records of the diplomatic conference on the international protection of performers, producers of phonograms and broadcasting organizations

rome 10 to 26 october 1961

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on the International Protection of
Performers, Producers of Phonograms
and Broadcasting Organizations

Rome, 10 to 26 October 1961

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Records of the Diplomatic Conference on the International Protection of Performers, Producers of Phonograms and Broadcasting Organizations

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International Convention

for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

The Contracting States, moved by the desire to protect the rights of performers, producers of phonograms, and broadcasting organizations,
Have agreed as follows:

Article 1
Protection granted under this Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Convention may be interpreted as prejudicing such protection.

Article 2
1. For the purposes of this Convention, national treatment shall mean the treatment accorded by the domestic law of the Contracting State in which protection is claimed:
(a) to performers who are its nationals, as regards performances taking place, broadcast, or first fixed, on its territory;
(b) to producers of phonograms who are its nationals, as regards phonograms first fixed or first published on its territory;
(c) to broadcasting organizations which have their headquarters on its territory, as regards broadcasts transmitted from transmitters situated on its territory.
2. National treatment shall be subject to the protection specifically guaranteed, and the limitations specifically provided for, in this Convention.

Article 3
For the purposes of this Convention:
(a) 'performers' means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works;
(b) 'phonogram' means any exclusively aural fixation of sounds of a performance or of other sounds;
(c) 'producer of phonograms' means the person who, or the legal entity which, first fixes the sounds of a performance or other sounds;
(d) 'publication' means the offering of copies of a phonogram to the public in reasonable quantity;
(e) 'reproduction' means the making of a copy or copies of a fixation;
(f) 'broadcasting' means the transmission by wireless means for public reception of sounds or of images and sounds;
(g) 'rebroadcasting' means the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization.

Article 4
Each Contracting State shall grant national treatment to performers if any of the following conditions is met:
(a) the performance takes place in another Contracting State;
(b) the performance is incorporated in a phonogram which is protected under Article 5 of this Convention;
(c) the performance, not being fixed on a phonogram, is carried by a broadcast which is protected by Article 6 of this Convention.

Article 5
1. Each Contracting State shall grant national treatment to producers of phonograms if any of the following conditions is met:
(a) the producer of the phonogram is a national of another Contracting State (criterion of nationality);
(b) the first fixation of the sound was made in another Contracting State (criterion of fixation);
(c) the phonogram was first published in another Contracting State (criterion of publication).
2. If a phonogram was first published in a non-contracting State but if it was also published, within thirty days of its first publication, in a Contracting State (simultaneous publication), it shall be considered as first published in the Contracting State.
3. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will not apply the criterion of publication or, alternatively, the criterion of

fixation. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

Article 6

1. Each Contracting State shall grant national treatment to broadcasting organizations if either of the following conditions is met:

(a) the headquarters of the broadcasting organization is situated in another Contracting State;

(b) the broadcast was transmitted from a transmitter situated in another Contracting State.

2. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

Article 7

1. The protection provided for performers by this Convention shall include the possibility of preventing:

(a) the broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;

(b) the fixation, without their consent, of their unfixed performance;

(c) the reproduction, without their consent, of a fixation of their performance:

i. if the original fixation itself was made without their consent;

ii. if the reproduction is made for purposes different from those for which the performers gave their consent;

iii. if the original fixation was made in accordance with the provisions of Article 15, and the reproduction is made for purposes different from those referred to in those provisions.

2. (1) If broadcasting was consented to by the performers, it shall be a matter for the domestic law of the Contracting State where protection is claimed to regulate the protection against rebroadcasting, fixation for broadcasting purposes, and the reproduction of such fixation for broadcasting purposes.

(2) The terms and conditions governing the use by broadcasting organizations of fixations made for broadcasting purposes shall be determined in accordance with the domestic law of the Contracting State where protection is claimed.

(3) However, the domestic law referred to in sub-paragraphs (1) and (2) of this paragraph shall not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organizations.

Article 8

Any Contracting State may, by its domestic laws and regulations, specify the manner in which performers will be represented in connexion with the exercise of their rights if several of them participate in the same performance.

Article 9

Any Contracting State may, by its domestic laws and regulations, extend the protection provided for in this Convention to artistes who do not perform literary or artistic works.

Article 10
Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

Article 11
If, as a condition of protecting the rights of producers of phonograms, or of performers, or both, in relation to phonograms, a Contracting State, under its domestic law, requires compliance with formalities, these shall be considered as fulfilled if all the copies in commerce of the published phonograms or their containers bear a notice consisting of the symbol P, accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection; and if the copies or their containers do not identify the producer or the licensee of the producer (by carrying his name, trade mark or other appropriate designation), the notice shall also include the name of the owner of the rights of the producer; and, furthermore, if the copies or their containers do not identify the principal performers, the notice shall also include the name of the person who, in the country in which the fixation was effected, owns the rights of such performers.

Article 12
If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both. Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration.

Article 13
Broadcasting organizations shall enjoy the right to authorize or prohibit:

(a) the rebroadcasting of their broadcasts;

(b) the fixation of their broadcasts;

(c) the reproduction:

i. of fixations, made without their consent, of their broadcasts;

ii. of fixations, made in accordance with the provisions of Article 15, of their broadcasts, if the reproduction is made for purposes different from those referred to in those provisions;

(d) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; it shall be a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised.

Article 14
The term of protection to be granted under this Convention shall last at least until the end of a period of twenty years computed from the end of the year in which:

(a) the fixation was made—for phonograms and for performances incorporated therein;

(b) the performance took place—for performances not incorporated in phonograms;

(c) the broadcast took place—for broadcasts.

Article 15
1. Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Convention as regards:

(a) private use;

(b) use of short excerpts in connexion with the reporting of current events;

(c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;

(d) use solely for the purposes of teaching or scientific research.

2. Irrespective of paragraph 1 of this Article, any Contracting State may, in its domestic laws and regulations, provide for

the same kinds of limitations with regard to the protection of performers, producers of phonograms and broadcasting organizations, as it provides for, in its domestic laws and regulations, in connexion with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with this Convention.

Article 16

1. Any State, upon becoming party to this Convention, shall be bound by all the obligations and shall enjoy all the benefits thereof. However, a State may at any time, in a notification deposited with the Secretary-General of the United Nations, declare that:

(a) as regards Article 12:

i. it will not apply the provisions of that Article;

ii. it will not apply the provisions of that Article in respect of certain uses;

iii. as regards phonograms the producer of which is not a national of another Contracting State, it will not apply that Article;

iv. as regards phonograms the producer of which is a national of another Contracting State, it will limit the protection provided for by that Article to the extent to which, and to the term for which, the latter State grants protection to phonograms first fixed by a national of the State making the declaration; however, the fact that the Contracting State of which the producer is a national does not grant the protection to the same beneficiary or beneficiaries as the State making the declaration shall not be considered as a difference in the extent of the protection;

(b) as regards Article 13, it will not apply item (d) of that Article; if a Contracting State makes such a declaration, the other Contracting States shall not be obliged to grant the right referred to in Article 13, item (d), to broadcasting organizations whose headquarters are in that State.

2. If the notification referred to in paragraph 1 of this Article is made after the date of the deposit of the instrument of ratification, acceptance or accession, the declaration will become effective six months after it has been deposited.

Article 17

Any State which, on 26 October 1961, grants protection to producers of phonograms solely on the basis of the criterion of fixation may, by a notification deposited with the Secretary-General of the United Nations at the time of ratification, acceptance or accession, declare that it will apply, for the purposes of Article 5, the criterion of fixation alone and, for the purposes of paragraph 1(a), (iii) and (iv), of Article 16, the criterion of fixation instead of the criterion of nationality.

Article 18

Any State which has deposited a notification under paragraph 3 of Article 5, paragraph 2 of Article 6, paragraph 1 of Article 16 or Article 17, may, by a further notification deposited with the Secretary-General of the United Nations, reduce its scope or withdraw it.

Article 19

Notwithstanding anything in this Convention, once a performer has consented to the incorporation of his performance in a visual or audio-visual fixation, Article 7 shall have no further application.

Article 20

1. This Convention shall not prejudice rights acquired in any Contracting State before the date of coming into force of this Convention for that State.

2. No Contracting State shall be bound

to apply the provisions of this Convention to performances or broadcasts which took place, or to phonograms which were fixed, before the date of coming into force of this Convention for that State.

Article 21

The protection provided for in this Convention shall not prejudice any protection otherwise secured to performers, producers of phonograms and broadcasting organizations.

Article 22

Contracting States reserve the right to enter into special agreements among themselves in so far as such agreements grant to performers, producers of phonograms or broadcasting organizations more extensive rights than those granted by this Convention or contain other provisions not contrary to this Convention.

Article 23

This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until 30 June 1962 for signature by any State invited to the Diplomatic Conference on the International Protection of Performers, Producers of Phonograms and Broadcasting Organizations which is a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.

Article 24

1. This Convention shall be subject to ratification or acceptance by the signatory States.
2. This Convention shall be open for accession by any State invited to the Conference referred to in Article 23, and by any State Member of the United Nations, provided that in either case such State is a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.
3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the United Nations.

Article 25

1. This Convention shall come into force three months after the date of deposit of the sixth instrument of ratification, acceptance or accession.
2. Subsequently, this Convention shall come into force in respect of each State three months after the date of deposit of its instrument of ratification, acceptance or accession.

Article 26

1. Each Contracting State undertakes to adopt, in accordance with its Constitution, the measures necessary to ensure the application of this Convention.
2. At the time of deposit of its instrument of ratification, acceptance or accession, each State must be in a position under its domestic law to give effect to the terms of this Convention.

Article 27

1. Any State may, at the time of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall extend to all or any of the territories for whose international relations it is responsible, provided that the Universal Copyright Convention or the International Convention for the Protection of Literary and Artistic Works applies to the territory or territories concerned. This notification shall take effect three months after the date of its receipt.
2. The notifications referred to in paragraph 3 of Article 5, paragraph 2 of Article 6, paragraph 1 of Article 16 and Articles 17 and 18, may be extended to cover all or

any of the territories referred to in paragraph 1 of this Article.

Article 28

1. Any Contracting State may denounce this Convention, on its own behalf, or on behalf of all or any of the territories referred to in Article 27.
2. The denunciation shall be effected by a notification addressed to the Secretary-General of the United Nations and shall take effect twelve months after the date of receipt of the notification.
3. The right of denunciation shall not be exercised by a Contracting State before the expiry of a period of five years from the date on which the Convention came into force with respect to that State.
4. A Contracting State shall cease to be a party to this Convention from that time when it is neither a party to the Universal Copyright Convention nor a member of the International Union for the Protection of Literary and Artistic Works.
5. This Convention shall cease to apply to any territory referred to in Article 27 from that time when neither the Universal Copyright Convention nor the International Convention for the Protection of Literary and Artistic Works applies to that territory.

Article 29

1. After this Convention has been in force for five years, any Contracting State may, by notification addressed to the Secretary-General of the United Nations, request that a conference be convened for the purpose of revising the Convention. The Secretary-General shall notify all Contracting States of this request. If, within a period of six months following the date of notification by the Secretary-General of the United Nations, not less than one half of the Contracting States notify him of their concurrence with the request, the Secretary-General shall inform the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, who shall convene a revision conference in co-operation with the Intergovernmental Committee provided for in Article 32.
2. The adoption of any revision of this Convention shall require an affirmative vote by two-thirds of the States attending the revision conference, provided that this majority includes two-thirds of the States which, at the time of the revision conference, are parties to the Convention.
3. In the event of adoption of a Convention revising this Convention in whole or in part, and unless the revising Convention provides otherwise:

(a) this Convention shall cease to be open to ratification, acceptance or accession as from the date of entry into force of the revising Convention;

(b) this Convention shall remain in force as regards relations between or with Contracting States which have not become parties to the revising Convention.

Article 30

Any dispute which may arise between two or more Contracting States concerning the interpretation or application of this Convention and which is not settled by negotiation shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

Article 31

Without prejudice to the provisions of paragraph 3 of Article 5, paragraph 2 of Article 6, paragraph 1 of Article 16 and Article 17, no reservation may be made to this Convention.

Article 32

1. An Intergovernmental Committee is hereby established with the following duties:

(a) to study questions concerning the application and operation of this Convention; and

(b) to collect proposals and to prepare documentation for possible revision of this Convention.

2. The Committee shall consist of representatives of the Contracting States, chosen with due regard to equitable geographical distribution. The number of members shall be six if there are twelve Contracting States or less, nine if there are thirteen to eighteen Contracting States and twelve if there are more than eighteen Contracting States.

3. The Committee shall be constituted twelve months after the Convention comes into force by an election organized among the Contracting States, each of which shall have one vote, by the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, in accordance with rules previously approved by a majority of all Contracting States.

4. The Committee shall elect its Chairman and officers. It shall establish its own rules of procedure. These rules shall in particular provide for the future operation of the Committee and for a method of selecting its members for the future in such a way as to ensure rotation among the various Contracting States.

5. Officials of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works, designated by the Directors-General and the Director thereof, shall constitute the Secretariat of the Committee.

6. Meetings of the Committee, which shall be convened whenever a majority of its members deems it necessary, shall be held successively at the headquarters of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works.

7. Expenses of members of the Committee shall be borne by their respective Governments.

Article 33

1. The present Convention is drawn up in English, French and Spanish, the three texts being equally authentic.

2. In addition, official texts of the present Convention shall be drawn up in German, Italian and Portuguese.

Article 34

1. The Secretary-General of the United Nations shall notify the States invited to the Conference referred to in Article 23 and every State Member of the United Nations, as well as the Director-General of of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works:

(a) of the deposit of each instrument of ratification, acceptance or accession;

(b) of the date of entry into force of the Convention;

(c) of all notifications, declarations or communications provided for in this Convention;

(d) if any of the situations referred to in paragraphs 4 and 5 of Article 28 arise.

2. The Secretary-General of the United Nations shall also notify the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural

Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works of the requests communicated to him in accordance with Article 29, as well as of any communication received from the Contracting States concerning the revision of the Convention.

IN FAITH WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Rome, this twenty-sixth day of October 1961, in a single copy in the English, French and Spanish languages. Certified true copies shall be delivered by the Secretary-General of the United Nations to all the States invited to the Conference referred to in Article 23 and to every State Member of the United Nations, as well as to the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works.

Final Act

The Conference convened jointly by the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization and the International Union for the Protection of Literary and Artistic Works,

With a view to adopting an international Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations,

Was held at Rome on the invitation of the Government of Italy from 10 to 26 October 1961 under the Chairmanship of H.E. Mr. Giuseppe Talamo Atenolfi (Italy),

And held discussions on the basis of the Records of the Committee of Experts on the International Protection of Performers, Producers of Phonograms and Broadcasting Organizations, which met at The Hague from 9 to 20 May 1960, and of Draft Final Clauses submitted jointly by the Secretariats of the three Organizations convening the Conference.

The Conference drew up the text of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

IN FAITH WHEREOF the undersigned, delegates of the States invited to the Conference, have signed this Final Act.

DONE at Rome, this twenty-sixth day of October 1961, in the French, English and Spanish languages, the original to be deposited in the archives of the United Nations.

Signatories

This list of signatories is complete up to 30 June 1962.

Argentina
Final Act and Convention:
Ricardo TISCORNIA, 26 October 1961

Australia
Final Act:
Clive F. WESTON, 26 October 1961

Austria
Final Act and Convention:
Rudolf KIRSCHSCHLAEGER, 26 October 1961

Belgium
Final Act and Convention:
Robert VAES, 26 October 1961

Brazil
Final Act and Convention:
Ildefonso MASCARENHAS DA SILVA,
26 October 1961

Cambodia
Final Act and Convention:
S. SOTH, 26 October 1961

Chile
Final Act and Convention:
Luis MORAND DUMAS, 26 October 1961

Democratic Republic of Congo
Final Act:
Willy WAEYENBERGE, 26 October 1961

Cuba
Final Act:
José Luis GALBE, 26 October 1961

Czechoslovakia
Final Act:
Vojtěch STRNAD, 26 October 1961

Denmark
Final Act and Convention:
Vincens de STEENSEN-LETH, 26 October 1961

Ecuador
Convention:
Leopoldo BENITES, 26 June 1962

Finland
Final Act:
Ragnar MEINANDER, 26 October 1961
Convention:
Ralph ENCKELL, 21 June 1962

France
Final Act and Convention:
Henry PUGET, 26 October 1961

Federal Republic of Germany
Final Act and Convention:
Eugen ULMER, 26 October 1961

Holy See
Final Act and Convention:
Vittorio TROCCHI, 26 October 1961

Iceland
Final Act and Convention:
Thórdur EYJÓLFSSON, 26 October 1961

India
Final Act and Convention:
G. K. MOOKERJEE, 26 October 1961

Ireland
Final Act:
J. J. LENNON, 26 October 1961
Convention:
T. F. O'SULLIVAN, 30 June 1962

Israel
Final Act:
G. ELRON, 26 October 1961
Convention:
M. S. COMAY, 7 February 1962

Italy
Final Act and Convention:
G. Talamo Atenolfi BRANCACCIO DI CASTELNUOVO, 26 October 1961

Japan
Final Act:
Michitoshi TAKAHASHI, 26 October 1961

Lebanon
Convention:
Georges HAKIM, 26 June 1962

Luxembourg
Final Act:
Gustave GRAAS, 26 October 1961

Mauritania
Final Act:
Sidi BOUNA, 26 October 1961

Mexico
Final Act and Convention:
Jorge GAXIOLA, 26 October 1961

Monaco
Convention:
G. R. BORGHINI, 22 June 1962

Netherlands
Final Act:
G. H. C. BODENHAUSEN, 26 October 1961

Norway
Final Act:
Olav LID, 26 October 1961

Paraguay
Convention:
Ruben RAMIREZ PANE, 30 June 1962
ad referendum

Peru
Final Act:
Luis A. AUBRY, 26 October 1961

Portugal
Final Act:
Eduardo BRAZÃO, 26 October 1961

Republic of South Africa
Final Act:
Louis-François JOUBERT, 26 October 1961

Spain
Final Act and Convention:
José Luis MESSÍA JIMÉNEZ, 26 October 1961

Sweden
Final Act and Convention:
Sture PETRÉN, 26 October 1961
(subject to ratification)

Switzerland
Final Act:
Hans MORF, 26 October 1961

Tunisia
Final Act:
Mustapha FERSI, 26 October 1961

United Kingdom
Final Act and Convention:
Gordon GRANT, 26 October 1961

United States of America
Final Act:
Abraham L. KAMINSTEIN, 26 October 1961

Yugoslavia
Final Act and Convention:
Alexsandar JELIĆ, 26 October 1961

List of participants

Delegations

Argentina

Dr. Ricardo TISCORNIA (Head of Delegation)
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R.A. Medina MUÑOZ (Adviser)
Consejero de Embajada.

Australia

Clive Frederick WESTON (Delegate)
Department of Labour and National Service.

Michael James MCKEOWN (Alternate delegate)
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Austria

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Dr. Oskar EDLBACHER (Deputy head of delegation)
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F. FAECQ (Expert)
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International Radio and Television Organization (OIRT)
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Secrétaire de la Commission juridique.

International Union of Cinematograph Exhibitors (UIEC)
Dr. Francesco Saverio CILENTI
Avocat.

International Union of National Organizations of Hotel, Restaurant and Cafe Keepers (HoReCa)
Dr. Antonio PRANTERA
Président de la Fédération italienne.
Dr. Alfredo VECCHIO
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Inviting organizations

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Francis WOLF (Head, Legal Division).
W. DOBBERNACK (Head, Non-manual Workers Division).
Paolo FANO (Director, Rome Field Office).
Karl St. GRÜNBERG (Counsellor, Non-manual Workers Division).

United Nations Educational, Scientific and Cultural Organization

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Juan O. DÍAZ-LEWIS (Head, Copyright Division).
Thomas ILOSVAY (Copyright Division).

United International Bureaux for the Protection of Intellectual Property (Berne Union)

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Claude MASOUYÉ (Counsellor, Head of Copyright Division).
Georges-Richard WIPF (Secretary).

Officers and secretariat of the conference

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Dr. Vojtěch STRNAD (*Czechoslovakia*).
Henry PUGET (*France*).
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Professor G. H. C. BODENHAUSEN (*Netherlands*).
H.E. Sture PETRÉN (*Sweden*).
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Secretaries
Karl St. GRÜNBERG (BIT).
Claude MASOUYÉ (BIRPI).

Deputy Secretaries
Thomas ILOSVAY (Unesco).
Georges-Richard WIPF (BIRPI).

Report of the Rapporteur-General

Introduction

The Diplomatic Conference on the International Protection of Performers, Producers of Phonograms and Broadcasting Organizations met in Rome, at the Palazzo dei Congressi of the Esposizione Universale di Roma from 10 to 26 October 1961, on the generous invitation of the Italian Government.

Convocation of the Diplomatic Conference

The Diplomatic Conference was convened jointly by the Directors-General of the International Labour Office (ILO) and the United Nations Educational, Scientific and Cultural Organization (Unesco) and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works (Berne Union).

Preparatory work

The preparations for this meeting took a long time to complete. The rights involved were discussed by the International Union for the Protection of Literary and Artistic Works at its Diplomatic Conference in Rome in 1928. The International Labour Organisation began studies in 1926 dealing with the protection of performers, and has maintained a continuing interest in the subject. The problem was considered at a meeting in Samaden, Switzerland (1939), and *vœux* were expressed by the Brussels revision conference of the Berne Copyright Union (1948).

In 1951 a committee of experts meeting in Rome produced a preliminary draft convention regarding the protection of performers, manufacturers of phonographic records, and broadcasting organizations, the so-called Rome Draft. In 1956 another draft was produced under the sponsorship of the International Labour Office, and in 1957 the Monaco Draft was prepared by a committee of experts convened by Unesco and the Berne Union. The matter was under constant study in the Intergovernmental Copyright Committee and the Permanent Committee of the Berne Union. Finally, in 1960, a committee of experts convened jointly by the three intergovernmental organizations met at The Hague, under the able chairmanship of Professor G. H. C. Bodenhausen, drew up and unanimously approved the draft convention (hereafter referred to as the Hague Draft) which served as the basis for the deliberations in Rome. The text of the Hague Draft and the report on it adopted by the experts were transmitted to governments and through them to interested organizations.

Documentation

The Diplomatic Conference had before it the 'Records' of the Hague Committee of Experts, including the Hague Draft. It also had before it a draft of the final or formal clauses (hereafter referred to as the Secretariat Draft) and draft rules of procedure for the Conference. The last two drafts were prepared by the Secretariats of the three sponsoring Organizations. Finally, the Conference had before it the observations and suggestions of governments concerning the Hague and Secretariat Drafts, and an analysis of these observations and suggestions prepared by the Secretariats.

Terms of reference of the Conference

The Conference was invited to draw up and adopt an international convention for the protection of the rights of performers, producers of phonograms, and broadcasting organizations (sometimes referred to as 'neighbouring rights').

Participation

Delegations from forty-four countries attended the Conference. At a later point the

Credentials Committee reported that credentials in good order had been presented on behalf of the delegations from the following thirty-nine countries which participated in the Conference: Argentina, Australia, Austria, Belgium, Brazil, Cambodia, Chile, Congo (capital: Leopoldville), Cuba, Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic of), Holy See, Iceland, India, Ireland, Israel, Italy, Japan, Luxembourg, Mauritania, Mexico, Monaco, Morocco, Netherlands, Norway, Peru, Poland, Portugal, South Africa (Republic of), Spain, Sweden, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

Representatives of the following five countries registered as participants: Dominican Republic, Ghana, Nicaragua, Rumania, and Venezuela. Rumania and Venezuela announced that they were present as observers.

The Delegation of Morocco objected to the seating of the Delegation of Mauritania. The President of the Conference ruled that since an invitation had been issued to Mauritania, that country could participate. Morocco recorded its protest against this ruling.

The United Nations, the Council of Europe, and the International Institute for the Unification of Private Law were represented by observers. In addition, there were observers from fifteen international non-governmental organizations who presented their views to the Conference during the debates.

Organization of the Conference

The opening session heard introductory addresses by Mr. H. Saba, representing the Director-General of Unesco, Mr. J. Secretan, Director of the United International Bureaux for the Protection of Intellectual Property, Mr. Abbas Ammar, Assistant Director-General of ILO, and Mr. G. Giraudo, Under-Secretary of State, representing the Italian Government.

Officers of the Conference

The opening plenary session of the Diplomatic Conference elected by acclamation Ambassador Giuseppe Talamo Atenolfi Brancaccio di Castelnuovo, Head of the Italian Delegation, as its President.

The following heads of their respective delegations were designated Vice-Presidents of the Conference: Messrs. Ricardo Tiscornia (Argentina), Samreth Soth (Cambodia), Vojtěch Strnad (Czechoslovakia), Henry Puget (France), Eugen Ulmer (Federal Republic of Germany), Dua-Sakyi (Ghana), G. H. C. Bodenhausen (Netherlands), Sture Petrén (Sweden), Mustapha Fersi (Tunisia), and Gordon Grant (United Kingdom).

Mr. Abraham L. Kaminstein (United States of America) was designated Rapporteur-General of the Conference.

Ambassador Michithoshi Takahashi (Japan) was appointed Chairman of the Credentials Committee and Conseiller d'Etat Henry Puget (France) Chairman of the Drafting Committee.

The President of the Conference, the ten Vice-Presidents, the Rapporteur-General, and the Chairman of the Credentials Committee constituted the 'Bureau' or Steering Committee of the Conference.

Procedure

The draft rules of procedure were approved by the Conference with slight modifications, including in particular a change in Rule 10 to provide for nine members of the Drafting Committee (later changed to twelve) and an amendment in Rule 16 to limit to representatives of States the right to submit draft resolutions and amendments.

Each national delegation had one vote in the Conference and its subsidiary bodies.

All decisions in plenary meetings of the Conference required the affirmative vote of at least two-thirds of the delegations present and voting.

Plenary meetings of the Conference and meetings of the Main Commission and Working Parties were open to the public.

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

Secretariat of the Conference

The three sponsoring Organizations were represented at the Conference by the following officials: the ILO by Messrs. A. Ammar, F. Wolf, W. Dobbernack, P. P. Fano and K. St. Grünberg; Unesco by Messrs. H. Saba, J. O. Díaz Lewis and T. Ilosvay; and the Bureau of the Berne Union by Messrs. J. Secretan, C. Masouyé and G. R. Wipf.

The three sponsoring Organizations provided the necessary assistance for the work of the Conference, including translation of the debates and documents under the direction of Mr. J. P. Urlik, Conference Officer. The three Organizations furnished a joint Secretariat of the Conference directed by Mr. J. O. Díaz Lewis, Secretary-General, Messrs. K. St. Grünberg and C. Masouyé, Secretaries, and Messrs. T. Ilosvay and G. R. Wipf, Deputy Secretaries. The staff of the joint Secretariat was completed by personnel detailed to the Conference by the Italian Government, with Mr. R. Ferretti, Minister Plenipotentiary, as liaison officer.

Main Commission and working parties

In addition to its plenary sessions, the Conference sat as a Main Commission. The President of the Conference was also Chairman of this Commission.

After a general discussion in plenary sittings of the Conference and in the Main Commission, three working parties were set up.

Working Party No. I, under the chairmanship of Professor G. H. C. Bodenhausen (Netherlands) was entrusted with the work on Articles 2 to 4, 7 and 10 of the Hague Draft and the study of the substance of Articles 1, 18 and 19.

Working Party No. II, under the chairmanship of Professor Eugen Ulmer (Federal Republic of Germany) was to deal with Articles 5, 6 and 8, and 11 to 16 of the Hague Draft.

Working Party No. III, under the chairmanship of Ambassador Sture Petrén (Sweden) was responsible for the final clauses, namely Articles 20 to 29 of the Secretariat Draft and, in addition, for Articles 1, 18 and 19 of the Hague Draft after their substance had been studied by Working Party No. I.

The three Working Parties, therefore, covered the entire Convention, with the exception of Articles 9 and 17 which were reserved for the Main Commission.

Reports were submitted to the Main Commission by the rapporteurs: Mr. William Wallace (United Kingdom) for Working Party No. I, Dr. Valerio de Sanctis (Italy) for Working Party No. II, Mr. Arpad Bogsch (United States of America) for a sub-group of that Party working on what eventually became Article 16 of the Convention and Ambassador Sture Petrén (Sweden) for Working Party No. III. These reports were of great assistance in the work of the Conference.

At the opening of the Conference, the Delegation of France declared that it considered a convention on neighbouring rights both superfluous and untimely: superfluous because most of the situations covered by it can be regulated by contracts, and untimely because international conventions follow rather than precede juridical developments.

Other delegations disagreed, believing the time propitious for international regulations. The Scandinavian countries pointed

to the recent adoption of their own national legislation. Some saw an international convention as helpful in setting standards and a general pattern for domestic legislation.

Convention provisions

Safeguarding of copyrights (Article 1)

The Hague Draft contained an article providing that the protection granted under the Convention 'shall leave intact and shall in no way affect the protection of the rights of authors of literary and artistic works or of other copyright proprietors', and that consequently, 'no provision of this Convention may be interpreted as prejudicing such protection'. The meaning of this provision, as clearly expressed in the Hague Report, was that the Convention would have no effect upon the legal situation of copyright proprietors. Its possible effect on economic interests was another matter.

Some delegations expressed the view that the provision was superfluous since the Convention, which did not deal with the rights of the author, could not affect him. Others, and particularly the French, Italian, and Mexican delegations, insisted on the importance of such a provision. The French and Italian delegations proposed (Doc. 15) that the provision be amended to state, in addition, that the protection granted under the Convention shall not affect 'the exercise of that right [i.e., the right of copyright] over the work performed, recorded or broadcast'. The two delegations stated that their proposal was meant to be applied only in extreme cases.

During the discussion, some delegations said that the proposed amendment was dangerous since the provisions requiring consent by the performer, producer of phonograms, or broadcasting organization might be interpreted as 'affecting the exercise' of copyright. They argued that, if this interpretation were accepted, the provisions requiring consent by the performer, recorder, or broadcaster could be rendered ineffective by the proposed amendment. For example, it might be maintained that only the authorization of the composer of the recorded music was necessary for the reproduction of a phonogram, because an added requirement for the authorization of the record producer could be considered as 'affecting the exercise' of the copyright of the composer. Several delegations expressed the opinion that such a result would deprive the Convention of any significance.

The Franco-Italian proposal, when put to a vote, was rejected, and the Hague text, with some modifications based mainly on a Swiss proposal (Doc. 19), was adopted and became Article 1 of the Convention. Proposals by India (Doc. 30) and the United Kingdom (Doc. 20) were not pressed, since their purport was considered to be implied in the text as approved.

Under the text of Article 1, as adopted, it is clear that whenever, by virtue of the copyright law, the authorization of the author is necessary for the reproduction or other use of his work, the need for this authorization is not affected by the Convention. Conversely, when, by virtue of this Convention, the consent of the performer, recorder, or broadcaster is necessary, the need for his consent does not disappear because authorization by the author is also necessary.

Protection granted by the Convention (Article 2)

On the basis of a proposal of the United States (Doc. 43), the Conference decided to treat separately the questions of (a) the persons protected and the circumstances under which protection is granted to them, and (b) the nature and extent of this protection.

The Hague Draft dealt with these questions concurrently; in the case of the beneficiaries it also did so indirectly, that is, by first stating that a Contracting State must grant protection if the country of origin of a performance, phonogram, or broadcast was another Contracting State, and then defining what country of origin meant in each case. The Conference found the definition in the Hague Draft ambiguous and the method of treatment somewhat complicated. Consequently, it decided to state directly who was to be protected and in what cases (Articles 4, 5 and 6), and the Convention, as adopted, no longer employs the term 'country of origin'. The question of nature and extent of protection is dealt with in Article 2.

The basic protection accorded by the Convention consists of national treatment, and this is defined in paragraph 1 of Article 2. The definition is different in form from that in the Hague Draft, but its essence and intent are identical. Simply stated, national treatment is the treatment that a State grants under its domestic law to domestic performances, phonograms, and broadcasts.

In response to a proposal by Belgium (Doc. 13) and Switzerland (Doc. 14), the Convention also contains a provision making national treatment subject to the protection specifically guaranteed by the Convention. This refers to the so-called minimum protection provided particularly in Articles 7, 10, 12 and 13, which the Contracting States undertake to grant—subject to permitted reservations and exceptions—even if they do not grant it to domestic performances, phonograms, or broadcasts. This idea is expressed in paragraph 2 of Article 2, which also provides that national treatment shall be subject to the limitations specifically provided for in the Convention. For example, under Article 16 a Contracting State could deny or limit rights of secondary use with respect to phonograms (Article 12), regardless of whether its domestic law granted this protection.

In this connexion, Czechoslovakia proposed (Doc. 31) that a State which granted rights other than the minima required by the Convention should not be bound to grant them to nationals of other States which did not grant such rights to nationals of the first State. This was not accepted by the Conference.

During the discussion several delegations expressed the view that Article 2, paragraph 2, was unnecessary as a matter of strict legal logic; they argued that the qualifications upon the principle of national treatment necessarily resulted from the various provisions of the Convention and needed no special mention. The majority believed, however, that a provision like paragraph 2 would facilitate the understanding of the Convention. They favoured a clear statement that what the Convention obligates the States to grant does not necessarily coincide exactly with national treatment, since Convention protection might, under the circumstances referred to above, be more or less than national treatment.

Definitions (Article 3)

Performers. Definitions of 'performers' were proposed by Austria (Doc. 49) and the United States (Doc. 52), and the one incorporated in the Convention is based on the suggestion of the latter. It provides that ' "performers" means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary and artistic works'. The Conference agreed that the expression 'literary and artistic works', used in the definition of 'performers' and in other provisions of the Convention, has the meaning which those words have in the Berne and Universal Copyright Conventions, and in particular that they

include musical, dramatic, and dramatico-musical works. Furthermore, it was agreed that conductors of musicians or singers are to be considered as included in the definition of 'performers'.

The Hague Draft contained a definition of 'performance' but not of 'performers'. In view of the addition of a definition of 'performers', the Conference found it superfluous to define 'performance' separately; obviously, performance means the activities of a performer *qua* performer. It was, however, agreed that whenever the Convention uses the expression 'performance', or, in the French text, 'exécution', and in the Spanish, 'ejecución', it must be understood as a generic term which also includes recitation ('récitation', 'recitación') and presentation ('représentation', 'representación').

Phonogram. For the purposes of the Convention, 'phonogram' means any exclusively aural fixation of sounds of a performance or other sounds. The definition is almost identical with that which was included in the Hague Draft. It has been suggested that bird songs and other nature sounds are examples of sounds not coming from a performance.

Producer of phonograms. As in the Hague Draft, 'producer of phonograms' is defined as the person or legal entity which first fixes the sounds of a performance or other sounds. It was noted during the discussion that when an employee of a legal entity fixes the sounds in the course of his employment, the employer legal entity, rather than the employee, is to be considered the producer.

Publication. On the basis of proposals by Austria (Doc. 27), the United Kingdom (Doc. 20), and the United States (Doc. 50), publication was defined as the 'offering of copies of a phonogram to the public in reasonable quantity'. This definition will be discussed again in connexion with Article 5.

Reproduction. This term is defined as 'the making of a copy or copies of a fixation'. The definition is based on a proposal of the United Kingdom (Doc. 20), and was found desirable in order to make it clear that reproduction means copying. Performance, exhibition, showing, or any other activity which does not result in new permanent tangible copies are excluded. It was explained during the Conference that the expressions 'phonogram' and 'fixation', as used in the Convention, differ from each other: while 'phonograms' are exclusively aural fixations, 'fixations' also include visual or audio-visual fixations.

Broadcasting. This term is defined as the transmission of sounds, or of images and sounds, by wireless means for public reception. An Austrian proposal (Doc. 49) would have included transmission by wires in the definition. The Conference was of the opinion that only transmission by hertzian waves or other wireless means should constitute broadcasting. The words 'transmission for public reception' used in the definition should make it clear that broadcasts intended for reception by one person or by a well-defined group—such as ships at sea, planes in the air, taxis circulating in a city, etc.—are not to be considered as broadcasts.

Rebroadcasting. In its adopted form the definition, which was based on an Austrian proposal (Doc. 98), provides that rebroadcasting means 'the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization'. An earlier Austrian proposal (Doc. 49) would also have considered a deferred broadcast as rebroadcasting. However, an objection was raised against this proposal on the ground that a deferred broadcast is necessarily based on a fixation

of the broadcast of the originating transmitter, and the proposal was withdrawn.

Other definitions proposed by India (Docs. 30 and 50), and a proposed definition of the expression 'broadcasting organization' (United States, Doc. 52), were also withdrawn. The debate on the latter, however, clarified a few points. For example, if the technical equipment in a Contracting State is owned by the postal administration, but what is fed into the transmitter is prepared and presented by such organizations as the Radiodiffusion-Télévision Française or the British Broadcasting Corporation, the latter, and not the postal administration, is to be considered the broadcasting organization. Furthermore, if a given programme is sponsored by an advertiser, or is prerecorded by an independent producer of television films, and is transmitted by such organizations as the Columbia Broadcasting System in the United States, the latter, rather than the sponsor or the independent producer, is to be considered the broadcasting organization.

Protected performances (Article 4)

As already suggested, Articles 4, 5 and 6 indicate who is protected and in what cases. A question applicable to all three Articles was whether the Convention should apply only to international situations, or also to national situations. Simply stated, the question was whether a Contracting State must apply the Convention only to foreign or also to domestic performances, phonograms, and broadcasts.

Proposals by Belgium (Doc. 13) and Cambodia (Doc. 18), orally supported by other countries, suggested that the Convention should apply to domestic as well as international situations. It was generally agreed that the question was probably of little practical significance, since it was unlikely that a State would not grant at least the same advantages to domestic performances, etc., as to foreign ones. On the other hand, several delegations, and particularly that of the United States, emphasized that domestic situations should not be regulated by international treaty. The amendments were not pressed and, like the Hague Draft, the Convention covers only international situations.

Article 4 provides that a Contracting State must grant protection to a performer in each and all of the following three cases: (a) when the performance takes place in another Contracting State; (b) when the performance is incorporated in a phonogram protected under Article 5; (c) when the performance, which has not been fixed in a phonogram, is carried by a broadcast protected under Article 6. It was stated during the discussion that the purpose of items (b) and (c) was to establish a system under which performances recorded on phonograms are protected when the phonogram producer is protected, and under which broadcast performances (other than those fixed on phonograms) are protected when the broadcasting organizations transmitting them are protected.

The Federal Republic of Germany proposed that a performer who is a national of a Contracting State, and who performs in another Contracting State, should enjoy in the latter State the same rights as those enjoyed by performers who are nationals of this latter State (Doc. 29). Views were divided on the question of whether this was a truly international situation; the performer would be a foreigner in the State where he would claim protection but, on the other hand, the place of the performance and the place where protection would be claimed would be the same. In view of the doubts expressed by some delegations the proposal was withdrawn.

Protected phonograms (Article 5)

With respect to the protection of phonogram producers, the Hague Draft differentiated

between published and unpublished phonograms. Under that Draft, a Contracting State would have had to protect published phonograms if first publication took place in another Contracting State and would have had to protect unpublished phonograms if their fixation took place in another Contracting State, provided the producer was a national of a Contracting State.

The cases in which phonograms must be protected are somewhat different under the Convention as adopted. Subject to certain exceptions, Article 5 provides that each Contracting State must grant national treatment in each and all of the following three cases: (a) when the producer is a national of another Contracting State; (b) when the first fixation was made in another Contracting State; (c) when the first publication took place in another Contracting State.

Several delegations expressed their unwillingness to grant protection on the basis of the criterion of fixation. At the same time, several others declared that their countries could not accept the criterion of first publication (cf. France, Doc. 51). As a result, a compromise solution was worked out. This compromise, as incorporated in Article 5, paragraph 3, allows each Contracting State to make a reservation to the effect that it will not apply the criterion of publication or, alternatively, the criterion of fixation. The application of both criteria cannot be excluded by the same State; and the application of the criterion of nationality cannot be excluded by any State. (See, however, Article 17.)

With respect to published phonograms, the provision means that there may be three categories of Contracting States:

1. Those that make no declaration under paragraph 3. They will have to protect published phonograms if any of the three criteria (nationality, publication, fixation) is present.
2. Those that, by a declaration under paragraph 3, exclude the application of the criterion of publication. They will have to protect published phonograms if either of the remaining two criteria (nationality, fixation) is present.
3. Those that, by a declaration under paragraph 3, exclude the application of the criterion of fixation. They will have to protect published phonograms if either of the remaining two criteria (nationality, publication) is present.

As for unpublished phonograms, of course, the exclusion of the application of the criterion of publication has no relevance. Thus, in this situation, the provision means that there may be two categories of Contracting States:

1. Those that make no declaration under paragraph 3. They will have to protect unpublished phonograms if either of the two criteria (nationality, fixation) is present.
2. Those that, by a declaration under paragraph 3, exclude the application of the criterion of fixation. They will have to protect unpublished phonograms, if and only if, the criterion of nationality is present.

As to published phonograms, the compromise did not satisfy a number of countries which had recently adopted laws recognizing only the criterion of fixation. They presented an amendment, the effect of which would have been to allow any Contracting State to apply only the criterion of fixation (Denmark, Finland, Iceland, Norway and Sweden, Doc. 59). The amendment was rejected, but another amendment to accomplish the same result was moved a few days later by the United Kingdom (Doc. 110). Under this amendment the opportunity to apply the criterion of fixation alone would be given, not to any Contracting State, but only to those whose laws already in force on 26 October 1961 were based on the sole criterion of fixation. This amendment was adopted, and

the corresponding provision is included in Article 17.

Paragraph 2 of Article 5 deals with 'simultaneous publication'. It provides that, even if a phonogram was first published in a non-Contracting State, it will be considered as 'first published' in a Contracting State if publication takes place in the Contracting State within thirty days of the first publication.

This rule of 'simultaneous publication' was also contained in the Hague Draft. Argentina, France, Italy and Yugoslavia protested against the rule since, in their view, the definition of 'publication' was narrower in the Hague Draft than in the Convention. Whereas the former defined publication as the multiplication of copies of the phonogram and the offering of such copies to the public in reasonable quantity, the latter speaks only of the offering, and not about multiplication. Others, however, considered that the intent of the Hague Draft was the same, multiplication having been mentioned only to emphasize the need for a certain quantity of copies.

Protected Broadcasts (Article 6)

Article 6, paragraph 1, provides that each Contracting State must grant national treatment to broadcasting organizations in either and both the following cases: (a) when the headquarters of the broadcasting organization is situated in another Contracting State, and (b) when the broadcast was transmitted from a transmitter situated in another Contracting State. Paragraph 2 of the same Article provides, in effect, that a Contracting State may reserve the right to protect broadcasts only if both the condition of nationality and the condition of territoriality are met.

It was agreed during the discussion that the State where 'the headquarters of the broadcasting organization is situated' should be understood to mean the State under the laws of which the broadcasting entity was organized. Thus, in the French text 'siège social' should be understood as the equivalent of 'siège statutaire', and it was also agreed that the legal entity in question may be what is known in some European countries as 'offene Handelsgesellschaft', or 'Kommanditgesellschaft'.

Minimum protection of performers (Article 7)

Paragraph 1 of this Article contains an enumeration of the minimum protection guaranteed to performers. The introductory sentence states that the protection provided by this Convention for the performer 'shall include the possibility of preventing' certain acts done without his consent. The quoted expression was opposed by several delegations. Czechoslovakia proposed (Doc. 31) that it be replaced by the expression 'shall have the right to authorize or prohibit', which is the expression used in the parallel provisions enumerating the minimum rights of producers of phonograms (Article 10) and broadcasting organizations (Article 13). However, the Conference decided to maintain the expression, which had been used in the Hague Draft. It was understood that this expression was used in order to allow countries like the United Kingdom to continue to protect performers by virtue of criminal statutes.

It was agreed that the acts enumerated in the paragraph require consent by the performer. The institution of a compulsory licence system would therefore be incompatible with the Convention since, under such a system, a performer could not prevent, but would have to tolerate, the acts in question.

The question arose as to whether the Convention should use the expression 'live' performance (in the French, 'exécution directe'; in the Spanish, 'ejecución directa'). This expression is ambiguous for several reasons: first, because 'live' in English has

a different connotation from 'directe' in French, or 'directa' in Spanish; second, because something that is a *directe* performance for the performer may not be *directe* for the public; and, third, because these terms have different connotations in different countries. Several attempts to define the term were unsuccessful, and it was finally agreed not to use the expression in the text of the Convention.

In connexion with paragraph 1 (a), the United Kingdom proposed (Doc. 20) to eliminate any reference to communication to the public of live performances. During the discussion it was argued that neither the communication to the public nor the fixation of a live performance ordinarily involves the crossing of national frontiers; it would thus be unnecessary to provide for them in a Convention limited to international situations. While the Conference recognized that cases of this sort might be rare, it did not regard their occurrence as outside the realm of the possible. The Conference therefore refused to eliminate the reference.

In connexion with paragraph 1 (b), Austria proposed that consent of the performer be required, not only in the case of the fixation of a live broadcast performance, but also in the case of the fixation of a live performance communicated to the public by any other means (Doc. 63). The proposal was accepted, and the text of Article 7, paragraph 1 (b), as redrafted, has the effect suggested by Austria.

A proposal by the Federal Republic of Germany would have required the consent of the performer in the case of the rebroadcast of his live performance. This proposal was withdrawn since the matter of rebroadcasting is, to a large extent, dealt with in paragraph 2.

Paragraph 1 (c), in the comparable version of the Hague Draft, provided that, in order to reproduce a fixation of his performance, the consent of the performer would be required in three specific cases. The United States proposed (Doc. 80) that this consent be required generally and not only in the three cases specifically mentioned. This proposal was rejected, whereupon the United States moved (Doc. 80) that a fourth case be added. This would have had the effect of requiring the consent of both the producer of the phonogram and the performer, if a phonogram incorporating the latter's performance was copied by a person other than one licensed by the authorized producer. This proposal was not accepted by the Conference. The majority believed that it was sufficient to give the right of reproduction to the producer of the phonogram in such cases, since he could be expected to enforce his right should anyone make unauthorized reproductions. It was felt that cases in which, for some reason or other, the producer would or could not enforce his rights were probably so rare that they did not require coverage in the provision on minimum protection of performers.

In paragraph 1 (c) (i), the Hague Draft provided that reproduction of a fixation required the consent of the performer if the original fixation was 'unlawful'. On the basis of a proposal by Austria (Doc. 63), 'unlawful' was changed to read 'without their [i.e., the performers'] consent'. However, it was understood that paragraph 1 (c) (i) of Article 7 would be inapplicable in cases where, under a national law that took advantage of Article 15, consent for a fixation was not required, and paragraph 1 (c) (iii) alone would apply.

Paragraph 1 (c) (ii) remained, in essence, as in the Hague Draft. It provides that performers must be given the possibility of preventing the reproduction of a fixation, if the reproduction is made for purposes different from those for which they gave their consent. A United Kingdom proposal (Doc. 20) would have limited the application of the provision to cases where the original fixation was made for purposes other than

the making of commercial phonograms, but the proposal was not adopted. An Austrian proposal (Doc. 63) was rejected, as was a proposal by Czechoslovakia (Doc. 128) presented to the Plenary Conference. The latter proposal would have required the consent of the performers only 'when the reproduction made for broadcasting is used for wireless purposes other than those for which they gave their consent'. Those objecting to the proposal said, among other things, that it would not enable the performer to prevent the reproduction of a fixation, consented to for the making of commercial discs, in a motion picture sound track. The possibility of preventing such an act was among the cases which the Convention, as adopted, guarantees.

A proposal by Austria (Doc. 63) intended to give the performers a right against the unauthorized putting into circulation of reproductions, and a proposal by Poland (Doc. 41) which would have allowed the requirement for the performer's consent to be replaced by compulsory licences, were rejected by the Conference.

Paragraph 2, sub-paragraphs (1) and (2) permit a Contracting State to regulate by domestic law certain matters for the benefit of broadcasters where the performer consented to the broadcast or where fixations made for broadcasting purposes are used by broadcasting organizations. The United States proposed (Doc. 81) to delete these provisions, which were also contained in the Hague Draft. In its view, matters of rebroadcasting, fixations for broadcasting purposes, and the use of such fixations, ought to be left to contractual arrangements freely negotiated between performers and broadcasting organizations. The proposal for deletion was not accepted, but the principle of the pre-eminence of free contractual arrangements was embodied in a new provision, which now constitutes sub-paragraph (3) of paragraph 2.

This new sub-paragraph is based on a proposal of the United Kingdom (Doc. 77), and states that domestic laws shall not, in the cases contemplated by sub-paragraphs (1) and (2), operate to deprive performers of the ability to control, by contract, their relations with broadcasting organizations. It was agreed during the discussion that 'contract' in this context includes collective contracts, and also the decisions of an arbitration board if arbitration was the mode of settlement ordinarily applying between the performers and broadcasters.

Austria proposed (Doc. 63) that the Article incorporate a provision dealing with cases in which a performer has transferred his rights to an individual or a corporate body. The proposal would have permitted the performer in this situation to continue to exercise the rights himself, if this were necessary to enable him to carry out a recording or broadcasting engagement accepted by him. Some delegates stated that this proposal was contrary to the principle of freedom of contract, since it meant either that performers had the right to repudiate their contracts, or that their freedom of contract was limited at the outset. The proposal was rejected.

Group performances (Article 8)

The Hague Draft provided that any Contracting State might, by its national laws and regulations, specify the conditions under which performers exercise their rights in cases where several of them participate in the same performance. The discussions underlined the importance of this provision, since most performances involve two or more performers.

Several proposals were made to the effect that these rights be exercised 'jointly' or 'in common', and that Contracting States be required rather than permitted to legislate in this matter (Belgium, Doc. 66; Monaco, Doc. 32; orally supported by France, Portugal). However, after debate, these proposals were withdrawn.

The United States proposed, first, that national laws should come into play only if the members of the group were unable to agree among themselves as to the joint exercise of their rights (Doc. 82). This proposal was opposed by several delegations on the ground that it would prevent States from regulating the question generally; they favoured permitting national regulation regardless of whether or not there was a conflict among the members of any given orchestra or other ensemble. When put to a vote, the proposal was defeated.

Thereupon the United States suggested (Doc. 101) that the scope of national laws and regulations be restricted in this matter. Under this proposal, the provision would make clear that national laws could not deal with any of the conditions under which these rights might be exercised, but that they must be limited to the question of how members of a group were represented when they exercised their rights. The discussion indicated that the use of the expression 'conditions of exercise of rights' might be undesirable in view of its connotations, particularly as used in the Berne Convention, where it is a euphemism for compulsory licences.

The text of the Hague Draft, as amended by this second proposal, was adopted as Article 8 of the Convention.

Variety artistes (Article 9)

As stated in connexion with Article 3, 'performers' are defined as persons who perform literary or artistic works. This definition prompted some discussion, since several delegates thought that all persons who 'perform' should come within the scope of the Convention, whether or not they perform 'works'. Other delegations, whose view prevailed, believed that the Convention should not require protection in the case of 'performances' other than performances of 'works'. They regarded this result as necessary in order to avoid practical difficulties, since the expression 'performance' in everyday language has many connotations.

The Conference decided to write into the Convention, as had been done in somewhat different terms in the Hague Draft, a provision permitting any Contracting State, by its domestic laws and regulations, to extend the protection provided in the Convention to 'artistes' who do not perform literary or artistic works. Some delegations stated that the provision was superfluous since, even without it, a State might protect such artistes in its own domestic sphere if it desired to do so. Others were of the opinion that the provision had some merit as a reminder for countries that they were not obliged to limit protection to performers of literary or artistic works. It was generally agreed that variety artistes not performing works were among those within the purview of Article 9.

Reproduction right of producers of phonograms (Article 10)

The Hague Draft provided that producers of phonograms had the right to authorize or prohibit the reproduction of their phonograms, whether the phonogram was reproduced 'directly or when broadcast'.

Pursuant to proposals submitted by Austria (Doc. 76), Belgium (Doc. 70), Denmark (Doc. 62), and Portugal (Doc. 88), the words 'or when broadcast' were replaced by the word 'indirectly'. It was understood that direct or indirect reproduction includes, among other things, reproduction by means of: (a) moulding and casting; (b) recording the sounds produced by playing a pre-existent phonogram; and (c) recording off the air a broadcast of the sounds produced by playing a phonogram.

Belgium proposed that the right of

reproduction refer to reproduction of part of the phonogram, as well as to complete reproduction (Doc. 70). This amendment was considered superfluous since the right of reproduction is not qualified, and is to be understood as including rights against partial reproduction of a phonogram. The same interpretation, it was agreed, should apply to the reproduction of other fixations, and should be regarded as covering performers and broadcasters as well as producers of phonograms.

Austria proposed that the Convention give producers the right to prohibit placing copies of their phonograms in circulation when they had not given their consent to such action, or when the terms of their consent had been exceeded (Doc. 76). Denmark, Finland, Iceland, Norway and Sweden (Doc. 24), and India (Docs. 50 and 104) suggested that the Convention prohibit the importation into a Contracting State of copies which would have been unlawful had they been made in that Contracting State. Objections to these proposals were raised on the ground that similar rights were not even recognized under the copyright conventions for works such as books. It was felt that the matter was one which should be left to the discretion of each Contracting State, and the proposals were not accepted.

Portugal proposed that the Convention not recognize the right of reproduction in cases where reproductions were made 'by broadcasting organizations for technical reasons' (Doc. 88). This proposal was criticized as too vague and general, and was considered unnecessary since most of what it was intended to accomplish could be satisfied by national legislation; under another provision of the Convention (Article 15), countries are free to allow reproduction without authorization in the case of ephemeral fixations made by a broadcasting organization with its own facilities and for its own broadcasts.

Formalities (Article 11)

In essence the Hague Draft provided that, if the domestic law of a Contracting State required compliance with formalities as a condition of the protection of phonograms, this requirement must be considered as satisfied if all the copies in commerce of the published phonogram bore a particular form of notice. This notice was to consist of the symbol Ⓟ, accompanied by an indication of the country and year of first publication.

Proposals by Austria (Doc. 58) and the United States (Doc. 86) suggested, among other things, that the notice might appear on the phonogram container rather than on the copies of the phonograms themselves. This change was accepted. See also a somewhat similar proposal by Czechoslovakia (Doc. 31).

The Austrian and United States proposals also suggested that the name of the Contracting State in which the first publication took place not be required in the notice. This too was accepted.

Also approved was a further proposal of the United States that the notice need contain the names of the owners of the rights of producer and performers only where the copies or containers do not indicate the producer and the principal performers. Since most copies or containers indicate both, as a practical matter, the notice will usually need to include only the symbol Ⓟ and the year date.

The proposal was also amended pursuant to a suggestion by the Federal Republic of Germany. This suggestion was intended to make clear that, in cases where the names of the owners of rights are required in the notice, the question of who is the owner will be decided on the basis of the law and factual situation existing in the country where the phonogram was fixed. The United States proposal, as thus amended, became Article 11 of the Convention.

It was understood by all that this Article does not require Contracting States to enact domestic legislation requiring formalities for the protection of performers or recorders in connexion with phonograms. It was also clearly understood that, in countries where no formalities are required as a condition of protection, Convention protection must be granted even if the phonogram does not bear the notice specified by the Convention.

Secondary uses of phonograms (Article 12)

The question of what the Convention should provide in connexion with the so-called secondary uses was doubtless the most difficult problem before the Conference. 'Secondary uses', a generalized expression not found in the Convention, is employed here to designate the use of phonograms in broadcasting and communication to the public.

The Hague Draft provided in essence that, if a phonogram published for commercial purposes were used directly for broadcasting or any public communication, a single equitable remuneration must be paid by the user to the performers, to the producers of phonograms, or both. At the same time the Hague Draft allowed Contracting States to refuse to grant this right of payment, either *in toto* or in relation to any of the uses indicated.

On the other hand, the earlier (1957) Monaco Draft did not impose any obligation on Contracting States to grant secondary use rights.

It was explained several times during the Conference that, in practice, the effect of the two Drafts would have been exactly the same, since a Contracting State would not have been obliged to grant secondary use rights under either one. The difference between the two Drafts was one of emphasis and approach. Under the Hague Draft, the granting of secondary use rights was a rule which could be avoided only if a Contracting State made a reservation; under the Monaco Draft there was no need for any reservation.

The two Drafts had an additional result in common. A Contracting State which granted secondary use rights under its domestic law would have been permitted, under both Drafts, to refuse such protection for phonograms originating in countries that failed to grant it reciprocal rights.

The arguments in this Conference were centred around the question of whether the Hague or Monaco system should be followed—that is, whether the Convention should establish the principle of the obligation of payments for secondary uses.

The Netherlands suggested (Doc. 38) that the system of the Monaco Draft be adopted. In its view, a general obligation to recognize secondary use rights was 'not sufficiently justified either on the score of equity or by social or economic consideration'. Proposals to the same effect were advanced by France (Doc. 71) and Portugal (Doc. 73). In explaining its proposal, the French delegation stressed the diversity of economic situations and laws existing in the various countries. These proposals, when discussed in the Working Group, received support from Japan, Monaco, Tunisia and Yugoslavia.

On the other hand, the solution of the Hague Draft received the endorsement of Austria, Czechoslovakia, the Federal Republic of Germany, India and the United Kingdom.

When put to a vote in the Working Group, the solution envisaged by the Monaco Draft was rejected by a vote of 14 against, 12 for, and 10 abstentions. Thereupon a solution along the lines of the Hague Draft was put to a vote and was carried by a majority of 24 for, with 8 against, and 3 abstentions.

A few days later the question was reopened in the Main Commission on the

basis of a joint proposal of France, the Netherlands, and Portugal (Doc. 108). The system of the Hague Draft was adopted in this body by a vote of 21 for, 11 against, with 4 abstentions.

When the same question came before the Plenary Conference, the system of the Hague Draft was adopted, 20 countries voting for it (Argentina, Australia, Brazil, Cambodia, Chile, Congo (Leopoldville), Cuba, Czechoslovakia, the Federal Republic of Germany, Iceland, India, Ireland, Israel, Italy, Mauritania, Mexico, Peru, Poland and the United Kingdom), 8 voting against it (France, Japan, Luxembourg, Monaco, the Netherlands, Tunisia, the Republic of South Africa and Yugoslavia), and 9 abstaining (Belgium, Denmark, Finland, Norway, Portugal, Spain, Sweden, Switzerland and the United States of America). The two-thirds majority required for the passage of any provision in the Plenary Conference thus having been achieved, the matter was settled. The joint proposal of France, the Netherlands, and Portugal (Doc. 24) was therefore not put to a vote.

As to the beneficiaries of the secondary use rights, several amendments were proposed. Belgium suggested (Doc. 65) that payment should always be made to the producer of the phonogram, and that he in turn should be required to share the payment with the performers. This proposal was rejected.

Argentina proposed (Doc. 85) that in each State the rights should be granted either to the performers or, alternatively, to performers and producers. This proposal was seconded by Czechoslovakia and supported by Mexico. When several delegations stated that the proposal would prevent their countries from accepting the Convention, Argentina withdrew its proposal, which was then put forward by Cuba but rejected by the majority. A proposal by the United Kingdom (Doc. 20) to insert the word 'or' between the words 'to the performers' and 'to the makers of phonograms' in the Hague Draft was accepted. Thus it is now clear that a Contracting State has a choice of any of the following three possibilities: (a) to grant the right of equitable remuneration to the performers only; (b) to grant it to the producer of the phonogram only; (c) to grant it to both performers and producers of phonograms.

Of course, Article 12 must be read in conjunction with Article 16, the provision dealing with reservations permitted under the Convention, which is discussed in its proper place. In the Main Commission, the Italian and Polish delegations raised a point of order and requested that Articles 12 and 16 be voted on jointly. Since this had not been possible, the Italian delegation told the Main Commission that it could not vote on Article 12 without linking it to Article 16.

A point repeatedly emphasized during the discussions, which is also clear from the text itself, was that the provision does not apply to all phonograms. It applies only to published phonograms, and then only if their publication was for commercial purposes. It was also pointed out that, in order to come under the provision, the use of phonograms in broadcasting must be a direct use. Use through rebroadcasting would not be a direct use. On the other hand, the mere transfer by a broadcasting organization of a commercial disc to tape and the broadcast from the tape, would not make the use indirect.

Minimum protection of broadcasts (Article 13)

The Convention provides, as did the Hague Draft, that broadcasters shall enjoy the right to authorize or prohibit the rebroadcasting of their broadcasts. For the definition of rebroadcasting see Article 3.

The Convention also provides that broadcasters have a right to authorize the fixation

of their broadcasts. In this connexion, Austria (Doc. 89) and Switzerland (Doc. 12) proposed that the prohibition against the fixation of television broadcasts include the right to prevent the making of still pictures of the telecast. The Conference agreed that the prohibition against fixing the broadcast extended to fixing parts of the broadcast. It refused, however, to take a stand on the question of whether a still picture of a telecast is part of a telecast, and decided to leave this question to be dealt with in the national laws of each Contracting State.

The Hague Draft prohibited the reproduction of a fixation of a broadcast if the fixation was 'unlawful'. On the basis of a proposal by Austria (Doc. 89), and in line with Article 7, 'unlawful' was changed to 'without consent'. It was also agreed that, as in the case of Article 7, Article 13 (c) (ii), rather than Article 13 (c)(i), applies in cases where, under Article 15, the fixation was made without the consent of the broadcaster.

The Convention, as did the Hague Draft, grants broadcasting organizations a television exhibition right—that is, a right to prohibit the communication to the public of television broadcasts, if the communication is made in places accessible to the public, and if an entrance fee is charged. Suggestions were made to delete this minimum right, but these were not accepted by the Conference. (See, however, Article 16, which permits reservations on this provision.)

Switzerland proposed (Doc. 92) that this right be granted whenever the communication to the public was made 'for pecuniary gain' rather than where there was 'payment of an entrance fee'. Austria suggested (Doc. 89) that the right should apply regardless of whether an entrance fee is charged, as long as the place where the public communication occurs is accessible to the public. After discussion, however, these proposals were withdrawn.

Lastly, Austria proposed that broadcasters be granted the right to authorize the putting into circulation of copies of a fixation of their broadcasts. This suggestion was not adopted by the Conference, for reasons analogous to those given above in the discussion of Article 10.

Minimum term of protection (Article 14)

In addition to establishing minimum terms, the article on the duration of protection in the Hague Draft provided that duration was to be determined by the law of the country where protection was claimed. It also contained a provision for 'comparison of terms', under which no country would be required to grant protection for a longer period than that fixed by the country of origin.

The Conference decided that the latter two provisions were superfluous, and omitted them from the Convention.

It goes without saying that duration is determined by the law of the country in which protection is claimed, since this result is implicit in the provision on national treatment.

As to the comparison of terms, the Conference concluded that it might be of real importance only in the case of secondary use rights. It noted, however, that this situation is adequately covered by Article 16, paragraph 1 (a) (iv), which expressly permits material reciprocity with respect to duration. Comparison of terms was not considered essential with respect to the right of reproduction of fixations, mainly because in most countries unauthorized reproduction is regarded as an act of unfair competition without any well-defined time limits.

As to the minimum term, two questions had to be decided: (a) how long the term should be, and (b) when the term should start.

With respect to length, the Hague Draft

provided for a minimum term of 20 years. Poland suggested 10 years (Doc. 41), Austria 30 years (Doc. 90), and the United States recommended 25 years with a possible renewal period of an additional 25 years (Doc. 102). Czechoslovakia proposed 20 years for performances and 10 years for phonograms and broadcasts (Doc. 107). None of these proposals was adopted, and the Convention provides, as the Hague Draft did, for a minimum term of 20 years.

As for the starting point, Denmark, Finland, Iceland, Norway and Sweden proposed that, in the case of phonograms, the minimum term be computed from the moment of fixation, whether or not the phonogram was published (Doc. 24). The proposal was adopted in a somewhat modified form, and became item (a) of Article 14. This starting point applies to phonograms and to performances incorporated in them. For performances not incorporated in phonograms the starting point is the date on which the performance took place [Article 14 (b)]; for broadcasts, the term is counted from the date on which the broadcast took place [Article 14 (c)].

In the Plenary Conference, Czechoslovakia proposed (Doc. 128) that the Convention omit any minimum term provision (a) for performances not incorporated in phonograms and (b) for broadcasts. The proposal was rejected, however, after several delegations expressed the view that it would have left visual or audio-visual fixations of performances, and fixations of broadcasts, without any minimum term.

Possible exceptions (Article 15)

Paragraph 1 of this Article, like the Hague Draft, permits the domestic laws and regulations of any Contracting State to provide certain exceptions to the protection guaranteed by the Convention. These exceptions relate to: (a) private uses; (b) the use of short excerpts in connexion with the reporting of current events; (c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts; and (d) use solely for purposes of teaching. On the basis of a proposal made by India, the Conference enlarged the last possible exception to include use solely for purposes of scientific research.

As to private uses, Switzerland suggested an amendment (Doc. 75) which would have provided *ex jure conventionis*—rather than leaving the matter to the discretion of domestic laws—that the use of a performance, phonogram or a broadcast exclusively for the personal and private purposes of the person who has reproduced the phonogram, fixed the broadcast off the air, etc., was lawful, provided that the reproduction of the phonogram or the fixation was not used by, or made available to, a third party with a view to financial gain. Switzerland also suggested that any Contracting State should be allowed to exclude the application of such a provision by means of a reservation made at the time of its adhering to the Convention. However, after discussion, Switzerland withdrew its proposal, since its aim can be achieved also under item (a) of paragraph 1 of this Article, as adopted by the Conference.

A number of other additions were suggested (Austria, Doc. 95; Denmark, Finland, Iceland, Norway and Sweden, Doc. 61; Poland, Doc. 41; India, Doc. 115). However, these were not pressed, probably because many of the situations they would have covered could fall under the general provision contained in paragraph 2.

This paragraph was adopted on the basis of a proposal of the Federal Republic of Germany (Doc. 100). It provides that, irrespective of paragraph 1, any Contracting State may establish the same kinds of limitations upon the protection of performers, producers of phonograms, and broadcasting organizations as it provides in connexion with copyright in literary and artistic works.

Thus, for example, if the copyright statute of a Contracting State allows free quotation for purposes of criticism, or free use for charitable purposes, the State could allow the same exceptions with respect to the protection of performers, producers of phonograms, or broadcasting organizations. However, as stated in the last sentence of the paragraph, 'compulsory licences may be provided for only to the extent to which they are compatible with this Convention'.

Reservations (Article 16)

As in the Hague Draft, reservations under the Convention are permitted only on specified provisions. Poland proposed (Doc. 41) that the Convention permit a Contracting State to make reservations on any provision whatsoever, but this proposal was not accepted.

One of the permitted reservations involves the provisions on secondary use rights in phonograms contained in Article 12. As regards this Article, any Contracting State has the power to make the following reservations:

i. It may declare that it will not apply the provisions of Article 12. This would be a total reservation.

ii. It may declare that it will not apply the provisions of Article 12 in respect to certain uses. This was understood by the Conference to mean that a country may decide not to grant payments in the case of uses in broadcasting, or in the case of public communication, or in the case of certain kinds of broadcasting or public communication.

iii. It may declare that it will not apply the provisions of Article 12 in cases where the phonogram producer is not a national of another Contracting State. This clause was adopted pursuant to a proposal by Ireland (Doc. 99). It means that the application of Article 12 may be refused even if the phonogram was fixed or first published in a Contracting State, as long as it was not first fixed by a producer who is a national of a Contracting State.

In addition, a State may limit the protection given to secondary use rights under its domestic law, even if the phonogram was fixed by a producer who is a national of another Contracting State, to the extent that similar protection is granted in the latter State. This clause, generally referred to as the clause of material reciprocity, was adopted pursuant to a proposal of Denmark, Finland and Sweden (Doc. 106). This enables the State making the reservation to cut back the protection it grants to the extent of the protection it receives. This possibility of comparison and cutting back also applies to the term of protection, and this is expressly stated in the Convention. The comparison, however, may not be applied with respect to the beneficiaries; a State that grants protection to both performer and producer cannot cut back rights with respect to a State that protects the performer or the producer only. Also, a State that grants protection only to the producer may not refuse protection to a State that grants protection only to the performer, and vice versa. This decision was taken by the Conference after a thorough discussion, based on a document prepared by an *ad hoc* working party (Doc. 119). This document clearly put before the Conference the necessity for deciding whether to extend the principle of material reciprocity to the question of beneficiaries.

The other reservation permitted under Article 16 relates to the television exhibition right of broadcasting organizations guaranteed under Article 13 (d) of the Convention. The Hague Draft permitted reservations on any of the minimum rights of broadcasting organizations. Pursuant to a proposal of France (Doc. 97), however, this possibility of reservation exists in the

Convention only with regard to the said television exhibition right.

The Convention states that reservations on both Article 12 and 13 (d) may be made at any time, and not just at the time instruments of ratification, acceptance, or accession are deposited. This is intended to allow countries to introduce reservations after they have adhered to the Convention, if changes in their domestic law make this desirable.

