the statement by the Delegation of India should be reproduced with the remark that, since it had been discussed at length in connection with the Universal Copyright Convention, the question had not been referred to in the Main Commission of the Berne Convention.

89. Mr. BOUTET (France) said that it was normal that the report should contain precise indications on the question of delay periods; either conference, moreover, was perfectly entitled to adopt whatever interpretation of the point it saw fit, without referring to the decisions of the other. In his view, paragraph 31, as it stood, exactly expressed the point of view of the Main Commission of the Conference for the Revision of the Berne Convention. It should, therefore, be maintained unchanged in the report.

90. Mr. DE SANCTIS (Italy) agreed with the Delegate of France that it was important to specify the standpoint of the Conference on that point so that there should be no ambiguity concerning a rule which was to be applied by private individuals (in particular, by publishers). In that respect, paragraph 31 expressed very accurately the opinion of the majority of the members of the Main Commission.

91. Mr. CHAUDHURI (India) suggested that the reference to the Indian Delegation's statement might be followed by a report on the present discussion in plenary session.

92. Mr. WALLACE (United Kingdom), supported by Mrs. STEUP (Germany (Federal Republic of)) suggested that the text as drafted covered the position quite correctly.

93. Mr. ULMER (Germany (Federal Republic of)), speaking as Chairman of the Main Commission, said that during the discussions in the Main Commission it had been clear that, while taking note of the statement by the Delegation of India, the Commission did not share its interpretation.

94. Mr. CHAUDHURI (India) accepted the explanation of the Chairman of the Main Commission.

95. *Paragraph 31 was approved.*

Paragraph 32

96. Mr. CHAUDHURI (India) proposed the addition of the following sentence at the end of the paragraph: "It was further understood that the owner of the license to translate should be given reasonable notice, by the owner of the right to translate, of the publication of his own translation."

97. Mr. WALLACE (United Kingdom) considered the amendment unnecessary, although he did not object to it.

98. Mr. BOUTET (France) said that he found the Indian Delegation's request perfectly reasonable. He hoped, however, that it would be specified that the owner of the right to translate was bound to notify the owner of the license only if he knew of the existence of the license.

99. Mr. CHAUDHURI (India) accepted the French amendment to his proposed new text.

100. *The Indian Delegation's amendment, as modified by the French Delegation, was adopted, and paragraph 32, thus amended, was approved.*

101. Mr. BOUTET (France) said that he hoped that the report would include a brief comment on Article II(9)(a) concerning licenses granted to broadcasting organizations; the comment would specify that the license covered only the translation of texts included in a work on the understanding that the right to broadcast the work itself—which was affirmed in Article 11bis of the Berne Convention—remained the prerogative of the author.

102. Mr. BOGSCH (First Deputy Director General of WIPO) suggested that reference might be made to the fact that it was understood that the Article II(9)(a) did not affect or modify the right of broadcasting as recognized in the Convention.

103. Mr. ULMER (Germany (Federal Republic of)), speaking as Chairman of the Main Commission, said that he thought he understood what the French Delegation had in mind. But since Article 11bis of the Berne Convention covered not only the right of broadcasting but also any public communication of the broadcast work, he suggested that the addition proposed by the French Delegation should be supplemented by the following sentence: "It is understood from the wording of Article II, paragraph (9)(a) that this provision of the Annex in no way alters the provisions of Article 11bis of the Berne Convention".

104. *It was decided to insert the addition proposed by the French Delegation, completed as proposed by the Chairman of the Main Commission.*

105. Mr. LARREA RICHERAND (Mexico) reminded the Conference that it had been agreed at one of the meetings of the Main Commission that a reference should be made in the report to the Drafting Committee's interpretation of Article II(9)(a)(i). The Mexican Delegate had in fact stated that it found the words "made" and "acquired" anomalous in that context and the United Kingdom Delegation had explained the interpretation put on those words by the Drafting Committee; it had been agreed at the time that that interpretation should be included in the Report of the Conference.

106. Mr. WALLACE (United Kingdom) suggested the following wording: "The expression in Article II(9)(a)(i) "made and acquired in accordance with the laws of the said country" means that the copy is not an infringing copy according to the laws of that country."

107. Mr. LARREA RICHERAND (Mexico) said that he accepted the wording proposed by the United Kingdom Delegate.

108. *It was decided that two new paragraphs incorporating the sentences just proposed by the Delegates of France and the United Kingdom and by the Chairman of the Main Commission concerning Article II(9)(a) would be included in the Report.*

Paragraph 33

109. *Paragraph 33 was approved.*

Paragraph 34

110. Mr. BOUTET (France) said that he hoped that it would be noted that, while accepting the text of paragraph 34, the

French Delegation reserved the right to formulate observations on Article III(7)(b) itself; that article raised a number of drafting problems connected with the need to reconcile the French and British systems for the protection of works incorporated in audio-visual fixations.

111. *With the reservation expressed by the Delegate of France, paragraph 34 was approved.*

Paragraph 35

112. *Paragraph 35 was approved.*

Paragraph 36

113. Mr. CHAUDHURI (India) said that he had hoped that some provision might be made in the Convention to safeguard the developing countries from the consequences of minor procedural errors some of them might make in the application of the Convention. Few of the developing countries would be well-versed in the intricate procedures involved, and it might well be that they inadvertently failed to observe or to understand some point of detail. He would be satisfied, however, if instead of amending the Convention, a text on the following lines appeared in the Report: "Any action taken by a State in pursuance of the provisions of this Convention in favor of the developing countries and which was taken in good faith should not be deemed to be invalid merely on the grounds that the strict requirements of procedure were not followed."

114. Mr. WALLACE (United Kingdom) said his Delegation had tabled a series of amendments to the two Conventions which should simplify the procedures involved considerably. He had no doubt that governments concerned would honor the spirit of the Convention, but he believed it would be unwise to accept the Indian Delegation's proposal since it might be misinterpreted. He wondered if the Indian Delegation could not defer its proposal until it had had the opportunity of examining the United Kingdom amendments.

115. Mr. CHAUDHURI (India) expressed his appreciation of the remarks made by the previous speaker. In submitting his proposal, his main practical aim was to protect nationals of a given State from suffering from any slight procedural errors which might be made by their governments, and at the same time to protect such governments from finding themselves in an embarrassing position as a result of any such errors.

116. The CHAIRMAN suggested that it might be sufficient if the observations just formulated were included in the minutes of the meeting.

117. The Indian Delegation having accepted that proposal, *Paragraph 36 was approved.*

Paragraph 37

118. *Paragraph 37 was approved.*

119. The CHAIRMAN then invited the Plenary Assembly of the Conference to examine document B/DC/35 which constituted an addendum to document B/DC/29.

Paragraph 36bis (document B/DC/35)

120. *Paragraph 36bis was approved unanimously.*

Paragraph 36ter (document B/DC/35)

121. Mr. BOGSCH (First Deputy Director General of WIPO) pointed out that the beginning of item (c) (document B/DC/35, English version only) had been amended by the replacement of the word "returned" by the word "shipped".

122. Mr. WALLACE (United Kingdom) proposed the replacement of the word "shipped" by the word "sent."

123. *It was so decided.*

124. The SECRETARY GENERAL proposed that, in the French text, the item in question should be redrafted to read: "*tous les exemplaires reproduits sont renvoyés en bloc au titulaire de la licence pour être distribués exclusivement dans le pays du titulaire; en outre, le contrat entre le titulaire de la licence et l'établissement qui effectue le travail de reproduction le stipule et prévoit par ailleurs que l'établissement donne sa garantie que le travail de reproduction est autorisé par la loi dans le pays où il est effectué.*"

125. Mr. SAID (Tunisia) thought that the expression "*en bloc*" was unclear and proposed that the text should simply read: "*tous les exemplaires reproduits sont envoyés au titulaire de la licence...*"

126. After a brief exchange of views, *the new wording proposed by the Secretary General for the French version of paragraph 36ter, item (c), with the minor amendment proposed by the Delegation of Tunisia, and with the amendment to the English version consisting in replacing the word "shipped" in the first line by the word "sent", was approved.*

127. *Paragraph 36ter, as amended, was approved as a whole.*

Paragraph 36quater (document B/DC/35)

128. *Paragraph 36quater was approved.*

Paragraph 36quinquies (document B/DC/35)

129. Mr. BOUTET (France) said that the French text of the paragraph was not very clear.

130. After an exchange of views between the French Delegate and the Secretary General, *it was decided to amend the French text of paragraph 36quinquies to read: "Il a été également entendu que les opérations prévues par cet alinéa ne permettent en aucun cas d'apporter des dérogations au droit d'auteur."*

131. Miss RINGER (Observer for the United States of America), speaking on behalf of the Rapporteur of the Universal Copyright Convention who had been a member of the Working Party responsible for preparing the document under discussion, expressed her concern at the number of amendments submitted to the text. The amendment of paragraphs 36ter, 36quater, 36quinquies and 36sexies might lead to serious problems in respect of the Universal Copyright Convention. Those paragraphs had been the subject of general agreement, and it would be regrettable if their amendment led to the re-opening of discussion on them.

The meeting rose at 1.05 p.m.

FOURTH MEETING

Thursday, July 22, 1971, 3.15 p.m.

EXAMINATION OF THE DRAFT REPORT (*continued*)
(document B/DC/35 constituting an Addendum to document B/DC/29)

Paragraph 36quinquies (continued) (document B/DC/35)

132. The SECRETARY GENERAL read out the French version of paragraph 36quinquies with the following new wording: "*Il a été également entendu que ces dispositions n'obligent pas un pays à permettre des opérations qui, selon sa législation nationale, constitueraient une atteinte au droit d'auteur.*" The new wording had the advantage of being more in line with the English version of the same paragraph in the draft report.

133. Mr. BOUTET (France) said that the English version also contained certain obscurities. In particular, the expression "this paragraph" in the first line was not clear. In any event, it was necessary that paragraph 36quinquies should specify that the countries referred to were those which did the work of reproduction.

134. Mr. WALLACE (United Kingdom) agreed with the Secretary General's clarification. He also pointed out that the words "under its law" should be added after "copyright" in the English text.

135. The SECRETARY GENERAL then proposed that paragraph 36quinquies should be drafted as follows: "It was further understood that these provisions do not require any country in which the copies are reproduced to permit what would otherwise be an infringement of copyright under its law." The Spanish and English texts would be amended in accordance with that new wording.

136. *The new text of paragraph 36quinquies as read out by the Secretary General was approved.*

Paragraph 36sexies (document B/DC/35)

137. *Paragraph 36sexies was approved.*

Paragraph 38 (document B/DC/35)

138. Mr. BOGSCH (First Deputy Director General, WIPO) remarked that the wording of paragraph 38 would correspond more closely with that of the Convention itself if the phrase "the culture and education of" was replaced by "teaching, scholarship or research for the benefit of".

139. Mr. WALLACE (United Kingdom) said that his Delegation would not be able to accept paragraph 38 unless it was amended in the way suggested by the First Deputy Director General.

140. Mr. BOGSCH (First Deputy Director General of WIPO), replying to a question by the Indian Delegate, said that his suggestion had been made only with a view to ensuring consistency with the terminology used in the Convention. However, his personal opinion was that it was difficult to conceive of either teaching without culture or culture without teaching.

141. Miss RINGER (Observer for the United States of America) could not agree with the First Deputy Director General that culture and teaching were coextensive. While it was obvious that there could be no teaching without culture, the converse was not necessarily true; for, culture was a far broader concept than teaching.

142. Mr. DA COSTA (Brazil), supported by Mr. KEREVER (France), Mr. SAID (Tunisia), Mr. DE SANCTIS (Italy), Mr. HAARDT (Netherlands) and Mr. GARRIGUES (Spain) said that he was in favor of the simple deletion of paragraph 38 since the object of the licenses was clearly defined in the Convention itself.

143. Mr. ULMER (Germany (Federal Republic of)), speaking as Chairman of the Main Commission, said that paragraph 38 had been introduced in the report to take account of paragraph 3 of the draft text prepared by the Sub-Committee of the Joint Working Party (Berne—UCC) contained in document B/DC/32. However, since, as several delegates had pointed out, the purpose of the licenses was defined in the Convention itself, it would be possible to delete paragraph 38.

144. *Paragraph 38 was deleted.*

145. *The draft report (documents B/DC/29 and B/DC/35), as amended, was approved.*

146.1 Mr. CHAUDHURI (India) stated that over four years ago, history was made at Stockholm when the fusion of two ideas, namely, the protection of literary and artistic works

and the urgent need for the dissemination of works of the human minds, had been given concrete expression in the Stockholm Protocol, which granted developing countries favorable terms for utilization of foreign works for the promotion of education and culture. Unfortunately, the trade interests of some of the developed countries seemed to have prevented the Protocol from coming into effect. His Government, despite its concern about the non-ratification of the Protocol, had been willing to pursue the matter in order to see whether similar concessions could be included in the text of the revised Universal Copyright Convention. When the request for further revision of the Berne Convention had been made, mainly for the benefit of the developed countries, the Indian Government had cooperated and had participated in a series of international meetings held over the past two years. The developing countries no doubt recalled the compromises they had been obliged to make in order to obtain the inclusion in both Conventions of certain minimum provisions granting them easier access to foreign works.

146.2 The Indian Delegation had been authorized to sign the Convention, but had been instructed to make it clear that should the Government of India, after careful study of the Convention, come to the conclusion that the minimum provisions incorporated in the final text did not suit the educational and cultural requirements of India or of the developing countries in general, it would not feel bound by that text. Furthermore, the Indian Government reserved the right to withdraw from either or both of the Conventions.

DRAFT OF THE PARIS ACT (submitted by the Main Commission to the Plenary Assembly) (document B/DC/34)

Preamble

147. *The Preamble was adopted.*

Articles 1 to 27

148. *Articles 1 to 27 were adopted.*

Article 28

149. Mr. REINIŠ (Czechoslovakia), referring to paragraph (2)(a)(ii), said that his Delegation considered it undesirable that the entry into force of the Convention should be dependent on the actions of States that were not members of the Berne Union, and would, therefore, abstain from participating in the adoption of Article 28.

150. *Article 28 was adopted.*

Articles 29 to 36

151. *Articles 29 to 36 were adopted.*

Article 37

152. Mr. KATO (Japan) proposed that the words "the Act" in paragraph (3) be replaced by "this Act".

153. *Article 37, as amended, was adopted.*

Article 38

154. *Article 38 was adopted.*

Appendix

155. The SECRETARY GENERAL said that the French and English versions of Articles II(4)(a)(ii), III(4)(a)(ii) and IV(2) (document B/DC/34) failed to correspond. In these articles, the French text should read: "*la requête soumise par lui à l'autorité qui a compétence pour accorder la licence*" instead of "*la requête soumise par lui à l'autorité compétente en vue d'obtenir la licence*".

Articles I and II

156. *Articles I and II were adopted.*

Article III

157. Mr. ULMER (Germany (Federal Republic of)), speaking as Chairman of the Main Commission, said that, since the French Delegation was not entirely satisfied with the wording of Article III, paragraph (7)(b), it was proposed, with the consent of the Chairman of the Drafting Committee, to make a minor change in the French version of the paragraph, the beginning of which would be amended to read: "*b) Le présent article est également applicable à la reproduction audio-visuelle de fixations licites audio-visuelles en tant qu'elles constituent ou incorporent...*".

158. *Article III, as amended, was adopted.*

Article IV

159. The SECRETARY GENERAL said that, at the end of paragraph 2) in the French version, the expression "*avoir son lieu principal d'activités*" should be replaced by the expression "*avoir le siège principal de ses opérations*", since the latter expression was more in line with French legal terminology.

160. Mr. WALLACE (United Kingdom) and Mr. BOUTET (France) proposed the deletion of the commas appearing, respectively, after the word "application" in the English text of paragraph (2) and after the word *requête* in the French text of that paragraph.

161. *Article IV, with the amendments proposed by the Secretary General and the Delegations of the United Kingdom and France, was adopted.*

Articles V and VI

162. *Articles V and VI were adopted.*

163. *The draft Paris Act (B/DC/34)—considered as a whole—as amended, was adopted.*

164. Mr. STRASCHNOV (Cyprus), in a statement on the way in which his Delegation and, he hoped, the Conference as a whole interpreted the Appendix, said that the principle of national treatment was written into the Convention. In other words, foreign works must receive at least the same degree of protection as was granted to national works. His understanding was, however, that the developing countries might avail themselves of the various relaxations provided for in the Appendix without being obliged to apply those relaxations to their own nationals and to works published for the first time by their nationals and to works published for the first time within their national boundaries. He assumed, for example, that a multi-lingual developing country that introduced compulsory licensing for translation might maintain full exclusive translation and reproduction rights for its nationals.

165. Mr. BOUTET (France), Mr. WALLACE (United Kingdom), Mr. DE SANCTIS (Italy), Mr. GARRIGUES (Spain) and Miss RINGER (Observer for the United States of America) said they could not agree with the interpretation given to the Appendix by the Delegate of Cyprus.

166. Mr. CHAUDHURI (India) remarked that the individual interpretation given by each government to the Convention was not really a question which could be taken up by the Conference, particularly after the adoption of its report.

SECOND REPORT OF THE CREDENTIALS COMMITTEE (document B/DC/30)

167. Mr. ADACHI (Japan), speaking on behalf of the Chairman of the Credentials Committee, read the Committee's second report (B/DC/30) *.

* *Editor's Note:* The text of the Second Report of the Credentials Committee is reproduced on page 115 of these Records.

168. Mr. CHAUDHURI (India) proposed that the words "could be interpreted" in paragraph 3 of the report be replaced by "should be considered".

169. *It was so decided.*

170.1 Mr. HUNEUS (Chile) said that he regretted that the German Democratic Republic had not been invited to take part in the Conference although it was a Member country of the Berne Union and completely up to date in the payment of its contributions. The Delegate of Chile asked that his statement should be included in the General Report; although the Report had already been approved, all that was necessary was to insert the name of Chile in paragraph 4 of the Report.

170.2 Furthermore, the Delegation of Chile considered that the Government of the People's Republic of China was alone competent to send a delegation representing China to the Conference.

171. Mr. CHAUDHURI (India) associated himself with the views expressed by the Delegate of Chile, and requested that a statement to that effect be included in the General Report of the Conference.

172. The SECRETARY GENERAL said that, after the second meeting of the Credentials Committee, the Secretariat, as instructed, had contacted the three Delegations which had not yet deposited their credentials. The Delegation of Bulgaria had announced that it was authorized to attend the Conference for the Revision of the Universal Convention solely in the capacity of observer; the Delegations of Turkey and Uruguay hoped to be able to hand credentials in due form to the Secretariat before the end of the Conference.

173. *The Plenary Assembly of the Conference took note of the Second Report of the Credentials Committee.*

CLOSURE OF THE CONFERENCE

174.1 The CHAIRMAN said that, with the termination of the Diplomatic Conference for the Revision of the Berne Convention, he would like to pay special tribute to those who

had participated in the 1967 Stockholm Conference. The creation of the World Intellectual Property Organization (WIPO), the revision of the provisions governing the Berne Union, and the measures taken in favor of the developing countries were major events which would always be associated with the name of the capital of Sweden where the text whose major guidelines had directed the work of revision at the present Conference had been established.

174.2 The principal objective of the work of revision had been attained: the developing countries now had the possibility either of leaving the Union without being subject to sanctions or of taking advantage of the privileged treatment adapted to their needs.

174.3 A particular tribute should be paid to those developing countries which had been members of the Berne Union for a long time and had endeavoured at the same time to place intellectual values above purely material considerations. Their efforts had enabled them to acquire an intellectual heritage of the utmost value, which gave them a high reputation throughout the world. He was convinced that their example would be followed by other States which preferred a valuable national cultural heritage to the sometimes sterilizing importation of foreign works. Thus, as their development progressed, the Berne Union should prove increasingly attractive to those countries which had initially acceded only to the Universal Copyright Convention.

174.4 The Chairman thanked all those who had helped to ensure the smooth progress of the Conference's work and, in particular, the Chairman of the Main Commission, the Chairman of the Drafting Committee, the Rapporteur General and the Secretary General of the Conference.

174.5 In conclusion, he expressed the hope that the young World Intellectual Property Organization, in close collaboration with Unesco, would strive to ensure the application of the principles of the Union for the benefit of the creation of cultural works and hence for the benefit of the peoples to whom those works were addressed.

The meeting rose at 4.30 p.m.

MAIN COMMISSION

Chairman: Mr. Eugen ULMER (Germany (Federal Republic of))

Rapporteur General: Mr. Ousmane GOUNDIAM (Senegal)

Secretary General: Mr. Claude MASOUYÉ (WIPO)

FIRST MEETING

Monday, July 12, 1971, 11.50 a.m.

ORGANIZATION OF WORK OF THE MAIN COMMISSION

175.1 The CHAIRMAN thanked his colleagues for the honor done to him in appointing him to direct the work of the Main Commission. The Commission's task had been greatly facilitated by the excellent preparatory work carried out by the International Bureau of WIPO on the basis of the proposals of the Permanent Committee. The Main Commission could also take advantage of the recent discussions in the Main Commission of the Conference for the Revision of the Universal Copyright Convention.

175.2 With regard to the work of the Drafting Committee elected during the first plenary meeting (*see* Summary Minutes, paragraphs 34 to 41), he proposed that the members of the Drafting Committee of the Conference for the Revision of the Universal Copyright Convention as well as the Delegation of India, which had requested to do so, should be permitted to attend the meetings of the Committee.

176. *It was so decided.*

STATEMENT ON FOLKLORE BY THE OBSERVER FOR BOLIVIA

177.1 Mr. COSTA DU RELS (Bolivia), speaking as an observer, said that, in the defence and protection of intellectual works, one basic element must not be forgotten: folklore. It was necessary to protect it because, being an anonymous heritage created over the centuries, it was by definition defenceless. The Universal Convention — signed, but not ratified, by Bolivia for reasons of an internal nature—contained no provisions covering folklore, which was regarded, at the international level, as being public property; the recent revival of folklore and its entry in the world market created a serious problem for a large number of countries.

177.2 Many works which rightly belonged to national folklores were attributed to individual authors. He was not referring to works by highly talented composers which were inspired by popular melodies, because those were genuine cases of personal creation, but of minor works transmitted by modern audio-visual media, which were simply transcriptions of melodies collected in different countries and attributed to a particular writer in another country.

177.3 The Delegate of Bolivia recalled that the 1946 Inter-American Copyright Convention, which Bolivia had ratified, covered the case of compilations; anonymous melodies were only exceptionally included in that category. He agreed that the drafters of conventions should not cast doubt on the integrity of composers, but, in view of the existing situation,

it was necessary to review the position and ensure that those who benefitted from copyright were in fact real composers and not mere usurpers of the creations of other people.

177.4 If suitable measures were not taken, he was afraid that there would soon be no more anonymous collections of popular tradition because the melodies they contained would be attributed to people who passed themselves off as the authors. In Bolivia, appropriate measures had been taken at the national level and traditional and anonymous folk music had been made State property. Peru had followed Bolivia's example, but, at the international level, neither Peru nor Bolivia felt protected.

177.5 Since Bolivia had neither ratified the Universal Convention nor acceded to the Berne Convention, he did not feel entitled to demand that the problem of folk music should be taken into account during the revision of the Convention. He nevertheless appealed to copyright experts to consider the matter and to see that it became the subject of an annex to the Convention directly aimed at protecting the folk heritage of nations with a view to defending the legitimate property rights of the anonymous people who created, cultivated and preserved that heritage.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION

Draft Paris Act (document B/DC/5)

Title and Preamble

178.1 The CHAIRMAN invited the Main Commission to examine in detail the Draft Paris Act (document B/DC/5).

178.2 He recalled that, with regard to the title of the revised Convention, the Commission had before it a proposal by the United Kingdom Delegation contained in document B/DC/12.

178.3 At the suggestion of the Delegate of Italy, he invited the Main Commission to postpone a decision on the title until it came to consider Article 37.

179. *It was so decided.*

180. The CHAIRMAN invited the Main Commission to take note of the draft Preamble (document B/DC/5, Draft Paris Act), while reserving its decisions on the title.

181. *It was so decided.*

Articles 1 to 20 (Substantive Provisions)

182. The CHAIRMAN invited the Main Commission to approve unchanged the text of the first twenty articles of the Stockholm Act, which contained the substantive provisions (document B/DC/5, Draft Paris Act, Articles 1 to 20 (Sub-

stantive Provisions)), which the Conference had accepted in principle during its general debate.

183. *It was so decided.*

Article 21 (Reference to the Appendix)

184. The CHAIRMAN invited the Main Commission to approve the Article, which was identical with Article 21 of the Stockholm Act, except that the words "Protocol regarding developing countries" had been replaced by the word "Appendix" *.

185. *It was so decided.*

Articles 22 to 26 (Administrative Provisions)

186. The CHAIRMAN invited the Main Commission to approve unchanged Articles 22 to 26 of the Stockholm Act, which contained the administrative provisions, in accordance with the wish expressed by the Conference during its general debate.

187. *It was so decided.*

Article 27 (Revisions)

188. The CHAIRMAN invited the Main Commission to approve unchanged the text of Article 27 which was identical with Article 27 of the Stockholm Act, except that the words "Protocol regarding developing countries" in paragraph (3) were replaced by the word "Appendix".

189. *It was so decided.*

Article 28 (Ratification or Accession by Countries of the Union; Entry into Force for the Same Countries)

Paragraph (1)(a) and (b)

190. The CHAIRMAN invited the Main Commission to approve paragraph (1)(a) and (b) of Article 28, the text of which was identical with the text of the corresponding provision in the Stockholm Act.

191. *It was so decided.*

Paragraph (1)(c)

192. The CHAIRMAN pointed out that the text of paragraph (1)(c) of Article 28 was ambiguous since it might give the impression that the countries of the Union were free to accept or refuse any of the first twenty-one articles. In reality, however, those substantive provisions formed a whole; countries, therefore, had the choice only of accepting or refusing them *en bloc*. He proposed that the Main Commission should approve the substance of paragraph (1)(c), while requesting the Drafting Committee to find a less ambiguous wording.

193. *It was so decided.*

Paragraph (2)(a)

194. The CHAIRMAN invited the Main Commission to approve paragraph (2)(a)(i) of Article 28.

195. *It was so decided.*

196. The CHAIRMAN said that he would suggest that the United States of America should not be mentioned in paragraph (2)(a)(ii) because it might seem surprising to make it a condition for the entry into force of the Berne

Convention that another international instrument should be ratified by a State which was not a Member of the Berne Union.

197. Mr. STRASCHNOV (Cyprus) recalled that ratification of the Universal Copyright Convention by the four countries listed had been one of the conditions of the Washington Recommendation. The United States of America had been included on account of the important contribution it could make to raising the educational standards of the developing countries, especially in the field of technological works. It did, however, appear unusual that the entry into force of the Berne Convention should depend on the ratification of the Universal Copyright Convention by a State which was not a member of the Berne Union, and on reflection he considered it preferable to delete the reference to the United States of America from Article 28(2)(a)(ii).

198. Mr. BALAKRISHNAN (India) maintained the original view of the developing countries concerning the importance of retaining the reference to the United States of America in the text. He found nothing unsuitable or unacceptable in doing so.

199. Mr. REINIŠ (Czechoslovakia) believed it preferable to delete the reference to the United States of America.

200.1 Mr. DE SANCTIS (Italy) said that the anomaly pointed out by the Chairman showed how right Italy had been in demanding for a long time past that juridical links should be established between the two Conventions, which were particularly important for the developing countries. His country's suggestion had unfortunately not been adopted.

200.2 He said that he was willing to rally to the majority view.

201. Mrs. STEUP (Germany (Federal Republic of)) said that she wondered whether it was legitimate to include among the conditions for the entry into force of the revised Berne Convention the ratification of another Convention by a country (for example, the United States of America) which was not a Member of the Berne Union. She would not, however, oppose that provision if the developing countries considered it essential that the United States of America should ratify the Universal Copyright Convention, as they had stipulated in the Washington Recommendation.

202. Mr. CHAUDHURI (India) suggested that the Commission defer taking a decision on the matter until the developing countries had had the opportunity of agreeing on a common attitude towards it.

203. *It was so decided.*

Paragraphs (2)(b)(c) and (d)

204. The CHAIRMAN invited the Main Commission to approve the provisions of paragraphs (2)(b), (c) and (d) of Article 28.

205. *It was so decided.*

Paragraph (3)

206. The CHAIRMAN invited the Main Commission to approve paragraph (3) of Article 28.

207. *It was so decided.*

Article 29 (Accession by Countries Outside the Union; Entry Into Force for the Same Countries)

Paragraph (1)

208. The CHAIRMAN invited the Main Commission to approve unchanged paragraph (1) of Article 29 of the Stockholm Act.

209. *It was so decided.*

* Editor's Note: See document B/DC/5, Introductory Observations, paragraph 13.

Paragraph (2)(a)

210. The CHAIRMAN invited the Main Commission to approve paragraph (2)(a) of Article 29 (document B/DC/5).

211. *It was so decided.*

Paragraph (2)(b)

212. The CHAIRMAN pointed out that the Main Commission had to choose between the two passages in square brackets, which were equivalent. Supported by Mr. WALLACE (United Kingdom), he proposed that the Main Commission should approve the first variant—"in the meantime"—while requesting the Rapporteur General to state in his report that that phrase was to be interpreted in the sense of the second passage in square brackets.

213. *It was so decided.*

Article 29bis (Reference to Article 14 of the WIPO Convention) (documents B/DC/5 and B/DC/13)

214. The CHAIRMAN recalled that WIPO had proposed the insertion of this new article in the hope of solving the difficulties pointed out by the Delegation of Japan at the session of the Berne Union Assembly in September 1970, which were set out in the commentary on Article 29bis in document B/DC/5 (Draft Paris Act). The United Kingdom Delegation had proposed another solution in document B/DC/13.

215.1 Mr. AUST (United Kingdom), introducing document B/DC/13 to the Commission, said that his Delegation had discussed the problem it had endeavoured to solve in its proposed amendment with the Secretariat of WIPO, and had concluded first of all that the suggested text of Article 29bis would be inapplicable in practice and, secondly, that the only legally watertight solution to the problem involved would be the amendment of Article 14(2) of the Convention Establishing the World Intellectual Property Organization.

215.2 The problem was a procedural one. Article 14(2) of the WIPO Convention stipulates, *inter alia*, that States party to the Berne Convention might only become party to the WIPO Convention after they had ratified or acceded to the Stockholm Act of the Berne Convention in its entirety or with the limitation set forth in Article 28(1)(b)(i). Article 34 of the Draft Paris Act (document B/DC/5), on the other hand, provided that once Articles 1 to 21 and the Appendix had entered into force, no country might accede to earlier Acts of the Convention. The adoption of that suggested Article 34 would lead to a situation in which a member State of the Berne Union which had not ratified or acceded to the Stockholm Act would be unable, according to Article 14(2) of the WIPO Convention, to become a party to the WIPO Convention, unless it became a party to the Stockholm/Paris Act. To solve that difficulty, Article 34 of the Paris Act (document B/DC/5) had been drafted in such a way as to make it subject to Article 29bis, which provided that ratification of or accession to the Act by any country not bound by Articles 22 to 38 of the Stockholm Act should, for the sole purposes of Article 14(2) of the Convention establishing the World Intellectual Property Organization, imply ratification of or accession to the Stockholm Act. His Delegation understood that provision to mean that ratification of the Paris Act by a country not bound by the administrative provisions of the Stockholm Act was deemed to amount to ratification of the administrative provision of the Stockholm Act. Article 14(2) of the WIPO Convention, however, contained no reference to such an eventuality, and his Delegation believed it impossible to construe that Article

in the way suggested by the WIPO Secretariat. The only satisfactory solution would be the amendment of Article 14(2) of the WIPO Convention. Such a step, however, could only be taken by the WIPO General Assembly, and in the meantime his Delegation wondered whether the best way out of the dilemma would be to fall back on the argument contained in the second paragraph of document B/DC/13 to the effect that Article 29bis would be effective as between States party both to the Paris Act and to the WIPO Convention.

216. Mr. BOGSCH (First Deputy Director General, WIPO) aged with the previous speaker that any solution reached, short of modifying the WIPO Convention, was bound to be somewhat curious from the legal point of view. The main difference between the United Kingdom proposal and that of the WIPO Secretariat was that the adoption of the United Kingdom proposal would mean that a State wishing to accede to the 1971 Convention would be required to ratify two Acts, the Stockholm Act and the Stockholm/Paris Act, and in addition would be required to file an explanatory declaration, whereas adoption of the WIPO proposal would mean that such a State would be required to ratify a single Act—the Stockholm/Paris Act. Neither proposal was entirely satisfactory from the legal point of view, but the WIPO Secretariat believed the text proposed in Article 29bis to be the most suitable since it had the advantage of calling for the simplest procedure.

217. Mrs. STEUP (Germany (Federal Republic of)), supported by Mr. BOUTET (France), accepted the proposal of the WIPO which, although imperfect from the legal standpoint, had, however, the advantage of simplicity.

218.1 Mr. KATO (Japan) agreed in general with the substance of Article 29bis, which would indeed provide the simplest solution to the problem his Delegation had raised. He did, however, have some difficulty in accepting the legal fiction the WIPO Secretariat had resorted to in suggesting that ratification of or accession to the Paris Act would "imply ratification of or accession to" the Stockholm Act, for he doubted if it would be sufficient to overcome the difficulties encountered by States party to the WIPO Convention but not members of the Berne Union. He suggested that the Conference might invite the General Assembly of WIPO to adopt a resolution to the effect that it accepted the legal fiction explained in the comments on draft Article 29bis (document B/DC/5) as valid, or alternatively that it replace the word "imply" by a more suitable term.

218.2 He welcomed the United Kingdom amendment but wondered if it would be possible for a State not a member of the Berne Union or a party to the WIPO Convention and wishing to accede to them, to accede first to the Paris Act and subsequently to the administrative provisions of the Stockholm Act—that problem might be solved if such a State were to accede to the WIPO Convention first and to the Berne Convention later. In general he was inclined to support the United Kingdom proposal, but if the legal difficulties arising from the drafting of Article 29bis (document B/DC/5) were solved, his Delegation would not press for an amendment of that Article.

219. Mr. DE SANCTIS (Italy) said that the only legally correct solution would be to amend the WIPO Convention. Failing that, the wisest course was to apply the simplest formula and adopt the new Article 29bis as proposed by WIPO. He was afraid, however, that the word "imply" was ambiguous. He wondered whether the Drafting Committee could not find a more satisfactory wording.

The meeting rose at 1.10 p.m.

SECOND MEETING

Monday, July 12, 1971, 3.15 p.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (*continued*)

Draft Paris Act (document B/DC/5) (continued)

Article 29bis (Reference to Article 14 of the WIPO Convention) (documents B/DC/5 and B/DC/13) (continued)

220.1 The CHAIRMAN recalled that the delegates had to choose between two proposals: the draft Article 29bis submitted by WIPO (document B/DC/5) and the draft amendment submitted by the United Kingdom Delegation (document B/DC/13), which suggested that the question should be settled, not in Article 29bis, but in Article 34. From a legal standpoint, neither of the two proposals was entirely satisfactory. The United Kingdom proposal had the drawback of complicating the procedure because parliaments would have to ratify both the Stockholm Act and the Paris Act. It therefore seemed preferable to adopt the text prepared by WIPO for Article 29bis. The word "imply" which appeared in that text was acceptable and there might be some risk in changing it.

220.2 The suggestion by the Japanese Delegation concerning a declaration by the General Assembly of WIPO on the interpretation to be given to Article 14(2) of the WIPO Convention seemed a good one; in the event of disagreement in the General Assembly, the article in question could be slightly amended. Subject to such a declaration, he proposed that the delegates should adopt the text proposed for Article 29bis (document B/DC/5).

221. Mr. WALLACE (United Kingdom) agreed entirely with the Chairman's summing up and said that, if the Japanese Delegation was satisfied, his Delegation was prepared to withdraw its proposal.

222. Mr. KATO (Japan) said that the Chairman's suggestion was acceptable to his Delegation.

223. Mr. BOUTET (France) said that he was prepared to support the Chairman's proposal. He wondered, however, whether it would not be better to replace the word "imply" by the words "be equivalent to".

224. The CHAIRMAN said that that question would be considered by the Drafting Committee.

225. *Article 29bis was approved on the understanding that the question of the interpretation of Article 14(2) of the WIPO Convention would be raised in the WIPO General Assembly.*

Article 30 (Reservations)

226. *Article 30 was approved subject to a number of purely drafting amendments.*

Article 31 (Territories)

227. Mr. HAARDT (Netherlands) suggested that the word "such" in Article 31(3)(a) be replaced by the word "that".

228. *Article 31 was approved subject to drafting changes.*

Article 32 (Earlier Acts)

229. *Article 32 was approved.*

Article 33 (Disputes)

230. *Article 33 was approved.*

Article 34 (Closing of Earlier Acts)

231. Mr. KATO (Japan) remarked that Article 34(1) referred only to accession, and suggested that a reference to ratification should be added at an appropriate place in that paragraph.

232. Mr. DITTRICH (Austria) said that in his country, the opinion had been expressed on certain occasions that the phrase "as from the same event" in paragraph (2) was a little ambiguous. While not pressing the point, he suggested that the Drafting Committee might consider the possibility of replacing those words by a more specific phrase.

233. The CHAIRMAN said that the question raised by the Austrian and Japanese Delegates would be considered by the Drafting Committee.

234. *Article 34 was approved subject to a number of purely drafting amendments.*

Article 35 (Denunciation)

235. *Article 35 was approved.*

Article 36 (Domestic Legislation) (documents B/DC/5 and B/DC/10)

236. Mr. DITTRICH (Austria) introduced the amendment proposed by his Delegation (document B/DC/10).

237. *The amendment proposed in the document B/DC/10 was adopted.*

238. *Article 36, as amended, was approved.*

239. Mr. DITTRICH (Austria) remarked that a certain number of countries had adopted the principle that ratified conventions should become part of the internal national legislation. There had been some discussion in his country as to whether the text of paragraph (1) of Article 36 excluded the possibility of self-executing agreements. He suggested that a statement should be included in the Report of the Conference to the effect that that paragraph did not exclude the possibility that the Convention might be self-executing.

240. Mr. BODENHAUSEN (Director General of WIPO) said that a provision analogous to that of Article 36 existed in the Universal Convention and in the Paris Convention on the Protection of Industrial Property; it had never been considered as excluding the possibility of the provisions of those two Conventions being self-executing. As the Austrian Delegate suggested, it might be stated in the Report that the same applied to the Paris Act now being prepared.

Article 37 (Signature, etc.) (documents B/DC/5 and B/DC/12)

Paragraph (1)(a) (documents B/DC/5 and B/DC/12)

241. Mr. WALLACE (United Kingdom), introducing the amendment contained in document B/DC/12, said that his Delegation's only concern was that the name of Stockholm should continue to be associated with the text, the substantive parts of which had been negotiated at Stockholm. It mattered little to his Delegation how that object was achieved; what was important was that the Act should be known in practice as the Stockholm/Paris Act.

242.1 Mr. BOUTET (France) said that there could be no question of forgetting the work done by the Stockholm Conference, but that he could not support the proposal by the United Kingdom Delegation which was contrary to established traditions.

242.2 All that was needed to highlight the particular importance of the Stockholm Act was to add the words "... and emphasizing the importance of the work of revision accomplished by the Stockholm Conference" at the end of the first paragraph of the Preamble of the Berne Convention. That would be the best way to proceed.

243. Mr. DE SANCTIS (Italy) said that most of the articles of the new Act would be identical with those of the Stockholm Act. As he had said at an earlier meeting, the Italian Delegation was prepared to accept the title "Paris Act"; and in any event it would accept the majority decision.

244. Mr. CHAUDHURI (India), Mr. DAYRELL DE LIMA (Brazil), Mr. DE SAN (Belgium), Mr. AMRI (Tunisia) and Mr. ALIHONOU (People's Republic of the Congo) supported the proposal of the French Delegate.

245. Mr. HARKINS (Australia) said that his Delegation, while supporting the spirit of the United Kingdom proposal, accepted the logic of the suggestion by the French Delegation that a reference should be made in the Preamble of the Convention.

246. Mr. DITTRICH (Austria) said that although both the French and the United Kingdom proposals were acceptable, his Delegation favoured the latter.

247. Mrs. STEUP (Germany (Federal Republic of)) and Mr. HAARDT (Netherlands) said that, although the United Kingdom proposal seemed to have certain advantages, their Delegations were prepared to support the proposal of the French Delegation, which most delegates seemed to prefer.

248. Mr. GARRIGUES (Spain) said that he thought the United Kingdom and French proposals equally acceptable. He was inclined, however to support the statement by the Delegation of Austria, which was in favour of the United Kingdom proposal.