Countries applying the sole criterion of fixation (Article 17)

Article 17 allows certain countries to apply the sole criterion of fixation with regard to Article 5. This question was discussed above in connexion with that Article.

Article 17 also allows the same countries to substitute, for the purpose of Article 16, paragraph 1 (a) (iii) and (iv), the criterion of fixation for the criterion of nationality.

Both of the prerogatives given in Article 17 can be exercised by means of a declaration deposited with the Secretary-General of the United Nations. This declaration must be deposited at the time the Contracting State deposits its instrument of ratification, acceptance, or accession, and not later.

Changes in reservations (Article 18)

Based on a proposal of the Netherlands (Doc. 64), this Article permits any State which has made reservations under other provisions of the Convention to reduce the scope of such reservations or to withdraw them altogether. Changes of this sort may be effected at any time, by notification deposited with the Secretary-General of the United Nations.

Protection of performers and broadcasting organizations in connexion with visual fixations (Article 19)

Under the Hague Draft, performers were guaranteed convention protection against the reproduction without their consent of fixations containing their performances, if the reproductions were made for purposes other than those for which they had given their consent. However, this minimum guarantee did not extend to reproductions of visual and audio-visual fixations such as motion pictures. Furthermore, the Hague Draft did not appear to grant national treatment either to performers or to broadcasting organizations in connexion with the reproduction or other use of visual or audio-visual fixations.

Proposals by Austria (Doc. 103) and Czechoslovakia (Doc. 128) would have provided different solutions for cinematographic works on the one hand, and for visual or audio-visual fixations intended for television on the other. The majority of the delegations, however, found such a distinction impractical. The Czechoslovakian amendment was presented in the last plenary session of the Conference, and was rejected by a vote of 22 against and 7 for, with 8 abstentions.

Article 19 was adopted on the basis of a proposal of the United States (Doc. 105). It provides that, notwithstanding anything in the Convention, once a performer has consented to the incorporation of his performance in a visual or audio-visual fixation, Article 7 has no further application. It was made clear during the debate that the exclusion of the minimum guarantees provided in Article 7 for performers, in the case of visual or audio-visual fixations, is more extensive in the Convention than it was in the Hague Draft. On the other hand, Article 19 has no effect upon performers' freedom of contract in connexion with the making of visual and audio-visual fixations, nor does it affect their right to benefit by national treatment, even in connexion with such fixations. The Article is similar to the Hague Draft in that it does not limit the minimum rights guaranteed to broadcasting organizations with respect to broadcasts using visual or audio-visual fixations.

Non-retroactive effect of the Convention (Article 20)

Paragraph 1 of this Article is similar to a provision in the Hague Draft. It provides that the Convention shall not prejudice rights acquired in any Contracting State before the date of coming into force of the Convention for that State.

Paragraph 2 of this Article is based on a proposal of the United States (Doc. 117). It provides that no Contracting State shall be bound to apply the provisions of this Convention to performances or broadcasts which took place, or to phonograms which were fixed, before the date of coming into force of this Convention for that State.

Other sources of protection (Article 21)

This Article provides that the protection granted by the Convention shall not prejudice any protection otherwise secured to performers, producers of phonograms and broadcasting organizations. It is based on a joint proposal of Denmark, Finland, Iceland, Norway and Sweden (Doc. 24).

Special agreements (Article 22)

On the basis of a proposal of Belgium (Doc. 96), Contracting States reserve, under this Article, the right to enter into special agreements among themselves, but only if such agreements grant more extensive rights than those granted by the Convention or contain no provisions contrary to the Convention.

Signature and deposit of the Convention (Article 23)

The Hague Draft provided that the Convention would be 'effective' only among those States that are parties to the Universal Copyright Convention or are members of the International (Berne) Union for the Protection of Literary and Artistic Works. This implied that it was possible to sign, ratify, accept, or accede to the Convention without being a party to either one of these Copyright Conventions. The Secretariat Draft provided that anyone invited to the Diplomatic Conference could sign the Convention, and that any country which had been so invited, or which was a member of the United Nations, could adhere. (For convenience, the expression 'adhere' will be used to cover ratification, acceptance, or accession.) Invitations to this Diplomatic Conference were sent to members of the United Nations Educational, Scientific and Cultural Organization (Unesco), the International Labour Organisation (ILO), and the International Union for the Protection of Literary and Artistic Works (Berne Copyright Union), and to parties to the Universal Copyright Convention.

On this point there were two opposing schools of thought at the Conference. Some delegations considered it futile to permit countries which were not parties to either of the two Copyright Conventions to sign and adhere to the Convention, since such action would have no effect. They proposed that a country be required to be a party to at least one of the two Copyright Conventions before it be permitted to sign or adhere to the Convention. Proposals to this effect were embodied in amendments submitted by Austria (Doc. 14), India (Doc. 25 as orally corrected), the United Kingdom (Doc. 20), and the United States of America (Doc. 12) and was implied in a proposal by Japan (Doc. 37).

The contrary position was taken by Czechoslovakia (Docs. 31, 36 and 42) and Poland (Doc. 41) who wished, in addition, to open the Convention to States that were not parties to either of the Copyright Conventions. Czechoslovakia also suggested that the Convention be open to all countries, whether or not they had been invited to the Conference or were members of the United Nations. When the Conference

rejected the proposals of Czechoslovakia and Poland, Czechoslovakia proposed (Doc. 42) that the Convention be open to any country whatsoever, but that Contracting States be allowed to declare, by way of reservation, that they would be bound only with respect to those countries which were parties to one of the Copyright Conventions. This, too, was defeated.

Proponents of the opposing point of view, particularly France and Italy, argued that the use of literary and artistic works was usually implied in the work of performers, recorders and broadcasters. It was thus logical to establish a link between the Copyright Conventions and the present Convention, which was popularly known as a Convention on 'neighbouring' rights, i.e., rights neighbouring on copyright. They believed it would be inequitable to have the performers, producers of phonograms and broadcasting organizations of a country enjoy international protection, when the literary and artistic works they used might be denied protection in that country because it was not a party to at least one of the Copyright Conventions. In reply, Czechoslovakia and other countries argued that there was no logical or equitable reason to establish such a link, particularly since the Convention would also protect the performances of literary or artistic works which had already fallen into the public domain, and phonograms or broadcasts which did not use literary or artistic works at all.

The majority of the Conference voted for the establishment of a link with copyright. The Convention therefore provides that, in order to sign the Convention, a State must fulfil both of the following conditions:

i. it must have been invited to attend the Conference, though it need not have attended; and
ii. it must be a party to the Universal Copyright Convention or the Berne Copyright Union.

Obviously, countries which are members of the Berne Copyright Union and are parties to the Universal Copyright Convention do meet these conditions.

Under Article 24 (2), a nonsignatory State may accede to the Convention whether or not it was invited to the Conference, if it is a member of the United Nations and a party to one of the Copyright Conventions. Congo (Leopoldville), Cuba, Czechoslovakia and Poland protested this decision of the Conference since they believed it would exclude a number of countries which, in their opinion, should be allowed to accede.

As proposed in the Secretariat Draft, the original signed copy of the Convention is deposited with the Secretary-General of the United Nations.

Adherence (Article 24)

States signing the Convention may thereafter ratify or accept it. Whether a signatory State calls its adherence 'ratification' or 'acceptance' is a matter of internal law. For States that do not sign, the Convention is open for 'accession'.

The conditions precedent for adherence established in Article 23 were discussed above in connexion with that Article. The protests of some delegations with respect to this question were repeated during the discussions on Article 24.

Instruments of ratification, acceptance, or accession must be deposited with the Secretary-General of the United Nations.

Entry into force (Article 25)

The Secretariat Draft proposed that the Convention become effective upon adherence by three States. The United Kingdom (Doc. 20) expressed the view that this might be too few; France, Italy and the United States of America proposed that the number be raised to twelve. When a

compromise was sought, Italy suggested requiring nine adherents, whereas the Federal Republic of Germany and other delegations favoured six. The Conference adopted the latter proposal.

For the first six States adhering to it, the Convention will therefore come into force three months after the deposit of the sixth instrument of adherence. As to other States, it will become effective three months after the particular State has deposited its instrument of adherence.

Application of the Convention (Article 26)

The Secretariat Draft proposed a provision under which each Contracting State undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of the Convention. India proposed that 'measures necessary' be replaced by 'the necessary legislation' (Doc. 116). However, the Conference adopted the text as proposed in the Secretariat Draft. This is now paragraph 1 of Article 26.

Paragraph 2 of the Article also adopts the language proposed by the Secretariat Draft and provides that, at the time of adherence, each State must be in a position, under its domestic law, to give effect to the terms of the Convention.

To some delegations, the Article seemed superfluous since each Contracting State must apply the Convention and, if necessary, adopt measures to conform to the Convention. Some delegations objected to the reference to the constitution of a State since no State was likely to adopt unconstitutional measures; they also felt that paragraph 2 was unnecessary since, if implementing measures were needed, they must perforce precede adherence. The majority of the Conference disagreed, considering it wise to make these points explicit and to emphasize the obligation of States to ensure the application of the Convention on their territory. It was also pointed out that, under paragraph 2, domestic measures would have to precede deposit and could not be left to the period between deposit and coming into effect.

Throughout the discussion it was understood that implementing legislation on points regulated by the terms of the Convention itself would not be necessary in those countries in which international treaties were directly applicable and took precedence over inconsistent domestic laws.

Territories (Article 27)

This Article deals with the method for making the Convention applicable to territories not responsible for their foreign relations. It provides, in effect, that this may be accomplished by filing a declaration with the Secretary-General of the United Nations. The declaration must be filed by the Contracting State responsible for the international relations of such territory, and can be filed only if one of the Copyright Conventions also applies to the territory.

Czechoslovakia (Doc. 33) and Poland (Doc. 41) proposed that there be no provision in the Convention relating to territories, and when the Conference adopted Article 27 and other provisions concerning territories, Congo (Leopoldville), Cuba, Czechoslovakia and Poland protested. Czechoslovakia expressed the view that any provision on territories would be an anachronism and would be contrary to the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly of the United Nations in 1960 [resolution 1514 (XV)], which states 'the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations'.

Other delegations took the position that the Declaration did not abolish the status of territories, that the continued existence

of territories—some of them actually under the trusteeship of the United Nations—was a fact, and that the provisions in question were desirable because they enlarged the potential territorial scope of the Convention.

Terminating the effect of the Convention (Article 28)

Under Article 28, the Convention ceases to be effective in any given State or territory (i) when the Contracting State denounces the Convention, or (ii) when the Contracting State or territory is no longer a party to either of the Copyright Conventions. The latter provision—automatically terminating the effect of the Convention in States which no longer belong to either Copyright Convention—was adopted by the Conference pursuant to proposals made by Austria (Doc. 14) and Japan (Doc. 37).

Denunciation may be made by notification addressed to the Secretary-General of the United Nations, and takes effect twelve months after receipt by the Secretary-General. The right of denunciation may be exercised by a Contracting State only after it has been bound by the Convention for at least five years. Japan (Doc. 37) and the United States of America (see Doc. 60 rev.) proposed that the Convention require no waiting period for denunciation, and the Netherlands proposed that the waiting period last three rather than five years (see Doc. 60 rev.), but these proposals were not approved.

Once the five-year period has elapsed, the Convention may be denounced at any time. The Secretariat Draft would have allowed denunciation only during the 6th, 11th, 16th, 21st, etc., year following adherence, but this proposal was not adopted.

Revision (Article 29)

The procedure to be used in calling revision conferences is laid down in paragraph 1 of this Article.

The Secretariat Draft provided that no revision conference could be convened before the expiration of at least five years from the time the Convention first came into force. Japan objected to this time limitation (Doc. 37), but it was approved by the Conference.

Although any Contracting State may request a revision conference, the request must be agreed to by at least one-half of the Contracting States. A proposal by Japan (Doc. 37) that the three International Secretariats also be given the authority to decide the convocation of revision conferences whenever they deemed one necessary, was not adopted.

Revision conferences will be convened by the three Secretariats in co-operation with the Intergovernmental Committee established under Article 32. This is a compromise between the Secretariat Draft, which would have entrusted the convocation to the three Secretariats alone, and a proposal of the United States of America (Doc. 45), which would have assigned the task to the Intergovernmental Committee.

Paragraph 2 deals with the question of how revisions are to be adopted. Adoption of any revision would require a vote of at least two-thirds of the States attending the revision conference, provided that this majority included at least two-thirds of the States then members of the Convention, whether or not they are present at the conference. This provision is based on a proposal of Switzerland (Doc. 72). One purpose of the provision was to avoid the 'rule of unanimity', which would permit one Contracting State to defeat any revision proposal. The Conference understood that decisions reached at a revision conference could bind only such States as ratify the revising Convention.

Paragraph 3 provides, in effect, that unless the Convention adopted by the revision conference provides otherwise, the present Convention shall be closed to new adher-

ences as soon as the newly-adopted Convention comes into force. The present Convention would, however, remain in force as between Contracting States in cases where neither have become parties to the newly-revised Convention, or where one has and the other has not.

Disputes (Article 30)

Under the Secretariat Draft, the International Court of Justice would, in effect, have been given jurisdiction in any dispute between two or more Contracting States which concerned the interpretation or application of the Convention and which had not been settled by negotiation.

Proposals of Czechoslovakia (Doc. 34) and Poland (Doc. 41) would have given the Court jurisdiction only if all the parties in a concrete case or controversy agreed to submit it to the Court. The United States of America proposed that the Convention should, in unmistakably clear terms, make the jurisdiction of the Court mandatory by providing that it would be enough for one of the parties to ask for a decision (Doc. 46).

The Conference adopted the latter recommendation, and rejected the proposal which would have made the Court's jurisdiction optional. Argentina, Congo (Leopoldville) and India explained that they voted against Article 30 because of this factor.

Reservations (Article 31)

This Article makes it clear that reservations to the Convention may be made only with respect to those provisions where the Convention itself expressly provides for possibility of reservation. Reservations are permitted only under Articles 5 (3), 6 (2), 16 (1), and 17.

Czechoslovakia proposed the omission of any such article (Doc. 35). Poland suggested that the Convention allow reservation on any provision of the Convention (Doc. 41). Both these proposals were rejected by the Conference.

Intergovernmental committee (Article 32)

The Secretariat Draft proposed the adoption of an article on the 'control of the application of the Convention'. Under it, each Contracting State would have been required to file periodic reports with the three Secretariats on 'any measures taken, under preparation, or contemplated by its administration in fulfilment of the present Convention'. The reports would have been examined by twelve experts, each of the three Secretariats designating four. The reports of the experts would, in turn, have been submitted to the competent bodies of Unesco, ILO and the Berne Copyright Union.

Several objections were raised to this proposal. It was said that the measures implementing the Convention were of public record and did not need reporting and that, since the question was whether a State fulfilled its obligations under the Convention, no control could be properly exercised in this respect by experts appointed by Secretariats.

The Conference rejected the proposal of the Secretariats. Instead, it set up an intergovernmental committee, whose members are designated by Governments rather than by the Secretariats, and whose jurisdiction is not to control the application of the Convention but to study questions concerning its application and operation. Furthermore, the Intergovernmental Committee is given the task of collecting proposals and preparing documentation for revision conferences.

As proposed by Japan (Doc. 47), the members of the Committee are to be designated with due regard to equitable geographical distribution. Officials of the three Secretariats constitute the secretariat of the Committee. The Committee itself will

consist of six to twelve members, depending on the number of the Contracting States, and will meet at the request of a majority of its members. Most of what is contained in Article 32 is based on a proposal of the United States of America (Doc. 44 rev.).

Languages of the Convention (Article 33)

As proposed in the Secretariat Draft, the Convention is drawn up in English, French and Spanish, the three texts being equally authentic. The Convention was signed in these three languages.

On a joint proposal of Austria, Brazil, the Federal Republic of Germany, Italy and Switzerland (Doc. 39), it was also provided that official texts should be drawn up in German, Italian and Portuguese. It was understood that these non-authentic but official texts would be established by the Governments concerned, and would be published by the Secretariats of Unesco, ILO and the Berne Copyright Union.

Notifications (Article 34)

This Article provides that the Secretary-General of the United Nations will advise all those States concerned of the various facts which the Governments or the Secretariats need to know in connexion with the Convention. The provision is an adaptation of the Secretariat Draft.

Conclusion

When the Convention as a whole was put to vote, it was adopted with thirty-three votes for, none against, and three abstentions. Eighteen countries—Argentina, Austria, Belgium, Brazil, Cambodia, Chile, Denmark, France, Germany (Federal Republic of), Holy See, Iceland, India, Italy, Mexico, Spain, Sweden, United Kingdom, Yugoslavia—signed the Convention at the conclusion of the Conference on 26 October 1961.

The 'Final Act', a document stating, in essence, that there was a diplomatic conference in Rome which drafted the Convention, was signed by almost all of the countries at the Conference.

In the form in which it was put before the Conference, the present Report covered only the substantive clauses, that is, the first twenty-two Articles of the Convention. The Conference adopted it unanimously in that form. That part of the present Report which deals with the so-called final clauses, that is, the last twelve Articles of the Convention, was submitted to all delegations for suggestions after the Conference.

The Rapporteur-General also wishes to take this opportunity to express his particular thanks to Dr. Arpad Bogsch, one of the delegates of the United States of America, for his tireless assistance and co-operation in the writing of the present Report.

Conseiller d'État Henry Puget, Head of the Delegation of France, expressed, in the name of his own and all other delegations, the sincere appreciation and admiration of the whole Conference for the services of its Chairman, Ambassador Giuseppe Talamo Atenolfi Brancaccio di Castelnuovo. His wisdom, energy and tact contributed greatly to the successful outcome of the Diplomatic Conference which, it is hoped, will benefit the public as well as the protected interests for generations to come.

Summary records of the proceedings

Hereunder will be found the summary records of the plenary meetings of the Conference and of the meetings of its Main Commission, arranged in the order in which they were held.

First plenary meeting[1,2]

Tuesday, 10 October 1961, at 11 a.m.

President: Mr. Jacques SECRETAN (Director of the United International Bureaux for the Protection of Intellectual Property—BIRPI); later: Mr. Giuseppe TALAMO ATENOLFI (Head of the Italian delegation).

OPENING OF THE DIPLOMATIC CONFERENCE

1. The PRESIDENT [F][3] declared the inaugural meeting of the Conference open.

2.1 Mr. SABA (representing Mr. Vittorino Veronese, Director-General of Unesco) [F] delivered the first opening address on behalf of the Director-General, who was indisposed. Welcoming all the delegates and observers present, he said he was happy to see the Conference taking place in a country and in a city which, throughout the history of mankind, had always been a focal point of the highest expressions of culture, and he thanked the Italian Government for the hospitality extended to the Conference as well as for the assistance and facilities so unstintingly bestowed upon it.

2.2 The importance assumed by conventions, not only in international relations, but also in national life could not, he thought, be overemphasized. For a change had taken place in the nature and role of international conventions. Whereas, in the past, their purpose had generally been to specify the reciprocal rights and obligations of governments, of late they were tending more and more to enforce observance of human rights and to define the moral and social standards which any State belonging to the world community must perforce embody in its domestic legislation. The task of preparing conventions fell increasingly to the international organizations, which were in process of becoming real international legislators, obliged to shoulder very heavy responsibilities. The share of those responsibilities which fell to each international organization depended mainly upon its own particular mission. The International Labour Organisation (ILO) devoted itself chiefly to the task of improving working conditions and the International Union for the Protection of Literary and Artistic Works (the Berne Union) to the protection of the rights of authors over their works, whereas Unesco's activities covered the whole vast field of education, science and culture.

2.3 The international regulation of the questions which were the subject of the Conference had claimed the attention of the three Organizations, each of which had considered the problem within the setting of its particular field of competence. Certain differences of conception which had emerged during the preliminary studies and work—carried out by the International Labour Organisation on the one hand and by the Berne Union and Unesco on the other—had, fortunately, been finally smoothed out, thus making it possible to establish bases for concerted action.

2.4 Performers had always played the part of intermediaries between authors and audiences and that role was no less important from the social than from the cultural standpoint. The same part was also being played, in a new way, by producers of phonograms and broadcasting organizations. The three Organizations had worked in unison to ensure that the future international instrument should be a composite

1. All the meetings of the Conference and its subsidiary bodies were held at the Palazzo dei Congressi dell'Esposizione Universale di Roma.
2. Cf. Doc. CDR/SR.1 (prov.).
3. The name of each speaker is followed by the letter E (English), F (French) or S (Spanish), indicating the language in which the statement was made and in which it was summarized in the provisional summary records.

whole, reconciling as far as possible the various legitimate interests at stake, those of the intermediaries as well as those of the authors themselves and those of the general public.

2.5 Mr. Saba wished to pay tribute to the spirit of co-operation which had inspired his colleagues of the other Organizations and thanks to which it had been possible to bring together a Committee of Experts at The Hague in 1960, prepare the draft convention submitted to the governments, and convene the Conference. He concluded by thanking the experts and non-governmental organizations concerned for their contribution and by expressing the hope that, at the close of the Conference, the new diplomatic instrument, the result and consummation of long and patient efforts, would be signed by a large number of States.

3.1 The PRESIDENT [F] expressed the gratitude of the States of the Berne Union to the Government of the Italian Republic for having made possible, through its generous hospitality, the great work of international collaboration which the Conference was destined to accomplish; he also thanked the various government departments which, by their co-operation, had facilitated that work. He was glad that the efforts made by the three intergovernmental Organizations had led to the preparation of a single draft, a result which but two years earlier had seemed unattainable.

3.2 Although creations of the mind owed much to technique, which had made it possible to disseminate them more widely and had also led to the emergence of new forms of creation, it entailed certain risks for them: it sometimes tended to obscure or alter the concept of intellectual creation to the point where the work was completely lost to sight behind the material means permitting its dissemination. There was a move on foot to give pre-legislative recognition to new rights, but it was important in that connexion not to lose sight of the essential character of authors' rights over their works, without which such new rights would not arise. For it was from the sources of literary or artistic creation that organizers of plays and concerts, as well as producers of phonograms and broadcasting organizations, drew their material.

3.3 The unquestioned respect for the rights of creators, mentioned in the so-called Berne Convention and in the Universal Convention of Geneva, thus constituted the first of a few fundamental principles which should be recognized by the Conference and which should later be improved upon in national legislation. Another of these principles was that in relations between countries, performances, phonographic recordings and radio broadcasts must not be subjected to unfair or arbitrary exploitation. It was also essential to reduce formalities between Contracting States to a minimum. Finally, a standing committee, to be known as the Committee of Experts, should be set up to supervise the application of the Convention, this being a method which the ILO Secretariat—the International Labour Office—had proved to be effective. The practical significance of the jurisdictional clause, on the other hand, seemed less certain.

3.4 In conclusion, the President suggested that the new instrument be drafted in simple terms, which would enable it to be incorporated in international law and ensure its application by the largest possible number of countries.

4.1 Dr. ABBAS AMMAR (Representative of Mr. David A. Morse, Director-General of the International Labour Office) [E], on behalf of the Director-General (who was prevented by other business from being present), welcomed all those participating in the Conference. The warmest thanks were due to the Government of Italy for the generous invitation to Rome; the Governing Body of the ILO had been particularly

gratified by that invitation. The problems with which the Conference was called upon to deal were important, not only for those directly or indirectly concerned, but also for the general public, for the cultural heritage of each nation, and for cultural exchanges throughout the world.

4.2 The ILO was concerned primarily with the conditions of working people, including performers. It had been led to deal with the problems of performers' rights because of the adverse effects upon the social and economic conditions of performers resulting from innovations in the field of recording and broadcasting and from the ever-increasing use of more and more elaborate, and often combined, methods and techniques of communication of performances, whether live or recorded, to the public. These problems were studied throughout the 1930's, and would have been discussed at the International Labour Conference in 1940 had not the war prevented the Conference from meeting in that year. In the meantime, the Berne Union had announced its interest in the question, after it had been discussed at a Diplomatic Conference held in Rome in 1928. Its interest was pursued at a meeting of experts convened by the Berne Union in collaboration with the International Institute for the Unification of Private Law, at Samaden in Switzerland in 1939. After the war, another Diplomatic Conference of the Berne Union, in 1948, expressed the wish that the problems affecting performers, record manufacturers and broadcasting organizations be studied.

4.3 At this stage the view was put forward that problems relating to these three groups were inter-related and in some respects complementary, and that simultaneous regulations regarding their protection were advisable and should be generally beneficial.

4.4 The ILO, which had resumed its own action concerning the protection of performers, therefore established contact with the Berne Union in order to co-ordinate the work of the two organizations in this field. In 1951, a Joint Committee of Experts was called by the Berne Union in Rome, on the invitation of the Government of Italy. The ILO participated in that meeting. The experts drew up a draft instrument—the so-called Rome Draft—which was to become the basis for future discussions. The ILO, after this draft had been examined by its competent bodies, approved the idea of aiming at one single instrument to deal simultaneously with the protection of performers, of producers of phonograms and of broadcasting organizations.

4.5 During the following years many meetings were held for further study of the matter. The international organizations of performers, manufacturers and broadcasting organizations, in particular, also met several times and suggested compromise solutions which, moreover, took into account the interest of authors and those of the general public. At this time Unesco, because of its evident interest in the subject, joined as a partner and brought its full contribution to the common effort. The question of how best to arrive at effective international regulations in this field was examined in common with a view to conciliating different viewpoints held both at the international and the national levels.

4.6 Finally, two draft international instruments were worked out: one—the so-called ILO Draft—by a Committee of Experts convened in Geneva by the Director-General of the ILO in 1956, the other—the so-called Monaco Draft—by a Committee of Experts convened at Monaco in 1957 by the Director-General of Unesco and the Director of the Bureaux of Berne Union.

4.7 Those two drafts, in accordance with the agreed plan of action, were communicated to governments. Most of the governments which commented thereon, however, urged that a further meeting be convened jointly by the three organizations with a

view to preparing one single draft instrument This suggestion was taken up by the Director-General of the ILO and approved by the competent bodies of all three organizations.

4.8 Consequently, a Committee of Experts was convened by the three organizations at The Hague in 1960, on the invitation of the Government of the Netherlands. Under the outstanding chairmanship of Professor Bodenhausen, the experts drew up and unanimously adopted a draft international Convention. The draft adopted at The Hague was communicated to governments for observations. The Governing Body of the ILO—which was composed of members representing governments, employers and workers throughout the world—expressed its satisfaction at the result achieved at The Hague. Together with those observations, the draft Convention was now before the Conference as a basis for discussion. The Conference also had before it draft final clauses which had been prepared jointly by the Secretariats of the three organizations to complete the proposed instrument.

4.9 This long-drawn-out procedure illustrated two points: first the very real difficulties which existed in this matter and the ways in which they were overcome step by step and, secondly, the thorough manner in which the necessary preparatory work had been carried out by the three intergovernmental organizations and their State Members as well as by all those concerned. As far as Unesco, the Berne Union and the ILO were concerned, this was made possible thanks to continued close and most friendly collaboration, and to the determination jointly to strive towards the working out of the basic common denominators on which appropriate international regulations might be built. A special tribute was due from the ILO to Mr. Veronese and to Professor Secretan, for the full collaboration which they had shown throughout that enterprise

4.10 The question before the Conference was essentially universal in nature, both because of the techniques employed and of the interests at stake. Broadcasting recognized no boundaries and the recording industry was very largely international. Social, economic and professional problems affecting performers were, more or less, identical in every country. There was, moreover, a variety of theories and doctrines—often conflicting—regarding the nature of the protection and, therefore, its scope and content. Those theories and their differences were reflected in national laws and practices: the diversity of doctrines and practices might, indeed, account in part for the absence of any regulations in a number of countries. It was significant that the importance of the problem and the need for an appropriate international solution had been recognized by a great many governments.

4.11 In their combined effect, those three factors—namely the universality of the problem, the diversity or absence of national regulations, and the very general realization by those responsible that international regulations are required—had resulted in making the subject eminently suited to international action. Appropriate international regulations on the protection of performers, producers of phonograms and broadcasting organizations would, indeed, serve two important purposes: they would greatly facilitate the gradual adaptation and standardization of national regulations; and they might also be of assistance to legislative authorities which had not yet considered it appropriate to adopt measures in this respect.

4.12 The representative of the Director-General of Unesco had rightly stressed the increasing importance of international standard-setting and the responsibilities of intergovernmental organizations in this field. In this connexion it was worth noting that that Conference would attempt for the first time to establish international

protective standards for the benefit of the three interested parties, and that, for many countries, that undertaking would open a new field. Professor Secretan's view—that the Conference should concentrate on hammering out general principles acceptable to the greatest possible number of States, so as to constitute a proper, if modest, basis for future progress—should, therefore, be endorsed.

4.13 That, indeed, had been the aim of the Committee of Experts which had met at The Hague in 1960. The draft which had been adopted by that Committee and which was then before the Conference for consideration, did not—and could not—satisfy entirely any one of the parties. It had, however, succeeded in laying down a number of equitable and balanced minimum standards of protection; and in working out those standards the drafters had taken full account of the great variety of national situations on the one hand and, on the other, of the interests of other parties concerned, and in particular of those of the authors of original works. Tribute was, therefore, due to all the experts of The Hague Committee and, last but not least, to the representatives of the parties concerned, who had contributed in no small way to the success achieved at The Hague.

4.14 It was to be hoped that that Conference—the task of which would surely be greatly facilitated by the work which had been done at The Hague meeting, and by the observations and suggestions received from governments on the Hague Draft—would carry out its mission in an atmosphere of goodwill, mutual understanding and close co-operation, and would succeed in approving an international instrument which would bring about the kind of realistic and practical solution which all those concerned throughout the world had been urging for many years past.

5.1 Mr. Giovanni GIRAUDO (Under-Secretary of State, Council of Ministers) [F] welcomed delegates on behalf of the Italian Government.

5.2 He recalled that the lengthy efforts which, after many international meetings and several years of detailed studies by the national bodies concerned, had led to the convening of the Conference in Rome had also been initiated in that city, for it was in Rome, in 1928, on the occasion of the second revision of the Berne Convention, that the first proposals for the recognition of performers' rights had been submitted to an international conference. It was also in Rome that a draft convention for the international protection of neighbouring rights had been prepared in 1951. That draft, like the drafts of Samaden (1939), Geneva (1956), Monaco (1957) and The Hague (1960), represented an important stage in the preparation of a single and effective instrument.

5.3 Italy had been one of the first countries to solve the problems submitted to the Conference—problems which owing to their legal, economic and social implications, were of a delicate nature and which, with the development of modern means of communication, were becoming increasingly complex—within the framework of the national law on copyright (1941); in so doing, it had endeavoured to ensure that authors' rights were fully respected, a matter that must continue to be of the greatest concern at the international level.

5.4 The speaker expressed the hope that the instrument adopted by the Conference, while recognizing the prime value of intellectual works, would also take into account both the artistic merit of performers and the importance of modern techniques for the dissemination of creations of the mind, and that it would constitute for the protection of all the legitimate interests concerned a firm basis on which it would be possible to build in the future.

ELECTION OF THE PRESIDENT

6 The PRESIDENT [F] asked the Conference to elect its President.

7 Mr. PUGET (France) [F] proposed the candidature of Mr. Talamo Atenolfi, Head of the Italian delegation.

8 Mr. STRNAD (Czechoslovakia) [F] seconded Mr. Puget's proposal.

9 Mr. Talamo Atenolfi was elected President of the Conference by acclamation.

(*Mr. Talamo Atenolfi took the chair.*)

ESTABLISHMENT OF THE CREDENTIALS COMMITTEE

10 The PRESIDENT [F], having expressed his gratitude to the Conference, asked it to set up a Credentials Committee.

11 The delegates of Brazil, Japan, Poland, Tunisia, the United Kingdom, and the United States of America *were elected* members of the Credentials Committee.

12 *The meeting rose at 1 p.m.*

Second Plenary Meeting [1]

Tuesday, 10 October 1961, at 4 p.m.

President: Mr. Giuseppe TALAMO ATENOLFI (Italy).

ADOPTION OF THE FIRST REPORT OF THE CREDENTIALS COMMITTEE

13 Mr. TAKAHASHI (Japan, Chairman of the Credentials Committee) [F] presented his Committee's first report (CDR/10): (i) the following twenty-one delegations had presented credentials in due form: Australia, Austria, Cambodia, Denmark, Finland, France, Federal Republic of Germany, Holy See, Iceland, Ireland, Japan, Mexico, Monaco, Morocco, Norway, Poland, Republic of South Africa, Switzerland, Tunisia, United Kingdom and Yugoslavia; (ii) the following seventeen delegations had presented credentials issued by authorities other than those prescribed by Rule 3 of the Draft Rules of Procedure: Argentina, Belgium, Burma, Congo (Leopoldville), Czechoslovakia, Dominican Republic, Ghana, Israel, Italy, Luxembourg, Mauritania, Netherlands, Nicaragua, Peru, Spain, Sweden and United States of America. The Committee considered that those delegations could be authorized provisionally to take part in the work of the Conference.

14 The PRESIDENT [F] thanked the Credentials Committee for its excellent work and took note of its report.

15 Mr. DE WAERSEGGER (Belgium) [F] recalled that he had already pointed out that his delegation's credentials had not yet been signed. He would, however, shortly receive full powers by telegram.

16 The PRESIDENT [F] took note of the statement by the Head of the Belgian delegation.

17 Mr. EL KABBAJ (Morocco) [F]

1. Cf. Doc. CDR/SR.2 (prov.).

protested against the presence of a delegation from the Islamic Republic of Mauritania which, he said, represented a non-existent State whose territory was an integral part of Moroccan territory and which had not been recognized by the United Nations.

18 The PRESIDENT [F] took note of the Moroccan delegation's protest.

19 Mr. EL KABBAJ (Morocco) [F] said that he was not satisfied with that answer and urged that the Conference should take a decision on the admission of the Mauritanian delegation.

20 The PRESIDENT [F] replied that the Conference was not competent to settle the question. The Islamic Republic of Mauritania was a member of the International Labour Organisation and had therefore been invited to send representatives to the Conference.

(The delegation of Morocco left the meeting room.)

21 Mr. DE WAERSEGGER (Belgium) [F] proposed that the question be referred to the Credentials Committee.

22 The PRESIDENT [F] remarked that the committee had already examined the Mauritanian delegation's credentials.

23 The first report of the Credentials Committee was unanimously *approved.*

ADOPTION OF THE AGENDA

24 The PRESIDENT [F] opened the discussion on the Provisional Agenda (CDR/2 rev.).

25 The agenda was *adopted* unanimously.

ADOPTION OF THE RULES OF PROCEDURE

26 The PRESIDENT [F] opened the discussion on the Draft Rules of Procedure (CDR/4).

Rules 1 to 9

27 Rules 1 to 9 were *adopted.*

Rule 10

28 Mr. KAMINSTEIN (United States of America) [E] proposed that the word 'six' in the first line of Rule 10 be changed to 'twelve'.

29 Mr. PUGET (France) [F] proposed an intermediate solution, namely, that the Drafting Committee should be composed of nine members, i.e., three members for each working language.

30 Rule 10, as *amended,* was *adopted.*

Rules 11 to 15

31 Rules 11 to 15 were *adopted.*

Rule 16

32 Mr. KAMINSTEIN (United States of America) [E] proposed to add the words 'may be proposed by the delegates and' after the word 'amendments' in the first sentence of Rule 16.

33 Rule 16, as *amended,* was *adopted.*

Rule 17

34 Rule 17 was *adopted.*

Rule 18

35 Replying to a question from Mr. Morf (Switzerland), Mr. WOLF (ILO Legal Adviser) [F] explained that the rules referred to in the third line of the second paragraph were Rules of Procedure and not articles of the Draft Convention.

36 Mr. PUGET (France) [F] proposed, with a view to avoiding any misunderstanding, that the word 'above' be added after the words 'Rules 5.6 ... 14 and 15' and the words 'where a simple majority is sufficient'.

37 Rule 18, as *amended,* was *adopted.*

Rules 19 to 22

38 Rules 19 to 22 were *adopted.*

39 The Rules of Procedure, *with the amendments* already approved, were adopted unanimously.

ELECTION OF OFFICERS

40 The PRESIDENT [F] proposed that the delegates of the following States be elected Vice-Presidents: Argentina, Cambodia, Czechoslovakia, France, Federal Republic of Germany, Ghana, Netherlands, Sweden, Tunisia, United Kingdom.

41 Mr. GRANT (United Kingdom) [E] proposed the inclusion of the head of the delegation of the United States of America in the list of the Vice-Presidents of the Conference.

42 The PRESIDENT [F] explained that he had intended to propose that the head of the delegation of the United States of America be elected Rapporteur-General.

43 The ten Vice-Presidents and the Rapporteur-General proposed by the President were *elected* unanimously.

PRESENTATION OF THE DRAFT CONVENTION DRAWN UP BY THE COMMITTEE OF EXPERTS (THE HAGUE, MAY 1960)

44.1 Mr. BODENHAUSEN (Chairman of the Hague Committee of Experts) [F] presented the Draft Convention (CDR/1).

44.2 He briefly described the background of the Draft, whose preparation had been a lengthy and eventful process (preliminary draft convention prepared in Rome, in 1951, by a committee of experts, 'concurrent' drafts respectively drawn up in Geneva, in 1956, and in Monaco, in 1957, etc.), and paid a tribute to the important preparatory work done by the Secretariats of the three organizations concerned.

44.3 He then drew attention to certain general questions to which The Hague Committee of Experts had endeavoured to find solutions: the relation between the future Convention and copyright (Articles 1 and 2), national and international situations (Article 3), effects of the Convention on the protection of motion pictures or other visual and audio-visual fixations (Articles 16, 12 and 5). He also drew attention to the definitions which made it possible to delimit the field of application of the Convention (Articles 4, 7 and 10). In accordance with the fundamental principle of the Draft, each State undertook to grant so-called national treatment to all performers, makers of phonograms and broadcasters of another Contracting State (Article 3). That principle was supplemented by several clauses providing, on the one hand, for minimum protection (Articles 5, 8 and 12) and, on the other, prescribing the maximum extent of the formalities that might be required (Article 9). The Draft provided also for a number of exceptions and for the possibility of reservations and, in various cases, stated that certain points should be determined by the national laws (Article 5, paragraphs 2 and 3, Articles 6, 11, 12 (d), 14, 15).

44.4 The draft final clauses (Articles 18 to 29) (CDR/3) had been drawn up by the three Secretariats, as the Committee had decided to leave them aside so as to be able to study the fundamental clauses in greater detail. The draft final clauses were much the same as those which were usually found in conventions of a similar nature, with the exception of certain special clauses (Articles 23, 24, 25 and 27).

44.5 Mr. BODENHAUSEN [F], as Chairman of the Committee of Experts and on behalf of the Netherlands Government, expressed the hope that the Conference would be able to contribute to the development of international law.

45 The PRESIDENT [F] thanked Mr. Bodenhausen for his excellent statement.

46 *The meeting rose at 5.40 p.m.*

Third Plenary Meeting [1]

Wednesday, 11 October 1961, at 11 a.m.

President: Mr. Giuseppe TALAMO ATENOLFI (Italy).

ORGANIZATION OF WORK

47.1 The PRESIDENT [F] informed the Conference that its Bureau proposed the following provisional time-table for its work: morning meetings from 10 a.m. to 1 p.m.; afternoon meetings from 3.30 p.m. to 6.30 p.m.

47.2 The Bureau of the Conference also proposed that the Main Commission should set up three working parties to study respectively the articles concerning: (a) definitions, national treatment and the country of origin; (b) minimum protection, exceptions and reservations; and (c) the final clauses.

47.3 For technical reasons, it was not possible to convene meetings of more than two working parties at the same time. It was proposed that the working party set up to study definitions, national treatment and the country of origin and the working party concerned with the final clauses should meet first. After the Commission had examined the reports of both those working parties, the third working party could meet.

47.4 The Main Commission should meet as soon as possible.

47.5 Delegates wishing to present amendments were requested to do so as soon as possible so that they could be communicated to the working parties. By means of such amendments the attitude and suggestions of the various delegations could be made clear. Amendments should, as far as possible, follow the order of the articles of the Draft Convention.

48 The proposals of the Bureau of the Conference were *approved*.

GENERAL DISCUSSION

49 The PRESIDENT [F] opened the general discussion on the Draft Convention (CDR/1).

50 Mr. PUGET (France) [F] said that the French Government had reservations to express concerning the usefulness and opportuneness of the Diplomatic Conference itself, for, in its view, it was not necessary to have recourse to a diplomatic instrument in order to achieve the aim proposed, seeing that it was possible to attain it by other means, in particular by the improvement of contracts. Usually, international conventions consummated the development of national laws; but there existed gaps in the latter, which it was desirable to fill in. The French Government accordingly considered that it could take the report of the Hague Committee of Experts as a working basis.

51.1 Mr. TISCORNIA (Argentina) [S] thought that, although the Draft Convention had been considered reasonably satisfactory and suitable for discussion with some probability of being adopted, its success would depend on co-operation between the Contracting Parties, on an understanding of the universal character of the general principles established and on the impartiality with which the problems involved were faced. Discussion on the rights of authors, performers, producers of phonograms and broadcasting organizations was just as keen as ever and it was not easy to find solutions which would satisfy everyone. Performers, producers of phonograms and broadcasting organizations were all covered by the title of the Conference. It would seem that their interests were reciprocal, but, on studying the question more closely, it became clear that the

1. Cf. Doc. CDR/SR.3 (prov.).

economic factor came into play and gave rise to disagreements, as a result of which they were split up into opposing parties.

51.2 It would be a mistake to try to draw up a model instrument, which would probably be incompatible with the laws of many countries; for that would be tantamount to drawing up the architectural plan of a superb cathedral which it would never be possible to construct. The Conference should therefore proceed slowly in order to achieve something modest but stable, which would serve as a starting point for more ambitious projects.

52 Mr. EDLBACHER (Austria) [F] stated that the Austrian Government had declared itself warmly in favour of an International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. It considered that the Draft drawn up by the Hague Committee of Experts constituted an excellent basis for discussion.

53 Mr. PETRÉN (Sweden) [F] said that Sweden, also, was in favour of the adoption of an international instrument in that field. At the national level, Sweden, like the other Scandinavian countries, had already taken a decisive step and the Swedish Government felt that the time had come to regulate the question at the international level. The Draft prepared by the Hague Committee could serve as a basis for the work of the Conference, but the Swedish delegation would have certain amendments to propose during the consideration of that Draft.

54.1 Mr. STRNAD (Czechoslovakia) [F] stated that the Czechoslovak Government considered the time propitious for the drawing up of an international instrument for the protection of performers, producers of phonograms and broadcasting organizations. The interests of performers were very satisfactorily protected in Czechoslovakia, with the result that performances by artistes constituted an important contribution to the cultural life of the nation.

54.2 Modern techniques had facilitated contacts between the various parts of the world, and the working conditions of performers as well as cultural exchanges raised problems which urgently called for regulation on the international level as the relevant national laws were no longer adequate. It was with a view to promoting such cultural exchanges that the Czechoslovak Government wished to draw attention to certain aspects of the Draft Convention which seemed unlikely to foster them.

54.3 It was provided, for instance that the Convention should apply only to the Contracting States which were parties to the Universal Copyright Convention or were members of the Berne Union. Copyright, however, was not indissolubly linked up with performers' rights and they should therefore not be linked together in the Convention either.

54.4 States which were neither parties to the Universal Convention nor members of the Berne Union would therefore be unable to benefit by the Convention submitted to the Conference for its consideration. Countries wishing to be entitled to the protection which it offered would accordingly have to accede to the Universal Convention or become members of the Berne Union. For that reason, the Czechoslovak Government considered that the Draft Convention should provide that States which were not parties to the Universal Convention or members of the Berne Union would also be covered by the Convention.

55.1 Mr. DRABIENKO (Poland) [F] said that the Polish Government, in sending a delegation to the Diplomatic Conference, wished to show its desire to make an effective contribution to the solution of the question of the protection of performers' rights. That did not mean, however, that it was right to regulate by a single convention the protection of performers and the protection of phonogram producers and broadcasting organizations.

55.2 The Polish Government's views, which had been communicated to the ILO, had not changed, for the protection of performers concerned the rights of living persons, whereas the protection of producers of phonograms and broadcasting organizations related to the rights of large enterprises which could attain the objects pursued by recourse to the laws of their respective countries.

55.3 However, the Polish Government, which was desirous of assisting performers, would not maintain its proposal that the two problems should be dealt with separately in two different conventions unless the Conference supported that proposal.

55.4 The Polish Government's detailed observations would be presented in the course of the examination of the various clauses of the Draft Convention, but Poland wished at once to point out that the minimum protection to be accorded to performers should not be less than that provided by copyright laws or international copyright conventions; moreover, the extent of the protection to be accorded to performers should be so defined as to make it possible for the Convention to be applied by the maximum number of countries, with due regard to the needs created by their economic development as well as to the system adopted for the distribution of the national revenue.

56 Mr. MOOKERJEE (India) [E], after conveying his Government's good wishes to the Conference, pointed out that the Indian Copyright Act of 1957 conferred far greater rights on performers than the Draft International Convention sought to confer, which was likely to place Indian performers at a disadvantage in countries ratifying the latter. However, his Government was participating in the Conference in the hope that, as a result of its work, many of the existing problems concerning protection would be solved.

57 Mr. WESTON (Australia) [E] said that for geographical reasons the problem of protection for performers, phonogram producers and broadcasters was probably less urgent in Australia than elsewhere. His Government, however, felt that the time had come for the preparation of an international instrument on the subject.

58 Mr. GAXIOLA (Mexico) [S] said that, in the view of the *Asociación Nacional de Intérpretes de Mexico*, the protection of performers should not be provided for by the same instrument that protected the rights of broadcasting organizations. He wished merely to emphasize the need to deal with each of those questions separately.

59 Mr. BOGSCH (United States of America) [E] drew attention to the fact that if the President's suggestions for procedure were followed, none of the working parties would be competent to consider the important points raised by the Czechoslovak delegate in connexion with Articles 1 and 2 of the Draft Convention. He asked whether the intention was that the Main Commission should itself discuss any points not specifically referred to the three working parties.

60 The PRESIDENT [F] pointed out that delegates were expected to give only general indications of their points of view and not to enter into a detailed discussion which would encroach on the task of the working parties.

61 Mr. SALA (Spain) [S] said he was surprised that the recognition of performers' rights could give rise to misgivings on the part of the defenders of copyright as though such a recognition could be prejudicial to authors. In Spain, the latter were fully protected and were represented by an extremely important organization. In all countries, protection was accorded to authors but not to performers or musicians. It was essential to protect the interests of those thousands of artistes and musicians, and thus crown the efforts which had for many years been made with that object

and which had led to the convening of the present Conference.

62 Mr. GALBE (Cuba) [S] supported the Czechoslovak delegate's observations concerning the contents of paragraph 2 of Article 19 of the Draft Convention. As the Conference was essentially an international one and as it was reasonable to expect that it would accomplish useful and acceptable work, it was inconceivable that it could adopt principles which would restrict the work it was about to undertake.

63 Mr. BODENHAUSEN (Netherlands) [F] stated that the Netherlands Government considered the Draft Convention drawn up by the Hague Committee of Experts to be acceptable as a basis for discussion. It felt, however, that the protection to be accorded to the three groups concerned should be considered on its merits in respect of each individual group. It was not convinced that the legitimacy of the interests involved and considerations of social justice warranted a single instrument. Its observations related mainly to Article 2 of the Draft Convention as it then stood, and the Netherlands Government reserved the right to revert to that question during the discussions.

64.1 Mr. DE STEENSEN-LETH (Denmark) [E] informed the Conference that the Danish Government had been working for many years on the problem of the protection of the interests concerned and had drawn up a new Copyright Bill which had come into effect on 1 October 1961. The structure of the Bill was not very different from that of the Draft Convention.

64.2 His Government favoured the preparation of an international instrument which would cover the essential problems of protection. It believed that a sound balance had been achieved in the Draft Convention between the interests of the groups concerned and, therefore, that the Draft could provide the Conference with a solid basis for its work. The Danish Government felt that some of the articles of the Draft required clarification and amendment, but hoped that the Conference would be able to reach agreement on a draft which was not too far from the one before it.

65.1 Mr. GRAVEY (International Federation of Actors) [F] thanked the President for calling upon the representative of the International Federation of Actors, which was directly interested in the preparation of the International Convention submitted to the Conference.

65.2 The Federation, whose membership at present comprised thirty-three professional actors' organizations in thirty different countries, had been endeavouring ever since its foundation to obtain protection for performers. The Second World War had prevented the ILO from drawing up a Convention in that field. Work had been resumed by the Berne Union and Unesco with a view to the preparation of a more far-reaching Convention, designed to protect not only performers but also phonogram producers and broadcasting organizations. It was urgently necessary, however, to give effect as rapidly as possible to the Convention which had been so eagerly awaited and which would ensure the protection of actors.

65.3 During the last fifty years, the actors' profession had been so profoundly changed that it was impossible to make comparisons between conditions as they were and those which existed before the First World War.

65.4 Contrary to the general opinion, sound films had not played the predominant role in that evolution, for, although they had attracted a large number of stage actors, most of the latter, while pursuing a film career, had continued to devote their art to the living theatre, which had been the basis of the actors' profession for over four-thousand years.

65.5 It was indisputable that it was the mechanical means of reproduction and

transmission (recordings, radio and television) which had, in the space of a few years, transformed the actor, who, until then, had been master of his own performance and his own talent, into a supplier for a chain of industries which reproduced and used his work unrestrictedly.

65.6 Consequently, all actors throughout the world were happy to note the unanimous agreement reached by the Hague Committee of Experts and confidently looked forward to the entry into force of the international Convention in that field, although it constituted not the ideal but only the bare minimum.

65.7 In countries with an ancient culture, the printed word and printed music had to compete with, or were even being replaced by, recordings and radio and television broadcasts to an ever greater extent. In new countries, in distant continents, those agencies of mass dissemination were often the fundamental means of propagating education and culture; but music originating in those new countries needed protection, whether it were the protection of the artists performing it, or of the phonogram producers recording it or of the broadcasting organizations transmitting it.

65.8 Having regard to the rapidity of that evolution, it was erroneous to claim that the time had not yet come for the Convention which the Diplomatic Conference was called upon to establish. If there were any further delay, national legislatures which had to settle those problems would go their own individual ways and their paths might diverge to such an extent that the drawing up of an international convention would be rendered increasingly more difficult if not impossible.

66.1 Mr. STEWART (International Federation of the Phonographic Industry)[E], after expressing his appreciation for the invitation extended to the Federation to be represented at the Conference, said that although the question of protection had been or was being dealt with in the national legislations of many of the countries represented at the Conference, there was an urgent need for immediate international legislation. If all national legislations were allowed to develop independently without reference to some international regulations, they would become further and further apart.

66.2 The phonogram producers had made certain concessions—as had others—to enable agreement to be reached at The Hague, and, to preserve the equilibrium then achieved, were prepared to accept the Hague Draft as a basis for work. On behalf of the International Federation of the Phonographic Industry, he associated himself completely with the Draft Convention.

67.1 Mr. RATCLIFFE (International Federation of Musicians) [E] thanked the conveners of the Conference for inviting the Federation to be represented.

67.2 The musicians had waited for a long time for the drafting of a convention which would protect their rights. It was regrettable, but inevitable, that legislation was drawn up years after the conditions calling for legislation had arisen. Broadcasting and television had introduced a new economic relationship between the performer and the public. Previously, the number of people listening to a performance could be controlled but recording now completely separated the performer from his performance, in other words, his performance could be possessed by others. The question of regulating the rights of performers was, therefore, of extreme urgency to musicians.

67.3 The International Federation had welcomed the adoption of the Hague Draft and would welcome the adoption of any amendments to it which would improve the position of musicians, provided that such amendments were not harmful to the interests of the other groups concerned.

68 Mr. ZAGAR (International Federation of Variety Artistes) [F] thanked the President

for allowing him to speak at that Conference which was of the greatest importance for variety artistes, whose interests were seriously threatened owing to the devaluation of their performances. Variety artistes throughout the world were fully confident that the Conference would adopt a convention granting them the complete protection the need for which was so urgently felt.

69.1 Mr. MALAPLATE (International Confederation of Societies of Authors and Composers) [F] said that his remarks would be very brief, as all the delegates would receive a memorandum prepared by his Confederation, recalling the principles which authors had never ceased to proclaim in the matter of so-called 'neighbouring rights'.

69.2 He thought he should, however, make it clear that authors considered that an international convention in that field was not necessary, as the ordinary law—particularly the law relating to contracts—was adequate to ensure the protection of the legitimate rights involved.

69.3 Furthermore, with regard to the Draft Convention prepared by the Hague Committee of Experts, authors were of opinion that it could only lead to a protection which would differ very greatly from one country to another. With respect to certain important questions, the draft not only limited itself, for lack of anything better, to referring to national laws, but Article 15 opened the door to reservations, and many States would not fail to exercise the right to make them, which would rob the Convention of a considerable part of its substance.

69.4 Article 16 of the Draft Convention also would give rise to considerable controversy, for there could be no doubt that, even at the time of its adoption, the Convention would already be out of date, as it did not deal with cinematography, which was closely related to television.

69.5 Authors were of the opinion that an international convention could not be established *a priori*, but must constitute a kind of synthesis of existing national laws and in a sense must be the expression of a common denominator. To endeavour to establish an international instrument of universal application for questions in respect of which there was no unanimity—apart, perhaps, from agreement on general principles of a purely theoretical nature—was like constructing an edifice which would not give any satisfaction to the groups concerned. On the contrary, it would be likely to bring a perturbing influence into the operations of those groups, and to have unfortunate effects on copyright.

70 Mr. MOURIER (International Confederation of Professional and Intellectual Workers) [F] thanked the President for permitting him to speak. The Confederation, which had been the first international organization to raise the question of the international protection of the various groups covered by the Draft Convention submitted to the Conference, wished to thank the international organizations which had participated in the preparation of that draft. It hoped that the Conference's work would lead to the adoption of an instrument based on the work of the Hague Committee of Experts.

71 Mr. ZINI-LAMBERTI (European Broadcasting Union) [F] recalled that his organization had followed very closely the work leading to the preparation of the Hague Draft Convention. That draft should be taken as a basis for discussion and it should always be borne in mind that it was the result of remarkable efforts to find compromise solutions whilst safeguarding the balance that it was indispensable to preserve between the different interests concerned. It was in that spirit and with a view to achieving a similar result that the European Broadcasting Union would co-operate whole-heartedly in the work of the Conference.

72 *The meeting rose at 12 noon.*

Main Commission

First Meeting[1]

Wednesday, 11 October 1961, at 12 noon

Chairman: Mr. Giuseppe TALAMO ATENOLFI (Italy).

EXAMINATION OF THE DRAFT CONVENTION

Title and Preamble of the Convention (CDR/1)

73 The CHAIRMAN [F] read out the title and preamble of the Draft Convention.

74 Mr. TISCORNIA (Argentina) [S], after stating that the Argentine law which protected *interpretes* (interpretative artistes)—without referring to *ejecutantes* (executant artistes)—had led to certain judicial decisions from the benefit of which executant artistes proper were in general excluded, proposed that, in the Spanish title of the Convention as it then stood, the disjunctive conjunction *o* (or) between the words *intérpretes* and *ejecutantes* should be replaced by a comma so that the title would not only distinguish between those two categories of performers, but would also cover both of them.

75 The CHAIRMAN [F] considered that the difference between 'interpretative' and 'executant' artistes was clearly indicated in the title, but, if he so desired, the Argentine delegate could submit an amendment in writing.

Articles 23, 24, 28 paragraph 4, and 29 of the Convention (Article 1 of the Draft Convention, CDR/1; and Articles 18, 19 and 23 of the Draft Final Clauses, CDR/3)

76.1 Mr. EDLBACHER (Austria) [F] thought that the principle underlying Article 1 of the Draft Convention was sound. As copyright was the very origin of neighbouring rights, the protection of the latter should be assured only on the basis of the adequate protection of copyright.

76.2 The very special wording of Article 1 was intended to encourage States which would ratify the Convention that was to be adopted by the Conference but which were neither members of the Berne Union nor parties to the Universal Convention to accede to one or the other, or to both of those Conventions.

76.3 The Austrian delegation, however, considered that there was a contradiction between that article and Article 19, providing that any State which became a member of the United Nations could accede to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. But a distinction should be made between them, since there would be Member States for which the Convention would be effective and States for which it would not be effective. It was possible, at least theoretically, that the Convention would enter into force but remain without any practical effect if the three instruments of accession required were deposited by States which were neither members of the Berne Union nor parties to the Universal Convention.

76.4 It could even happen, by virtue of Article 23, that a State might request the convening of a conference to revise the Convention, although the latter had not up to that time had any practical effect.

76.5 In order to avoid such regrettable results, the Austrian delegation suggested that the Convention should be open for accession only to States which were parties to the Universal Convention or members of the Berne Union.

76.6 If the Conference adopted that suggestion, the corresponding provision should be included in Article 18.

77 Mr. DE SANCTIS (Italy) [F] agreed with the Austrian delegate. In order to avoid unnecessary complications due to

1. Cf. Doc. CDR/COM.1/SR.1 (prov.).

the possibility of a ratification without effect, Article 1 should be amended so as to make it obligatory for a State to be a member of the Berne Union or a party to the Universal Convention before it deposited its instrument of ratification of the Convention which was being examined by the Diplomatic Conference.

78 Mr. SIDI BOUNA (Mauritania) [F] stated that Mauritania agreed with States like Czechoslovakia which did not consider that the application of the Convention should be conditional on the previous concluding of multilateral copyright agreements. In any case, Mauritania would have to demand the possibility of becoming, after the adoption of the Convention, a member of the Berne Union or a party to the Universal Convention.

79 Mr. MOOKERJEE (India) [E] suggested that Article 1 be deleted and that the words 'and by States which are parties to the Universal Copyright Convention or members of the International Union for the Protection of Literary and Artistic Works' be added to Article 18.

80.1 Mr. PETRÉN (Sweden) [F] agreed with the Austrian delegate that the Convention should be open for accession only to States which were parties to the Universal Convention or members of the Berne Union.

80.2 To be logical, however, if a State ceased to be a party to the Universal Convention or a member of the Berne Union, it should automatically cease to be a party to the Convention then under consideration.

81 Mr. DE WAERSEGGER (Belgium) [F] recalled that the Belgian Government had already transmitted its observations. He reserved the right to submit an amendment.

82 Mr. BOGSCH (United States of America) [E] supported the view that ratification without effect would be pointless; only those States which were members of the Berne Union or were parties to the Universal Convention should be allowed to deposit instruments of ratification of the Convention under discussion. He suggested that that condition be expressed in Article 18 rather than in Article 1.

83 Mr. BODENHAUSEN (Netherlands) [F] agreed with the observations made by the delegates of Austria, Italy, Sweden and the United States of America, but thought that an amendment should be presented to the Conference before it could reach any final decision.

84 Mr. WALLACE (United Kingdom) [E] drew attention to the United Kingdom Government's observations on the text of the Draft Convention, in which it was suggested that it would be more logical to delete Article 1 and to add to Article 18 the words 'which are parties to the Universal Copyright Convention (place, date) or which are members of the International Union for the Protection of Literary and Artistic Works'. If the Commission decided to delete Article 1, he would formally propose the addition of those words to Article 18.

85 Mr. ULMER (Federal Republic of Germany) [F] also agreed with the remarks of the Austrian delegate and of the other delegates who had associated themselves with the latter. He thought, however, that it was not sufficient to amend Article 18 and to provide that the Convention under consideration would be open for accession to States which were parties to the Universal Convention or members of the Berne Union, for it was always possible that a State might subsequently cease to be such a party or such a member.

86.1 Mr. STRNAD (Czechoslovakia) [F] emphasized that copyright was not indissolubly linked up with the protection of performers; it was easy to think of performed works which were not protected by copyright. There were also performed works the authors of which were not nationals of States members of the Berne

Union or parties to the Universal Convention.

86.2 Czechoslovakia maintained cultural relations with several countries which were neither members of the Berne Union nor parties to the Universal Convention. The adoption of Article 1 in its existing form might be detrimental to the protection of performers. If that article was to be maintained as it then stood Czechoslovakia would submit an amendment with a view to its complete deletion.

87 Mr. PUGET (France) [F] stated that the French Government was attached to the principle embodied in Article 1 and was not in favour of granting wider protection to performers than to authors.

88 Mr. DRABIENKO (Poland) [F] agreed with the remarks made by the Czechoslovak delegate.

Article 1 of the Convention (Article 2 of the Draft Convention, CDR/1)

89 Mr. PUGET (France) [F] reminded the Commission that the principle of th pre-eminence of copyright had been recognized in Article 2 by the Hague Committee of Experts, at the request of the French Government.

90 Mr. GAXIOLA (Mexico) [S] took the view that Article 2 was intended to establish a kind of order of priority as between authors' rights and the rights of performers. It was therefore advisable to include an express statement to that effect so that authors' rights would clearly prevail over the rights of performers.

91 Mr. GALBE (Cuba) [S] regretted he was unable to agree with the Mexican delegate. In the case of important works of art, the priority of the right of the authors was justified; but the same was not true with regard to many musical compositions which had been recorded and widely circulated throughout the world; in their case, it was not so obvious that the author had priority over the performer. It was easy to find numerous exceptions to the rule.

92 Mr. DE SANCTIS (Italy) [F] agreed with the French delegate. It must always be borne in mind that the rights which the Convention was intended to protect were artistes' rights with respect to the 'performance' of literary, artistic and musical works; the author's right must take precedence over that of the performer of his work.

93 Mr. TISCORNIA (Argentina) [S] said that, even in the case of mediocre works disseminated on a wide scale, the work of the author always preceded that of the performer; he therefore considered the wording of Article 2 of the Draft Convention quite satisfactory as it regarded the rights of authors as having been previously recognized.

94 Mr. MOOKERJEE (India) [E] suggested that the word 'musical' should be added after the word 'literary' in the first sentence of Article 2.

95 Mr. SIDI BOUNA (Mauritania) [F] considered that Article 2 defined the scope of the Convention indirectly; but as the protection of the rights of performers was likely to have an appreciable effect on the economic and moral interests, if not on the rights, of the authors themselves, Mauritania agreed with the remarks made on behalf of the other delegations.

96 Mr. GALBE (Cuba) [S] said that the text of Article 2 as it stood seemed satisfactory. With regard to authors' rights, he agreed entirely with the Argentine delegate. In his previous remarks he had merely wished to suggest that an official order of priority should not be established to the detriment of performers.

97.1 Mr. MORF (Switzerland) [F] associated himself with the observations made by the French and Italian delegates. He suggested that the same terminology be used in Article 2 as in Article 1 and that the expression 'protection of the rights of

authors' be replaced by the expression 'protection of works'.

97.2 With regard to the second sentence of Article 2, it hardly seemed necessary, but that was a question of drafting.

98.1 Mr. PUGET (France) [F], referring to the Indian delegate's proposal, stated that musical works were included among artistic works in the same way as paintings and sculptures.

98.2 In reply to the observation by the Swiss delegate, he expressed the view that the article in question should be maintained as it stood, including the second sentence.

99 Mr. DITTRICH (Austria) [E] suggested that the second sentence of Article 2 be deleted since it merely repeated the idea contained in the first sentence.

100 Mr. MOOKERJEE (India) [E] thought that it would be clearer if the word 'juridical' were added before the word 'rights' in both the first and second sentences of Article 2.

101 Mr. FERSI (Tunisia) [F] also wondered whether the second sentence of Article 2 added anything to the meaning of that article.

102 Mr. BOGSCH (United States of America) [E] agreed with the principle expressed in Article 2. It was a difficult principle to formulate, and any amendment to the present text should be given very careful consideration. For the sake of clarity, the word 'musical' might be added or, alternatively, the expression 'literary and artistic works' might be defined somewhere in the Convention.

103 Mr. GALBE (Cuba) [S] suggested that the reference to literary and artistic works should be deleted from Article 2, and that mention should be made only of the rights of authors and of other copyright proprietors.

104 Mr. DE WAERSEGGER (Belgium) [F] said he agreed with the proposal made by the French and Italian delegates, but he was not sure whether the second sentence was really necessary.

105 Mr. DITTRICH (Austria) [E] felt that it would be superfluous to insert the word 'juridical' before the word 'rights'; a right was always juridical.

106 Mr. LENNON (Ireland) [E] supported the proposal to insert the word 'musical' after the word 'literary' in the first sentence of Article 2.

107 Mr. WALLACE (United Kingdom) [E] drew attention to his Government's observations on the text of the Draft Convention in which it was suggested that the word 'musical' should be inserted after the word 'literary' where appropriate; the problem arose not only in Article 2.

108 Mr. SALA (Spain) [S] said he could agree either with the United States delegate's proposal that the word 'musical' be included or with the Cuban delegate's proposal that the other adjectives be deleted so as to avoid making any distinction. Both proposals seemed acceptable.

109.1 Mr. BODENHAUSEN (Netherlands) [F], referring to the wish of the French and Italian delegations that the pre-eminence of copyright should be affirmed, requested that a formal amendment on that matter be presented in writing.

109.2 As to the second sentence, it should be maintained because it contained a rule for the interpretation of the first sentence.

110 Mr. BOGSCH (United States of America) [E] suggested that the question of whether the word 'musical' be inserted or of whether it was desirable to define the phrase 'literary and artistic works' be referred to the Working Party on Definitions for study. If the working party considered it desirable to define the phrase it might be asked to submit a definition for consideration by the Main Commission.

111 Mr. DE SANCTIS (Italy) [F] supported the proposal made by the United States delegate. The question of the possible inclusion of musical works should be

studied very carefully. It was a question of definition, for everyone agreed that musical works should be included among artistic works.

112 Mr. MOOKERJEE (India) [E] supported the United States suggestion. A definition of the phrase was contained in the Indian Copyright Act. He would be pleased to give any help he could to the working party on the matter.

113 Mr. EDLBACHER (Austria) [F] did not object to the inclusion of the adjective 'musical', but he drew attention to the fact that that adjective was not employed either in the Universal Convention or in the Berne Convention.

114 The CHAIRMAN [F] stated that the question would be referred to the Working Party on Definitions.

115 *The meeting rose at 1 p.m.*

Main Commission

Second meeting[1]

Wednesday, 11 October 1961, at 4.30 p.m.

Chairman: Mr. Giuseppe TALAMO ATENOLFI (Italy).

COMPOSITION OF THE WORKING PARTIES

116.1 The CHAIRMAN [F] communicated to the Commission the Bureau's proposals concerning the constitution of the working parties; delegations should indicate the working parties on which they wished to be represented and designate one of their members to follow the work of each of those working parties.

116.2 Working Party No. II, which would be asked to study in particular the question of minimum protection and that of reservations, would not meet at the same time as Working Party No. I, which would deal with the question of national treatment (including the definition of literary and artistic works); but the meetings of Working Party No. III which would deal with the final clauses, could take place at the same time as those of either of the other two working parties.

COMPOSITION OF THE DRAFTING COMMITTEE

117 The CHAIRMAN [F] proposed to the Main Commission that it should appoint as members of the Drafting Committee delegates of the following nine countries; Argentina, Czechoslovakia, France, Federal Republic of Germany, Mexico, Spain, Sweden, United Kingdom and United States of America.

118 After a discussion on procedure, in which the delegates of France, United

1. Cf. Doc. CDR/COM.1/SR.2 (prov.). (*N.B.* The reference number on the first page of this document was mistakenly given as 'CDR/COM.2/SR. (prov.)'.)

States of America, Monaco, Belgium, Italy, India, Federal Republic of Germany, Czechoslovakia, Republic of South Africa and United Kingdom took part, the CHAIRMAN [F] announced that a plenary meeting of the Conference would be held on the following day for the purpose of deciding whether the number of members of the Drafting Committee should remain limited to nine, as provided by Rule 10 of the Rules of Procedure (CDR/4), as amended at the second plenary meeting, or whether it should be increased to twelve, in accordance with the wish expressed by certain delegates.

119 *The meeting was suspended for thirty minutes.*

EXAMINATION OF THE DRAFT CONVENTION (continued)

Article 2 of the Convention (Article 3 of the Draft Convention, CDR/1)

120 Mr. SOTH (Cambodia) [F] announced that he had tabled a proposal for the amendment of Article 3 of the Draft Convention.

121 Mr. KAMINSTEIN (United States of America) [E] said that the United States Government was opposed to a Convention which would be applicable to the internal situation in any given country.

122 Mr. MOOKERJEE (India) [E] stated that Articles 5, 8 and 12 of the Draft Convention should be accepted by all the contracting parties before there could be any question of accepting Article 3. The Indian delegation would later be submitting an amendment on that point.

123 Mr. KIRSCHSCHLAEGER (Austria) [F] considered that the meaning of Article 3 of the Draft Convention should be made clear before the Austrian Government could take up a position on that subject. It was not clearly indicated whether that article conferred subjective rights on those concerned, as did Articles 8 and 12 of the Draft Convention.

124 Mr. BODENHAUSEN (Netherlands) [F], at the Chairman's request, explained that the intention of the authors of the Draft Convention had been to confer subjective rights as far as possible and that that was particularly the case with respect to Article 3; in certain other cases, however, particularly with respect to Article 5, they had wished to leave greater latitude to the States.