249. Mr. LARREA RICHERAND (Mexico) said that, in his view, the revised text of the Berne Convention which the Conference was in process of adopting, should be called the "Paris Act", with a reference in the Preamble to the Stockholm Conference.

250. Mr. WALLACE (United Kingdom) said that his Delegation was prepared to withdraw its proposal, on the understanding that the Drafting Committee would be given the necessary latitude to consider how the text to be inserted in the Preamble could most appropriately be worded.

251.1 The CHAIRMAN said that he was not sure whether the passage proposed by the French Delegation should be added at the end of the first paragraph of the Preamble, because the second paragraph mentioned revision conferences which were earlier than the Stockholm Conference. Perhaps it would be best to insert the passage in the last paragraph of the Preamble, before the words: "have agreed as follows":

251.2 With the agreement of Mr. BOUTET (France), he proposed that the Drafting Committee should be asked to consider the matter and to propose a final version of the insertion.

252. *It was so decided.*

Paragraph (1)(b) (document B/DC/5)

253. Mr. SAÏD (Tunisia) proposed that Arabic should be added to the list of languages mentioned in the paragraph.

254. *It was so decided.*

255. *Paragraph (1)(b) of Article 37, as amended, was approved.*

Paragraphs (1)(c), (2), (3) and (4) (document B/DC/5)

256. *Paragraphs (1)(c), (2), (3) and (4) of Article 37 (document B/DC/5) were approved.*

Paragraph (5) (document B/DC/5)

257. Mr. HAARDT (Netherlands) said that Article 38(1) should be added to those mentioned at the end of Article 37, paragraph (5).

258. The SECRETARY GENERAL said that the reference to Article 38(1) was implicit, but the Drafting Committee might study the desirability of mentioning it explicitly. Although the corresponding reference had not been made in the Stockholm Act, the Director General of WIPO had always notified the Governments of all countries of the Union of declarations concerning the "five-year privilege" (see Article 38(2) of the Berne Convention).

259. Mr. DA COSTA (Brazil) said that the completion of paragraph (5) of Article 37 should be left to the Drafting Committee because it would be necessary to insert a reference to the other notifications specified in the Appendix.

260. The CHAIRMAN proposed that the Drafting Committee should be instructed to prepare a new text which would subsequently be submitted for consideration to the Main Commission.

261. *It was so decided.*

Article 38 (Transitional Provisions) (document B/DC/5)

262. *Article 38 (document B/DC/5) was approved.*

Appendix (Provisions Regarding Developing Countries) (documents B/DC/5, B/DC/9 and B/DC/16)

263. The CHAIRMAN invited the delegates to consider certain questions concerning the Appendix and, in particular, the proposals by the Delegation of the United Kingdom concerning paragraphs (7) and (9) of Article II of the Appendix (documents B/DC/9 and B/DC/16).

264. Mr. STRASCHNOV (Cyprus) considered that certain of the amendments proposed to the Appendix to the Draft Paris Act, in particular, those submitted by the United Kingdom (documents B/DC/9 and B/DC/16), raised extremely important questions and might even jeopardize the entire "package deal" negotiated at Geneva. Discussion of those proposals should, therefore, be postponed until the developing countries had had the opportunity to discuss the matter among themselves.

265. Mr. WALLACE (United Kingdom) pointed out that the proposals contained in documents B/DC/9 and B/DC/16 were very limited in scope, relating only to cases where a country had ceased to be regarded as a developing country. It was, he felt, a gross exaggeration to say that those proposals jeopardized the entire agreement.

The meeting rose at 4.15 p.m.

THIRD MEETING

Thursday, July 15, 1971, 10.15 a.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (continued)

Amendments to the text of the draft Paris Act contained in document B/DC/5 (document B/DC/24)

266. The CHAIRMAN drew the Main Commission's attention to document B/DC/24 in which, on the basis of previous discussions and of the proposals to the Diplomatic Conference for Revising the Berne Convention, the WIPO Secretariat presented texts amending or replacing some of those in document B/DC/5. The amendments relating to parts of the text other than the Appendix would not be discussed for the present because they would be submitted

direct to the Drafting Committee (except, however, for Article 28, which would be considered in the Main Commission at a later meeting). He, therefore, invited the Main Commission to consider the new text proposed for the Appendix in document B/DC/24 paragraph by paragraph.

Appendix

Article I (document B/DC/24)

Paragraph (1)

267. The CHAIRMAN said that the lines in square brackets did not appear in the corresponding article of the Universal Convention; it was not a question of defining a "developing country", but of specifying that it was for individual developing countries to decide whether or not they wished to make use of the reservations provided in the Convention.

268. Mr. STRASCHNOV (Cyprus) pointed out that the text in square brackets appeared in the Protocol, and did not form part of a definition of a developing country. While he had no strong feelings about the matter, he felt that since the text added nothing new it could be deleted as unnecessary.

269. Mrs. STEUP (Germany (Federal Republic of)) supported the proposal of the Delegate of Cyprus.

270. Mr. BODENHAUSEN (Director General of WIPO) thought that on the contrary the text did add a new element. Each country considered to be a developing country in accordance with United Nations criteria remained free to decide whether or not to make use of the provisions under discussion. The text in square brackets suggested an additional criterion and was thus not superfluous; the Secretariat had, therefore, a slight preference in favor of its retention.

271. Mr. FERNANDO (Ceylon) asked whether, on the assumption that the text in square brackets was deleted, there existed any established practice of the General Assembly of the United Nations regarding the definition of a developing country. If there were no such established practice, it would be preferable to retain the text.

272. The CHAIRMAN said that the question had been raised on numerous occasions and that a document * prepared by the WIPO Secretariat to clarify the situation had been distributed for the information of delegates.

273. Mr. GABAY (Israel) asked whether the information document referred to by the Chairman was based on United Nations criteria.

274. Mr. BODENHAUSEN (Director General, WIPO) said that the information document had been produced on the basis of a considerable volume of correspondence with the United Nations Secretariat requesting advice on the criteria used by the United Nations. While the document was by no means perfect, it set out a simple criterion for the use of developing countries.

275. Mr. GABAY (Israel) emphasized that the point at issue was whether the definition provided of a developing country was that used by the United Nations. There was nothing in the report of the Committee on Contributions to the twenty-fifth session of the General Assembly which indicated that the category of countries with a *per capita* income under \$300 a year comprised all the developing countries. Israel considered the figure of \$300 a year to be too rigid a criterion, which excluded certain categories of countries from benefits they should be entitled to enjoy under the Berne Convention.

276. Mr. DITTRICH (Austria) said that the Delegation of Austria had a slight preference for retaining the text in square brackets.

277. Mr. BALAKRISHNAN (India) thought that it would be preferable to delete the text in square brackets in order to avoid creating a difference between the Berne and the Universal Copyright Conventions.

278. Mr. GROMPONE (Uruguay) said that, although it was a question of minor importance, he was in favor of maintaining the passage in square brackets because it was in line with a principle which the Uruguayan Delegation had supported on a number of occasions, to the effect that account must be taken of cultural as well as of economic factors.

279. Mr. ALVAREZ DE TOLEDO (Argentina) supported the Delegate of Uruguay.

280. Mr. BODENHAUSEN (Director General, WIPO) noted that two questions were involved, firstly whether the text in square brackets should be deleted and secondly, the point raised by the Delegate of Ceylon as to whether the criterion indicated was based on United Nations practice. He suggested that the WIPO Secretariat should study the latter point further, in cooperation with Unesco with a view to obtaining a better definition of the established practice in the General Assembly.

281. Mr. BALAKRISHNAN (India) thought that the point raised by Ceylon concerned a much wider forum than the Conference for the revision of the Berne Convention. The United Nations definition of a developing country was applicable for a wide variety of purposes, not only in connection with copyright, and it was inappropriate for discussion by the Conference.

282. Mr. FERNANDO (Ceylon), agreeing with the Delegate of India, said that he merely wished to make the point that, should the text in square brackets be deleted, it would be necessary to make clear what criteria would be applied.

283. Mrs. STEUP (Germany (Federal Republic of)) thought that if an additional criterion was to be adopted it should be included in both Conventions in identical terms.

284. The CHAIRMAN put to the vote the retention or deletion of the lines in square brackets.

285. *By 11 votes in favor to 9 against, with 14 abstentions, it was decided to retain the lines in square brackets in Article I(1) of the Appendix as given in document B/DC/24.*

286. Mr. WALLACE (United Kingdom) asked whether it was the feeling of the meeting that the text should also be included in the revision of the Universal Copyright Convention.

287. The CHAIRMAN said that that point should be left for consideration to the Conference for the Revision of the Universal Convention.

288. *Article I, paragraph (1) (document B/DC/24) with the passage in square brackets was approved without opposition.*

Paragraph (2)

289. Mr. BOGSCH (First Deputy Director General, WIPO) said that it might be argued that the text in square brackets (document B/DC/24, Article I(2)) was superfluous, in that it was stated in paragraph (1) that the declaration might be made by a country "at the time of depositing its instrument of ratification ... or ... at any time thereafter." He nevertheless considered that it added a desirable clarification as to the periods of ten years, and suggested that the Drafting Committee be requested to express it in a more appropriate way.

290. The CHAIRMAN said that he thought it would be useful to retain the sentence in square brackets, the definitive formulation of which could be left to the Drafting Committee.

291. *Subject to drafting amendments, Article I, paragraph (2) (document B/DC/24) was approved without opposition.*

* *Editor's Note:* Document DA/29/2 of December 28, 1968.

Paragraph (3)

292. The CHAIRMAN proposed that the words in square brackets at the beginning of the paragraph should be deleted.

293. *Article I, paragraph (3) (document B/DC/24), as amended, was approved without opposition.*

Paragraph (4)

294. The CHAIRMAN proposed that it should be left to the Drafting Committee to decide whether or not the words in square brackets (document B/DC/24) should be retained.

295. *With that reservation, Article I, paragraph (4) (document B/DC/24) was approved without opposition.*

Paragraph (5)

296. *Article I, paragraph (5) (document B/DC/24) was approved without opposition.*

Paragraph (6)(a)

297. The CHAIRMAN said that it had been considered necessary to mention explicitly in this paragraph that all material reciprocity was excluded; that had not been done in the Universal Convention, but the context of the two Conventions was not identical. Furthermore, while the point was not mentioned in the Berne Convention itself, it did appear in the Appendix.

298. Mr. KEREVER (France) said that the legal framework of the Berne Convention was different from that of the Universal Convention. Nevertheless, he thought it desirable to specify, for example in the General Report, that the words "less protection ... than is provided for in Articles 1 to 20" was without prejudice to the provisions of Article 7 of the Convention.

299. Mr. WALLACE (United Kingdom) fully supported the comment by the Chairman.

300. The CHAIRMAN proposed that the proposed clarification should be included in the General Report of the Conference.

301. *It was so decided.*

302. *Article I, paragraph (6)(a) (document B/DC/24) was approved without opposition.*

Paragraph (6)(b)

303. Mr. LARREA RICHERAND (Mexico) said that, in the Spanish text, the word *por* should be replaced by the words *en el caso de*.

304. Mr. BOGSCH (First Deputy Director General, WIPO) pointed out that at the end of paragraph (6)(b), reference should be made, not to paragraph (1) of Article I, but to Article II, because the question here referred only to translation rights. The Drafting Committee would no doubt deal with this matter.

305. *Subject to the above-mentioned reference, Article I, paragraph (6)(b) (document B/DC/24) was approved without opposition.*

*Article II (document B/DC/24)**Paragraph (1)*

306. Mrs. STEUP (Germany (Federal Republic of)) doubted whether the words "and availing itself" were necessary, and suggested that the matter be referred to the Drafting Committee.

307. The CHAIRMAN proposed that the beginning of the paragraph should be amended to read: "Any country entitled to avail itself of the faculty provided ...", the rest remaining unchanged.

308. *Article II, paragraph (1) (document B/DC/24), as amended, was approved without opposition.*

Paragraph (2)

309. Mr. KULKARNI (India), commenting on the phrase "any national of such country may obtain a license," assumed that each country was free to define the term "any national." In India's view, the term should be interpreted to include both physical and legal persons, and that interpretation should be included in the General Report of the Conference.

310. The CHAIRMAN recalled that it had been decided to insert a similar remark in the Report of the Conference on the Revision of the Universal Copyright Convention. Since one could not have recourse to domestic legislation in interpreting an international convention, it might be best in the present case, to explain that a "national" might mean either an individual or a legal entity.

311. Mr. SAÏD (Tunisia) proposed that, to bring the texts of the two Conventions into line, paragraph (2) should specify that it referred to a translation which had not been published in "a language in general use in the country issuing the license".

312. Mr. LUTÉTÉ (People's Republic of the Congo) supported the Delegate of Tunisia.

313. The CHAIRMAN pointed out that the expression "the language or languages of the country" already occurred in Article 30(2)(b) of the Berne Convention, which was a wording of very long standing. It was true that the words used in Article V, paragraph (2), of the Universal Convention were: "the national language or, where applicable ... one of the national languages of a Contracting State", but that formula had proved unsatisfactory. The proposal of the Tunisian Delegate had certain advantages, but could one speak of a language being "in general use" when the use of the language was confined to part of the country in question?

314. Mr. KEREVER (France) supported the Tunisian Delegate's proposal which would make the text more precise. There was nothing to prevent the amendment of a terminology which no longer corresponded to the current situation.

315. Mr. WALLACE (United Kingdom) thought that the phraseology used was the best which could be obtained, and the nearest possible assimilation to that used in Article V of the Universal Copyright Convention. Any change would entail a considerable amount of redrafting, perhaps even of Article V itself. It would therefore be preferable to leave the text unchanged, while explaining in the Report that there was no difference in conception between the two Conventions.

316. Mr. DE SANCTIS (Italy) said that he wished to reaffirm the position of the Italian Administration which thought it would be undesirable to provide for different treatment for different languages, whether or not such languages were in general use.

317. Mr. KULKARNI (India) supported the proposal of the Delegate of Tunisia.

318. Mrs. STEUP (Germany (Federal Republic of)) said that she would prefer to see the phraseology of Article 30 used in paragraph (2) of Article II of document B/DC/24, with a clarification in the Report.

319. Mr. HAARDT (Netherlands) supported the views expressed by the Chairman and the Delegates of the United Kingdom and the Federal Republic of Germany.

320. Mr. KEREVER (France) again declared himself in favor of the proposal of the Delegate of Tunisia, pointing out the differences of a drafting nature which existed between the terms used in the two Conventions.

321. Mr. GABAY (Israel) supported the proposal that reference should be made in the text to the language or languages "in general use".

322. Mr. BODENHAUSEN (Director General, WIPO) made two points. Firstly, if the proposal by the Delegation of Tunisia were adopted, the text would be different from that used in the Universal Copyright Convention, whereas the purpose of the two Conferences was to create parallel systems. Secondly, with regard to the comment by the Delegate of India, India had a very large number of languages, of which only a few were in general use. The best solution might be to use the term "languages" or "national languages" and explain in the General Report of the Conference that the term covered both languages in general use and those used territorially in a country applying the provision.

323. Mr. CHAUDHURI (India) proposed that further discussion be postponed pending an informal study of the question.

324. The CHAIRMAN proposed that the Main Commission should revert to the question later.

325. *That proposal was adopted.*

Paragraph (3)

326. *Article II, paragraph (3) (document B/DC/24), was approved without opposition.*

Paragraph (4) (documents B/DC/19 and B/DC/24)

327. The CHAIRMAN pointed out that the first sentence of Article II, paragraph (4) in document B/DC/24 appeared as Article II, paragraph (5) in document B/DC/5, and that the second sentence was based on the proposal by the Swedish Delegation in document B/DC/19.

328. Mr. GABAY (Israel) recalled that when the Swedish proposal had been discussed, the word "further" when used for the first time had been deleted; in other words, it had been made clear that the period of six months was consecutive on the period of three years. He suggested the word "further" in the beginning of Article II(4), should be similarly deleted.

329. The CHAIRMAN said that the word "further" had been maintained in this Article, which dealt with translation rights, but that it did not appear in the provisions concerning reproduction rights.

330. Mr. CHAUDHURI (India) asked that it be included in the Report that India's interpretation was that the period should be concurrent, and not consecutive.

331. Mr. KEREVER (France) said that from the discussions in the Main Commission of the Conference for the Revision of the Universal Copyright Convention it had emerged that the further period stipulated in regard to an applicant for permission to translate started to run after the expiry of the normal period starting from the first publication of the work.

332. The CHAIRMAN said that that was the correct interpretation of the wording of the paragraph. He recalled, however, that the Delegate of India had already requested that this interpretation should be included in the Report of the Conference for the Revision of the Universal Convention.

333. *Article II, paragraph (4) (document B/DC/24) was approved without opposition.*

Paragraph (5) (documents B/DC/17 and B/DC/5)

334. The CHAIRMAN recalled that the Delegation of Ceylon had proposed in document B/DC/17 that paragraph (5) of

Article II should be amended to read: "Any license under the preceding paragraphs shall be granted only for the purpose of teaching, scholarship, research or promotion of culture."

335. Mr. WALLACE (United Kingdom) noted that a fundamental change was being proposed. Recalling that the "package deal" had concentrated on requirements for educational purposes, he said that the United Kingdom could not agree to the proposed addition.

336. Mr. KEREVER (France) said that he agreed with the United Kingdom Delegate that any change in the field of application of reservations was unacceptable.

337. Mr. FERNANDO (Ceylon) said that in view of the arguments put forward he had no alternative but to withdraw the amendment.

338. *Article II, paragraph (5) of the Appendix was approved in the form in which it appears in document B/DC/24.*

Paragraph (6)

339. *Article II, paragraph (6) (document B/DC/24) was approved without opposition.*

Paragraph (7)

340. *Article II, paragraph (7) (document B/DC/24) was approved without opposition.*

Paragraph (8)

341. *Replying to a question by the Chairman*, Mr. STRASCHNOV (Cyprus) said that while he was not the author of subparagraph (8)(a)(iv), he understood that the intention behind it was that it referred to a license to translate exclusively for broadcasting purposes. It should if possible cover all the schools in a particular country, and might, therefore, be granted to more than one broadcasting organization in a particular country. He suggested that the Drafting Committee should redraft paragraph (8)(a)(iv) to indicate that, with the permission of the organization which had received the license to translate, other broadcasting organizations in the same country might use the translation in a recorded form, always provided, of course, that they had the right to broadcast.

342. Mr. ALVAREZ DE TOLEDO (Argentina) said that, as he had already stated during the discussions at the Conference for the Revision of the Universal Copyright Convention, the problem of broadcasting licenses—which had not been dealt with in the revised draft—required further consideration by governments.

343. Mr. KEREVER (France), referring to the phrase "any text incorporated in an audio-visual fixation", which occurred in Article II, paragraph (8)(b) (document B/DC/24), said that, during the discussion on the definition of an "audio-visual work" in the Main Commission of the Conference for the Revision of the Universal Copyright Convention, it had been suggested that it should be defined as being "any text incorporated in an audio-visual fixation of a work protected by [the said] Convention". He suggested that that wording should be adopted here too because the existing wording suggested that it was not so much the work which was protected as the audio-visual fixation which served as its support.

344. Mr. DE SANCTIS (Italy) said that he was afraid that there would be certain drawbacks, in the present case, about putting the words "text" and "work" side by side; he would prefer the formulation proposed in document B/DC/24.

345. Mr. KEREVER (France) said that he understood the anxiety of the Italian Delegate and he would not insist on the amendment of Article II, paragraph (8)(b). But he hoped

very much that the wording he had just suggested would be introduced into Article *Vquater* of the Universal Copyright Convention and into Article 3 of the Berne Convention.

316. Mr. WALLACE (United Kingdom) suggested that the question be deferred for discussion at a later date.

347. *It was so decided.*

348. *Article II, paragraph (8) (document B/DC/24) was approved subject to drafting amendments.*

Paragraphs (9), (10) and (11) (documents B/DC/5, B/DC/9, B/DC/16 and B/DC/24)

349. The CHAIRMAN drew the Main Commission's attention to the proposed amendments submitted by the United Kingdom Delegation in documents B/DC/9 and B/DC/16. Those proposals had been made previous to the publication of document B/DC/24 and they, therefore, referred to document B/DC/5.

350. Mr. BOGSCH (First Deputy Director General, WIPO) invited the Delegate of the United Kingdom to comment on his proposals in documents B/DC/9 and B/DC/16, some of which, it seemed to him, had already been taken care of in the new texts proposed in document B/DC/24 to replace some of those which appeared in document B/DC/5.

351. Mr. ARMITAGE (United Kingdom) agreed that the new text proposed in Article II(9) of the Appendix in document B/DC/24 covered the first point raised by the United Kingdom Delegation concerning Articles II(7)(a)(i) of the Appendix in document B/DC/5 (documents B/DC/9 and B/DC/16), although he would still like to propose minor drafting changes, which could perhaps be referred to the Drafting Committee. As regards the second proposal of the United Kingdom Delegation, referring to Article II(9) of the Appendix in document B/DC/5 (the substance of which had now been incorporated in Article II(11) of document B/DC/24) the situation under consideration was that of a country which ceased to be a developing country. It had been agreed in the Permanent Committee that such a country should then have the right, notwithstanding the fact that it had had a compulsory licensing system in the past, to choose the ten-year translation provisions of the Berne Convention. All that the United Kingdom was doing was to make two suggestions relating to consequential matters. The first suggestion was that if a translation had been published under a compulsory license, it should count as if it had been published by the author, for the purpose of preserving the author's rights of translation in the country concerned, after it became a developed country. Since he understood that this suggestion might raise some difficulties, and since it was in fact a minor point, he was prepared to withdraw it. The second suggestion was that there should be a period during which authors had notice of the fact that the country in question wished to avail itself of the ten-year translation rule, during which they would have the opportunity to bring out their own translation in that country in order to protect their right of translation. The United Kingdom had suggested a period of three years, though any other period might be adopted, provided that it was reasonably long enough to give the copyright owner time to bring out his own translation.

352. Mrs. STEUP (Germany (Federal Republic of)) considered the second United Kingdom suggestion to be justified. There was, however, the danger that the wording might be so interpreted that there might be an interruption in the supply of school books under compulsory license. She suggested an amendment on the lines that any country in the category under consideration should still be allowed a certain period, perhaps two years, during which it might make use of the possibility of a compulsory license.

353. Mr. TORNARITIS (Cyprus) thanked the Delegate of the United Kingdom for withdrawing his first suggestion which in the view of the developing countries was a serious infringe-

ment in the "package deal." He fully supported the amendment proposed by the Delegate of the Federal Republic of Germany.

354. Mr. WALLACE (United Kingdom) said that he had an open mind as to the method by which the desirable object should be achieved. He would like to be given the opportunity of considering a text, possibly in the Drafting Committee.

355. Mr. BALAKRISHNAN (India) supported the amendment proposed by the Delegation of the Federal Republic of Germany, with the suggested modification that the period might be one year instead of two.

356. Mr. DE SANCTIS (Italy) said that he would support the proposal by the United Kingdom Delegate, provided it was amended in accordance with the suggestions of the Delegate of the Federal Republic of Germany.

357. Mr. KEREVER (France) said that he thought that the United Kingdom Delegate's proposal was very reasonable; it would have the happy effect of preventing the sudden expiry of licenses after ten years; and it also had the advantage of not endangering the general balance of the provisions. It was true, however, that it might deprive the developing countries of all university and school supplies and it was doubtless for that reason that the Delegate of the Federal Republic of Germany had made a complementary suggestion. Unfortunately he had not very well understood the legal machinery which the Delegate of the Federal Republic of Germany proposed to introduce.

358. Mrs. STEUP (Germany (Federal Republic of)) said that it was not her opinion that the time during which a developing country had a right to avail itself of the faculty should be prolonged. She considered that all that was necessary was for the developing country itself to make the declaration under Article 30 during that time, and at least two years before its expiration. As the declaration would become valid only at the end of the period, there would be a two-year period from the date of the declaration until it came into force, during which the author could make his own translation.

359. The CHAIRMAN asked the Delegate of India whether he would be prepared to agree that the period referred to should be two years.

360. Mr. BALAKRISHNAN (India) said that he could agree that the period should be two years.

361. The CHAIRMAN proposed that Article II, paragraph (11) of the Appendix (document B/DC/24) should be amended to read: "Any country which has ceased to be regarded as a developing country in conformity with the practice referred to in Article I(1) may, two years before the expiry of the period provided for in Article I(3), avail itself of the faculty provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union."

362. *Article II, paragraph (11) (document B/DC/24), as amended, was approved.*

363. *Subject to the amendments decided on and to possible purely drafting amendments, paragraphs (9), (10) and (11) of Article II (document B/DC/24) were approved.*

364. *Article II of the Appendix, as amended, was approved as a whole.*

Article III (document B/DC/24)

Paragraph (1)

365. *Article III, paragraph (1) (document B/DC/24) was approved without opposition.*

Paragraph (2)

366. *Article III, paragraph (2) (document B/DC/24) was approved without opposition.*

Paragraph (3)

367. Mr. WEINCKE (Denmark), referring to the English text of Article III, assumed that in paragraph (3)(ii) the reference to "works of fiction" included all works generally classified as "belles lettres". If that was the case, it should be made clear in the Report that the period of seven years was also applicable to works based on documents but presented in an artistic manner.

368. The CHAIRMAN said that the French version was clearer and that it was impossible to find an exact English translation of the expression *les œuvres appartenant au domaine de l'imagination*. The correct interpretation, which the Danish Delegate had just given, might be included in the General Report of the Conference.

369. *Article III, paragraph (3) (document B/DC/24) was approved without opposition.*

Paragraph (4) (documents B/DC/5, B/DC/19 and B/DC/24)

370. The CHAIRMAN pointed out that paragraph (4)(a) was the same as paragraph (4) of Article III in document B/DC/5 and that paragraph (4)(b) was based on the third proposal by the Swedish Delegation in document B/DC/19.

371. *Article III, paragraph (4) (document B/DC/24) was approved without opposition.*

Paragraph (5)

372. The CHAIRMAN said that the question of languages referred to in paragraph (5)(ii) would be decided by the Drafting Committee.

373. *Subject to that reservation, Article III, paragraph (5) (document B/DC/5) was approved without opposition.*

Paragraph (6)

374. *Article III, paragraph (6) (document B/DC/24) was approved without opposition.*

Paragraph (7) (documents B/DC/11 and B/DC/24)

375. The CHAIRMAN asked whether the formulation of paragraph (7)(b) of Article III, which referred to "works incorporated in audio-visual fixations" met the wishes of the French Delegate.

376. Mr. KEREVER (France) said that it did.

377. Mr. TORNARITIS (Cyprus) asked for a clarification of the phrase in Article (7)(b) (document B/DC/24) "This Article shall also apply to the reproduction of works incorporated in audio-visual fixations ..." In countries governed or influenced by English law, the audio-visual fixation might itself be a work. Since Article (7)(b) referred only to works "incorporated" in such a fixation, he feared that the provision might be interpreted as referring only to pre-existing works, in other words as meaning that the audio-visual fixation itself could not be reproduced. In order to avoid such a misinterpretation he suggested that a clarification should be made not only in the Report but also in the text of the paragraph, possibly on the lines of the United Kingdom Delegation's proposal in document B/DC/11.

378. Mr. WALLACE (United Kingdom) said that the following new text for Article V *quater* (3)(b) of the Universal Copyright Convention had recently been discussed in the Drafting Committee: "The provisions of this Article shall also apply to reproduction in audio-visual form of lawfully made audio-visual fixations, including any protected work incorporated therein, and to the translation of any incorporated text into the language ..." He thought the text had been acceptable to all the members of the Drafting Committee, and suggested that the same formulation should be adopted for Article III(7)(b) of the Berne Convention.

379. Mr. KEREVER (France) said that he was glad to be able to support the United Kingdom Delegate's proposal; the wording he had proposed combined the two systems of protection and should be acceptable to everybody.

380. *With the amendment proposed by the United Kingdom Delegate, Article III, paragraph (7) (document B/DC/24) was approved without opposition.*

The meeting rose at 12.55 p.m.

FOURTH MEETING

Thursday, July 14, 1971, 3.15 p.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (continued)

Amendments to the text of the draft Paris Act contained in document B/DC/5 (continued) (documents B/DC/15, B/DC/24 and B/DC/25)

Appendix (continued)

Article IV (documents B/DC/24 and B/DC/25)

Paragraph (1)

381. Mr. KEREVER (France) said that the General Report of the Conference must state that, in the case of the licenses referred to in Article IV, paragraph (1), of the Appendix (licenses to translate or to reproduce), the periods of delay could only begin to run from the entry into force of the Convention. In fact, once the Convention came into force, a large number of works published after periods of exclusive rights would become "licensable"; it was therefore important to provide for a grace period between the date on which the Convention came into force and the date on which licenses were granted, in order to enable the author to negotiate his rights satisfactorily.

382. *It was decided to include the French Delegate's remarks in the General Report of the Conference.*

383. *Article IV, paragraph (1) (document B/DC/24) was approved without opposition.*

Paragraph (2) (documents B/DC/15 and B/DC/24)

384. The CHAIRMAN said that, in accordance with the proposal by the United Kingdom Delegation, contained in document B/DC/15, the publisher was characterized in the paragraph by his principal place of business and not by his nationality.

385. *Article IV, paragraph (2) (document B/DC/24) was approved without opposition.*

Paragraph (3)

386. *Article IV, paragraph (3) (document B/DC/24) was approved without opposition.*

Paragraph (4)(a)

387. Mr. STRASCHNOV (Cyprus) expressed the hope that the same comments as those to be made in the Report of discussions on the same issue held by the Main Commission for the revision of the Universal Copyright Convention concerning the printing of copies in a country other than the country

which had issued the license would be included in the Report of the present discussion. Two points had been raised in that connection—the fact that printing was often difficult for technical or financial reasons, and the fact that all copies printed outside it would be returned to the country which had issued the license.

388. Mr. WALLACE (United Kingdom) recalled that his Delegation had accepted, within the framework of the Universal Copyright Convention's revision, a proposal concerning printing abroad in relation to translation rights but that it had not accepted it in relation to reproduction rights. There did not seem to be any pressing need to do so for the latter—reproduction of texts by photocopy processes was a simple matter.

389. Mr. STRASCHNOV (Cyprus) said he had understood that both translation and reproduction had been involved in the decision taken in respect of the Universal Copyright Convention. The use of photocopy processes for the reproduction of text books would not provide a very satisfactory solution—photocopies faded rapidly and were not always legible. He did not believe the rights of authors or copyright owners would be endangered in any way by the inclusion of a reference on the lines he had suggested in the Report. So long as it was agreed that all copies should be returned to the country of origin, the question of export should not arise.

390. The CHAIRMAN said that the Main Commission would have the opportunity to revert to the question when it came to examine the amendment submitted by the Delegations of several African countries proposing the introduction of a new paragraph (*4bis*) into Article IV (document B/DC/25).

Paragraph (4)(b)

391. *Article IV, paragraph (4)(b) (document B/DC/24) was approved without opposition.*

Paragraph (4)(c)

392. The SECRETARY GENERAL said that paragraph (4)(c) had been inserted in Article IV (document B/DC/24) because it had been thought highly probable that a proposal in that sense would be submitted by some of the delegations present. The Brazilian Delegation had in fact fulfilled that expectation: its proposal was contained in document B/DC/26.

393. Mr. CHAUDHURI (India) proposed the deletion of the reference to notification of agreements to the Director General from Article (4)(c)(iv) (document B/DC/24).

394. The CHAIRMAN said that the reference to the notification of the agreement to the Director General was designed to safeguard the interests of the country in which the work originated when a third country was involved.

395. Mr. WALLACE (United Kingdom) recalled that the reference had been inserted to take into account the position of copyright owners in one country whose works might be the subject of agreements entered into by other countries. A copyright owner who was a national of the Federal Republic of Germany, for example, would wish to be informed of agreements entered into by nationals of two or more English-speaking countries to translate his work or works into English. The inclusion of the reference to notification of agreements to the Director General would allow copyright owners to be informed of such agreements.

396. Mr. CHAUDHURI (India) thanked the previous speaker for his explanation and withdrew his proposal.

397. *Article IV, paragraph (4)(c) (document B/DC/24) was approved without opposition.*

398. Mrs. LIGUER-LAUBHOUET (Ivory Coast) said that the proposed amendment submitted by the five African countries (Congo (Democratic Republic of the), Ivory Coast,

Niger, People's Republic of the Congo, Senegal) did not call into question any of the points of the compromise reached during the preparatory work. Its purpose was to enable developing countries to join together to obtain joint licenses to translate or to reproduce. Such a provision would in no way harm copyright, in whose protection the African countries were the first to be interested; but it was indispensable to enable the developing countries to benefit effectively from the faculties offered by the Berne Convention. Many of the developing countries were still without publishing houses of their own and it would be years before such publishing houses could be established. It would be advantageous for them to be able to benefit from joint licenses for the common use of existing facilities. Developing countries were often compelled to resort to regional co-operation for economic or technical reasons. Unesco systematically encouraged that policy, especially when applied in the cultural field, as in the case of the proposed provision.

399. Mr. WALLACE (United Kingdom) said he believed it had been generally understood during the negotiations leading to the general agreement on it that the prohibition of exports was a most important element of the package deal. Prohibition of exports implied that printing and publication would be carried out in the country issuing the license. Two exceptions to the principle involved had already been accepted during the present discussions but, in view of the importance of that principle for copyright circles in his country, it would be impossible for his Delegation to accept any further exceptions, and consequently impossible for it to accept the proposal contained in document B/DC/25.

400. Mr. STRASCHNOV (Cyprus) asked its sponsors if the proposal (document B/DC/25) related to any language or to languages not in general use in the developing countries. He also asked to which bodies the joint requests for licenses for translation should be submitted.

401. Mr. GABAY (Israel) found the idea behind the proposal in document B/DC/25 very sound. While understanding the position of the United Kingdom, he believed the Commission could not close its eyes to the difficulties encountered by many developing countries, and that the proposal would not constitute a breach of the agreement concerning the prohibition of exports. He suggested the replacement of the words "request and obtain" by the word "grant", in the first sentence of Article IV(*4bis*) of the proposed text of the Appendix.

402.1 Mr. N'DIAYE (Senegal) said that the Delegate of Israel had correctly understood the intentions of the sponsors of the amendment and he had no difficulty in accepting the amendment he had proposed.

402.2 Replying to the United Kingdom Delegate, he said that the African amendment did not call into question the prohibition of exports. The sole purpose of the new paragraph was to permit the granting of joint licenses to States which, under the provision proposed by the International Bureau, could in any case obtain them separately. It went without saying that the copies produced under a joint license would be circulated only in the countries holders of the license in question.

403. Mr. DAYRELL DE LIMA (Brazil) supported the amendment submitted by the five African countries (document B/DC/25); in his view, the proposed clause in no way constituted an infringement of the principle of non-exportation. He further pointed out that a work might be printed in one country and published in another.

404. Mr. LUTÉTÉ (Peoples Republic of the Congo) said that he very much hoped that the Main Commission would adopt the African countries' amendment contained in document B/DC/25).

405.1 Mr. KEREVER (France) said that the amendment called into question the package agreement by postulating the principle that there was no "exportation" in the case of licenses obtained, jointly by several countries which had

come together for that sole purpose. The developing countries had already obtained considerable advantages in the form of much shorter periods for the granting of translation rights. It seemed difficult to make further concessions. How could the proposed amendment not be regarded as violating the prohibition of exports? A joint license authorizing, for example, the translation of a work into Arabic or Swahili would inevitably involve the distribution of a considerable number of copies of the work translated.

405.2 The Delegate of Brazil was of course right to distinguish between printing and publication; but the French Delegation could not but oppose the African amendment, since it was convinced that it referred in fact to publication and not to printing.

406. Mr. SAÏD (Tunisia) agreed with the Brazilian Delegate that the African amendment did not violate the principle of non-exportation; its only purpose was to enable certain African countries to benefit effectively from the facilities they were offered.

407. Miss RINGER (Observer for the United States of America), recalling that her country was a party to the package deal, said that it would unfortunately be quite unable to accept the proposal concerning the new paragraph (4*bis*). The issue had been raised in a more elaborate form during the preliminary negotiations, and, bearing in mind the need to keep a proper balance between the needs of the developing countries on the one hand and the legitimate right of the developed countries on the other, it had finally been agreed that the revised text of the Convention should draw a distinction between the two types of works and that there should be an absolute ban on exports. The developing countries had accepted the principle of the export ban. It now appeared, however, that they were unwittingly calling for an amendment which would amount to a breach of the previous agreement on the export ban. The United States could not accept it in any circumstances if the question of its ratification of the revised Berne Convention were to arise. It was indeed doubtful if it would be able to accept the Universal Copyright Convention if the new proposed paragraph (4*bis*) were included in the Berne Convention. The United States Government considered the ban on exports to be of paramount importance. The Delegate of the United States of America, appealed to the sponsors of the proposal to consider whether they would not run the risk of losing considerable advantages by insisting on a condition which was of comparatively minor importance. It would be highly regrettable if the present Conference were to result in a deadlock.

408. Mrs. STEUP (Germany (Federal Republic of)) said that she had followed with interest the discussions to which the African amendment had given rise, but in view of the positions adopted by the Delegates of the United States of America, France and the United Kingdom, to accept the amendment would jeopardize the success of the Conference. On the other hand, the developing countries needed to combine their efforts. Perhaps the solution would be for the countries wishing to obtain a joint license to confine their co-operation to the printing of the work.

409.1 Mr. KANDJI (Senegal) said that, if the Berne Convention rightly granted the developing countries comparatively short periods for obtaining translation and reproduction licenses, that was to assist them in their teaching, scholarship and research activities. The developing countries were as keen as the developed countries to protect copyright. They had no intention of calling into question the package agreement which was reflected in the draft submitted by WIPO; nor had they any desire to go back on the no-export principle. But the fact was that, for historical reasons, their cultural activities encountered difficulties of a linguistic nature; in some cases, populations which spoke the same language were divided among several States; in others, a new language had been imposed on them. The developing countries, therefore, needed to combine their efforts to overcome their handicap and to be able to take advantage of the facilities offered by the Berne Convention.

409.2 If several countries interested in the translation or reproduction of a work could obtain a collective license instead of a number of individual licenses, the advantage was obvious: they would be able to reduce printing and publishing costs. Moreover, it was difficult to see how such a provision could alter the number of copies distributed; it was, therefore, impossible to speak of a violation of the principle of non-exportation.

410.1 Mr. BODENHAUSEN (Director General, WIPO) said that the proposed provision contained no restrictions; its scope was, therefore, wide. A joint license granted to translate a work into a widely-spoken language like Arabic, or even Spanish, would lead to the circulation of an extremely large number of copies.

410.2 In addition, there would be difficulties in applying the provision. Firstly, it was the interested party (usually a publishing house) which asked for a license to translate or to reproduce; it was not a country. Again, who would be competent to grant compulsory licenses? A national body or a body common to several countries? In either case, an international treaty would be necessary.

410.3 The simplest solution would doubtless be to distinguish between printing and publication: the various countries concerned would each apply for a license, but would co-operate in the printing of the works.

411.1 Mrs. LIGUER-LAUBHOUET (Ivory Coast) said that she recognized that the African amendment was not sufficiently explicit. She wished to make a number of clarifications and hoped that the developed countries would be willing, in the light of those explanations, to reconsider their position. The sponsors of the amendment had, of course, had in mind that the license would be requested by a publisher. But only two out of the fourteen French-speaking countries in Africa so far had publishing houses. That meant that, if the African countries' amendment was not adopted, the concessions granted under paragraph (4) would be a dead letter for them.

411.2 Contrary to what the Director General of WIPO seemed to imagine, it was not impossible to establish bodies recognized by several States for the granting of licenses; such bodies already existed in the French-speaking countries in Africa.

411.3 The sponsors of the amendment had understood that the copies produced under the license in question should bear the names of the countries in which they might be circulated.

411.4 The sponsors of the amendment did not intend the application of the provisions they proposed to be confined to regional languages. If populations speaking the same language had been artificially separated or if the same language had been imposed on a number of countries, it was only just to allow them to combine to take advantage of their community of language.

411.5 On the other hand, it would be possible to limit the number of countries which might benefit from a joint license, if such a limitation was necessary to protect copyright. The developing countries were, in fact, the first to desire that copyright should enjoy effective international protection.

411.6 She urged the developed countries to reconsider their position in the light of these explanations. If they did not adopt the African amendment, many developing countries would have no concrete possibility of benefitting from the advantages theoretically offered to them.