Articles 4, 5 and 6 of the Convention (Article 4 of the Draft Convention, CDR/1)

125 Mr. ULMER (Federal Republic of Germany) [F] reserved the right to submit to the appropriate working party a written proposal with a view to the amendment of Article 4 of the Draft Convention.

126 Mr. PETRÉN (Sweden) [F] also announced that he would submit a proposal for an amendment to that article.

127 Mr. STRNAD (Czechoslovakia) [F] defended the principle of nationality, which, in his view, constituted the firmest basis for any effective protection of performers, as it avoided the uncertainties which were inevitably entailed by the application of the principle of territoriality.

128 Mr. STRASCHNOV (Monaco) [F], supporting a proposal previously made by the Government of the United Kingdom, suggested that the country of origin should be defined simply as 'the country where the performance took place', in order to prevent there being several countries of origin for the same performance, as was possible under paragraph (a) as it then stood. With regard to paragraph (b) (country of origin of phonograms) Mr. Straschnov reserved the right to submit an amendment for the consideration of the working party.

129 Mr. MORF (Switzerland) [F] announced that he had tabled a proposal for an amendment to paragraph (b) (ii).

130 *The meeting rose at 6.15 p.m.*

Fourth Plenary Meeting [1]

Thursday, 12 October 1961, at 10 a.m.

President: Mr. Giuseppe TALAMO ATENOLFI (Italy).

GENERAL DISCUSSION

131 The PRESIDENT [F] reopened the general discussion and called upon the Head of the Spanish delegation who had just arrived.

132.1 Mr. GARCIA-NOBLEJAS (Spain) [S] stated that the Draft Convention, the actual purpose of which was to ensure the international protection of the so-called neighbouring rights of copyright, had been carefully examined in Spain. The Spanish laws on intellectual property referred only to intellectual work itself, while the rights of performers were regulated by the Law on Labour Contracts; those of phonogram producers by the Law on Industrial and Intellectual Property, when such property had been transferred to them; and those of broadcasting organizations by special laws.

132.2 He added that, for the moment, no changes in this legal system were envisaged in Spain and that it seemed premature to contemplate the adoption of an international convention before there existed any legal basis in the matter on the national level. The Spanish Government, however, was very glad to take part in the Conference and was not indifferent to the new principles which were being worked out in that legal field or to their progressive incorporation in positive law.

133 Mr. GALBE (Cuba) [S] was surprised that allusions were repeatedly being made in the Conference to the difficulty of establishing international regulations in the absence of any previous national regulations. He recalled that, at all international conferences, it was the usual practice to establish ideal standard regulations, which the various countries then accepted or did not accept as they deemed fit.

134 Mr. GARCIA-NOBLEJAS (Spain) [S] said he did not wish his remarks to be wrongly interpreted. The Spanish delegation was extremely interested in the Conference's work and wished to take part in it, but Spain had no national laws on the matter in question and preferred to reflect on the ideas put forward pending the preparation of such laws.

AMENDMENT OF THE RULES OF PROCEDURE

135 The PRESIDENT [F] recalled that, at the second meeting of the Main Commission, it had been proposed to increase to twelve the number of members of the Drafting Committee. If that proposal were adopted, it would be necessary to amend Rule 10 of the Rules of Procedure (CDR/4) as amended at the second plenary meeting, in accordance with the procedure prescribed in Rule 22 of the said Rules of Procedure.

136 Mr. BOGSCH (United States of America) [E], supported by Messrs. STRASCHNOV (Monaco), PUGET (France) and TISCORNIA (Argentina), introduced the proposal made by the United States delegate, Mr. Kaminstein, at a previous meeting, that Rule 10 of the Rules of Procedure be amended to increase the number of members of the Drafting Committee from nine to twelve, and that the three additional members of the Committee should be the delegates from Belgium, Italy and Japan.

137 The amendment of Rule 10 of the Rules of Procedure (cf. CDR/40) was *adopted* by 19 votes to none, with 11 abstentions.

CONSTITUTION OF THE DRAFTING COMMITTEE

138 The PRESIDENT [F] proposed to the Conference that it set up a Drafting

1. Cf. Doc. CDR/SR.4 (prov.).

Committee composed of representatives of the following States: Argentina, Belgium, Czechoslovakia, France, Federal Republic of Germany, Italy, Japan, Mexico, Spain, Sweden, United Kingdom and United States of America.

139 The above proposal was *adopted.*

140 *The meeting rose at 10.30 a.m.*

Main Commission

Third meeting[1]

Thursday, 12 October 1961, at 10.50 a.m.

Chairman: Mr. Giuseppe TALAMO ATENOLFI (Italy).

EXAMINATION OF THE DRAFT CONVENTION (continued)

141 The CHAIRMAN [F] invited the Main Commission to resume its examination of the articles of the Draft Convention.

Article 7 of the Convention (Article 5 of the Draft Convention, CDR/1)

142.1 Mr. GAXIOLA (Mexico) [S] said that in Mexico a draft amendment to the laws then in force was being prepared; it would incorporate each and all of the rights accorded by Article 5 of the Draft Convention.

142.2 He added that, as in Mexico no one could be deprived of his rights except by a legal decision, he would submit a written proposal that a clause should be added to Article 5 stating that each State, through its national laws, shall be entitled to fix the necessary sanctions, and also the manner of exercising such rights.

142.3 He also stated that, as conflicts could arise when the author authorized a secondary use of his work and the performer opposed the exercise of a secondary use right, the Mexican delegation proposed adoption of the principle that, if the performer's opposition to the secondary reproduction was unjustified or detrimental to the author's rights the author was entitled, in his turn, to demand compensation for loss or damage suffered. That meant the adoption of the principle known in civil law as an abuse of rights.

143.1 Mr. GRAVEY (International Federation of Actors) [F] stated that his Federation, the International Federation of Musicians and the International Federation of Variety Artistes had warmly welcomed the observations made with regard to Article 5 of the Draft Convention by the governments of the United States of America, the Federal Republic of Germany and Austria.

143.2 The experts who had met at the Hague did not seem to have fully understood the wishes of performers; for paragraphs 2 and 3, which were designed to give them

1. Cf. Doc. CDR/COM.1/SR.3 (prov.). (*N.B.* The reference number on the first page of this document was mistakenly given as 'CDR/SR.1 (prov.)'.)

satisfaction, would, in fact, have the contrary effect, as they would prevent performers from discussing the clauses of their contracts freely.

143.3 Consequently, paragraphs 2 and 3 of Article 5 should be deleted and paragraph 1 should be amended as follows: sub-paragraph (a): insert the words 'the rebroadcasting' between the word 'broadcasting' and the words 'and the communication to the public'; sub-paragraph (c): insert the words 'or use' between the word 'reproduction' and the words 'without their consent'; sub-paragraph (c) (ii): insert the words 'or use' between the word 'reproduction' and the words 'is made for purposes'; sub-paragraph (c) (iii): insert the words 'or use' between the word 'reproduction' and the words 'is made for purposes'.

144 Mr. ZINI-LAMBERTI (European Broadcasting Union) [F] said that such a proposal would be detrimental to the interests and efficient operation of broadcasting organizations which, in Europe, were public services. Article 5 of the Draft Convention represented a compromise solution which had been reached by the experts only after considerable efforts and it should not be amended as that might upset its balance.

145 Mr. PUGET (France) [F] remarked that it should be made clear in the text of the article in question that a performer, by authorizing the fixation of his performance, thereby authorized the use of that fixation for broadcasting purposes.

146 Mr. TISCORNIA (Argentina) [S] urged that the Draft Convention should include provisions for the protection of the performer's moral rights. Under Argentine law, the performer of a literary or musical work could oppose the dissemination of his performance whenever the reproduction of the latter was made in such a form that it might occasion serious and unjustifiable injury to his artistic interests. Such cases were becoming increasingly rarer, but it would be desirable that the Convention should deal with such moral rights.

147 Mr. MOOKERJEE (India) [E] informed the Committee that under Indian law performers had the right to stipulate the terms of their contract with employers but had no special legal protection otherwise.

148 Mr. GAXIOLA (Mexico) [S] supported the view of the Argentine delegate. In Mexico, also, the so-called moral rights of performers were protected in that they had a right to compensation for moral injury.

149.1 Mr. EDLBACHER (Austria) [F] considered that the Convention should protect performers who had consented to the fixation of their performances for broadcasting purposes against the rebroadcasting or reproduction of that fixation; he was afraid that States might not exercise the right mentioned in paragraph 2 or might exercise it to the detriment of performers.

149.2 Paragraph 2 should therefore be deleted; moreover, paragraph 3, which could be maintained, adequately protected the interests of broadcasters.

150 Mr. STRASCHNOV (Monaco) [F] pointed out that, whenever a performer was able to conclude a contract, he had the possibility of protecting himself against the use of his performance. The protection of the performer should be limited to cases in which his performance might be used clandestinely, without his consent; it was unnecessary to grant, *ex jure conventionis*, a right which was virtually equivalent to an exclusive right.

151.1 Mr. FERSI (Tunisia) [F] attached great importance to the maintenance of paragraph 2 of Article 5. Tunisia would ensure that its laws would protect performers, but it could not allow the rights of performers to hinder broadcasting and, consequently, the dissemination of culture.

151.2 The Convention should take into account the situation of rapidly developing

countries where broadcasting played a fundamental role in promoting the people's social progress.

152 Mr. MORF (Switzerland) [F] considered that, rather than include in the scope of the Convention the use of fixations made for private purposes and then provide for exceptions, it would be better to limit the effects of the Convention to the commercial field and leave it to national laws to extend its effects to the private domain.

153 Mr. RATCLIFFE (International Federation of Musicians) [E] stated that the views of the musicians' organizations coincided with those expressed in the name of the International Federation of Actors. He stressed the unfortunate situation which might arise for artistes who were called upon, as many of them were, to perform in different countries where different national legislations might afford, at the one extreme, complete protection against reproduction of their performances without their consent, or, at the other extreme, no protection at all. The question was really one of freedom of contract and it was vitally important that the artiste be free to decide himself to what extent his performance could be used. National legislation should not be allowed to supersede individual contracts. If paragraphs 2 and 3 of Article 5 were retained in the final draft, the speaker felt that this would be working against the interests of the performers.

Article 8 of the Convention (Article 6 of the Draft Convention, CDR/1)

154.1 Mr. GALBE (Cuba) [S] pointed out that Article 6 of the Draft Convention raised a particularly serious problem with respect to the establishment of ideal regulations.

154.2 He urged the appropriate working party not to leave Contracting States completely free to do as they liked without at the same time making clear to them what the Conference understood by ideal standard regulation; otherwise Article 6 would be completely useless.

155.1 Mr. STRASCHNOV (Monaco) [F] concurred with the Cuban delegate's remarks; if the Contracting States were not required to regulate the conditions governing the exercise of rights relating to a group performance, the use of the performance of a large orchestra, for instance, might become very difficult.

155.2 He intended, therefore, to present a proposal for the amendment of Article 6 with a view to giving it a binding character.

156.1 Mr. TISCORNIA (Argentina) [S] said that with respect to group performances, Argentine laws regarded the conductor of an orchestra as the performer; that was why the Argentine delegation would find it difficult to accept, in principle at least, the suggestion made by the delegate o Monaco.

156.2 He thought that the views prevailing in Argentina in that connexion would gradually change and that, side by side with the efforts which the circles concerned made to defend their own rights, the law would come to be adapted ever more closely to existing needs. That was why he approved the text of Article 6 as it stood, with the conviction that national laws would gradually be adapted to the ideal standards proposed.

157 Mr. GRAVEY (International Federation of Actors) [F] stated that his Federation would welcome the amendment of Article 6 as proposed by the United States Government in its comments on the Draft Convention (State intervention to be limited to cases in which the members of the groups concerned were unable to reach any agreement).

Articles 3(a) and 9 of the Convention (Article 7 of the Draft Convention, CDR/1)

158 Mr. DITTRICH (Austria) [E] stated that the Austrian delegation supported the view that the Convention should cover

variety artistes and other performers leaving to the national legislation the authority to exclude such persons.

159 Mr. MOOKERJEE (India) [E] stated that his Government would submit an amendment proposing to add the words 'dramatic or musical' after the word 'literary' in both places where it appeared in the text.

160 Mr. PUGET (France) [F] considered that the second sentence of Article 7 was unnecessary, for States were always able, by their national laws, to protect artistes who did not perform literary or artistic works.

161 Mr. GARCÍA-NOBLEJAS (Spain) [S] found the French delegate's remarks very apposite and asked the authors of the Draft Convention what was to be understood by artistes who did not perform literary or artistic works.

162 Mr. BODENHAUSEN (Netherlands) [F] explained that the second sentence of Article 7 was useful, for, in the absence of such a stipulation, those artistes might be excluded from the benefit of Article 3, and the Contracting States would not be obliged to grant them national treatment.

163 Mr. ZAGAR (International Federation of Variety Artistes) [F] said he would like to see Article 7 amended in such a way that it would apply also to artistes who did not perform 'works' in the sense in which that term was used in the matter of copyright. The text proposed excluded the great majority of variety and circus artistes notwithstanding the artistic value of their performances. Those artistes urged very strongly that they should be allowed to benefit by the protection accorded by the Convention.

164 Mr. GALBE (Cuba) [S], referring to the question as to what was meant by artistes who did not perform literary or artistic works, said that if variety artistes, who executed feats of skill, were to be placed in that category, the question would arise whether bullfighters, for instance, would be protected; people spoke of the art of bullfighting, but it was by no means certain that bullfighters performed artistic works. It would be difficult to see just how far such a definition went.

165 Mr. GARCÍA-NOBLEJAS (Spain) [S] suggested that it might be possible not to apply the term 'artistes' to those who did not perform literary or artistic works. He recalled the importance of certain means of retransmitting sporting events, such as boxing, for instance. In such cases, the protagonist, who was also the person primarily interested in the matter, did not lay claim to the title of artiste, and no one would think of referring to him as such.

Article 10 of the Convention (Article 8 of the Draft Convention, CDR/1)

166 Mr. DE STEENSEN-LETH (Denmark) [E], supported by Mr. DITTRICH (Austria), proposed that this Article should be amended to give it more general application, since broadcasting is only one example of indirect reproduction. He would support a less restrictive wording such as that suggested by the Swiss Government, namely, 'makers of phonograms shall enjoy the right to authorize or prohibit the reproduction of their phonograms'.

167 Mr. MOOKERJEE (India) [E] would like to see included a prohibition against the illegal importation of records.

168 Mr. STEWART (International Federation of the Phonographic Industry) [E] welcomed the protection afforded to phonographic producers in the draft text, but considered that it would be improved by replacing the words 'either directly or when broadcast' by the words 'directly or indirectly or by any means whatsoever'. Mr. Stewart also thought that the Conference should give consideration to the problem of illegal importation of records. The situation could well arise where a Contracting State might import from a

non-contracting State unprotected and possibly illicitly made records.

Article 11 of the Convention (Article 9 of the Draft Convention: CDR/1)

169 Mr. STRASCHNOV (Monaco) [F] emphasized that as the question of the formalities that might be required was closely linked with the determination of the country of origin (Article 4 (b) of the Draft Convention), it was premature to discuss it so long as the country of origin had not been precisely defined.

170 Mr. MOOKERJEE (India) [M] stated that Indian law required no formalities in connexion with the publication of records.

Article 3 (d) of the Convention (Article 10 (c) of the Draft Convention, CDR/1)

171 Mr. WALLACE (United Kingdom) [E] stated that his Government, in common with several other countries, would propose an amendment making the draft less restrictive by eliminating the requirement of a multiplication of copies (sub-paragraph (c)).

172 Mr. DITTRICH (Austria) [E] declared that his delegation would submit a similar proposal.

173 Mr. MOOKERJEE (India) [E] also announced that he was submitting a proposed amendment. The Indian Copyright Act of 1957, the speaker noted, defined the publication of a record as 'the issuing of records to the public in sufficient quantities' (Article 3(c)).

174 Mr. STEWART (International Federation of the Phonographic Industry) welcomed the amendments proposed by the United Kingdom, Austrian and Indian delegates. It was his view that since the main purpose of the Conference was to facilitate international cultural exchanges, any restriction such as the manufacturing clause contained in Article 10 of the Draft Convention was undesirable. He would propose an amendment based on Article 4, paragraph (4), of the Berne Convention.

CONSTITUTION OF WORKING PARTIES

175.1 The CHAIRMAN [F] recalled that it had been decided to set up three working parties to study the clauses concerning national treatment, the country of origin and definitions (Working Party No. I), minimum protection, exceptions and reservations (Working Party No. II), and the final clauses (Working Party No. III).

175.2 He asked Mr. Bodenhausen (Netherlands) and Mr. Petrén (Sweden) to act respectively as Chairmen of Working Parties Nos. I and III until they had elected their officers.

175.3 He then proposed (a) that Working Parties Nos. I and III should begin their work that afternoon; (b) that Working Party No. II should meet only at the beginning of the following week; and (c) that the Main Commission should suspend its meetings until Working Parties Nos. I and III had handed in their reports.

176 The above proposals were *adopted.*

177 *The meeting rose at 12.20 p.m.*

Main Commission

Fourth meeting[1]

Tuesday, 17 October 1961, at 10 a.m.

Chairman: Mr. Giuseppe TALAMO ATENOLFI (Italy).

ORGANIZATION OF WORK

178.1 The CHAIRMAN [F] announced that Working Party No. II would begin its work in the afternoon of 17 October and would continue it until the following Friday evening without interruption. The Bureau of the Conference had provisionally designated Mr. Ulmer as Chairman of that working party.

178.2 The Main Commission would meet again on the morning of Saturday, 21 October.

178.3 It was proposed to convene the Drafting Committee on Thursday, 19 October, for the election of its officers and of a sub-committee whose task would be to put into final shape the articles approved by the Main Commission.

178.4 Mr. Puget was designated to act provisionally as Chairman of the Drafting Committee.

CONSIDERATION AND ADOPTION OF THE REPORT OF WORKING PARTY NO. III (FINAL CLAUSES)

179.1 Mr. PETRÉN (Sweden, Chairman and Rapporteur of Working Party No. III) [F] presented the working party's report (CDR/60/rev.) and drew attention to a few points which called for discussion, particularly in regard to Articles 18, 19, 22, 23, 25, 27 and 28 of the Draft Final Clauses (CDR/3).

179.2 With regard to Article 19, the words 'shall become' in the third line of paragraph 2 should be replaced by the word 'is'.

179.3 With regard to Article 20, the working party had fixed six as the number of ratifications necessary for the entry into force of the Convention.

179.4 Article 22 had given rise to a discussion as to the desirability of fixing a period of time before the expiration of which a State having ratified the Convention would be unable to exercise its right to denounce it. The working party considered that such a period should be maintained.

179.5 The Main Commission's attention was particularly drawn to paragraph 5 of the working party's report, concerning Article 23 on which the members of the working party had been unable to reach agreement and in respect of which the Commission was called upon to take a decision.

179.6 With regard to Article 24, although the Czechoslovak delegation had presented an amendment which would make the submission of disputes to the International Court of Justice optional, the Working Party had maintained the text of the Draft prepared by the Hague Committee of Experts.

179.7 Article 27 gave rise to a long discussion and to several proposals which were contained in the Working Party's report; in that connexion, the Commission's attention was particularly drawn to the first paragraph on page 6 concerning the proposal presented by the Argentine delegate and seconded by the Mexican delegate. That proposal had not been adopted as there had been the same number of votes in favour and against; but it should be noted that, in view of the equal number of votes for and against, it was possible to agree on a new text.

180 The CHAIRMAN [F] proposed that the Commission should first examine

1. Cf. Doc. CDR/COM.1/SR.4 (prov.).

Articles 18, 19, 20, 21 and 22, then Articles 24, 25, 26 and 27 and, lastly, Article 23.

Article 23 of the Convention, (Article 1 of the Draft Convention, CDR/1; Article 18 of the Draft Final Clauses, CDR/3)

181.1 Mr. STRNAD (Czechoslovakia) [F] recalled that, when Article 1 was being discussed by Working Party No. I, he had reserved the right to reopen the discussion on Article 18 in the Main Commission. The latter was asked to consider the original proposal according to which the Convention would remain open for signature by all the States invited to the Conference, provided they were parties to the Universal Convention or members of the Berne Union.

181.2 The Czechoslovak delegation had submitted to Working Party No. I an amendment, which had been rejected; it had then submitted a compromise proposal, which was contained in document CDR/42. Several States Members of the ILO and of Unesco attending the Conference would be unable to sign or ratify the Convention as they were neither parties to the Universal Convention nor members of the Berne Union.

181.3 If the Commission deemed the Czechoslovak amendment to be unacceptable, Mr. Strnad would propose that the discussion on Article 18 be postponed until a later meeting in order to allow delegations to reconsider their attitude.

182.1 Mr. PUGET (France) [F] thought that delegations had had ample time to study the Czechoslovak amendment and that there was no need to postpone the discussion.

182.2 As to the question of substance, France considered that Article 18 as proposed by the Working Party was essential.

183.1 Mr. GALBE (Cuba) [S] could not understand why criteria should be introduced that would impede the achievement of a desirable aim.

183.2 He seconded the Czechoslovak delegate's proposal, as he felt that it would provide an opportunity for a careful study of the question at issue.

183.3 The speaker felt that the suggestion of the French delegate was too radical. All efforts at improvement should be welcomed.

184 Mr. SIDI BOUNA (Mauritania) [F] concurred with the statements of the Czechoslovak and Cuban delegates.

185 The CHAIRMAN [F] proposed that the Commission should vote on the amendment presented by the Czechoslovak delegation.

186 Mr. STRNAD (Czechoslovakia) [F], raising a point of order, requested that the Commission should vote first on the question of the postponement of the discussion to a later meeting, and then on his amendment.

187 The CHAIRMAN [F] called for a vote on the proposal to postpone the discussion to a later meeting.

188 Mr. GALBE (Cuba) [S] requested that the vote be taken by roll-call.

189 The CHAIRMAN [F] said he would take the vote by a show of hands.

190 The Czechoslovak delegation's proposal to postpone the discussion on Article 18 was *rejected* by 23 votes to 7, with 3 abstensions.

191 The amendment presented by the Czechoslovak delegation (CDR/42) was *rejected* by 20 votes to 4, with 6 abstentions.

192 Mr. BODENHAUSEN (Netherlands) [F] observed that, as the amendment had been rejected, the text of Article 18 should be made more precise. It was not obvious that it applied to signature at the present Conference as well as to future signature of the Convention. He proposed that the text be slightly modified by the inclusion of a full stop after the words 'United Nations', the next sentence beginning with the words 'It is and shall remain ...'. The Drafting Committee would be able to find the appropriate wording.

193 Mr. PUGET (France) [F] agreed with that proposal.

194 The CHAIRMAN [F] stated that the question would be referred to the Drafting Committee which would draw up an appropriate text.

195 Mr. STRASCHNOV (Monaco) [F] asked whether, as all reference to the date of the Convention had been deleted from the Article, the word 'date' should not be deleted from the title of the article.

196 The CHAIRMAN [F] announced that the question was referred to the Drafting Committee.

197 Draft Article 18, subject to the suggestions made by Mr. Bodenhausen and Mr. Straschnov, was *adopted* by 27 votes to 3, with 2 abstentions.

Articles 24, 28 and 27 of the Convention (Articles 19, 22 and 25 of the Draft Final Clauses, CDR/3)

198 Mr. STRASCHNOV (Monaco) [F] asked why Article 19 did not contain a clause similar to that in Article 22 which stated that any Contracting State could denounce the Convention on its own behalf or on behalf of any of the territories for whose international relations it was responsible.

199 Mr. PETRÉN (Sweden) [F] remarked that the point raised by the delegate of Monaco was covered by Article 25.

200 Mr. STRASCHNOV (Monaco) [F] accepted that explanation, but wondered whether it would not be more logical to place Article 25 before Article 22.

201 The CHAIRMAN [F] proposed to refer the question to the Drafting Committee.

202 Mr. STRNAD (Czechoslovakia) [F] said that he would vote in favour of Article 19, while maintaining his reservations concerning Article 18.

203 Draft Article 19, amended so that the words 'shall become' were replaced by the word 'is', was *adopted* by 31 votes to 1, with 1 abstention.

Article 25 of the Convention (Article 20 of the Draft Final Clauses, CDR/3)

204 Mr. DE SANCTIS (Italy) [F] proposed that the number of instruments of ratification, acceptance or accession necessary for the entry into force of the Convention should be increased from six to nine.

205 Mr. PUGET (France) [F] seconded the Italian delegate's proposal.

206 Mr. ULMER (Federal Republic of Germany) [F] thought it would be dangerous to require an excessively large number of ratifications and considered that six should be maintained as the requisite number.

207 Mr. KAMINSTEIN (United States of America) [E] supported the proposal to increase to nine the number of instruments of ratification to be deposited before the entry into force of the Convention.

208 Mr. DE WAERSEGGER (Belgium) [F] considered six ratifications amply sufficient if the Convention was to enter into force rapidly.

209 Mr. STRNAD (Czechoslovakia) [F] was of opinion that the number of ratifications necessary for the entry into force of the Convention should be reduced and he urged that the working party's proposal be approved.

210 Mr. SIDI BOUNA (Mauritania) [F] supported the Italian delegate's proposal to increase the number of ratifications to nine.

211 Mr. WAEYENBERGE (Congo, Leopoldville) [F] thought that the entry into force of the Convention should depend on a small number of ratifications, for that would encourage subsequent ratifications. He supported the working party's proposal.

212.1 Mr. GARCÌA-NOBLEJAS (Spain) [S] supported the proposals made by the delegates of France and Italy.

212.2 He said that, in view of the large number of countries which had recently achieved their independence and sovereignty—and that was one of the great signs

of contemporary progress—nine or ten ratifications should be the minimum figure required if the Conventions were to be rightly described as international.

213 Mr. DE SANCTIS (Italy) [F] said that they must work on sound lines for only in that way could the Convention have its full effect.

214 Mr. MOOKERJEE (India) [E] said that unless the purpose of the Article was to avoid too early a coming into force of the Convention, he saw no point in increasing the number of deposits to nine. He suggested that the Commission adopt the compromise proposal agreed to by the working party.

215 Mr. BODENHAUSEN (Netherlands) [F] pointed out that Article 21 made it an obligation for States ratifying the Convention to have laws in harmony with its provisions. He considered that the number of ratifications required under Article 20 should be maintained at six, as proposed by the working party.

216.1 Mr. TISCORNIA (Argentina) [S] said that, while the universal nature of the Convention must be borne in mind, the main aim was to provide world-wide protection for performers as rapidly as possible. Argentina, which protected them, wished to see the treatment accorded to foreign performers in Argentina granted to its own performers in other countries. If, to begin with, the Convention were accepted by a small number of countries, as a nucleus, that would suffice to ensure the protection of the artistes concerned.

216.2 He was therefore in favour of the number of six countries, as proposed in the working party's report.

217 Mr. DITTRICH (Austria) [E] strongly supported the working party's proposal; six was a reasonable number.

218 The CHAIRMAN [F] put to the vote the proposal of the French, Italian, Spanish and United States delegations to increase to nine the number of ratifications, acceptances or accessions needed for the entry into force of the Convention.

219 The proposal was *rejected* by 15 votes to 13, with 4 abstentions.

220 The text of draft Article 20 as proposed by the working party was *adopted* by 26 votes to none, with 2 abstentions.

Articles 26 and 32 of the Convention (Articles 21 and 27 of the Draft Final Clauses, CDR/3)

221 Mr. BODENHAUSEN (Netherlands) [F] was in favour of Article 21, which obliged States to harmonize their laws with the provisions of the Convention. He recalled, however, the existence of similar clauses which already figured in certain other conventions.

222 Mr. WESTON (Australia) [E] asked whether there was any need to include the words 'in accordance with its constitution' in Article 21. They seemed unnecessary in an international instrument.

223 Mr. PETRÉN (Sweden) [F] pointed out that ratified conventions had legal effect in certain countries but not in others. It was essential to recall that fact in the Convention.

224 Mr. WESTON (Australia) [E] pointed out that countries had to act in accordance with their constitutions. He saw no reason why such a fact had to be specifically stated.

225 Mr. MOOKERJEE (India) [E] suggested that the last phrase of the first paragraph be replaced by the words 'the necessary legislation to ensure the adoption of the present Convention'.

226 Mr. PETRÉN (Sweden) [F] recalled that the Universal Convention included an article with similar wording.

227.1 Mr. GALBE (Cuba) [S] said that paragraph 2 did not seem to him to be necessary, first because it indicated a certain lack of confidence in the Contracting States and, secondly, because it did not serve any real purpose, seeing that Article 27 and some of the amendments which might be approved provided for an instrument of

control which would achieve everything that paragraph 2 was intended to do.

227.2 Furthermore, paragraph 2 might prevent certain countries from acceding to the Convention, for, if they were required to modify their own laws before ratifying the Convention, they might not ratify it, if only because they lacked the necessary time to do so.

228 Mr. STRNAD (Czechoslovakia) [F] pointed out that neither the Berne Convention nor the Universal Convention contained any similar clause; he would vote against Article 21.

229 Mr. WAEYENBERGE (Congo, Leopoldville) [F] proposed the following wording for paragraph 1: 'the legal measures necessary for the application of the present Convention'.

230 Mr. PETRÉN (Sweden) [F] considered that Article X, paragraph 2, of the Universal Convention met the same requirement as Article 21 of the Draft Convention; it was therefore preferable to have an explicit provision on those lines in the Convention under discussion.

231 Mr. DE SANCTIS (Italy) [F] remarked that some countries, such as Italy, were in a position to ratify the Convention without having to modify their domestic laws, but it was understood that the entry into force of the provisions of the Convention would be determined by the particular circumstances of each country. For other countries, however, the provisions of Article 21 were essential.

232 Mr. GAXIOLA (Mexico) [S] pointed out that the Constitutions of certain countries, such as Argentina, Mexico, Peru and the United States of America, provided that, when an international treaty was approved, the latter immediately assumed the character of a law—a supreme law. Countries in that situation therefore preferred that paragraph 2 of Article 21 should be maintained.

233 Mr. PUGET (France) [F] said that Article 21 as it stood was acceptable to France.

234 Mr. MOOKERJEE (India) [E] said he was still not convinced that the wording of the last phrase of paragraph 1 was satisfactory; the mere fact that a given formula had been used in other Conventions was no reason why it should continue to be used if it was unsatisfactory. He saw no reason for not replacing the words 'measures necessary' by the words 'necessary legislation'.

235 The CHAIRMAN [F] emphasized that the wording of paragraph 2 of Article 21, which was of a general nature, covered also particular cases such as those of countries where there was a special procedure for the application of provisions which acquired the force of law through the ratification of international conventions.

236.1 Mr. KAMINSTEIN (United States of America) [E] said he favoured the retention of the second paragraph.

236.2 It was not quite accurate to include the United States amongst those countries whose constitutions provided that international conventions became law immediately after ratification. Domestic legislation was required to give such conventions legal effect within the United States.

237 Mr. SABA (Unesco Legal Adviser) [F] said that paragraph 2 of Article 21 had been taken *mutatis mutandis* from Article X of the Universal Convention. It was a formal provision which appeared in many conventions, including the Convention on Genocide adopted by the United Nations. Moreover, the clause in question had not created any difficulty for the States which were parties to the Universal Convention.

238 Draft Article 21 was *adopted* by 29 votes to 3, with no abstentions.

Articles 23 and 28 of the Convention (Articles 18 and 22 of the Draft Final Clauses, CDR/3)

239 Mr. KAMINSTEIN (United States of America) [E], drawing attention to document CDR/69 which contained proposals by the United States delegation concerning the working party's draft text for Articles 18 to 29 (CDR/60 Rev., Annex), said he believed the intention of Article 22, paragraph 4, was that only if a State was no longer a party to either of the two Copyright Conventions would it cease to be a party to the present Convention. That should be made perfectly clear.

240 Mr. PETRÉN (Sweden) [F] took the view that the article must be in harmony with the meaning of Article 18; if the condition prescribed by the latter article ceased to be fulfilled, States would cease to be parties to the Convention.

241 Mr. STRNAD (Czechoslovakia) [F] thought that the question should be studied thoroughly and in the light of Article XIV of the Universal Convention.

242 Mr. KAMINSTEIN (United States of America) [E] withdrew the United States amendment in view of the explanations given by Mr. Petrén. The final wording of the Article could be left to the Drafting Committee.

243 Mr. STRNAD (Czechoslovakia) [F] expressed reservations with regard to paragraph 1, which he was unable to approve, seeing that the United Nations had adopted a resolution against colonialism. He approved paragraphs 2, 3 and 4.

244 Draft Article 22 was *adopted* by 29 votes to 3, with 1 abstention.

Articles 29 and 32 of the Convention (Articles 23 and 27 of the Draft Final Clauses, CDR/3)

245 Mr. KAMINSTEIN (United States of America) [E] suggested that consideration of Article 23 be deferred until after Article 27 had been considered.

246 The CHAIRMAN [F] noted that the Commission agreed to consider Article 23 after Article 27.

Article 30 of the Convention (Article 24 of the Draft Final Clauses, CDR/3)

247 Mr. STRNAD (Czechoslovakia) [F] recalled that the Czechoslovak delegation had presented to the working party a proposal to amend Article 24 by replacing the word 'shall' by the word 'may', which would ensure greater freedom; he again proposed such an amendment.

248 Mr. PETRÉN (Sweden) [F] pointed out that the text proposed was quite clear; it provided for the compulsory jurisdiction of the International Court of Justice. The Czechoslovak proposal might give rise to certain doubts; that was why the working party had preferred to maintain the text drawn up by the Hague Committee.

249.1 Mr. DRABIENKO (Poland) [F] presented a proposal (CDR/41) to replace Article 24 by a new text which had been supported by the Czechoslovak delegation during the working party's discussions. He requested that the proposed amendment be put to the vote.

249.2 The amendment provided that any dispute between two or more Contracting States should be settled by negotiation and that, if the matter in dispute were not so settled, it might be brought before the International Court of Justice with the consent of the parties to the dispute.

250 Mr. WAEYENBERGE (Congo, Leopoldville) [F] supported the text presented by the working party.

251 The CHAIRMAN [F] proposed that the Commission should vote, first, on the maintenance of the wording presented by the working party, and, secondly, on the question whether the word 'shall' should be replaced by the word 'may'.

252 Mr. Tiscornia (Argentina) [S] referred to the international principle of the optional and not compulsory nature of the jurisdiction of the International Court of Justice, and supported the proposal to replace the word 'shall' by the word 'may'.

253 The amendment presented by the Polish delegate (CDR/41) was *rejected* by 24 votes to 5, with 2 abstentions.
254 Draft Article 24 was *adopted* by 26 votes to 3, with 1 abstention.

Article 27 of the Convention (Article 25 of the Draft Final Clauses, CDR/3).

255 Mr. STRNAD (Czechoslovakia) [F] stated that the article under discussion was incompatible with the resolution on colonialism adopted the previous year by the United Nations. He proposed the deletion of Article 25.

256 Mr. PETRÉN (Sweden) [F] remarked that the Commission did not have before it the text of the United Nations resolution and that it would be useful to know it before taking a decision.

257 Mr. STRNAD (Czechoslovakia) [F] stated that the text was generally known to all the States represented at the Conference and that it was not necessary to have it reproduced and distributed.

258 Mr. PETRÉN (Sweden) [F] considered that, if reference was made to a text which was specifically applicable to the Convention, it was essential to know the wording of it.

259.1 Mr. GALBE (Cuba) [S] fully shared the views of the Czechoslovak delegate.
259.2 He added that his attitude was in keeping with the spirit of the United Nations resolution. Whether the text was before the Commission or not was of no importance; the terms of the resolution were well known to everyone.

260 Mr. MASCARENHAS DA SILVA (Brazil) [F] said that it was the United Nations which had created anti-colonialism.

261 Mr. BODENHAUSEN (Netherlands) [F] emphasized that Article 25 was not concerned exclusively with colonialism. There existed completely independent countries for whose international relations metropolitan States were responsible. He proposed that there should be an immediate vote on the article, which had a definite meaning for a large number of countries.

262 Mr. FERSI (Tunisia) [F] accepted Mr. Bodenhausen's explanation.

263 Mr. KAMINSTEIN (United States of America) [E] pointed out that the present Conference could not abolish colonialism. It was obvious, however, that once colonialism was abolished, the provisions of Article 25 would no longer apply.

264 Draft Article 25 was *adopted* by 27 votes to 3, with 2 abstentions.

Article 31 of the Convention (Article 26 of the Draft Final Clauses, CDR/3)

265 Mr. DRABIENKO (Poland) [F] requested that a vote be taken on the proposal for an amendment to Article 26 which he had presented (CDR/41).

266 The amendment was *rejected* by 24 votes to 3, with 2 abstentions.

267 Draft Article 26 was *adopted* by 27 votes to 3, with 2 abstentions.

Article 32 of the Convention (Article 27 of the Draft Final Clauses, CDR/3)

268 Mr. KAMINSTEIN (United States of America) [E] said he thought it unnecessary to explain the United States delegation's proposed amendments to Article 27, paragraphs 1 and 8 (CDR/69); the working party's report was sufficiently clear on the subject.

269 Mr. PETRÉN (Sweden) [F] emphasized that the question had been discussed by the working party, which had considered that the Intergovernmental Committee should not be given tasks which were too great or made responsible for all questions relating to the international protection of the parties concerned.

270 Mr. GRANT (United Kingdom) [E] said his delegation had no very strong feelings in respect of the United States proposal for amending paragraph 1. With regard to paragraph 8, however, it felt it was vital that the expenses of members of

the Intergovernmental Committee be borne by the governments concerned. Since the assumption in the past had been that such expenses should fall on the sponsoring organizations, it was to everyone's advantage that it be made quite clear in the Convention where those expenses would fall.

271.1 Mr LENNON (Ireland) [E] agreed with the United Kingdom delegate.

271.2 He asked whether non-members of the Committee would be permitted to attend its meetings as observers.

272 Mr. PETRÉN (Sweden) [F] said the question was one that would be decided by the Rules of Procedure which the Intergovernmental Committee would draw up itself.

273 Mr. PUGET (France) [F] preferred the text proposed by the working party.

274.1 Mr. KAMINSTEIN (United States of America) [E] withdrew the United States amendment to paragraph 8.

274.2 With regard to paragraph 1, he asked who would be responsible for dealing with other questions concerning the international protection of performers, producers of phonograms and broadcasting organizations, if not the Intergovernmental Committee.

275 The amendment to paragraph (a) of Article 27 presented by the United States delegation (CDR/69) was *rejected* by 21 votes to 2, with 7 abstentions.

276 Draft Article 27 was *adopted* by 28 votes to none, with 2 abstentions.

Articles 29 and 32 of the Convention (Articles 23 and 27 of the Draft Final Clauses, CDR/3) (continued)

277 The CHAIRMAN [F] recalled that the Commission had decided to revert to Article 23 after completing its consideration of Article 27.

278 Mr. TISCORNIA (Argentina) [S] referred to the proposal which he had presented to the working party, and which had been supported by Mexico. There had been an equal number of votes for and against that proposal. He asked whether it would not be desirable to discuss that proposal before considering Article 23.

279 The CHAIRMAN [F] drew attention to the first paragraph on page 6 of the working party's report (CDR/60/rev.). If Article 23 were adopted, it would be for the Drafting Committee to consider whether the proposal in question could be incorporated in Article 27 itself or whether it should be dealt with in a separate article. The Main Commission had to take a decision on the proposal made by the Argentine and Mexican delegations.

280 Mr. TISCORNIA (Argentina) [S] said that the purpose of his proposal was to ensure that States would give their views periodically on the problems to which the application of the Convention gave rise. Every two years, for instance, the States would have the opportunity to make suggestions and provide information concerning their problems and experience.

281 Mr. PUGET (France) [F] considered it useless to impose on all States the obligation to present reports on the application of the Convention. On the other hand, it would be useful to provide that, from time to time, at the Intergovernmental Committee's suggestion, its Secretariat should request States to supply information.

282.1 Mr. GARCIÁ-NOBLEJAS (Spain) [S] supported the proposal made by the Argentine representative.

282.2 With regard to the French delegate's observations, he thought that the obligation to be assumed by States could be very slight. It was not proposed to fix the length of the reports, which could be mere summaries concerning the application of the Convention in each country.

283 Mr. GAXIOLA (Mexico) [S] reaffirmed his support of the Argentine delegation's proposal, which would be beneficial from the point of view of the interests and rights it was desired to protect.

284 Mr. MASCARENHAS DA SILVA (Brazil) [F] supported the proposal made by the Argentine and Mexican delegations.

285 Mr. GRANT (United Kingdom) [E] said that from his own experience, the submission of regular reports did not produce the desired results. There was nothing in the text of the Article to stop States reporting to the Secretariat, or to prevent the Secretariat consulting States. He urged the Commission not to insist on the submission of regular reports.

286 Mr. KAMINSTEIN (United States of America) [E] supported the views of the French and United Kingdom delegates.

287 Mr. GALBE (Cuba) [S] said he would support the proposal made by Argentina and Mexico, provided it was made clear that the Intergovernmental Committee would not request reports more than once a year.

288 Mr. SIDI BOUNA (Mauritania) [F] shared the opinion of the delegate of France.

289 Mr. STRNAD (Czechoslovakia) [F] thought that, if States were obliged to furnish reports concerning the application of the Convention, it would be easy for them to present information of no real value.

290 The CHAIRMAN [F] wondered whether it would not suffice to mention in the Rapporteur-General's report that the Secretariat could request information, without including a special provision to that effect in the Convention.

291 Mr. GALBE (Cuba) [S] said that, before taking a decision on that point, he would like to know whether his proposal that the Intergovernmental Committee should not request a report more than once a year had been taken into consideration.

292.1 Mr. TISCORNIA (Argentina) [S] thought that the application of the Convention was bound to give rise to problems in some countries. When making his proposal, he had thought it would be useful for the various countries to exchange the results of their experience in the matter so that they could compare views, smooth out differences and gradually achieve the ideal pursued.

292.2 With regard to the possibility that had been mentioned that countries might provide merely superficial information, the speaker had always been of the opinion that each country would endeavour to give the most useful information possible.

292.3 He added that, in view of the opinions expressed by other delegates, he would be satisfied if his proposal were mentioned in the Rapporteur-General's report.

293 Mr. GAXIOLA (Mexico) [S] said that procedural questions were of relatively secondary importance compared with the possibility offered to States to exchange information among themselves concerning questions coming within the scope of the Convention. He had therefore supported and would continue to support the Argentine representative's proposal.

294 The CHAIRMAN [F] recalled that Article 27 had already been adopted. It was therefore not possible to accept any proposal for an addition.

Article 29 of the Convention (Article 23 of the Draft Final Clauses, CDR/3)

295 Mr. BOGSCH (United States of America) [E], drawing attention to the United States proposal to omit Article 23, paragraph 2 (CDR/69), said that from a legal point of view it was undesirable to include a clause in the Convention laying down rules which, by the terms of the clause, could be set aside by the revising Convention. Furthermore, it was undesirable that the whole relationship between States adhering to previous Conventions, the new Convention and a possible revised Convention should be dealt with in a few lines.

296 Mr. PETRÉN (Sweden) [F] did not agree with the United States delegate, as it

was not certain that all the States which were parties to the old Convention would also be parties to the revised Convention.

297 Mr. BOGSCH (United States of America) [E] asked what the value of the provisions would be if they could be set aside by a revising Conference.

298 Mr. PETRÉN (Sweden) [F] pointed out that there might in fact be two categories of States, those which had accepted the old Convention and those which accepted the new Convention. It was therefore necessary to include a provision which would take account of that situation.

299.1 Mr. WOLF (Legal Adviser of the ILO) [F] gave further particulars, as the provision concerned was contained in the draft presented by the Secretariats (CDR/3).

299.2 The United States delegation had proposed the deletion of paragraph 2 of the article concerned because, according to its very terms, such a clause could be set aside by the revising Convention.

299.3 The purpose of paragraph 2 was to ensure that the revising Conference would be free to act as it pleased—with a specific majority; but there was one thing which the revising Conference would be unable to modify if the Convention did not include an express provision, that is the effect of the new Convention in regard to the old Convention.

299.4 Furthermore, paragraph 2 aimed at giving States the greatest freedom in the matter. A similar clause was contained in a large number of international treaties.

299.5 If paragraph 2 were rejected, many States represented at the Conference might regret it later.

300 Mr. STRNAD (Czechoslovakia) [F] thought that, according to paragraph 1, it would be enough for three of the States signatories of the Convention to request its revision for that revision to take place.

301 Mr. KAMINSTEIN (United States of America) [E] withdrew the United States amendment.

302 Mr. STRNAD (Czechoslovakia) [F] proposed that a vote be taken on Article 23 paragraph by paragraph, sub-paragraph by sub-paragraph, and that sub-paragraph (a) of paragraph 2 of that article be deleted.

303 Paragraph 1 of Article 23 was *adopted* unanimously.

304.1 Mr. MORF (Switzerland) [F] inquired whether the Convention itself should specify the majority required for the adoption of a revised text or whether the matter should be decided by the Rules of Procedure of a possible revising Conference. Being in favour of the former solution, the Swiss delegation had submitted an amendment (CDR/72), which would consist in inserting a new paragraph 2 on the subject, after paragraph 1.

304.2 Regarding the question of substance, the Swiss delegation would prefer the retention of the principle of unanimity as provided for in the Berne Convention but, as it seemed unlikely that the Conference would accept it, the Swiss delegation proposed a two-thirds majority of the delegations present at a revising conference. Should the Swiss amendment be adopted, the existing paragraph 2 would become paragraph 3.

305 Mr. PUGET (France) [F] seconded the amendment presented by the Swiss delegation. A new Convention should have a certain stability; it was therefore essential to require a substantial majority, at least a two-thirds majority, for a revision of the Convention.

306.1 Mr. DE SANCTIS (Italy) [F] agreed with the Swiss amendment, although the Berne Convention required the unanimity of the countries which were parties to it.

306.2 He asked the Swiss delegate to explain why the amendment provided simply for a majority of two-thirds of the delegations *present* at the revising Conference and not a majority of two-thirds

of the *Contracting* States of the Convention.

307 Mr. MORF (Switzerland) [F] explained that the description of the vote required had been taken from the Rules of Procedure of the Diplomatic Conference.

308 Mr. DE WAERSEGGER (Belgium) [F] would have preferred a proposal requiring unanimity for revision, but in the absence of such a proposal, he supported the Swiss and Italian delegations.

309 Mr. TISCORNIA (Argentina) [S] said that, of the three possibilities that would be provided for—unanimity, a simple majority or a two-thirds majority—he was in favour of the last mentioned. Unanimity would be unacceptable, for the opposition of a single country would suffice to prevent any change. A simple majority would prove to be dangerous, particularly during the early years. Assuming, for instance, that only seven countries had ratified the Convention, the will of four of them would prevail over that of the other three. He therefore considered that the principle of a two-thirds majority was the most satisfactory.

310.1 Mr. BODENHAUSEN (Netherlands) [F], replying to the delegate of Belgium, said he considered it unnecessary to include a provision expressly requiring unanimity for revision; in the absence of a provision to the contrary, unanimity was automatically required.

310.2 He wondered whether it would be desirable to adopt for the first time, a qualified majority. In his opinion, it would be better to retain the principle of unanimity.

311 Mr. GRANT (United Kingdom) [E] said he did not share the views of some of the preceding speakers. It would not be right for the present Conference to tie the hands of a future Conference; the decision should be left to the revising Conference itself.

312 Mr. DE SANCTIS (Italy) [F], referring to Mr. Bodenhausen's statement that, in the absence of a provision to the contrary, the principle of unanimity would prevail, said that, if the Commission approved the notion of unanimity, he would support Mr. Bodenhausen's suggestion that no provision concerning the question under discussion should be included in the Convention. There must be no risk, however, that, in the absence of any such provision, the Convention might be revised by a simple majority.

313.1 Mr. STRNAD (Czechoslovakia) [F] pointed out that, if the Swiss amendment were adopted, the situation might arise in which, assuming that the Convention had been ratified by six States, the revising Conference could be convened at the request of three States and the Convention could be revised by a majority of two votes to one, which would be absurd.

313.2 He therefore supported the proposal made by the United Kingdom delegation.

314.1 Mr. PETRÉN (Sweden) [F] thought that Mr. Bodenhausen had opened up new possibilities.

314.2 Under Article 23, if a certain number of Contracting States so desired, a revising Conference would be convened. It must be understood that all the Contracting States would be invited to the revising Conference, for it was essential that the number of States constituting the Conference should be the same as that of the Contracting States.

314.3 If a link were established between the Convention in process of being drawn up and the future revised Convention, that would exclude the idea of unanimity.

314.4 The simplest solution would be to leave it to the revising Conference to fix the majority itself in its Rules of Procedure, as suggested by the United Kingdom delegate.

315 Mr. MASCARENHAS DA SILVA (Brazil) [F] supported the Swiss amendment.

316 Mr. DE WAERSEGGER (Belgium) [F] wondered why it had been thought necessary to include in the Berne Convention a pro-

vision requiring unanimity if that principle was regarded as applying automatically.

317 Mr. SABA (Unesco Legal Adviser) [F] referred to the practice followed by the United Nations, which had been led to amend a whole series of conventions adopted by the League of Nations; the protocols of amendment had been adopted by the General Assembly by a two-thirds majority.

318 *The meeting rose at 1.35 p.m.*

Fifth Plenary Meeting [1]

Sunday, 22 October 1961, at 9.15 a.m.

President: Mr. Giuseppe TALAMO ATENOLFI (Italy).

ADOPTION OF THE SECOND REPORT OF THE CREDENTIALS COMMITTEE

319 The PRESIDENT [F] opened the meeting.

320 Mr. TAKAHASHI (Japan, Chairman of the Credentials Committee) [F] read out the second report of his Committee (CDR/91).

321 The second report of the Credentials Committee was *adopted* unanimously.

322 *The meeting rose at 9.30 a.m.*

Main Commission

Fifth meeting[2]

Sunday, 22 October 1961, at 9.30 a.m.

Chairman: Mr. Giuseppe TALAMO ATENOLFI (Italy).

EXAMINATION OF THE DRAFT CONVENTION (continued)

323 The CHAIRMAN [F] opened the discussion on the text proposed by the Drafting Committee (CDR/111 rev.).

Article 33 of the Convention (Article 28 of the Draft Final Clauses, CDR/3)

324 The CHAIRMAN [F] stated that the Drafting Committee had approved the final text of the article concerned (Article 27 in document CDR/111 rev.) as drawn up by Working Party No. III (Final Clauses).

325 Article 33 was *adopted* unanimously.

1. Cf. Doc. CDR/SR.5 (prov.).
2. Cf. Doc. CDR/COM.1/SR.5 (prov.).

Article 29 of the Convention (Article 23 of the Draft Final Clauses, CDR/3)

326 Mr. PETRÉN (Sweden, Chairman and Rapporteur of Working Party No. III) [F] thought it would be desirable to specify in the Convention itself the majority required for its revision. The lack of such a provision in the existing texts might suggest that unanimity was essential; but, if it were, that too should be specified. The question of the requisite majority was linked with the question of the States to be invited to the revising Conference. Would only the Contracting States be invited? That would not be in conformity with the practice adopted by the United Nations, but it might be preferable in the case of the Convention under consideration. If it were decided to extend invitations to a larger number of States, it would probably be necessary to specify that the requisite majority (for instance, two-thirds) should be understood to be the majority of the States present and *also the majority of the Contracting States* so as to ensure that the Convention could not be revised against the will of the Contracting States.

327 Mr. PUGET (France, Chairman of the Drafting Committee) [F] thought it necessary to specify a majority and to fix it at two-thirds of the Contracting States.

328 Mr. PETRÉN (Sweden) [F] drew attention to the difference between his proposal and Mr. Puget's, which provided only for a majority of the Contracting States.

329 Mr. MORF (Switzerland) [F] emphasized that a great service would be rendered to the revising Conference if the problem were settled forthwith.

330 Mr. DE WAERSEGGER (Belgium) [F] thought it would be wise to establish forthwith a precise rule and supported the rule proposed by Mr. Petrén.

331 Mr. MORF (Switzerland) [F] said he had come round to the opinion that the majority should be fixed at two-thirds of the Contracting States, and not merely of the States present.

332 Messrs. ULMER (Federal Republic of Germany) [F], DITTRICH (Austria) and PUGET (France) supported that view.

333 Mr. SABA (Unesco Legal Adviser) [F] in the light of the discussions, and on the understanding that the final text would be drawn up by the Drafting Committee, proposed the adoption of the following words: 'two-thirds of the invited States present and two-thirds of the Contracting States'.

334 That proposal was *adopted* by 20 votes to none, with 6 abstentions (cf. Article 29, paragraph 2, of the Convention).

335 Mr. MORF (Switzerland) [F] observed that document CDR/111 rev. did not make it possible to regulate relations between States bound by the revised Convention and those which would not have become parties to that Convention.

336 Mr. PUGET [F] as Chairman of the Drafting Committee stated that it would be the responsibility of the revising Conference to take a decision on that matter and that paragraph 2(b) of draft Article 23 was adequate in itself.

337 Draft Article 23, paragraph 2(b), was *adopted* by 26 votes to none, with 2 abstentions.

338 Mr. STRASCHNOV (Monaco) [F] pointed out that document CDR/111 rev. contained only two paragraphs, whereas document CDR/111 contained three.

339 The CHAIRMAN [F] explained that the third paragraph had been deleted by the Drafting Committee.

340 Draft Article 23 as a whole was *adopted* by 27 votes to none, with 1 abstention.

341 Mr. MORF (Switzerland) [F], supported by Mr. DITTRICH (Austria), reverted to the question raised by Mr. Straschnov; the deletion of the third paragraph (CDR/111) was important enough to call for a decision by the Main Commission rather than by the Drafting Committee alone.

342 The CHAIRMAN [F] pointed out that

the question had already been put to the vote.

343 Mr. PUGET (France) [F] stated that in the opinion of the Drafting Committee what was said in paragraph 3 could be taken as self-evident.

344 Mr. SABA (Unesco Legal Adviser) [F] said that the deletion of that paragraph was of no real importance since it enunciated a principle widely recognized in international law; moreover, it was implied in paragraph 2(b).

Article 34 of the Convention (Article 29 of the Draft Final Clauses, CDR/3)

345 Mr. BELINFANTE (Netherlands) [E] pointed out that it was possible that Contracting States might make declarations under Articles 3 and 15 of the Convention, and it was important that other Contracting States should know what they contained. He felt it would be useful if it were expressly stated in the Convention that the Secretary-General of the United Nations would inform Contracting States of the substance of any such declarations.

346 Mr. BOGSCH (United States of America) [E] suggested that the point might be met by making a reference to Article 15 in paragraph 1(c). The matter could be left to the Drafting Committee.

347 Mr. STRASCHNOV (Monaco) [F] supported the Netherlands delegate's proposal that the notifications contemplated in Articles 3 and 3*bis* should be mentioned in sub-paragraph (c) of paragraph 1 of the new text (Article 28 of document CDR/111 rev.).

348 Mr. PUGET (France) [F] approved that suggestion.

349 The CHAIRMAN [F] called for a vote on the article with the addition suggested, it being understood that the text would be put into its final form by the Drafting Committee.

350 The above draft Article was *adopted* unanimously.

351 The text of the final paragraph of the Convention was unanimously *adopted.*

Final Act of the Diplomatic Conference.

352 Mr. SABA (Unesco Legal Adviser) [F] said that it was the usual practice to conclude the work of such a Conference by a Final Act containing a brief background account of the Conference but entailing no legal obligation. Such a text could be prepared, submitted to the Drafting Committee and adopted by the Conference in plenary meeting. In that way all States which were neither members of the Berne Union nor parties to the Universal Copyright Convention would be able to record officially their participation in the Conference and their general agreement on fundamentals.

353 Mr. GALBE (Cuba) [S] thought it premature to express in solemn form any opinion on the work of the Conference. The proposed document might make the position of certain delegations difficult when reporting to their respective Governments.

354 The CHAIRMAN [F] stated that the Final Act would be submitted to the Conference for its approval and that note would be taken of the Cuban delegate's remark.

Article 1 of the Convention (Article 2 of the Draft Convention, CDR/1)

355 Mr. PUGET (France) [F] said that Article 2 was merely a statement of principle; but the principle was one to which several delegations, including the French delegation, attached fundamental importance. The French delegation would be unable to sign the Convention if that article were deleted.

356 Mr. DE SANCTIS (Italy) [F] also considered Article 2 to be absolutely essential. The purpose of the amendment jointly proposed by the French and Italian delegations (CDR/15) was not to change the meaning of the article but simply to improve the wording. It was indeed sufficiently clear that 'the protection of the rights of authors' could not be affected by the Convention in process of being drawn up, which had a different aim. That protection was essentially a task for national laws. It would therefore

be preferable to speak in that Convention of copyright and of its exercise.

357 Mr. ULMER (Federal Republic of Germany) [F] said he agreed with the principle of the pre-eminence of copyright and also agreed that Article 2 was useful but, in his view, the French and Italian amendment was not quite clear and left the way open to dangerous interpretations. For the broadcasting of a work, the consent of both the artiste and the author was necessary. For the reproduction of the phonogram of a protected work, the consent of both the author and the producer was necessary. The amendment might give the idea that only the author's consent was necessary.

358 Mr. WALLACE (United Kingdom) [E] agreed with the delegate of the Federal Republic of Germany. He supported the Hague Draft as amended by the Swiss proposal (CDR/19).

359 Mr. FERSI (Tunisia)[F] supported the French and Italian amendment, which usefully emphasized the idea of the pre-eminence of the original work. He associated himself with Mr. Puget's remarks.

360 Mr. DITTRICH (Austria) [E] associated himself with the views of the delegates of the Federal Republic of Germany and the United Kingdom.

361 Mr. GAXIOLA (Mexico) [S] supported the proposal of the French and Italian delegations, as he considered that copyright should prevail over the rights of performers.

362 Mr. PERALES (Spain) [S] supported the proposal of the French and Italian delegations as the text of the article concerned should make it quite clear that no limitation whatsoever would be imposed on copyright.

363 Mr. BODENHAUSEN (Netherlands) [F] also emphasized the danger of the French and Italian amendment. It was true that everyone recognized the need to protect copyright but, in speaking of 'the exercise of that right', the proposal went further. It might be inferred from the text of the amendment that, as soon as the author had given his consent, the artiste was deprived of the possibility of refusing his own, which would rob the Convention of all its meaning. Mr. Bodenhausen was therefore in favour of the original text, subject, perhaps, to the Swiss amendment which, in his view, was merely a formal improvement of the original text.

364.1 Mr. KAMINSTEIN (United States of America) [E] agreed.

364.2 He pointed out that the translation of '*le droit d'auteur*' should be 'copyright' in the English text and not 'the right of the author'.

365 Mr. JELIĆ (Yugoslavia) [F] supported the French and Italian amendment. He emphasized that, as the Convention limited the rights of authors, it was essential to protect those rights.

366 Mr. PETRÉN (Sweden) [F] wished the text to be clarified before he expressed an opinion on it. The interpretation given to the amendment by the delegates of the Federal Republic of Germany and the Netherlands might not be that envisaged by the authors of the amendment.

367 Mr. PUGET (France) [F] admitted that he had been disturbed by the detrimental effect which the Convention would have on the rights of authors of literary and artistic works. It was the existence of such works which constituted the starting point for the activities of artistes as well as of those of the other categories of persons protected by the Convention; thence followed naturally the idea of the pre-eminence of copyright. The consequences of the amendment which were apprehended by Messrs. Bodenhausen and Ulmer were extreme consequences which would occur only in extreme circumstances, and it was in such circumstances that it was essential to protect the rights of authors. Mr. Puget added that, in his view, the Swiss amendment did not represent a mere formal improvement of the original text.

368 Mr. DE SANCTIS (Italy) [F] considered it had been wrongly claimed that the amendment would virtually destroy the

Convention. That of course was not its purpose; nor would it produce that result. The other articles of the Convention did indeed accord definite rights to artistes. Article 2 was simply an interpretative article. The purpose of the proposed amendment was to enable rules of interpretation to be established for extreme cases, for instance, cases in which the author consented to the performance of his work and the artiste's refusal of consent prevented the reproduction of the work. The amendment made it possible for national laws to limit abuses of rights—*vis-à-vis* authors—by the three categories of persons covered by the Convention. That was all the more necessary as the laws of certain countries (for instance, Italy) did not recognize the principle of the abuse of rights and did not enable such abuses to be effectively combated. Copyright no longer enjoyed pre-eminence if it could be annulled. Mr. de Sanctis explained that nevertheless it was not intended to establish indirectly a kind of legal licence effective against artistes or broadcasting organizations. The term 'pre-eminence of copyright' simply meant that, in the event of a conflict, the author could assert his right to have his work reproduced and broadcast. In any case, legal licence was excluded by the Convention.

369 Mr. PUGET (France) [F] also emphasized that the cases envisaged by the authors of the amendment were extreme cases, in respect of which it was useful to provide a sound rule of interpretation for the courts. In order to allay the misgivings of certain delegates, he would be prepared, for his part, to accept the words 'the *non-abusive* exercise of that right over the work...'. It was simply necessary to prevent the author's right from being paralysed by an ill-disposed artiste desirous of preventing the work from being performed by someone else.

370 The CHAIRMAN [F] proposed that a sub-committee be set up to examine that important question in greater detail before it was put to the vote.

371.1 Mr. GALBE (Cuba) [S] regretted that his delegation had been unable to take the floor earlier. The most obvious conclusion to be drawn from the discussion was the fact that, if such lengthy speeches had been necessary in order to defend the proposal of the French and Italian delegations and if those speeches had resulted only in the suggestion of a compromise solution, the said amendment hardly imposed itself by its own merits. If a new sub-committee were to be set up, the members of the latter would probably be obliged to listen to even further arguments.

371.2 He agreed with the delegates of the Federal Republic of Germany and the United Kingdom. In any case, he preferred the Swiss delegation's amendment to that presented by the French and Italian delegations.

371.3 In the speaker's view there was a contradiction in the attitude of those who supported the amendment submitted by the delegations of France and Italy, as copyright was more effectively protected in the Hague Draft than it was in that amendment. It was more accurate to speak of the rights of authors than simply of copyright which was open to many different interpretations.

371.4 In conclusion, he pointed out that the Swiss amendment was the clearer of the two and would give rise to less difficulties in the future.

372 Mr. STRNAD (Czechoslovakia) [F] said that the protection of the author was not the object pursued by the Convention and was to be taken for granted. Article 2 could therefore be deleted without causing any change in the situation, but, if it were not deleted, it would be preferable to retain the Hague text, subject perhaps to the amendment proposed by the Swiss delegation. The French and Italian proposal was dangerous for artistes and performers.

373 Mr. DE STEENSEN-LETH (Denmark) [E] said he did not think it was necessary to refer the matter to a sub-committee. He

supported the Hague Draft as amended by the Swiss proposal.

374 Mr. GRANT (United Kingdom) [E] doubted if a satisfactory compromise could be reached; the differences of opinion were too fundamental. If the Convention contained what the Italian and French delegation appeared to want it to contain, the United Kingdom would be unable to sign it.

375 Mr. PETRÉN (Sweden) [F] emphasized the difficulties of interpretation to which a general reference to copyright might give rise.

376 Mr. FERSI (Tunisia) [F] thought it unnecessary to refer the question to a subcommittee; the question, which was one of principle, was clearly propounded. Tunisia, where there were authors but no performers or phonogram producers—it was not a unique case—remained firmly attached to the principle of the pre-eminence of copyright. The author was the sole master of his work and he must always be able to authorize or prohibit the performance, fixation or broadcasting of that work. Mr. Fersi requested that the Tunisian position should be mentioned in the Rapporteur-General's report.

377.1 Mr. TISCORNIA (Argentina) [S] said that, in accordance with the laws of his country, he supported the view that copyright should have priority. However, the French and Italian delegations' proposal (document CDR/15) that the pre-eminence of copyright should be reaffirmed was expressed in such terms that it might give rise to many difficulties and result in legal disputes which it would not be easy to settle.

377.2 He thought that the text of the article, as contained in the Hague Draft, sufficiently protected authors and left national laws and, above all, national courts, which would furnish the final decision on those problems, free to settle any questions that might arise.

377.3 As the question was one of substance and not of form, it was unlikely that the redrafting of the text would be able to resolve the question of substance.

377.4 He proposed that, without prejudice to the right of other delegates to take the floor, a vote be taken in order to decide between the proposed amendment and the Hague text.

378.1 Mr. MOOKERJEE (India) [E] felt that a compromise was possible unless a fundamental difference existed in the concept of the law.

378.2 The French and Italian amendment was completely unacceptable to his delegation. If, on the other hand, the Hague draft —possibly as amended by the Swiss proposal—were adopted, the Article would not conflict with the rights of authors under Indian law.

379 Mr. STRNAD (Czechoslovakia) [F] pointed out that the Berne Convention offered the possibility of legal licences effective against the author and that it was therefore preferable not to subordinate the legal rights of performers, for whom legal licences were excluded, to the rights of authors.

380 Mr. ULMER (Federal Republic of Germany) [F] did not think it possible to reach a compromise agreement on the question under discussion. It had been said that the purpose of the amendment was simply to enable the courts in extreme cases to ignore the rights of artistes or those of the other categories covered by the Convention. In fact, however, those were not extreme cases but normal cases. It was usually protected works that were broadcast, and it was precisely the purpose of the Convention to give artistes the right to oppose such broadcasts.

381 Mr. MASCARENHAS DA SILVA (Brazil) [F] seconded the French and Italian amendment.

382 Mr. GRAVEY (International Federation of Actors) [F] shared the opinion of the delegate of the Federal Republic of Germany that the 'extreme cases' envisaged

by the authors of the amendment were in fact normal cases. The adoption of that amendment would deprive the artiste of his freedom to conclude contracts.

383 Mr. RATCLIFFE (International Federation of Musicians) [E] said that the French and Italian proposal was a very dangerous one from the points of view of both the performer and the composer. The argument on which it was based appeared to be an economical one: although the performer was entitled to rights, he should not be allowed to exercise them if they interfered with the economic interests of composers. The danger was that the right of the employee to dispose of his labour would be interfered with. Furthermore, if the performer's ability to exercise his right in the performance of works under copyright was rendered nugatory, the composer or author would himself suffer. It was obvious that in such a case, the performer would only perform works which were not under copyright, which would be a tremendous obstacle to contemporary musicians and to cultural development. He hoped the Commission would not adopt the proposal.

384 Mr. TISCORNIA (Argentina) [S] said that the purpose of his proposal was to close the discussion and put the question to the vote, but he was prepared to withdraw it in order that the question might be discussed from every angle.

385 Mr. DE STEENSEN-LETH (Denmark) [E] said he was not opposed to the matter being referred to a sub-committee, but he did not think that necessary.

386 Mr. FERSI (Tunisia) [F] had no objection to the question being referred to a sub-committee.

387 Mr. GRANT (United Kingdom) [E] strongly opposed the suggestion that the matter be referred to a sub-committee. He proposed that the debate be closed and that a vote be taken immediately on the Italian and French proposal.

388 Mr. BOGSCH (United States of America) [E] said he thought that since it was a question of two major countries being unable to sign the Convention if the Hague Draft was retained as it stood, it would be a pity if an attempt was not made to reach a compromise.

389 It was *decided* by 22 votes to 11, and 1 abstention, to close the debate.

390 The draft amendment proposed by the French and Italian delegations (CDR/15) was *rejected* by 19 votes to 10, with 5 abstentions.

391 The draft amendment proposed by the Swiss delegation (CDR/19) was *adopted* by 17 votes to 8, with 9 abstentions.

392 The CHAIRMAN [F] said that Article 2 of the Draft Convention was adopted as amended by Switzerland.

393 Messrs. PUGET (France) [F] and KAMINSTEIN (United States of America) [E] regretted that Article 2 had not been put to the vote in its original form, without any amendment.

394 Mr. BODENHAUSEN (Netherlands) [F] pointed out that the course favoured by Mr. Puget was incompatible with the Rules of Procedure. When an amendment was adopted by a vote, the text which it amended was adopted subject to that amendment.

395 Mr. KAMINSTEIN (United States of America) [E] urged that the Commission be given an opportunity of discussing the Hague Draft and the Swiss proposal.

396 After a discussion on procedure, Mr. SABA (Unesco Legal Adviser) [F] confirmed that, by virtue of Rule 18 of the Rules of Procedure, it was the text of the draft as amended which was put to the vote when an amendment was adopted; but, if the Chairman thought the matter sufficiently important to suspend the Rules of Procedure, that would be possible with the assent of the majority of the delegates.

397 Mr. KAMINSTEIN (United States of America) [E] proposed that the words 'copyright in' be inserted before the word

'literary' in the first sentence of the Swiss draft amendment.

398 Mr. ULMER (Federal Republic of Germany) [F] supported the United States delegate's suggestion; the inclusion of the word 'copyright' in the text of the Swiss proposal would provide at least partial satisfaction for the French and Italian delegations.