412. Mr. GARRIGUES (Spain) said that he wondered whether the principle of non-exportation was not being converted into a principle of exportation because—as the United Kingdom Delegate had already pointed out—two exceptions to the principle had already been granted and a third exception was proposed in the amendment in document B/DC/25. He appreciated the arguments put forward by the Delegate of the Ivory Coast, but the statements of other delegates had shown how serious and important the consequences of the

proposal under discussion were. In his view, unless a compromise solution which preserved the integrity of the no-export principle was found, the countries sponsoring the amendment proposed in document B/DC/25 should review their position and withdraw the amendment.

413.1 Mr. KEREVER (France) said that, in its present form, the African countries' amendment was extremely far-reaching and might call into question the principle of the prohibition of exports. That would not be so if its application was limited to the French-speaking countries in Africa.

413.2 He recalled that the French Delegation did not regard the package agreement as sacrosanct. It had, for example, accepted the extension of translation licenses to broadcasting organizations. But it did not see the advantage of the African amendment. It was not in fact necessary to apply for a joint license: the interested countries only had to co-ordinate their applications so that the periods during which the works became subject to license coincided.

413.3 Moreover, it was unnecessary to stipulate that the circulation of copies among the countries benefitting from a joint license should not be regarded as export. It was sufficient if the countries in question agreed to share the printing costs. It was wholly desirable that publication should remain a national matter, in order to facilitate control. If certain countries did not yet possess publishing houses, there was nothing to prevent their ministries to apply for licenses in the capacity of publishers.

413.4 Thus the objective aimed at by the African countries could be attained without adopting the amendment they proposed, which would have the serious disadvantage of violating the no-export principle. It was clear that to authorize the free circulation of a work translated, for example, into Swahili or Arabic would involve the circulation of a considerable number of copies.

414. Mr. KINDO (Niger) said that he hoped that a formula would be found which would take care of the interests both of the developed and of the developing countries. He recalled that the licenses referred to in Articles II and III were granted only for the purpose of teaching, scholarship or research. It was the development of the beneficiary countries which was at stake.

415. Mr. ZERROUKI (Observer for Algeria) supported the amendment submitted by the African countries (document B/DC/25) which, without jeopardizing copyright, had substantial advantages for the developing countries.

416.1 Mr. AHIANYO-AKAKPO (Observer for Togo) said that he did not understand how anyone could be afraid that the provisions proposed in document B/DC/25 would impair the no-export principle. If three countries held individual licenses or if they obtained a joint license, the practical result, i.e., the number of copies put into circulation, would be exactly the same. On the other hand, it was obvious that the greater the number of countries they were divided among, the smaller the printing costs would be. For example, if all the Latin American countries were Contracting Parties, it would be to their advantage to apply for joint licenses.

416.2 He was still less able to understand the opposition of the French Delegation, since the latter had no objection to several countries co-operating in the printing of a work. If, as the French Delegate claimed, the faculties requested by the sponsors of the African amendment were implicitly contained in the text of Article IV, what was the objection to saying so?

417. Mrs. LIGUER-LAUBHOUET (Ivory Coast) supported the arguments put forward by the Observer for Togo. As the French Delegate had rightly understood, the sponsors of the African countries' amendment, far from wishing to derogate from the no-export principle, had nothing else in view but to obtain explicit recognition of the advantages implicitly contained in the draft submitted by WIPO. The French Delegate had suggested that, in countries which had no

publishing houses, ministries should assume the role of publishers, but was he not afraid that measures of that kind would push Africans towards a centrally-planned economy? However that might be, the developing countries which did not yet have publishing houses were obviously free to study the possibilities offered by that formula.

418.1 Mr. SAÏD (Tunisia) said that he had noted with interest that, in the eyes of the developing countries, the no-export principle was called into question neither in the African amendment, nor—more especially—in the minds of the sponsors of the amendment or of those who had given it their support. He understood that certain countries might not wish to adopt the said amendment; he could even understand that they might not wish to state the reasons for their opposition; but he would thank them, if they had no really valid arguments, not to invoke an alleged violation of the no-export principle which nobody dreamt of calling into question.

418.2 He nevertheless appealed to the sponsors of the amendment to withdraw it in a spirit of conciliation. In exchange, it could be stated in the Report that, where several countries enjoyed a license to translate or to reproduce a work in a common language, they might be authorized to print the work jointly in a single country, on condition: (1) that the other countries concerned were unable, for economic or technical reasons, to print it in their own countries; and (2) that all the copies produced under such conditions would be divided among the States holding such a license.

419. Mr. WALLACE (United Kingdom) asked if the proposal of the Delegate of Tunisia could be made available to the Commission in writing.

420. Mrs. STEUP (Germany (Federal Republic of)) suggested that the Commission appoint a working group comprising representatives of the developing and the developed countries to consider the Tunisian proposal.

421. The CHAIRMAN, having consulted the Chairman of the Main Commission of the Conference for the Revision of the Universal Copyright Convention, proposed that the question should be referred to a Working Group composed of the following countries: Argentina, Cyprus (Kenya for the UCC), France, India, Ivory Coast, United Kingdom and the United States of America. The Chairmen of the two Main Commissions would be *ex officio* members of the working group referred to below as the "Joint (Berne-UCC) Working Group". *

422. *It was so decided.*

Paragraph (5)

423. Mr. DE SANCTIS (Italy), supported by Mr. KEREVER (France), proposed that the words "and only for the purpose of teaching, scholarship or research" should be added at the end of paragraph (5).

424. The CHAIRMAN said that a distinction should be made between a license to translate and a license to reproduce; the latter was granted only for teaching and scholarship purposes.

425. Mr. STRASCHNOV (Cyprus) said his Delegation would be unable to accept the Italian proposal if it were to prevent the sale to the general public of copies of the translations involved.

426. Mr. DE SANCTIS (Italy) said that it was in no way his intention to prevent the sale of the copies produced to the

* *Editor's Note:* This is a Joint Working Group composed of persons taking part in the work of the two Diplomatic Conferences for the revision of the Berne Convention and of the Universal Copyright Convention.

general public. He hoped, on the contrary, that it would be clearly stated in the Report that the works in question would be on sale to the general public.

427. The CHAIRMAN said that he was doubtful of the usefulness of the addition proposed by the Delegate of Italy.

428. Mr. GROMPONE (Uruguay) said that he supported the Italian delegate's statement because he considered that copyright should be protected from any form of infringement.

429. Mr. SAÏD (Tunisia) said that the amendment proposed by the Italian Delegate was in contradiction with Article III, paragraph (6) of the Appendix, which so far from confining the application of its provisions to teaching and scholarship gave priority to the needs of the general public.

430. Mr. DE SANCTIS (Italy) said that he would not insist on his amendment.

431. *Article IV, paragraph (5) (document B/DC/24) was approved without opposition.*

Paragraph (6)

432.1 Mr. ALVAREZ DE TOLEDO (Argentina) said that—as had been mentioned before—the developing countries also were, to a greater or lesser extent, exporters of intellectual and imaginative works. His Delegation was concerned lest the protection of authors in the developing countries should be reduced in the same proportion as the protection of authors in the developed countries. It seemed unjust that the burden of the assistance given to the developing countries should fall on authors in those countries; that burden should be borne by the more affluent countries. He also shared the view expressed by the observer from the International Literary and Artistic Association (ALAI) at the second meeting of the Plenary Assembly, to the effect that assistance to the developing countries should not be provided exclusively at the cost of copyright. He, therefore, took the view that governments which were prepared to make concessions to the developing countries should take steps to ensure that indemnities and compensation should be offered rapidly and effectively, in convertible currency, to the authors whose works were used in accordance with the system of licenses set up under the revised Berne Convention.

432.2 He understood that it was impossible to introduce provisions into the Berne Convention involving financial commitments for the States concerned. He was also aware that, in its Recommendation No. III, the Stockholm Conference had asked the International Bureau to undertake "in association with other governmental and non-governmental organizations a study of ways and means of creating financial machinery to ensure a fair and just return to authors". But the Working Group which met in Geneva pursuant to Recommendation No. III had reached no really conclusive result.

432.3 He reminded the Main Commission that Article 24, paragraph (5) of the Berne Convention, as revised at Stockholm stipulated that "The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright". His Delegation accordingly considered that there was nothing to prevent the present Conference from formulating a recommendation to the effect that the International Bureau should study the question at the earliest possible moment and propose appropriate measures to solve the problem by establishing a proper balance between the practical protection of copyright and meeting the needs and aspirations of the developing countries.

433. The CHAIRMAN assured the Delegate of Argentina that his statement would appear in the minutes.

434. Mrs. STEUP (Germany (Federal Republic of)), supported by Mr. CHAUDHURI (India), proposed the deletion of the words "by national legislation" from the first sentence of Article IV(6) (document B/DC/24).

435. Mr. BOGSCH (First Deputy Director General, WIPO), while understanding the previous speaker's aim of bringing the text into line with the corresponding text in the Universal Copyright Convention, believed that reference to national legislation would in fact be required in respect of item (iii) of paragraph (6).

436. Mr. WALLACE (United Kingdom) believed that the reference to national legislation might be deleted.

437. Mr. BODENHAUSEN (Director General, WIPO) observed that the inclusion of the same provision in the Universal Copyright Convention had never raised any problem.

438. The CHAIRMAN proposed that the question should be referred to the Drafting Committee.

439. *It was so decided.*

Paragraph (7)

440. *Article IV, paragraph (7) (document B/DC/24) was approved without opposition.*

Paragraph (8)

441. *Article IV, paragraph (8) (document B/DC/24) was approved without opposition.*

Article V (document B/DC/24)

Paragraph (1)

442. *Article V, paragraph (1) (document B/DC/24) was approved without opposition.*

Paragraph (2)

443. *Article V, paragraph (2) (document B/DC/24) was approved without opposition.*

The meeting rose at 6.20 p.m.

FIFTH MEETING

Friday, July 16, 1971, 3.15 p.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION *(continued)*

Proposals of the Joint (Berne-UCC) Working Group (documents B/DC/5, B/DC/24, B/DC/25)

444.1 The CHAIRMAN reported to the delegates the conclusions reached by the Joint (Berne-UCC) Working Group, which it had been decided to set up at the previous meeting, and which had met that morning.

444.2 The Joint (Berne-UCC) Working Group had first of all studied the question of joint licenses on the basis of the proposal submitted by the Delegation of Tunisia and India. It had come to the conclusion that part of the General Report of the Conference should be devoted to individual remarks on the subject. A sub-committee of the Joint (Berne-UCC) Working Group, composed of the Delegates of Cyprus (Kenya for the UCC), Ivory Coast, the United Kingdom and the United States of America would draft that part of the report, which would be submitted for approval to the Main Commission. It would state that it was not possible to grant joint licenses, but that when licenses to

translate were granted in several developing countries where the same language was in use, the same translation could be used, in cases where the translation had not already been published, by the various license-holders.

444.3 The Joint (Berne-UCC) Working Group had also considered the question of printing in a foreign country. In its view, it might be stated in the General Report of the Conference that the holder of a license to translate or to reproduce could have recourse to printing services in a foreign State which had also acceded to the Berne Convention or to the Universal Convention, on condition: (a) that, for economic or technical reasons, it was unable to do the printing on its own territory, and (b) that it was clearly understood that all the copies printed abroad would be sent to it and could only be used in the country of the license-holder.

444.4 If he heard no objection, he would consider that the delegates accepted the conclusions of the Joint (Berne-UCC) Working Group on those two points, on the understanding that it would be open to them to examine the relevant passage in the General Report of the Conference.

444.5 Lastly, the Joint (Berne-UCC) Working Group had studied the question of the designation of so-called "national" languages. In that connection, it had thought it would be useful to use the same terms in the revised texts of the Berne Convention and the Universal Copyright Convention, and it had proposed to employ the expression "language in general use" in a country, which seemed preferable to "national language" or "a language of the country". If that proposal was accepted, it would of course be necessary to amend the formulation of Article II(2) of the Appendix to the revised Berne Convention (document B/DC/24) and that of Article 30(2)(b) of the same Convention (document B/DC/5), on the understanding that, for a language to be regarded as being in general use in a country, it was sufficient for it to be in general use in part of the country. The Joint (Berne-UCC) Working Group had suggested that the same expression should be used in the Universal Copyright Convention.

444.6 He asked delegates if they would accept that amendment.

445. *It was so decided.*

Article 28(2)(a)(ii) (document B/DC/5)

446. The CHAIRMAN invited participants to state their views on paragraph (2)(a)(ii) of Article 28, which perhaps contained an anomaly because it implied that the entry into force of Articles 1 to 21 of the Act, and of the Appendix, would depend on the agreement of a country (the United States of America) which was not a member of the Berne Union.

447. Mr. DE SANCTIS (Italy) said that it was still more abnormal to provide that the entry into force of Articles 1 to 21 of the Paris Act and of the Appendix would, under the same paragraph, depend on the accession of a number of countries to the Universal Copyright Convention which, from the legal standpoint, was not linked to the Berne Convention. It was for that reason that the Italian Delegation had urged the need to establish a link between the two Conventions. The question of the ratification of the Universal Convention by the United States of America was stipulated in the Washington Recommendation; in any event, the system the Conference was endeavouring to establish would only function if the United States of America acceded to the Convention.

448. Mr. DAYRELL DE LIMA (Brazil), replying to the first statement by the Delegate of Italy, said that the Universal Copyright Convention and the Berne Convention were in fact linked by many cross-references. The ratification of the Universal Convention by the United States of America was one of the essential principles of the Washington Recom-

mendation. In his view, it was indispensable to mention the United States of America in paragraph (2)(a)(ii) of Article 28, now under consideration; the Brazilian Delegation was, therefore, prepared to accept the text proposed by WIPO for that paragraph (document B/DC/5).

449. Mr. BALAKRISHNAN (India) said it was the unanimous opinion of the developing countries that paragraph (2)(a)(ii) of Article 28 should be retained.

450. Mr. LARREA RICHERAND (Mexico) supported the statements by the Delegations of Brazil and India in favor of retaining the reference to the United States of America in Article 28, paragraph (2)(a)(ii).

451. *Article 28, paragraph (2)(a)(ii), as appearing in document B/DC/5, was approved.*

452. Mr. LEUZINGER (Observer for the International Federation of Musicians) said that his Organization was gratified to note that the present Conference had been organized with a view to restricting compulsory licenses to a given sector, thus enabling the developing countries to translate and publish works on more favorable terms than had been the case up to the present. Unlike the Stockholm Protocol, the Appendix to the Paris Act contained provisions which did not have unfavorable implications for artists and musicians. If those provisions were approved, authors from the developing countries would have no cause to fear that they might receive less favorable treatment than their colleagues from the developed countries.

453.1 Mr. GÉRANTON (Observer for the International Publishers Association), said that ever since the Stockholm Conference, the International Publishers Association had been advocating that no distinction should be made between those developing countries which were members of the Berne Union and those which were parties to the Universal Convention, and that the same concessions should be made to both.

453.2 The International Publishers Association also hoped that there would be as few compulsory licenses as possible, since it believed that it should be possible to conclude fair contracts between publishers in developed and in developing countries, which would render such compulsory licenses unnecessary. Moreover, the interests of the developing countries were defended by the national copyright information centres, which also acted in a conciliatory role, and he thought that those primarily concerned could be expected to display sufficient good will for it to be scarcely necessary to resort to compulsory licenses.

The meeting rose at 3.40 p.m.

SIXTH MEETING

Wednesday, July 21, 1971, 10.10 p.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (continued)

Draft Paris Act prepared by the Secretariat according to the instructions of the Drafting Committee (document B/DC/27)

454. The CHAIRMAN invited the Main Commission to examine the draft text prepared by the Secretariat and submitted in document B/DC/27.

Title and preamble

455. *The title and preamble were approved.*

Article 21

456. *Article 21 was approved.*

Article 27

457. *Article 27 was approved.*

Article 28

458. Mr. KATO (Japan) drew attention to an error in Article 28(1)(b), where reference should be made, not to Article V(1) of the Appendix, but to Article VI(1).

459. The CHAIRMAN said that the necessary correction would be made in the final text.

460. *Article 28, thus amended, was approved.*

Article 29

461. *Article 29 was approved.*

Article 29bis

462. *Article 29bis was approved on the understanding that the text would be submitted to the General Assembly of WIPO.*

Articles 30 to 38

463. *Articles 30 to 38 were approved.*

*Appendix**Article I**Paragraphs (1) and (2)*

464. *Article I, paragraphs (1) and (2) were approved.*

Paragraph (3)

465. Mr. KATO (Japan) said that there were two entitlement systems under which a developing country could translate works, namely, the compulsory license system provided for under Article II of the Appendix, and the ten-year reservation system now provided for under Article V. While the time when a country would cease to be entitled to avail itself of the compulsory license system was clearly stipulated in paragraph (3) of Article I, the corresponding situation in respect of the ten-year reservation system seemed rather ambiguous. If his interpretation of the texts was correct, there was a slight difference between the duration of the two systems. According to the original text appearing in document B/DC/5, the ten-year reservation system was included in the category of faculties, and the duration of both systems was the same. In the text under discussion, however, the ten-year reservation system had been excluded from the category of faculties. He, therefore, suggested the addition, either at the end of paragraph (3) of Article I of the Appendix (or in another appropriate place), of a sentence along the following lines: "In the case where the three-year period mentioned above expires later, a declaration made under the second sentence of paragraph (1) shall remain effective until the date on which the said period expires".

466. Mr. BOGSCH (First Deputy Director General, WIPO) said that the point raised by the Delegate of Japan could most suitably be discussed when paragraph (3) of Article V was examined. At the present stage, he wished only to draw attention to Article V, from which it appeared that the declaration must be made when the instrument of ratification or accession was deposited. Furthermore, in the case of a country which had ceased to be regarded as a developing country, the effect of the declaration would cease on the date stipulated in paragraph (3) of Article I.

467. Mr. KATO (Japan) said that he did not object to deferring discussion of his proposal until such time as Article V was examined.

468. *It was so decided.*

469. *On that understanding, Article I, paragraph (3) was provisionally approved.*

Paragraphs (4) and (5)

470. *Article I, paragraphs (4) and (5) were approved.*

Paragraph (6)

471. Mr. BOGSCH (First Deputy Director General, WIPO) referred to the two texts proposed for paragraph (6)(b) and said that the Secretariat, in preparing its text (document B/DC/27) had been guided by the belief that it would be highly illogical to differentiate between the developed countries themselves. Adoption of the first of the two texts, that which did not appear between square brackets, was the only means of ensuring that there would be no discrimination between those countries.

472. Mr. WALLACE (United Kingdom) and Mr. KATO (Japan) expressed preference for the first of the two texts proposed for paragraph (6)(b).

473. Mr. BOUTET (France) said that his Delegation preferred the first of the two versions proposed for paragraph (6)(b). It thought, however, that the words "the period referred to in Article I(3)" should be replaced by the words "the period applicable under Article I(3)"; that would make it quite clear that, of the two periods referred to in the article, the period applicable was the one which expired later.

474. Mr. HAARDT (Netherlands) drew the Main Commission's attention to the fact that the reference to Article V(1) at the end of Article I(6)(b) was not sufficiently precise.

475. The SECRETARY GENERAL, replying to the Delegate of the Netherlands, said that the end of paragraph (6)(b) should read: "in accordance with Article V(1)(a)".

476. *Article I, paragraph (6), with the amendments suggested by the Delegate of France and the Secretary General, was approved.*

477. *Subject to subsequent reconsideration of paragraph (3), Article I of the Appendix, as amended, was approved.*

*Article II**Paragraph (1)*

478. *Article II, paragraph (1) was approved.*

Paragraph (2)

479. Mrs. STEUP (Germany (Federal Republic of)) proposed that the word "translations" in paragraph (2)(b) be replaced by "translation."

480. *Article II, paragraph (2), thus amended, was approved.*

Paragraph (3)

481. *Article II, paragraph (3), was approved.*

Paragraph (4) (documents B/DC/27 and B/DC/31)

482. Mrs. STEUP (Germany (Federal Republic of)), introducing the amendment contained in paragraph I of document B/DC/31, said that her Delegation had submitted that amendment with a view to making it quite clear that each of the two periods in question was applicable to a different case.

483.1 Mr. BOUTET (France) said that the draft amendment submitted by the Delegation of the Federal Republic of Germany raised two problems.

483.2 First, where the owner of the right to translate was unknown, it would perhaps be better if the period began to run, not from the date on which the copies of the application for a license were sent to the publisher, but from the date on which the application itself was sent. That was the solution adopted in the Universal Copyright Convention; but that was not a point of major importance.

483.3 Second, even when the owner of the right to translate was known, his address might not be known. That being so, it might be useful to provide that, in every case, the request for authorization mentioned in the version of Article II(4)(a)(i) proposed in document B/DC/31 should be addressed not only to the owner of the right to translate, but also to the publisher.

484.1 Mr. WALLACE (United Kingdom) considered that the essential object was to ensure that the copyright owner or his publisher were made aware of the fact that an application had been made for a compulsory license. A statement to that effect should, in his view, be included in the report.

484.2 After expressing support for the amendment proposed by the Delegation of the Federal Republic of Germany, he suggested that the words "the identity or address of" be inserted after the word "where" in the beginning of paragraph (4)(a)(ii) of the amendment (document B/DC/31). It might also be useful to insert a phrase such as "or he cannot, after due diligence, be contacted" after "unknown".

484.3 Finally, certain minor drafting changes in the wording of that paragraph would be desirable if the amendment was adopted.

485. The CHAIRMAN, speaking as the Delegate of the Federal Republic of Germany, supported the United Kingdom Delegate's proposal.

486. Mr. BOUTET (France) suggested that the draft amendment proposed by the Delegation of the Federal Republic of Germany should be amended by the addition, at the end of paragraph (4)(a)(i), of the words: "...; to take effect, such request for authorization should also be sent to the publisher."

487. Mr. BOGSCH (First Deputy Director General, WIPO) said that the French Delegation's proposal seemed to raise a question of substance. In any event, that proposal, which referred to cases in which the owner of the right to translate was not the publisher, might best be considered during the discussion of Article IV(1) of the Appendix.

488. Mr. STRASCHNOV (Cyprus) expressed the view that the problem raised by the French Delegation was not so serious as it might seem at first sight, because only in a very few cases would the author himself be the copyright owner. Consequently, it would perhaps be sufficient to include in the Report a statement to the effect that in cases where the applicant did not know who the copyright owner was, the application should be sent to both the publisher and the author. If that clarification was made in the General Report, there would be no need to alter the amendment proposed by the Federal Republic of Germany (document B/DC/31).

489. Mr. DE SANCTIS (Italy) said that it was essential for the applicant to get into touch with the publisher; it was of little importance, however, if he sent him a request for authorization or simply a copy of his application for a license.

490. Mr. WALLACE (United Kingdom) agreed with the view that the normal way to contact the copyright owner was to contact the publisher. In order to ensure that that was done, it would be sufficient to make a small amendment to Article IV(1), and he would make a specific suggestion in that respect when Article IV was examined.

491. The CHAIRMAN suggested that the Main Commission should suspend its discussion on Article II, paragraph (4), and on the amendment in document B/DC/31 until it came to consider Article IV paragraphs (1) and (2) of the Appendix.

492. *It was so decided.*

Paragraphs (5), (6), (7) and (8)

493. *Article II: paragraphs (5), (6), (7) and (8) were approved.*

Paragraph (9)(a)

494. Mr. BOUTET (France) said that, in the French version, the beginning of item (ii) should read: *la traduction est utilisable seulement dans les émissions destinées...*

495.1 The CHAIRMAN said that the wording proposed by the French Delegate for item (ii) was preferable to the present wording.

495.2 With regard to item (iii), he suggested that the French version should be amended to read: *la traduction est utilisée exclusivement aux fins énumérées au point ii) dans des émissions faites licitement et destinées aux bénéficiaires sur le territoire dudit pays, y compris les émissions par le moyen d'enregistrements sonores...*

496. Mrs. STEUP (Germany (Federal Republic of)) proposed the insertion of the word "any" before "commercial" in paragraph (9)(a)(iv).

497. *Article II, paragraph (9)(a), as amended at the suggestion of the Chairman and on the proposals of the Delegates of France and the Federal Republic of Germany, was approved.*

Paragraph (9)(b)

498. Mr. PEDRAZZINI (Switzerland), supported by Mr. DA COSTA (Brazil), proposed that the words "and with the agreement of that organization" should be deleted.

499. Mrs. STEUP (Germany (Federal Republic of)), supported by Mr. BOUTET (France) and Mr. STRASCHNOV (Cyprus), expressed the view that the phrase in question should be retained.

500. Mr. PEDRAZZINI (Switzerland) withdrew his proposal.

501. *Article II, paragraph (9)(b) (document B/DC/27) was approved.*

Paragraph 9(c)

502. The CHAIRMAN proposed that the word "itself" should be inserted before the word "prepared" in the English version.

503. *It was so decided.*

504. The CHAIRMAN said that the French version could be tidied up by replacing the words *dans une fixation audio-visuelle lorsqu'une telle fixation a été préparée et publiée...* by *dans une fixation audio-visuelle faite et publiée...*

505. Mr. BOUTET (France) proposed that the words *dans le seul but* in the French version should be replaced by the words *à seule fin*.

506. The SECRETARY GENERAL suggested that, to bring the wording of the French version of the paragraph into line with the corresponding paragraph of the Universal Copyright Convention, the words *pour les besoins de l'enseignement scolaire et universitaire* should be replaced by the words *pour l'usage scolaire et universitaire*.

507. Mr. LARREA RICHERAND (Mexico) said that, under Article II, paragraph (9)(c), a license could only be granted if the conditions set out in paragraph (9)(a)(i) of the same article were met; one of those conditions was that the

translation should be made "from a copy made and acquired in accordance with the laws of the said country". He understood that the paragraph referred to an audio-visual fixation incorporating a text in the language of the country granting the license. If that was so, he could not understand why the conditions laid down should include the requirement that the translation should be made from a copy "made" in accordance with the laws of the country granting the license, because the copy would in fact have been made in that country.

508. Mr. WALLACE (United Kingdom), referring to the remarks made by the previous speaker, said that there had been some discussion by the Drafting Committee on the phrase "made and acquired in accordance with the laws of the said country." It had been agreed that the interpretation to be given to that phrase was that the film in question should not constitute an infringement of the laws of the country granting the license. He, therefore, suggested that the present text be retained and that the necessary clarification be included in the Report of the Conference.

509. *It was so agreed.*

510. *Article II, paragraph (9)(c), with the amendments proposed by the Chairman, the Delegate of France and the Secretary General of the Conference, was approved.*

Paragraph (9)(d)

511. *Article II, paragraph (9)(d) was approved.*

512. *With the exception of paragraph (4) (to be re-examined later), Article II, as amended, was approved.*

Article III

Paragraph (1)

513. *Article III, paragraph (1) was approved.*

Paragraph (2)

514. Mr. BOUTET (France) said that, having regard to the wording adopted for the Universal Convention, it would be better, in the French version, to replace the word *public* in paragraphs (2)(a) and (b) and in the other paragraphs of Article III by the words *grand public*.

515. *It was so decided.*

516. *Article III, paragraph (2), with the amendments proposed by the Delegate of France, was approved.*

Paragraph (3)

517. *Article III, paragraph (3) was approved.*

Paragraph (4)

518. *It was decided to postpone consideration of Article III, paragraph (4) until the Commission had examined Article IV, paragraphs (1) and (2) of the Appendix.*

Paragraphs (5) and (6)

519. *Article III: paragraphs (5) and (6), were approved.*

Paragraph (7)(a)

520. *Article III, paragraph (7)(a) was approved.*

Paragraph (7)(b)

521.1 The SECRETARY GENERAL read out the text proposed at a previous meeting by the Delegate of France for the corresponding paragraph of the Universal Convention (which had been approved by the Main Commission of the Conference for the Revision of the Universal Convention).

521.2 He further pointed out that, as had been previously decided in connection with Article II(9)(c), the end of Article III(7)(b) in the French version should be amended to read: *... ont été conçues et publiées aux seules fins de l'usage scolaire et universitaire.*

522. The CHAIRMAN said that the wording proposed at the previous meeting by the French Delegation was somewhat different from the English version. He, therefore, suggested that the beginning of Article III, paragraph (7)(b) in the French version should be amended to read: *le présent article est également applicable à la reproduction audio-visuelle de fixations licites audio-visuelles constituant ou incorporant des œuvres protégées, ainsi qu'à la traduction du texte ...*

523. Mr. STRASCHNOV (Cyprus) fully supported the suggestion by the Chairman.

524. *Article III, paragraph (7)(b), as amended according to the Chairman's and the Secretary General's suggestions, was approved.*

525. *With the exception of paragraph (4) (to be re-examined later), Article III, as amended, was approved.*

Article IV

Paragraph (1)

526. Mr. WALLACE (United Kingdom) proposed that the phrase "including contacting the publisher, if known," be inserted after "part".

527. The SECRETARY GENERAL read out the French version of the amendment proposed by the United Kingdom Delegate to Article IV, paragraph (1); if it was adopted, the end of the paragraph would read in French: *... après dues diligences de sa part, et après avoir pris contact avec l'éditeur si celui-ci est connu, n'a pu atteindre ce titulaire ou n'a pu obtenir son autorisation.*

528.1 Mr. BOUTET (France) said that there were two drawbacks to that wording.

528.2 First, it suggested that the owner of the right to translate was always the author, whereas in fact it was sometimes the author and sometimes the publisher.

528.3 Secondly, the text proposed by the United Kingdom Delegate did not state that, when he was not the owner of the right to translate, the publisher must be informed of the submission of an application so that the period referred to in Article II(4) should begin to run. It might happen, therefore, that a license was granted, completely legally, whereas the publisher had only been informed of the application too late to be able to take the necessary steps. It was necessary, therefore, to state clearly that, to be effective, an application must be addressed to the publisher also, even when the author was the owner of the translation right.

529.1 Mr. BOGSCH (First Deputy Director General, WIPO) replying to the French Delegate, said that the question whether the author or the publisher was the owner of the right to translate was one for national law.

529.2 With regard to the second point raised by the French Delegate, he thought that a provision to the effect that an applicant should get into touch with the publisher when making his application might be added at the end of paragraph (1) of Article IV.

530. The CHAIRMAN said that in view of the problem involved in formulating paragraph (1) of Article IV, the preparation of a final draft might be entrusted to a working group; the text it prepared would then be submitted to the Main Commission. The working group might be composed of Delegates from the following countries: Cyprus, Federal Republic of Germany, France, India, Tunisia, and the United Kingdom.

531. *It was so decided.*

Paragraph (2)

532. The CHAIRMAN said that any amendments that were made to paragraph (1) of Article IV were likely to affect paragraph (2); the Working Group should therefore be invited to propose a new text of that paragraph.

533. *It was so decided.*

Paragraph (3)

534. *Article IV, paragraph (3), was approved.*

Paragraphs (4)(a) and (b)

535. *Article IV: paragraphs (4)(a) and (b) were approved.*

Paragraph (4)(c)

536. Mrs. LIGUER-LAUBHOUET (Ivory Coast) said that the word *individus* should be deleted from the French version of paragraph (4)(c)(i).

537. *After an exchange of views, it was decided to replace the word "individus" by the word "particuliers" in the French version of Article IV(4)(c)(i).*

538. Mr. FERNANDO (Ceylon) said that he assumed that the word "individuals" in the English text of paragraph (4)(c)(i) referred only to persons in the recipient country who, by virtue of the agreement concluded between the two countries concerned, were entitled to receive copies.

539. Mrs. STEUP (Germany (Federal Republic of)) proposed that the word "any" be inserted before "commercial" in paragraph (4)(c)(iii).

540. *It was so agreed.*

541. Mrs. STEUP (Germany (Federal Republic of)), referring to paragraph (4)(c)(iv), pointed out that the corresponding provision in the Universal Copyright Convention required only one of the governments concerned to make notification of the agreement.

542. Mr. BOGSCH (Deputy Director General, WIPO) said that if the phrase "one of the Governments" was used, each of the Governments concerned might wait indefinitely for the other to carry out the notification.

543. Mr. DE OLIVEIRA ASCENSÃO (Portugal) said that it would be desirable to specify that the Government of the country to which the license had been granted was responsible for notification.

544. *It was so decided.*

545. *Article IV, paragraph (4)(c), as amended, was approved.*

Paragraphs (5) and (6)

546. *Article IV: paragraphs (5) and (6) were approved.*

547. *Article IV, with the amendments accepted during the discussion, was approved, except for paragraphs (1) and (2), to be reconsidered.*

*Article V**Paragraph (1)*

548. Mr. KATO (Japan) proposed the addition of a new subparagraph (*abis*) along the following lines: "If a country having made a declaration according to this paragraph ceases to be regarded as a developing country as referred to in Article I(2), such declaration shall remain effective until the date on which the period referred to in Article I(3) expires."

549. *Article V, paragraph (1), thus amended, was approved subject to drafting changes.*

Paragraph (2)

550. *Article V, paragraph (2), was approved.*

Paragraph (3)

551. Mrs. STEUP (Germany (Federal Republic of)) proposed that the phrases "provided for in" and "referred to in" in Article V (3) be replaced by "applicable under."

552. *Article V, paragraph (3), thus amended, was approved.*

553. *Article V, as amended, was approved.*

*Article VI**Paragraph (1)(i)*

554. *Article VI, paragraph (1)(i) was approved.*

Paragraph (1)(ii)

555. Mrs. STEUP (Germany (Federal Republic of)), supported by Mr. GABAY (Israel) and Mr. STRASCHNOV (Cyprus), considered that it was neither necessary nor desirable to differentiate between the various types of rights. The alternative text for paragraph (1)(ii) appearing between square brackets was therefore the more satisfactory of the two.

556. Mr. BOUTET (France) said that, for paragraph (1)(ii), the first text was preferable to the variant between square brackets because it gave States greater freedom of action: it enabled them to adopt different attitudes in the case of the right to translate and of the right to reproduce.

557. Mr. GABAY (Israel), referring to the remarks made by the French Delegate, said that systems which offered the possibility of admitting application of only certain parts of an agreement had not proved successful in the past. A situation where one country could decide to apply one system to one part of the agreement and another system to another part should be avoided. In the interest of preserving a single cohesive system, therefore, he hoped that the French Delegate would be able to accept the alternative text proposed between square brackets for Article VI(1)(ii) (document B/DC/27).

558. Mr. BOUTET (France) said that he had been convinced by the explanations given by the Delegate of Israel.

559. *Article VI, paragraph (1)(ii), was approved, with the variant between square brackets.*

Paragraph (2)

560. *Article VI, paragraph (2) was approved.*

561. *Article VI, with the variant in square brackets for paragraph (1)(ii), was approved as a whole.*

DECLARATION BY THE OBSERVER FOR IRAN

562. Mr. RAJABNIA (Iran) conveyed to the Conference his Government's full support for the cause of the developing nations and its hope that the results of the Conference would be such as to assist those nations in achieving their goals.

The meeting rose at 1.20 p.m.

SEVENTH MEETING

Wednesday, July 21, 1971, 3.30 p.m.

EXAMINATION OF PROPOSALS FOR REVISING
THE STOCKHOLM ACT OF THE BERNE
CONVENTION (*continued*)

Draft text prepared by the Sub-Committee (Cyprus [Kenya for the UCC], Ivory Coast, United Kingdom, United States of America) of the Joint (Berne-UCC) Working Party (document B/DC/32)

563. The CHAIRMAN drew the Main Commission's attention to the draft text for insertion in the General Report of the Conference, which had been drafted on the proposal of the Delegations of Congo (Democratic Republic of the), Ivory Coast, Niger, People's Republic of the Congo and Senegal by the Sub-Committee of the Joint (Berne-UCC) Working Party (document B/DC/32).

Paragraph 1

564. Mr. SAÏD (Tunisia) said that the word *à* should be inserted after the word *interdisant* in the first paragraph of the French version.

565. The RAPPORTEUR GENERAL said that the end of paragraph 1 in the French version was badly drafted. It was hardly correct to say that a prohibition *n'a pas lieu d'être*.

566. Mr. KEREVER (France) suggested that the passage should be amended to read *on estime que cette interdiction n'est pas applicable quand les circonstances ci-après sont réunies ...*

567. *Paragraph 1, as amended, was approved without opposition.*

Paragraph 2

568. *Paragraph 2 was approved without opposition.*

Paragraph 3

569. Mrs. STEUP (Germany (Federal Republic of)) asked for a clarification of the meaning of paragraph 3, which had not been discussed in the Working Party.

570. Miss RINGER (Observer for the United States of America) spoke as a member of the Sub-Committee of the Joint Working Party, which had discussed the question of commercial gain. There had been unanimous agreement in the Sub-Committee that in Article *Vter* and Article *Vquater* the basic purpose behind the granting of the license should not preclude the use of profit-making facilities for the purpose of the enterprise. The Sub-Committee had considered that such an interpretation should be included as part of the basic understanding.

571. Mrs. STEUP (Germany (Federal Republic of)) pointed out that the phrase "for commercial purposes" had been used in the text several times as signifying "profit-making", and that paragraph 3 as it stood was, therefore, ambiguous. Her understanding was that paragraph 3 did not exclude the possibility of a publisher obtaining a license and then selling for profit. She suggested that the text should be modified to make that understanding clear.

572. Mr. BALAKRISHNAN (India), supporting that understanding, thought that to avoid ambiguity it would be preferable to delete paragraph 3.

573. Mr. MOREIRA ALVES (Brazil) said that he agreed with the Delegate of India.

574. Mr. DE SANCTIS (Italy) said that in the case of public institutions one could say that their purposes were non-commercial or that they were non-profit-making; but publishers, at least in market-economy countries, were business-men whose activities were defined by law as being profit-making. It might be best, therefore, if the paragraph referred to "cultural purposes".

575. The CHAIRMAN said that if the ideas which lay behind paragraph 3 of document B/DC/32 were to be included in the Report, they should appear in a more general form than in the document as drafted. He, therefore, proposed that the sentence in paragraph 3 should not be included in the Report as it stood.

576. Mr. REINIŠ (Czechoslovakia) supported the Chairman's proposal; he also drew attention to the fact that several articles referred to in document B/DC/32 were numbered as in the Universal Copyright Convention, whereas the correct reference should be to the draft of the Berne Convention.

577. Mr. SAÏD (Tunisia) supported the Chairman's proposal.

578. *It was decided not to include paragraph 3 of document B/DC/32 in the General Report of the Conference.*

579. *Subject to the amendments made to paragraph 1, it was decided to include paragraphs 1 and 2 of document B/DC/32, with reference to the corresponding articles of the Berne Convention, at appropriate points in the General Report of the Conference.*

Proposals by the Working Group concerning amendments to be made to Articles II, III and IV in document B/DC/27 (document B/DC/33)

580. The CHAIRMAN drew the Main Commission's attention to document B/DC/33 containing the proposals made by the Working Group set up at the sixth meeting of the Main Commission with a view to redrafting Articles II, III and IV of the Appendix, as proposed in document B/DC/27.

581. Mrs. STEUP (Germany (Federal Republic of)) said that in discussion in the Working Group different opinions had been expressed as to who or what body should be notified of the application for a license. For example, India would have found it difficult to agree that the publisher should be notified at the same time as the owner of the translation or reproduction right. The acceptable solution finally devised was for a provision to the effect that the applicant should send a request to the owner of the relevant right, and at the same time to a national or international information center designated by the country of origin of the work. Such a provision took care both of the Indian difficulty and the insistence by France that the publisher should be informed that an application had been made. As regards paragraph (2) of Article IV (document B/DC/33), the number of bodies who had to be notified had been reduced. It had been the unanimous view that only two copies of the application should be sent, one to the publisher of the work and the other to the national or international information center already mentioned. Such a solution was acceptable since it did not impose a heavy burden on the developing countries, while taking care of the interests of both the owner of the right and the publisher.

Article IV

Paragraphs (1) and (2)

582. After an exchange of views in which Mr. SAÏD (Tunisia), Mr. BOGSCH (First Deputy Director General, WIPO) and the SECRETARY GENERAL took part, the CHAIRMAN suggested that Article IV, paragraph (1) should be amended to read: "No license under Article II or Article III may be granted unless the applicant, in accordance with the procedure of the country concerned, establishes ..." (the rest unchanged).

583. After an exchange of views in which Mrs. STEUP (Germany (Federal Republic of)) and Mr. BOGSCH (First Deputy Director General, WIPO) took part, the CHAIRMAN suggested that Article IV, paragraph (2) should be amended to read: "If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application submitted to the competent authority with a view to obtaining a license to the publisher whose name appears on the work and to any national or international information centre which may have been designated in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business."

584. Mr. LARREA RICHERAND (Mexico) said that the Spanish text of the document under discussion had not been distributed and requested that, in accordance with rules 19 and 20 of the Rules of Procedure, discussion should be postponed until such time as the Spanish text of the document was available.