399 Mr. JELIĆ (Yugoslavia) [F] thought that the Conference could reconsider its decision if it deemed fit.

400 Mr. MORF (Switzerland) [F] was ready to agree to his amendment being supplemented as suggested by the United States delegate.

401 Mr. TISCORNIA (Argentina) [S] said it had been a procedural error to put to the vote an amendment which had not been discussed. Quite apart from the question whether the Swiss delegate did or did not accept the new amendment to his amendment, the United States delegate was right in stating that the Swiss amendment had not been really discussed.

402 Mr. GALBE (Cuba) [S] requested that mention should be made in the minutes of his delegation's reservations concerning the procedure adopted, i.e., the reopening of the debate on an amendment which had already been adopted, because some delegations were not satisfied with the result of the voting.

403 The text of the Swiss amendment with the addition proposed by the United States of America was *adopted* by 30 votes to 3 with 2 abstentions.

404 Article 2 of the Draft Convention in its new form was *adopted* by 32 votes to 2, with 1 abstention.

Article 11 of the Convention (Article 9 of the Draft Convention, CDR/1)

405 Mr. BOGSCH (United States of America) [E] said that the Article on formalities was probably of more concern to the United States of America than to other countries, and that was why the United States delegation had submitted an amendment (CDR/86) which would simplify the provision. The amendment omitted the requirement that the name of the country in which first publication took place be indicated on the copies of the published phonogram and made it possible for the formalities to be complied with if the required information appeared on the container of the copies and not on the copies themselves.

406 Mr. DITTRICH (Austria) [E] supported the United States proposal, which covered the points raised in his delegation's amendment (CDR/58).

407 Mr. STRASCHNOV (Monaco) [F] thought that the question of formalities should be considered in the light of the decision taken by Working Party No. II with respect to the protection of phonograms. In general, formalities did not seem necessary as the laws concerning unfair competition already provided protection against the reproduction of phonograms without the need for any formalities. It was only with the regard to the reservation provided for in Article 15, sub-paragraph 1(a), of the Draft Convention that it was necessary to think of establishing formalities owing to the existence of a reciprocity principle. Thus, if formalities were considered necessary, it was particularly the nationality of the producer which should be mentioned on the phonogram or on its container.

408 Mr. WALLACE (United Kingdom) [E] said his delegation had no very strong feelings on the question of formalities. The only formality to which it attached importance was the one which required the year date of first publication to be shown.

409 Mr. ULMER (Federal Republic of Germany) [F] supported the United States delegate's proposal. The last sentence of that proposal, however, raised not only a question of drafting but a more important question: Who was the owner of the performer's rights? It was the national laws which designated the representative of the

performers and they could do so in various ways. Such differences might be detrimental to the protection of performers. Mr. Ulmer therefore asked the United States delegate to clarify his text.

410 Mr. KAMINSTEIN (United States of America) [E] replied that it was a matter of drafting, which could be left to the Drafting Committee to clarify. The owner of the rights of performers would depend on the law of the country in which the phonogram was produced.

411 The CHAIRMAN [F] decided to put the Czechoslovak proposal (CDR/31) to the vote first, as it was the furthest removed from the original text.

412 The Czechoslovak proposal for an amendment (CDR/31) was *rejected* by 20 votes to 5, with 7 abstentions.

413 Mr. STRNAD (Czechoslovakia) [F] requested that his delegation be designated as that of the Republic of Czechoslovakia and not as the Czech delegation; he also requested that the Federal Republic of Germany be called by its full name in order to avoid any confusion.

414 The CHAIRMAN [F] took note of the first request of the delegate of Czechoslovakia, but pointed out that the fact that there was a single German delegation at the Conference obviated all risk of confusion.

415 Mr. GALBE (Cuba) [S] supported the remarks of the delegate of Czechoslovakia and said that, in order to designate countries as required by international law, it was not necessary to await the arrival at the Conference of a delegate of the German Democratic Republic. Since there were, unfortunately, two German States, it was essential to respect each legal entity, each State, by designating it correctly, instead of referring to one united German State.

416 The CHAIRMAN [F] recalled that, in accordance with the established practice for such meetings, the names used were merely designative and not full official titles.

417 Mr. BOGSCH (United States of America) [E] suggested that the words 'in the country in which the fixation was made' be added at the end of the United States draft (CDR/86).

418 Mr. STRASCHNOV (Monaco) [F] asked the United States delegate whether he thought his amendment would make it possible to determine clearly enough the producer's nationality.

419 Mr. BOGSCH (United States of America) [E] replied that in about 99.9 cases out of a hundred it would, because either the name or the trade mark of the producer would appear. The difference between the Hague Draft and the United States draft was that the former required the notice to carry the name of the owner of the rights of producer, whereas the latter did not, provided that an indication was given anywhere on the record or the container of who the producer of the phonogram was. He was opposed to the proposal of the Monegasque delegate since it would impose new obligations.

420 Mr. STEWART (International Federation of the Phonographic Industry) [E] said that it might not always be easy to ascertain the name of the owner of the rights of performers not identified on the phonograms or their containers. He felt that such a requirement might create great difficulties.

421 Mr. BOGSCH (United States of America) [E] did not think that the provision would be difficult to comply with, since practically every phonogram identified the principal performers.

422 Mr. STEWART (International Federation of the Phonographic Industry) [E] accepted that explanation.

423 Mr. ULMER (Federal Republic of Germany) [F] said it would be preferable to leave it to the Drafting Committee to draw up the final text; but it should be made clear that the 'owner' was the person designated by the laws of the country where the fixation was made.

424 Article 9 of the Draft Convention, as modified by the United States amendment

(CDR/86), was *adopted* by 28 votes to none, with 6 abstentions, subject to the final drafting of its text by the Drafting Committee.

425 Mr. WALLACE (United Kingdom) [E] hoped that it was clear that any Contracting State was not bound to insist on all or any of the formalities referred to in Article 9.

426 Mr. BOGSCH (United States of America) [E] suggested that that should be stated in the report.

427 Mr. WALLACE (United Kingdom) [E] agreed.

Articles 20 to 22 of the Convention (Article 17 of the Draft Convention, CDR/1)

428 Mr. BERGSTRÖM (Sweden) [E], speaking on behalf of the sponsors of the amendment contained in document CDR/24, said that if Article 17 of the Draft Convention was to be interpreted as meaning that rights acquired under other Conventions and legislation prior to the entry into force of the present Convention would not be repealed by the present Convention, a more general wording was required. The sponsors, who interpreted the Article in that way, had suggested such a wording.

429 Mr. ULMER (Federal Republic of Germany) [F] thought that that proposal should constitute a new and completely separate article which would be discussed after the discussion of Article 17; for the new text was concerned with unfair competition rather than with neighbouring rights.

430 Mr. DE WAERSEGGER (Belgium) [F] explained that his amendment (CDR/96) represented an addition and not a substitution. He pointed out that a material error had slipped into the text of that document, in which the word 'strengthen' had been substituted for the word 'comprise'. Furthermore, he wished to delete the second paragraph of his text as it was simply a repetition.

431 Mr. STRNAD (Czechoslovakia) [F] was afraid that the new provision might be regarded as an obstacle by States which might wish later on to accord by law more extensive rights to performers. The Convention should surely be regarded as establishing the minimum protection.

432 Mr. PERALES (Spain) [S] pointed out that the three proposals made with respect to Article 17 corresponded in fact to three distinct positions. Article 17, according to the Hague text, aimed at establishing the principle of the non-retroactive effect of the Convention. The proposal of the Scandinavian delegations (CDR/24) dealt with a separate question that was unrelated to that principle. The Belgian delegate's proposal (CDR/96) concerned the recognition of the right of Contracting States to make arrangements for special situations. Thus, the proposal of the United States of America (CDR/117) seemed to be the one which corresponded most closely to what was envisaged by Article 17, namely, the establishment of the principle of the non-retroactive effect of the Convention.

433 Mr. WALLACE (United Kingdom) [E] said that his delegation had been satisfied with Article 17 as it stood, but it was prepared to accept the United States amendment provided that the words 'shall be bound to apply' were substituted for the words 'shall apply' in the first line of the second paragraph.

434 Mr. BODENHAUSEN (Netherlands) [F] said he was in favour of the United States proposal, particularly if it was amended as suggested by Mr. Wallace. As for the other two proposals, they seemed to him to have nothing to do with Article 17 and they should be discussed as draft proposals for new articles, of which, moreover, his delegation would be in favour.

435 Mr. BOGSCH (United States of America) [E] accepted the wording suggested by the United Kingdom delegate.

436 Mr. PETRÉN (Sweden) [F] thought that the United States proposal was not entirely satisfactory as it referred only to rights acquired under national laws; he felt it would be useful to clarify the text of that proposal

by taking account of the amendment presented by the Nordic countries, which defined acquired rights in particularly wide terms.

437 Mr. DE WAERSEGGER (Belgium) [F] emphasized the usefulness of the new provision which he had proposed and which, despite statements to the contrary, was not to be taken for granted.

438 Mr. WAEYENBERGE (Congo, Leopoldville) [F] drew attention to the practical difficulties to which the application of Article 17 might give rise. What would happen if, in order to comply with the Convention, a State increased the protection of one of the groups concerned to the detriment of the others? Would the latter be unable to exercise their acquired rights?

439 The CHAIRMAN [F], on the Swedish delegation's suggestion, proposed that a vote be taken on each amendment in turn.

440 The United States amendment was *adopted* by 25 votes to none, with 2 abstentions.

441 Mr. PUGET (France) [F] asked whether the text adopted definitely included the words 'shall be bound to apply' and not the words 'shall apply'.

442 The CHAIRMAN [F] decided to consult the Main Commission again on that point.

443 The Main Commission unanimously confirmed the fact that the words 'shall be bound to apply' had been adopted.

444 The CHAIRMAN [F] noted that the article had been *adopted* with the words referred to by Mr. Puget.

445 Mr. PERALES (Spain) [S] repeated that the amendment presented by the Scandinavian countries did not refer to the text of Article 17, as modified by the amendment just approved, but constituted a new text which was quite unrelated to the text to be corrected or amended.

446 The joint proposal by the Danish, Finnish, Icelandic, Norwegian and Swedish delegations was *adopted* by 20 votes to 2, with 9 abstentions.

447 Mr. BOGSCH (United States of America) [E] felt that it was unnecessary to include in the Convention a provision such as that proposed by the Belgian delegation in document CDR/96. The argument that such a provision had been contained in the Berne Convention was not convincing, since all those who had worked with the Berne Convention were aware of the trouble the provision had caused. Such a provision had not been included in later Conventions.

448 The Belgian proposal contained in document CDR/96, as amended orally by the Belgian delegate, was *adopted* by 19 votes to 5, with 6 abstentions.

449 The CHAIRMAN [F] stated that Article 17 of the Draft Convention was replaced by a text (Articles 20 to 22 of the Convention) in which the three amendments adopted followed one another, subject to any necessary adjustments that might be decided upon by the Drafting Committee.

450 *The meeting rose at 1 p.m.*

Main Commission

Sixth meeting[1]

Monday, 23 October 1961, at 3.30 p.m.

Chairman: Mr. Giuseppe TALAMO ATENOLFI (Italy)

ADOPTION OF THE TEXTS SUBMITTED BY WORKING PARTIES NOS. I AND II

451 The CHAIRMAN [F], opening the discussion on the texts submitted by Working Parties Nos. I and II (CDR/122), recalled that Article I of the Draft Convention (CDR/1) had been merged with Article 18 of the Draft Final Clauses (CDR/3) and that Article 2 had already been adopted by the Commission.

Article 5 of the Convention (Article 4, paragraph (b) of the Draft Convention, CDR/1)

452.1 Mr. DE SANCTIS (Italy) [F], supported by Messrs. PUGET (France) and RISTIĆ (Yugoslavia), recalled the reservations expressed by the Italian delegation with regard to paragraph (2) of Article 3 (CDR/122), which provided that, if a phonogram was first published in a non-Contracting State but was also published, within thirty days of its first publication, in a Contracting State—that being defined as 'simultaneous publication'—it would be considered as first published in the Contracting State.

452.2 Article 10 of the Draft Convention (CDR/122) defined 'publication' as the offering of copies of a phonogram to the public in reasonable quantity. However, in the text proposed, the offering of copies of a phonogram to the public in reasonable quantity was not accompanied by the idea of fixation.

452.3 During the working party's discussions, the Italian delegation had expressed reservations concerning paragraph (2), with respect to the simultaneity of publication. It had approved that idea of simultaneity, which was also to be found in the Copyright Conventions, but only on condition that it was accompanied by a definition of 'publication' covering not only the offering of copies of a phonogram to the public in reasonable quantity but also the idea of fixation.

452.4 That important change in the Hague Draft might constitute an obstacle to Italy's ratification of the Convention; he therefore requested that his statement be included in the minutes.

453 Article 3, as set out in document CDR/122, was *adopted* by 34 votes to none, with 3 abstentions.

Article 6 of the Convention (Article 4, paragraph (c) of the Draft Convention, CDR/1)

454 Mr. STRNAD (Czechoslovakia) [F] drew the Commission's attention to the fact that paragraph (2) of Article 3bis (CDR/122) did not provide for the case in which the broadcasting organization had its headquarters in a Contracting State and the Broadcast had been transmitted from a transmitter located on a vehicle rocketed into space. Research was henceforth being carried out in that field and such broadcasts were to be expected in the not-too-distant future.

455 Article 3*bis*, as set out in document CDR/122, was *adopted* unanimously (by 37 votes).

Article 4 of the Convention (Article 4, paragraph (a) of the Draft Convention, CDR/1)

456 Mr. WALLACE (United Kingdom) [E] felt that since it had been decided not to include a definition of 'live performance' in the Convention, that term should be avoided; he proposed that the words 'live performance' in paragraph (iii) of Article 3*ter* (CDR/122) should be deleted and the sentence read:

1. Cf. Doc. CDR/COM.1/SR.6 (prov.).

'if the broadcast which carries the performance (not being a performance incorporated in a phonogram) is protected', etc.

457 Mr. BODENHAUSEN (Netherlands) [F] thought that everyone was agreed on the principle inspiring the amendment proposed by the United Kingdom delegate; but the word 'live' should no longer appear in the Convention as it had been excluded; the words 'not incorporated in phonograms', which were contained in Article 14 of the Convention, should be used.

458 The CHAIRMAN [F] referred that observation, together with an observation by the Belgian delegate concerning a question of form, to the Drafting Committee.

459 Article *3ter*, as set out in document CDR/122, was *adopted* unanimously (by 37 votes).

Article 2 of the Convention (Article 3 of the Draft Convention, CDR/1)

460 This Article (Article 4 in document CDR/122) was *adopted* unanimously (by 37 votes).

Article 7 of the Convention (Article 5 of the Draft Convention, CDR/1)

461 Mr. STRASCHNOV (Monaco) [F] recalled that the working party had approved the expression 'is made from a fixation', whereas the text submitted to the Commission (CDR/122) contained the expression 'is given from a fixation', which was ambiguous. The Drafting Committee should consider that text.

462 Mr. NAMUROIS (Belgium) [F] recalled that, during the working party's discussions, it had been agreed that it would be indicated in the Rapporteur-General's report that the term 'contract' contained in sub-paragraph (c) of paragraph (2) of Article 5 covered collective contracts as well as individual contracts.

463 Article 5, as set out in document CDR/122, was *adopted* by 35 votes to none, with 3 abstentions.

Article 8 of the Convention (Article 6 of the Draft Convention, CDR/1)

464 Article 6, as set out in document CDR/122, was *adopted* unanimously (by 37 votes).

Article 3 of the Convention (Article 7 of the Draft Convention, CDR/1)

465 Mr. BODENHAUSEN (Netherlands) [F] recalled that Article 7 of the Hague Draft had been deleted, and that the definition was now contained in Article 10 (CDR/112). It had been agreed, however, that the second sentence of Article 7, beginning with the words 'it shall be a matter for...', would be retained; the Drafting Committee should therefore take account of it.

Article 10 of the Convention (Article 8 of the Draft Convention, CDR/1)

466 Article 8, as set out in document CDR/122, was *adopted* unanimously, with 1 abstention.

Article 3 of the Convention (Articles 7 and 10 of the Draft Convention, CDR/1)

467 Mr. BODENHAUSEN (Netherlands) [F] emphasized, with respect to the addendum to Article 10 (CDR/122), that it had been decided to delete the words *en relais* from the French text.

468 Mr. DITTRICH (Austria) [E] recalled that the Austrian delegation had submitted a proposed amendment in document CDR/93, concerning the definition of producers of phonograms, which was intended to cover certain types of such organizations existing in Austria.

469 Mr. BODENHAUSEN (Netherlands) [F] stated that Working Party No. 1 had taken note of the Austrian proposal and had decided to mention it in the report.

470 Mr. GALBE (Cuba) [S] recalled that, at the previous meeting, it had been decided that the Drafting Committee would try to find a better term than 'rebroadcasting' (*réémission* in the French text), for, despite

the deletion of the words *en relé* from the Spanish text (*en relais* in the French text), the objection raised by the Cuban delegation still remained valid.

471 The CHAIRMAN [F] considered that the question of finding a better term than *en relais* (*en relé* in the Spanish text) did not arise since it had been decided to delete that term.

472 Mr. ULMER (Federal Republic of Germany) [F] stated that several Spanish-speaking delegates of Working Party No. II had indicated that it was difficult to find an exact translation of the term 'rebroadcasting' (*réémission* in the French text); the Drafting Committee might well study the question.

473 Mr. GALBE (Cuba) [S] said that, as they were concerned with simultaneous broadcasts and also with subsequent broadcasts, the discussion bore upon the idea of rebroadcasting and not upon the term 'relay'.

474 Mr. PERALES (Spain) [S] thought it would not be advisable to dwell upon that point, as the question would have to be settled by the Drafting Committee.

475 Mr. TISCORNIA (Argentina) [S], referring to paragraph 4 of Article 10 (CDR/122), said that, in view of the amendment made to the Hague Draft by the deletion of the word 'multiplication', he wished to make reservations and to associate himself with the Italian delegate's remarks.

476 Mr. KAMINSTEIN (United States of America) [E] pointed out that the term 'headquarters' used in Articles 3*bis* and 4 (CDR/122) needed some clarification; perhaps a definition such as 'the country under whose laws the broadcasting organization has been organized' could be included in the report, although he did not feel that it was necessary to include a definition in the Convention itself.

477 Article 10, as set out in document CDR/122, was *adopted* by 33 votes to none, with 2 abstentions, it being understood that the Drafting Committee would reinsert the second sentence of Article 7 of the Hague Draft, which had been deleted.

Article 12 of the Convention (Article 11 of the Draft Convention, CDR/1)

478 Mr. BODENHAUSEN (Netherlands) [F] stated, on behalf of the French, Netherlands and Portuguese delegations, who had submitted the proposal in document CDR/108, that the question was one of very great importance. He would not repeat the arguments which had already been presented and which were set out on pages 7 and 8 of the draft report of Working Party No. II (CDR/112), but he wished to emphasize the principle involved. It would be extremely regrettable if certain delegations were unable to sign the Convention after having contributed to its preparation.

479 Mr. PUGET (France) [F] thought that the proposal of the three delegations corresponded better to the diversity of the laws and economic situations of the particular countries to which reference had been made.

480 Mr. RISTIĆ (Yugoslavia) [F] said he would vote against Article 11 as proposed by Working Party No. II. He supported the proposal of the French, Netherlands and Portuguese delegations.

481 Mr. WALLACE (United Kingdom) [E] agreed that the question was a very important one. The delegation were faced with a straight choice on a matter of principle; those who believed that it was right to encourage payment for secondary uses to phonogram producers and performers would vote in favour of the draft text, and the United Kingdom delegation was among them. Those who were opposed to payment for secondary uses would support the amendment proposed by France, Netherlands and Portugal.

482 Mr. MOREIRA DA SILVA (Portugal) [F] associated himself with the observations of the Netherlands and French delegates.

483.1 Mr. ULMER (Federal Republic of

Germany) [F] thought that Article 11 of the draft (CDR/]122) did not impose a strict obligation on the Contracting States, as reservations were provided for by Article 15.

483.2 Article 11 was the most important article of the Convention. If it were replaced by the article proposed by the French, Netherlands and Portuguese delegations, the Convention would lose a great part of its substance.

483.3 Raising a point of order, he proposed the closure of the debate.

484 The CHAIRMAN [F] accepted the point of order, but called upon the delegates of Czechoslovakia and Norway, who had asked leave to speak.

485 Mr. STRNAD (Czechoslovakia) [F] said that, in 1953, Czechoslovakia had adopted a legislative provision giving performers and phonogram producers a right to remuneration for secondary broadcasts. He was therefore in favour of the text proposed by Working Party No. II (CDR/122).

486 Mr. EVENSEN (Norway) [E] stated that his delegation had hoped that Article 11 would be worded in such a way that the established Norwegian system of remuneration for secondary uses, which included payments to a collectivity, could be covered by this provision. He doubted that this was the case with the draft submitted. In the circumstances, the Norwegian Government might not be able to ratify the Convention, and he would therefore be obliged to vote against Article 11.

487 The draft text of Article 11 in document CDR/122 was *adopted* by 21 votes to 11, with 4 abstentions.

488 Mr. BODENHAUSEN (Netherlands) [F] reserved the right to revert to the question at a plenary meeting of the Conference.

489 Mr. PUGET (France) [F] made the same reservation.

490 Mr. MOREIRA DA SILVA (Portugal) [F] associated himself with the statements made by Messrs. Bodenhausen and Puget.

491 Mr. GALBE (Cuba) [S], replying to speakers who contended that legal subtleties had been employed in the vote taken, pointed out that every possible procedural device had been resorted to precisely in order to defend the view contrary to the one that had prevailed in the voting.

Article 13 of the Convention (Article 12 of the Draft Convention, CDR/1)

492 Article 12, as set out in document CDR/122, was unanimously *adopted* (by 37 votes).

Article 14 of the Convention (Article 13, paragraph 2, of the Draft Convention, CDR/1)

493 Article 13 was *adopted* by 34 votes to 1, with 1 abstention.

Article 15 of the Convention (Article 14 of the Draft Convention, CDR/1).

494 Mr. ULMER (Federal Republic of Germany) [F], as Chairman of Working Party No. II, drew attention to the proposal submitted by the Indian delegate (CDR/115). That proposal had already been presented orally to Working Party No. II, and should therefore be put to the vote.

495 Mr. MOOKERJEE (India) [E] drew attention to an amendment to Article 14 proposed by the Indian delegation in document CDR/115, which Working Party No. II had not had time to discuss. He would like to maintain that amendment, since his Government attached considerable importance to the inclusion of a mention of exceptions to the protection accorded to performers, phonogram producers and broadcasters in the case of charitable performances and certain other institutions.

496 Mr. BODENHAUSEN (Netherlands) [F] did not see any need for the amendment as the exceptions provided for in certain countries in respect of authors' rights were covered by paragraph (2) of the article in question (CDR/122). He did not see why mention should be made of the exception in that special case.

497 Mr. ULMER (Federal Republic of Germany) [F] agreed with the Netherlands delegate's remarks.

498 Mr. MOOKERJEE (India) [E] agreed to withdraw his amendment, provided that the comments on it made by the delegates of the Netherlands and the Federal Republic of Germany appeared in the report.

499 Replying to a question raised by the Chairman, Messrs. BODENHAUSEN (Netherlands) [F] and ULMER (Federal Republic of Germany) said that they agreed with the Indian delegate's proposal.

500 Article 14, as set out in document CDR/122, was unanimously *adopted* (by 36 votes).

Article 16 of the Convention (Article 15 of the Draft Convention, CDR/1)

501 Mr. DITTRICH (Austria) [E] asked for a vote to be taken separately on sub-paragraphs (a) and (b) of paragraph (1) of Article 15 (CDR/122).

502 Mr. ULMER (Federal Republic of Germany) [F] drew the Drafting Committee's attention to the fact in the French text of paragraph (1) (a) (iii) of Article 15, the sentence beginning on the next line with the words 'Toutefois, lorsque l'État...' should form part of the text of that paragraph.

503 Mr. WAEYENBERGE (Congo, Leopoldville) [F] drew attention to the last sentence of paragraph (1), beginning 'However, a State may...' and to the decision taken by Working Party No. III (Final Clauses). He wondered whether the wording was adequate in view of the amendment submitted to that working party.

504 Mr. BODENHAUSEN (Netherlands) [F] emphasized that the amendment had a different sense and that the text set out in document CDR/122 was correct.

505 Messrs. LENNON (Ireland) [E] and WALLACE (United Kingdom) drew attention to errors in the English text of Article 15, paragraph 1(a)(iii). In line ten, the word 'under' should be deleted, and in the fourteenth and fifteenth lines, the phrase 'within the limits of Article 11' should be deleted.

506 Paragraph 1(a) was *adopted* by 36 votes to 1, with 2 abstentions.

507 Paragraph 1(b) was *adopted* by 34 votes to 1, with 1 abstention.

508 Paragraphs 2 and 3 were *adopted* by 34 votes to 2, with no abstentions.

509 Article 15 as a whole was *adopted* by 34 votes to 1, with 1 abstention.

Article 17 of the Convention (Article 15*bis* in document CDR/122)

510 Article 15*bis* was unanimously *adopted* (by 34 votes).

Article 19 of the Convention (Article 16 of the Draft Convention, CDR/1)

511.1 Mr. STRNAD (Czechoslovakia) [F], commenting on a proposal made by the Czechoslovak delegation (CDR/123), recalled that, during the discussions of Working Party No. II, that delegation had presented an amendment (CDR/107), which had been rejected, and that it had reserved the right to revert to the question at a meeting of the Main Commission.

511.2 Following discussions with the groups concerned, it had been thought that it might perhaps be possible to reach a compromise solution which, although it would not be binding on all signatory States, would be acceptable to all States.

512 Mr. RATCLIFFE (International Federation of Musicians) [E] speaking in the name of the International Federation of Actors and the International Federation of Variety Artistes, as well as for his own Federation, stated that the performers were agreed that nothing should be included in the Convention which would infringe on the realm of film copyright. They were convinced, however, that Article 16 in document CDR/122 went further than was necessary in protecting the interests of the motion picture industry, and withheld from the performers a much-needed protection in regard to the

fixation of visual performances for television broadcasts. Such fixations were very often made with a view to deferred or reported transmissions. Under the existing draft of Article 16 the performers would have no protection against the secondary uses of such fixations. That was a very important issue for the performers and many examples could be given of cases where protection was necessary in relation to television performances.

513.1 Mr. STRASCHNOV (Monaco) [F] thought that it was a question of visual and audio-visual fixations regulated by contract, and not of ephemeral fixations. Moreover, Article 5, paragraph 2(b) of the Draft Convention (CDR/1), referred to in the amendment (CDR/107), dealt with fixations made for broadcasting purposes, such as films intended for television.

513.2 Such films could be produced by the television organizations themselves, but they were often made by independent film producers. Under current practice, nearly all films intended for screening in cinemas were also intended for television, at any rate after a certain interval of time.

513.3 If the Czechoslovak proposal were adopted, it might be inferred that the Contracting States would be in a position to regulate the use of cinematographic films for television purposes, which would be detrimental to the interests of the film industry.

513.4 The Czechoslovak proposal could be modified by deleting the reference to sub-paragraph (b) of paragraph (2), while maintaining the reference to sub-paragraph (c) of the same paragraph.

514 Mr. ULMER (Federal Republic of Germany) [F] emphasized that Working Party No. II had adopted Article 16 on the basis of an amendment presented by the delegation of the United States of America (CDR/118). The curtailment of the protection of artistes did not entirely satisfy the working party, but being aware of the film industry's obdurate resistance to the exercise of neighbouring rights, it had adopted what seemed to it to be the simplest proposal.

515 Mr. WALLACE (United Kingdom) [E] stated that the United Kingdom delegation could vote in favour of the amendment if the deletion suggested by Mr. Straschnov were adopted, since that would mean that contracts would be respected, but he could not support the amendment in its present form.

516 The above opinion was supported by Mr. KAMINSTEIN (United States of America) [E] who agreed that the contract was the most important form of protection, and considered that the compromise reached in the draft text should be respected.

517 Mr. TISCORNIA (Argentina) [S] thought that the Czechoslovak delegate's proposal, subject to the amendment suggested by the delegate of Monaco, might greatly facilitate matters, as it might perhaps give considerable if not complete satisfaction to performers.

518 Mr. WAEYENBERGE (Congo, Leopoldville) [F] supported the Czechoslovak proposal.

519 Mr. SIDI BOUNA (Mauritania) [F] also supported that proposal.

520 Mr. BELINFANTE (Netherlands) [E] had difficulty in understanding the effect of the proposed amendment. Paragraph 2(b) and (c) of Article 5, to which the amendment referred, did not grant the performers any rights but only concerned the regulation by national legislation of the use of fixations for broadcasting. Moreover, if the reference to (b) were deleted, as the delegate of Monaco had suggested, the exception of sub-paragraph (c) alone would have no sense, since this paragraph included a reference to sub-paragraph (b). Even if both (b) and (c) were referred to, the amendment still had no meaning, and the speaker was opposed to its adoption.

521 Mr. GAXIOLA (Mexico) [S], supported by Mr. GALBE (Cuba), considered that, in view of the importance which television had

assumed for performers, they should not be deprived of protection in that field of activity. He was therefore inclined to vote in favour of the Czechoslovak delegate's proposal.

522 Mr. LENOBLE (France) [F] remarked that the amendment submitted by the delegation of the United States of America (CDR/118) entirely excluded everything relating to the film industry; the Czechoslovak proposal tended to distinguish between cinematographic films and films for television purposes, which had not been done at The Hague. The French delegation was in favour of Article 16 as set out in document CDR/122, but it would be prepared, if necessary, to agree to the compromise proposal made by the delegate of Monaco.

523.1 Mr. MALAPLATE (International Confederation of Societies of Authors and Composers) [F] emphasized how difficult it would be to distinguish between cinematographic films and films for television purposes, considering that certain cinematographic films were subsequently used for television broadcasts and vice versa, and that, in addition, producers were endeavouring more and more to make films which could be used not only for screening in cinemas but also for television purposes.

523.2 He added that the intervention of artistes with respect to films would certainly perturb the relations authors had, on the one hand, with the film industry and, on the other, with television organizations.

524 Mr. CHESNAIS (International Federation of Actors) [F] thought that there was no question of making any distinction between cinematographic films and films for television purposes.

525 The amendment presented by the Czechoslovak delegation (CDR/123) was *rejected* by 17 votes to 9, with 11 abstentions.

526 In response to a question put by the Chairman, Mr. STRASCHNOV (Monaco) [F] said he would withdraw his oral proposal.

527 Article 16, as set out in document CDR/122, was *adopted* by 27 votes to 5, with 8 abstentions.

528 Mr. GALBE (Cuba) [S] wished it to be recorded in the minutes that he considered that, after the rejection of the Czechoslovak delegation's amendment, a vote should have been taken on the compromise proposal put forward by the delegate of Monaco.

529 *The meeting rose at 5.35 p.m.*

Sixth Plenary Meeting[1]

Wednesday, 25 October 1961, at 9 a.m.

President: Mr. Giuseppe TALAMO ATENOLFI (Italy)

ADOPTION OF THE THIRD REPORT OF THE CREDENTIALS COMMITTEE

530 Mr. TAKAHASHI (Japan, Chairman of the Credentials Committee) [F] presented the third report of the Credentials Committee (CDR/126).

531 The third report of the Credentials Committee was unanimously *adopted*.

1. Cf. Doc. CDR/SR.6 (prov.).

ADOPTION OF THE CONVENTION

532.1 The PRESIDENT [F] explained that the Drafting Committee had put the proposals of the Main Commission into final form and had rearranged the order of the articles (CDR/125 rev.).

532.2 He would ask the Conference to take a decision on each of the articles in turn. He recalled that, under the Rules of Procedure (Rule 18), decisions must be taken by a two-thirds majority.

Preamble to the Convention

533 The Preamble was *adopted* unanimously (by 31 votes).

Article 1 of the Convention

534 Article 1 was *adopted* unanimously (by 35 votes).

Article 2 of the Convention

535 Article 2 was *adopted* unanimously (by 35 votes).

Article 3 of the Convention

536 Article 3 was *adopted* by 34 votes to none, with 2 abstentions.

Article 4 of the Convention

537 Article 4 was *adopted* unanimously (by 36 votes).

Article 5 of the Convention

538 Article 5 was *adopted* by 30 votes to none, with 5 abstentions.

Article 6 of the Convention

539 Article 6 was *adopted* by 36 votes to none, with 1 abstention.

Article 7 of the Convention

540 Sub-paragraphs (a) and (b) and clause (i) of sub-paragraph (c) of paragraph 1 of Article 7 were *adopted* by 36 votes to none.

541 Mr. STRNAD (Czechoslovakia) [F] explained his proposal (CDR/128) which was intended to facilitate the adoption of Article 19 of the Convention. The existing text did not specify whether it was a fixation of sound only or a fixation of sound and images that was covered by the derogation provided for in Article 19. Contracts would therefore be liable to contradictory interpretations according to whether paragraph 2 (sub-paragraph (b)) of Article 7 or Article 19 was applied.

542 Mr. ULMER (Federal Republic of Germany) [F] thought that the Czechoslovak proposal considerably widened the scope of clause (ii). If a performer consented to the fixation of his performance on a record, and if that record was subsequently used in a film, the performer would be protected by the Drafting Committee's text, but not by the Czechoslovak delegation's text.

543 Mr. PUGET (France) [F] considered that the text as it stood was satisfactory.

544 Mr. KAMINSTEIN (United States of America) [E] explained that the Berne Union and Unesco were sponsoring a special study on motion pictures. A committee, under the chairmanship of Mr. Ulmer, had met in Madrid two weeks before the opening of the present Conference and had discussed the possibility of making a distinction between films used for the cinema and for broadcasting. It had been decided that such a distinction was impossible. He urged the meeting to retain Article 7 as it stood.

545.1 Mr. STRASCHNOV (Monaco) [F] supported the observations of the delegates of the Federal Republic of Germany and the United States of America.

545.2 He pointed out that, if the Czechoslovak proposal were adopted, paragraph 2 of Article 7 would have to be changed.

545.3 The assumptions on which the Czechoslovak proposal was based were mistaken. The film industry put out many audio-visual recordings for television; they represented a large share of its production. The provision would therefore apply to most films and would be very detrimental to film producers.

546 Mr. STRNAD (Czechoslovakia) [F] considered that, if the reasoning of the delegate of Monaco were accepted, performers would no longer be able to determine their relations with broadcasting organizations by way of contract; for those organizations could, by a unilateral decision, modify the terms on which the performer had made his consent depend.

547 The Czechoslovak proposal (CDR/128) was *rejected* by 27 votes to 3, with 5 abstentions.

548 Clauses (ii) and (iii) of paragraph 1(c) and sub-paragraphs (1), (2) and (3) of paragraph 2 of Article 7 were *adopted* by 35 votes to none, with 1 abstention.

549 Article 7 was *adopted* by 35 votes to none, with 2 abstentions.

Article 8 of the Convention

550 Article 8 was *adopted* by 34 votes to none, with 1 abstention.

Article 9 of the Convention

551 Article 9 was *adopted* by 36 votes to none, with 1 abstention.

Article 10 of the Convention

552 Article 10 was *adopted* by 32 votes to 1, with 1 abstention.

Article 11 of the Convention

553 Article 11 was *adopted* by 35 votes to none, with 1 abstention.

Article 12 of the Convention

554.1 Mr. FERSI (Tunisia) [F] said that the Tunisian delegation had had the impression of being excluded from the unofficial discussions that had taken place during a reception offered to certain delegations by the Embassy of the Federal Republic of Germany to which it had not been invited.

554.2 The Tunisian delegation wished to participate in the work of the Conference with full knowledge of what was involved and with the feeling that it was doing useful and profitable work. It could not take a decision on a draft amendment submitted at the last moment, which it had not time to study attentively.

554.3 Tunisia would certainly not accept a provision overtly prejudicial to the interests of a public service which was a powerful medium for the dissemination of culture and the instrument of a sound and effective social policy.

554.4 The Tunisian delegation would vote against Article 12 and against any amendment which might be proposed at the last minute in the event of Article 12 failing to obtain the requisite majority.

555.1 Mr. BODENHAUSEN (Netherlands) [F] said that there were no grounds for the concern felt by the Tunisian delegation. There had been no secret negotiations. If Article 12 did not obtain a two-thirds majority, the Conference would be asked to take a decision on a proposal contained in document CDR/124 which was, with certain purely formal changes, the repetition of a proposal which had already been discussed.

555.2 Owing to the importance of the question, Mr. Bodenhausen asked that the vote should be taken by roll-call.

556.1 Mr. PUGET (France) [F] recalled that the draft of Article 12 had obtained only a small majority in the Main Commission.

556.2 France was firmly opposed to Article 12 and urged that it be rejected.

557.1 Mr. TISCORNIA (Argentina) [S] spoke of the tasks of the Conference, the great value of many of the speeches, the tolerance and equanimity which had been displayed and the efforts which had been made to ensure protection for performers. Concessions had been made on all sides in order to overcome certain difficulties; for instance, it had been accepted that the country of origin should not be mentioned and that a 'possibility of preventing' should be spoken of instead of 'rights'.

557.2 When it came to Article 12, the Conference was confronted with the main

problem which it was called upon to solve. If that article were deleted, the Convention, with its title, would be like a splendid portal leading to a deserted courtyard. A divergence existed between those who wanted to protect performers and those who, adhering to other concepts and defending other interests, did not wish to recognize such protection categorically.

557.3 Article 12 was concerned with a matter of principle. Exceptions under Article 16 could restrict its scope even to the point of leaving it without any application; but at least the principle remained established that a performer was a collaborator of the author.

557.4 If the differences which were dividing delegates had their roots in economic interests, a system would have to be found that would make it possible to reconcile those interests, but without denying the performer's right to remuneration. National laws sought and found remedies for such conflicts of interests so as to reach a fair balance and give to each his due.

557.5 Countries which did not wish to recognize the rights of performers had nothing to fear from Article 12. At the same time, no one could deny the justice of the principle of defending performers. The approval of Article 12 would be a great step ahead for everyone.

557.6 Mr. Tiscornia said that if the existing text of Article 12 were deleted, he would nevertheless sign the Convention, but he would do so with a great feeling of disappointment, and his feeling would be shared by all performers, who were contributing so much to culture.

558 Mr. MOOKERJEE (India) [E] supported Article 12 and appealed to the sponsors of the amendment not to risk wasting the efforts the Conference had made in reaching a compromise.

559 Mr. MOREIRA DA SILVA (Portugal) [F] pointed out that a practical argument also could be advanced in favour of the proposal of the French, Netherlands and Portuguese delegations, namely, that Article 12, as it stood, might prevent many States from ratifying the Convention.

559.2 The proposal in question in no way denied the rights of performers. By prescribing material reciprocity, it aimed at giving national legislation the possibility of extending progressively the protection accorded to performers.

560 Mr. STRNAD (Czechoslovakia) [F] pointed out that the majority in favour of Article 12 was insufficient but nevertheless undeniable. He proposed that the discussion should be closed.

561 Mr. LID (Norway) [E] said he would not repeat the reasons his delegation had given for voting against the article in the Main Commission. If he could be sure that the report would contain a reference to payment in collectivity, he would not vote against the article at that juncture; he would merely abstain from voting.

562 A roll-call vote was taken.

563 The result of the vote was as follows:

In favour: Argentina, Australia, Austria, Brazil, Cambodia, Chile, Congo (Leopoldville), Cuba, Czechoslovakia, Federal Republic of Germany, Iceland, India, Ireland, Israel, Italy, Mauritania, Mexico, Peru, Poland, United Kingdom.

Against: France, Japan, Luxembourg, Monaco, Netherlands, Republic of South Africa, Tunisia, Yugoslavia.

Abstentions: Belgium, Denmark, Finland, Norway, Portugal, Spain, Sweden, Switzerland, United States of America.

564 Article 12 was *adopted* by 20 votes to 8, with 9 abstentions.

565 Mr. KAMINSTEIN (United States of America) [E] congratulated the Conference on its ability to reach a decision on that important question. The United States had abstained in the voting because, as pointed out in the report drawn up by Mr. Wallace

Rapporteur-General of the Committee of Experts at the Hague, the current practice was that broadcasters did not pay for using records.

Article 13 of the Convention

566 Article 13 was *adopted* (by 35 votes).

Article 14 of the Convention

567.1 Mr. STRNAD (Czechoslovakia) [F], explaining the Czechoslovak proposal in document CDR/128, pointed out that in cases where the performance was not fixed in material form, there was no need to provide for a term of protection; it would be dangerous to interpret sub-paragraphs (b) and (c) as applying to visual or audio-visual fixations, since such fixations were motion pictures, to which the Berne Convention granted protection for fifty years.

567.2 Mr. Strnad accordingly proposed to delete sub-paragraphs (b) and (c).

568 Mr. ULMER (Federal Republic of Germany) [F] admitted that it was useless to stipulate the term of protection for a performance that was not fixed at all; but sub-paragraph (b) concerned audio-visual fixations—which were not necessarily motion pictures—made without the consent of the performer. The performer must be protected against such fixations and the reproduction of them. Of course those were exceptional cases, but provision must be made for them.

569.1 Mr. STRASCHNOV (Monaco) [F] added that sub-paragraph (c) concerned, for example, audio-visual fixations of broadcasts made without the consent of the broadcasting organization, which must be able to oppose their reproduction.

569.2 Such audio-visual fixations were not necessarily films. Moreover, in that case, there would be no conflict between the two conventions, since Article 21 reserved other sources of rights.

570 Mr. STRNAD (Czechoslovakia) [F] emphasized the fact that a fixation made without the consent of the performer or the broadcasting organization was nevertheless a fixation. If certain delegations thought that sub-paragraphs (b) and (c) related to audio-visual fixations, it would suffice to say in sub-paragraph (a): 'in material form fixing sounds, sounds and images, or images alone'.

571 The Czechoslovak proposal (CDR/128) was *rejected* by 27 votes to 4, with 3 abstentions.

572 Article 14 was *adopted* by 33 votes to none, with 3 abstentions.

Article 15 of the Convention

573 Article 15 was *adopted* by 35 votes to none, with 2 abstentions.

574 Mr. GALBE (Cuba) [S] wished to have it stated in the minutes that he had abstained fromvoting on Article 15.

Article 16 of the Convention

575 Article 16 was *adopted* by 31 votes to 1, with 3 abstentions.

576 Mr. GALBE (Cuba) [S] wished to have it stated also in the minutes that he had voted against Article 16.

577 Mr. SIDI BOUNA (Mauritania) [F] said that he had voted for Article 12 in the hope that Article 16 also would be adopted. He therefore welcomed the result of the vote.

578 Mr. TISCORNIA (Argentina) [S] wished to have it stated in the minutes that his abstention was due solely to clause (iv) of sub-paragraph (a) of paragraph 1, but that he agreed with all the rest.

Article 17 of the Convention

579 Mr. WALLACE (United Kingdom) [E] said that if he was right in assuming that the phrase 'criterion of fixation' meant the criterion of the place of fixation, he would have no objection to the article.

580 Article 17 was *adopted* by 31 votes to none, with 2 abstentions.

Article 18 of the Convention

581 Mr. STRASCHNOV (Monaco) [F]

mentioned the case of a State which, by virtue of Article 16, had made a reservation concerning only communication to the public. If such a State afterwards established a new cultural and information broadcasting service would it be able to make an additional reservation concerning secondary uses in respect of that service?

582 Mr. BOGSCH (United States of America) [E] pointed out that since, under the provisions of Article 16, paragraph 1, a State might *at any time* make a notification to the Secretary-General of the United Nations, it would be possible for declarations, such as those envisaged by the delegate of Monaco, to be made after accession.

583 Article 18 was *adopted* by 34 votes to 2, with 2 abstentions.

Article 19 of the Convention

584.1 Mr. STRNAD (Czechoslovakia) [F] emphasized the fact that Article 7, which itself provided for important exceptions to the protection it established, was rendered practically meaningless by Article 19. Indeed, if the performance was included in an audio-visual fixation—a thing which, under Article 15, could be done without the consent of the performer—then the performer could be refused any protection by virtue of Article 19.

584.2 Article 19 was contrary to the general principle of abiding by contracts—a principle asserted, moreover, in Article 7 (paragraph 2, sub-paragraph (3))—since it enabled producers to take no account of the conditions on which the performer made his consent depend.

584.3 Mr. Strnad was persuaded that the text of Article 19 went beyond the intentions of its authors. The object had been to permit the use of motion pictures for broadcasting or television without its being necessary to obtain the further consent of the performer; but the text did not make that sufficiently clear.

584.4 The Czechoslovak amendment (CDR/128) had a two fold purpose: (1) to make clear the meaning of Article 19 (by substituting the words 'in a motion picture' for the words 'in a visual or audio-visual fixation'); (2) to safeguard the principle of respect for contracts by giving a performer who consented to the inclusion of his performance in a motion picture the possibility of excluding the use of this fixation for broadcasting (by the insertion of the words 'unless stipulated to the contrary').

585.1 Mr. STRASCHNOV (Monaco) [F] thought that the Czechoslovak delegate's interpretation of Article 15 was a mistaken one. Article 15 was concerned with cases where the use of a fixation was permitted without the performer's consent. In such cases, Article 19 was not applicable, since it concerned cases where the performer 'has consented'.

585.2 Working Party No. II had decided not to use the term 'motion pictures' because it was too difficult in current circumstances to make a distinction between motion pictures and other audio-visual fixations.

585.3 It was useless to add to Article 19 the words 'unless stipulated to the contrary' since it was there stated expressly that 'once a performer has consented . . . Article 7 shall have no further application'. This excluded the application of the article to the cases covered by sub-paragraph (c) of paragraph 1 of Article 7. The provision in Article 19 was in perfect conformity with the principle of abiding by contracts.

586.1 Mr. STRNAD (Czechoslovakia) [F] pointed out that the ephemeral fixations, fixations for purposes of teaching or scientific research, etc., referred to in Article 15 would be made with the consent of the performer, since he would necessarily be present.

586.2 The documentation presented to the Conference by the three professional organizations proved that there were good grounds for apprehension about the interpretation of Article 19.

587 The Czechoslovak proposal (CDR/

128) was *rejected* by 22 votes to 5, with 8 abstentions.

588 Mr. STRNAD (Czechoslovakia) [F] asked that the interpretation which the delegate of Monaco had given of Article 19 should be included in the general report.

589 Article 19 was *adopted* by 26 votes to 5, with 6 abstentions.

590 Mr. PERALES (Spain) [S] regretted that in numbering the articles of the Convention, the figures had not been written out in full, which would have avoided confusion.

591.1 Mr. RATCLIFFE (International Federation of Musicians) [E] expressed his very great regret that it had been found impossible to give performers in television protection against the use of television visual and audiovisual fixations for purposes other than those for which consent had been given. While understanding the difficulty of definition, he was surprised that the Conference had been unable to devise a form of words which would exclude the motion picture industry and yet give performers protection against the improper use of fixations made for a limited purpose.

591.2 As an observer, he was unable to submit a formal proposal, but he felt that a satisfactory result could have been achieved by inserting the words 'other than a fixation made by a broadcaster solely for broadcasting' after the words 'visual or audiovisual fixation' in Article 19. He hoped it would be found possible, at some future time, to give performers adequate protection.

Article 20 of the Convention

592 Article 20 was *adopted* by 3 votes to 1, with no abstentions.

Article 21 of the Convention

593 Article 21 was *adopted* unanimously (by 37 votes).

Article 22 of the Convention

594 Mr. SIDI BOUNA (Mauritania) [F] said he did not understand the sense in which the words 'in so far as' were used in the second line of the text.

595 The PRESIDENT [F] explained that the text reproduced a provision of the Berne Convention.

596 Article 22 was *adopted* by 36 votes to none, with 1 abstention.

597 Mr. SIDI BOUNA (Mauritania) [F] stated that, as he did not understand the exact meaning of the provision put to the vote, he had not felt able to take part in the voting.

Article 23 of the Convention

598 Mr. WAEYENBERGE (Congo, Leopoldville) [F] said he found the condition laid down in the last part of the text unacceptable, since, in his view, the Convention should have the widest possible field of application. He would vote against the article.

599 Messrs. STRNAD (Czechoslovakia) [F], DRABIENKO (Poland) and GALBE (Cuba) recalled that, right from the opening of the Conference, they had stated that they were opposed to the exclusion of certain countries. They made reservations regarding the signature of ratification of the Convention by their Governments.

600 Article 23 was *adopted* by 27 votes to 5, with no abstentions.

Article 24 of the Convention

601.1 Messrs. STRNAD (Czechoslovakia) [F] and GALBE (Cuba) made the same reservations with regard to paragraph 2 as in the case of Article 23.

601.2 They requested that the article be put to the vote paragraph by paragraph.

602 Paragraph 1 of Article 24 was *adopted* by 33 votes to none, with 1 abstention.

603 Paragraph 2 of Article 24 was *adopted* by 28 votes to 4, with 1 abstention.

604 Paragraph 3 of Article 24 was *adopted* unanimously (by 32 votes).

605 Article 24 was *adopted* by 28 votes to 1, with 4 abstentions.

Article 25 of the Convention

606.1 Mr. DE SANCTIS (Italy) [F] recalled that the Italian delegation had proposed to raise to twelve the number of ratifications necessary for the entry into force of the Convention. Subsequently, as a compromise, it had reduced the figure to nine, but its proposal had been rejected.

606.2 The Italian delegation, in agreement with the French delegation, wished to reintroduce that proposal in the plenary meeting. It felt that a Convention which was designed to be applied universally and which was endeavouring for the first time to regulate international relations in a field where there were few national laws could not be truly effective if six ratifications sufficed to put it into force.

607 Mr. KAMINSTEIN (United States of America) [E] supported the Italian proposal for the reasons he had given at an earlier meeting.

608.1 Mr. ULMER (Federal Republic of Germany) [F] could not support the Italian proposal. The Convention dealt with an almost entirely new field. Many States would have to draft and enact laws before ratifying it. Very few States would be in a position to ratify it within the time stipulated.

608.2 Mr. Ulmer paid a tribute to the conciliatory spirit of the Italian delegation, but said he did not understand what disadvantage there could be in having the Convention enter into force between States which were in a position to ratify it, which, in fact ,meant the institution of a system of reciprocity between States which had already adopted laws in that sphere.

609 Mr. STRNAD (Czechoslovakia) [F] was opposed to the Italian proposal, the effect of which would be to retard the entry into force of the Convention and thus deprive performers of more effective protection.

610.1 Mr. DE SANCTIS (Italy) [F] recognized that it was desirable for States which already had laws in that field to institute a system of reciprocity among themselves. But to achieve that object such States need merely conclude bilateral or multilateral treaties.

610.2 The value of a convention drawn up by the representatives of some forty States from all parts of the world and open for accession to some hundred States would be illusory if it could enter into force with only six ratifications.

610.3 The Italian Government attached great importance to that question and its attitude might well be influenced by the decision taken.

611 Mr. TISCORNIA (Argentina) [S] said he thought the Italian delegate's proposal deserved consideration. Having regard to the terms of Article 29, the case could arise where a small group of States would proceed to revise the Convention five years after its entry into force. That might prevent its acceptance by those States which had not ratified it before the revision.

612 The Italian proposal *was not adopted*, the result of the vote being 16 in favour and 14 against, with 4 abstentions.

613 Article 25 was *adopted* by 23 votes to 7, with 3 abstentions.

Article 26 of the Convention

614 Mr. STRNAD (Czechoslovakia) [F] noted that paragraph 2 of the article made it necessary for Contracting States to have laws on copyright. He would therefore vote against the article.

615 Article 26 was *adopted* by 29 votes to 3, with 1 abstention.

Article 27 of the Convention

616 Messrs. STRNAD (Czechoslovakia) [F], DRABIENKO (Poland) and GALBE (Cuba) considered it inadmissible for a State to be responsible for the international relations of another country. They would vote against the article.

617 Article 27 was *adopted* by 27 votes to 3, with 3 abstentions.

Article 28 of the Convention

618 Messrs. STRNAD (Czechoslovakia) [F], DRABIENKO (Poland) and GALBE (Cuba) considered that paragraph 1 of the article was unacceptable as it contained the same expression as Article 27.

619 Messrs. STRNAD (Czechoslovakia) [F] and WAEYENBERGE (Congo, Leopoldville) disapproved of paragraphs 4 and 5 which established a link between the Convention under consideration and the Copyright Conventions.

620 Article 28 was *adopted* by 30 votes to 4, with 1 abstention.

Article 29 of the Convention

621 Article 29 was *adopted* by 33 votes to none, with 2 abstentions.

Article 30 of the Convention

622 Messrs. STRNAD (Czechoslovakia) [F], DRABIENKO (Poland), MOOKERJEE (India), TISCORNIA (Argentina) and WAEYENBERGE (Congo, Leopoldville) said they would vote against the article as they could not accept the principle of compulsory reference to the International Court of Justice.

623 Article 30 was *adopted* by 25 votes to 6, with 3 abstentions.

624 Mr. TISCORNIA (Argentina) [S] asked to have it stated in the minutes that his attitude was due solely to the compulsory character of the intervention of the International Court of Justice. He was, however, otherwise in complete agreement with the provision.

625 Mr. MOOKERJEE (India) [E] said that he had voted against Article 30 because of the mandatory nature of its provisions.

Article 31 of the Convention

626 The CHAIRMAN [F] pointed out that the text should read 'without prejudice to the provisions of paragraph 3 of Article 5, paragraph 2 of Article 6, and Articles 16 and 17 . . . '.

627 Mr. STRNAD (Czechoslovakia) [F] said that, in view of the result of the vote on Article 30, he would vote against Article 31.

628 Mr. DRABIENKO (Poland) [F] recalled that he had proposed to allow Contracting States the possibility of making reservations concerning any provision in the Convention.

629 Mr. TISCORNIA (Argentina) [S] said that he would vote against the article because it was impossible to make any reservations other than those provided for in the text. He agreed with the rest of the provision and asked that mention to that effect should be made in the record.

630 Article 31 was *adopted* by 31 votes to 3, with no abstentions.

Article 32 of the Convention

631 Mr. GALBE (Cuba) [S] said that he would vote against the article because of the expression 'equitable geographical distribution' inasmuch as, for the moment, such equitable distribution did not exist in the world.

632 Mr. EDLBACHER (Austria) [F] asked why, in paragraph 1 of the French text, sub-paragraph (a) said *la présente Convention* while sub-paragraph (b) said *la Convention*.

633 Mr NAMUROIS (Belgium) [F] explained that sub-paragraph (b) did not refer to the Convention under consideration but to a new Convention, since it envisaged the possibility of a revision.

634 Article 32 was *adopted* by 34 votes to 1, with 1 abstention.

Article 33 of the Convention

635 Article 33 was *adopted* unanimously (by 34 votes).

Article 34 of the Convention

636 Article 34 was *adopted* unanimously (by 36 votes).

Final paragraph of the Convention

637 The final paragraph was *adopted* unanimously (by 31 votes).

ADOPTION OF THE CONVENTION AS A WHOLE

638.1 Mr. MORF (Switzerland) [F] said that the Swiss delegation was prepared to vote in favour of the text, recognizing it as a compromise that could be defended. That did not mean, however, that his delegation intended to sign the text immediately in Rome.

638.2 Having regard to the difficulty of foreseeing all the repercussions of the Convention from the national point of view his delegation must have an opportunity to give it careful study with a view to being able to sign it, if possible, within the time-limit prescribed in Article 23.

639 Mr. FERSI (Tunisia) [F] associated himself with the statement made by the Swiss delegation.

640 Mr. GALBE (Cuba) [S] said he thought the Swiss delegate's remarks extremely pertinent and added that he took the same attitude.

641 Mr. PERALES (Spain) [S] said that, for reasons of principle, he was in the same position as the delegate of Switzerland.

642 Mr. JOUBERT (Republic of South Africa) [E] said that he also would have to refer the Convention back to his Government before signing it.

643 Mr. LENNON (Ireland) [E] informed the meeting that he did not propose signing the Convention, but he would recommend it to his Government.

644 Mr. STRNAD (Czechoslovakia) [F] said he had already pointed out that that Convention contained on many points provisions contrary to fundamental principles to which the Czechoslovak Government was attached. The Czechoslovak delegation would vote for the Convention as a whole, but would not sign it.

645 Mr. GALBE (Cuba) [S] said that the delegate of Czechoslovakia was right. The Cuban delegation also would vote in favour of the Convention as a whole.

646 The Convention was *adopted* by 33 votes, with 3 abstentions.

FINAL ACT OF THE DIPLOMATIC CONFERENCE

647 The PRESIDENT [F] said that the second paragraph of the French text (CDR/125 *bis*) should read *'une Convention internationale* sur *la protection . . .'*.

648 The Final Act was *adopted* by 33 votes to none, with 1 abstention.

649.1 Mr. STEWART (International Federation of the Phonographic Industry) [E] said that, on behalf of the Federation he represented, as well as on behalf of the International Federation of Musicians, the International Federation of Actors and the International Federation of Variety Artistes, he wished to thank the President of the Conference, Chairman of the Main Commission, and the Chairmen of the working parties for authorizing the representatives of the Federations concerned to express their points of view.

649.2 He congratulated the Conference on the result it had obtained and expressed his gratitude to the Secretariats of the three Organizations, whose devoted labours were beyond praise.

650.1 The PRESIDENT [F] thanked the non-governmental organizations for their valuable and fruitful co-operation.

650.2 He thanked the delegations for their efforts and congratulated them on the work they had accomplished.

651 *The meeting rose at 1.35 p.m.*

Seventh Plenary Meeting[1]

Thursday, 26 October 1961, at 4.50 p.m.

President: Mr. Giuseppe TALAMO ATENOLFI (Italy)

PRESENTATION AND ADOPTION OF THE GENERAL REPORT

652 The PRESIDENT [F] opened the last plenary meeting of the Diplomatic Conference, the agenda of which included the reading and approval of the report of Mr. A. L. Kaminstein, Rapporteur-General, and the signing of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and of the Final Act.

653 The RAPPORTEUR-GENERAL [E] thanked the Chairman and the Italian Government for their contribution to the success of the Conference and remarked on the pleasant atmosphere in which it had taken place, both in and outside the Conference Hall. He felt that the Conference was to be congratulated on the work it had accomplished. In introducing the draft report (CDR/129), the Rapporteur-General pointed out that it was not complete, owing to the lack of time for its preparation. The introductory part had been left unfinished; there was no report on the final clauses; and there had not been time to include some important statements made the day before during the discussion in the plenary meeting. Those parts would be completed later and distributed in draft form to the delegates for their comments. The Rapporteur-General warmly thanked the Secretariat and its assistants who had so promptly translated and mimeographed the report.

654 *The meeting was adjourned for an hour* in order to give the delegates time to read the report.

655 The RAPPORTEUR-GENERAL [E] said that he would welcome the delegates' comments and suggestions. He drew attention to several obvious typing errors in the draft and asked that corrections on the less important points be submitted in writing in order to save time in the discussion.

656.1 Mr. STRNAD (Czechoslovakia) [F] observed that the report did not mention at all the statements which his delegation had made on several occasions concerning the relationship between the Universal Convention, the Berne Convention and the Convention under discussion and he asked that account should be taken of those statements in the report.

656.2 The Czechoslovak delegation had also submitted several proposals concerning the articles which provided that a country responsible for the international relations of another country might declare that its signature to the Convention applied also to such other country. The report, similarly, did not mention those proposals.

656.3 Lastly, with particular reference to Article 19, the reasons underlying the Czechoslovak proposals were summarized in such a way that it was not easy to grasp their object. He consequently hoped to be allowed to submit in writing the changes which would be needed in the Final Report.

657 Mr. GALBE (Cuba) [S] regretted that, on page 15 of the English text of the report, it was wrongly stated that the proposals of France and Portugal had received strong support from the delegation of Cuba. He therefore asked that the name of Cuba should be deleted from that sentence and should be added to the list of countries given in the following paragraph.

658 The RAPPORTEUR-GENERAL [E] reminded the delegate of Czechoslovakia that there had been no opportunity to deal with the final clauses in the report and assured him that the points he had raised would be mentioned when that section was completed.

659 Mr. PUGET (France) [F] asked that the report should mention the statement

1. Cf. Doc. CDR/SR.7 (prov.).

which the French delegation had made, on the instructions of its Government, at the beginning of the proceedings of the Conference, to the effect that the Convention for the International Protection of Performers, Producers of Phonograms and Broadcasting Organizations seemed to be both superfluous and untimely: superfluous because most of the situations covered by it could be regulated by way of contract, and untimely because international conventions followed rather than preceded progress made nationally.

660 The RAPPORTEUR-GENERAL[E]agreed that Mr. Puget's statement should appear in the introductory part of the report, which was still incomplete.

661 The introduction was then *approved.*

662 The section concerning the organization of the Conference was *approved.*

Safeguarding of copyright (Article 1)

663.1 Mr. PUGET (France) [F] asked that the report should include the point of view expressed by the French and Italian delegations in support of their proposed amendment to Article 2 of the Draft Convention (CDR/1) and in reply to the objections raised against that proposal. The two delegations had pointed out that the clause proposed in the amendment was to be applied only in extreme cases and that the intention had been to prevent the pre-eminence of copyright from being called into question.

663.2 Furthermore, although the Rapporteur-General had said that he had not yet completed the part of the report dealing with the final clauses, it might be well to introduce a reference to those clauses in the passage concerning Article 1.

664 On behalf of the Italian delegation, Mr. DE SANCTIS (Italy) [F] supported the statement made by the delegate of France.

665 The RAPPORTEUR-GENERAL [E] agreed to the suggestion made by the French and Italian delegations.

666 Mr. GAXIOLA (Mexico) [S] wished to have it stated in the report that his delegation had supported the priority of copyright as compared with the rights of performers and had concurred in the opinions on this matter expressed by the delegations of France and Italy.

667 The section concerning the safeguarding of copyrights (Article 1) was *approved.*

668 The sections concerning the protection granted by the Convention (Article 2) and definitions (Article 3) were *approved.*

Protected performances (Article 4)

669 Mr. STRASCHNOV (Monaco) [F] proposed to substitute for the words 'an unfixed but broadcast performance' in lines 8 and 9 of the second paragraph in this section the words 'performance not recorded on a phonogram but broadcast'.

670 The RAPPORTEUR-GENERAL [E] felt that he needed time to consider that suggestion, which he asked the delegate of Monaco to submit in writing.

671 The section concerning protected performances (Article 4) was *approved.*

Protected phonograms (Article 5) *and protected broadcasts* (Article 6)

672 The sections concerning protected phonograms (Article 5) and protected broadcasts (Article 6) were *approved,* subject to a drafting amendment suggested by Mr. DITTRICH (Austria) [E] who wished the last line of the second paragraph concerning Article 6 to include a mention of the *Kommanditgesellschaft,* as well as the *Offene Handelsgesellschaft,* since both those types of organization had been referred to in the discussion.

Minimum protection of performers (Article 7)

673 Mr. WESTON (Australia) [E] asked that the words 'agreed upon' in the last line of the first paragraph of page 11 in the English text be changed to read 'ordinarily applying'. That would indicate that the

'contracts' referred to in Article 7 included those customarily established by arbitration boards under the Australian system which had been in effect for over sixty years. It was his understanding that the Conference had not meant to exclude such contracts from the coverage of Article 7. The wording in the report would suggest, however, that that provision applied only to cases where the parties had specifically agreed to arbitration.

674 Mr. BOGSCH (United States of America) [E] did not agree with the Australian delegate. He felt that a question of principle was involved. If arbitration was based on law, it was a negation of freedom of contract. In his view, it was the understanding of the Conference that arbitration awards would be covered only if they were based on contracts between the parties concerned to submit their differences to arbitration.

675 Mr. BODENHAUSEN (Netherlands) [F] supported the observation made by the delegate of Australia. The notion of the absolute predominance of contracts had been adopted by Working Party No. II, but had been rejected by the Main Commission, which had adopted the proposal of the United Kingdom delegation.

676.1 Mr. STRASCHNOV (Monaco) [F] proposed to add at the end of the second paragraph of page 10 of the English text the phrase 'and that only paragraph 1(c) (iii) of that article would apply'.

676.2 In addition, in the last paragraph of that section on page 11, the last sentence might well be toned down, and the words 'Objections were raised to this proposal on the grounds that' should be replaced by 'Some delegates stated that, in their opinion'.

677 The RAPPORTEUR-GENERAL [E] agreed to make any changes necessary in the report in order to meet the objections of the Australian delegation and to reflect the intentions of the Conference correctly.

678 The section concerning minimum protection of performers (Article 7) was *approved.*

Group performances (Article 8)

679 Mr. PUGET (France) [F] asked that it should be stated in the second paragraph that the French delegation also had supported the term 'jointly'.

680 The section concerning group performances (Article 8) was *approved.*

Variety artistes (Article 9)

681 The section concerning variety artistes (Article 9) was *approved.*

Reproduction right of producers of phonograms (Article 10)

682 The section concerning the reproduction right of producers of phonograms (Article 10) was *approved,* subject to a drafting change indicated by Mr. LENNON (Ireland) [E], who pointed out that the word 'Ireland' in the fourth line of the fourth paragraph on page 13 of the English text should read 'Iceland'.

Formalities (Article 11)

683 Mr. STRNAD (Czechoslovakia) [F] asked that the words 'rather than' in the fourth line of the second paragraph of the English text should be replaced by the words 'and, in cases where that was not possible', as suggested in the amendment proposed by the Czechoslovak delegation.

684 The section concerning formalities (Article 11) was *approved.*

Secondary uses of phonograms (Article 12)

685 Mr. PUGET (France) [F], supported by Mr. STRASCHNOV (Monaco), asked that, after the third sentence of the eighth paragraph of this section, where the proposals presented by France and Portugal were spoken of, mention should be made of the fact that, following on those proposals, the French delegation had stressed the

diversity of economic situations and laws which justified reference to national laws.

686 Mr. LID (Norway) [E] pointed out that the last sentence of the fifth paragraph on page 16 of the English text did not truly reflect the discussion which had taken place. In his opinion, it should be deleted, or else the following words should be added after the end of the sentence: 'The matter was, however, left unsolved'.

687 Mr. MORF (Switzerland) [F] supported the observation made by the delegation of Norway, and asked that, at the end of the first paragraph on page 22 of the French text, the sentence '*La question n'a toutefois pas été résolue*' should be added.

688.1 Mr. ULMER (Federal Republic of Germany) [F], speaking as Chairman of Working Party No. II, recalled that the main question at issue was whether remuneration could be granted not only to individual performers, but also to a group of performers. The working party had decided to maintain the expression 'to the performers . . .' which would make it possible to ensure remuneration for such groups.

688.2 On the other hand, there had been no close study of the question whether national laws could provide that, in cases where phonograms were used for broadcasting and communication to the public, remuneration should be paid only to national performers, even when the phonograms fixed the performances of foreign performers. Having regard to the principle of reciprocity adopted in the Convention, he felt that there could be no doubt about it: the reply to that question must be in the negative. As examples could be taken the cases of phonograms fixing the performances of Norwegian performers, on the one hand, and phonograms fixing the performances of Austrian performers, on the other. When the performances of Norwegian performers fixed on phonograms were used in Austria for broadcasting or communication to the public, remuneration must be paid to the Norwegian performers. Inversely, when Austrian performances were used in Norway, the obligation arose to pay the Austrian performers. If a State wished to escape from such an obligation, it could make use of the reservation provided for in Article 16. It would then take the necessary measures to ensure that, in the event of use for broadcasting or communication to the public, the remuneration was always paid to national performers; but it would also have to bear in mind that when phonograms of national origin were used abroad, the States concerned could exclude the payment of remuneration.

688.3 As that was the situation, it would be a delicate matter to add, at the appropriate place in the report, that the question had not been settled. It would be better simply to delete the last sentence of the first paragraph on page 22, beginning with the words 'it was stated', and so leave the question to be settled by the interpretation given to the Convention, which Mr. Ulmer considered to be perfectly clear.

689 The RAPPORTEUR-GENERAL [E] agreed that the point was an important one. The first draft of the report, he stated, had included a mention of the fact that a Norwegian amendment had been introduced and then later withdrawn. He had no objection to adding the statement suggested by the Norwegian delegate but, if he did so, he felt that he should reinsert the mention of the proposal and withdrawal of the Norwegian amendment.

690 Mr. LID (Norway) [E] stated that he agreed to Mr. Ulmer's suggestion to delete the second sentence of the first paragraph.

691 The RAPPORTEUR-GENERAL [E] accepted that solution.

692 Mr. SIDI BOUNA (Mauritania) [F] said that he was in favour of Article 12 purely because of the reservations embodied in Article 16. He asked that his explanation should appear in the report.

693 Mr. FERSI (Tunisia) [F] thought that the words 'received strong support' in the

eighth paragraph of the English text went rather too far. The Tunisian delegation had supported the proposal of France and Portugal merely because the situation in developed countries was quite different from the situation in Tunisia and many other developing countries, where the question of copyright played a predominant part for broadcasting organizations. For that reason, the Tunisian delegation asked that its observation should be mentioned in the report.