585. Mr. BOGSCH (First Deputy Director General, WIPO) suggested that the discussion should be continued, but that no final decision should be taken until the Spanish text of document B/DC/33 was available.

586. The CHAIRMAN proposed that the English and French versions of Article IV, paragraphs (1) and (2) which he had read out should be approved at once by the Main Commission on the understanding that Spanish-speaking Delegations would be able to comment on the Spanish version in due course.

587. *The English and French versions of the new paragraphs (1) and (2) proposed by the Chairman for Article IV of the Appendix were approved without opposition.*

Article II

Paragraph (4)(a)

588. Mr. KEREVER (France) said that, in the French version of Article II(4)(a)(ii), the word *demande* should be replaced by the word *requête*.

589. Mr. DE SAN (Belgium) said that, to bring the French version into line with the English, the beginning of Article II(4)(a)(ii) should read: "*ou bien, si l'identité ou l'adresse de ce titulaire ne sont pas connues*". The same wording was found in Article III(4)(a)(ii) (document B/DC/33).

590. *Article II, paragraph (4)(a), as amended, was approved without opposition.*

Paragraph (4)(b)

591. The CHAIRMAN recalled that the Working Group's proposal had been that paragraph (4)(b) should be the same as the second sentence of Article II, paragraph (4), in document B/DC/27.

592. *The Working Group's proposal for Article II(4)(b) (document B/DC/33) was approved without opposition.*

Article III

Paragraph (4)(a)

593. *Article III, paragraph (4)(a) (document B/DC/33) was approved without opposition.*

Paragraph (4)(b)

594. The CHAIRMAN recalled that the Working Group's proposal had been that paragraph (4)(b) should be the same as the second sentence of Article III, paragraph (4)(a), in document B/DC/27.

595. *The Working Group's proposal for Article III (4)(b) (document B/DC/33) was approved without opposition.*

Paragraph (4)(c)

596. The CHAIRMAN recalled that the Working Group's proposal had been that paragraph (4)(c) should be the same as Article III, paragraph (4)(b) in document B/DC/27, except that the words "sub-paragraph (a)" would be replaced by the words "sub-paragraphs (a) and (b)".

597. Mrs. STEUP (Germany (Federal Republic of)) noted that the phrase in Article III(4)(c) (i.e. in Article III(4)(b) of document B/DC/27) "a distribution as described in paragraph (2)" should be amended to read "a distribution as described in paragraph (2)(a)".

598. *Article III, paragraph (4)(c), as amended, was approved without opposition.*

Paragraph (4)(d)

599. The CHAIRMAN recalled that the Working Group's proposal was that paragraph (4)(d) should be the same as Article III, paragraph (4)(c) in document B/DC/27.

600. *The Working Group's proposal for Article III(4)(d) (document B/DC/33) was approved without opposition.*

601. *Article III(4) (document B/DC/33), as amended, was approved as a whole.*

602. Mr. ARMITAGE (United Kingdom) said that it had been agreed in the Working Group that it would be appropriate for the report to indicate that, in any case in which a compulsory license was applied for, it was expected that the owner of the relevant right should be notified. Steps should be taken by the competent authorities to ensure such notification, and the owner should be given the opportunity to make representations with regard to the compulsory license.

603. The CHAIRMAN proposed that that clarification should be inserted in the General Report of the Conference.

604. *It was so decided.*

The meeting rose at 5.45 p.m.

EIGHTH MEETING

Thursday, July 22, 1971, 12 noon

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (continued)

Proposals by the Working Group concerning amendments to Articles II, III and IV of document B/DC/27 (document B/DC/33)

605. The CHAIRMAN recalled that at the previous meeting of the Main Commission it had been agreed that Spanish-speaking Delegations might revert to document B/DC/33 the Spanish version of which had not at the time been distributed. He invited those Delegations to take the floor if they so desired.

606.1 Mr. LARREA RICHERAND (Mexico) said that he approved the substance of the proposals concerning Articles II, III and IV (document B/DC/33), but thought that a few purely drafting changes should be made in the Spanish version.

606.2 The beginning of Article II, paragraph (4)(a) should read: *La licencia a que se refiere el presente artículo no podrá concederse antes de la expiración ...*

606.3 The beginning of Article IV, paragraph (1), should be amended to read: *Toda licencia referida al artículo II o III no podrá ser concedida ...*

606.4 The beginning of Article IV, paragraph (2), should be amended to read: *Si el titular del derecho no ha podido ser localizado ...*

607. The CHAIRMAN said that the Mexican Delegate's remarks referred to the Spanish text only and, therefore, gave rise to no objection.

608. *The Spanish version of Articles II, III and IV (document B/DC/33), having regard of the amendments madeto*

the English and French versions at the seventh meeting of the Main Commission, was adopted.

609. The Main Commission, as well as Mr. CHARPENTIER, Chairman of the Conference, thanked and congratulated Mr. Ulmer, Chairman of the Main Commission, for the excellent way in which he had performed his duties.

610. The CHAIRMAN thanked Mr. Charpentier and all the members of the Main Commission for their kind words. His task had been rendered particularly easy and agreeable by the help he had received from all those who had taken part in the work he had the honour to preside over.

The meeting rose at 12.30 p.m.

GENERAL REPORT

General report

unanimously adopted on July 22, 1971
by the Plenary Conference
(July 23, 1971, Original French, document B/DC/36)

I. Convening, purpose and composition of the Conference

1. In accordance with the decisions of the competent bodies of the Berne Union, the Director General of the World Intellectual Property Organization (WIPO) convened a Diplomatic Conference (hereinafter called "the Conference") for the revision of the Berne Convention for the Protection of Literary and Artistic Works (hereinafter called "the Convention"). This was held at Paris from July 5 to 24, 1971. The Universal Copyright Convention was also revised at the same place and dates.

2. The purpose of the Conference was on the one hand to revise the provisions relating to the developing countries contained in the Stockholm Act (1967) of the Convention, and on the other hand to introduce in the final clauses of the said Act the modifications consequent upon that revision.

3. Delegations of the following 48 countries, members of the Berne Union, participated in the work of the Conference: Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Canada, Ceylon, Chile, Congo *, Congo (Democratic Republic of the) **, Cyprus, Czechoslovakia, Denmark, Finland, France, Gabon, Germany (Federal Republic of), Greece, Holy See, Hungary, India, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Liechtenstein, Luxembourg, Morocco, Mexico, Monaco, Netherlands, Niger, Norway, Pakistan, Portugal, Senegal, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, Uruguay, Yugoslavia.

4. The Delegations of Czechoslovakia and Hungary protested against the fact that the German Democratic Republic had not been invited to take part in the Conference. The Delegation of Chile made the same protest, and also declared that it did not consider the observers of the Republic of China as empowered to represent the people of China. The Delegation of India associated itself with this latter declaration.

* This is the People's Republic of the Congo.

** This State has since changed its name; at the time of publication of these *Records* it is designated as "Zaire".

5. Delegations of the following 27 States, members of the United Nations or of one or more organizations of the United Nations system but not members of the Berne Union, participated in the work of the Conference as observers: Algeria, Bolivia, Central African Republic, Chad, China (Republic of), Costa Rica, Dominican Republic, Ecuador, Guatemala, Iran, Iraq, Kenya, Khmer Republic, Laos, Liberia, Malawi, Malaysia, Mauritania, Nicaragua, Republic of Viet-Nam, Rwanda, Sudan, Syria, Tanzania, Togo, United Arab Republic, United States of America.

6. WIPO was represented by its Director General, Professor G. H. C. Bodenhausen, and subsequently by its First Deputy Director General, Dr. Arpad Bogsch.

7. Four intergovernmental organizations (the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (Unesco), the Council of Europe and the African and Malagasy Industrial Property Office (OAMPI)), and nineteen international non-governmental organizations were represented by observers.

8. In total, nearly three hundred persons were present.

9. On the proposal of the Delegation of the United Kingdom, supported by the Delegations of Italy, Germany (Federal Republic), Spain and the Ivory Coast, His Excellency Ambassador Pierre Charpentier, Head of the Delegation of France, was elected President of the Conference by acclamation.

10. The Conference adopted the provisional Agenda submitted to it in document B/DC/1.

11. After introducing some modifications, the Conference adopted the draft Rules of Procedure prepared by the Permanent Committee of the Berne Union at its extraordinary session in September 1970 (document B/DC/2). The final text of the Rules of Procedure of the Conference is contained in document B/DC/3, modified by the substitution of the word "nine" for the word "eight" in Rule 10.

12. The following nine persons were elected Vice-Presidents of the Conference: Mr. J. P. Harkins (Australia), His Excellency Ambassador Everaldo Dayrell de Lima (Brazil), Mr. P.M.D. Fernando (Ceylon), Mr. Léopold Lutété (Congo, Democratic Republic of the), Mr. István Timár (Hungary), Mr. Abderrazak Zerrad (Morocco), Mr. Ulf Nordenson (Sweden), Professor Mario M. Pedrazzini (Switzerland), His Excellency Mr. Aleksandar Jelić (Yugoslavia).

13. The post of General Rapporteur was assigned to the Head of the Delegation of Senegal.

14. On the proposal of the Delegation of India, supported by the Delegations of the Netherlands, Canada, Italy and France, Professor Eugen Ulmer (Germany (Federal Republic)) was elected Chairman of the Main Commission. On the proposal of the Delegation of Spain, supported by the Delegation of the United Kingdom, His Excellency Ambassador Francisco Cuevas-Cancino (Mexico) and Mr. Abderrazak Zerrad (Morocco) were elected Vice-Chairmen of the Main Commission.

15. The Conference, on the proposal of the President, elected the representatives of the following countries as members of the Credentials Committee: Czechoslovakia, Germany (Federal Republic), Italy, Ivory Coast, Japan, Spain, Uruguay. During the Conference the Credentials Committee met on several occasions under the chairmanship of His Excellency Ambassador Yoshihiro Nakayama (Japan), its Chairman, or of Mr. Bernard Dadié (Ivory Coast), its Vice-Chairman. It examined the credentials of delegations and reported on its work to the Conference (documents B/DC/14 and 30).

16. The Conference, on the proposal of the President, elected the representatives of the following countries as members of the Drafting Committee: Argentina, Canada, France, India, Japan, Netherlands, Sweden, Tunisia, United Kingdom. The Drafting Committee elected Mr. William Wallace (United Kingdom) and Mr. Werner Ludwig Haardt (Netherlands) as its Chairman and Vice-Chairman respectively. The Drafting Committee held several meetings in order to put the revised text of the Convention into final form. Documents B/DC/24, 27 and 28 reflect the results of its work.

17. Mr. Claude Masouyé (WIPO) and Mr. Mihailo Stojanović (WIPO) acted as Secretary General of the Conference and Assistant Secretary General respectively.

II. Consideration of the draft text of the Convention

18. The Conference started its work in a plenary meeting in which general declarations were made. The same meeting decided that the instrument to be adopted should contain both the provisions which were and those which were not the subject of the Conference. Thus the new instrument is an "Act" to be known as "the Paris Act," rather than an Act "additional to the Stockholm Act." (The International Bureau had, before the Conference, prepared drafts of both a self-contained and an additional Act.)

19. (a) The provisions which have not been the subject of the Conference and thus are incorporated in the Paris Act with exactly the same content and in exactly the same form as they appear in the 1967 Stockholm Act are the general substantive provisions (Articles 1 to 20) and the administrative provisions (Articles 22 to 26). This fact, in itself, proves that the Stockholm Conference had achieved success on most important points.

(b) Although the present Conference revised the special substantive provisions adopted at the Stockholm Conference concerning developing countries (and made consequential changes in the final clauses), it was generally recognized not only that the work of the Stockholm Conference was very important also as far as the questions concerning developing countries were concerned, but that, without that work, the present Conference could not have achieved the unanimous agreement which it had achieved in respect of those questions.

20. In order to underline the merits of the work accomplished at Stockholm, the Conference decided to express, in the preamble of the Paris Act, recognition of the importance of that work and to recall that the Articles referred to above were the result of the Stockholm, rather than the present, Conference.

21. Most of the rest of the discussions of the Conference took place in its Main Commission in which all the countries and all the organizations represented in the Conference had the right to participate and in which they all participated. The delegations representing developing countries held several meetings among themselves. These proved to be particularly useful in arriving at common positions among such countries on some of the more difficult issues.

22. The discussions were based (i) on the draft text prepared by the Permanent Committee of the Berne Union in 1970 (document B/DC/4) as slightly modified, on purely formal points, by the International Bureau of WIPO (document B/DC/5), (ii) on the observations made before the Conference by governments and by interested organizations (documents B/DC/6 and 7), and (iii) on a number of amendments presented during the Conference by several delegations and working groups (documents B/DC/9 to 13, B/DC/15 to 23, B/DC/25 and 26 and B/DC/31 to 35). It is recalled that the text prepared by the Permanent Committee was, in turn, based on the work of several preparatory meetings, particularly those held in Washington in 1969 and in Geneva in May and September 1970 (see documents B/DC/3 and 4).

23. The discussions in the Plenary and in the Main Commission are reflected in the summary minutes. Consequently, this Report mainly mentions only those points which may be important for understanding the intentions of the Conference in adopting certain provisions and which the Conference agreed should be mentioned in this Report.

24. It is to be noted that several provisions in the Paris Act are similar to corresponding provisions in the Universal Copyright Convention as revised. Discussions on these provisions usually took place in the Revision Conference of that Convention only days before they were discussed in the present Conference, among participants who were to a great extent identical in the two Conferences. Arguments for and against and understandings on such provisions were, in many cases, not repeated in the present Conference. These facts explain the relative brevity of the following passages of this Report. The points referred to in the previous paragraph are considered in the order in which they appear in the Paris Act.

Article 29^{bis}

25. The Conference noted a declaration of the Director General of WIPO to the effect that he would call the attention of the competent bodies of WIPO to this Article and would invite them to note it for the purposes of the application of Article 14(2) of the Convention Establishing the World Intellectual Property Organization.

Article 36

26. It was understood that in countries according to the constitution of which treaties were self-executing no separate legislation was necessary to implement those provisions of the Convention which, by their nature, were susceptible of direct application.

APPENDIX

Article I(1)

27. It was understood that the expression "country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations" did not allow for the drawing up of a list of such countries which would not be susceptible to changes in the future, not only

because the stage of development of particular countries may change but also because the practice of the General Assembly may undergo changes in the sense that the criteria on which such practice is based may undergo changes. Whether any country is at any given time a developing country for the purposes of the Appendix would have to be decided on the basis of the practice of the General Assembly prevailing at the time relevant for deciding the question.

Article I(6)(a)

28. It was understood that this subparagraph did not modify the right of any country to apply the so-called "comparison of terms" clause contained in Article 7(8).

Article II(2)

29. It was understood that the term "national of such country" also covered legal entities, including the State itself, its national or local authorities, and enterprises owned by the State or such authorities.

30. (a) Furthermore, it was understood that the notion of "a language in general use" in a country included languages in general use by less than the totality of the country's population. Thus, such a language could be a language in general use in a given geographic region of the country, the language of an ethnic group of the population, or a language generally used for particular purposes, such as government administration or education.

(b) It is to be noted that the expression in question also appears in other provisions of the Paris Act. It should be understood in the above sense in all such provisions also.

Article II(4)

31. Although the Delegation of India said that it interpreted the first sentence of this paragraph as meaning that the six or nine months period could start running before the expiration of the three or one year period (and thus the two kinds of periods could run concurrently), it was generally agreed that the six or nine months periods could not run concurrently with the three or one year periods since an application for a license for translation could validly be presented only after the expiration of the three or one year period and because

the sense of the word "further" was to bring out clearly that the six or nine months period is necessarily subsequent to the three or one year period.

Article II(6)

32. (a) This paragraph provides that the license to translate terminates if the owner of the right to translate himself publishes a translation satisfying certain conditions. One of them is that the said translation must have "substantially the same content" as the translation which was published under the license. It was understood that this condition would be satisfied not only when the content of the translation of the owner was identical or almost so to the content of the translation made under a license but also when the former contained certain improvements, as would be the case, for example, when the content of a school book is updated.

(b) It was further understood that the licensee should be given reasonable notice by the owner of the right of translation, of the publication of a translation authorized by him, if the owner of the right is aware of the license.

Article II(9)(a) and (b)

33. It was understood that these subparagraphs do not affect or modify in any respect Article 11^{bis} of the Convention.

34. It was understood that the words "made and acquired in accordance with the laws of the said country" in paragraph (9)(a)(i) mean that the copy must not be an infringing copy according to the laws of that country.

Article III(3)(ii)

35. It was noted that the English text uses the expression "works of fiction, poetry, drama and music" and the French text "*œuvres qui appartiennent au domaine de l'imagination, telles que romans, les œuvres poétiques, dramatiques et musicales,*" but that the difference was merely one of form (unavoidable, because "works of fiction" had no exactly corresponding expression in French, and "*œuvres qui appartiennent au domaine de l'imagination*" had no exactly corresponding expression in English) whereas in substance they meant the same, and, in particular, the absence of the word "*roman*" in English did not mean that novels were not included, and that the use of the word "*roman*" in French did not mean that works of fiction shorter than novels were excluded.

Article III(7)(b)

36. This subparagraph applies when the reproduction is in audio-visual form — that is, a fixation containing both pictures and sound — and whether the audio-visual fixation constitutes itself a protected work or contains a protected work. It allows for the distribution of the reproductions of the fixation for the purposes and under the conditions provided for in the other provisions of Article III and the relevant provisions of Article IV.

Article IV(1)

37. It was understood that the request for authorization addressed to the owner of the right must indicate that, if such authorization is denied, the denial might serve as a basis for applying for a license under the Appendix.

38. Furthermore, it was understood that licenses under the Appendix may validly be applied for only when the applicable period under Article II(2)(a) or (3), or under Article III(3), has expired.

Article IV(2)

39. It was understood that where a license under Articles II or III is to be granted, the competent authority should take reasonable steps to ensure that the owner of the right has an opportunity to be aware of the application and to take such measures as may seem to him appropriate.

Article IV(4)(a)

40. It follows from the provisions of Article IV(4)(a), prohibiting the export of copies and prescribing that the license shall be valid only for publication in the territory of the country where it has been applied for, that these provisions are considered as prohibiting a licensee from having copies reproduced outside the territory of the country granting the license. However, it was understood that this prohibition does not apply under the following conditions:

- (a) the country granting the license has, within its territory, no printing or reproduction facilities, or such facilities exist but are incapable for economic or practical reasons of reproducing the copies;

- (b) the country where the work of reproduction is done is a member of the Berne Union or a party to the Universal Copyright Convention;
- (c) all copies reproduced are sent, in one or more bulk shipments, to the licensee for distribution exclusively in the licensee's country and the contract between the licensee and the establishment doing the work of reproduction so requires and provides further that the establishment guarantees that the work of reproduction is lawful in the country where it is done;
- (d) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a license has been granted under Article II or Article III; and
- (e) all copies reproduced bear a notice in accordance with Article IV(5).

41. (a) It was also understood that the foregoing conditions only apply to works published in printed or analogous forms of reproduction and to the incorporation in audio-visual fixations of translated texts.

(b) It was further understood that these provisions do not require any country in which the copies are reproduced to permit what would otherwise be an infringement of copyright under its law.

42. It was generally accepted that nothing in Articles II, III and IV prohibited a compulsory licensee from employing a translator in another country, or other compulsory licensees, licensed to publish a translation in the same language in other countries, from using the same translation, assuming, of course, that the translation has not already been published. The same interpretation applies with respect to persons entrusted with doing the preparatory editorial work.

Article IV(4)(c)(iii)

43. It was understood that the expression "without commercial purpose" did not mean that the public entity could not charge a price for each copy; what it meant was that the price, if any, could not include any profit or financial gain for the entity, but could merely enable it to recover its costs.

SIGNED TEXT

**Berne Convention
for the Protection of Literary
and Artistic Works**

of September 9, 1886,
completed at PARIS on May 4, 1896, revised at BERLIN on November 13,
1908, completed at BERNE on March 20, 1914, and revised at ROME on
June 2, 1928, at BRUSSELS on June 26, 1948,
at STOCKHOLM on July 14, 1967,
and at PARIS on July 24, 1971

The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works,

Recognizing the importance of the work of the Revision Conference held at Stockholm in 1967,

Have resolved to revise the Act adopted by the Stockholm Conference, while maintaining without change Articles 1 to 20 and 22 to 26 of that Act.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:

Article 1

The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2

(1) The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

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

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

(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 2^{bis}

(1) It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protection provided by the preceding Article political speeches and speeches delivered in the course of legal proceedings.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press,

broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11^{bis}(1) of this Convention, when such use is justified by the informatory purpose.