694 Mr. TISCORNIA (Argentina) [S] requested that the report should make it clear—with reference to the fifth paragraph on page 16 of the English text—that the Argentine delegation had withdrawn its proposal because various delegations had stated that its acceptance would prevent their countries from ratifying or accepting the Convention.

695 Mr. GAXIOLA (Mexico) [S], referring to the Argentine delegate's remarks, wished the report to state that Mexico had strongly supported the Argentine proposal.

696 Mr. GALBE (Cuba) [S] thought the expression '*en revanche*' in the second paragraph on page 21 of the French text was inappropriate and requested that Cuba should be included amongst the countries mentioned in that paragraph.

697 Mr. PUGET (France) [F] pointed out that in French the term '*en revanche*' merely meant 'on the contrary' or 'on the other hand'.

698 Mr. DE SANCTIS (Italy) [F] wished to add, after the last paragraph on page 16 of the English text: 'In this connexion, the Italian and Polish delegations had raised a point of order with a view to having the two articles voted on jointly. Since that had not been possible, the Italian delegation had stated in the working party and in the Main Commission that it could not vote in favour of Article 12 without linking it with Article 16'.

699 The RAPPORTEUR-GENERAL [E] noted that some delegates wished to remove the word 'strong' (last sentence of eighth paragraph on page 15 of the English text), while others wanted to maintain it. His own feeling was that the report should not express emotions but put positions simply. The original draft had contained further details, including an explanation of the United States vote on that Article, which had been deleted. He was prepared to remove the word 'strong' if this would satisfy the delegates.

700 The section concerning secondary uses of phonograms (Article 12) was *approved.*

Minimum protection of broadcasts (Article 13) *and minimum term of protection* (Article 14)

701 The sections concerning minimum protection of broadcasts (Article 13) and minimum term of protection (Article 14) were *approved.*

Possible small exceptions (Article 15)

702 Mr. MORF (Switzerland) [F] recalled that the Swiss delegation had presented an amendment (CDR/75) concerning the introduction of a provision on the subject of private uses. The amendment had subsequently been withdrawn since it had not been supported. However, the Swiss delegation would like the fact of its having been presented to be mentioned in the report.

703 Mr. BODENHAUSEN (Netherlands) [F] suggested that the word 'small' which appeared in the title for the section should be deleted.

704 The RAPPORTEUR-GENERAL [E] agreed to delete the word 'small' and hoped that a better expression could be found.

705 The section concerning possible exceptions (Article 15) was *approved.*

Reservations (Article 16), *countries applying the sole criterion of fixation* (Article 17) *and changes in reservations* (Article 18)

706 The sections concerning reservations (Article 16), countries applying the sole criterion of fixation (Article 17) and changes in reservations (Article 18) were *approved.*

Protection of performers and broadcasting organizations in connexion with visual fixations (Article 19)

707 Mr. PUGET (France) [F] asked that that section which dealt with Article 19 should be preceded by a short paragraph stating that the Conference had, as a matter of principle, sought to exclude everything relating to the film industry.

708 Mr. STRNAD (Czechoslovakia) [F] referring to the second paragraph on page 24 of the English text, asked the Rapporteur-General to make it clear that the object of the Czechoslovak proposal had been to ensure that the use of a performance should not be contrary to the terms of the contract concluded with the performer.

709 The section concerning the protection of performers and broadcasting organizations in connexion with visual fixations (Article 19) was *approved.*

Non-retroactive effect of the convention (Article 20) *and other sources of protection* (Article 21)

710 The sections concerning the non-retroactive effect of the convention (Article 20) and other sources of protection (Article 21) were *approved,* on the understanding that, as Mr. PUGET (France) [F] suggested, the word *stipule* in the paragraph concerning Article 21 in the French text should be replaced by the word *dispose.*

Special Agreements (Article 22)

711 Mr. SIDI BOUNA (Mauritania) [F], referring to the French text of Article 22, expressed certain reservations with regard to the construction of the second part of the sentence.

712 Mr. PUGET (France) [F] gave some explanations on that subject which satisfied Mr. Sidi Bouna.

713 The section concerning special agreements (Article 22) was *approved.*

714 The draft Report as a whole (CDR/129) was *adopted.*

CLOSING ADDRESSES

715.1 Mr. PUGET (France) [F], speaking on behalf of the delegations taking part in the Conference, said that the Rome Conference had become part of history. The Convention for the International Protection of Performers, Producers of Phonograms and Broadcasting Organizations which had been adopted had originated in an agreement concluded between the ILO, Unesco and the Berne Union. That agreement had indeed been reached only after some difficulties had been overcome.

715.2 Thanks to the generosity of the Italian Government, to the excellent practical arrangements made for the Conference, and to the courtesy, understanding and competence with which the President had directed the proceedings, the whole task had been carried through to a successful conclusion.

715.3 All the delegations wished also to thank the Chairmen of the three Working Parties, who had directed the sometimes arduous labours of those groups with great competence and understanding.

715.4 The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations was at last a reality. It was to be hoped that it would receive a large number of signatures and ratifications and give the groups concerned all the satisfaction to which they were entitled. International conventions usually followed in the wake of national legislation, but the Rome Convention, on the contrary, had gone ahead of the laws of many countries.

715.5 In conclusion, the delegate of France presented the following draft resolution:

'The Diplomatic Conference which met in Rome from 9 to 26 October 1961 for the purpose of drawing up an international convention for the protection of performers, producers of phonograms and broadcasting organizations wishes, before concluding its work, to convey to the Italian Government its immense gratitude and its most sincere thanks for the generous traditional hospitality it has enjoyed as well as for the care taken both to provide for the organization and ensure the success of the meeting and to make the stay of the delegates a pleasant one.'

716.1 The PRESIDENT [F] said that, thanks to the perseverance, competence and spirit of international collaboration displayed by the delegations, the many obstacles and difficulties encountered had been successfully overcome.

716.2 He expressed his thanks to the Vice-Presidents of the Conference who had assisted him in his task and, in particular, the Chairmen and Rapporteurs of the three Working Parties, the Chairmen of the Credentials Committee and the Drafting Committee, and the Rapporteur-General, Mr. Kaminstein, who had assumed responsibility for an extremely complex report destined to remain one of the basic documents of the Conference.

716.3 Those who had taken part in the Diplomatic Conference wished to extend special thanks to the three International organizations which had invited them to meet—the ILO, Unesco and the Berne Union. They, in collaboration with the Italian government authorities, had taken all the necessary measures to ensure that the Conference could do its work under the best possible conditions.

716.4 Special tribute should be paid to Professor Secretan, Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI), Dr. Abbas Ammar, Assistant Director-General of the International Labour Office, the Legal Advisers of Unesco and the International Labour Office, Mr. Saba and Mr. Wolf, and the Secretary-General of the Conference, Mr. Díaz Lewis.

716.5 The Italian Government was happy to have received the Conference in Rome, whose name would remain attached to the Convention designed to protect performers, producers of phonograms and broadcasting organizations. After many years of study and preparatory work in that field, a very important step forward had just been accomplished. He expressed the hope that the heads of delegations of many countries would append their signatures to this new international instrument and that it would in the near future receive the ratifications or accessions as a result of which it would become a living reality. Some delegates had announced that they did not yet intend—at least at that stage—to sign the Convention. Some of them had reserved the right to sign it at a later date, since the instrument was open for signature until 30 June 1962. However, all delegates would no doubt wish to sign the Final Act, which gave rise to no international obligations and constituted the formal act which it was customary, at the close of a diplomatic conference, to submit for the signatures of all delegates. This Act, indeed, merely recorded that a conference had been held and had adopted an international instrument. It did not, however, impose the slightest obligation on governments.

717.1 Mr. SABA (Unesco Legal Adviser) [F], on behalf of the Director-General and his collaborators in the Unesco Secretariat, warmly thanked the Italian Government for its welcome and its hospitality, as well as the President, whose amiability and skill in directing the discussion and work of the Conference had substantially contributed to its success.

717.2 He also thanked the Chairmen of the Working Parties, of the Credentials Committee and of the Drafting Committee, whose authority had made it possible to complete

the work of the Conference within the time allotted to it.

717.3 He wished also to tell his colleagues in the Secretariats of the International Labour Office and the Berne Union how pleasant it had been for him to work and collaborate with them.

717.4 That day, an international convention had been concluded which offered the international organizations yet another means of giving practical effect to human rights. Unesco had since its foundation, and by virtue of the Universal Declaration of Human Rights, pursued a task which had led in 1952 to the adoption of the Universal Copyright Convention. Unesco was glad to have had the opportunity of being associated in the work of drawing up another international convention which, by protecting the rights of performers, producers of phonograms and broadcasting organizations, contributed to a still fuller establishment of human rights.

718 Mr. WOLF (ILO Legal Adviser) [F] joined with his friends of Unesco and the Berne Union in expressing, on behalf of the Director-General of the International Labour Office and on behalf of his ILO colleagues present in Rome, their feelings of profound gratitude towards the President, the Rapporteur-General and the delegates to the Diplomatic Conference. The President had been the pilot who had guided the ship past many reefs to its haven. The task had been a novel one, all the more difficult because there were no precedents. Not only was it apparently the first time that three organizations of international public law had, after many years of effort in their respective spheres, co-operated in convening a conference and providing its Secretariat, but, in addition, the international regulations which the Conference had been asked to draw up were entirely new. However, as André Siegfried had put it more or less, in order to negotiate a treaty, all that was needed was agreement in the hearts and feelings of those concerned. The jurists of Philippe le Bel would always be there to give that agreement its due form. If the Conference had reached a successful issue, it was precisely because the delegates attending it were at once men of great heart and skilful craftsmen. Among them all, the President had been outstanding and all those who had taken part in the Conference would long remember him.

719.1 Mr. MASOUYE (Counsellor-BIRPI) [F], speaking on behalf of the Berne Union and of its Director, Professor Secretan, whose duties had recalled him to Geneva, joined in the tribute and thanks offered to the President and the Italian Government.

719.2 The work of the Conference had been hard, but it had produced a result. The Convention which it had taken so many years to shape had finally come into being. The Berne Union, which had wanted to see the question settled internationally, could but welcome that result. On leaving Rome, all those present would carry with them the conviction that, by bringing their different points of view closer together, they had contributed not only to the protection of the interests concerned, but also to the noble cause of world peace.

SIGNATURE OF THE CONVENTION

720 The following eighteen States *signed* the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: Argentina, Austria, Belgium, Brazil, Cambodia, Chile, Denmark, France, Federal Republic of Germany, Holy See, Iceland, India, Italy, Mexico, Spain, Sweden, United Kingdom, Yugoslavia.

721 Mr. KAMINSTEIN (United States of America) [E] stated that he had cabled his Government for authority to sign the Convention. He had not known that that procedure would be followed and had come only with instructions to return with the Final Act.

722 Mr. PUGET (France) [F] stated that the signature of the Convention by France

also had effect for Andorra, which it represented.

723 Mr. FISHER (Israel) [E] stated that the Government of Israel welcomed the Convention. The State of Israel had so far enacted no legislation in that field, with the exception of a law for the protection of producers of phonograms and the grant of secondary users' rights. However, the State of Israel would certainly take the Convention as a guide for the legislation to be enacted in the near future. He added that his delegation was not in a position to state when Israel would accede to the Convention but expressed the hope that this might occur in the near future.

724 Mr. STRASCHNOV (Monaco) [F] said that the Principality of Monaco reserved the right to sign the Final Act and the Convention at a later date.

SIGNATURE OF THE FINAL ACT

725 The following thirty-five States *signed* the Final Act: Argentina, Australia, Austria, Belgium, Brazil, Cambodia, Chile, Congo (Leopoldville), Cuba, Czechoslovakia, Denmark, Finland, France, Federal Republic of Germany, Holy See, Iceland, India, Ireland, Israel, Italy, Japan, Luxembourg, Mauritania, Mexico, Netherlands, Norway, Peru, Portugal, Republic of South Africa, Spain, Sweden, Switzerland, Tunisia, United Kingdom and Yugoslavia.

726 The PRESIDENT declared that the work of the Diplomatic Conference for the International Protection of Performers, Producers of Phonograms and Broadcasting Organizations was concluded.

727 *The meeting rose at 7.20 p.m.*

Working Party No. II

First meeting[1]

Tuesday, 17 October 1961, at 4.30 p.m.

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)

ELECTION OF THE CHAIRMAN AND RAPPORTEUR

1001 At the proposal of the delegate of Sweden, the working party unanimously *confirmed* the appointment as its Chairman of Mr. Eugen ULMER (Federal Republic of Germany), who was provisionally acting in that capacity.

1002 The working party unanimously *approved* the proposal of the delegate of the United States of America to elect Mr. DE SANCTIS (Italy) as Rapporteur.

CONSIDERATION OF THE DRAFT CONVENTION

1003 The CHAIRMAN [F] after recalling that the working party was to examine Articles 5, 6, 8, 11, 12, 13, 14, 15, and 16 of the Draft Convention (cf. CDR/68, con-

1. Cf. Doc. CDR/WG.II/SR.1 (prov.).

cerning the terms of reference of Working Party No. II), opened the discussion on Article 5.

Article 7, first sentence of paragraph 1, of the Convention (Article 5, first sentence of paragraph 1, of the Draft Convention, CDR/1)

1004 The CHAIRMAN [F] drew the working party's attention to the United Kingdom proposal (CDR/20) to replace the words 'possibility of preventing' in the English text by the words 'ability to prevent'.

1005 Mr. WALLACE (United Kingdom) [E] explained that the United Kingdom proposal was prompted purely by a desire for better drafting. The proposed change would in no way affect the substance of the preamble.

1006 Mr. KAMINSTEIN (United States of America) [E] preferred that the existing wording be improved by the substitution of the word 'means' for the word 'possibility'.

1007 The CHAIRMAN [F] proposed to leave the question to the Drafting Committee for consideration.

1008 Mr. STRNAD (Czechoslovakia) [F] hoped that, in accordance with the draft amendment submitted by his delegation (CDR/31), the text of that paragraph would grant performers a 'right to authorize or prohibit' similar to the right accorded to producers of phonograms by Article 8 of the Draft Convention and to broadcasting organizations by Article 12.

1009 The CHAIRMAN [F], while recognizing the advantages to be gained from bringing the texts of Articles 5 and 8 into line, pointed out that methods of protection varied from one country to another and that the wording proposed by the Czechoslovak delegation would not be well suited to the situation in countries like the United Kingdom where protection was provided, not under civil law, but under criminal law. The difficulty might perhaps be met, however, if it were made clear in the report of the Conference that the wording of the paragraph had been intended to cover such cases.

1010 Mr. WALLACE (United Kingdom) [E] said he would need notice of the question which had just been put to him by the Chairman. It did, however, appear doubtful whether a court of law would consider a reference in the report of the Conference as adequate evidence of the intention of the Conference with regard to the interpretation to be given to the wording of the Convention.

1011 Mr. STRASCHNOV (Monaco) [F] said that the wording proposed by the Czechoslovak delegate would result in endowing performers with an exclusive and transferable right, despite whatever interpretations might be set forth in the report (and the report, moreover, would not necessarily be taken into consideration by all countries). If that wording were adopted, the possibilities of transfer ought to be expressly limited. The simplest solution, however, would be to retain the existing text.

1012 The CHAIRMAN [F] thought that the idea of transferability was not strictly implied by the expression proposed; he added that the question would be given further study later.

1013 Mr. DE SANCTIS (Italy) [F] shared that view. In his opinion, the charge proposed would not affect the particular problem of transferability so much as the very structure of the Convention. He was in favour of maintaining the text of the Draft Convention.

1014 Messrs. PUGET (France) [F], BODENHAUSEN (Netherlands), BERGSTRÖM (Sweden), NAMUROIS (Belgium) and LENNON (Ireland) were likewise in favour of the existing text.

1015 Mr. EDLBACHER (Austria) [F] said that he, too, accepted the text of the Hague Draft, without, however, being opposed to the Czechoslovak proposal.

1016 Mr. TISCORNIA (Argentina) [S] recalled that, at the Hague Conference, he had quoted the example of Argentine law in that connexion. On the other hand, he felt that the right of authorization might seem to be incompatible with copyright which it was the intention to safeguard. Consequently, he did not think that such a provision could be included in the Convention.

1017 Mr. MOOKERJEE (India) [E] explained that performers' rights were not so far expressly recognized in Indian law; he thought it only fair, however, that the proposed Convention should specify certain minimum rights for performers, and should not confine itself to specifying rights for producers of phonograms and for broadcasters.

1018 Mr. MORF (Switzerland) [F] wished to have the meaning of the word 'preventing' clarified. He asked how that term differed from the word 'prohibiting' and whether it was incompatible with a system of compulsory licences.

1019 The CHAIRMAN [F] answered that the term 'preventing' implied the idea of the possibility of preventing, whereas the word 'prohibiting' suggested a subjective right.

1020 Mr. BODENHAUSEN (Netherlands) [F] thought that the term 'preventing' was incompatible with the existence of compulsory licences.

1021 Mr. STRNAD (Czechoslovakia) [F], for whom 'preventing' meant something less than 'prohibiting', regretted that the first of those terms was being retained.

Article 7, paragraph 1, sub-paragraph (a) of the Convention (Article 5, paragraph 1, sub-paragraph (a) of the Draft Convention, CDR/1)

1022 The CHAIRMAN [F] read the text of a United Kingdom proposal to delete that words 'and the communication to the public' (CDR/20).

1023 Mr. STRASCHNOV (Monaco) [F] pointed out that the Convention would be applicable only to international relations and that, in such relations, fixation was an hypothesis no less exceptional than that of 'communication to the public'.

1024 Mr. CHESNAIS (International Federation of Actors) [F] thought that the possibility of transmissions by wire should be taken into consideration.

1025 Mr. NAMUROIS (Belgium) [F] said that it was above all by clearly defining 'live performances' that performers could be relieved of any reason for anxiety.

1026 Mr. STRNAD (Czechoslovakia) [F] proposed to add after the reference to 'communication to the public' the words 'by wire or by wireless'.

1027 Mr. WALLACE (United Kingdom) [E] took it as understood that, in that context, the expression 'communication to the public' meant communication by wire from one place to another, and that it was not intended to refer to the copyright sense of 'communication to the public'. United Kingdom law contained no provision whereby a performer could give or withhold his consent to a live performance by him being transmitted by wire, because that practice was not considered to be a major problem. To meet such an obligation of the Convention would necessitate legislation in the United Kingdom and that in turn might considerably delay ratification.

1028 The CHAIRMAN [F] emphasized that, although communication by wire was exceptional in relations between States, and although the Convention should, in principle, deal only with such relations, it was nevertheless desirable not to disregard national domestic situations. He proposed to take a vote on the United Kingdom draft amendment.

1029 The United Kingdom draft amendment to delete from paragraph 1, sub-paragraph (a), the words 'and the communication to the public' was *rejected* by 16 votes to 3, with 6 abstentions.

1030 Mr. NAMUROIS (Belgium) [F] said he wished to have it indicated explicitly that paragraph 1, sub-paragraph (a), concerned only live performances, and not broadcast programmes.

1031 Mr. STRASCHNOV (Monaco) [F], supporting the opinion expressed on that subject by the Chairman, pointed out that the text was sufficiently clear and that the drafting of sub-paragraph (b) of the same paragraph confirmed the fact that the case of live broadcasts was not covered by sub-paragraph (a).

1032 Mr. NAMUROIS (Belgium) [F] explained, in reply to a question from the Chairman, that he was not asking to have a definition of live performances included in the text of the Convention itself, but merely to have included in the report of the Conference the explanations on the subject that were given in the Hague Report (paragraph 34).

Article 7, paragraph 1, sub-paragraph (b), of the Convention (Article 5, paragraph 1, sub-paragraph (b) of the Draft Convention, CDR/1)

1033 The CHAIRMAN [F] read an Austrian proposal to change the end of the sentence to read: '... of their live performances broadcast or communicated by any other means' (CDR/63).

1034 Mr. BOGSCH (United States of America) [E] observed that there appeared to be some confusion with regard to the notion of a 'live' performance. On another occasion, that point had been raised by a Belgian delegate, who had given it as his understanding that a 'live' performance was a performance which was neither broadcast nor recorded. On the other hand, a speaker addressing an audience in front of him in the hall in which the present sitting was being held, would clearly be giving a 'live' performance—notwithstanding the fact that the transmission of sound within the hall was largely effected by means of wire.

1035 Mr. NAMUROIS (Belgium) [F] admitted that live performances could be communicated to the public by means of wire.

1036 Mr. STRNAD (Czechoslovakia) [F] took the view that the criterion for a live performance was the presence of the performer; it did not matter whether wire was used or not.

1037 Mr. WALLACE (United Kingdom) [E] said that despite the fact that in practice everyone well knew what was meant by a 'live' performance, it was virtually impossible to find wording which would constitute a watertight definition. In those circumstances, it might be preferable to have no definition at all, rather than to attempt to draw up one which would inevitably contain flaws.

1038 The CHAIRMAN [F] nevertheless thought it necessary to determine whether a performance transmitted to the public by means of wire constituted a live performance.

1039 Mr. CHESNAIS (International Federation of Actors) [F] recalled that, in Working Party No. I, the United States delegate had rightly mentioned the case of 'sonorization' or the strengthening of sound for the exclusive use of the audience in the hall.

1040 Mr. LEUZINGER (International Federation of Musicians) [F] was anxious to know whether a performer would be protected in the case of a fixation made in another hall to which the performance was transmitted.

1041 Mr. BODENHAUSEN (Netherlands) [F] said that, in his opinion, there would not be a live performance in such a case.

1042 The CHAIRMAN [F] asked the delegate of Belgium to explain how he proposed to define live performances.

1043 *The meeting rose at 6 p.m.*

Working Party No. II

Second meeting[1]

Wednesday, 18 October 1961, at 10 a.m.

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)

CONSIDERATION OF THE DRAFT CONVENTION (continued)

Article 7, paragraph 1, first sentence and sub-paragraph (a), of the Convention (Article 5, paragraph 1, first sentence and sub-paragraph (a) of the Draft Convention, CDR/1) (continued)

1044 The CHAIRMAN [F] recalled that the Working Party had already adopted the first sentence of the draft of Article 5, paragraph 1, subject to final reconsideration of the wording of the English text.

1045 Mr. STRNAD (Czechoslovakia) [F] presented the Czechoslovak proposal (CDR/31) concerning Article 5, paragraph 1, sub-paragraph (a).

1046 The Czechoslovak proposal was *rejected* by 23 votes to 4, with 1 abstention.

1047 The draft of sub-paragraph (a) was *adopted*.

Article 7, paragraph 1, sub-paragraphs (b) and (c) of the Convention (Article 5, paragraph 1, sub-paragraphs (b) and (c) of the Draft Convention, CDR/1)

1048.1 Mr. EDLBACHER (Austria) [F] presented document CDR/63. He said that the proposed text closely followed that of Article 5 of the Hague Draft; the changes were underlined.

1048.2 In sub-paragraph (c) of the English text, the words 'made without their consent' (clause (i)) and 'exceeds the terms of their consent' (clause (ii)) and in all three texts paragraph 4 should be underlined.

1048.3 Sub-paragraph (b) of the Austrian proposal was intended to protect performers against fixation of their performances transmitted by wire. Such protection was not indeed provided elsewhere, as the Working Party had decided that the term 'broadcasting' did not apply to transmission by wire.

1049 The Austrian proposal was supported by Messrs. WAEYENBERGE (Congo, Leopoldville) [F], MORF (Switzerland) and STRNAD (Czechoslovakia).

1050 Mr. WALLACE (United Kingdom) [E] was not against the amendment in principle but would prefer to reserve his decision until a definition of 'live performances' had been agreed upon.

1051 The draft amendment to paragraph 1(b) of Article 5, proposed by the Austrian delegation, was *adopted* unanimously, with 2 abstentions.

1052 Mr. STRASCHNOV (Monaco) [F] pointed out that the text proposed in document CDR/31 ought not to appear in sub-paragraph (b) but perhaps in sub-paragraph (c), because, if broadcasting or communication were effected from a fixation, the fixation of that broadcast or communication constituted the reproduction of a fixation.

1053 It was decided to *defer* study of that proposal.

1054 Mr. BOGSCH (United States of America) [E] said that, of the alternatives suggested in document CDR/80, the American delegation preferred the version contained in the first paragraph, according to which clauses (i), (ii) and (iii) of paragraph 1(c) of Article 5 would be omitted. That would give performers a more general right of protection against reproduction of fixations of their performances without their consent than that accorded in the Hague Draft. Under the Hague Draft, the performer would have recourse against the copying of records of his performances without his consent only in certain cases

1. Cf. Doc. CDR/WG.II/SR.2 (prov.).

whereas the record manufacturers were protected against such reproduction in an unqualified manner under Article 8. There was no reason, he felt, why the protection of performers should be limited to the cases described, somewhat obscurely, in the existing draft. He also noted that the questions of certain minor exceptions, motion picture rights and special provisions for broadcasting organizations, which were covered in Articles 14 and 16, applied to all parties, and that the provisions of those articles would not be prejudiced by the adoption of a formula granting general protection to performers, as was the case for record makers.

1055 Mr. LENOBLE (France) [F] thought it necessary first to study paragraphs 2 and 3 of Article 5 and Articles 14 and 16 in order to see whether in fact they were not contrary to the rights granted to performers in the first paragraph of Article 5.

1056 The CHAIRMAN [F] observed that the United States proposal touched upon an essential point in the Convention, and that it should be studied first.

1057 Mr. TISCORNIA (Argentina) [S] entirely shared the Chairman's view. The concept must first be defined, and then matters related to that main concept should be dealt with in further provisions.

1058 Mr. WALLACE (United Kingdom) [E] appreciated the United States proposal to simplify the article, but referred to the difficulty experienced by the United Kingdom delegation in accepting the idea of performers as well as record makers having a property right to the recording of their performances, either directly or indirectly, since in the United Kingdom performers were protected solely by the system of criminal sanctions.

1059 Mr. BOGSCH (United States of America) [E] pointed out that the United States amendment under discussion had been drafted before agreement had been reached on paragraph 1 of Article 5, and that the reference to the 'right to authorize or prohibit' contained in the explanatory paragraph of document CDR/80 was consequently no longer valid.

1060.1 Mr. STRASCHNOV (Monaco) [F] said he thought the working party should study paragraphs 2 and 3 before deciding on that extension of the right to authorize or prohibit reproductions.

1060.2 It was not correct to say that the retention of paragraph 2 would not affect relations between performers and broadcasting organizations. The latter were constantly reproducing phonograms in agreement with the gramophone industry. Performers, in their contracts with phonogram producers, did not always grant authorization to reproduce the recording of their performances at the time of the contract. In countries where national legislation protected performers, not only by criminal sanctions but by a property right, performers would be led to have their rights administered by professional associations, as in the case of copyright. But, unlike societies of authors, professional associations would find it in their interest to prohibit the reproduction of phonograms in order to encourage the employment of performers who were nationals of the country where the authorization was requested, even if, and especially if, such performers were second or third rate. The extension of the right to prohibit reproduction would therefore be prejudicial to broadcasting organizations, to phonogram producers and even to authors.

1061 Mr. EVENSEN (Norway) [E] stated that the Norwegian delegation would support the United States proposal provided that a balance was maintained between the interests of the performers and those of the broadcasters. He noted that a new United States amendment had been tabled in document CDR/81 proposing to suppress paragraphs 2 and 3 of Article 5 and was of the opinion that it was important to know

what the fate of those two paragraphs would be before deciding on the amendment under discussion.

1062 Mr. DE SANCTIS (Italy) [F] drew the working party's attention to Italian legislation which based the protection of performers on the rights of labour by giving them the right to a fair remuneration even if there was no contract. Italy took the view that property rights must not be allowed to become so numerous that they paralysed one another.

1063.1 Mr. EDLBACHER (Austria) [F] noted that the proposal of the United States of America was in conformity with Austrian laws which had been in force for the past twenty-five years, without ever giving rise to any difficulties.

1063.2 He favoured the United States proposal, subject to the maintenance of paragraph 3, which empowered national laws to protect broadcasting organizations.

1064 The CHAIRMAN [F], speaking as representative of his Government, stated that that proposal was in conformity with a draft law which was under consideration in the Federal Republic of Germany.

1065.1 Mr. STRNAD (Czechoslovakia) [F] did not share Mr. Straschnov's fears. It was hardly probable that professional associations of performers would exercise their rights in such a manner as to obstruct international exchanges. Moreover, in the case of live performances, performers could exercise their rights themselves; professional associations intervened only in the case of secondary uses.

1065.2 It would be desirable for the United States delegation to propose a precise text on the lines indicated.

1066 Mr. PUGET (France) [F] agreed with the remarks of the delegate of Italy and said that he was against the deletion of paragraphs 2 and 3 of the Hague Draft.

1067 Mr. NAMUROIS (Belgium) [F] emphasized that Article 5 was a compromise formula laboriously worked out at The Hague. It was impossible to cut out part of it without upsetting the balance of that provision and even of the rest of the Draft Convention.

1068.1 Mr. BODENHAUSEN (Netherlands) [F] thought it impossible to reach a decision about the United States proposal before the terms of paragraphs 2 and 3 of Article 5 and Articles 14 and 16 were settled.

1068.2 The proposal of the United States of America differed from The Hague text in two respects: (a) it put the onus of proof on the user, while The Hague text placed it on the performer; (b) it protected performers against the reproduction of any fixation, even a lawful one, of their performances.

1069 Mr. ZINI-LAMBERTI (European Broadcasting Union) [F] felt it his duty to draw the attention of the Conference to the very real difficulties—already referred to by the delegate of Monaco—which the adoption of the United States proposal might create for broadcasting organizations.

1070 Mr. FERSI (Tunisia) [F], supported by Mr. RISTIČ (Yugoslavia), emphasized once again that countries in full process of development, where broadcasting was indispensable to the growth of culture, would not agree to grant performers property rights which would hamper the functioning of broadcasting organizations.

1071 Mr. WALLACE (United Kingdom) [E] did not agree with the Netherlands delegate that the amendment of the United States of America would shift the onus of proof from the performer to the record maker. On the contrary, it would still be up to the performer to show that the reproduction had been made without his authorization.

1072 In response to a suggestion by the Chairman that the feeling of the working party towards the United States amendment might be tested forthwith, Mr. BOGSCH (United States of America) [E] said that

he would prefer not to press the matter to a vote at that stage.

1073 It was therefore agreed to *defer* voting on that amendment.

Article 7, paragraph 2 of the Convention (Article 5, paragraph 3, of the Draft Convention, CDR/1)

1074.1 Mr. LENOBLE (France) [F] emphasized the fact that it must be possible to apply the Convention throughout the world. But the situation was far from being the same in all regions of the world. In America, distances were great, and broadcasting organizations were generally private enterprises of a commercial character. In Europe, distances were smaller, and broadcasting organizations were public services controlled by the State. A similar trend was being seen in Africa.

1074.2 Rebroadcasting was a matter of capital importance; the relays set up between different countries in Europe and even in Africa were indispensable, not only from the technical point of view but also from the cultural and political points of view. Hitherto, efforts had been made to reduce obstacles to cultural exchanges, but if the Convention gave performers the right to prohibit the rebroadcasting of their performances, it would create a new obstacle to such exchanges.

1075 Mr. GALBE (Cuba) [S] said he wished to raise a drafting point. The amendment presented by the delegation of the Federal Republic of Germany (CDR/74) spoke of 'rebroadcasting' and 'fixation' —two very different things—while subparagraph (c) of paragraph 1 spoke of 'reproduction'. In Spanish, at least, the notion of rebroadcasting *(reemisión)* was comprised in the word reproduction *(reproducción)*. He hoped that the Drafting Committee would, if it thought fit, take account of that fact.

1076 Mr. WALLACE (United Kingdom) [E] recalled that Working Party No. I had dealt with the definition of 'reproduction' and he felt that the Convention must adhere throughout to the definitions agreed upon in that working party.

1077 Mr. WEINCKE (Denmark) [E] stated that his delegation was opposed to the inclusion in the Convention of a protection of performers against rebroadcasting of their performances, since that would affect contractual situations existing between performers and broadcasters for the use of their performances.

1078 Mr. EVENSEN (Norway) [E] supported the views of the delegate of France. He opposed the deletion of paragraph 2 and the deletion of the word 'rebroadcasting' in paragraph 2.

1079.1 Mr. STRASCHNOV (Monaco) [F] agreed with Mr. Lenoble's remarks. Europe had two networks of exchanges of television programmes—Intervision in Eastern Europe and Eurovision in Western Europe. The Eurovision network was to be extended to Africa. Rebroadcasting, whatever meaning was given to the term, was involved in all these cases.

1079.2 At a time when every attempt was being made to develop cultural exchanges, it would be paradoxical and even dangerous to create a new obstacle to such exchanges by giving performers property rights.

1079.3 Moreover, such property rights were unnecessary, since performers were able to stipulate, in their contracts, that their performances could not be relayed. If the broadcasting organization then authorized relaying in violation of the contract, the performer could bring a civil action against it.

1079.4 In Europe, it was technically impossible to make an off-the-air relay without the knowledge of the producing organization. If, nevertheless, such a relay were made, the performer could, under the system of the Hague Draft, take action against the producing organization and oblige it to exercise the right it enjoyed under Article 12, paragraph 1.

1079.5 That was a reasonable system for it avoided creating a series of rights to authorize which would mutually paralyse one another.

1080 Mr. WALLACE (United Kingdom) [E] agreed with Mr. Straschnov that the proper recipient of the right to prevent rebroadcasting was the broadcasting organization and not the performer. He also emphasized the importance of avoiding a situation where the contracting States could pass legislation overriding the contractual rights of performers. He referred to the amendment proposed by the United Kingdom in document CDR/77, which was intended to meet in part this problem.

1081 Mr. MOREIRA DA SILVA (Portugal) [F] presented document CDR/78. He explained that, because of the technical needs of broadcasting, the authorization given by the performer to the broadcasting organization should include, *ex jure conventionis*, the authorization to fix his performance.

1082 Messrs. STRASCHNOV (Monaco) [F], LENOBLE (France), DE SANCTIS (Italy) and LENNON (Ireland) supported the United Kingdom proposal.

1083 Mr. BOGSCH (United States of America) [E] welcomed the United Kingdom proposal. He explained that the United States amendment entailing the deletion of paragraphs 2 and 3 (CDR/81) had been proposed for the same reasons, namely to protect the principle of freedom of contract. The State should not have the right to disregard contractual provisions and authorize rebroadcasting, fixation or use of fixations of performances, without the performer's consent. He also noted that the United Kingdom amendment should be made applicable to both paragraphs 2 and 3 and not to paragraph 3 alone.

1084 Mr. WALLACE (United Kingdom) [E] explained that the United Kingdom amendment had been made to apply only to paragraph 3 since that paragraph dealt with the most important problem, namely, the possibility of a broadcasting organization making a fixation of a performance and subsequently using it or allowing its use in breach of contract with the performer and without remunerating him. He admitted that the same principle might be applied to other situations.

1085 Messrs. RISTIČ (Yugoslavia) [F] and NAMUROIS (Belgium) said they were in favour of maintaining paragraphs 2 and 3 of Article 5 and could accept the United Kingdom amendment.

1086 Mr. EDLBACHER (Austria) [F] urged that paragraph 2 be deleted and paragraph 3 maintained; he could agree with the United Kingdom amendment provided that a clause was added to safeguard freedom of contract.

1087 Mr. MOREIRA DA SILVA (Portugal) [F] withdrew his amendment in favour of that of the United Kingdom.

1088 Mr. LENOBLE (France) [F] thought that the withdrawal of the Portuguese amendment was premature. He reserved the right to present another draft amendment on the same lines.

1089 Mr. FERSI (Tunisia) [F], supported by Mr. WAYENBERGE (Congo, Leopoldville), considered that the United Kingdom proposal might provide a compromise solution if the existing paragraphs 2 and 3 were maintained.

1090 Mr. RATCLIFFE (International Federation of Musicians) [E] wished to remind the meeting that the question under consideration was the protection of performers, not of broadcasters. Was this protection to be limited only to such as would not cause inconvenience to broadcasting organizations? He pointed out that performers had frequently included in their contracts with impresarios and even with broadcasters a clause stipulating that they would not be allowed to broadcast for some weeks after the date of their performance in the country where their performance took place. Such contracts would no longer be

possible if rebroadcasting without the performer's consent were allowed, since no performer could guarantee to observe such a clause. The speaker also warned that if broadcasting organizations depended too much on imported performances available in fixations, they would discourage the development of national talent.

1091 Mr. BOGSCH (United States of America) [E] withdrew his amendment proposing to delete paragraphs 2 and 3 and accepted the United Kingdom amendment as a basis for discussion. He wished to emphasize two points: first, that the paragraphs should be so drafted as to make it clear that the making and reproduction of fixations, rebroadcasting and so forth are as a general rule governed by contract and that it is only where contracts do not exist that the national legislation may regulate the performer's rights; and, second, that the United Kingdom amendment should be made applicable to paragraph 2 as well as to paragraph 3 since the former referred to rebroadcasting, which was a question of the use of fixations very similar to the matters dealt with in paragraph 3.

1092.1 The CHAIRMAN [F] proposed to entrust to a sub-group the task of formulating proposals, in the light of the discussion, concerning paragraphs 2 and 3 of Article 5 of the United Kingdom draft amendment, and the definition of the term 'rebroadcasting'. The sub-group might be made generally responsible for drafting the working party's decisions and compromise formulas.

1092.2 The sub-group might be composed of representatives of the following countries: Argentina, France, Netherlands, Sweden, United Kingdom, United States of America. The Chairman and Rapporteur of Working Party No. II might also be present at its discussions.

1093 The above proposal was *adopted.*

1094 Mr. DRABIENKO (Poland) [F], supported by Mr. STRNAD (Czechoslovakia), explained that, if it were decided to refuse performers the right to authorize, it would be necessary to give them, *ex jure conventionis*, the right to equitable remuneration (cf. CDR/41).

1095 Mr. BOGSCH (United States of America) [E] felt that that amendment would open the way to restriction by the State of freedom of contract in broadcasting, and the establishment of compulsory licences and tariffs. If that interpretation were correct, the Polish amendment would invalidate the performer's consent which had already been agreed to in paragraph 1 of Article 5. The United States delegation would oppose such an amendment since in their view the conditions of broadcasting should be regulated in the first instance by contract and not by State intervention.

1096 The CHAIRMAN [F] pointed out that the text covered two separate cases: (a) the broadcasting of live performances, which would be protected by the terms of paragraph 1, sub-paragraph (a), already adopted by the working party; (b) recording for the purposes of such broadcasting, to be protected by national legislation, which must ensure respect for contracts.

1097 Mr. STRASCHNOV (Monaco) [F] pointed out that performances given in studios represented 90 per cent of the cases in point and that the broadcasting of public performances was generally regulated by contracts between the broadcasting organization and the impresarios. He would like to know what difference there was between 'public performances' and 'non-public performances'.

1098.1 Mr. DRABIENKO (Poland) [F] agreed to the deletion of the words 'recording for the purposes of such broadcasting'.

1098.2 The object of his proposal was to give performers a protection which would not be more extensive than that enjoyed by authors (system of compulsory licences

in conjunction with equitable remuneration).

1099 Mr. STRASCHNOV (Monaco) [F] pointed out that, as it stood, paragraph 2, which left to national legislation the duty of providing protection for performers, also left it the choice of the system of protection (criminal sanctions, exclusive rights or even compulsory licences).

1100 The CHAIRMAN [F] stressed the fact that paragraph 2 covered only cases in which the performer had consented to the broadcasting; it therefore did not permit national legislation to make the broadcasting of live performances subject to the system of compulsory licences.

1101 Mr. BOGSCH (United States of America) [E] again emphasized that the existing draft of paragraph 2 would entitle the State to take away the rights of performers whereas, if the United Kingdom proposal were accepted, the State could intervene only where no contract existed. In his view, a compulsory licence should be allowed only in such cases; the contract was the first and most important means of regulation and legislation should be secondary to it.

1102.1 Mr. LEUZINGER (International Federation of Musicians) [F] very much regretted that the United States delegation had withdrawn its proposal concerning the deletion of paragraphs 2 and 3.

1102.2 The Federation was strongly in favour of the United Kingdom draft amendment (CDR/77), but it was seriously disturbed by the Polish proposal (CDR/41) and earnestly hoped that the Conference would not agree to it.

1103 Mr. GALBE (Cuba) [S] wondered whether mention should not be made in paragraph 2 of a certain type of broadcast by means of which private broadcasting companies obtained additional profits (for example, records played in response to special requests). Such a case was not covered by any of the sections of paragraph 1 and could quite well be included in paragraph 2, by adding after the words 'rebroadcasting, fixation for broadcasting and the reproduction of such fixation for broadcasting purposes', the words 'and any other use which would bring in money to broadcasters'. It was not fair for performers to be deprived of protection in situations of that kind which still existed in many countries.

1104 The amendment to Article 5 proposed by the Polish delegation was *rejected* by 25 votes to 3, with 3 abstentions.

1105 Mr. BERGSTRÖM (Sweden) [E] drew attention to the fact that in Swedish copyright regulations the question of ephemeral recordings was of considerable importance in the relations between performers and broadcasting organizations. He felt that Article 14, which covered that matter, should also be discussed by the sub-group in connexion with their discussion of Article 5, since the two questions were closely related and the Swedish delegation could not agree to a draft of Article 5 before knowing what decision would be taken on that question of ephemeral recordings.

1106.1 Mr. EDLBACHER (Austria) [F] explained that his amendment (CDR/63), which reproduced sub-paragraph 2(c) of Article 4 of the ILO draft, was intended to make it possible for performers to discharge their contractual obligations.

1106.2 In reply to a remark by the Chairman, he said that he was prepared to insert, at the beginning of the text, the words 'In the event of an assignment of rights'.

1107 Mr. WALLACE (United Kingdom) [E] supported the Austrian amendment. It was his understanding that a performer, even if he assigned to his trade union or professional association his right of consent to the use of fixations of his performances, could not deprive himself of the right to perform.

1108 Mr. STRASCHNOV (Monaco) [F]

supported that proposal. It would be useful not only to users of performances, but also to the performers themselves. The text ensured that performers would be able to fulfil their professional engagements even if they had assigned their rights, in advance and for a specified period, to a professional organization.

1109 Mr. DE SANCTIS (Italy) [F], supported by Messrs. BERGSTRÖM (Sweden) and PUGET (France), took the view that the question should be left to national legislation.

1110 Mr. LEUZINGER (International Federation of Musicians) [F] asked whether that text would permit a performer who had assigned all his exclusive rights to a recording company to enter into a contract with another company.

1111 Mr. STRASCHNOV (Monaco) [F] replied that the two questions were quite distinct. The assignment of rights to a professional organization had nothing in common with a contractual obligation towards a company.

1112 Mr. BOGSCH (United States of America) [E] asked whether the amendment would mean that, if a performer who had assigned his rights to a trade union thereafter authorized a broadcasting organization to broadcast a performance in violation of his contract, he would be immune from the consequences of his breach of contract and the broadcasting organization concerned would also be relieved of any responsibility in the matter. If so, the United States delegation, along with the French, Italian and other delegations, would oppose the amendment.

1113 Mr. EDLBACHER (Austria) [F] replied that his proposal concerned only contracts which had already been concluded. In such a case, the company to which a performer had assigned his rights could not prevent him from carrying out his contractual obligations.

1114 Mr. STRASCHNOV (Monaco) [F] pointed out that if that clause was included in the Convention, it would be clearly understood that performers did not assign their rights to a professional organization except on condition of being able to fulfil their contractual obligations. The effect of the proposal would not, therefore, be to permit breaches of contract, but it would, on the other hand, guarantee freedom of contract.

1115 Mr. NAMUROIS (Belgium) [F] supported the Austrian proposal.

1116 Mr. STRNAD (Czechoslovakia) [F] thought that the proposal was dangerous because it could, for example, enable performers to elude certain inconvenient clauses in the contract they had concluded with their trade union. Moreover, its consequences would not necessarily be favourable to performers, since it was possible that the conditions of the contract entered into between them and their trade union would be more favourable than those of the contract they signed with a firm.

1117 Mr. GRAVEY (International Federation of Actors) [F] thought that the proposal would hamper the work of professional or trade union associations, especially concert associations, which performers joined freely.

1118 Mr. BOGSCH (United States of America) [E] said that he felt very strongly that the Convention should not contain anything which would be a restriction of freedom of contract.

1119 Mr. RATCLIFFE (International Federation of Musicians) [E] preferred the expression 'assignee', as used in the United Kingdom, to the term 'trade unions' which was being frequently used in connexion with the assignment of rights. He pointed out that the practical effect of the Austrian amendment would be to make performer's rights unassignable, since no assignee would accept an assignment of rights if these were at the same time retained by the performers.

1120 Mr. EDLBACHER (Austria) [F] repeated that the proposal was intended only to enable performers to respect whatever obligations they had contracted with broadcasting organizations, producers of phonograms, etc.

1121.1 Mr. GALBE (Cuba) [S] was surprised that use should have been made of terms like penal protection of performers, which was something he had never even thought of when he spoke earlier.

1121.2 He said that his delegation would be prepared to accept the amendment presented by the delegation of Austria, provided that point 4 of the amendment was modified as follows: 'Notwithstanding other rights, transferred by performers to an individual or a corporate body, it may be reserved (instead of "it is in all cases reserved") to performers, etc.', the following words being added at the end: 'or broadcasting, *when the person concerned has formulated such a reservation on signing the principal contract*'.

1122 With reference to the proposal of the Austrian delegation, Mr TISCORNIA (Argentina) [S] thought that the best solution might be to keep to the general principle of law according to which no one could assign a greater right than the one he possessed. That question could be settled by national legislation.

1123 In reply to a proposal to adjourn the meeting made by Mr. STRNAD (Czechoslovakia), Mr. DE SANCTIS (Italy) [F] said that, whatever the exact meaning of that proposal might be, the working party should reach an immediate decision on the question of principle, which was a clear one: ought the Convention to contain provisions concerning the assignability of rights and rules of interpretation for contracts?

1124 Mr. GALBE (Cuba) [S] pointed out that, in his previous remarks, he had not sought to offer interpretations of any kind. He had merely wished to refer to the possibility that private individuals who signed contracts with other private bodies might or might not reserve certain specific rights. The purpose of his statement had indeed been to obviate future interpretations and later discussions.

1125 The proposal set forth in paragraph 4 of document CDR/63 was *rejected* by 21 votes to 8, with 3 abstentions.

1126 *The meeting rose at 1.15 p.m.*

Working Party No. II

Third meeting[1]

Wednesday, 18 October 1961, at 3.30 p.m.

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)

CONSIDERATION OF THE DRAFT CONVENTION (continued)

Article 7 of the Convention (Article 5 of the Draft Convention, CDR/1) (continued)

1127 The CHAIRMAN [F] announced that two documents had been presented concerning the definition of direct performances, namely document CDR/84, submitted by

1. Cf. Doc.CDR/WG.II/SR.3 (prov.).

the Belgian delegation, and document CDR/83, prepared by himself.

1128 Mr. BODENHAUSEN (Netherlands) [F] asked for further particulars concerning the two definitions proposed. If there was a direct performance which was transmitted by wire at the same time to another place for the benefit of an audience, was it still regarded as a direct performance or not? The question was important. In his view, a definition was unnecessary, and he therefore preferred to abide by the Hague Draft.

1129 The CHAIRMAN [F] thought that, in such a case, the performance in the first hall was direct but that the performance transmitted was indirect.

1130 Mr. DE STEENSEN-LETH (Denmark) [E] said the decisive criterion should not be whether a performance was transmitted to another place but whether it was transmitted to another audience. There were cases where performances, such as lectures, for example, were transmitted to another locality when the hall in which they were given was too small to hold the audience.

1131 Mr. NAMUROIS (Belgium) [F], in order to meet Mr. Bodenhausen's objection, proposed that the word 'or' be included after the word 'and' in the first paragraph.

1132.1 The CHAIRMAN [F] pointed out that the first paragraph of the Belgian proposal mentioned live performances which *took place*, whereas the second paragraph referred to performances which were *used*.

1132.2 There was also the case in which the performer did not participate in a direct performance; for instance, when the latter was given in a broadcasting studio it could not be said that it took place in the presence of a specific audience.

1132.3 That was why his own amendment was drafted in a negative form.

1133.1 Mr. BOGSCH (United States of America) [E] said he had some difficulty in accepting the Belgian proposal, which, in the second paragraph, spoke of performances 'used for other purposes'. There was no mention of the purpose for which they could be used.

1133.2 He agreed that 'performances' relayed to people outside churches or main meeting halls because there was insufficient room inside to hold them should be classified as 'direct performances'. That might well be added to any definition of the term.

1133.3 He suggested that the working party's report should make it quite clear that if a performance was both direct and indirect, it should be considered as indirect. A broadcast of a live performance was both direct and indirect and should, therefore, be considered an indirect performance. The Chairman's definition took account of that point.

1134.1 Mr. STRNAD (Czechoslovakia) [F] felt that the fundamental difficulty was to find a solution according to whether the problem was considered from the standpoint of the performer or from the standpoint of the audience.

1134.2 From the standpoint of the performer, every performance given by the performer in person was direct; it was indirect only in the circumstances indicated in the Belgian amendment.

1135 Mr. NAMUROIS (Belgium) [F] considered that a studio performance was a broadcast performance; a direct performance was one designed primarily for a given audience; a performance had other purposes when it was used for an audience other than the one for which it was originally intended.

1136 Mr. WALLACE (United Kingdom) [E] considered it would be better to have no definition than one which might have unforeseen consequences. The definitions in documents CDR/83 and CDR/84 both gave rise to difficulties and, in his view, it would be unwise to adopt either.

1137 Mr. EVENSEN (Norway) [E] pointed out that the terminology used in Article 5 was different from that in documents CDR/83 and 84; Article 5 spoke of 'live

performances and the definitions in the two documents of 'direct' and 'indirect' performances.

1138 Mr. BODENHAUSEN (Netherlands) [F] said that performers must be protected against the making of unlawful fixations. Mr. Strnad's observations were well founded; a distinction must be made between the performer and the audience. An indirect performance could be taken to mean the communication of a performance to an audience not present at the place where the performance was given. Every performance not covered by that definition was a direct performance.

1139 The CHAIRMAN [F] thought that the working party was in agreement not to have a definition included in the Convention, but simply to leave it to its Rapporteur to include the definition in the working party's report.

1140 Mr. STRNAD (Czechoslovakia) [F] took the view that a definition should be included in the Convention as the term 'live performances' appeared in Article 5.

1141 The CHAIRMAN [F] preferred that the question should be dealt with in the working party's report, not by way of giving a definition but simply by mentioning the observations made during the discussions.

1142 Mr. GALBE (Cuba) [S] said he did not agree with the procedure proposed, for he felt it was the working party itself that should settle the question.

1143.1 Mr. PUGET (France) [F] thought that the term 'direct performance' would give rise to controversy; but he agreed that the Convention should contain a fairly short and comprehensive definition, which would be supplemented in the report.

1143.2 He proposed the adoption of the definition suggested by the delegate of the Netherlands, namely 'an indirect performance is the communication of a performance to an audience not present at the place where the performance is given'.

1144 The CHAIRMAN [F] emphasized that the question which arose was whether a definition should be included in the Convention.

1145 Mr. STRNAD (Czechoslovakia) [F] felt that it was essential to include a definition, as the term 'live performances' which occurred in paragraph 1(b) was of fundamental importance.

1146 Mr. BOGSCH (United States of America) [E] said it was extremely difficult to decide on a definition before seeing the context in which the expression appeared in the Convention. He suggested that the working party should complete its discussion of Article 5 and, after seeing the new draft which was to be prepared, should then decide whether any definition was necessary and, if so, what form such definition should take.

1147 Mr. TISCORNIA (Argentina) [S] proposed a combined solution: a direct performance could be defined as one given by the performer in the presence of an audience or transmitted by a loudspeaker; then all other performances would be described as indirect performances.

1148 Mr. NAMUROIS (Belgium) [F] said he did not consider his proposal to be absolutely perfect and suggested that the question be referred to the small sub-group so that the latter might endeavour to reconcile all the various points of view.

1149.1 Mr. WAEYENBERGE (Congo, Leopoldville) [F] was in favour of including a definition in the Convention, particularly as Article 10 of the draft included several definitions of other terms.

1149.2 With reference to the definition proposed by the Belgian delegation, he wondered whether an unrecorded performance also did not constitute a direct performance, even if it did not take place in the presence of an audience.

1150 The CHAIRMAN [F], in view of the very limited time at the working party's disposal for the performance of its task, repeated his proposal that it should be left

to the sub-group to suggest a solution.

1151 It was so *decided.*

1152.1 The CHAIRMAN [F] observed that, sub-paragraphs (a) and (b) of paragraph 1 of Article 5 having been adopted, sub-paragraph (c) still remained to be considered; he proposed to revert to that sub-paragraph at a later meeting.

1152.2 As to paragraph 2, the delegation of the Federal Republic of Germany had decided to withdraw its amendment (CDR/74).

1152.3 The Mexican delegation had presented an amendment (CDR/48) designed to add a new paragraph to Article 5. Personally, he considered it unnecessary to provide that national laws should specify the form and manner referred to in the amendment; moreover, it was dangerous to speak of the 'form'.

1153 Messrs. WALLACE (United Kingdom) [E], BODENHAUSEN (Netherlands), PETRÉN (Sweden) and EDLBACHER (Austria) agreed with the Chairman.

1154 In the absence of Mr. Gaxiola (Head of the Mexican delegation), his delegation requested the postponement of the discussion of document CDR/48.

1155 It was so *decided.*

1156 The CHAIRMAN [F] said that the question of secondary uses should be considered in connexion with Article 11.

1157 Mr. STRNAD (Czechoslovakia) [F] proposed that performers should be given the right over any further use of their performances (cf. CDR/31).

1158 The CHAIRMAN [F] asked what were the further uses to which the speaker had referred. The use by communication to the public was dealt with in Article 11 of the draft.

1159 Mr. STRNAD (Czechoslovakia) [F] said that he had in mind, for instance, the recording of a musical performance which could be used again for purposes other than those mentioned in Article 5.

1160 The CHAIRMAN [F] stated that a recording constituted a fixation or reproduction, the first of which was provided for in sub-paragraph (b) and the other in sub-paragraph (c).

1161 Mr. WALLACE (United Kingdom) [E] said he was not in favour of the Czechoslovak amendment.

1162 Mr. STRASCHNOV (Monaco) [F] shared the view of the United Kingdom delegate; the expression 'further use' was so wide that its interpretation would be difficult.

1163 Mr. GALBE (Cuba) [S] was in favour of the Czechoslovak amendment.

1164 Mr. PUGET (France) [F] was against the Czechoslovak delegation's proposal.

1165 Mr. STRNAD (Czechoslovakia) [F] withdrew his proposal.

1166 The CHAIRMAN [F] declared the debate on Article 5 closed. The consideration of paragraphs 2 and 3 would be resumed after the discussion by the sub-group. The consideration of sub-paragraph (c) of paragraph 1 would be resumed after examination of the sub-group's report.

1167 Mr. WALLACE (United Kingdom) [E] said he would not press the proposals made by his delegation for amending Article 5 (CDR/20) at the present juncture, but reserved the right to do so, if necessary, after seeing the new draft.

1168 Mr. STRASCHNOV (Monaco) [F] drew attention to paragraph 2 of the amendment presented by the Austrian delegation (document CDR/63) and inquired whether that proposal had been withdrawn or not.

1169.1 Mr. EDLBACHER (Austria) [F] said that the purpose of the Austrian proposal was to allow national legislation to regulate the validity of contracts, particularly collective contracts, with respect to performers participating in performances while in the employ of or under contract with the organizer of such performances

1169.2 The situation could have repercussions at the international level in cases where the criterion was the performer's

country and where the broadcast was effected on the territory of a non-Contracting State.

1170 The CHAIRMAN [F] considered that that was a contractual question.

1171 Mr. PUGET (France) [F] pointed out that the adoption of paragraph 2 of the Austrian amendment would entail the deletion of paragraph 2 of Article 5 of the Hague Draft. He personally thought that the latter was adequate and preferable to the amendment.

1172 Mr. WALLACE (United Kingdom) [E] said that the examination of the effect of contractual relationships came within the working party's terms of reference, and there was no reason why the point just raised should not be discussed.

1173 The CHAIRMAN [F] asked the Austrian delegate if he was agreeable to his proposal being discussed by the subgroup.

1174 Mr. EDLBACHER (Austria) [F] said he agreed.

Article 8 of the Convention (Article 6 of the Draft Convention, CDR/1)

1175 The CHAIRMAN [F] thought that the amendments presented by the delegations of Belgium (CDR/66) and Monaco (CDR/32) were similar. Unlike the Hague Draft, which was permissive, both amendments were mandatory.

1176.1 Mr. STRASCHNOV (Monaco) [F] emphasized that his amendment was not intended to make it obligatory for national legislation to determine the conditions under which performers' rights must be exercised.

1176.2 As it stood, Article 6 did not state that performers participating in the same performance constituted a group. Thus, it was possible that the laws of some particular country might contain no provisions on that matter and that it would therefore be necessary to consult all the performers individually, which might give rise to serious difficulties. The national legislation might specify the representatives of a group of performers but it might, on the other hand, not do so, in which case performers' rights would be governed by the ordinary law of the country concerned. It was clearly understood, as indicated by the amendment, that the rights in question would be exercised in accordance with the national laws and regulations.

1177 Mr. NAMUROIS (Belgium) [F] stated that the Belgian delegation had the same objects in view as the delegation of Monaco but that the Belgian proposal went further than that of Monaco. During the discussions of The Hague Committee of Experts, the performers' representatives had stated in that connexion that the interests of those participating in a group performance were not always the same—for instance, the interests of soloists and those of the conductor of the orchestra. It was not possible to admit the existence of two groups which would adopt a conflicting attitude with respect to the same performance.

1178 The CHAIRMAN [F] considered that the Belgian proposal was perfectly clear. As to the proposal of Monaco, it was not possible to stipulate in an international convention that performers should exercise their rights jointly, since ideas on the matter varied considerably from one national body of law to another.

1179 Mr. BOGSCH (United States of America) [E] said he was convinced that Article 6 was one of the most important articles in the Convention since, in reality, 99 per cent or more performances were given by two or more artists. He was somewhat concerned that the Hague Draft and the amendments submitted by the Belgian and Monaco delegations left States free, through national laws and regulations, to determine how performers were to exercise their rights, even where the method of exercising their rights had been regulated by contract. In his view, that meant that the rights given to performers under Article 5 could be

rendered ineffective by national legislation. The purpose of the United States amendment (CDR/82) was to ensure that national legislation would come into play only if no free agreement were reached among performers taking part in the same performance. National laws should not oblige performers participating in the same performance to agree to or desist from exercising their rights.

1180 Mr. BODENHAUSEN (Netherlands) [F] was satisfied with The Hague text and saw no advantage in adding the word 'jointly'. The national legislation must retain complete freedom in the matter.

1181 Mr. STRNAD (Czechoslovakia) [F] thought that nothing should be added to Article 6.

1182 Mr. PUGET (France) [F] agreed with Mr. Bodenhausen. Article 6 had been discussed at length at The Hague; but he saw no objection to the adoption of the word 'collective'.

1183 Mr. DE SANCTIS (Italy) [F] said he, too, agreed with Mr. Bodenhausen and was satisfied with Article 6 as it stood.

1184 Mr. JOUBERT (South Africa) [E] said he was satisfied with Article 6 of the Hague Draft, but felt it might be better if the contractual element were placed first, namely, if the Article read 'if several performers participate in the same performance, any Contracting State may . . . '.

1185 Mr. TISCORNIA (Argentina) [S] was opposed to the Monaco and Belgian amendments and thought that the text of Article 6 as approved at The Hague should be maintained, as he felt it was a solution acceptable to all. He reserved his opinion concerning the United States amendment.

1186 Mr. EVENSEN (Norway) [E] shared the views of the Netherlands, French and Italian delegates; Article 6 should be retained as it stood.

1187 Mr. FERSI (Tunisia) [F] approved the text of Article 6 as it stood subject to the addition proposed by France.

1188 Mr. BOGSCH (United States of America) [E], referring to the remarks of the Netherlands delegate, said that unless he was labouring under a misapprehension, if the question of how performers were to exercise their rights was left to each Contracting State, any agreement reached by performers participating in the same performance could be set aside by national legislation. For example, a French orchestra might give a broadcast performance which a foreign broadcasting organization wanted to record and use. Under Article 5, performers were given the right to authorize or refuse the making of a fixation of their performance, but if the national legislation of that foreign country had freedom to determine how the performers' rights could be exercised, the broadcasting company concerned might be able to make a fixation whether the French artists liked it or not. In such a case, the performers' right would be useless. The United States delegation wanted to ensure that such a situation could not arise. There was no problem with regard to the legislation of the country in which the performance took place, only with regard to the laws of foreign countries, since the Convention only dealt with international situations.

1189.1 The CHAIRMAN [F] thought that, in certain States, the question was regulated by law and not by agreement between the performers. Regulation by law was justified, as regulation by agreement between the performers would be complicated. In his view, national laws would regulate the questions concerned on a reasonable basis.
1189.2 He proposed that the United States amendment be put to the vote first. The problem was whether the matter should be settled in the first place by agreement between the performers and, if such agreement were not possible, by national legislation.

1190 Mr. GALBE (Cuba) [S] requested that a vote be taken on Article 6 of the Hague Draft.

1191 The CHAIRMAN [F] said that the

amendments must be put to the vote first.

1192 The amendment presented by the United States of America was *rejected* by 26 votes to 2, with 3 abstentions.

1193 Mr. BOGSCH (United States of America) [E] proposed that the words 'specify the conditions under which performers exercise their rights' be replaced by the words 'specify who represents performers in the exercise of their rights'. That would ensure that Article 6 could not be interpreted to mean that national legislation could ignore the rights of performers participating in the same performance.

1194 Mr. EVENSEN (Norway) [E] opposed that amendment.

1195 Mr. GALBE (Cuba) [S] recalled that oral amendments had not been accepted at the morning meeting; he saw no reason to adopt a different procedure in the afternoon.

1196 Mr. STRNAD (Czechoslovakia) [F] drew attention to the fact that there had been an interruption during the vote.

1197 Mr. PUGET (France) [F] was opposed to the amendment proposed orally by the United States delegate and requested that Article 6 be put to the vote as it stood.

1198 Mr. WAEYENBERGE (Congo, Leopoldville) [F] said he, too, was opposed to the United States proposal, which he considered to be too restrictive.

1199 Mr. BELINFANTE (Netherlands) [E] said that since the wording proposed by the United States delegate reflected the views of the Hague Conference and was clearer than that of the Hague Draft, he was prepared to accept it.

1200 Mr. RATCLIFFE (International Federation of Musicians) [E] feared that the United States proposal might operate to the disadvantage of performers, since it left open the possibility that national legislation might, for example, designate the conductor of an orchestra. The consequences of adopting such an amendment might be serious. He felt that the United States delegation was giving a very strict interpretation to the word 'conditions'; the Chairman's interpretation was more acceptable. The small sub-committee might consider the desirability of finding a better word.

1201 Mr. JOUBERT (South Africa) [E] supported the United States amendment.

1202 Mr. TISCORNIA (Argentina) [S] considered that the United States amendment was not inconsistent with the text of Article 6 as approved at The Hague. The conditions mentioned in that article included the designation of the representative of performers participating in the same performance.

1203 Mr. TROLLER (International Literary and Artistic Association) [F] thought that the amendment was dangerous and that the text should remain unchanged.

1204.1 The CHAIRMAN [F] believed the question was one of drafting and that it should be possible to find a form of words acceptable to all.

1204.2 He proposed to put the Belgian and Monaco amendments to the vote. The United States delegate was free to present his proposal in writing.

1205 Messrs. STRASCHNOV (Monaco) [F] and NAMUROIS (Belgium) said that, in the light of the discussion, they would withdraw their amendments.

1206 The CHAIRMAN [F] stated that, in principle, Article 6 was adopted, on the understanding that the delegate of the United States of America could, if he wished, submit his proposal in writing.

1207 Mr. MOREIRA DA SILVA (Portugal) [F] thought that consideration should be given to the French delegate's proposal to add the word 'collective'. If it were not proposed to put it to the vote, he suggested that it be referred to the Drafting Committee.

1208 Mr. PUGET (France) [F] preferred the word 'collectively', but he would not press the suggestion, for it was a drafting question.

1209 The CHAIRMAN [F] suggested that it be left to the Drafting Committee of the Conference to settle the question.

1210 *The meeting rose at 5 p.m.*

Working Party No. II

Fourth meeting[1]

Thursday, 19 October 1961, at 10 a.m.

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)

CONSIDERATION OF THE DRAFT CONVENTION (continued)

Article 7 of the Convention (Article 5 of the Draft Convention, CDR/1) (continued).

1211 The CHAIRMAN [F], referring to the amendment to Article 5 which had been presented the day before by the Mexican delegation (CDR/48) and recalling that that amendment, which would permit the establishment of compulsory licences, had not been favourably received by members of the working party, asked the Mexican delegate if he was prepared to withdraw it.

1212 Mr. GAXIOLA (Mexico) [S] said that, as Article 5 referred only to relations of an international character and as, in Mexico, when the Senate approved an international convention, the latter automatically acquired the force of law, he would like to ask the following two questions: (a) What procedure should be adopted in order to prevent the violation of performers' rights? (b) What sanctions should be taken against those who violated such rights? The Mexican delegation would have no objection to withdrawing its proposal provided that the meeting answered those two questions.

1213 The CHAIRMAN [F] pointed out that the text as it stood allowed States to have recourse to both civil law (creation of a subjective right) and criminal law in order to ensure the exercise of the rights mentioned in Article 5.

1214 Mr. GAXIOLA (Mexico) [S] considered that the Chairman's answer was satisfactory and requested that it be mentioned in the working party's report.

1215 The CHAIRMAN [F] agreed to the inclusion of his explanation in the working party's report.

Article 10 of the Convention (Article 8 of the Draft Convention, CDR/1)

1216 The CHAIRMAN [F] read out the amendments proposed by the delegations of Czechoslovakia (CDR/31), India (CDR/50), Denmark (CDR/62), Belgium (CDR/70), Austria (CDR/76) and Portugal (CDR/88).

1217 Mr. DE WAERSEGGER (Belgium) [F] emphasized that partial reproductions should be protected in the same way as total reproductions.

1218 Mr. WALLACE (United Kingdom) [E] felt that the wording of Article 8 could be improved if it were to incorporate a specific reference to the reproduction, directly or indirectly, of phonograms.

1219 The CHAIRMAN [F], while agreeing that protection should be provided against partial reproductions, thought it would nevertheless be dangerous to include the words 'in whole or in part' in the text of that article, seeing that they did not appear in the article concerning performers or broadcasting organizations. If those words were included, it might be inferred that only phonogram producers were entitled to be protected against partial reproductions.

1220 Mr. TISCORNIA (Argentina) [S] recalled the doubts which had been expressed by the Cuban delegate with regard to the exact meaning of the term 'reproduction'. In the speaker's view, the article concerned referred to copies of the phonogram, but it could be interpreted as meaning that a phonogram used for broadcasting purposes constituted a reproduction when it was rebroadcast. The article should be made clearer in order to avoid any confusion on the part of those who were unacquainted with the technical significance of the terms employed.

1. Cf. Doc. CDR/WG.II/SR.4 (prov.).

1221 Mr. GAXIOLA (Mexico) [S] said that, in view of the various kinds of relations which might be established in that connexion between the author and the performer, on the one hand, and the phonogram producer, on the other, it might be useful to complete Article 8 by adding at the beginning the words 'without prejudice to the rights of authors and performers'.

1222 Mr EDLBACHER (Austria) [F] proposed that it should be mentioned in the Rapporteur-General's report that the three groups concerned would enjoy the same protection against partial reproductions.

1223 Mr. DE WAERSEGGER (Belgium) [F] agreed with that suggestion.

1224 Mr. TROLLER (International Literary and Artistic Association) [F] drew attention to a memorandum explaining his association's point of view, which should not be interpreted as opposition to the very principle of the Convention. As to Article 8, he was surprised that a subjective right was accorded to phonogram producers but no similar right to performers. He thought that protection by means of criminal sanctions was just as effective as the creation of a subjective right.

1225.1 The CHAIRMAN [F] explained that the difference between the wording of Article 5 and that of Article 8 was not due to any ill-will towards performers but simply to the desire to take account of the special situation in the United Kingdom, where a subjective right was accorded only to phonogram producers.

1225.2 Replying to certain questions asked by delegates concerning the definition of the term 'reproduction', the Chairman said that the term was to be interpreted in a very broad sense; it covered, in particular, the repressing and fixation of a phonogram used for broadcasting purposes. It could be given all its recognized meanings, particularly if the text mentioned 'direct and indirect reproductions' as proposed by the delegations of Belgium (CDR/70) and Denmark (CDR/62).

1226 Mr. DE SANCTIS (Italy) [F] proposed that the question should be studied further by the Drafting Committee.

1227 Mr. BODENHAUSEN (Netherlands) [F] supported the proposals made by Belgium and Denmark, to the effect that the words 'direct or indirect' should be included in the text of the article before the word 'reproduction', as well as the suggestion that the Rapporteur-General's report should mention that partial reproductions would be protected in the same way as total reproductions. On the other hand, he was opposed to the Austrian proposal (CDR/76), for the right it proposed was not even enjoyed by authors, and to the Portuguese proposal (CDR/88), the substance of which was already covered by Article 14 of the Draft Convention.

1228 Mr. EDLBACHER (Austria) [F] said he, too, was in favour of including the words 'direct or indirect'.

1229 Mr. STRNAD (Czechoslovakia) [F], replying to the remarks made by the observer of the International Literary and Artistic Association, said that Article 5 did not in any way prevent a State from creating subjective rights for the benefit of performers.

1230 Mr. MOREIRA DA SILVA (Portugal) [F] said he too was in favour of including the words 'direct or indirect'.

1231 The CHAIRMAN [F] noted that there was general agreement on the need to amend the article by including the words 'direct or indirect' before the word 'reproduction' and by deleting the words 'either directly or when broadcast'. He opened the discussion on the Portuguese proposal (CDR/88).

1232 Mr. MOREIRA DA SILVA (Portugal) [F] emphasized that his amendment, which excluded the right to prohibit reproductions made by broadcasting organizations, was inspired essentially by technical considerations. In view of the complexity of the work involved in the preparation of programmes, it would be very difficult in

practice to provide penalties for the infringement of such a right, particularly with regard to phonograms made a long time before the broadcast concerned.

1233 Messrs. SEI SAITO (Japan) [E], FERSI (Tunisia), ZE'EV SHER (Israel) and RISTIČ (Yugoslavia) supported the Portuguese proposal.

1234 Mr. WALLACE (United Kingdom) [E] urged caution in the matter. The Portuguese proposal under discussion went very far indeed, and the working party should think well before adopting anything of the kind.

1235 Mr. STRNAD (Czechoslovakia) [F] reserved his opinion until the final text of Article 5 was known.

1236 Mr. EDLBACHER (Austria) [F] pointed out that the Portuguese proposal concerned an exception of the same kind as those mentioned in Article 14. He therefore proposed that discussion of it be adjourned until Article 14 came up for consideration.

1237 Mr. MOREIRA DA SILVA (Portugal) [F] agreed to the adjournment of the discussion of his amendment until Article 5 had been dealt with, but not until Article 14 had been discussed, for he was proposing an exception *ex jure conventionis*, whereas Article 14 concerned only exceptions authorized by national laws.

1238.1 Mr. CROASDELL (International Federation of Actors) [E] agreed with the view of the Netherlands delegate: Article 14(c) did, in fact, provide for exceptions, under national legislation, with respect to ephemeral fixation—a matter with which it was, indeed, quite proper for national legislation to deal.

1238.2 The draft amendment proposed by the Portuguese delegation was, however, far from clear; it could permit of a multitude of abuses. Thus, for instance, it would empower the producers of phonograms to control the reproduction of their phonograms—but only in cases other than when the reproduction was made by a broadcasting organization 'for technical reasons'. Who was to decide what, in such circumstances, would constitute valid 'technical reasons'? It was therefore clearly preferable to retain the text of Article 8 as in the Hague Draft.

1239.1 The CHAIRMAN [F] thought it better to postpone further discussion of the Portuguese amendment until Article 14 had been discussed, for, despite the differences pointed out by the Portuguese delegate, there was a close relation between the problems dealt with.

1239.2 After noting that the working party approved his suggestion, the Chairman decided to pass on to the consideration of the proposal of Austria (CDR/76).

1240 Mr. MOOKERJEE (India) [E] strongly urged that an additional sentence be added so as to protect the makers of phonograms against illegal operations—such as the import of unauthorized copies of phonograms.

1241 Mr. PUGET (France) [F] said he was opposed to the Austrian proposal.

1242 Mr. STRNAD (Czechoslovakia) [F] supported the Austrian proposal.

1243 Mr. EDLBACHER (Austria) [F] pointed out that the Berne Convention also contained a reference to 'putting into circulation'. He was, however, prepared to withdraw his proposal.

1244 Mr. WALLACE (United Kingdom) [E] suggested that the text of Article 8 should give explicit protection to the makers of phonograms against the importation of unauthorized copies of their phonograms —as was called for both in the joint proposal (CDR/24) submitted by the Danish, Finnish, Icelandic, Norwegian and Swedish delegations, as well as in the amendment (CDR/50) submitted by the Indian delegation.

1245 Mr. BERGSTRÖM (Sweden) [E] explained that the joint proposal was to the effect that an entirely new Article be inserted to cover the importation into a

Contracting State, of an unauthorized fixation of a performance. Such an article could best be inserted between Articles 14 and 15 of the Hague Draft, and it might be preferable for the working party to postpone discussion of that point until after Article 14 of the Hague Draft had been dealt with.

1246 Mr. WALLACE (United Kingdom) [E] made it clear that, in that context, his interest was limited to the protection of the producers of phonograms, and did not extend to the protection of the producers of cinematographic films. The proposal contained in document CDR/24 could be taken to apply equally well to the latter producers, whereas that in document CDR/50 confined itself to the illegal importation of records.

1247 Mr. MOOKERJEE (India) [E] endorsed the statement which had just been made by the United Kingdom delegate. The illegal importation of records presented a very serious problem in India, and should be dealt with under Article 8 of the Convention.

1248 Mr. EDLBACHER (Austria) [F] supported the joint proposal of the Danish, Finnish, Icelandic, Norwegian and Swedish delegations, but urged that the term 'illegal importation' be defined more clearly. In his view, the phonograms concerned should comprise both illegal fixations and recordings made in accordance with Article 14.

1249 Mr. STEWART (International Federation of the Phonographic Industry) [E] welcomed the joint proposal contained in document CDR/24, and the support which had been expressed by the Indian and Portuguese delegations for the idea underlying that proposal.

It was only logical that if there were to be established a family of countries in which neighbouring rights were protected, countries who opted not to become members of that family should not be permitted freely to export phonograms to countries which were members of the family. The working group might wish to consider adding to Article 8 a second paragraph along the following lines: 'The protection provided for makers of phonograms in this Article shall include the possibility of preventing the importation into contracting countries of reproductions or their phonograms, made without their consent'.

1250 The CHAIRMAN [F] proposed that the discussion should for the time being be limited to the protection of phonogram producers, as the protection of performers was complicated by the fact that English law did not regard them as possessing a subjective right.

1251 Mr. STRASCHNOV (Monaco) [F] pointed out that illegally imported phonograms might constitute only a small part of a broadcast and, in that case, it was not possible to take action against the importation without extending the prohibition to the entire broadcast.

1252 Mr. WALLACE (United Kingdom) [E] suggested that the feeling of the meeting be tested as to whether protection should be confined to the producers of phonograms. He was prepared to drop the matter if a majority of the delegates were opposed to it.

1253 The CHAIRMAN [F] considered it necessary to have a new written proposal on the question before a vote could be taken on it.

1254.1 Mr. TISCORNIA (Argentina) [S] said he was in favour of the general principle of protecting phonogram producers against illegal importation.

1254.2 He noted a great difference between the Indian amendment and the joint Danish, Finnish, Icelandic, Norwegian and Swedish proposal. The former advocated the adoption of measures against illegal importation, a principle which was acceptable. The joint proposal was very categorical and provided for sanctions of a criminal kind. The speaker thought it undesirable to include in an international convention a provision of a criminal kind, relating to

public order. It might be wise to seek another solution, bearing in mind that all the countries prepared to sign the Convention under consideration had a sufficiently advanced legislative system to enable them to prevent illegal imports.

1254.3 He thought it preferable that the question should not yet be put to the vote and that efforts should be made to find a solution which would be acceptable both to the countries concerned and to producers of phonograms.

1255 Mr. STRNAD (Czechoslovakia) [F] emphasized the need for a new text to define the term 'illegal import' referred to in the proposals of India and the Nordic States. He requested the delegations of those countries to present a new text.

1256 Mr. MOOKERJEE (India) [E] recognized that the amendment submitted by India to Article 8 did not present any specific wording. He would be glad to produce such wording without delay.

1257 *The meeting adjourned from 11.35 a.m. until 11.55. a.m.*

Article 12 of the Convention (Article 11 of the Draft Convention, CDR/1)

1258 The CHAIRMAN [F] opened the discussion on Article 11 of the Draft Convention. He said that proposals for amendments to that article had been presented by the delegations of the United Kingdom (CDR/20), the Netherlands (CDR/38), Belgium (CDR/65), France (CDR/71), Portugal (CDR/73), Norway (CDR/79), Argentina (CDR/85) and the Republic of Congo (Leopoldville) (CDR/87).

1259.1 Mr. EVENSEN (Norway) [E] pointed out that the various draft amendments which had been submitted to Article 11 revealed wide differences of opinion. It was doubtful whether, in those circumstances, the question was yet ripe for treatment at the international level. The proposal submitted by the Netherlands delegation should, therefore, be supported in principle, since the text of Article 11, as it stood in the Hague Draft, was justified neither on social nor on economic grounds.

1259.2 There was, however, one drawback to the complete deletion of Article 11; for if such a deletion were made, countries which, in their national legislation, granted protection for secondary uses might find themselves—because of the general provisions of Article 3 of the Convention—having to grant to all and sundry the same protection which they granted to their own nationals. That drawback was, however, reasonably disposed of by the proposal submitted by the French delegation and by the Portuguese amendment, which was similar. The wording of the French proposal appeared, however, to be the more suitable of the two, but even that wording would be improved if the opening phrase of Article 11 were to be amended to read: 'Any Contracting State recognizing that producers of phonograms or performers are protected in the case of broadcasts or communication to the public . . . shall grant the same protection in respect of phonograms . . .'.

1259.3 The following additional provision should, moreover, be incorporated in Article 11: 'National laws and regulations may lay down the conditions as to the collecting, sharing and distribution of any remuneration to be paid for such secondary uses'.

1259.4 The reason for the above proposal was that, in practice, the collection and distribution of remuneration in respect of secondary uses had proved to be exceedingly difficult and frequently so costly that little or no funds had remained available for distribution to the individual performers concerned. In the light of that situation, and because it had proved impracticable in Norway to effect distribution directly to each performer and to each phonogram producer, a special Joint Fund had been established by law for the collection and

distribution of the moneys in question. Phonogram producers were yearly paid a lump sum, and the bulk of the income received by the Joint Fund was paid to individual performers or to their heirs—and, indeed, to foreign performers living in Norway—in accordance with the actual need of each case. It was not being suggested that the Norwegian system should necessarily be adopted everywhere, but that system had shown that national legislation could, in conformity with the spirit of the proposed Convention, adequately deal with the difficult problems of the collection and distribution of the moneys in question.

1259.5 The present proposals being put forward by the Norwegian delegation superseded the draft amendment which it had earlier proposed, and which was accordingly withdrawn.

1260.1 Mr. STRASCHNOV (Monaco) [F] said that the Government which he represented was completely opposed to Article 11. There was no sufficient justification for the article either from the social or from the economic standpoint. Broadcasting constituted the most powerful means of publicity for the sale of phonograms. In Monaco, for instance, the station Radio-Monte-Carlo received a considerable quantity of phonograms which were sent to it free of charge by the vendors, and that was not a unique case. In the United States of America, producers paid for the broadcasting of their phonograms.

1260.2 Moreover, the Convention was also intended to cover new countries where broadcasting played an important cultural role but where there were practically no phonogram producers. Article 11 would entail for those countries an outflow of foreign currencies which it would be preferable to spare them.

1260.3 Furthermore, national laws on the matter were extremely diverse. In some countries, only performers were entitled to remuneration; in others, producers of phonograms had the same right; elsewhere, there was simply a single remuneration paid by the user and no subjective right.

1260.4 It thus seemed impossible to lay down a uniform rule to be applied under the Convention. Article 15, no doubt, made it possible to exclude the right to remuneration in the absence of reciprocity, but that article simply permitted exceptions to be established without modifying the general rule. Moreover, the application of reciprocity rules raised very difficult problems. The delegate of Monaco said that, for all those reasons, he would support the French proposal.

1261.1 Mr. TISCORNIA (Argentina) [S] said that the words 'or a reproduction of such phonogram', which appeared in the text of the Draft Convention, should be included in the text of the amendment proposed by his delegation after the word 'phonogram' in the first line.

1261.2 The delegate of Monaco had mentioned the economic basis of the question, but he had done so from only one standpoint: that of broadcasting stations. The economic basis should also be taken into account, however, from the standpoint of performers. The question of the protection of performers, which had been under consideration for many years, had reached the point when it could be said that every time a performer made a recording he was, as it were, attending his own burial. Performers throughout the world were keeping their eyes fixed on Article 11 of the draft under consideration and, if it were deleted, their disillusionment would be general. Everyone knew full well the arguments adduced for and against, but the most important argument was that performers should not continue to be excluded from sharing in the immense profits made by phonogram producers and broadcasters through the exploitation of their performances. Such exclusion was completely unjust.

1261.3 In conclusion, Mr. Tiscornia emphasized that, if it were really desired to protect performers and to ensure that the Convention would be advantageous to them, it was essential to maintain Article 11, as amended by the Argentine proposal, so that secondary uses might benefit performers alone or both performers and phonogram producers.

1262.1 Mr. GRANT (United Kingdom) [E] emphasized that the provision for payment for the secondary uses of commercial records was one of the most important—and indeed essential—matters covered by the Draft Convention. If this money were made available, performers' contracts would enable them to share in it.
1262.2 In the United Kingdom, for practical reasons, the law provided that the money in question should go to the record manufacturers, and the Government was aware that a proportion of this money was in fact passed on to the performers—an arrangement which was working very satisfactorily. Indeed, the availability of such moneys to be shared between record manufacturers and performers made for satisfactory relations between those two groups—relations which might not otherwise be possible. A requirement that the money in question should be paid to individual performers would lead to practical complications, and could not be adequately covered by legislation. It was therefore to be hoped that as many countries as possible would accept the principle of Article 11, and would agree with the suitability of the Hague Draft.

1263 Mr. STRNAD (Czechoslovakia) [F], after pointing out that, in his country, payment was made to the two groups concerned (performers and phonogram producers), said that it would suffice to accord producers the right to demand a remuneration if they so desired. The words 'or to both' would be deleted and States would be left completely free to fix the methods of collecting and distributing the remuneration.

1264 Mr. PUGET (France) [F] stated that his Government made the most express reservations concerning the article in question. The diversity of laws and economic situations made the establishment of a general obligatory rule impossible. Article 11 should therefore be radically modified in order to leave great freedom to States. That was the purpose of the French amendment.

1265 Mr. BODENHAUSEN (Netherlands) [F] referred to the written proposal submitted by his delegation and emphasized that his country would not be able to sign the Convention if Article 11 were maintained as it then stood.

1266 Mr MASCARENHAS DA SILVA (Brazil) [F] considered Article 11 indispensable for the protection of the three groups concerned. That article had been drawn up in the light of all the discussions that had so far taken place. He supported the Argentine delegate's proposal.

1267 Mr. FERSI (Tunisia) [F] defended the standpoint of the developing countries. He felt that Article 11 would be detrimental to their interests. His Government was completely opposed to the text as it stood. Broadcasting was essentially a public service, the operation of which would be jeopardized by Article 11. The French amendment could be considered as the lesser of two evils, and Tunisia would support it.

1268 Mr. WAEYENBERGE (Congo, Leopoldville) [F] was in favour of maintaining Article 11 (CRD/87), which recognized a fundamental right and constituted an essential part of the system of protection established by the Draft Convention. He approved certain amendments, particularly those proposed by Argentina and Belgium.

1269 Mr. SIDI BOUNA (Mauritania) [F] agreed with the views expressed by the delegate of Monaco and with the French proposal for an amendment.

1270.1 Mr. MALAPLATE (International Confederation of Societies of Authors and Composers) [F] said that, in the view of authors, Article 11, which was of considerable importance, would inevitably be extremely detrimental not only to their own interests but also to those of the community as a whole, without, however, really serving the interests of performers and phonogram producers.

1270.2 He emphasized that many average-sized or small users (hotels, restaurants, cafés, bars, etc.), whose budget for 'artistic' activities was modest and for whom musical performances were only an 'accessory' which they could easily dispense with, could not meet the least additional charge. They would therefore simply cease to use phonograms in their establishments, which would be to the detriment of authors and of the general public and of no benefit to performers and phonogram producers as, in the long run, less recordings would be purchased by possible users.

1270.3 He added that authors were fully aware that the co-operation of artistes and phonogram producers was of great value to them, but they considered that the interests of all concerned could and should be protected by some other means than that of requiring remuneration for secondary uses.

1271 Mr. GAXIOLA (Mexico) [S] pointed out that, although the system in Argentina, and probably also the system in Brazil, differed from the system in Mexico, where performers received remuneration for the secondary use of their performances, the proposal presented by the Argentine delegation and supported by Brazil had the merit of reconciling the interests concerned and the Mexican delegation would therefore definitely vote in favour of it.

1272 Mr. MOREIRA DA SILVA (Portugal) [F] pointed out that the Convention was intended to be universal. It was important that the greatest possible number of States should ratify it; but Article 11 was likely to be an obstacle to such ratifications if it were maintained as it then stood or if it were deleted. A compromise solution therefore seemed desirable. The Portuguese Government, after reconsidering its original decision to oppose the French proposal, (CDR/71), was henceforth in favour of it.

1273 Mr. EDLBACHER (Austria) [F] was in favour of maintaining Article 11. Article 15 would permit of sufficient reservations by countries wishing to limit the right to remuneration.

1274 Mr. MOOKERJEE (India) [E] gave full support to the statement which had been made by the Austrian delegate. The Indian Copyright Act gave maximum protection to phonograms used for public broadcasting, regardless of whether they had been produced in India or in another country. The All-India Radio paid those concerned, and Indian performers obtained a fair share of the moneys which thus became available. The Hague Draft deserved wholehearted support.

1275 Mr. LENNON (Ireland) [E] supported Article 11 of the Hague Draft in principle, and on the understanding that full reciprocity would be possible under Article 15 in relation to a State which did not grant similar rights.

1276 Mr. STRNAD (Czechoslovakia) [F] said that, after further study of the question, and particularly in view of the reservations provided for in Article 15, which offered States opposed to Article 11 sufficient opportunities to defend their position, he was prepared to support the text under discussion as it stood.

1277.1 Mr. RATCLIFFE (International Federation of Musicians) [E], speaking on behalf of the International Federation of Actors and the International Federation of Variety Artistes, as well as on behalf of his own Federation, pointed out that, in the sphere under discussion, legislation lagged far behind reality: phonograms had

been used for broadcasting for nearly forty years. If performers had been selfish, and especially if they could have looked into the future, they would have refused to co-operate with producers by performing for the production of phonograms. But this had not been the attitude of performers, who had, on the contrary, been most generous in this matter.

1277.2 During the thirty-five years since this subject first arose, it appeared to have become accepted that it was natural for broadcasters to maintain their services by the use of phonograms published for commercial purposes and primarily for private purchase and use. But, in fact, nothing could be more unnatural. That practice constituted unfair competition with performers; and performers throughout the world were looking to the Conference to adopt a Convention which would ensure them at least some protection.

1277.3 The main argument which had been advanced against Article 11 had been that its adoption would have an adverse economic effect upon broadcasters and authors. That attitude was not based upon principle: it was equivalent to saying to performers: 'if you get something, we shall get less'. That was surely a most unworthy argument, even though it may have been advanced by most worthy people. It should not be overlooked that the use of phonograms for broadcasting had already had a disastrous effect upon performers—an effect which, it was hoped, Article 11 would help to ameliorate.

1277.4 The principle of equitable remuneration for performers, phonogram producers or both, should be adopted as a matter of common justice. If that principle were not adopted by the Conference, the consideration which had been given to the subject for thirty-five years would have been wasted. Performers wanted nothing more than justice.

1278.1 Mr. STEWART (International Federation of the Phonographic Industry) [E] referred to the argument that Article 11 should be deleted because of the wide differences which existed between the legislation of different countries. Surely, however, the whole purpose of the Conference was to deal with that very situation. What might be termed the 'broadcasting argument' had been put forward—e.g., by the Monegasque delegate—to the effect that, for economic reasons, no payments should be made in respect of secondary uses.

1278.2 Nevertheless, many broadcasters fully recognized that they simply could not function without the help of phonograms, and it was therefore only fair that they should pay a reasonable price for such essential assistance. It was to be hoped that all delegates would support the text of Article 11 of the Hague Draft, particularly when it was borne in mind that Article 15 of the same draft provided for exceptions. The Hague Draft represented an equitable compromise which would be completely upset if Article 11 were not to be adopted.

1279 Mr. RISTIČ (Yugoslavia) [F] supported the French amendment.

1280.1 The CHAIRMAN [F] summed up the discussion on Article 11. The latter was definitely the most important provision in the Convention. It must be read in conjunction with Article 15, which limited the obligations of Contracting States. However, it was necessary at that stage to decide what would be the principle and what would be the exception.

1280.2 He proposed that the French amendment (CDR/71) and the Netherlands amendment (CDR/38), which were substantially the same despite certain drafting differences, should be put to the vote first. It would be a vote on the principle, and the drafting of the final text would be left to the sub-group.

1281 Mr. BODENHAUSEN (Netherlands) [F] agreed to that procedure.

1282 Mr. PUGET (France) [F] preferred that the French amendment should be put to the vote first, as it was the furthest removed from the original text.

1283 The amendment presented by France was *rejected* by 14 votes to 12, with 10 abstentions.

1284 *The meeting rose at 1 p.m.*

Working Party No. II

Fifth meeting[1]

Thursday, 19 October 1961, at 3.30 p.m.

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)

CONSIDERATION OF THE DRAFT CONVENTION (continued)

Article 12 of the Convention (Article 11 of the Draft Convention, CDR/1) (continued).

1285 Mr. WAEYENBERGE (Congo, Leopoldville) [F] presented document CDR/87 and pointed out that the replacement of the words 'shall be paid by the user' by the words 'shall be due' was more than a purely formal amendment; he agreed, however, that the proposal should not be put to the vote, provided that it was referred to the Drafting Committee.

1286 Mr. STRNAD (Czechoslovakia) [F] supported the second part of the Congolese proposal, which suggested the deletion of the word 'single'. It was not necessary to impose any particular system on Contracting States. The essential point was that performers and phonogram producers should receive equitable remuneration.

1287 Mr. NAMUROIS (Belgium) [F] was opposed to that deletion. The authors of The Hague text had wished to ensure that the user would not have to meet two claims for remuneration. The term 'single' was very important in the context of The Hague Draft.

1288 The deletion of the word 'single' was *rejected* by 26 votes to 4, with 5 abstentions.

1289 The CHAIRMAN [F], speaking as representative of the Federal Republic of Germany, said he could not accept the Belgian proposal (CDR/65), as the German draft law on the subject provided that remuneration would be paid to the performers, who would be obliged to hand over part of it to the phonogram producers.

1290 Mr. GALBE (Cuba) [S] took the opportunity afforded by the discussion of the amendments to express his views on Article 11 as a whole. That article protected the rights of performers and it was inadmissible that certain difficulties or the reservations provided for in Article 15 should be invoked as a reason for not proclaiming that right, which the Cuban delegation regarded as fundamental. In the speaker's view, the delegate of Monaco had dealt with a completely exceptional case.

1. Cf. Doc. CDR/WG.II/SR.5 (prov.).

The Tunisian delegation had defended broadcasting as an instrument of culture in the so-called underdeveloped countries, but Mr. Galbe thought that it should not prejudice the rights of performers, who, precisely in the underdeveloped countries, were those who were most disposed to sacrifice their interests for the benefit of culture. In conclusion, the delegate of Cuba said that he was opposed to the Netherlands amendment (CDR/38), but approved that of Argentina (CDR/85).

1291 The CHAIRMAN [F] took note of the Cuban delegate's statement, but pointed out that the working party had recognized that the proposals presented by the delegations of France (CDR/71), the Netherlands (CDR/38) and Portugal (CDR/73) were substantially the same and that, by rejecting the French proposal, it had expressed its opinion on all three proposals.

1292 Mr. EVENSEN (Norway) [E], supported by Mr. WEINCKE (Denmark), opposed the Belgian amendment on the grounds that it was neither expedient nor natural to stipulate in a Convention that phonogram makers should act as a kind of proxy for the performers, when other more natural solutions could be found through national legislation.

1293 Mr. WAEYENBERGE (Congo, Leopoldville) [F] associated himself with the Norwegian delegate's remarks and pointed out further that the Belgian proposal would entail serious disadvantages in developing countries when the performer was a national and the phonogram producer a foreigner.

1294 The proposal contained in document CDR/65 was *rejected* by 20 votes to 11, with 6 abstentions.

1295 Mr. WALLACE (United Kingdom) [E] drew attention to the situation in the United Kingdom where, for practical reasons, payments were made only to the record manufacturers, with the knowledge that the latter made arrangements for the remuneration of the performers. The United Kingdom could not support a Convention which would make compulsory a law providing for payments to performers.

1296 Mr. TISCORNIA (Argentina) [S] said that an order of priority should be established between the various rights concerned. First priority should be given to the rights of the author, whose work existed with no need of performers. Second priority should be given to performers who had need of the author's work although they gave their own interpretation of it. Third priority should be given to phonogram producers who could not dispense with the services of performers. Finally, there were the rights of broadcasting organizations. Under this system of priorities performers' rights were the most important after the rights of authors. Argentina considered that to be a question of fundamental importance; but, in view of the reservations provided for in Article 15, which allowed each country to recognize that order of priorities, and in view of the fact that the Convention was an international instrument which must respect the different national standpoints so that all countries could sign it, Mr. Tiscornia was prepared to withdraw his amendment, subject to Argentina's position being clearly stated in the Rapporteur-General's report.

1297 Mr. GALBE (Cuba) [S] said that, if Argentina withdrew its amendment, Cuba would take it up in its own name. He requested that the amendment be put to the vote.

1298 The amendment was *rejected* by 18 votes to 3, with 8 abstentions.

1299 Mr. TISCORNIA (Argentina) [S] said that he had withdrawn his amendment because it would be sufficient if Argentina's point of view was mentioned in the Rapporteur-General's report. The rejected amendment was not Argentina's but the Cuban delegation's, and he asked again that his country's point of view be mentioned in the Rappotreur-General's report.

1300 The CHAIRMAN [F] took note of Mr. Tiscornia's statement.

1301 Mr. FERSI (Tunisia) [F] protested against the Cuban delegate's remarks. Tunisian performers would not refuse to grant certain privileges to national broadcasting organizations, but the Tunisian public, which was deeply attached to its traditional culture, was none the less appreciative of foreign cultural values. In any case, the Cuban delegate was not qualified to speak on behalf of the Tunisian Government.

1302 Mr. GALBE (Cuba) [S] said he had never had any intention of saying what attitude should be adopted by the Tunisian Government. He had simply wished to reply to its delegate, which he was perfectly entitled to do, and he regretted that, for the first time, the Tunisian delegate had adopted a violent tone in replying to remarks made by another delegate.

1303 Messrs. STRASCHNOV (Monaco) [F], PUGET (France), EVENSEN (Norway), MOREIRA DA SILVA (Portugal) and FERSI (Tunisia) said they would vote against Article 11.

1304 Mr. DRABIENKO (Poland) [F], supported by Mr. DE SANCTIS (Italy), pointed out that Articles 11 and 15 were closely related. He proposed that the vote should be taken on both articles at the same time.

1305 Mr. BODENHAUSEN (Netherlands) [F], emphasized that all the provisions of the Draft Convention were closely related. He was therefore not in favour of that proposal.

1306 Mr. BERGSTRÖM (Sweden) [E] was in favour of Article 11 of the Hague Draft, provided that certain changes which he wished to propose in Article 15 were accepted later; if this were not the case, he would reserve his position on Article 11 in the Main Commission.

1307 Mr. GALBE (Cuba) [S] said that it would complicate the question if a vote were taken on the two Articles 11 and 15 at the same time. He pointed out further that there was an error in the Spanish text of Article 15 as approved at The Hague, for the term '*accesión*' could not be used in place of the term '*adhesión*'.

1308 Mr. MOOKERJEE (India) [E], supported by Messrs. WALLACE (United Kingdom), PUGET (France) and BODENHAUSEN (Netherlands), pointed out that according to proper parliamentary procedure a vote should be taken only on the article at present under discussion, without taking into consideration other draft articles which would come up later. In any case, the decisions taken at the present stage were provisional. Mr. Mookerjee asked that a vote be taken on Article 11 alone.

1309 Mr. DE SANCTIS (Italy) [F] stated that, if Article 11 were put to the vote immediately, he would abstain from voting, for he could not express an opinion on Article 11 without being certain that his Government would be able to make reservations.

1310 The motion to postpone the vote on Article 11 was *rejected* by 22 votes to 8, with 4 abstentions.

1311 Article 11 was *adopted* by 24 votes to 8, with 3 abstentions.

Article 13, sub-paragraph (a), of the Convention (Article 12, sub-paragraph (a), of the Draft Convention, CDR/1)

1312 Mr. STRNAD (Czechoslovakia) [F] pointed out that, by virtue of the exception provided for in Article 16, Article 12 accorded broadcasting organizations certain special rights which were not accorded to performers. That would have to be taken into account in the final text of Article 5.

1313 Mr. EDLBACHER (Austria) [F] thought that the text of the Convention should contain a definition of the term 'rebroadcasting'. Did that term simply mean simultaneous rebroadcasting, or relaying, or did it also cover deferred broadcasting, and repeated broadcasting?

1314.1 Mr. STRASCHNOV (Monaco) [F] said that the term 'rebroadcasting' had been employed in sub-paragraph (a) of Article 12 as a synonym of 'relaying' or 'simultaneous rebroadcasting'.

1314.2 When the rebroadcasting was deferred, there was a fixation within the meaning of sub-paragraph (b) of the same article. There was no provision which accorded protection against rebroadcasting by means of a fixation, but such protection was usually ensured by national legislation.

1315 Mr. EDLBACHER (Austria) [F] accepted that definition and urged that it be included in Article 10.

1316 The definition of the term 'rebroadcasting' was *adopted* unanimously.

Article 13, sub-paragraph (b), of the Convention (Article 12, sub-paragraph (b) of the Draft Convention, CDR/1)

1317 Messrs. LENOBLE (France) [F] and STRASCHNOV (Monaco) supported the Swiss delegation's proposal (CDR/92), subject to the replacement of the words 'of their broadcasts or of single images of those broadcasts' by the words 'of their broadcasts in whole or in part'.

1318 Mr. WALLACE (United Kingdom) [E] recalled that the problem of protecting broadcasts from copying, in whole or in part, was dealt with in the United Kingdom Copyright Act of 1956 which extended protection to the copying of 'a substantial part' of a television broadcast, defined as 'any sequence of images sufficient to be seen as a motion picture'. This did not cover still photos. He could therefore not accept the wording proposed by the Swiss delegate.

1319 Mr. DE SANCTIS (Italy) [F] approved the substance of the Swiss delegation's proposal, but thought it unnecessary to modify Article 12. It was clearly understood that the term 'reproduction' meant reproduction in whole or in part. If that were indicated in the article concerned, it would have to be indicated elsewhere, which would make the text unnecessarily complicated.

1320 Mr. EDLBACHER (Austria) [F] was glad that there was agreement on the substance of the proposal, but wondered whether, in the absence of such an indication, a single image would be regarded as part of a television broadcast. It had been considered necessary to include that indication in Article 1, paragraph 1(d), of the European Agreement on the Protection of Television Broadcasts, the terms of which were repeated in the Swiss delegation's proposal.

1321 Mr. MORF (Switzerland) [F] agreed to withdraw his proposal provided that the Rapporteur-General's report mentioned that the term 'fixation' applied also to a photograph of a single image.

1322 The CHAIRMAN [F] noted that it was understood that, in any case, the term 'reproduction' meant reproduction in whole or in part and that it would be possible to make that fact clear in the Rapporteur-General's report. However, before extending protection to single images, a vote would be necessary.

1323.1 Mr. BODENHAUSEN (Netherlands) [F], supported by Mr. BERGSTRÖM (Sweden), thought it better to leave it to national legislation to define what was meant by 'part' of a broadcast.

1323.2 The European Agreement on the Protection of Television Broadcasts provided for the protection of single images, but left Contracting States free to make reservations on the matter. Some States —amongst them, the United Kingdom—had already exercised that right. However, the working party did not yet know whether all the possibilities for making reservations provided for in Article 15 would be maintained.

1324 Messrs. MORF (Switzerland) [F] and EDLBACHER (Austria) said they would withdraw their proposal, provided that the

Rapporteur-General's report made it clear that the protection of a broadcast covered the whole or part of that broadcast.

1325 It was so *decided.*

Article 13, sub-paragraph (c), of the Convention (Article 12, sub-paragraph (c) of the Draft Convention, CDR/1)

1326 Mr. WALLACE (United Kingdom) [E] said that it was his understanding that sub-paragraph (c) referred to cinematographic films, where both sound and vision were involved; he wished to remind the delegates that such films were already protected by the copyright conventions.

1327 Mr. LENNON (Ireland) [E] drew attention to the fact that the same difficulty might arise with regard to the interpretation of the word 'unlawful' in Article 5, paragraph 1, sub-paragraph (c) (i), and he felt that a similar change in wording should be made there.

1328 Messrs. STRASCHNOV (Monaco) [F] and WAEYENBERGE (Congo, Leopoldville) supported the proposed amendment to sub-paragraph (c) presented by the Austrian delegation.

1329 Mr. NAMUROIS (Belgium) [F], supported by Mr. DE SANCTIS (Italy), thought it preferable to maintain The Hague text, which, in his view, accorded wider protection. A fixation made with the broadcasting organization's consent might later become unlawful if, for instance, such consent was given on certain conditions and if those conditions were not fulfilled.

1330 Mr. MORF (Switzerland) [F] pointed out that the term 'unlawful' might be interpreted as 'unlawful from the standpoint of the performers'.

1331 Mr. WALLACE (United Kingdom) [E] agreed that the Austrian amendment would clarify the meaning of sub-paragraph (c) and he was in favour of its adoption.

1332 Mr. STRNAD (Czechoslovakia) [F] thought that there was a gap in The Hague text. A broadcasting organization of a Contracting State could make a broadcast, which might be rebroadcast or recorded in a non-Contracting State. That rebroadcast or that fixation, which was lawful according to the national laws, might then be rebroadcast by a broadcasting organization of another Contracting State. The last-mentioned broadcast, which would be 'lawful' according to The Hague text, would be detrimental to the interests of the organization of origin.

1333 Mr. EDLBACHER (Austria) [F] added that the term 'unlawful' could be interpreted in many different ways; it might be considered, for instance, that a broadcast was 'unlawful' if it was contrary to national laws on morality.

1334 Mr. LENOBLE (France) [F] agreed with the Austrian proposal.

1335. The proposal contained in sub-paragraph (c) of document CDR/89 was *adopted* unanimously, with 3 abstentions.

1336 Sub-paragraph (c) of Article 12 of the Draft Convention, so amended, was *adopted.*

1337 Mr. WALLACE (United Kingdom) [E] said that he had abstained in the vote on this point since he doubted whether the Convention should deal with films, which, as he had already mentioned, were covered by copyright conventions.

Article 13, sub-paragraph (d), of the Convention (Article 12, sub-paragraph (d) of the Draft Convention, CDR/1)

1338 Mr. BOGSCH (United States of America) [E] proposed that sub-paragraph (d) should be deleted entirely, since the right which it envisaged was contrary to accepted practice in the United States and he felt that it was unnecessary.

1339 Mr. PUGET (France) [F] supported the Swiss proposal (CDR/92).

1340 Mr. DE SANCTIS (Italy) [F] recalled that The Hague text was the result of a compromise and that various States, which would be prepared to accept Article 12 of

the Hague Draft, might make reservations if that sub-paragraph were modified.

1341 Mr. BODENHAUSEN (Netherlands) [F], the CHAIRMAN, Messrs. WALLACE (United Kingdom) and RISTIČ (Yugoslavia) supported the remarks made by Mr. De Sanctis.

1342 Mr. TISCORNIA (Argentina) [S] suggested that both expressions should be used, so that the text would read as follows: 'against payment of an entrance fee and for profit', which would exclude performances for charitable purposes.

1343 Replying to a question from Mr. Morf (Switzerland), Mr. BODENHAUSEN (Netherlands) [F] said that the interpretation of the words 'against payment of an entrance fee' should be left to national legislation.

1344 Mr. STRNAD (Czechoslovakia) [F] stated that the number of receiving-sets in his country was so high that establishments demanding payment of an entrance fee would rapidly become bankrupt. He hoped that, under Article 15, States would be able to declare that that provision was not applicable on their territory.

1345 Mr. STRASCHNOV (Monaco) [F] assumed that the second sentence of sub-paragraph (d) meant, as in other provisions already considered, that national legislation could transform the right to authorize into a compulsory licence subject to remuneration.

1346 Mr. NAMUROIS (Belgium) [F] proposed the deletion of the last sentence on the ground that it would be useless if Article 15 of the Hague Draft was maintained and would enable a Contracting State, at the time of ratification or later, to institute a system of compulsory licences, without other States being able to apply the reciprocity principle.

1347 Messrs. EDLBACHER (Austria) [F] and MORF (Switzerland) withdrew their proposals (CDR/89 and CDR/92 respectively).

1348 The deletion of sub-paragraph (d) was *rejected* by 25 votes to 2, with 5 abstentions.

1349 The deletion of the second sentence of sub-paragraph (d) was *rejected* by 22 votes to 2, with 7 abstentions.

1350 Sub-paragraph (d) was *adopted* by 30 votes to 2, with 2 abstentions.

Article 13 of the Convention (Article 12 of the Draft Convention, *new sub-paragraph (e)*)

1351 Mr. PUGET (France) [F] pointed out that the Austrian delegation's proposal would give broadcasting organizations wider protection than that given to authors by the Berne Convention.

1352 Mr. EDLBACHER (Austria) [F] was prepared to withdraw his proposal provided that the question would be considered when Article 8 came up for discussion, during the examination of the joint proposal of the Danish, Finnish, Icelandic, Norwegian and Swedish delegations (CDR/24) concerning unlawful imports.

1353 Mr. NAMUROIS (Belgium) [F] thought that those two questions were indeed related and should be settled at the same time.

1354 Article 12, as amended, was *adopted.*

1355 *The meeting rose at 6.15 p.m.*

Working Party No. II

Sixth meeting[1]

Friday, 20 October 1961, at 10 a.m.

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)

CONSIDERATION OF THE DRAFT CONVENTION (continued)

Article 7, paragraph 2 of the Convention (Article 5, paragraphs 2 and 3, of the Draft Convention, CDR/1) (continued)

1356 The CHAIRMAN [F] said that the Sub-Group had presented a proposal (CDR/94) for the replacement of paragraphs 2 and 3 of Article 5 by a single paragraph 2.

1357 Mr. WALLACE (United Kingdom, Chairman of the Sub-Group) [E] said that in accordance with its terms of reference, the Sub-Group had considered the drafting of Article 5, paragraphs 2 and 3, in the light of the working party's discussion on the subject. The United Kingdom amendment (CDR/77) had received the general support of the Sub-Group. The majority had felt that contracts freely negotiated should not, in any circumstances, be overridden by national legislation. The Netherlands member, however, could not subscribe to that view, believing that national legislation should be absolutely free to regulate the protection of performers. The text contained in document CDR/94 was a compromise.

1358 Mr. BOGSCH (United States of America, Rapporteur of the Sub-Group) [E] explained that the minimum rights of performing artists provided for in Article 5, paragraph 1, of the Hague Draft were subject to certain exceptions. It was with the exceptions under Article 5 that the Sub-Group had had to deal. The Sub-Group had been extremely careful to cover all the cases included in Article 5 of the Hague Draft and believed that the wording it had submitted was clear. The general spirit of that wording was that contracts prevailed, but if no contracts existed, Contracting States could, by means of legislation, facilitate the work of the broadcasting organizations.

1359 Mr. STRNAD (Czechoslovakia) [F] asked for further particulars concerning the amendment proposed in document CDR/94. Was it to be inferred that paragraph 1, with sub-paragraphs (a), (b) and (c), of the Hague text was to be maintained as it stood?

1360 The CHAIRMAN [F] stated that the consideration of sub-paragraphs (a) and (b) had been completed, but that sub-paragraph (c) was still open for discussion and would be examined later.

1361.1 Mr. STRNAD (Czechoslovakia) [F] concluded that the mention of paragraph 1, followed by a few dots, meant that only sub-paragraphs (a) and (b) were implied and not sub-paragraph (c).

1361.2 He asked what the Sub-Group meant by the words 'the terms and conditions'. What were the national laws referred to? As the performer's domicile had not yet been defined, the reference to national laws did not seem clear.

1362 The CHAIRMAN [F] explained that the Sub-Group's proposal referred only to paragraphs 2 and 3.

1363 Mr. WALLACE (United Kingdom)[E] said that in his view the national laws referred to were the laws of the country where protection was claimed.

1364 Mr. GALBE (Cuba) [S] suggested that a new sub-paragraph (e) be added to the text of paragraph 2 of Article 5, as proposed by the Sub-Group, and that it should be worded as follows: 'any other form of pecuniary gain by broadcasters'.

1365 The CHAIRMAN [F] emphasized that the working party could not express an opinion on a proposal unless it were presented in writing.

1366 Mr. GALBE (Cuba) [S] recalled that, on the previous day, the Chairman had

1. Cf. Doc. CDR/WG.II/SR.6 (prov.).

established a precedent by accepting an amendment presented orally by the United States delegate; he therefore requested that he should proceed in the same manner in the present case, which was a similar one.

1367 The CHAIRMAN [F] pointed out that the previous proposal had been a proposal for a deletion.

1368 Mr. WALLACE (United Kingdom) [E] suggested that the working party should proceed to an immediate vote on the Cuban proposal.

1369.1 Mr. STRASCHNOV (Monaco) [F] recalled that it had previously been decided that rebroadcasting would mean solely simultaneous relaying. If that were the case, sub-paragraph (d) of the Sub-Group's proposal should be amended as follows: '... or of a fixation referred to under (a) and (b), above...'.

1369.2 Furthermore, the United States delegate had quite rightly stated that, if no contracts existed in any of the four cases mentioned in sub-paragraphs (a), (b), (c) and (d), national legislation was free to provide the necessary rules. It was a question of drafting.

1370 The CHAIRMAN [F] reverted to the proposals of the Cuban and United Kingdom delegates. It was obviously possible to make exceptions; if the working party was in agreement, he proposed to put to the vote the Cuban delegate's proposal to add a new sub-paragraph (e) worded as follows: '(e) any other form of pecuniary gain by broadcasters'.

1371 Mr. GALBE (Cuba) [S] emphasized that the purpose of his proposal was to ensure that whenever a broadcasting organization made a pecuniary profit of any kind the performer who had made the recording would receive a part of that profit.

1372 The Cuban delegate's proposal was *rejected* by 23 votes to 2, with 4 abstentions.

1373 The CHAIRMAN [F], referring to the delegate of Monaco's suggestion that sub-paragraph (d) of the Sub-Group's proposal be amended, said that, as the term 'rebroadcasting' had been defined, it was in fact necessary to include also reproduction.

1374 Mr. BOGSCH (United States of America) [E] said that the wording of the last phrase of the Sub-Group's text was satisfactory in English.

1375.1 The CHAIRMAN [F] remarked that there seemed to be a difference between the French and English texts of the Sub-Group's proposal, as the French text of sub-paragraph (d) mentioned sub-paragraphs (a), (b) and (c), whereas the English text mentioned only (a) and (b).

1375.2 As for the proposal to include the word 'reproduction', he suggested that it be referred to the Drafting Committee.

1376.1 Mr. PUGET (France) [F] thought that it should be specified that the national legislation applicable was that of the country in which protection was requested.

1376.2 As to the substance of the question, he had certain misgivings. The Hague text had been made known eighteen months ago and since then it had been critically analysed. If a new text were improvised, it would be difficult to foresee the consequences. It had been understood that the Sub-Group would take The Hague text as the basis for its work, supplementing it only with the United Kingdom delegate's proposal.

1376.3 The Hague text could be modified by the addition of a few words specifying that the national legislation could not deprive performers of their right to control by way of contract their relations with the broadcasting organizations with which contracts were concluded.

1377 Mr. NAMUROIS (Belgium) [F] agreed with the delegate of France and suggested that The Hague text, amended in accordance with the United Kingdom proposal, should be maintained.

1378 Mr. FERSI (Tunisia) [F] recalled that the Tunisian Government had emphasized in its observations on the Hague Draft

that it attached great importance to paragraph 2 of Article 5. He agreed with the French delegation's views.

1379 Mr. BOGSCH (United States of America) [E] remarked that nothing could have been more improvised than the text of the Hague Draft; States had had ample time to see how bad it was. The Sub-Group had carried out its mandate, which was to try to improve on The Hague text.

1380 Mr. BELINFANTE (Netherlands) [E] said that the Netherlands member of the Sub-Group had not agreed to the text now before the working party. The implications of the text were not at all clear, whereas it was certain that under The Hague text national legislation could provide protection for the party which was economically weakest. The Sub-Group's draft, providing, as it did, that national legislation could come into play only in the absence of contractual agreement, removed the power of national legislation to protect the economically weakest party.

1381.1 The CHAIRMAN [F] said that the Sub-Group had been instructed to combine the United Kingdom proposal with paragraphs 2 and 3 of Article 5; it had been given those instructions because it was considered that the principle of freedom of contract should prevail and that the national legislation should regulate only those questions in respect of which there was no contract in the sense of any express provision. The Sub-Group's proposal was completely in harmony with that idea.

1381.2 The whole question was whether the principle that the contract should always prevail was to be accepted; the Netherlands delegation was opposed to that principle and considered that provision should be made for exceptions.

1381.3 The Chairman had not clearly understood the proposal made by the French delegate and he asked the latter whether he meant that the contract should always prevail or whether he considered on the contrary that there should be exceptions to that principle.

1381.4 If the working party were in agreement on the principle that the contract should always prevail, there remained simply a question of drafting.

1382 Mr. PUGET (France) [F] pointed out that he had merely repeated the United Kingdom delegate's proposal.

1383 The CHAIRMAN [F] therefore took it as agreed that the contract always prevailed.

1384 Mr. GALBE (Cuba) [S] considered that the last question raised by the Chairman had been admirably resolved by the Sub-Group through the use of the words 'To the extent to which the contract...'. It was true that, as one delegate had already pointed out, that was tantamount to depriving the national legislation of certain of its powers; but the principle of the freedom of contract was thereby safeguarded. The Cuban delegation accordingly agreed with the wording which the Sub-Group proposed for paragraph 2.

1385 Mr. WESTON (Australia) [E] informed the working party that in Australia the actions referred to in sub-paragraphs (a), (b) and (c) could become the subject of settlement under existing arbitration machinery. Any award made in the case of a dispute might be regulated in a particular contract, but it was also subject to the national laws. He could support the draft only if it was understood that the reference in it to the contract also included arbitration awards. He would not submit an amendment if mention was made of that in the report.

1386 Mr. HESSER (Sweden) [E] asked whether the word 'performer' in the first line of the Sub-Group's draft also covered the holder of a performer's rights. Clarification on that point might usefully be included in the report.

1387 Mr. BOGSCH (United States of America) [E], replying to the Swedish delegate, said that the word 'performer' did include the holder of a performer's rights.

He proposed that that should be stated in the report.

1388 Mr. BODENHAUSEN (Netherlands)[F] did not think there was any difference between the views of the French and Belgian delegations, on the one hand, and the views of the Netherlands delegation, on the other, apart from the fact that the latter delegation did not accept the principle that the contract prevailed in all cases.

1389 Mr. BOGSCH (United States of America) [E] recalled that in his delegation's view freedom of contracting was a principle upon which there could be no compromise. He suggested that a vote be taken to test the feeling of the Conference on that point. If the Conference's attitude was negative, the United States delegation would have no interest in the draft Convention.

1390 The CHAIRMAN [F] wished to know the general opinion of the working party.

1391 Mr. BODENHAUSEN (Netherlands) [F] said he could accept the United Kingdom proposal combined with The Hague Text. In that particular case, he could agree that the contract should prevail.

1392.1 Mr. STRNAD (Czechoslovakia) [F] agreed with the Netherlands delegation. He asked whether after the ratification of the Convention, when national legislation protected performers as the weakest parties, that legislation should not be applied under Article 5. He personally did not think so.

1392.2 It should be provided that, in all cases in which national legislation did not contain provisions for the protection of performers, measures should be taken to remedy that situation.

1393 Mr. NAMUROIS (Belgium) [F] pointed out that the Sub-Group's proposal stipulated that it was only when the contract contained no provisions on the matter that national legislation should govern the situation. He agreed with the Netherlands delegate. It might happen that the contract could not be taken into consideration owing to the existing social legislation. The situation in Belgium, in that connexion, was such that the proposal did not give entire satisfaction.

1394 The CHAIRMAN [F] did not think that the working party could express an opinion on that important question in the absence of a written proposal. He suggested that the discussion be adjourned pending the submission of a text.

1395 Mr. BODENHAUSEN (Netherlands) [F] thought that The Hague text, supplemented by the amendment presented by the United Kingdom delegate, would be quite sufficient, subject to final drafting.

1396 The CHAIRMAN [F] felt that a difficulty arose, as the United Kingdom amendment referred only to paragraph 3, whereas the working party seemed, on the whole, to consider that the principle of the supremacy of the contract should also be accepted in respect of paragraph 2.

1397 Mr. BOGSCH (United States of America) [E] pointed out that what was under discussion was the granting of special advantages to broadcasting organizations. If national legislation favoured artists beyond the minimum rights accorded them under Article 5, it was the national legislation which would apply. It was purely a matter of national treatment.

1398 Mr. EVENSEN (Norway) [E] pointed out that the Draft Convention did not deal only with performers; it was not only their interests which were at stake.

1399 Mr. WALLACE (United Kingdom) [E] felt that almost all were agreed that performers, at least, should not be deprived of the right to contract freely with broadcasting organizations. He suggested, as a compromise, that paragraphs 2 and 3 of the Hague Draft be left as they stood and a paragraph 4 be added along the lines of the United Kingdom proposal in document CDR/77. The wording he would suggest for such a new paragraph was as follows: 'However, national laws and regulations shall not operate to deprive the performer of the ability by contract to control his

relations with the broadcasting organization with which his contract was made'.

1400 The CHAIRMAN [F] considered that, if the principle were accepted only in respect of paragraph 3, the Contracting States would be able to introduce provisions which would be contrary to the principles of the contracts. The important question was whether the contract should prevail only in respect of paragraph 3 or also in respect of paragraph 2.

1401 Mr. TISCORNIA (Argentina) [S] thought that the solution proposed by the Sub-Group was sufficient to show that The Hague text should be substantially modified in order to ensure the supremacy of the contract. He did not consider that the new proposal presented by the United Kingdom necessitated a modification of the wording proposed by the Sub-Group.

1402 Mr. PUGET (France) [F] considered that the United Kingdom delegate's amendment applied to both paragraphs 2 and 3.

1403 The CHAIRMAN [F] asked the working party if it agreed with that view.

1404 Mr. NAMUROIS (Belgium) [F] was of the opinion that the recognition of the supremacy of the contract in all cases would be unacceptable to countries where it was provided that, under certain conditions and in accordance with certain rules, collective agreements prevailed over individual contracts.

1405 Mr. PUGET (France) [F], replying to the Belgian delegate, expressed the view that individual contracts could not be dissociated from collective contracts.

1406 Mr. BODENHAUSEN (Netherlands) [F] thought that there were slight differences and he supported the Belgian delegate. However, the United Kingdom amendment, the terms of which were less categorical, would be acceptable to the Netherlands, subject to final drafting.

1407 The CHAIRMAN [F] asked the Belgian delegate if he could also accept the United Kingdom proposal, it being understood that the latter would constitute a new paragraph 4 and would apply to both paragraphs 2 and 3.

1408 Mr. NAMUROIS (Belgium) [F] said that he would agree to it on the same understanding as the Netherlands delegation.

1409 Mr. RISTIČ (Yugoslavia) [F] supported the United Kingdom amendment.

1410.1 The CHAIRMAN [F] stated that the working party had before it two proposals, namely the proposal presented by the Sub-Group, and, subject to final drafting, the proposal to maintain paragraphs 2 and 3 as they stood and to combine them with the United Kingdom suggestion, which would be added in the form of a paragraph 4 so that it would apply to both paragraphs 2 and 3.

1410.2 The Chairman asked the United States delegate if he agreed to that proposal which was simpler and would facilitate the acceptance of the principle of the supremacy of the contract.

1411 Mr. BOGSCH (United States of America) [E] accepted the United Kingdom suggestion.

1412 Mr. BERGSTRÖM (Sweden) [E] suggested that the United Kingdom proposal should be followed, if it were considered to be a better compromise than the proposal submitted by the Sub-Group.

1413 Mr. TISCORNIA (Argentina) [S] said he agreed with the new wording which the United Kingdom delegate proposed for his amendment which, although in substance it did not differ from the Sub-Group's proposal, had the advantage of being clearer and of allowing greater elasticity.

1414 Mr. NAMUROIS (Belgium) [F] asked for further details. According to the French delegate's interpretation, both individual and collective contracts were concerned. If, however, only individual contracts were concerned, there arose the difficulty already referred to by the Netherlands delegate.

1415 The CHAIRMAN [F] asked the United Kingdom delegate whether by 'contract' he meant individual contracts only or collective contracts. In order to clarify the

situation, it could be mentioned in the Rapporteur-General's report that the term 'contract' covered both individual and collective contracts. He asked the United Kingdom delegate whether he accepted that suggestion.

1416 Mr. WALLACE (United Kingdom) [E] agreed.

1417 The CHAIRMAN [F] proposed that a vote be taken on the United Kingdom proposal (CDR/77), subject to final drafting, which would constitute a new paragraph 4, paragraphs 2 and 3 being maintained.

1418 Messrs. NAMUROIS (Belgium) [F] and PUGET (France) thought that the word 'régler' should be used in the French text.

1419 Messrs. TISCORNIA (Argentina) [S], GALBE (Cuba) and SALA (Spain) agreed that the words *facultad de limitar* in the Spanish text of the amendment concerned should be replaced by the words *facultad de regular*.

1420 The CHAIRMAN [F] read out the proposal and asked the working party if it agreed with it, subject to final drafting.

1421 Mr. STRNAD (Czechoslovakia) [F] recalled that, according to Czechoslovak legislation, the conditions concerning performers were fixed by collective contracts. He could not therefore accept the proposal unless it were stated that those conditions would be determined by national laws only in the absence of a collective contract.

1422 The amendment presented by the United Kingdom delegation (CDR/77) proposing to add a new paragraph 4 to Article 5 was *adopted* unanimously, without abstentions.

Article 7, paragraph 1, sub-paragraph (c) of the Convention (Article 5, paragraph 1, sub-paragraph (c) of the Draft Convention, CDR/1)

1423.1 The CHAIRMAN [F] emphasized that the Hague Draft did not give general protection against the reproduction of a fixation, but protection only in the particular cases mentioned in items (i), (ii) and (iii) of paragraph 1(c). Two proposed amendments were before the working party, namely the United States proposal (CDR/80) that items (i), (ii) and (iii) be deleted and the Czechoslovak proposal (CDR/31) that the words 'is unlawful' in item (i) of the same sub-paragraph be replaced by the words 'has been made without their consent'.

1423.2 He thought that, subject to the exeptions provided for in Article 14 of the Draft Convention, consideration should be given to the possibility of giving performers general protection against the reproduction of fixations of their performances.

1424 Mr. BOGSCH (United States of America) [E] in explaining the United States proposal to delete items (i), (ii) and (iii) in sub-paragraph 1(c), said that if a general right of reproduction was given to producers of phonograms, there was no reason why the right of reproduction of performing artists should be limited to the three cases provided in items (i), (ii) and (iii). Performers ought to be guaranteed the same general right of reproduction as producers were guaranteed. Other provisions of the Draft already established certain exceptions to the right of reproduction. Those exceptions took sufficiently into account the interests which must be safeguarded. Another reason for omitting items (i), (ii) and (iii) was that their deletion would make the Convention much simpler and easier to interpret. He was convinced that there would be no danger in leaving in sub-paragraph 1(c) only the words "the reproduction without their consent of a fixation of their performance".

1425.1 Mr. LENOBLE (France) [F] appreciated the United States delegate's desire to simplify The Hague text, but, as had already been pointed out, that text had stood the test of time. It was to be feared that the simplification proposed by the United States might have certain unforeseeable consequences.

1425.2 The reproduction of phonograms would require the previous authorization of the performers, whereas, up to that time, broadcasting organizations had been obliged

only to obtain the authorization of the producers of the phonogram in order to reproduce the latter. France preferred that The Hague text should be maintained.

1426.1 Mr. STRASCHNOV (Monaco) [F] said he, too, was in favour of maintaining The Hague text for the reasons given in the report of the Committee of Experts.

1426.2 According to the United States delegate's proposal, the authorization of all the performers would be necessary to enable the matrix of a phonogram to be sent abroad for pressing; but that would be virtually impossible. The extension of the performer's right of reproduction, as suggested by the United States delegate, would have very serious consequences.

1427 Mr. GALBE (Cuba) [S], replying to the misgivings expressed by the French delegate, said that every performer who made a recording of his 'live' performance was free to give or withhold his consent to the reproduction of that recording by the other contracting party.

1428 Mr. BOGSCH (United States of America) [E], replying to the objections just raised, said that if the United States proposal were adopted, symmetry would be established between Article 5 and Article 8. The omission of the three items would in no way be an obstacle to record manufacturers wishing to have their records made by a sub-contractor; provision for sub-contracting could be made in the contract. Broadcasting organizations would be prevented from making tape recordings of records on the commercial market if the Convention made no provision in respect of ephemeral fixation, but such provision was to be made and would apply to each group. The arguments against the omission of the three items were not very convincing.

1429.1 Mr. EDLBACHER (Austria) [F] drew attention to the amendment (CDR/63) presented by the Austrian delegation with respect to paragraph 1(c) of Article 5.

1429.2 Although the purpose of that proposal was to extend the rights of performers, the Austrian delegation supported the United States amendment in order to expedite the work of the working party.

1430 The CHAIRMAN [F] noted that, if the United States amendment were adopted, the Austrian amendment would be regarded as withdrawn; in the contrary event, the discussion on the Austrian amendment would be reopened.

1431 Mr. GALBE (Cuba) [S] asked whether the general protection extended to televised images.

1432 Mr. CHESNAIS (International Federation of Actors) [F] supported the United States delegate's proposal; Article 14 dealt with reproduction in the form of an ephemeral fixation.

1433 Mr. NAMUROIS (Belgium) [F] was in favour of maintaining The Hague text.

1434 The amendment presented by the United States delegation was *rejected* by 21 votes to 8, with 4 abstentions.

1435 The CHAIRMAN [F] proceeded to the consideration of items (i), (ii) and (iii) of paragraph 1 (c) of Article 5 of the Hague Draft. The working party had before it an amendment presented by the Austrian delegation (CDR/63), concerning item (i) of paragraph 1(c).

1436 Mr. PUGET (France) [F] supported the Austrian amendment.

1437 Mr. WALLACE (United Kingdom) [E] asked whether reference to ephemeral recording was to be made in Article 5. There was a difference between fixation made without a performer's consent and unlawful fixation.

1438 The CHAIRMAN [F] agreed, but said that the result was the same.

1439 Mr. SALA (Spain) [S] agreed with the substance of the Austrian proposal but suggested that, with a view to greater clarity, the word 'originally' should be included after the words 'was made' in item (i) of paragraph 1(c) (CDR/63).

1440 The CHAIRMAN [F] suggested that,

as there still seemed to be certain doubts, they should proceed to the vote.

1441 The amendment presented by the Austrian delegation concerning item (i) was *adopted* unanimously, with 5 abstentions.

1442 The CHAIRMAN [F] pointed out that two amendments had been presented with respect to item (ii): one by the delegation of Austria (CDR/63) and the other by the delegation of the United Kingdom (CDR/20).

1443 Mr. WALLACE (United Kingdom)[E] recalled that in document CDR/20, the United Kingdom delegation had suggested that paragraph (1) (c) (ii) was not sufficiently clear, since it did not define what was meant by a 'different' purpose. If that sub-paragraph were retained, the suggestion was that it should be reworded as follows: '(ii) If the fixation was made for a purpose other than the making of commercial phonograms and the reproduction is made for purposes different from those for which the performers had given their consent'. In making that suggestion, the United Kingdom delegation had taken into account the opinion of a working party which had considered the question of 'different purposes' at The Hague during the drafting of the text before the Conference.

1444.1 The CHAIRMAN [F] thought that the text proposed was not sufficient, as there also existed, for instance, the case of a fixation which was made for commercial phonograms and which was subsequently used for the sound track of a film.

1444.2 He thought it would be difficult to reconsider the compromise solution which had been worked out at The Hague.

1445 Mr. DE SANCTIS (Italy) [F] agreed with the Chairman. He pointed out that the question as to what constituted 'purposes different from those for which the performers had given their consent' must be interpreted by the courts. The Italian delegation was in favour of The Hague text.

1446 Mr. PUGET (France) [F] agreed with the Chairman and the Italian delegate.

1447 Mr. WALLACE (United Kingdom) [E] said the purpose of his delegation had been to draw attention to the difficulty of defining 'different purposes'. In the circumstances, however, he would withdraw the proposal he had just made.

1448 Mr. EDLBACHER (Austria) [F] thought that the text would not enable the performer to prevent a reproduction if the phonogram producer, in contravention of the contract, produced a greater number or a different kind of reproductions. In that case, there would no longer be any purposes different from those for which the performer had given his consent. It had been stated that the sub-paragraph must be interpreted as widely as possible. If that were so, the Austrian proposal represented no more than a drafting amendment.

1449 The CHAIRMAN [F] thought that it was not simply a question of drafting, but also the question whether the production of a greater number of phonograms than that for which the performer had given his consent constituted a violation of the contract.

1450 Mr. PUGET (France) [F] proposed that The Hague text be maintained.

1451 Mr. STRASCHNOV (Monaco) [F] believed that the Austrian delegate meant 'if the reproduction made exceeds the terms *of the contract*'; if that proposal were adopted, certain rights, such as copyright, would not be taken into consideration.

1452 The amendment presented by the Austrian delegation with a view to adding the words 'exceeds the terms of their consent' to item (ii) of paragraph 1(c) of Article 5, was *rejected* by 22 votes to 6, with 5 abstentions.

Article 7, paragraph 1, of the Convention (Article 5, paragraph 1, of the Draft Convention *new sub-paragraph* (d)).

1453 The CHAIRMAN [F] said that the Austrian amendment to paragraph 1 of Article 5 (CDR/63) also provided for a new sub-paragraph (d) designed to protect

performers not only against the reproduction, but also against the circulation, of their performances. That question had already been discussed and it had then become evident that certain delegations would find it difficult to recognize circulation rights.

1454 Mr. EDLBACHER (Austria) [F] withdrew his proposal, but asked that the question of illegal importation should be discussed in connexion with Article 5.

Article 7, paragraph 1, sub-paragraph (c) of the Convention (Article 5, paragraph 1, sub-paragraph (c) of the Draft Convention, CDR/1)

1455.1 Mr. BOGSCH (United States of America) [E] drew the Chairman's attention to the fact that the United States delegation had submitted an alternative proposal to be considered by the working party should its first proposal be rejected. Both proposals were contained in document CDR/80.

1455.2 The United States delegation thought that there was a regrettable ambiguity and a possible loophole in the Hague Draft, which should be understood by all. The Hague Draft nowhere prohibited the selling of copies of a phonogram made from a stolen matrix. Such an eventuality was not covered either by sub-paragraph (i) or by sub-paragraph (ii). Since it was obvious that everyone would wish to protect the performing artiste against such flagrant violation of his rights, the United States delegation proposed that a new sub-paragraph be inserted between sub-paragraphs (i) and (ii) to be worded as suggested in document CDR/80.

1456.1 The CHAIRMAN [F] agreed with the United States delegate; the Hague Committee of Experts had envisaged the case of a phonogram producer who allowed another phonogram producer to make copies; in that case, the performer had no rights.

1456.2 However, the Committee of Experts had not envisaged the case of a second producer who made copies without the consent of the performer or of the first producer. The question was whether, in such a case, there did not exist, in addition to a producer's right, a performer's right.

1457 Mr. STRNAD (Czechoslovakia) [F] said that it was precisely for the reasons given by the Chairman that he approved the proposal made by the United States delegate.

1458.1 Mr. STRASCHNOV (Monaco) [F] did not understand the proposals; he thought it was a question of drafting. Was it desired to ensure that the performer could prohibit the reproduction, or the producer? If the producer had given permission to copy, could the performer still prohibit the reproduction? Could the performer prohibit a reproduction effected without his consent and also without the consent of the person who had been authorized to make the first fixation?

1458.2 How could such a proposal be reconciled with the fixation of ephemeral recordings which had not been made with the performer's consent, but by virtue of legal provisions?

1459 The CHAIRMAN [F] thought that such a case would constitute one of the exceptions provided for in Article 14.

1460.1 Mr. BODENHAUSEN (Netherlands) [F] remarked that the United States delegate had said that the Hague Draft must not be regarded as inviolable. Nevertheless it contained sound principles, one of which was that double protection must not be given in respect of the same matter.

1460.2 The United States delegate's proposal reintroduced the idea of double protection, which was unnecessary. The question could be settled by a contract between the performer and the phonogram producer.

1461 Mr. DE SANCTIS (Italy) [F] agreed with the Netherlands delegate and was opposed to the United States delegate's proposal.

1462 Mr. CHESNAIS (International Federation of Actors) [F] thought that the proposal submitted by the United States delegate

did not apply merely to hypothetical cases, and he mentioned the example of a French performer who had been the victim of circumstances identical with those envisaged by the United States delegate.

1463 Mr. STEWART (International Federation of the Phonographic Industry) [E] asked if a performer belonging to a country which was a signatory to the Convention went to a country which was not a signatory and made a recording and the matrix was then sent to a signatory country whether the latter would have to obtain the consent of all the performers participating in the recorded performance, as well as of the first maker of the record, before he would be in a position to make use of the matrix.

1464.1 Mr. BOGSCH (United States of America) [E] said that if such a performer was not protected in the non-signatory country, he could not be protected by the Convention.

1464.2 He well understood the fears of the Netherlands delegate, but explained that there had been frequent cases in the United States of America, where there were literally hundreds of firms producing phonograms, of firms going out of business, and then there was no one who could exercise the rights. Those were the cases which the United States delegation wished to have covered.

1465 The second solution proposed by the United States delegation was *rejected* by 16 votes to 10, with 5 abstentions.

Article 14 of the Convention (Article 13, paragraph 2, of the Draft Convention, CDR/1)

1466 Mr. WALLACE (United Kingdom) [E] thought that the period of protection written into the Hague Draft should be maintained.

1467 The CHAIRMAN [F] recalled that the working party had before it various proposals concerning the period of protection.

1468 Mr. DRABIENKO (Poland) [F] proposed that the period of protection be fixed at ten years (CDR/41), which would correspond to the situation in Poland.

1469 Mr. GALBE (Cuba) [S] supported the Polish delegate's proposal.

1470 Mr. KAMINSTEIN (United States of America) [E] felt that the period of protection should be at least twenty-five years (CDR/102). He would have preferred an even longer period.

1471.1 Mr. STRNAD (Czechoslovakia) [F] thought that the fixing of a period would not settle the question, as it would still be essential to know from what date the period of protection ran. Would it be from the date on which the performance took place or from the date on which the fixation was made or from the other starting-points mentioned in Article 13?

1471.2 The question did not concern performers only, but also phonogram producers. It was essential to settle the question of the period of protection and to specify from what date it was to begin.

1472 Mr. PUGET (France) [F] was in favour of a period of thirty years.

1473 Mr. WALLACE (United Kingdom) [E] said that in the United Kingdom, records were protected for fifty years, broadcasts for fifty years and performers by criminal sanction only.

1474 Mr. STEWART (International Federation of the Phonographic Industry) [E] pointed out that people lived longer now than formerly and that it frequently happened that an artiste was still performing when the period of protection ran out. That was unfair to the artistes as well as to the record manufacturer. The period of protection should be extended during a performer's lifetime.

1475 Mr. BERGSTÖRM (Sweden) [E] said that all the groups were protected for twenty-five years in Sweden. He was in favour of maintaining the period of protection in the Hague Draft.

1476 Mr. CHESNAIS (International Federation of Actors) [F] suggested that the protection granted should last as long as possible and at least as long as that granted for phonograms.

1477 Mr. Ristić (Yugoslavia) [F] was in favour of maintaining The Hague text.

1478.1 Mr. De Sanctis (Italy) [F] said that Italian legislation fixed the period of protection at twenty years for performers and at thirty years for phonogram producers. For broadcasting organizations there was no fixed period, but the idea was gaining ground that there should be a fixed period of protection for broadcasts.

1478.2 As to the minimum period of protection, the minimum laid down would inevitably have an effect on the ratification of the Convention. The period of protection should not be extended if that would be likely to make it more difficult for certain Governments to ratify the Convention.