(3) Nevertheless, the author shall enjoy the exclusive right of making a collection of his works mentioned in the preceding paragraphs.

Article 3

(1) The protection of this Convention shall apply to:

- (a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;
- (b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

(3) The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4

The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to:

- (a) authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of the Union;
- (b) authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5

(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be:

- (a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;
- (b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;
- (c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:
 - (i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country, and
 - (ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

Article 6

(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Director General of the World Intellectual Property Organization (hereinafter designated as "the Director General") by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Director General shall immediately communicate this declaration to all the countries of the Union.

Article 6^{bis}

(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 7

(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.

(2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making.

(3) In the case of anonymous or pseudonymous works, the term of protection granted by this Convention shall expire fifty years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years.

(4) It shall be a matter for legislation in the countries of the Union to determine the term of protection of photographic works and that of works of applied art in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work.

(5) The term of protection subsequent to the death of the author and the terms provided by paragraphs (2), (3) and (4) shall run from the date of death or of the event referred to in those paragraphs, but such terms shall always be deemed to begin on the first of January of the year following the death or such event.

(6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.

(7) Those countries of the Union bound by the Rome Act of this Convention which grant, in their national legislation in force at the time of signature of the present Act, shorter terms of protection than those provided for in the preceding paragraphs shall have the right to maintain such terms when ratifying or acceding to the present Act.

(8) In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

Article 7^{bis}

The provisions of the preceding Article shall also apply in the case of a work of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the last surviving author.

Article 8

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

Article 9

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

Article 10

(1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.

(3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.

Article 10^{bis}

(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

Article 11

(1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:

- (i) the public performance of their works, including such public performance by any means or process;
- (ii) any communication to the public of the performance of their works.

(2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 11^{bis}

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

- (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
- (ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
- (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Article 11^{ter}

(1) Authors of literary works shall enjoy the exclusive right of authorizing:

- (i) the public recitation of their works, including such public recitation by any means or process;
- (ii) any communication to the public of the recitation of their works.

(2) Authors of literary works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 12

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

Article 13

(1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(2) Recordings of musical works made in a country of the Union in accordance with Article 13(3) of the Conventions signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until a date two years after that country becomes bound by this Act.

(3) Recordings made in accordance with paragraphs (1) and (2) of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

Article 14

(1) Authors of literary or artistic works shall have the exclusive right of authorizing:

- (i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;
- (ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.

(2) The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the authors of the original works.

(3) The provisions of Article 13(1) shall not apply.

Article 14^{bis}

(1) Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

(2) (a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

(b) However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.

(c) The question whether or not the form of the undertaking referred to above should, for the application of the preceding subparagraph (b), be in a written agreement or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. The countries whose legislation so provides shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

(d) By "contrary or special stipulation" is meant any restrictive condition which is relevant to the aforesaid undertaking.

(3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, or to the principal director thereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2)(b) to such director shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

Article 14^{ter}

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.

Article 15

(1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries

of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.

(2) The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

(3) In the case of anonymous and pseudonymous works, other than those referred to in paragraph (1) above, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work.

(4) (a) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

(b) Countries of the Union which make such designation under the terms of this provision shall notify the Director General by means of a written declaration giving full information concerning the authority thus designated. The Director General shall at once communicate this declaration to all other countries of the Union.

Article 16

(1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.

(2) The provisions of the preceding paragraph shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.

(3) The seizure shall take place in accordance with the legislation of each country.

Article 17

The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

Article 18

(1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.

(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.

(3) The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.

(4) The preceding provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.

Article 19

The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.

Article 20

The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

Article 21

(1) Special provisions regarding developing countries are included in the Appendix.

(2) Subject to the provisions of Article 28(1)(b), the Appendix forms an integral part of this Act.

Article 22

(1) (a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 22 to 26.

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

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

(2) (a) The Assembly shall:

- (i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;
- (ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention Establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26;
- (iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;
- (iv) elect the members of the Executive Committee of the Assembly;
- (v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;
- (vi) determine the program and adopt the triennial budget of the Union, and approve its final accounts;
- (vii) adopt the financial regulations of the Union;
- (viii) establish such committees of experts and working groups as may be necessary for the work of the Union;
- (ix) determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- (x) adopt amendments to Articles 22 to 26;
- (xi) take any other appropriate action designed to further the objectives of the Union;
- (xii) exercise such other functions as are appropriate under this Convention;
- (xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.

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

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

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

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

(d) Subject to the provisions of Article 26(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

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

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

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

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

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

Article 23

(1) The Assembly shall have an Executive Committee.

(2) (a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 25(7)(b), have an *ex officio* seat on the Committee.

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

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

(3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements which might be established in relation with the Union to be among the countries constituting the Executive Committee.

(5) (a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be re-elected, but not more than two-thirds of them.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6) (a) The Executive Committee shall:

- (i) prepare the draft agenda of the Assembly;
- (ii) submit proposals to the Assembly respecting the draft program and triennial budget of the Union prepared by the Director General;
- (iii) approve, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General;
- (iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;
- (v) in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General;

(vi) perform such other functions as are allocated to it under this Convention.

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

(7) (a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

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

(8) (a) Each country member of the Executive Committee shall have one vote.

(b) One-half of the members of the Executive Committee shall constitute a quorum.

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

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

(9) Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.

(10) The Executive Committee shall adopt its own rules of procedure.

Article 24

(1) (a) The administrative tasks with respect to the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property.

(b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.

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

(2) The International Bureau shall assemble and publish information concerning the protection of copyright. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright.

(3) The International Bureau shall publish a monthly periodical.

(4) The International Bureau shall, on request, furnish information to any country of the Union on matters concerning the protection of copyright.

(5) The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be *ex officio* secretary of these bodies.

(7) (a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 22 to 26.

(b) The International Bureau may consult with 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 these conferences.

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

Article 25

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

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

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

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

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

(i) contributions of the countries of the Union;

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

(4) (a) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I	. . . .	25
Class II	. . . .	20
Class III	. . . .	15
Class IV	. . . .	10
Class V	. . . .	5
Class VI	. . . .	3
Class VII	. . . .	1

(b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must announce it to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.

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

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

(e) A country which is in arrears in the payment of its contributions shall have no vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

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

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

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

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

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

(7) (a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an *ex officio* seat on the Executive Committee.

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

(8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 26

(1) Proposals for the amendment of Articles 22, 23, 24, 25, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment of Article 22, and of the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their

respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

Article 27

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

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

(3) Subject to the provisions of Article 26 which apply to the amendment of Articles 22 to 26, any revision of this Act, including the Appendix, shall require the unanimity of the votes cast.

Article 28

(1)(a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification or accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply to Articles 1 to 21 and the Appendix, provided that, if such country has previously made a declaration under Article VI(1) of the Appendix, then it may declare in the said instrument only that its ratification or accession shall not apply to Articles 1 to 20.

(c) Any country of the Union which, in accordance with subparagraph (b), has excluded provisions therein referred to from the effects of its ratification or accession may at any later time declare that it extends the effects of its ratification or accession to those provisions. Such declaration shall be deposited with the Director General.

(2)(a) Articles 1 to 21 and the Appendix shall enter into force three months after both of the following two conditions are fulfilled:

- (i) at least five countries of the Union have ratified or acceded to this Act without making a declaration under paragraph (1)(b),

(ii) France, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, have become bound by the Universal Copyright Convention as revised at Paris on July 24, 1971.

(b) The entry into force referred to in subparagraph (a) shall apply to those countries of the Union which, at least three months before the said entry into force, have deposited instruments of ratification or accession not containing a declaration under paragraph (1)(b).

(c) With respect to any country of the Union not covered by subparagraph (b) and which ratifies or accedes to this Act without making a declaration under paragraph (1)(b), Articles 1 to 21 and the Appendix shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 1 to 21 and the Appendix shall enter into force with respect to that country on the date thus indicated.

(d) The provisions of subparagraphs (a) to (c) do not affect the application of Article VI of the Appendix.

(3) With respect to any country of the Union which ratifies or accedes to this Act with or without a declaration made under paragraph (1)(b), Articles 22 to 38 shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 22 to 38 shall enter into force with respect to that country on the date thus indicated.

Article 29

(1) Any country outside the Union may accede to this Act and thereby become party to this Convention and a member of the Union. Instruments of accession shall be deposited with the Director General.

(2) (a) Subject to subparagraph (b), this Convention shall enter into force with respect to any country outside the Union three months after the date on which the Director General has notified the deposit of its instrument of accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, this Convention shall enter into force with respect to that country on the date thus indicated.

(b) If the entry into force according to subparagraph (a) precedes the entry into force of Articles 1 to 21 and the Appendix according to Article 28(2)(a), the said country shall, in the meantime, be bound, instead of by Articles 1 to 21 and the Appendix, by Articles 1 to 20 of the Brussels Act of this Convention.

Article 29^{bis}

Ratification of or accession to this Act by any country not bound by Articles 22 to 38 of the Stockholm Act of this Convention shall, for the sole purposes of Article 14(2) of the Convention establishing the Organization, amount to ratification of or accession to the said Stockholm Act with the limitation set forth in Article 28(1)(b)(i) thereof.

Article 30

(1) Subject to the exceptions permitted by paragraph (2) of this Article, by Article 28(1)(b), by Article 33(2), and by the Appendix, ratification or accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention.

(2) (a) Any country of the Union ratifying or acceding to this Act may, subject to Article V(2) of the Appendix, retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession.

(b) Any country outside the Union may declare, in acceding to this Convention and subject to Article V(2) of the Appendix, that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into a language in general use in the said country. Subject to Article I(6)(b) of the Appendix, any country has the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country.

(c) Any country may withdraw such reservations at any time by notification addressed to the Director General.

Article 31

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification at any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3) (a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

(4) This Article shall in no way be understood as implying the recognition or tacit acceptance by a country of the Union of the factual situation concerning a territory to which this Convention is made applicable by another country of the Union by virtue of a declaration under paragraph (1).

Article 32

(1) This Act shall, as regards relations between the countries of the Union, and to the extent that it applies, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable, in their entirety or to the extent that this Act does not replace them by virtue of the preceding sentence, in relations with countries of the Union which do not ratify or accede to this Act.

(2) Countries outside the Union which become party to this Act shall, subject to paragraph (3), apply it with respect to any country of the Union not bound by this Act or which, although bound by this Act, has made a declaration pursuant to Article 28(1)(b). Such countries recognize that the said country of the Union, in its relations with them:

- (i) may apply the provisions of the most recent Act by which it is bound, and
- (ii) subject to Article I(6) of the Appendix, has the right to adapt the protection to the level provided for by this Act.

(3) Any country which has availed itself of any of the faculties provided for in the Appendix may apply the provisions of the Appendix relating to the faculty or faculties of which it has availed itself in its relations with any other country of the Union which is not bound by this Act, provided that the latter country has accepted the application of the said provisions.

Article 33

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Article 34

(1) Subject to Article 29^{bis}, no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix have entered into force.

(2) Once Articles 1 to 21 and the Appendix have entered into force, no country may make a declaration under Article 5 of the Protocol Regarding Developing Countries attached to the Stockholm Act.

Article 35

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

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

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

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

Article 36

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

(2) It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 37

(1) (a) This Act shall be signed in a single copy in the French and English languages and, subject to paragraph (2), shall be deposited with the Director General.

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

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

(2) This Act shall remain open for signature until January 31, 1972. Until that date, the copy referred to in paragraph (1)(a) shall be deposited with the Government of the French Republic.

(3) The Director General shall certify and transmit two copies of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

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

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Articles 28(1)(c), 30(2)(a) and (b), and 33(2), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 30(2)(c), 31(1) and (2), 33(3), and 38(1), as well as the Appendix.

Article 38

(1) Countries of the Union which have not ratified or acceded to this Act and which are not bound by Articles 22 to 26 of the Stockholm Act of this Convention may, until April 26, 1975, exercise, if they so desire, the rights provided under the said Articles as if they were bound by them. Any country desiring to exercise such rights shall give written notification

to this effect to the Director General; this notification shall be effective on the date of its receipt. Such countries shall be deemed to be members of the Assembly until the said date.

(2) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.

(3) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

APPENDIX

Article I

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(1)(c), at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V(1)(a).

(2) (a) Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a notification deposited with the Director General not more than fifteen months and not less than three months before the expiration of the ten-year period then running.

(b) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the ten-year period then running. Any such declaration may be renewed as provided for in the second sentence of subparagraph (a).

(3) Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in paragraph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.

(4) Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed until their stock is exhausted.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

(6) (a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than it is obliged to grant under Articles 1 to 20.

(b) The right to apply reciprocal treatment provided for in Article 30(2)(b), second sentence, shall not, until the date on which the period applicable under Article I(3) expires, be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article V(1)(a).

Article II

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled, so far as works published in printed or analogous forms of reproduction are concerned, to substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2) (a) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction.

(b) A license under the conditions provided for in this Article may also be granted if all the editions of the translation published in the language concerned are out of print.

(3)(a) In the case of translations into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2)(a).

(b) Any country referred to in paragraph (1) may, with the unanimous agreement of the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2)(a) a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it.

(4) (a) No license obtainable after three years shall be granted under this Article until a further period of six months has elapsed, and no license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed

- (i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or
- (ii) where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(b) If, during the said period of six or nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.

(5) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.

(6) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7) For works which are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of Article III are also fulfilled.

(8) No license shall be granted under this Article when the author has withdrawn from circulation all copies of his work.

(9) (a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in a country referred to in paragraph (1), upon an application made to the competent authority of that country by the said organization, provided that all of the following conditions are met:

- (i) the translation is made from a copy made and acquired in accordance with the laws of the said country;
- (ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;
- (iii) the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;
- (iv) all uses made of the translation are without any commercial purpose.

(b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph (a) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the country whose competent authority granted the license in question.

(c) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(d) Subject to subparagraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

Article III

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled to substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2)(a) If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of

(i) the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or

(ii) any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date,

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a license to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities.

(b) A license to reproduce and publish an edition which has been distributed as described in subparagraph (a) may also be granted under the conditions provided for in this Article if, after the expiration of the applicable period, no authorized copies of that edition have been on sale for a period of six months in the country concerned to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works.

(3) The period referred to in paragraph (2)(a)(i) shall be five years, except that

(i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;

- (ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4) (a) No license obtainable after three years shall be granted under this Article until a period of six months has elapsed

- (i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or
- (ii) where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(b) Where licenses are obtainable after other periods and Article IV(2) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.

(c) If, during the period of six or three months referred to in subparagraphs (a) and (b), a distribution as described in paragraph (2)(a) has taken place, no license shall be granted under this Article.

(d) No license shall be granted if the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.

(5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

- (i) where the translation was not published by the owner of the right of translation or with his authorization, or
- (ii) where the translation is not in a language in general use in the country in which the license is applied for.

(6) If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and with substantially the same content as the edition which was published under the said license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7) (a) Subject to subparagraph (b), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) This Article shall also apply to the reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Article IV

(1) A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any national or international information center referred to in paragraph (2).

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any national or international information center which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.

(3) The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies.

(4) (a) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country in which it has been applied for.

(b) For the purposes of subparagraph (a), the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I(5).

(c) Where a governmental or other public entity of a country which has granted a license to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of subparagraph (a), be considered to constitute export if all of the following conditions are met:

- (i) the recipients are individuals who are nationals of the country whose competent authority has granted the license, or organizations grouping such individuals;
- (ii) the copies are to be used only for the purpose of teaching, scholarship or research;
- (iii) the sending of the copies and their subsequent distribution to recipients is without any commercial purpose; and
- (iv) the country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been notified of the agreement by the Government of the country in which the license has been granted.

(5) All copies published under a license granted by virtue of Article II or Article III shall bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6) (a) Due provision shall be made at the national level to ensure

- (i) that the license provides, in favour of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned, and
- (ii) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(b) Due provision shall be made by national legislation to ensure a correct translation of the work, or an accurate reproduction of the particular edition, as the case may be.

Article V

(1) (a) Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II may, instead, at the time of ratifying or acceding to this Act:

- (i) if it is a country to which Article 30(2)(a) applies, make a declaration under that provision as far as the right of translation is concerned;
- (ii) if it is a country to which Article 30(2)(a) does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30(2)(b), first sentence.

(b) In the case of a country which ceases to be regarded as a developing country as referred to in Article I(1), a declaration made according to this paragraph shall be effective until the date on which the period applicable under Article I(3) expires.

(c) Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.

(2) Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to paragraph (1).

(3) Any country which has ceased to be regarded as a developing country as referred to in Article I(1) may, not later than two years prior to the expiration of the period applicable under Article I(3), make a declaration to the effect provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union. Such declaration shall take effect at the date on which the period applicable under Article I(3) expires.

Article VI

(1) Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:

- (i) if it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article I(1), that it will apply the provisions of Article II or of Article III or of both to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix; such declaration may, instead of referring to Article II, refer to Article V;

(ii) that it admits the application of this Appendix to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.

(2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.

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

DONE at Paris, on July 24, 1971

Brazil (E. Dayrell de Lima), Cameroon (J.-A. Ndong), Ceylon* (P.M.D. Fernando), Cyprus (T.L. Christodoulides), Denmark (W.A. Weincke), France (P. Charpentier, A. Saint-Mleux), Germany (Federal Republic of) (R. von Keller, E. Ulmer), Holy See (Mgr. E. Rovida), Hungary (I. Timár), India (K. Chaudhuri, S.I. Balakrishnan), Israel (M. Gabay), Italy (P. Archi), Ivory Coast (B. Dadié), Lebanon (S. Stétié), Liechtenstein (A.F. de Gerliczy-Burian), Luxembourg (E. Emringer), Mexico (F. Cuevas-Cancino), Monaco (P.-L. Falaize), Morocco (A. Zerrad), Netherlands (W.L. Haardt, J. Verhoeve), People's Republic of the Congo (E. Alihonou), Senegal (O. Goundiam), Spain (E. Garrigues), Sweden (H. Danelius), Switzerland (M.M. Pedrazzini), Tunisia (R. Saïd), United Kingdom (E. Armitage, W. Wallace), Yugoslavia (A. Jelić).

Editor's Note: The Paris Act was also signed within the period provided for in Article 37(2) of this Act, by the following countries: Austria, January 28, 1972 (E. Lemberger), Belgium, August 12, 1971 (G. Papeians de Morchoven), Finland, January 25, 1972 (P. Laitinen), Japan, January 25, 1972 (Y. Nakayama), Norway, December 28, 1971 (H. Vogt), Romania**, January 31, 1972 (C. Flitan) and Uruguay, October 4, 1971 (R. Botto).

* This State has since changed its name; at the time of publication of these *Records* it is designated as "Sri Lanka."

** At the time of signature, the Government of the Socialist Republic of Romania declared that it intended to avail itself of the right provided for under Article 7(7) of the said Act regarding the term of protection. Furthermore, this Government declared that it does not consider itself bound by the provisions of paragraph (1) of Article 33 and it is of the opinion that any dispute concerning the interpretation or application of the Convention may be brought before the International Court of Justice only with the consent of the countries concerned. Finally, it declared that "the maintenance in a state of dependency of certain territories to which the provisions of Article 31 of the Convention apply is not in conformity with the Charter of the United Nations or with the documents adopted by the United Nations concerning the grant of independence to colonial countries and peoples, including the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, unanimously adopted by Resolution No. 2625 (XXV) of the 1970 General Assembly of the United Nations, which solemnly proclaims the duty of States to promote realization of the principle of equal rights and self determination of peoples, in order to bring a speedy end to colonialism."

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¹ *Editor's Note:* This State has since changed its name; at the time of publication of these *Records* it is designated as "Sri Lanka".

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¹ This State has since changed its name; at the time of publication of these Records it is designated as "Zaire".

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Second Part

Articles I to VI of the Appendix to the Paris Act

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¹ This State has since changed its name; at the time of publication of these Records it is designated as "Sri Lanka".

² This State has since changed its name; at the time of publication of these Records it is designated as "Zaire".

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¹ This is Southern Korea.² This is Southern Viet-Nam.³ This State has since changed its name; at the time of publication of these Records it is designated as "People's Democratic Republic of Yemen".

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¹ This State has since changed its name; at the time of publication of these *Records* it is designated as "Zaire".

² This State has since changed its name; at the time of publication of these *Records* it is designated as "Sri Lanka".

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