1479.1 The Chairman [F] thought that the period of thirty years proposed by the Austrian delegation (CDR/90) might indeed prevent certain countries from acceding to the Convention. It would be difficult for some countries, such as the Scandinavian countries, to modify their recent legislation on copyright.

1479.2 He asked the Austrian delegation if it would agree to accept the United States proposal that the period of protection be fixed at twenty-five years.

1480 Mr. Edlbacher (Austria) [F] emphasized that Austrian legislation accorded thirty years' protection both to performers and to phonogram producers. He did not see how a long period of protection could prevent States from ratifying the Convention, seeing that Article 13 provided that the period of protection could be reduced in certain cases.

1481 Mr. De Steensen-Leth (Denmark) [E] said that in Denmark the period of protection was twenty-five years for all three groups. He was prepared to accept twenty-five years as the period for protection, but believed it would be wiser to maintain the twenty year period which appeared in the Hague Draft.

1482.1 Mr. Strnad (Czechoslovakia) [F] said that Czechoslovak legislation accorded protection to performers for a period of twenty years, and to producers of phonograms for a period of ten years.

1482.2 He supported the Polish delegation's proposal that the period of protection be fixed at ten years, in view of the situation of countries which depended for their broadcasting on the production of foreign phonograms.

1483 Mr. Mascarenhas da Silva (Brazil) [F] thought that twenty years should be the minimum period of protection, but he was in favour of a longer period; he also considered that the protection given to performers should last at least as long as that granted to phonogram producers.

1484.1 Mr. Tiscornia (Argentina) [S] said that in Argentina the Copyright Law protected the author and his assignees for a period lasting until fifty years after the author's death. The same law protected the performer (but not his assignees) for a period which, although not expressly mentioned, could be understood to cover the performer's lifetime. The Argentine delegation was therefore not opposed to a longer period. He suggested that the period of twenty-five years already fixed by the Universal Copyright Convention should be adopted as the period of protection.

1484.2 The speaker wished to know whether the ten-year period of protection which, according to the Polish delegate, was granted in Poland for certain works could not be longer for works of a different category.

1485 *The meeting rose at 1 p.m.*

Working Party No. II

Seventh meeting[1]

Friday, 20 October 1961, at 3.30 p.m.

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)

CONSIDERATION OF THE DRAFT CONVENTION (continued)

Article 14 of the Convention (Article 13, paragraph 2, of the Draft Convention, CDR/1) (continued)

1486 The CHAIRMAN [F] recalled that several proposals had been made with a view to modifying the period of protection provided for in Article 13 of the Draft Convention.

1487 Mr. SIDI BOUNA (Mauritania) [F] supported the Polish proposal (CDR/41) to reduce that period to ten years.

1488 Mr. WAEYENBERGE (Congo, Leopoldville) [F] also supported that proposal.

1489 The CHAIRMAN [F] suggested that the working party should vote first on the proposal which would extend the period of protection most as compared with the period provided for in the Hague Draft, namely, the Austrian proposal to fix that period at thirty years (CDR/90). Successive votes would then be taken on (i) the proposal of the United States of America for a period of twenty-five years (CDR/102); (ii) the provision contained in the Draft Convention, fixing the period at twenty years (CDR/1); and (iii) the Polish proposal to fix the period at ten years (CDR/41). If a particular period were adopted, all subsequent votes on the other periods of lesser duration would, of course, become unnecessary.

1490 The procedure proposed by the Chairman was *approved.*

1491 The Austrian proposal to extend the period of protection to thirty years was *rejected* by 17 votes to 6, with 5 abstentions.

1492 The United States proposal to extend the period of protection to twenty-five years was *rejected* by 14 votes to 9, with 6 abstentions.

1493 The text of the Hague Draft fixing the period of protection at twenty years was *adopted* by 24 votes to 1, with 5 abstentions.

1494 The CHAIRMAN [F] suggested that the United States proposal concerning the other provisions of Article 13 of the Draft Convention (CDR/102) should be referred to the Sub-Group for its examination and that the amendment of the Nordic countries (CDR/24) should be discussed after that examination. He considered that sub-paragraphs (a) and (c) of paragraph 2 had been adopted. The working party unanimously expressed its *agreement* on that point.

Article 8 of the Convention (Article 6 of the Draft Convention, CDR/1) (continued)

1495 The CHAIRMAN [F] thought that the text which the United States of America proposed for that article (CDR/101) was better than The Hague text, for the word 'conditions' in the latter would make it possible to diminish the protection accorded by permitting the institution of compulsory licences.

1496 Mr. PUGET (France) [F] thought that, for the French text, the words *les conditions dans lesquelles* were preferable to the words *la manière dont.*

1497 The CHAIRMAN [F] proposed that the term '*modalités*' be adopted for the French text.

1498 Mr. WAEYENBERGE (Congo, Leopoldville) [F] was in favour of adopting the terminology which was the least open to a restrictive interpretation.

1499 Mr. BOGSCH (United States of America) [E] thought that the Drafting Committee could usefully make any improvements which might be considered desirable with regard to the French text. It was important, however, that the wording adopted

1. Cf. Doc. CDR/WG.II/SR.7 (prov.).

should accurately reflect the intentions of the working party.

1500 Mr. LEUZINGER (International Federation of Musicians) [F] said he, too, supported the United States amendment.

1501 Mr. DE SANCTIS (Italy) [F] disagreed with the substance of the amendment proposed by the United States of America as it referred exclusively to the representation of performers. The advantage of The Hague text was that it envisaged group performances in the broadest possible manner, without limiting itself to the question of representation. As to the form, Mr. De Sanctis, also, was in favour of referring the text to the Drafting Committee.

1502 Mr. PUGET (France) [F] did not attach great importance to the word 'conditions', but proposed that the word 'jointly', which had been excluded from The Hague text, should be restored to the latter, after the word 'participate'.

1503 Mr. TISCORNIA (Argentina) [S] agreed with Mr. De Sanctis that the United States proposal limited the scope of Article 6. He was not opposed to the adoption of a term more precise than 'conditions', but he did not approve the spirit of the United States proposal, as national legislation, in addition to determining who should represent performers, could also specify other conditions.

1504 Mr. BOGSCH (United States of America) [E] said that if it should be decided that the text of this article, as it appeared in the Hague Draft, should be left unchanged, the United States Government would interpret the Article in the sense of document CDR/101—namely, that performers themselves should be enabled to exercise their rights.

1505 Mr. DE WAERSEGGER (Belgium) [F] thought it would be more appropriate to add the word 'jointly' after the words 'exercise their rights'.

1506 Mr. PUGET (France) [F] was of the same opinion.

1507 Mr. BODENHAUSEN (Netherlands) [F] said that the word 'jointly' could be added only after the word 'participate', as otherwise the phrase concerned would acquire a meaning which had occasioned misgivings during a previous discussion of the question.

1508 Mr. STRNAD (Czechoslovakia) [F] agreed with the substance of the United States proposal.

1509 The CHAIRMAN [F] put to the vote the United States proposal, but reserved the right to have the wording of the French text improved.

1510 The United States amendment was *adopted* by 18 votes to 5, with 7 abstentions.

Article 3 of the Convention (Article 10 of the Draft Convention, CDR/1)

1511 The CHAIRMAN [F] referred to the Austrian proposal (CDR/98) concerning the article in question. He asked the delegates if they agreed to the proposed definition of the term 'rebroadcasting'.

1512 Mr. DE WAERSEGGER (Belgium) [F] pointed out that the definition should include relays by a second network, and also the simultaneous relay by one broadcasting organization of the broadcast of another broadcasting organization.

1513 Mr. EDLBACHER (Austria) [F] agreed to include that detail in the proposed definition.

1514 The Austrian amendment, subject to the Belgian modification, was unanimously *adopted*, with 2 abstentions.

1515 Mr. GALBE (Cuba) [S] pointed out, for the Drafting Committee's information, that the Spanish word *reemisión* also applied to rebroadcasts which were not simultaneous.

1516 The CHAIRMAN [F] proposed that the drafting of the Spanish text be entrusted to the Drafting Committee, whose members included three Spanish-speaking delegates. The Cuban delegate agreed.

Article 15 of the Convention (Article 14 of the Draft Convention, CDR/1)

1517 The CHAIRMAN [F] said that proposals relating to the article in question had been presented by Poland (CDR/41), the Nordic countries (CDR/61), Switzerland (CDR/75), Austria (CDR/95) and the Federal Republic of Germany (CDR/100). He proposed that the last-mentioned proposal be discussed first.

1518 Mr. WEINCKE (Denmark) [E], referring to the draft amendment to Article 14 which had been jointly proposed by his delegation together with those of Finland, Iceland, Norway and Sweden (CDR/61), and which related to short quotations, pointed out that the right to quote was acknowledged in most countries under Copyright Law. It should be similarly recognized in any instrument relating to neighbouring rights. The draft amendment would, however, be withdrawn in the event of acceptance of that which had been proposed by the delegation of the Federal Republic of Germany.

1519 Mr. MOOKERJEE (India) [E] urged that provision be made for exceptions with respect to: (i) use solely for purposes of scientific research; (ii) use in judicial proceedings, or in reports of such proceedings; and (iii) use for performances of literary, dramatic or musical works by amateur societies before non-paying audiences or for the benefit of charitable or religious organizations.

1520 Mr. KAMINSTEIN (United States of America) [E] commented that the working party was being called upon to consider no less than eight clauses relating to exceptions under Article 14 of the proposed Convention. It would clearly be preferable to adopt the draft amendment which had been proposed by the delegation of the Federal Republic of Germany and which had the effect of strengthening Article 2 of the Convention, inasmuch as it followed the example of Copyright Law.

1521 Mr. STRASCHNOV (Monaco) [F] said that the proposal presented by the Federal Republic of Germany placed the Government of Monaco in a difficult situation, for ephemeral fixations were not covered by the copyright law in force in Monaco. Thus, if the proposal of the Federal Republic of Germany were adopted, it would be necessary, in order to include ephemeral recordings among the exceptions admitted in the matter of neighbouring rights, to extend the copyright law to such recordings. It would perhaps be preferable to provide simply that States could be authorized to extend to neighbouring rights the reservations which were generally admitted in the matter of copyright.

1522 The CHAIRMAN [F] thought that a general mention should be made in Article 14 of the exceptions provided for by national copyright laws and that it would be necessary to add the special exceptions which did not come within the scope of copyright law.

1523 Mr. DE SANCTIS (Italy) [F] thought it desirable either to take copyright as a basis, or to maintain the existing text of Article 14.

1524 Mr. EDLBACHER (Austria) [F] agreed with the Chairman's last proposal.

1525 Mr. STRNAD (Czechoslovakia) [F] considered that a reference to the exceptions provided for in the Berne Convention would raise numerous difficulties, for there existed several texts of that Convention. Moreover, all countries had not exercised the right accorded to them by the Berne Convention.

1526 The CHAIRMAN [F] remarked that such difficulties disappeared as soon as reference was made to national laws instead of to the Berne Convention.

1527 Mr. WALLACE (United Kingdom) [E] pointed out that, in the draft amendment proposed by the Federal Republic of Germany, it was provided that the introduction of compulsory licences should be confined to cases in which such licences would be compatible with the terms of the Convention. This

might, however, be interpreted as excluding ephemeral fixations. While he was not necessarily in favour of such fixations, it appeared that a number of delegations would wish to provide for them.

1528 The CHAIRMAN [F] proposed the addition of a paragraph 2 corresponding to the proposal of the Federal Republic of Germany and completed by the words: 'In addition, any Contracting State shall have the right to add special exceptions'. He suggested that if that proposal were accepted, they should discuss the question of what other exceptions would be added. Replying to a question put by a delegate, he said that it was the entire proposal, and not simply the first sentence, which would be put to the vote.

1529 The proposal was *adopted* by 24 votes to 1, with 5 abstentions.

1530 The CHAIRMAN [F] proposed that consideration should be given to what special exceptions were necessary in the matter of neighbouring rights; he recalled that it had been considered necessary to mention ephemeral reproductions. There remained the question of the other exceptions, particularly those provided for in sub-paragraph (a). A proposal on that subject had been presented by the Swiss delegation (CDR/75).

1531 Mr. MORF (Switzerland) [F] introduced the proposals presented by his delegation (CDR/75 and CDR/92), relating to Articles 12, 14 and 15 of the Draft Convention. In sub-paragraph (a) of Article 14, the word 'use' covered the fixation of broadcasts and the reproduction of such fixations; that sub-paragraph was intended to deal with private magnetophones. In fact, however, it was very difficult to control private reproductions. Moreover, it would be unfair to protect one of the three groups concerned by the Convention in cases where the author himself was not protected because the reproductions envisaged were made privately. According to the Swiss proposal the right to use for private purposes would become the rule under the Convention and protection would become the exception. Protection should be accorded only in the case of a reproduction for pecuniary gain.

1532 Mr. WALLACE (United Kingdom) [E] was not quite clear as to what was meant by the wording of the proposed Article 12*bis*, as presented in the draft amendment (CDR/75) which had been proposed by the Swiss Delegation. The tape-recording, by private individuals in their homes, of broadcasts constituted what might well be considered as unfair competition against the legitimate interests of manufacturers of records; records were, after all, produced mainly with a view to being sold to private individuals for their domestic enjoyment. It was one thing to know that such private tape-recording activities were carried on, but it was quite another thing for an international Convention to give its express blessing to such a practice.

1533 The CHAIRMAN [F] thought that the system proposed by the Swiss delegation was rather too complicated for an international convention.

1534 Mr. STRASCHNOV (Monaco) [F] felt that each State should define what it meant by 'private use', just as it defined what it meant by copyright.

1535 Mr. MORF (Switzerland) [F] agreed to withdraw his proposal.

1536 The CHAIRMAN [F] asked whether it was really necessary to mention private use as an exception in Article 14; he did not think so, as all national copyright laws provided for such an exception; he personally was in favour of its deletion.

1537 Mr. KAMINSTEIN (United States of America) [E] felt that concepts such as those of 'private use' or 'fair use' were in practice too complex to permit of adequate definition in an international instrument, and should therefore be avoided. Sub-paragraph (a) should be deleted.

1538 Mr. STRNAD (Czechoslovakia) [F] was in favour of maintaining the mention of

that exception in the text of the article concerned.

1539 The CHAIRMAN [F] remarked that the exception in question obviously did not constitute an obligation for States, but simply a possibility.

1540 The proposal to delete sub-paragraph (a) of Article 14 was *rejected* by 11 votes to 6, with 14 abstentions.

1541 With regard to sub-paragraph (b), the CHAIRMAN [F] emphasized that the exception to which it referred was provided for in many national copyright laws, but that it could be usefully introduced in the matter of neighbouring rights even if it were not already incorporated in copyright. He therefore proposed that it should be maintained.

1542 The proposal to maintain sub-paragraph (b) was *adopted* unanimously.

1543 The proposal to maintain sub-paragraph (c) was *adopted* unanimously.

1544 With regard to sub-paragraph (d), the CHAIRMAN [F] said that it concerned a typical exception in the matter of copyright; he therefore considered it unnecessary to mention it in the text under consideration.

1545 Mr. PUGET (France) [F] proposed that all the exceptions mentioned in The Hague text should be maintained if only to facilitate the reading of it.

1546 Mr. BODENHAUSEN (Netherlands) [F] proposed that sub-paragraph (d) be maintained, as, in many countries, the exceptions authorized by copyright law for teaching purposes were very limited.

1547 Mr. KAMINSTEIN (United States of America) [E] objected to the wording of sub-paragraph (d) of Article 14: in this context, wide differences of meaning could be attributed to 'teaching', and it would therefore be preferable to delete the sub-paragraph. If, however, it were to be retained, the terms in which it was worded would require much more thought.

1548 Mr. MOOKERJEE (India) [E] renewed his proposal relating to exceptions for purposes of scientific research.

1549 Mr. WALLACE (United Kingdom) [E] suggested that sub-paragraph (d) of the Hague Draft be retained, but that the report of the working party make it clear—as had been done in paragraph 26 of the report of The Hague meeting—that 'teaching purposes' should be construed narrowly, in the sense of teaching in schools and like institutions.

1550 Mr. MOOKERJEE (India) [E] urged that provision for exceptions was of very real importance in the case of industrially underdeveloped countries in which there were many instances of a largely illiterate population residing in isolated areas. Sub-paragraph (d) should, therefore, be retained, and—as he had already urged—provision should also be made for exceptions for purposes of scientific research.

1551 Mr. KAMINSTEIN (United States of America) [E] endorsed the views which had been expressed by the United Kingdom delegation, but urged that the exceptions referred to in sub-paragraph (d) be expressly confined to teaching in 'recognized' schools.

1552 Mr. MOOKERJEE (India) [E] commented that in many industrially underdeveloped countries it would simply not be possible to confine exceptions to 'recognized' schools. The wording 'schools and like institutions' did, however, adequately meet the situation.

1553 Mr. PUGET (France) [F] thought it would be better not to mention 'recognized schools' in order to avoid the interpretation difficulties to which such an expression might give rise. It would be better to speak of 'schools and similar establishments', or else to abide by The Hague text.

1554 Mr. GALBE (Cuba) [S] wished to know what was meant by a recognized school as he considered the term very vague.

1555 Mr. KAMINSTEIN (United States of America) [E] withdrew his proposal with regard to the concept of 'recognized' schools.

1556 Mr. WEINCKE (Denmark) [E] announced the withdrawal of the draft amend-

ment which had been jointly proposed by the delegations of Denmark, Finland, Iceland, Norway and Sweden.

1557 The Indian proposal to add 'and for the purposes of scientific research' was *adopted* by 22 votes to 1, with 9 abstentions.

1558 Mr. EDLBACHER (Austria) [F] explained that his proposal was intended to encourage the activity of theatres. As theatre performances could be broadcast in another country, the provisions concerning them were applicable to international situations.

1559 The CHAIRMAN [F] wondered whether that question should not be settled exclusively by contract between performers and the theatre; in that case, it would be unnecessary to include it in the Convention.

1560 Messrs. BODENHAUSEN (Netherlands) [F] and WALLACE (United Kingdom) agreed with the Chairman in that connexion.

1561 Mr. EDLBACHER (Austria) [F] withdrew his proposal.

1562 Mr. MOOKERJEE (India) [E] renewed his proposal that an additional sub-paragraph be inserted in Article 14 providing for exceptions with respect to performances of literary, dramatic or musical works by amateur performers for non-paying audiences or for the benefit of charitable or religious institutions. Such exceptions would greatly facilitate mass education, particularly in industrially underdeveloped countries where there was an acute need for such education.

1563 Mr. BODENHAUSEN (Netherlands) [F], raising a point of order, moved the closure of the discussion on that article. He considered it improper to discuss an important amendment which had not been presented in writing.

1564 Mr. MOREIRA DA SILVA (Portugal) [F] shared the opinion of the Netherlands delegate.

1565 The motion on the point of order was *adopted* by 24 votes to 2, with 4 abstentions.

Article 10 of the Convention (Article 8 of the Draft Convention, CDR/1) (continued)

1566 The CHAIRMAN [F] recalled that the Portuguese delegation had raised, in connexion with Article 8, a question which was to be re-examined after the discussion of Article 14. The question was whether the exception provided for in sub-paragraph (c) of Article 14 was sufficient or whether the exception suggested by the Portuguese delegation in document CDR/88 should be added to Article 8.

1567 Mr. WALLACE (United Kingdom [E] considered that the exceptions provided for under sub-paragraph (c) were entirely adequate to meet all legitimate requirements of broadcasters. It would be going too far to grant broadcasters exceptions for reproductions made for unspecified 'technical' reasons.

1568 Mr. MOREIRA DA SILVA (Portugal) [F] was prepared to withdraw his proposal provided it was made clear in the Rapporteur-General's report that Article 14(c) covered the exception to which the Portuguese amendment referred.

1569 The CHAIRMAN [F] said that Article 14(c) related only to ephemeral fixations and was therefore more limited in scope than the Portuguese amendment. He added that it was hardly possible to introduce into the Rapporteur-General's report a mention which was contrary to the provisions of the Convention.

1570 Mr. MOREIRA DA SILVA (Portugal) [F] stated that, in that case, he would maintain his proposal.

1571 The Portuguese draft amendment was *rejected* by 21 votes to 8, with 2 abstentions.

Article 16 of the Convention (Article 15 of the Draft Convention, CDR/1)

1572 The CHAIRMAN [F] announced that proposals had been presented by the delegations of Poland (CDR/41), the Netherlands (CDR/53 and CDR/54), France

(CDR/97), Ireland (CDR/99) and Denmark, Finland and Sweden (CDR/106).

1573 Mr. DRABIENKO (Poland) [F] withdrew the amendment which he had presented with reference to that article.

1574 Mr. LENOBLE (France) [F] proposed that the possibilities for exceptions, which in the existing text covered Article 12 as a whole, should be limited to sub-paragraph (d) of Article 12.

1575 Messrs. DE SANCTIS (Italy) [F] and SIDI BOUNA (Mauritania) supported the French proposal.

1576 The French proposal was *adopted* by 22 votes to 5, with 5 abstentions.

1577 Mr. LENNON (Ireland) [E] explained the purpose of the draft amendment proposed by his delegation. In a Contracting State which granted the right provided for in Article 11, persons who made use of a phonogram should not be bound by the Convention to pay for such use merely because the phonogram in question—having been made by a national of a Contracting State where the right concerned was not granted—had been published or fixed in a Contracting State which granted that right. In Irish law, phonograms were not protected as regards that right unless a similar right subsisted in the country in which the phonogram was made. The proposed amendment would, however, be withdrawn if the working party considered that the text of Article 15 of the Hague Draft was sufficiently wide to permit of such a reservation being made. The Drafting Committee might usefully consider that amendment, in conjunction with that jointly proposed by the Danish, Finnish and Swedish delegations.

1578 The CHAIRMAN [F] proposed that the question be referred to the Sub-Group —which was agreed to—and that the Netherlands proposal (CDR/53) should next be discussed.

1579 Mr. BODENHAUSEN (Netherlands) [F] said that the substance of the draft amendment proposed by his delegation had been considered by Working Party No. III in connexion with Article 25 of the Draft Final Clauses (CDR/3). From the text of Article 15 of the Hague Draft, it was not clear whether a State which was responsible for the international relations of other territories could ratify the proposed Convention fully in respect of itself, while ratifying it only partially in respect of some or all of the other territories in question.

1580 Mr. WALLACE (United Kingdom) [E] supported the Netherlands amendment.

1581 Mr. STRNAD (Czechoslovakia) [F] was opposed to that amendment for fundamental reasons which he had already indicated in connexion with certain other articles.

1582 The Netherlands proposal (CDR/53) was *adopted* by 20 votes to 3, with 6 abstentions.

1583 The Netherlands proposal to give States the possibility of withdrawing their declarations concerning reservations (CDR/54) was unanimously *adopted.*

New clause: Seizure of imported fixations unlawfully made

1584 The CHAIRMAN [F] referred to the Sub-Group the proposal presented by the Danish, Finnish and Swedish delegations (CDR/106) and opened the discussion on another proposal concerning seizures presented jointly by the Danish, Finnish, Icelandic, Norwegian and Swedish delegations. (CDR/ 24).

1585 Mr. HESSER (Sweden) [E] introduced the joint proposal. He felt it was reasonable to assume that States would arrange for the necessary machinery to ensure the rights which were protected by the Convention. Thus, for instance, if illegal copies were made of a phonogram, the producer of the original should be entitled to have the illegal copies seized. Such copies could, however, be manufactured in a foreign country, and could then be imported into the country of the legitimate producer. Protection was clearly needed to stop such imports. States should conse-

quently declare as illegal the importation of any unauthorized copy or unauthorized fixation of a performance or broadcast. It would be noted that the proposed new Article was confined to fixations which would have been unlawful in the country into which they were being imported, if they had been made in that country.

1586 Mr. WALLACE (United Kingdom) [E] suggested that phonograms be dealt with separately from cinematograph films. If it should be decided to exclude films from the scope of the proposed Convention it would only be logical that any reference to films be deleted from the Article under discussion.

1587 The CHAIRMAN [F] pointed out that the proposal concerned had been supported by several delegations and that the obstacle referred to by the United Kingdom delegate was perhaps not insurmountable in so far as the purpose of the proposal was to give a right and not to impose an obligation.

1588 Mr. STRNAD (Czechoslovakia) [F] was in favour of giving States the right to seize unlawful fixations imported from non-Contracting States, but was of opinion that the text should exclude the possibility of seizing fixations made by Contracting States in accordance with Article 14.

1589 Mr. KAMINSTEIN (United States of America) [E] endorsed the view which had been expressed on behalf of the United Kingdom delegation.

1590 Mr. SCHNEIDER (Federal Republic of Germany) [F] supported the proposal of the Nordic countries, but suggested that a paragraph (3) should be added, worded as follows: 'The seizure shall be effected in accordance with the laws of each Contracting State'.

1591.1 Mr. HESSER (Sweden) [E] commented that some delegations appeared to be concerned at the possible implications of the use of the term 'unlawful' in document CDR/24. To meet these apprehensions, the wording might be modified so as to make it clear that the reference was to fixations, the illegality of which would have stemmed from the terms of the Convention, as distinct from any other legislation.

1591.2 With regard to the comment which had been made by the delegate of Czechoslovakia, why—if the making of a private tape-recording was illegal within a given country—should the movement of such a tape-recording across international frontiers be facilitated? This was, however, a matter which might well be referred to the Sub-Group.

1592 Mr. DE WAERSEGGER (Belgium) [F] approved the proposal presented by the delegate of the Federal Republic of Germany.

1593 Mr. BOGSCH (United States of America) [E] said that, although the Chairman, on the basis of the French text, had been able to state that the proposal envisaged a right only, the English text went much further, since it provided for a real obligation.

1594 The CHAIRMAN [F] noted that there was, in fact, a fundamental difference between the French and English texts.

1595 Mr. HESSER (Sweden) [E] said that, in fact, the French text corresponded more accurately to the ideas of his delagation.

1596 Mr. BODENHAUSEN (Netherlands) [F] stated that, in his view, the seizure should constitute an obligation for States; but he felt it would be difficult for the Conference to take a decision on the question, which was not yet ripe for settlement.

1597 Mr. STRASCHNOV (Monaco) [F] wondered whether the fact of reserving special treatment for phonograms was not likely to give the idea, *a contrario*, that visual fixations of broadcasts were not protected at the time of their importation. He too, would therefore favour the deletion of this provision.

1598 Mr. BOGSCH (United States of America) [E] pointed out that if the provision under discussion were merely permissive, it was superfluous. If, however, there was any intention to introduce compulsion, it would surely be recognized that the matter was as

yet far from ripe for treatment at the international level.

1599 Mr. WALLACE (United Kingdom) [E] concurred in the view which had just been expressed on behalf of the United States delegation.

1600 Mr. GALBE (Cuba) [S] pointed out that the words *se decomisarán*, which were used in the Spanish text, were imperative, and, at that stage, it seemed rather venturesome to include such a provision in the Convention. Cuba's vote would depend on whether the effect of the provision was to impose an obligation or to offer a possibility.

1601 Mr. DE SANCTIS (Italy) [F] shared the view that the question was not yet ripe for decision.

1602 Mr. PUGET (France) [F] said that, if the text envisaged a mere possibility, it was superfluous and that if it imposed an obligation it was premature. Moreover, it was regrettable that it could be inferred, *a contrario*, that visual fixations were not protected.

1603 Mr. DE WAERSEGGER (Belgium) [F] proposed that a vote should be taken on the principle of seizure for the three categories of fixations.

1604 Mr. BODENHAUSEN (Netherlands) [F] suggested that a vote should first be taken on the Swedish amendment, which went the furthest.

1605 Mr. GALBE (Cuba) [S] urged that before the vote, it should be made clear whether the provision imposed an obligation or was merely permissive.

1606 The CHAIRMAN [F] stated that it was necessary to vote first on the question whether an obligation should be introduced. If no obligation was to be created, the text would in fact lose all significance, as, even in the absence of a text, the possibility would remain open.

1607 The proposal of the Nordic countries was rejected by 20 votes to 11, with 2 abstentions.

1608 The CHAIRMAN (F) then put to the vote the proposal limiting seizure to phonograms, in accordance with the Indian delegation's draft amendment (CDR/50).

1609 That proposal was *rejected* by 19 votes to 12, with 1 abstention.

Article 19 of the Convention (Article 16 of the Draft Convention, CDR/1)

1610 Mr. STRASCHNOV (Monaco) [F] felt it would be difficult to give practical effect to the Austrian proposal (CDR/103), which distinguished between motion pictures and other visual fixations. Moreover, it was impossible to apply Articles 5 and 12 without having recourse to the idea of the country of origin and the idea of the beneficiary country. For all those reasons, Mr. Straschnov was strongly opposed to the Austrian proposal.

1611 Mr. KIRSCHSCHLAEGER (Austria) [E] explained that the object of his delegation's proposal was to present a compromise solution. It did not seem advisable to guarantee protection to broadcasting organizations with regard to audio-visual fixations which were protected by copyright as cinematographic works: double protection would merely cause practical difficulties. This would apply to cinematographic works which had been initially produced for televising—frequently referred to as 'telefilms'—in so far as such works were covered by International Copyright Conventions. On the other hand, the protection provided by Article 5, paragraph 1(c)(ii), in so far as it extended to the 'Ampex' process, went beyond what the motion picture producers themselves desired. Austrian performers had, for their part—and in his delegation's view, reasonably—pressed for the deletion of this protection. The draft amendment related in particular to motion pictures initially produced for showing by television.

1612 The CHAIRMAN [F] shared Mr. Straschnov's views concerning the impossibility of distinguishing between the various categories of visual reproductions. There were, of course, visual fixations which were not motion pictures, but they constituted very

exceptional cases and were not taken into consideration by the laws of all countries.

1613 Mr. KAMINSTEIN (United States of America) [E], presenting the proposal in document CDR/105, pointed out that activity on the part of the United States interests concerned was on a very large scale, and, moreover, took place not only within the territory of the United States, but also in other countries. There was considerable uncertainty as to how the relatively complicated text of the Hague Draft, if adopted, would affect the situation. In these circumstances the proposal set forth in document CDR/105 should be adopted.

1614 Mr. STRASCHNOV (Monaco) [F] supported the statement made by the United States delegate.

1615 Mr. PUGET (France) [F] thought it preferable to leave aside everything relating to the motion picture industry; he therefore supported the United States proposal.

1616 Mr. BODENHAUSEN (Netherlands) [F] said he too supported the United States proposal.

1617 Mr. STRNAD (Czechoslovakia) [F] defended his proposal (CDR/107) which, in his view, was logically justified by the extent of the rights accorded by Article 5.

1618 Mr. DE SANCTIS (Italy) [F] likewise maintained that motion picture problems should not be dealt with by the Convention, for they had not yet been sufficiently clarified. It was to be hoped that national bodies of law would succeed in providing adequate solutions; but at the stage so far reached, prudence was essential.

1619 The CHAIRMAN [F] shared the views expressed by Mr. De Sanctis and said that he too supported the United States proposal.

1620 Mr. LEUZINGER (International Federation of Musicians) [F] emphasized the importance of television in the professional life of performers. In his view, half of the Convention's value for performers would disappear if no protection were provided for televised broadcasts.

1621 The United States proposal (CDR/105) was *adopted* by 19 votes to 5, with 8 abstentions.

1622 *The meeting rose at 7.15 p.m.*

Working Party No. II

Eighth meeting[1]

Saturday, 21 October 1961, at 4.30 p.m.

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)

CONSIDERATION OF THE DRAFT CONVENTION (continued)

Article 17 of the Convention (new provision)

1623 The CHAIRMAN [F] said that the United Kingdom proposal (CDR/110) did in fact concern the possibility of a reservation and therefore fell within the terms of reference of Working Party No. II.

1624 Mr. WALLACE (United Kingdom) [E] introduced the amendment, which, he stated, was not presented as a final draft but

1. Cf. Doc. CDR/WG.II/SR.8 (prov.).

the sense of which was clear. It was intended to allow countries which, at the time of the signing of the Convention, had legislations concerning the protection of phonograms in which the only criterion chosen for protection was the place where the fixation was made, to adhere to the Convention, in spite of the fact that the provisions of Article 3 of the Convention laid down that the criterion for protection was the nationality of the phonogram producer, the place of fixation or the place of first publication, the possibility of a reservation on one of the latter two criteria being allowed. The speaker felt that the new proposal, if not quite logical, was a practical one, since it would permit States such as the Nordic countries to adhere to the Convention while maintaining their existing legislation, which had been recently adopted, pending the adoption at a later time of laws more in line with the terms of the Convention.

1625.1 Mr. STRASCHNOV (Monaco) [F] pointed out that that proposal, the practical value of which he recognized, introduced a discrimination between States which had already adopted legislation and those which had not had time to do so or had waited for the Convention under discussion to be drawn up, but would nevertheless prefer to take the place of fixation as the sole criterion.

1625.2 In order to avoid making such a discrimination, he proposed to amend the text prepared by the United Kingdom delegation to bring it into line with Article IV of the Universal Copyright Convention, by saying: 'Any State which, upon the effective date of the present Convention in that State . . .'.

1626 Mr. STRNAD (Czechoslovakia) [F] supported the proposal of the United Kingdom delegation but thought that the amendment proposed by Mr. STRASCHNOV would enlarge its scope too much.

1627 Mr. KAMINSTEIN (United States of America) [E] pointed out, with reference to Mr. Straschnov's proposal, that, whereas at the time of the adoption of the Universal Copyright Convention most of the signatory States already had legislation on that question, that was not true for the subject of the Convention under discussion. Mr. Straschnov's proposal, if adopted, would have the effect of encouraging many of the Contracting States to base their criterion on fixation alone.

1628 Mr. WALLACE (United Kingdom) [E] agreed with the United States delegate. The principle of nationality as the main criterion had been laid down in the Convention, whereas Mr. Straschnov's proposal would in effect leave the choice of criteria entirely open to adhering countries.

1629 Mr. BELINFANTE (Netherlands) [E] recalled that, after long discussion in the working parties, agreement had been reached on a draft text of Article 15 which accepted the criterion of nationality in regard to material reciprocity. Would not those provisions be invalidated by the new Article proposed by the United Kingdom? He was opposed to the United Kingdom amendment and to Mr. Straschnov's proposal.

1630 Mr. STEWART (International Federation of the Phonographic Industry) [E] also pointed out that Mr. Straschnov's proposed amendment was contrary to the terms of draft Article 3. He was, however, in favour of the United Kingdom amendment which seemed to be a practical proposition deserving of consideration as a gesture of conciliation to the Nordic countries which had pioneered in legislation in that field. He hoped that the delegates would find it acceptable.

1631 Mr. AUBRY (Peru) [S] supported the proposal presented in document CDR/110.

1632 The CHAIRMAN [F] said that the working party could not take a decision on the amendment proposed by Mr. Straschnov, because that amendment challenged the decisions taken by Working Party No. I concerning criteria.

1633 The new provision submitted by

the United Kingdom delegation in document CDR/110 was *adopted* unanimously, with 4 abstentions.

Article 16 of the Convention (Article 15 of the Draft Convention, CDR/1) (continued). Proposal by the Sub-Group (CDR/113)

1634 The CHAIRMAN [F] drew attention to a few corrections to be made in the document:

(a) English text, second sentence of first paragraph, read: 'However, any State may at any time, by a declaration deposited with the Secretary-General of the United Nations, specify...';

(b) Spanish text, second line of sub-paragraph (b), read: '*apartado (d)*' instead of '*apartado (b)*';

(c) French text, sub-paragraph (a): add the words '*dans ledit article*' at the end of clause (ii).

1635 Mr. TISCORNIA (Argentina) [S] suggested that the Spanish text of clause (i) of sub-paragraph (a) should read: '*se propone no quedar*' instead of '*no se propone quedar*'.

1636 Messrs. PERALES (Spain) [S] and GAXIOLA (Mexico) seconded that proposal.

1637 Mr. GALBE (Cuba) [S] also supported it. He said, however, that he was not concerned about the drafting of those reservations.

1638 Mr. WALLACE (United Kingdom) [E] explained that paragraph 1(a)(i) of Article 15 contained the same provision as Article 15 paragraph 1(a) of The Hague text; that sub-paragraph (a)(ii) was intended to remove any ambiguity in the Hague Draft by making it clear that the States had broad latitude to make reservations with regard to the granting of complete or partial rights for broadcasting or for public communication; and that sub-paragraph (a)(iii) contained the substance of two amendments proposed by the Irish delegation (CDR/99) and the Danish, Finnish and Swedish delegations (CDR/106), allowing States to apply the principle of material reciprocity in regard to phonograms optionally. The criterion chosen here was the nationality of the phonogram producer, but it would be quite possible to add a provision intended for the States benefiting from the new provision adopted by the working party, stipulating that the place of fixation could also be taken as a criterion.

1639 Mr. NAMUROIS (Belgium) [F] supported by Mr. MOOKERJEE (India) said he thought it would be better to keep to The Hague text. If national legislations had the right not to grant remuneration for any one of the uses referred to in Article 11, they would have all the more right not to grant remuneration for some portion of such uses.

1640 Mr. BODENHAUSEN (Netherlands) [F], for the sake of clarity, suggested modifying clause (ii) as follows: 'In respect of certain uses'.

1641 Mr. MORF (Switzerland) [F] thought that it would be well, in this clause, to repeat the terms of The Hague Draft: 'in relation to any of the uses mentioned in that article'.

1642 Mr. STRASCHNOV (Monaco) [F] said that clause (iii) might conflict with Article 3, for example, in the following case: a producer who was a national of a non-contracting State made a fixation in a Contracting State; another Contracting State, which had made the reservation provided for in clause (iii) would then be able to refuse to protect the phonogram, even though it had been fixed in a Contracting State.

1643 The CHAIRMAN [F] replied that in such a case the phonogram would be protected against reproduction, but the producer would not have a right to remuneration.

1644 Mr. WALLACE (United Kingdom) [E] proposed that the word 'contracting' be deleted in the third line of the English text of sub-paragraph (a)(iii), in order to meet that difficulty.

1645.1 Mr. STRASCHNOV (Monaco) [F] found the suggestion of the United Kingdom delegate concerning the deletion of the word

'contracting' unacceptable. How could a non-contracting State be expected to apply the provisions of the Convention?

1645.2 He did not understand how a State which adopted the place of fixation as sole criterion could make a reservation concerning reciprocity by virtue of clause (iii).

1646.1 The CHAIRMAN [F] replied that it would be easy to indicate in clause (iii) that the criterion of nationality could be replaced by that of the place of fixation in States which adopted the place of fixation as the only criterion.

1646.2 The deletion of the word 'contracting' was a question of form. The meaning of the text was clear as it stood, and the responsibility for studying points of wording could be left to the Drafting Committee.

1647 Mr. BODENHAUSEN (Netherlands) [F] said he would like to know how clause (iii) would affect a Contracting State which granted remuneration for secondary uses only to performers.

1648 Mr. DE SANCTIS (Italy) [F] wished to point out that the concept of 'country of origin' had greatly preoccupied the Sub-Group and Working Party No. I. The question was raised whether the definition of the country of origin given in Article 4 of the Hague Draft should be retained, or whether that notion should be abandoned. The question had been left undecided. Working Party No. II must give the Main Commission a definite opinion on the point.

1649.1 The CHAIRMAN [F] said that clause (iii) was not concerned with the beneficiaries of remuneration but merely the principle of remuneration.

1649.2 He recalled that Mr. Bogsch (United States of America) had established a definition of the country of origin which was the logical consequence of the criteria adopted by Working Party No. I (CDR/67). That definition was a long and rather complicated one, and it seemed better to abandon it. It had been possible to avoid the expression 'country of origin' in Articles 3, 3*bis* and 3*ter* by specifying the criteria, and those texts were now very clear; if the same method could be adopted in Articles 11 and 15—as the Sub-Group had endeavoured to do—it would prove possible to avoid the difficulty involved in defining the country of origin.

1650 Mr. LENNON (Ireland) [E] was in favour of the proposed draft of Article 15 paragraph 1(a) with the amendments indicated. He suggested, and was supported by Mr. BOGSCH (United States of America), that the last three lines of sub-paragraph (a) (iii) should read 'Article in respect to phonograms produced by a national of the Contracting State making the declaration'.

1651 Mr. STRASCHNOV (Monaco) [F] asked what was meant by the term 'produced' which was to be found in no other provision of the draft Convention.

1652 Mr. BOGSCH (United States of America) [E] preferred the term 'fixed' to the term 'produced', in line with the definitions already elaborated by Working Party No. I.

1653 Mr. LENNON (Ireland) [E] made the suggestion that the words 'maker' and 'made' be used in sub-paragraph (a)(iii), as they had been in the draft text of Article 3 in document CDR/67 Rev.

1654 The CHAIRMAN [F] pointed out that the term 'maker' was to be found only in the original text of the United Kingdom proposal; it had been replaced, in the definition adopted, by the word 'producer'.

1655.1 Mr. STRNAD (Czechoslovakia) [F] recalled that it had been decided to adopt as criteria for the protection of phonograms the place of fixation and the nationality of the producer. Consequently, if a national of a Contracting State which had made the reservation provided for in clause (iii) made a fixation in a non-Contracting State, the phonogram would not be protected against reproduction, by virtue of the theory of criteria, and another Contracting State would be able to refuse it the protection accorded under Article 11 by virtue of clause (iii).

1655.2 The working party has just adopted a proposal which would permit certain Contracting States to take the place of fixation as sole criterion. How could reciprocity be applied between such States and those which had adopted the twofold criterion of nationality and fixation?

1656 Mr. WALLACE (United Kingdom) [E] noted that the working party had not attempted to define the point of attachment of a fixation, but simply to determine the nationality of phonograms for the purposes of material reciprocity. The working party had chosen the criterion of nationality since this was the only constant criterion of the three recognized under the terms of the Convention.

1657 Mr. BOGSCH (United States of America) [E] drew attention to the explanations on page 4 of the English text of the report of Working Party No. I (CDR/67 Rev.), which made it clear that the three criteria mentioned in Article 3 were not cumulative but that each of them must be applied, except that any State might declare on ratification that it did not propose to apply the criterion of first fixation or, alternatively, the criterion of first publication. All States were, however, bound to protect phonograms made by a national of a Contracting State.

1658 Mr. MORF (Switzerland) [F] asked whether the declaration provided for in clause (ii) could cover the beneficiaries of remuneration. He proposed to expand the scope of this text by inserting the words 'or any of the beneficiaries' between the words 'uses' and 'mentioned in that article'.

1659 Mr. HESSER (Sweden) [E] pointed out that if, in accordance with the terms of Article 11, one country gave the right to remuneration only to phonogram producers and another country only to performers, either State could make reservations under Article 15 and would not be bound to make payments to the other State. That interpretation followed from the existing wording of Article 15, which covered a similar amendment proposed by the Danish, Finnish and Swedish delegations in document CDR/106.

1660.1 Mr. BOGSCH (United States of America) [E] said that according to the United Kingdom delegation's interpretation of Article 11, material reciprocity between the United Kingdom and the United States of America would mean that the latter country would be able to grant secondary rights only to phonogram producers. If the Swiss proposal were accepted, the United Kingdom would be obliged to make a declaration of reservation. These proposals would cast doubt on the meaning of Article 11.

1660.2 In reply to the delegate of Sweden, he pointed out that it was unnecessary to mention categories of beneficiaries in sub-paragraph (a)(ii) and (iii), concerning material reciprocity, since all the terms of national protection were covered in the Article as drafted.

1661 Mr. WALLACE (United Kingdom) [E] added that the provisions of sub-paragraph (a)(iii) allowed broad latitude to Contracting States in their relations with other Contracting States on the question of reciprocity. He felt that it was important not to be too restrictive during the early stages of the application of the Convention.

1662 Mr. MORF (Switzerland) [F] thought that if Article 11 gave national legislations the right to reserve remuneration to one category of beneficiaries, Article 15 ought to make reciprocity possible.

1663 The CHAIRMAN [F] said that, in that case, States were not required to make a declaration; consequently, Article 15 was not concerned with that case.

1664 Mr. GALBE (Cuba) [S] did not want to go into technical discussion about that case, because what he was interested in was the legal—and what might be called the sociological—aspect of the question as a whole. What the reservations then under

study attempted to do was to nullify Article 11 before it was even approved. Yet Article 11 was the article which recognized the rights of performers, and that was what he thought should be defended. The Hague text had left too much liberty in regard to that matter, and the text proposed was even worse in that respect. Instead of beginning with the most harmless reservation, that contained in clause (iii), and then going on to clause (ii) and ending with clause (i), which contained the most comprehensive provision, the text began with the last-named clause, perhaps in order to make it perfectly clear that the intention was to nullify the provisions of Article 11, although it would have been more consistent not to adopt that article at all. The delegation of Cuba regretted to see Article 11 die even before it was born and asked that its opinion should be noted.

1665 Mr. WALLACE (United Kingdom) [E] did not agree that it would be more logical to reverse the order of (i), (ii) and (iii). Sub-paragraph (i) allowed for the possibility of a reservation on the whole of Article 11; sub-paragraph (ii) for a reservation on part of Article 11; and sub-paragraph (iii) dealt with the consequences of reservations made under (i) and (ii); that was the logical order.

1666 Mr. GALBE (Cuba) [S] said that he had explained his views clearly and thought that the explanations which had just been given to him were unnecessary.

1667 Mr. WALLACE (United Kingdom) [E] drew attention to an important change in the first paragraph of Article 15. In The Hague text, a Contracting State had the possibility of making a declaration of reservation 'in its instrument of ratification or accession'. That had been enlarged in the new draft to the possibility of making such a declaration 'at any time'.

1668 The draft text of paragraph 1(a) was *adopted* by 32 votes to 1, with no abstentions, subject to revision by the Drafting Committee.

1669 The draft text of paragraph 1(b) was *adopted* unanimously.

1670 The draft text of paragraph 2 was *adopted.*

1671 The draft text of Article 15 as a whole was *adopted*, subject to revision by the Drafting Committee.

Article 14 of the Convention (Article 13 of the Draft Convention, CDR/1) (continued)

1672.1 The CHAIRMAN [F] said that it was first necessary to determine whether the Article should provide for a comparison of terms. In the case of phonograms, such a clause seemed useless. Contracting States could make reservations concerning the protection they granted against secondary uses (Article 15 (iii)), and protection against reproduction was, in many countries, supplemented by laws against unfair competition. If the comparison of terms were abandoned, it would be possible to avoid recourse to the concept of the country of origin.

1672.2 Apart from protection against secondary uses, the cases where a comparison of terms could intervene were few and unimportant so far as concerned the protection of performers or broadcasting organizations.

1673 Mr. WALLACE (United Kingdom) [E] explained that in the United Kingdom there was no comparison of terms. All phonograms, including protected foreign phonograms, were protected for a period of fifty years. The important question was that of secondary uses and comparison of terms in this case was covered in Article 15 paragraph 1(a)(iii). The speaker felt that a clause covering comparison of terms in relation to the copying of records was not necessary since most States would accord to foreign phonograms the same protection they accorded to their own.

1674 Mr. LENNON (Ireland) [E] agreed to the deletion of the comparison of terms provision with regard to phonograms in Article 13.

1675.1 Mr. STRASCHNOV (Monaco) [F]

was in favour of deleting the comparison of terms.

1675.2 It might perhaps be possible to insert in clause (iii) of Article 15 the words 'and for the period in which' between the words 'to the extent to which' and 'the Contracting State', so as to make it clear that reciprocity could likewise be extended to the term of protection.

1676 It was unanimously *decided* to recommend the deletion of the comparison of terms for the protection of phonograms.

1677 Mr. BOGSCH (United States of America) [E] considered that since comparison of terms for secondary uses of phonograms was covered by Article 15, it was unnecessary to include a comparison of terms provision for performers, since that could refer only to the fixation of live performances, where the question of duration did not arise.

1678 It was unanimously *decided* to recommend the deletion of the comparison of terms for the protection of performers.

1679 Mr. STRASCHNOV (Monaco) [F] said that he was in favour of deleting the comparison of terms in the case of broadcasting organizations, though he reserved the right to revert to that problem if the Main Commission modified Article 16.

1680 It was unanimously *decided* to recommend the deletion of the comparison of terms for the protection of broadcasts.

1681 *The meeting rose at 8.30 p.m.*

Working Party No. II

Ninth meeting[1]

Monday, 23 October 1961, at 11 a.m.

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)

DRAFT REPORT OF WORKING PARTY NO. II AND PROPOSALS OF THE SUB-GROUP SET UP BY WORKING PARTY NO. II

1682.1 The CHAIRMAN [F] asked the working party to study, after each draft article, the corresponding section of the draft report (CDR/112).

1682.2 In three cases (Articles 12, 15 and 15*bis* of the draft Convention), the working party still had to decide on the substance. The other draft texts reflected decisions which had already been taken. The Chairman asked the delegates not to linger over questions of form, since all those texts would be revised by the Drafting Committee.

1683.1 Mr. DE SANCTIS (Italy) (Rapporteur) [F] wished to recall that the Sub-Group had put the draft articles in form after the draft report had been prepared; that report would have to be modified in consequence.

1683.2 He thanked the Secretariat of the Conference for having assisted him in carrying out his somewhat complicated task.

Introduction to the draft report: Composition officers and terms of reference of Working Party No. II

1. Cf. Doc. CDR/WG.II/SR.9 (prov.).

1684 The introduction to the report was *adopted.*

Article 7 of the Convention (draft Article 5, CDR/114 rev.)

1685.1 The CHAIRMAN [F] pointed out that the following change was to be made in the text: paragraph 1, sub-paragraph (a), last line, instead of 'or a fixation of a performance' read 'or is made from a fixation' (in French *'ou est donnée d'après une fixation'* instead of *'ou provient d'une fixation'*).

1685.2 Draft Article 5 was fundamentally the same as The Hague text (CDR/1), except for a change in form; the expression 'live and other than live performances', which had been found very difficult to define, had been avoided.

1686 Draft Article 5 was *adopted.*

First section of the draft report: Performers

1687 The first section of the report was *adopted,* subject to revision by the Drafting Committee.

Article 8 of the Convention (draft Article 6, CDR/114 rev.)

1688 Draft Article 6 was *adopted.*

Second section of the draft report: Group performances

1689 The second section of the report was *adopted.*

Article 10 of the Convention (draft Article 8, CDR/114 rev.)

1690 Draft Article 8 was *adopted.*

Third section of the draft report: Producers of phonograms

1691 The third section of the report was *adopted* unanimously.

Article 12 of the Convention (draft Article 11, CDR/114 rev.)

1692 Mr. BOGSCH (United States of America) [E] said that the text of Article 11 as proposed in document CDR/114 rev. was somewhat ambiguous, since it could be interpreted as permitting of a situation in which, in respect of the broadcasting of a particular phonogram, payment would be made to the local group or organization of performers rather than to the performer or performers whose performance had resulted in the phonogram in question. Furthermore, since a phonogram usually had only one producer, the singular should be used. Consequently, the first sentence of Article 11 should read as follows: 'If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performer or performers, or to the producer of the phonogram, or to both.'

1693 The CHAIRMAN [F], supported by Mr. WALLACE (United Kingdom), said that the proposal of the United States delegate re-opened the question of substance and could be settled only by the Main Commission.

1694 Mr. GALBE (Cuba) [S] stated that he was opposed to any text which could prevent performers from obtaining remuneration. He wanted his opinion to be noted very clearly.

1695 Mr. MORAND (Chile) [S] thought that the remark made by the Cuban delegate was right and pertinent. The point of view of South American countries was quite different from that of European countries and the United States of America. For them, paying remuneration to the performer was a very different matter from paying it to the producer of phonograms, and should be kept separate.

1696 Draft Article 11 was *adopted.*

Fourth section of the draft report: Secondary uses

1697 Mr. TISCORNIA (Argentina) [S] said that, despite a request on his part, the report had not mentioned the fundamental

attitude of Argentina. He had withdrawn his proposal solely because of the categorical statement by the United Kingdom delegation that it would not sign the Convention if the Argentine amendment were included.

1698 Mr. WAEYENBERGE (Congo, Leopoldville) [F] pointed out an inaccuracy in the account of the discussion on the Congolese proposal (p. 8, second paragraph, third sentence). In reality, only the second part of that proposal, relating to the deletion of the word 'single' had been rejected. The first part (the replacing of the words 'shall be paid by the user' by 'shall be due') had been considered a formal change, and it had been decided to submit it to the Drafting Committee.

1699 The fourth section of the report, as amended, was *adopted*.

Articles 3 and 13 of the Convention (draft Article 12 and draft addendum to the Article on definitions, CDR/114 rev.)

1700 The CHAIRMAN [F] pointed out that the following corrections were to be made in the text:

First line of the English text of Article 12: read: 'Broadcasters shall enjoy';

English text of the Addendum: instead of 'relay' read: 'broadcast'; in French, instead of '*la diffusion simultanée en relais*', read: '*l'émission simultanée*'.

1701 Mr. PERALES (Spain) [S] supported by Messrs. GALBE (Cuba) and TISCORNIA (Argentina), said that in Spanish it was impossible to define the word '*reemisión*' as had been done in Article 12, and he reserved the right to submit that question to the Drafting Committee.

1702 Mr. WALLACE (United Kingdom) [E] pointed out that, in current usage in the United Kingdom, the term 'relay' had come to be associated in the minds of many people with the transmission by wire of a programme which was primarily intended for radio broadcasting. With a view to avoiding any possibility of ambiguity in that connexion, the word 'relay' in the proposed Addendum to the Article on Definitions should be replaced by the word 'broadcast'.

1703 Draft Article 12, together with the Draft Addendum to the Article on Definitions, as amended in accordance with the proposal of the United Kingdom delegation, were *adopted*, subject to such redrafting as might be found necessary in the case of the Spanish text.

Fifth section of the draft report: broadcasting organizations

1704 Mr. TISCORNIA (Argentina) [S] recalled that, when the working party had studied the question, he had proposed that, after the words 'against payment of an entrance fee' the words 'and for pecuniary gain' should be added, in order to exclude charity performances. He requested that the report state clearly that it should be left to national legislations to make provision for such cases.

1705 The CHAIRMAN [F] pointed out that sub-paragraph (d) left to national legislation the possibility of determining the conditions under which the right in question could be exercised and, consequently, of excluding certain cases.

1706 Mr. DE SANCTIS (Italy) (Rapporteur) [F] explained that, for the sake of concision, he had mentioned in the draft report only those observations which had given rise to a discussion and a vote. However, he saw no difficulty in mentioning the point of view of the Argentine delegation.

1707 The fifth section of the report, as amended, was *adopted*.

Article 14 of the Convention (Draft Article 13, CDR/118)

1708.1 The CHAIRMAN [F] said that it had been thought useless to refer, in that text, to the principle of national treatment, since that principle was recognized throughout the draft Convention as a whole. Likewise, the comparison of terms had been dropped.

1708.2 That text corresponded to Article 13, paragraph 2, of the Hague Draft, except on one point; on the proposal of the Nordic countries, the distinction between published and non-published phonograms had been dropped, and the term of protection was therefore calculated, for all phonograms, from the end of the year in which the fixation occurred.

1709 Mr. KAMINSTEIN (United States of America) [E] urged that published and non-published phonograms be dealt with separately. In the case of non-published phonograms, the base date for determining the expiry of the period of protection should be the end of the year of the fixation, whereas in the case of published phonograms, the end of the year of first publication would be more appropriate.

1710 Mr. WALLACE (United Kingdom) [E] said that, while for published phonograms his delegation would have preferred the concept of the date of first publication—since that concept was in conformity with current legislation in the United Kingdom—it was recognized that that might not be acceptable to everyone. His delegation was accordingly prepared to agree to the text which had been proposed by the Sub-Group in document CDR/118.

1711 Mr. DE SANCTIS (Italy) [F] said that he was in favour of the new text, which would make it easier for Italy to accede to the Convention. In any case, the term of protection thus provided represented a minimum, and States had the possibility of making the term start from the year of first publication.

1712 Mr. BODENHAUSEN (Netherlands) [F] also expressed his preference for that text.

1713 Mr. KAMINSTEIN (United States of America) [E] agreed to withdraw the proposal which he had made earlier in connexion with Article 13, provided that it would be made quite clear in the report of the working party that the period of protection referred to in the Article was to be considered as merely a minimum period.

1714.1 Mr. STRNAD (Czechoslovakia) [F] said that he also favoured the new text.

1714.2 If that text were adopted, it would be logical to amend Article 9 of the Draft Convention in consequence. The notice borne by phonograms should no longer give the year of first publication, but the year of fixation.

1715 The CHAIRMAN [F] replied that Article 9 did not fall within the terms of reference of the working party. The delegate of Czechoslovakia could, if he wished, raise that question at a plenary meeting.

1716 Draft Article 13 was *adopted* unanimously, with 2 abstentions.

Sixth section of the draft report: Period of protection

1717 The sixth section of the report was *adopted*, subject to mention of the fact that the protection provided under Article 13 constituted a minimum.

Article 15 of the Convention (draft Article 14, CDR/118)

1718 Mr. MOOKERJEE (India) [E] drew attention to the fact that, in document CDR/115, he had submitted an amendment to Article 14. He would, however, be putting that amendment to the Main Commission.

1719 Draft Article 14 was unanimously *adopted*.

Seventh section of the draft report: Exceptions to the protection granted by the Convention

1720 Mr. KIRCHSCHLAEGER (Austria) [E] drew attention to an error in the paragraph of that section of the draft report relating to the proposal which his delegation had submitted in document CDR/95. That proposal had been withdrawn simply because it was clear that the majority of delegations would not be prepared to accept it. He availed himself of the occasion to point out, in connexion with the text on page 3 of

document CDR/112, that the Austrian proposal regarding paragraph 1(c) and paragraphs 2 and 3 of Article 5 had been referred to the Sub-Group.

1721 The seventh section of the report was unanimously *adopted*, subject to the modifications requested by the Austrian delegation.

Article 16 of the Convention (draft Article 15, CDR/119)

1722.1 The CHAIRMAN [F] pointed out that a few changes should be made in the French text of clause (iii): line 2, read '*[le] producteur n'est pas ressortissant d'un État contractant*'; lines 11 and 12: delete '*au titre de cet article*'; line 13: replace '*dans*' by the words '*par un ressortissant de*'; line 3 of the text between brackets on page 2, delete '*dans les limites de l'article 11*'.

1722.2 At the request of Mr. Perales (Spain), the CHAIRMAN [F] added that the following change should be made in the Spanish text of clause (i): the words '*que se propone no quedar obligado*' should be substituted for '*que no se propone quedar obligado*'.

1722.3 That text was identical with the one which the working party had already considered in document CDR/113, except for clause (iii), which had been radically changed in the light of the opinions expressed during the debate.

1722.4 The case of phonograms of which the producer was not a national of a Contracting State had become the subject of a separate provision. The words 'that it intends to grant the right referred to in that article only' had been replaced by 'it intends to limit the protection referred to in that article to the extent and the duration to which' in order to make it clear that Contracting States could reserve the possibility of a comparison of terms.

1722.5 The Chairman stated the various possible hypotheses. The most complicated case was the following: State A granted remuneration only to producers; State B granted it to performers or to both categories In such a case, should State B be given the possibility of excluding payment of remuneration in its relations with State A?

1722.6 The Sub-Group had not taken any decision on that point; it had merely drawn up two texts between which it asked the working party to choose.

1722.7 Personally, the Chairman thought that, even in the case he had mentioned, it was not necessary to provide for the possibility of a reservation. In fact, even in States where the law granted remuneration only to producers, those producers would often be bound by contract to give performers the benefit of it and, in view of social developments, it was probable that that situation would become the usual one.

1722.8 Consequently, the Chairman proposed that the working party should adopt the first of the proposals of the Sub-Group (text between brackets).

1723 Mr. TISCORNIA (Argentina) [S] thanked the Chairman for the clear explanation he had just given of the matter. He had no doubts about the logical development of the problem, as the Chairman had explained it. However, as he did not feel able to take the future into account, but only existing realities, he favoured the second solution. For his country, the rights closely related to copyright were those of performers. His attitude had consistently been to defend those rights, and that was the object of the amendment which he had proposed and then withdrawn because he had not believed it possible to impose the Argentine point of view on other countries. However, Argentina would never agree to have the benefit of remuneration extended only to producers of phonograms and preferred the second solution, which would enable his country not to enter into commitments with countries which remunerated producers alone.

1724.1 Mr. LEUZINGER (International Federation of Musicians) [F] thought that the draft Convention all too often left national

legislation the possibility of not protecting producers of phonograms or performers. A new possibility of reservation ought not to be created.

1724.2 Consequently, the International Federation of Musicians, the International Federation of Actors, and the International Federation of Variety Artistes asked the working party to adopt the first text.

1725 Mr. DE SANCTIS (Italy) [F] said that, after hearing the remarks of the representative of the International Federation of Musicians, he no longer felt any hesitation about deciding in favour of the first text.

1726.1 Mr. JESSEN (Brazil) [F] supported the Chairman's proposal. The solution which did not allow exclusion of remuneration in cases when the national legislation of two States prescribed different beneficiaries was certainly the better one.

1726.2 The example of relations between Brazil and Argentina showed that, in practice, as the Chairman had pointed out, the problem could easily be solved without prejudice to the interests of either of the groups concerned.

1727 Mr. TISCORNIA (Argentina) [S] stressed the fact that the position of Argentina was a question of principle. It did not prevent performers from agreeing with producers to have a portion of the sums collected reserved for them, just as in Brazil producers preserved a share for performers. Brazil and Argentina had always found a way of solving their conflicts, and he believed that they would do so in that case also. Moreover, once the position of principle had been affirmed, paragraph 2 of that Article would make it possible to reduce the scope of the declaration and thereby take account of individual cases.

1728 Mr. WALLACE (United Kingdom) [E] pointed out that the Sub-Group which had been set up by the working party had unanimously agreed that there were only two possible solutions—namely, those indicated in document CDR/119. The Sub-Group had not, however, been able to reach agreement with regard to which of those two solutions should be proposed. Nevertheless, it seemed clear that—as had been pointed out by the observer of the International Federation of Musicians—it was in the interests of performers to encourage the production and maximum sale of phonograms of their performances. The United Kingdom delegation accordingly preferred the text given in brackets at the end of sub-paragraph (a) (iii) of Article 15 in document CDR/119.

1729 Mr. STRASCHNOV (Monaco) [F] asked why the second text provided for only one of the two possible cases of reservation.

1730 The CHAIRMAN [F] explained that the Sub-Group had had the impression that States granting remuneration only to producers of phonograms did not wish to make a reservation concerning reciprocity. However, if such a reservation was made in respect of them, the second sentence freed them from their obligations under the terms of Article 11.

1731 Mr. JOUBERT (Republic of South Africa) [E] suggested that the delegation of Argentina might see its way to accept the first term of the alternative, if the wording were altered so as to make it permissive rather than mandatory. This could be effected by deleting the words 'shall not be considered' and replacing them by the words 'need not be considered'.

1732 Mr. MORF (Switzerland) [F] said that he would vote in favour of the second text, in order to leave legislation full freedom of action, but Switzerland would not necessarily make use of that possibility.

1733 The text between brackets in clause (iii) was *adopted* by 18 votes to 9, with 10 abstentions.

1734 Draft Article 15 was *adopted* in that form.

Eighth section of the draft report: Reservations

1735 Mr. PUGET (France) [F] asked that the report should make it clear that the French delegation had abstained because it reserved its position with regard to Article 15 until Article 11 had been finally adopted.

1736 Mr. LENNON (Ireland) [E] proposed that, in the section under discussion, the sentence relating to the statement on behalf of the delegation of Ireland be amended by the replacement of the words 'if necessary' by the words 'in certain circumstances'. That would more accurately reflect the position of his delegation.

1737 The eighth section of the report, as amended, was *adopted.*

Article 17 of the Convention (draft Article 15*bis*, CDR/120)

1738.1 The CHAIRMAN [F] pointed out that a correction should be made in that text: in line 3, 'to join' should be substituted for 'to adhere' (in French '*être partie*' instead of '*adhérer*').

1738.2 The working party had already adopted that text up to the words 'on this basis'. The ensuing phrase was the logical consequence of the adoption of draft Article 15.

1739 Draft Article 15*bis* was *adopted.*

Ninth section of the draft report: Exceptions affecting Article 3.

1740 The ninth section of the report was *adopted.*

Article 19 of the Convention (Draft Article 16, CDR/118).

1741 Draft Article 16 was *adopted.*

Tenth section of the draft report: Effect of the Convention on films

1742 Mr. GRAVEY (International Federation of Actors) [F] pointed out a mistake in the mention made of his speech on page 16 (fourth paragraph) of the Draft Report. In the fifth line, 'to improve' should be substituted for 'to maintain'.

1743 The tenth section of the report, as amended, was *adopted.*

1744 The report of Working Party No. II was *adopted*, subject to being corrected and put in final form.

1745 The CHAIRMAN [F] thanked all the members of the working party for the co-operation they had given him in studying such highly complex questions. He wished to offer his special thanks to the members of the Sub-Group, in particular Mr. Wallace and Mr. Bogsch, for their conciliatory spirit, and lastly, to Mr. De Sanctis for his valuable report.

1746 At the proposal of Mr. GRANT (United Kingdom) [E], the working party unanimously and by acclamation *adopted* a vote of thanks to the Chairman.

1747 *The meeting rose at 1.20 p.m.*

Working documents

The numbering of the Articles in the Hague Draft Convention (CDR/1) and the Secretariat Draft Final Clauses thereto (CDR/3, referred to for convenience as a part of the Hague Draft Convention) used as the basic working documents by the Diplomatic Conference differs from the numbering of the Articles in the Convention as adopted. In several cases, the Convention as adopted also contains entirely new Articles. Article numbers 1 to 34 contained in the subheadings on the following pages are the Article numbers of the Convention as adopted. The corresponding Article number of the Hague Draft Convention appears in each case in parentheses after these Article numbers, except in cases of entirely new Articles, which are so indicated by the word 'New' in parentheses following the Article in question. Except in the case of CDR/125 rev., which follows the Article numbering system of the Convention as adopted, all references in Conference Documents to Article numbers are to the Article numbers of the Hague Draft, unless otherwise noted (e.g., CDR/111, which adopted a transitional Article numbering system).

Convention

TITLE

CDR/1 Draft
Proposed as title:
International Convention concerning the Protection of Performers, Makers of Phonograms and Broadcasters.

CDR/16 Argentina
Proposed change in title:
In the Spanish title of the Convention (artistas interpretes and *ejecutantes) replace the conjunction* o (or) *by* a comma *between the two words* interpretes *and* ejecutantes.

CDR/67 rev. Report of Working Party No. I
See text on page 256.

CDR/125 rev. Final Draft
The title should read:
International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

Convention Final text of title
As in CDR/125 rev.

PREAMBLE

CDR/1 Draft
Proposed as preamble:
The Contracting States, moved by the desire to protect the rights of performers, makers of phonograms and broadcasters,
Have agreed as follows:

CDR/20 United Kingdom
The preamble should read:
The Contracting States,
Being parties to the Universal Copyright Convention signed at Geneva on 6 September 1952, or members of the International Union for the Protection of Literary and Artistic Works,
Moved by the desire to protect the rights of performers, makers of phonograms and broadcasting organizations,
Have agreed as follows:

CDR/125 rev. Final Draft
In CDR/1, replace: broadcasters *by:* broadcasting organizations.

Convention Final text of Preamble
As in CDR/125 rev.

ARTICLE 1 (formerly Article 2)

CDR/1 Draft
Proposed as Article 2:
The protection granted under this Convention shall leave intact and shall in no way affect the protection of the rights of authors of literary and artistic works or of other copyright proprietors. Consequently, no provision of this Convention may be interpreted as prejudicing such rights.

CDR/15 France, Italy
CDR/1 should read:
The protection granted under this Convention shall leave intact and shall in no way affect the right of the author and the exercise of that right over the work interpreted, performed, recorded or broadcast. No provision of this Convention may be interpreted as prejudicing that right.

CDR/19 Switzerland
CDR/1 should read:
The protection granted under this Convention shall leave intact and shall in no way affect the protection of literary and artistic works. Consequently, no provision of this Convention may be interpreted as prejudicing such protection.

CDR/20 United Kingdom
In CDR/1 insert: juridical *before:* rights; and *insert:* musical *after:* literacy.

CDR/30 India
In CDR/1 make changes proposed in CDR/20 and insert: dramatic and *before:* musical.

CDR/121 Drafting Committee
In CDR/19 insert: copyright in *before:* literacy.

CDR/121 rev. Drafting Committee
Same as CDR/121.

CDR/125 rev. Final draft
Same as CDR/121.

Convention Final text of Article 1
As in CDR/121.

ARTICLE 2 (formerly Article 3)

CDR/1 Draft
Proposed as Article 3:
Each Contracting State shall grant to performers, makers of phonograms and broadcasters, in respect of their performances, phonograms and broadcasts, when the country of origin of such performances, phonograms or broadcasts is another Contracting State, the same protection which it grants to its own nationals in respect of performances taking place on its territory, phonograms recorded or published on its territory and broadcasts transmitted on its territory.

CDR/13 Belgium
CDR/1 should read:
Each Contracting State undertakes to grant protection to performers, producers of phonograms and broadcasters, in respect of their performances, phonograms and broadcasts, when it is the country of origin within the meaning of Article 4 below, or when the country of origin, within the meaning of the said Article, is another country party to the present Convention.
In the contracting countries, the protection shall be regulated by the legislation of the country in which this protection is claimed, subject to the rights specifically granted by the present Convention.

CDR/17 United States of America
CDR/1 should read:
Except as otherwise provided in the present Convention, each Contracting State shall grant performers, makers of phonograms and broadcasting organizations, in respect to their performances, phonograms and broadcasts, when the country of origin is another Contracting State, the same protection which it grants to its own nationals in respect to performances, phonograms and broadcasts originating in its own territory.

CDR/18 Cambodia
In CDR/1 insert: to this Convention *after:* Each Contracting State; *and delete:* when the country of origin ... is another Contracting State.

CDR/19 Switzerland
In CDR/1 insert a second paragraph as follows:
Performers, producers of phonograms and broadcasters shall also enjoy, in respect of their performances, phonograms and broadcasts having another Contracting State as their country of origin, the rights specifically granted by this Convention.

CDR/20 United Kingdom
In CDR/1 replace: broadcasters *by*: broadcasting organizations.

CDR/30 India
Proposal concerning CDR/1:
It is proposed that the draft Article 3 should be accepted only in case the Convention adopts Draft Articles 5, 8 and 12.

CDR/31 Czechoslovakia
CDR/1 should read:
Each Contracting State shall grant to

performers who are nationals of another Contracting State, and to producers of phonograms and broadcasters with their headquarters in another Contracting State, in respect of their performances, phonograms or broadcasts, the same protection which it grants to its own nationals in respect of their performances, phonograms and broadcasts.

However, any Contracting State may, in a formal declaration communicated to the depositary of this Convention, give notification that it intends to restrict the protection to broadcasters granted by the present Convention to those broadcasters having their headquarters on the territory of a Contracting State and broadcasting from its territory. When a Contracting State, by its national laws and regulations, grants to performers, makers of phonograms and broadcasters, rights other than those provided by the present Convention, it shall not be bound to grant them to the nationals of another Contracting State, should its own nationals not benefit by the same protection in the latter State.

CDR/43 United States of America
CDR/1 should read:

1. National treatment shall mean:
   (a) in the case of performers, granting the same protection which the Contracting State where protection is claimed grants its own nationals if it itself is the country of origin;
   (b) in the case of makers of phonograms and broadcasting organizations, granting the same protection which the Contracting State in which protection is claimed grants, in the case of phonograms and broadcasts respectively, if it itself is the country of origin.
2. National treatment shall be subject to the protection specifically guaranteed[1] and the exceptions specifically provided in this Convention.[2]

CDR/64 Proposal of the drafting party established by Working Party No. I
CDR/1 should read:

1. National treatment shall mean the same protection which the Contracting State in which protection is claimed grants, under its domestic law, to performers and makers of phonograms being its own nationals, and to broadcasters having their headquarters on its own territory, in respect to performances taking place, first fixed or broadcast, phonograms first published or first fixed, and broadcasts transmitted from transmitters located, on its own territory.
2. *As in CDR/43.*

CDR/67 rev. Report of Working Party No. I
See text on page 256.

CDR/67/Annex rev. Texts proposed by Working Party No. I
As in CDR/64, except replace: exceptions *by*: limitations *in paragraph 2*

CDR/125 rev. Final draft
Article 2 should read:

1. For the purposes of this Convention, national treatment shall mean the treatment accorded by the domestic law of the Contracting State in which protection is claimed:
   (a) to performers who are its nationals, as regards performances taking place, broadcast, or first fixed, on its territory;

1. Proposed to meet the Austrian proposal (Doc. No. 19). The minimum rights are meant.
2. Proposed to cover the case where less than national treatment may be granted (for example, by virtue of the rule on comparison of terms (Article 13(i)) or reciprocity under Article 15(2)).

(b) to producers of phonograms who are its nationals, as regards phonograms first fixed or first published on its territory;
(c) to broadcasting organizations which have their headquarters on its territory, as regards broadcasts transmitted from transmitters situated on its territory.

2. *As in CDR/67/Annex rev.*

Convention Find text of Article 2
As in CDR/125 rev.

ARTICLE 3 (Formerly Article 7, first sentence, and Article 10)

CDR/1 Draft
Proposed as Article 7, first sentence, and Article 10:
For the purpose of this Convention, 'performance' means the recitation, presentation or performance of a literary or artistic work...

... For the purpose of this Convention:
(a) 'phonogram' means any exclusively aural fixation of a performance or other sounds;
(b) 'maker of phonograms' means the person or corporate body who first fixes a performance or other sound in material form;
(c) 'publication' means the multiplication of copies of the phonogram and the offering of such copies to the public in reasonable quantity.

CDR/11 United States of America
The Convention should contain the following provision:
For the purpose of this Convention 'works' means musical compositions; dramatic and other literary works; cinematographic, choreographic and pantomimic works; and any combinations of these works.

CDR/20 United Kingdom
Insert: musical *after:* literary *in CDR/1.*

CDR/20 United Kingdom
The following changes should be made in Article 10:
The definition *of 'publication' in Article 10(c)* should be: 'the offering of copies of the phonogram to the public in reasonable quantity'.

The word 'broadcast' should be defined in this Article to make it clear that the Convention only grants rights to broadcasting organizations in respect of their transmission by means of Hertzian waves and that no rights are granted in respect of transmissions by means of wires and other paths provided by a material substance.

The word 'reproduction' should also be defined in this Article and the definition should be in accordance with the agreement recorded in paragraph 37 of the Report of the Committee of Experts, i.e., 'the making of a copy or copies'.

CDR/23 Austria
Article 7, first sentence, should read:
For the purpose of this Convention 'performance' means literary or artistic recitations, presentations or performances of all kinds.

CDR/24 Denmark, Finland, Iceland, Norway, Sweden
Proposal concerning Article 10:
Delete the provision under (c).

CDR/27 Austria
Article 10(c) should read:
(c) 'publication' means the offering of copies of a phonogram to the public in reasonable quantity.

CDR/30 India
The definitions should include:
1. Literary work: 'literary work' includes tables and compilations.

2. Dramatic work: 'dramatic work' includes any piece for recitation, choreographic work or entertainment in drama show, the scenic arrangements or acting form, all of which is fixed in writing or otherwise but does not include a cinematographic film.
3. Artistic work: 'artistic work' means
   (a) a painting, a sculpture, a drawing (including a diagram, map, chart or plan) or photograph, whether or not any such work possesses artistic quality.
   (b) an architectural work of art, and
   (c) any other work of artistic craftsmanship.
4. Musical work: 'musical work' means any combination of melody and harmony or either of them printed to writing or otherwise graphicaliy produced or reproduced.

CDR/30 India
Proposal concerning Article 7, first sentence, and Article 10:
The provisions of draft Article 7 dealing with the definition of 'performance' and the provisions of draft Article 10 dealing with 'phonograms', 'maker of phonograms' and 'publications' may be transposed to the *definitions Article.*

CDR/49 Austria
Article 10 should include the following definitions:
'Performer' means anyone who takes part as an artist in the performance or presentation of a literary or artistic work or a variety show. (*The adoption of this definition would entail the deletion of Article 7.*)

'Broadcasting' means the transmission of sounds or images, or the transmission of sounds or images by Hertzian waves or by wire, or by any other method of broadcasting or rebroadcasting.

'Rebroadcasting' means the simultaneous or deferred transmission of a broadcast or the retransmission of a broadcast.

CDR/50 India
In Article 7, insert: dramatic or musical *after:* literary.

CDR/50 India
The following definition should be added to Article 10(a):
... '*Record*' means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a sound track associated with cinematograph film.

CDR/50 India
Proposed change in Article 10(c):
... 'publication' should be defined as follows: 'Issuing of records to the public in sufficient quantities'.

CDR/52 United States of America
Articles 7 and 10 (Definitions) should read:
1. 'Phonogram' means any exclusively aural fixation in material form of sounds of a performance or of other sounds.
2. 'Producer of phonogram' is the person or legal entity which first fixes in material form the sounds of performance or other sounds.
3. 'Publication' means the offering of copies of a phonogram to the public in reasonable quantity.
4. 'Performer' means actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, or otherwise perform works. Conductors of musicians or singers shall be considered as performers.
5. 'Broadcast' means the transmission by wireless means for public reception of sounds or of images and sounds.
6. 'Broadcasting organization' means the legal entity which initiates a broadcast.

(The proposal contained in Doc. CDR/11 is superseded by the present proposal.)

CDR/52 rev. United States of America
Articles 7 and 10 (Definitions) should read: as in CDR/52, except paragraph 5 thereof is deleted and paragraphs 6 and 7 thereof become paragraphs 5 and 6.

CDR/57 Belgium
Article 7 should include the following definition:
'Direct performance' means live recitations, presentations and performances, used without having recourse to any technical means.

CDR/67 rev. Report of Working Party No. I
See text on page 256.

CDR/67/Annex rev. Texts proposed by Working Party No. I
The Article on Definitions should read:
For the purpose of this Convention[1]
1. *As in paragraph 4 of CDR/52 except insert:* literary or artistic *before:* works, *and delete last sentence.*[2]
2. *As in paragraph 1 of CDR/52 except delete:* in material form.
3. *As in paragraph 2 of CDR/52, except change:* Phonogram *to:* phonograms *and delete:* in material form.
4. *As in paragraph 3 of CDR/52.*
5. 'Reproduction' means the making of a copy or copies of a fixation.
6. *As in paragraph 6 of CDR/52.*

CDR/83 Proposal made by the Chairman of Working Party No. II
A performance is no longer direct if it is fixed, or if it is broadcast, or if it is transmitted by some technical means to a place other than that in which the performance took place.

CDR/84 Belgium
The following definitions should be included in the text:
A 'direct performance' means live recitations, presentations or performances which take place in the presence, and for the benefit, of a given audience.

A performance is 'indirect' when such recitations, presentations or performances are used for other purposes by means of broadcasts, fixations or any other technical process.

CDR/93 Austria
Article 10, paragraph 3, should read:
'Producer of phonograms' means the person who, or the head of the undertaking which, first fixes a performance or other sounds.

CDR/98 Austria
In Article 10, add the following definition:
'Rebroadcasting' means the simultaneous relay of a broadcast.

CDR/114 Proposal of the working group established by Working Party No. II
Add the following definition:
'Rebroadcasting' means the simultaneous relay by one broadcasting organization of the broadcast of another broadcasting organization.

CDR/125 rev. Final draft
Article 3 should read:
(a) *As in paragraph 1 of CDR/67/Annex rev.*
(b) *As in paragraph 2 of CDR/67/Annex rev.*
(c) 'Producer of phonograms' means the person who, or the legal entity which, first fixes the sounds of a performance, or other sounds;

1. The question of possible definition of 'live performance' and of 'rebroadcast' has been reserved for later discussion.
2. In an appropriate place in the Convention, the second sentence of Article 7 of the Hague Draft should be inserted ('It shall be a matter for national laws and regulations to extend the protection to artistes who do not perform literary or artistic works').

(d) *As in paragraph 3 of CDR/52.*
(e) *As in paragraph 5 of CDR/67/Annex rev.*
(f) *As in paragraph 6 of CDR/52, except change:* Broadcast *to:* Broadcasting.
(g) *As in CDR/114, except change:* simultaneous relay *to:* simultaneous broadcasting.

Convention Final text of Article 3:
As in CDR/125 rev.

ARTICLE 4 (formerly Article 4(a))

CDR/1 Draft
Proposed as Article 4(a):
For the purpose of enjoyment of protection under this Convention, the country of origin shall be considered to be:
(a) in the case of performances, the country where the performance took place; however, when the performance has not taken place in a Contracting State, and when a phonogram or a broadcast has been made thereof, its country of origin shall be considered to be the country defined in sub-paragraph (b) or (c) below *(see text under Article 5, CDR/1, and Article 6, CDR/1).*

CDR/20 United Kingdom
Delete text of CDR/1 from: however *through:* below.

CDR/24 Denmark, Finland, Iceland, Norway, Sweden
As in CDR/20.

CDR/29 Federal Republic of Germany
Insert as Article 4bis:
'Performers who are nationals of a Contracting State shall enjoy, in another Contracting State in which their performances take place, the same rights as performers who are nationals of that State'.

CDR/31 Czechoslovakia
CDR/1 should be deleted.

CDR/43 United States of America
CDR/1 should read:
1. Each Contracting State shall grant national treatment to performers if any of the following conditions is met:
   i. if the performance took place in another Contracting State;
   ii. if the phonogram in which the performance is incorporated meets any of the conditions referred to in Article 3(1) *(see text of CDR/43 under Article 2 above)*;
   iii. if the broadcast which carries the performance satisfies any of the conditions referred to in article 3*bis*(1) *(see text of CDR/43 under Article 2 above).*
2. For the purposes of determining the country of origin of a performance, if more than one of the conditions referred to in the preceding paragraphs are met, condition (ii) shall have precedence over conditions (i) and (iii), and (iii) shall have precedence over (ii).

CDR/64 Proposal of the drafting group established by Working Party No. I
CDR/1 should read:
1. *As in CDR/43.*
   i. *as in CDR/43, except replace:* took *by:* takes;
   ii. *as in CDR/43, except change text after:* incorporated *to read:* is protected by virtue of Article 3 above *(see text of CDR/64, under Article 5)*;
   iii. *as in CDR/43, except change text after:* carries *to read:* the live performance is protected by virtue of Article 3*bis* above *(see text of CDR/64 under Article 6).*
2. The country of origin of a performance shall be:
   i. the same as the country of origin of the phonogram, if the performance is incorporated in a phonogram;

ii. the country in which the performance takes place, if the performance is not incorporated in a phonogram.

CDR/67 rev. Report of Working Party No. I
See text on page 256.

CDR/67/Annex rev. Texts proposed by Working Party No. I
As in CDR/64 except delete paragraph 2.

CDR/125 rev. Final draft
Article 4 should read as follows:
Each Contracting State shall grant national treatment to performers if any of the following conditions is met:
(a) the performance takes place in another Contracting State;
(b) the performance is incorporated in a phonogram which is protected under Article 5 of this Convention;
(c) the performance, not being fixed on a phonogram, is carried by a broadcast which is protected by Article 6 of this Convention.

Convention Final text of Article 4
As in CDR/125 rev.

ARTICLE 5 (formerly Article 4(b))

CDR/1 Draft
Proposed as Article 4(b):
For the purpose of enjoyment of protection under this Convention, the country of origin shall be considered to be:
[...]
(b) in the case of phonograms:
i. if published, the country of first publication; in the case of phonograms published simultaneously in a non-Contracting State and in a Contracting State, the latter shall be considered exclusively as the country of origin; a phonogram shall be considered as having been published simultaneously in several countries which has been published in two or more countries within thirty days of its first publication;
ii. if unpublished, the country in which the first fixation of sounds was made, provided it was made by a national of a Contracting State;

CDR/19 Switzerland
CDR/1 paragraph (b)(ii) should read:
. . . if unpublished, the country in which the maker of the fixation of sounds is domiciled.

CDR/24 Denmark, Finland, Iceland, Norway, Sweden
CDR/1 paragraph (b) should read:
. . . in the case of phonograms, the country where the first fixation of sounds was made;

CDR/26 Austria
CDR/1 paragraph (b)(ii) should read:
. . . if unpublished, the contracting State in which the first fixation of sounds was made; if the first fixation was made outside a contracting State, the country to which the person who has made the first fixation of sounds belongs.

CDR/28 Federal Republic of Germany
CDR/1 paragraph (b)(ii) should read:
. . . if unpublished, the Contracting State in which the fixation of sounds was made, or, if the fixation was not made in a Contracting State, the Contracting State to which the maker of phonograms belongs.

CDR/31 Czechoslovakia
CDR/1 should be deleted.

CDR/43 United States of America
CDR/1 should read:

1. Each Contracting State shall grant national treatment to makers of phonograms if any of the following conditions is met:
   (a) in the case of unpublished phonograms:
      i. if the first fixation of the sound was made in another Contracting State;
      ii. if the maker of the phonogram is a national of another Contracting State;
   (b) in the case of published phonograms, if the phonogram was first published in another Contracting State.
2. If a phonogram was first published in a non-contracting State but if it was also published, within thirty days of its first publication, in a Contracting State ('simultaneous publication'), it shall be considered as first published in the Contracting State. In case of simultaneous publication in several Contracting States, the Contracting State granting the shortest term of protection shall be considered the country of origin.
3. In the case of unpublished phonograms, any Contracting State may, by means of a declaration deposited with ... declare that it will protect unpublished phonograms only if the first fixation of the sound was made (paragraph 1(a)(i)) in, and the maker of the phonogram is a national of (paragraph 1(a)(ii)), another Contracting State.[1]
4. For the purposes of determining the country of origin of an unpublished phonogram, if both conditions (i) and (ii) of paragraph 1(a) are met, the country where the first fixation of the sound was made (paragraph 1(a)(i)) shall be considered as country of origin.

CDR/51 France

CDR/43 should read:

1. As in CDR/43.
   (a) if the first fixation of the sound was made in another Contracting State;
   (b) if the first fixation of the sound was made by a national of another Contracting State.
2. For the purposes of determining the country of origin of a phonogram, if the conditions mentioned in paragraph 1(a) and (b) above are met, the country where the first fixation of the sound was made shall be considered as the country of origin.

CDR/56 Chairman of working group established by Working Party No. I

CDR/1 should read:

1. *As in CDR/43.*
   i. if the maker of the phonogram is a national of another Contracting State ('criterion of nationality');
   ii. if the first fixation of the sound was made in another Contracting State ('criterion of fixation');
   iii. if the phonogram was first published in another Contracting State ('criterion of publication').
2. *As in CDR/43.*
3. By means of a declaration deposited with the Secretary-General of the United Nations, any Contracting State may reserve the right to apply either: the criteria of nationality and publication alone, or the criteria of nationality and fixation alone.
4. (a) The country in which the first fixation of the sound was made shall be considered the country of origin of unpublished phonograms; however, a Contracting State which, by virtue of a declaration made under paragraph 3, does not apply

1. The United States delegation does not recommend the adoption of paragraph (3). It is here inserted merely to conform with the provisions of Article 4(b)(ii) of CDR/1.

the criterion of fixation shall consider the country of which the maker of the phonogram is a national as the country of origin of unpublished phonograms.

(b) The country in which first publication took place shall be considered the country of origin of published phonograms; however, a Contracting State which, by virtue of a declaration made under paragraph 3, does not apply the criterion of publication shall consider the country in which the first fixation of the sound was made as the country of origin of published phonograms.

CDR/59 Denmark, Finland, Iceland, Norway, Sweden
In CDR/56 add at the end of paragraph 3:
or the criterion of fixation alone.

CDR/64 Proposal of the drafting party established by Working Party No. 1
CDR/1 should read:
1. *As in CDR/56.*
2. *As in CDR/56.*
3. *As in CDR/56, except change text after:* right, *to read:* not to apply either the criterion of publication or the criterion of fixation.
4. The country of origin of a phonogram is the country of which the maker of the phonogram is a national; however, if he is a national of a non-Contracting State, then:
   (a) in the case of unpublished phonograms, the country of the first fixation shall be considered as country of origin;
   (b) in the case of published phonograms,
      i. the country of the first publication, and, if the country of the first publication is also a non-Contracting State, the country of the first fixation, shall be considered as country of origin by countries not having made any declaration under paragraph 3 above;
      ii. the country of the first publication shall be considered as the country of origin by Contracting States which, by virtue of a declaration made under paragraph 3, do not apply the criterion of fixation;
      iii. the country of the first fixation shall be considered as the country of origin by Contracting States which, by virtue of a declaration made under paragraph 3, do not apply the criterion of publication.

CDR/67 rev. Report of Working Party No. I
See text on page 256.

CDR/67/Annex rev. Texts proposed by Working Group No. I
CDR/1 should read:
1. *As in CDR/56.*
2. *As in CDR/56, except delete last sentence.*
3. *As in CDR/64.*

CDR/125 rev. Final draft
Article 5 should read:
1. Each Contracting State shall grant national treatment to producers of phonograms if any of the following conditions is met:
   (a) the producer of the phonogram is a national of another Contracting State (criterion of nationality);
   (b) the first fixation of the sound was made in another Contracting State (criterion of fixation);
   (c) the phonogram was first published in another Contracting State (criterion of publication).
2. *As in CDR/67/Annex rev.*
3. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may

declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

Convention Final text of Article 5
As in CDR/125 rev.

ARTICLE 6 (formerly Article 4(c))

CDR/1 Draft
Proposed as Article 4(c):
For the purpose of enjoyment of protection under this Convention, the country of origin shall be considered to be:
[...]
(c) in the case of broadcasts, the country where the broadcaster has its headquarters or the country where the broadcast is transmitted; however, any Contracting State may, in a declaration made and deposited with the depository of this Convention, require, for protection under this Convention, that the headquarters of the broadcaster shall be located on the territory of a Contracting State and that such broadcasts shall be transmitted from such territory.

CDR/31 Czechoslovakia
CDR/1 should be deleted.

CDR/43 United States of America
CDR/1 should read:
1. Each Contracting State shall grant national treatment to broadcasting organizations if any of the following conditions is met:
   i. if the head office of the broadcasting organization is located in another Contracting State;
   ii. if the broadcast has been transmitted from a transmitter located on the territory of another Contracting State.
2. Any Contracting State may, by means of a declaration deposited with ..., declare that it will protect broadcasts only if the head office of the broadcasting organization is located in (paragraph 1(i)), and the broadcast has been transmitted from a transmitter located on the territory of (paragraph 1(ii)), another Contracting State.
3. For the purposes of determining the country of origin of a broadcast, if both conditions referred to in paragraph 1 are met, the country in which the head office of the broadcasting organization is located (paragraph 1(i)) shall be considered as country of origin.

CDR/64 Proposal of the drafting party established by Working Party No. I
CDR/1 should read:
1. *As in CDR/43.*
   i. *as in CDR/43 except replace:* head office *by:* headquarters.
   ii. *as in CDR/43.*
2. Any Contracting State may, by means of a declaration deposited with the Secretary-General of the United Nations, declare that it will protect broadcasts only if the headquarters of the broadcasting organization is located in another Contracting State and the broadcast has been transmitted from a transmitter located on the territory of the same Contracting State.
3. (a) The country in which the headquarters of the broadcasting organization is located shall be considered the country of origin of a broadcast; however, if this country is a non-Contracting State and the transmitter is located in a Contracting State, the country in which the transmitter is located shall be considered as country of origin;
   (b) Contracting States which made a declaration under paragraph 2 above shall consider as country of origin

the Contracting State in which both the headquarters of the broadcasting organization and the transmitter are located.

CDR/67 rev. Report of Working Party No. I
See text on page 256.

CDR/67/Annex rev. Texts proposed by Working Party No. I.
As in CDR/64 except delete paragraph 3.

CDR/125 rev. Final draft
Article 6 should read:

1. Each Contracting State shall grant national treatment to broadcasting organizations if either of the following conditions is met:
   (a) the headquarters of the broadcasting organization is situated in another Contracting State;
   (b) the broadcast was transmitted from a transmitter situated in another Contracting State.
2. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

Convention Final text of Article 6
As in CDR/125 rev.

ARTICLE 7 (formerly Article 5)

CDR/1 Draft
Proposed as Article 5:

1. The protection provided for performers by this Convention shall include the possibility of preventing:
   (a) the fixation, the broadcasting and the communication to the public of their live performances, without their consent;
   (b) the fixation without their consent of their live broadcast performances;
   (c) the reproduction without their consent of a fixation of their performances;
      i. if the fixation itself is unlawful;
      ii. if the reproduction is made for purposes different from those for which the performers had given their consent;
      iii. if the fixation was made in accordance with the provisions of Article 14 and the reproduction is made for purposes different from those provided for by the said provisions.
2. If broadcasting was consented to by the performer, it shall be a matter for national laws and regulations to regulate the protection against rebroadcasting, fixation for broadcasting and the reproduction of such fixation for broadcasting purposes.
3. The terms and conditions governing the use by broadcasting of fixations made for broadcasting shall be determined in accordance with national laws and regulations.

CDR/20 United Kingdom
Proposals concerning CDR/1:

(a) *In paragraph 1 replace:* possibility of preventing *by:* ability to prevent.
(b) *CDR/1, paragraph 1(a), should read:* ... the fixation and the broadcasting of their live performances without their consent.
(c) *If CDR/1, Paragraph 1(c) (ii), is retained, it should read:* If the fixation was made for a purpose other than the making of

commercial phonograms and the reproduction is made for purposes different from those for which the performers had given their consent.

CDR/31 Czechoslovakia
CDR/1 should read:

1. The protection granted to performers by this Convention shall include the right to consent to or prohibit:
   (a) the fixation, the wireless broadcasting or diffusion by wire of sounds and images, and the communication to the public of their live performances, without their consent;
   (b) *as in CDR/1, except delete:* live;
   (c) the reproduction without their consent of fixations of their performances more particularly;
      i. if the fixation itself has been made without their consent;
      ii. *as in CDR/1, except replace:* the performers *by:* they;
      iii. *as in CDR/1;*
   (d) each use, without their consent, of the fixation of their performances, except for the purposes mentioned in Article 14.
2. If broadcasting was consented to by the performer, it shall be a matter for national laws and regulations to regulate the terms and conditions of protection against rebroadcasting, fixation for broadcasting and the reproduction of such fixation for broadcasting purposes, together with the terms and conditions governing the use of fixations by broadcasters.

CDR/41 Poland
To CDR/1, add the following text:
The diffusion of public performances by wireless or by wire and the recording for the purposes of such diffusion shall be regulated in accordance with the national laws and regulations, provided that an equitable remuneration be paid to the performers.

CDR/48 Mexico
Add the following paragraph to CDR/1:

4. Any Contracting State may, by its national laws and regulations, specify the form and manner in which the rights enunciated in this article shall be exercised, and the penalties for their infringement.

CDR/63 Austria
CDR/1, should read:

1. *As in CDR/1.*
   (a) *as in CDR/1;*
   (b) *as in CDR/1 except replace:* broadcast performances *by:* performances broadcast or communicated by any other means;
   (c) *as in CDR/1;*
      i. if the fixation itself was made without their consent;
      ii. if the reproduction made exceeds the terms of their consent or is made for purposes different from those for which the performers had given their consent;
      iii. *as in CDR/1;*
   (d) the putting into circulation of reproduction of their performances without their consent or exceeding the terms of their consent.
2. It is a matter for national legislation to regulate the obligations of performers who participate in performances while in the employ of or under contract with the organizer of such performances.
3. *As in CDR/1.*
4. Notwithstanding other rights, transferred by performers to an individual or a corporate body, it is in all cases reserved to performers to exercise the rights necessary for the carrying out of an engagement accepted by them for recording or broadcasting.

CDR/74 Federal Republic of Germany
CDR/1, paragraph 1(b), should read: the rebroadcasting and fixation without their consent of their live broadcast performances;
and in paragraph 2 delete: rebroadcasting.

CDR/77 United Kingdom
Add at end of CDR/1, paragraph 3:
However, national laws and regulations shall not operate to deprive the performer of the ability, by contract, to control the use to which the broadcasting organization which made it may put any such fixation.

CDR/78 Portugal
CDR/1, paragraph 2, should read:
The consent given by the performer to the broadcasting of his performance includes, unless otherwise stipulated, authorization to make a fixation of that performance exclusively for broadcasting purposes.

CDR/80 United States of America
In CDR/1, paragraph 1(c), delete items (i), (ii) and (iii), or insert following text between items (i) and (ii);
... if the reproduction is made without the consent of both the performer and the person whom the performer had authorized to make the original fixation.

CDR/81 United States of America
Omit paragraphs 2 and 3 of CDR/1.

CDR/94 Proposal of the working group established by Working Party No. II
CDR/1, paragraph 2, should read:
To the extent to which the contract between the performer and the broadcasting organization in which the performer consented to the broadcasting of his live performance does not regulate the terms and conditions of
(a) fixation by a broadcaster of the live performance;
(b) reproduction by a broadcaster of the fixation referred to in (a) above;
(c) broadcasting of a fixation, or of the reproductions of the fixation, referred to in (a) and (b), above;
(d) rebroadcasting of the broadcast of his live performance or of a fixation referred to under (a) and (b), above;
the terms and conditions which the national laws may for such cases determine shall apply.

CDR/112 rev. Report of Working Party No. II
See text on page 261.

CDR/114 Proposal of the working group established by Working Party No. II
CDR/1 should read:
1. *As in CDR/1;*
   (a) the broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself a broadcast performance or a fixation of a performance;
   (b) *as in CDR/1, except replace:* live broadcast *by:* unfixed;
   (c) *as in CDR/1;*
      i. if the original fixation itself had been made without their consent;
      ii. *as in CDR/1;*
      iii. if the original fixation was made in accordance with Article 14, and the reproduction is made for purposes different from those referred to in that Article.
2. (a) If broadcasting was consented to by the performer, it shall be a matter for the national laws and regulations of the Contracting State where protection is sought to regulate the protection against rebroadcasting, fixation for broadcasting purposes, and the reproduction of such fixation for broadcasting purposes.

(b) The terms and conditions governing the use by broadcasters of fixations made for broadcasting purposes shall be determined in accordance with the national laws and regulations of the Contracting State where protection is sought.

(c) However, national laws and regulations referred to in sub-paragraphs (a) and (b) of the present paragraph shall not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organizations with which their contracts were made.

CDR/128 Czechoslovakia
CDR/125 rev., paragraph 1(c)(ii), should read:
. . . when the reproduction of a fixation made for broadcasting is used for wireless purposes other than those for which they gave their consent.

CDR/125 rev. Final draft
Article 7 should read:
1. *As in CDR/1;*
   (a) *as in CDR/114, except after:* itself *substitute:* already a broadcast performance or is made from a fixation;
   (b) *as in CDR/114;*
   (c) *as in CDR/1;*
      i. *As in CDR/114, except replace:* had been *by:* was;
      ii. *As in CDR/1, except replace:* had given *by:* gave;
      iii. *As in CDR/114, except replace:* Article 14 *by:* the provisions of Article 15, *and replace:* that Article *by:* those provisions.
2. (1) *As in paragraph 2(a) of CDR/114, except replace:* national *by:* domestic *and replace:* sought *by:* claimed.
   (2) *As in paragraph 2(b) of CDR/114, except replace:* broadcasters *by:* broadcasting organizations, *replace:* national laws and regulations *by:* domestic law, *and replace:* sought *by:* claimed.
   (3) However, the domestic law referred to in sub-paragraphs 1 and 2 of this paragraph shall not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organizations.

Convention Final text of Article 7
As in CDR/125 rev.

ARTICLE 8 (formerly Article 6)

CDR/1 Draft
Proposed as Article 6:
Any Contracting State may, by its national laws and regulations, specify the conditions under which performers exercise their rights, if several of them participate in the same performance.

CDR/32 Monaco
CDR/1 should read:
When several performers participate in the same performance, they shall exercise their rights jointly in accordance with the national laws and regulations.

CDR/66 Belgium
CDR/1 should read:
Every Contracting State shall, by its national laws and regulations, specify the conditions under which performers exercise their joint rights, when several of them participate in the same performance.

CDR/82 United States of America
Add at end of CDR/1:
. . . and if they are unable to agree among themselves as to the joint exercise of their rights.

CDR/101 United States of America
In CDR/1 replace: conditions under *by:* manner in, *and replace:* exercise *by:* will

be represented in connexion with the exercise of.

CDR/112 rev. Report of Working Party No. II
See text on page 261.

CDR/114 Proposal of the working group established by Working Party No. II
As in CDR/101.

CDR/125 rev. Final draft
As in CDR/101, except replace: national *by:* domestic.

Convention Final text of Article 8
As in CDR/125 rev.

ARTICLE 9 (formerly Article 7, second sentence)

CDR/1 Draft
Proposed as Article 7, second sentence:
It shall be a matter for national laws and regulations to extend the protection to artistes who do not perform literary or artistic works.

CDR/20 United Kingdom
As in CDR/1 but insert: musical *after:* literary.

CDR/50 India
As in CDR/1 but insert: dramatic or musical *after:* literary.

CDR/67 rev. Report of Working Party No. I
See text on page 256.

CDR/67/Annex rev. Texts proposed by Working Party No. I
See text of footnote 2 under Article 3.

CDR/125 rev. Final draft
Article 9 should read:
Any Contracting State may, by its domestic laws and regulations, extend the protection provided for in this Convention, to artistes who do not perform literary or artistic works.

Convention Final text of Article 9
As in CDR/125 rev.

ARTICLE 10 (formerly Article 8)

CDR/1 Draft
Proposed as Article 8:
Makers of phonograms shall enjoy the right to authorize or prohibit the reproduction of their phonograms either directly or when broadcast.

CDR/24 Denmark, Finland, Iceland, Norway, Sweden
The following additional text is suggested:
If fixations of a performance protected under this Convention are made in a territory to which this Convention does not apply, such fixations shall be liable to seizure when imported to the territory of a Contracting State, provided that the fixation would have been unlawful in that country, had it been made there.

This provision also applies to copies of a protected phonogram and fixations of a protected broadcast as well as to reproduction of fixations envisaged in this article.

CDR/31 Czechoslovakia
CDR/1 should read:
The protection of makers of phonograms shall include the right to authorize or prohibit the reproduction of their phonograms and of their broadcast phonograms.

As long as the reproduced phonogram has not been made available to the public in a sufficient number of copies, these rights shall be reserved to nationals of the Contracting State which made the recording.

CDR/50 India
Supplement CDR/1: by stipulations against 'illegal import of records'.

CDR/62 Denmark
As in CDR/1 except replace: when broadcast *by:* indirectly.

CDR/70 Belgium
CDR/1 should read:
Makers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms, in whole or in part.

CDR/76 Austria
CDR/1 should read:
Makers of phonograms shall enjoy the right to authorize or prohibit:
(a) the reproduction of the phonograms either directly or indirectly;[1]
(b) the putting into circulation of copies of their phonograms without their consent or exceeding the terms of their consent.

CDR/88 Portugal
CDR/1 should read:
Producers of phonograms shall enjoy the right to authorize or prohibit the reproduction, either direct or indirect, of their phonograms, except reproduction by broadcasting organizations for technical reasons.

CDR/104 India
Add the following text to CDR/1:
2. If reproductions of a phonogram protected under this Convention are made in a territory to which this Convention does not apply, such reproductions shall be liable to seizure when imported to the territory of a contracting State, provided that the reproduction would have been unlawful in that State, had it been made there.

CDR/112 rev. Report of Working Party No. II
See text on page 261.

CDR/114 Proposal of the working group established by Working Party No. II
CDR/1 should read:
Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

CDR/125 rev. Final draft
As in CDR/114.

Convention Final text of Article 10
As in CDR/114.

ARTICLE 11 (formerly Article 9)

CDR/1 Draft
Proposed as Article 9:
If a Contracting State, under its national laws and regulations, requires as a condition of protection of phonograms compliance with formalities, these requirements shall be considered to be satisfied, as regards the makers of phonograms and the performers, if all the copies in commerce of the published phonogram bear the symbol Ⓟ accompanied by the name of the Contracting State in which the first publication took place and the year date of this first publication placed in such manner and location as to give reasonable notice of claim of protection.

CDR/31 Czechoslovakia
In CDR/1, after: commerce, *the text should read:* bear the symbol Ⓟ accompanied by the name of the Contracting State on whose territory the headquarters of the phonogram maker is situated, and the year date of the recording; the symbol, name

1. That is, by way of broadcasting or by any other means of communication.

and year must be affixed on the disc; for other types of reproduction (tapes, wires, etc.) these particulars must appear on the reel or on its container.

CDR/58 Austria
In CDR/1 delete: accompanied by the name of the Contracting State in which the first publication took place, *and insert a second paragraph as follows:* It is sufficient too to set out the information required by paragraph 1 on the containers of the phonogram.

CDR/86 United States of America
CDR/1 should read:
If, as a condition of protecting the rights of producers of phonograms or of performing artistes or both in relation to phonograms, a Contracting State, under its national laws and regulations, requires compliance with formalities, these shall be considered as fulfilled if all the copies in commerce of the published phonogram or their containers bear a notice consisting of the symbol Ⓟ, accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection; and if the copies or their containers do not identify the producer of the phonogram or the licensee of the producer (by carrying his name, trade mark or other appropriate designation), the notice shall also include the name of the owner of the rights of the producer of the phonogram; and, furthermore, if the label on the copies or their containers does not identify the principal performers, the notice shall also include the name of the owner of the rights of such performers.

CDR/121 Drafting Committee
As in CDR/86, except replace: owner of the rights of such performers *by:* person who, in the country in which the fixation was effected, owns the rights of such performers.

CDR/121 rev. Drafting Committee
As in CDR/121, except replace: national laws and regulations *by:* domestic law, *and delete:* the label on.

CDR/125 rev. Final draft
As in CDR/121 rev. except delete in both places in which it appears: of the phonogram.

Convention Final text of Article 11
As in CDR/125 rev., except replace: performing artistes *by:* performers.

ARTICLE 12 (formerly Article 11)

CDR/1 Draft
Proposed as Article 11:
If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly by a broadcaster or for any method of communication to the public, a single equitable remuneration shall be paid by the user to the performers, to the makers of phonograms or to both. National laws and regulations may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration.

CDR/20 United Kingdom
In CDR/1 insert: or *after:* performers.

CDR/38 Netherlands
CDR/1 should read:
Every Contracting State which grants rights to performers or makers of phonograms, or both, in connexion with the broadcasting or other communication to the public of phonograms for which it is considered the country of origin may, to the extent to which similar protection is not granted by another Contracting State, refuse to extend these rights granted under its own laws and regulations to the case of the broadcasting or other communication to the public of phonograms for

which that other State is considered the country of origin.

CDR/65 Belgium
In CDR/1, the text between: public *and:* National *should read:* an equitable remuneration shall be paid by the user to the maker of phonograms.

The performers shall receive from the maker of phonograms published for commercial purposes an equitable remuneration for the use of those phonograms for broadcasting or any method of communication to the public.

CDR/71 France
CDR/1 should read:
Any Contracting State recognizing that producers of phonograms or performers possess certain rights in the case of broadcasts or communication to the public of phonograms for which it is considered to be the country of origin shall grant these same rights in respect of phonograms for which another Contracting State is considered to be the country of origin, in so far as that State grants similar, reciprocal protection.

CDR/73 Portugal
CDR/1 should read:
Any Contracting State which, by its domestic law, grants rights to performers or producers of phonograms in the event of broadcasts or communication to the public of phonograms for which it is the country of origin, shall grant, on a reciprocal basis, the same rights in respect of phonograms for which another Contracting State is the country of origin, provided that similar rights are granted by the domestic law of the aforesaid other Contracting State.

CDR/79 Norway
As in CDR/1 except delete: the *before:* makers, *delete:* in the absence of agreement between these parties, *and replace* sharing *by:* collecting, sharing and distribution.

CDR/85 Argentina
CDR/1 should read:
If a phonogram published for commercial purposes is used directly in any form for communication to the public or for broadcasting, a single equitable remuneration shall be paid by the user to the performers, or to the latter and to the makers of phonograms. In this last case, national laws and regulations may, in the absence of agreement between these parties, lay down the conditions governing the sharing of this remuneration.

CDR/87 Congo (Leopoldville)
The first sentence of CDR/1 should read:
When a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly by a broadcaster or for any method of communication to the public, an equitable remuneration shall be due to the performers, to the makers of phonograms or to both.

CDR/108 France, Netherlands, Portugal
CDR/1 should read:
Each Contracting State which grants protection to performers or producers of phonograms, or both, in the case of broadcasts or any other method of communication to the public of phonograms for which it is considered to be the country of origin, may, in so far as similar protection is not granted by another Contracting State, refuse to extend the protection granted by its own laws and regulations in the case of broadcasts or any other method of communication to the public of phonograms for which the latter State is considered to be the country of origin.

CDR/112 rev. Report of Working Party No. II
See text on page 261.

CDR/114 Proposal of the working group established by Working Party No. II

As in CDR/1, except replace: by a broadcaster *by:* for broadcasting, *and replace:* makers of *by:* producers of the.

CDR/124 France, Netherlands, Portugal
CDR/1 should read:
Any Contracting State which, in cases where phonograms are broadcast or communicated to the public, grants protection to performers or broadcasting organizations or both, shall have the power:
(a) not to grant this protection to phonograms the producer of which is not a national of a Contracting State;
(b) to limit the extent and the period of this protection to those of the protection granted by the Contracting State of which the producer is a national; however, when the latter State does not grant protection to the same beneficiary or beneficiaries as the Contracting State in which the protection is claimed, this fact shall not be regarded as constituting a difference in respect of the extent of the protection.

CDR/125 rev. Final draft
As in CDR/114, except insert: or *before:* to the producers, *and replace:* National laws and regulations *by:* Domestic law.

Convention Final text of Article 12
As in CDR/125 rev.

ARTICLE 13 (formerly Article 12)

CDR/1 Draft
Proposed as Article 12
Broadcasters shall enjoy the right to authorize or prohibit:
(a) the rebroadcasting of their broadcasts;
(b) the fixation of their broadcasts;
(c) the reproduction of unlawful fixations or of fixations made in accordance with the provisions of Article 14, if the reproduction is made for purposes different from those provided for by the above-mentioned provisions;
(d) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee. It shall be left to national legislation to determine the conditions under which this right may be exercised.

CDR/75 Switzerland
Add as Article 12bis:
The use of a performance, a phonogram or a broadcast within the meaning of Articles 5, 8 and 12, exclusively for the personal and private purposes of the person who has used it is lawful, provided that the fixation or reproduction of the phonogram is not used or made available to a third party with a view to financial gain.

CDR/89 Austria
CDR/1 should read:
(a) *as in CDR/1;*
(b) *as in CDR/1, except after:* broadcasts *insert:* or still photographs thereof;
(c) *as in CDR/1, except replace:* unlawful fixations *by:* fixations made without the consent of the broadcaster;
(d) *as in CDR/1, except delete:* against payment of an entrance fee;
(e) the putting into circulation of copies of fixation of their broadcasts without their consent, or exceeding the terms of their consent.

CDR/92 Switzerland
CDR/1 should read:
(a) *as in CDR/1;*
(b) *as in CDR/1, except after:* broadcasts *insert:* or of single images of those broadcasts;
(c) *as in CDR/1;*
(d) *as in CDR/1, except replace:* against payment of an entrance fee *by:* for pecuniary gain.

CDR/112 rev. Report of Working Party No. II
See text on page 261.

CDR/114 Proposal of the working group established by Working Party No. II
As in CDR/1 except sub-paragraphs (c) and (d) should read:
(c) the reproduction:
  i. of fixations, made without their consent, of their broadcasts;
  ii. of fixations, made in accordance with Article 14, of their broadcasts, if the reproduction is made for purposes different from those referred to in that Article;
(d) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; it shall be a matter for the national legislation of the country where the protection of this right is claimed to determine the conditions under which it may be exercised.

CDR/125 rev. Final draft
As in CDR/114 except replace: Broadcasters *by:* Broadcasting organizations; *and in sub-paragraph (c) (ii) replace:* Article 14 *by:* the provisions of Article 15 *and replace:* that Article *by:* those provisions; *and in sub-paragraph (d) replace:* national legislation of the country *by:* domestic law of the State.

Convention Final text of Article 13
As in CDR/125 rev.

ARTICLE 14 (formerly Article 13)

CDR/1 Draft
Proposed as Article 13:
1. The period of the protection granted, under the terms of this Convention, to performers, makers of phonograms and broadcasters, shall be determined by the law of the country where the protection is claimed. However, no Contracting State shall be obliged to grant protection for a longer period than that fixed by the law of the country of origin.
2. Nevertheless, the period of protection under this Convention shall in no case expire before the twentieth year following:
  (a) for performances, the end of the year in which the performances took place;
  (b) for unpublished phonograms, the end of the year of the fixation; for published phonograms, the end of the year of first publication, if the latter took place within the period of protection provided for unpublished phonograms;
  (c) for broadcasts, the end of the year in which the broadcast took place.

CDR/24 Denmark, Finland, Iceland, Norway, Sweden
In CDR/1, paragraph 2(b) should read: for phonograms the end of the year of the first fixation.

CDR/41 Poland
In CDR/1, paragraph 2, replace: twentieth *by:* tenth.

CDR/90 Austria
In CDR/1, paragraph 2, replace: twentieth *by:* thirtieth.

CDR/102 United States of America
CDR/1 should read:
1. No Contracting State shall be obliged to grant protection for a longer period than that fixed by the law of:
  (a) the Contracting State of which the maker of the phonogram is a national, in the case of phonograms and performances incorporated in phonograms;

(b) the Contracting State in which the performance takes place, in the case of performances not incorporated in phonograms;
(c) the Contracting State in which the headquarters of the broadcasting organization is located, in the case of broadcasts.

2. Nevertheless, the period of protection under this Convention shall in no case expire before the twenty-fifth[1] year following:
(a) the end of the year of the fixation, in the case of unpublished phonograms and performances incorporated therein;
(b) the end of the year of first publication, in the case of published phonograms and performances incorporated therein;
(c) the end of the year in which the performance took place, in the case of performances not incorporated in phonograms;
(d) the end of the year in which the broadcast took place, in the case of broadcasts.

CDR/107 Czechoslovakia
CDR/1, paragraph 2, should read:
Nevertheless, for performances the period of protection under this Convention shall in no case expire before the twentieth year following the end of the year in which the performance took place. For broadcasts and phonograms, the period of protection shall in no case expire before the end of the tenth year following the year in which the recording was made.

Conditional proposal: Should the twenty-year period of protection be accepted for all three categories of beneficiaries, it is proposed that the following paragraph be inserted:

However, in the event of the twenty-year period of protection not being uniformly adopted by all the Contracting States, the period of protection shall be governed by the law of the country where protection is claimed, but shall not exceed the period fixed in the country where the recording was made. Contracting States shall consequently be bound to apply the period of protection only insofar as it is compatible with their national laws and regulations.

CDR/112 rev. Report of Working Party No. II
See text on page 261.

CDR/118 Proposal of the working group established by Working Party No. II
CDR/1 should read:
The period of protection to be granted under this Convention shall endure at least until the expiration of the twentieth year following:
i. the end of the year of the fixation—for phonograms and performances incorporated therein;
ii. the end of the year in which the performance took place—for performances not incorporated in phonograms;
iii. the end of the year in which the broadcast took place—for broadcasts.

CDR/125 rev. Final draft
Article 14 should read:
The term of protection to be granted under this Convention shall last at least until the end of a period of twenty years computed from the end of the year in which:
(a) the fixation was made—for phonograms and for performances incorporated therein;

1. The United States Delegation is ready to accept a provision for a minimum term of up to fifty years if the Convention expressly permits a Contracting State to require, as a condition of protection beyond twenty-five years, that a registration to extend the protection be made in that State.

(b) the performance took place—for performances not incorporated in phonograms;
(c) the broadcast took place—for broadcasts.

CDR/128 Czechoslovakia
In CDR/125 rev. delete sub-paragraphs (b) and (c) and add the text of sub-paragraph (a) to the preceding text.

Convention Final text of Article 14
As in CDR/125 rev.

ARTICLE 15 (formerly Article 14)

CDR/1 Draft
Proposed as Article 14:
Any Contracting State may provide exceptions, under its laws and regulations, to the protection of performers, makers of phonograms and broadcasters, with respect to:
(a) private use;
(b) use of short excerpts in connexion with reporting of current events;
(c) ephemeral fixation by a broadcaster by means of his own facilities and for his own broadcasts;
(d) use solely for teaching purposes.

CDR/41 Poland
To CDR/1 add the following sub-paragraphs:
(e) the public use of the sound or television broadcast, by wireless or by wire, if it takes place without payment of an entrance fee or in clubs and cultural centres;
(f) the public use of the sound or television broadcast, by wireless or by wire, if it is made by an association solely for its members.

CDR/61 Denmark, Finland, Iceland, Norway, Sweden
To CDR/1 add the following sub-paragraph:
(e) short quotations to the extent justified by the purpose.

CDR/75 Switzerland
Delete sub-paragraph (a) of CDR/1.

CDR/95 Austria
To CDR/1, add the following sub-paragraphs:
(e) use of aural, visual and audio-visual fixation made by theatre managements by means of their own facilities and their own staff for their own purposes and with the knowledge of the performers concerned;
(f) broadcasting and communication of live performances in cases where, for practical purposes or for information of late-arriving spectators, transmission is made to premises within the theatre.

CDR/100 Federal Republic of Germany
CDR/1 should read:
Any Contracting State may place the same limitations under its laws and regulations, on the protection granted to performers, producers of phonograms and broadcasting organizations as it places on the protection of the rights of authors of literary and artistic works. However, compulsory licences may be introduced only in cases where they are compatible with the terms of this Convention.

CDR/112 rev. Report of Working Party No. II
See text on page 261.

CDR/115 India
To CDR/1, add the following sub-paragraph:
(e) The performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience or for the benefit of a religious or charitable institution.

CDR/118 Proposal of the working group established by Working Party No. II
CDR/1 should read:

1. Any Contracting State may provide, in its laws and regulations, exceptions to the protection guaranteed by the present Convention with respect to:
   (a) private use;
   (b) use of short excerpts in connexion with reporting current events;
   (c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;
   (d) use solely for the purposes of teaching or scientific research.
2. Irrespective of paragraph 1 above, any Contracting State may provide, in its laws and regulations, the same kind of limitations in respect to the protection of performers, producers of phonograms and broadcasting organizations, as it provides, in its domestic laws and regulations, in respect to the protection of the rights of authors of literary and artistic works. However, compulsory licences may be provided only to the extent to which they are compatible with the terms of the present Convention.

CDR/125 rev. Final draft
Article 15 should read:

1. Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Convention as regards:
   (a) private uses;
   (b) use of short excerpts in connexion with the reporting of current events;
   (c) *as in CDR/118;*
   (d) *as in CDR/118.*
2. Irrespective of paragraph 1 of this Article, any Contracting State may, in its domestic laws and regulations, provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms and broadcasting organizations, as it provides for, in its domestic laws and regulations, in connexion with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with this Convention.

Convention Final text of Article 15
As in CDR/125 rev.

ARTICLE 16 (formerly Article 15)

CDR/1 Draft
Proposed as Article 15:

1. Ratification or accession by a Contracting State shall imply full acceptance of all the obligations and admission to all the advantages provided by this Convention. However, a Contracting State may specify, in its instrument of ratification or accession:
   (a) that it does not intend to grant the right provided for in Article 11 or that it intends to restrict it in relation to any of the uses mentioned in that Article;
   (b) that it does not intend to be bound by one or more of the provisions of Article 12.
2. If a Contracting State makes such a declaration, the other Contracting States shall not be obliged to apply the reserved provision or provisions in their relations with such a State.

CDR/38 Netherlands
In CDR/1, paragraph 1(a) should be deleted.

CDR/41 Poland
In CDR/1, delete everything after the first sentence.

CDR/53 Netherlands
Add the following text at the end of the first paragraph of CDR/1:

A similar declaration may be made separately with respect to the territories referred to in Article 25.

CDR/54 Netherlands
Add the following paragraph at the end of CDR/1:
Any State which has made a declaration under this Article may at any time reduce its scope or withdraw it by means of a fresh declaration.

CDR/71 France
As in CDR/38.

CDR/73 Portugal
As in CDR/38.

CDR/75 Switzerland
Insert, under paragraph 1 of CDR/1, a new sub-paragraph (c), as follows:
(c) that it does not intend to be bound by Article 12*bis*.

CDR/97 France
CDR/1, paragraph 1(b), should read:
(b) that it does not intend to be bound by the terms of Article 12(d).

CDR/99 Ireland
CDR/1, paragraph 2, should read:
If a Contracting State makes such a declaration, the other Contracting States, in their relations with such a State:
(a) Notwithstanding the terms of any declaration made under Article 3(3) may reserve the right to apply any or all of the criteria set out in Article 3(1) in connexion with the application of the provisions of Article 11;
(b) shall not be obliged to apply the reserved provision or provisions of Article 12.

CDR/106 Denmark, Finland, Sweden
Add the following paragraph 3 to CDR/1:
A Contracting State shall be obliged to apply the provisions of Article 11 on phonograms, for which another Contracting State is the country of origin, only to the extent to which similar protection is granted in that other Contracting State.

CDR/108 France, Netherlands, Portugal
As in CDR/38.

CDR/112 rev. Report of Working Party No. II
See text on page 261.

CDR/113 Cor. Proposal of the working group established by Working Party No. II
CDR/1 should read:
1. Ratification or acceptance of, or accession to, the present Convention by a State shall imply full acceptance of all the obligations and admission to all the advantages provided by this Convention. However, any State may at any time, specify in a declaration deposited with the Secretary-General of the United Nations:
   (a) in relation to Article 11,
      i. that it does not intend to be bound by any provision of that Article;
      ii. that it intends not to apply the provisions of that Article in respect of specified uses referred to in the said Article;
      iii. that it intends to grant the right referred to in that Article only to the extent to which the Contracting State of which the producer is a national applies the provisions of the same Article in respect to phonograms of which the producer is its own national (that is, a national of the Contracting State making the declaration);
   (b) in relation to Article 12, that it does not intend to be bound by item (d) of that Article: if a Contracting State makes such a decla-

ration, the other Contracting States shall not be obliged to grant the right referred to in Article 12, item (d), to broadcasters, whose head office is in that State.

2. Any State which has made a declaration under paragraph 1 may, by means of a communication addressed to the Secretary-General of the United Nations, reduce its scope or withdraw it.
3. Declarations and communications referred to in the preceding paragraphs may include, or may be limited to, territories the external relations of which are assured by the Contracting State making the declaration or the communication.

CDR/119 Proposal of the working group established by Working Party No. II
CDR/1 should read:

1. *As in CDR/113 cor.;*
   (a) *as in CDR/113 cor.;*
      i. *as in CDR/113 cor.;*
      ii. that it intends not to apply the provisions of that Article in respect of certain uses;
      iii. that, in respect to phonograms the producer of which is the national of a non-Contracting State, it does not intend to apply that Article (even if the fixation or the first publication took place in a Contracting State); and, that in respect to phonograms the producer of which is a national of a Contracting State, it intends to limit the protection referred to in that Article to the extent and the duration to which the latter Contracting State grants protection under that Article in respect to phonograms first fixed in the Contracting State making the declaration. [However, the fact that the Contracting State of which the producer is a national does not, within the limits of Article 11, grant the protection to the same beneficiary or beneficiaries as the Contracting State making the declaration shall not be considered as a difference in the extent of the protection.][1]
   (b) *As in CDR/113 cor.*
2. *As in CDR/113 cor.*
3. *As in CDR/113 cor.*

CDR/124 France, Netherlands, Portugal
In CDR/119, delete the provisions of paragraph 1(a); and combine the second sentence of paragraph 1(b) as follows:
. . .However, any State may at any time specify, in a declaration deposited with the Secretary-General of the United Nations, that it does not intend to be bound by the provisions of Article 12, item (d); if a Contracting State ... etc.

CDR/125 rev. Final draft
Article 16 should read:

1. Any State, upon becoming party to this Convention, shall be bound by all the obligations, and shall enjoy all the benefits thereof. However, a State may at any time, in a notification

1. IF THE WORKING PARTY WISHES TO FOLLOW THE CONTRARY IDEA TO THAT EXPRESSED IN THE SENTENCE APPEARING IN BRACKETS, THE FOLLOWING TEXT SHOULD BE CONSIDERED: Furthermore, a Contracting State which grants the right referred to in Article 11 to the performers alone, or both to the performers and the producers, may specify in its declaration that it does not intend to grant the right referred to in that Article in the case of phonograms the producer of which is a national of a Contracting State granting such right to the producer alone; in this case, the latter State shall not be obliged to grant the right referred to in Article 11 in respect to phonograms the producer of which is a national of the Contracting State making such declaration.

deposited with the Secretary-General of the United Nations, declare that

(a) as regards Article 12:

i. it will not apply the provisions of that Article;

ii. it will not apply the provisions of that Article in respect of certain uses;

iii. as regards phonograms the producer of which is not a national of another Contracting State, it will not apply that Article;

iv. as regards phonograms the producer of which is a national of another Contracting State, it will limit the protection provided for by that Article to the extent to which, and the term for which, the latter State grants protection to phonograms first fixed by a national of the State making the declaration. However, the fact that the Contracting State of which the producer is a national does not grant the protection to the same beneficiary or beneficiaries as the State making the declaration shall not be considered as a difference in the extent of the protection;

(b) as regards Article 13, it will not apply item (d) of that Article; if a Contracting State makes such a declaration, the other Contracting States shall not be obliged to grant the right referred to in Article 13, item (d), to broadcasting organizations whose headquarters are in that State.

2. If the notification referred to in paragraph 1 of this Article is made after the date of the deposit of the instrument of ratification, acceptance or accession, the declaration will become effective six months after it was deposited.

Convention Final text of Article 16
As in CDR/125 rev., except in sub-paragraph 1(a)(v) insert: to *before:* the term, *and replace the period by a semicolon before:* however; *and in paragraph 2 replace:* was *by:* has been.

ARTICLE 17 (New)

CDR/59 Denmark, Finland, Iceland, Norway, Sweden
See text under Article 5.

CDR/110 United Kingdom
Insert a new provision:
Any State which, at the date of this Convention, grants protection to phonograms solely on the basis of the place in which the fixation was made shall be entitled to adhere to the Convention on this basis.

CDR/120 Proposal of the working group established by Working Party No. II
*As Article 15*bis, *subject to drafting, add at end of CDR/110:* and to apply, for the purposes of Article 15(1)(a)(iii) (*see text of CDR/119 under Article 16*), the criterion of the first fixation instead of the criterion of the nationality of the producer.

CDR/124 France, Netherlands, Portugal
In CDR/120, replace: 15(1)(a)(iii) *by:* 11 (*see text of CDR/124 under Article 12*).

CDR/125 rev. Final draft
Article 17 should read:
Any State which, on 26 October 1961, grants protection to producers of phonograms solely on the basis of the criterion of fixation may, by a notification deposited with the Secretary-General of the United Nations at the time of ratification, acceptance or accession, declare that it will apply, for the purposes of Article 5, the criterion of fixation alone and, for the purposes of paragraph 1(a)(iii) and (iv) of

Article 16, the criterion of fixation instead of the criterion of nationality.

Convention Final text of Article 17
As in CDR/125 rev.

ARTICLE 18 (New)

CDR/125 rev. Final draft
Article 18 should read:
Any State which has deposited a notification under paragraph 3 of Article 5, paragraph 2 of Article 6, Article 16 or Article 17, may, by a further notification deposited with the Secretary-General of the United Nations, reduce its scope or withdraw it.

Convention Final text of Article 18
As in CDR/125 rev., except insert: paragraph 1 of *before:* Article 16.

ARTICLE 19 (formerly Article 16)

CDR/1 Draft
Proposed as Article 16:
No provision of this Convention may be interpreted as applying to the reproduction or any use of motion pictures or other visual and audio-visual fixations, except the provisions contained in Articles 12 and 5, other than paragraph 1(c)(ii) of the latter.

CDR/103 Austria
CDR/1 should read:
No provision of this Convention may be interpreted as applying to the reproduction or to any use of motion pictures of any kind including those initially produced for broadcasting.

Likewise, no provision of this Convention, except Articles 5 and 12, may apply to the reproduction or to any use of any other visual and audio-visual fixations.

CDR/105 United States of America
CDR/1 should read:
Notwithstanding anything in this Convention, once a performer has consented to the incorporation of his performance in a visual or audio-visual fixation, Article 5 shall have no further application.

CDR/107 Czechoslovakia
In CDR/1, delete: other than paragraph 1(c)(ii) of the latter.

CDR/112 rev. Report of Working Party No. II
See text on page 261.

CDR/118 Proposal of the working group established by Working Party No. II
As in CDR/105.

CDR/123 Czechoslovakia
CDR/1 should read:
Notwithstanding any other provision of this Convention, Article 5, with the exception of paragraphs 2(b) and (c), becomes non-applicable from the time when the performer has given his consent to the inclusion of his performance in a visual or audio-visual fixation.

CDR/125 rev. Final draft
As in CDR/105, except replace: Article 5 *by:* Article 7.

CDR/128 Czechoslovakia
CDR/1 should read:
Notwithstanding all other provisions of this Convention, Article 5 does not apply as from the time when a performer has given his consent to the inclusion of his performance in a motion picture, unless stipulated to the contrary.

Convention Final text of Article 19
As in CDR/125 rev.

ARTICLE 20 (formerly Article 17)

CDR/1 Draft
Proposed as Article 17:
This Convention is without prejudice to rights acquired in any Contracting State prior to the date of the coming into force of this Convention in such State.

CDR/24 Denmark, Finland, Iceland, Norway, Sweden
CDR/1 should read:
The protection afforded by this Convention shall not prejudice any protection of performers, phonograms and broadcasts otherwise secured.

CDR/96 Belgium
CDR/1 should read:
The Governments of the Contracting States reserve the right to make special arrangements among themselves if such arrangements would give performers, producers of phonograms and broadcasting organizations more extensive rights than those granted by the Convention, or if they would strengthen other provisions not contrary to this Convention.

The terms of existing arrangements which meet the above-mentioned requirements shall continue to apply.

CDR/117 United States of America
CDR/1 should read:
1. This Convention is without prejudice to rights acquired in any Contracting State under its national law prior to the date of the coming into force of this Convention in that State.
2. No Contracting State shall apply the provisions of this Convention to performances and broadcasts which have taken place, and to phonograms which were recorded, prior to the coming into force of this Convention in that State.

CDR/121 Drafting Committee
As in CDR/117, except in paragraph 1 delete: under its national law.

CDR/121 rev. Drafting Committee
CDR/1 should read:
1. This Convention shall not prejudice rights acquired in any Contracting State before the date of coming into force of this Convention for that State.
2. No Contracting State shall be bound to apply the provisions of this Convention to performances and broadcasts which took place, and to phonograms which were fixed, before the date of the coming into force of this Convention for that State.

CDR/125 rev. Final draft
As in CDR/121 rev., except in paragraph 2 delete: the *before:* coming.

Convention Final text of Article 20
As in CDR/125 rev.

ARTICLE 21 (New)

CDR/24 Denmark, Finland, Iceland, Norway, Sweden
See text under Article 20.

CDR/121 Drafting Committee
*Article 17*bis *should read:*
The protection afforded by this Convention shall not prejudice any protection otherwise secured to performers, producers of phonograms and broadcasting organizations.

CDR/121 rev. Drafting Committee
As in CDR/121, except replace: afforded by *by:* provided for.

CDR/125 rev. Final draft
As in CDR/121 rev.

Convention Final text of Article 21
As in CDR/121 rev.

ARTICLE 22 (New)

CDR/96 Belgium
See text under Article 20.

CDR/121 Drafting Committee
*Article 17*ter *should read:*
Contracting States reserve the right to enter into special agreements among themselves provided that such agreements give performers, producers of phonograms and broadcasting organizations more extensive rights than those granted by this Convention and that they include other provisions not contrary to this Convention.

CDR/121 rev. Drafting Committee
*Article 17*ter *should read:*
Contracting States reserve the right to enter into special agreements among themselves in so far as such agreements give performers, producers of phonograms or broadcasting organizations more extensive rights than those granted by this Convention or embody any other provisions not contrary to this Convention.

CDR/125 rev. Final draft
As in CDR/121 rev., except replace: give *by:* grant, *and replace:* embody *by:* contain.

Convention Final text of Article 22:
As in CDR/125 rev.

ARTICLE 23 (formerly Article 18)

CDR/3 Draft
Proposed as Article 18 (date, signature and deposit):
The present Convention, which shall bear the date of . . . 1961, shall be deposited with the Secretary-General of the United Nations and shall remain open until 31 December 1961, for signature by all States invited to the Conference (which adopted it).

CDR/14 Austria
Add at end of CDR/3: provided that they are parties to the Universal Copyright Convention or members of the International Union for the Protection of Literary and Artistic Works.

CDR/20 United Kingdom
CDR/3 should read:
The present Convention shall remain open until 31 December 1961, for signature by all States which are parties to the Universal Copyright Convention signed at Geneva on 6 September 1952, or which are members of the International Union for the Protection of Literary and Artistic Works. It shall be deposited with the Secretary-General of the United Nations.

CDR/25 India
In CDR/3, replace: (which adopted it) *by:* and by States which are parties to the Universal Copyright Convention or which are members of the International Union for the Protection of Literary and Artistic Works.

CDR/37 Japan
CDR/3 should read:
The present Convention shall be deposited with the Government of Italy and shall remain open until 31 December 1961, for signature by all States invited to the Diplomatic Conference on the International Protection of Performers, Producers of Phonograms and Broadcasters.

CDR/42 Japan
Add to CDR/3 the following paragraph:
Any signatory State at the time of ratifying or accepting this Convention or acceding thereto may declare that it intends to be bound by its provisions only in respect of Member States of the International Union for the Protection of Literary and Artistic Works or of States parties to the Universal Copyright Convention.

CDR/55 Working Party on Final Clauses
As in CDR/14, except delete: which shall bear the date of . . . 1961, *and replace:* 31 December 1961 *by:* 30 June 1962.

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
As in CDR/55

CDR/67 rev. Report of Working Party No. I
See text on page 256.

CDR/111 Drafting Committee
CDR/3 should read:
This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until 30 June 1962 for signature by any State invited to the Diplomatic Conference on the International Protection of Performers, Producers of Phonograms and Broadcasting Organizations, which is a Party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.

CDR/111 rev. Drafting Committee
As in CDR/111.

CDR/125 rev. Final draft
As in CDR/111.

Convention Final text of Article 23
As in CDR/111.

ARTICLE 24 (formerly Articles 1 and 19)

CDR/1 Draft
Proposed as Article 1:
This Convention shall be effective in respect to those Contracting States which are parties to the Universal Copyright Convention or members of the International Union for the Protection of Literary and Artistic Works.

CDR/3 Draft
Proposed as Article 19 (ratification, acceptance, accession):
1. The present Convention shall be subject to ratification or acceptance by the signatory States.
2. The present Convention shall be open for accession by all States mentioned in Article 18 which have not signed it, as well as any other State which shall become a member of the United Nations.
3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the United Nations.

CDR/12 United States of America
Articles 1 and 19(1) and (2) should be replaced by the following provisions:
1. The present Convention shall be subject to ratification or acceptance by signatory States. A signatory State must be either a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works at the time of deposit of its instrument of ratification or acceptance of the present Convention.
2. The present Convention shall be open for accession to any State which has been invited to the Conference and which has not signed it, as well as any other State which shall become a member of the United Nations, provided that in either case such State is, at the time of accession, a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.

CDR/14 Austria
Delete Article 1, and add at the end of Article 19, paragraph 2:
. . . provided that it is a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.

CDR/20 United Kingdom
Article 1 should be deleted and added to Article 18.

CDR/20 United Kingdom
Article 19, paragraph 2, should read:
The present Convention shall be open for accession by any State not signing it which is a party to the Universal Copyright Convention, signed at Geneva on 6 September 1952, or a member of the International Union for the Protection of Literary and Artistic Works.

CDR/25 India
Delete Article 1.

CDR/31 Czechoslovakia
As in CDR/25.

CDR/36 Czechoslovakia
Article 19 should read:
The present Convention shall be open for accession by all States mentioned in Article 18 which have not signed it, and by States which were not invited to the Conference.

CDR/37 Japan
In *CDR/3, paragraph 3, replace:* Secretary-General of the United Nations *by:* Government of Italy.

CDR/41 Poland
As in CDR/25.

CDR/55 Working Party on Final Clauses
As in CDR/3, as modified by CDR/14.

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
As in CDR/55.

CDR/67 rev. Report of Working Party No. I
See text on page 256.

CDR/111 Drafting Committee
As in CDR/3, except paragraph 2 should read:
2. This Convention shall be open for accession by any State invited to the Conference referred to in Article 17 (*see text of CDR/111 under Article 23*) and by any State Member of the United Nations, provided that in either case such State is a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.

CDR/111 rev. Drafting Committee
As in CDR/111.

CDR/125 rev. Final draft
As in CDR/111 except replace Article 17, *by* Article 23.

Convention Final text of Article 24
As in CDR/125 rev.

ARTICLE 25 (formerly Article 20)

CDR/3 Draft
Proposed as Article 20 (entry into force):
1. The present Convention shall enter into force three months after the date of deposit of the third instrument of ratification, acceptance or accession.

2. Thereafter, it shall enter into force for each State three months after the deposit of its instrument of ratification, acceptance or accession.

CDR/20 United Kingdom
Comments concerning CDR/3:
Three countries is a small number to bring an international Convention into force. Whether it is an appropriate number will depend to some extent on the actual obligations imposed by the Convention in its final form.

CDR/55 Working Party on Final Clauses
In CDR/3, paragraph 1, replace: third *by:* sixth.

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
As in CDR/55.

CDR/111 Drafting Committee
CDR/3 should read:
1. This Convention shall come into force three months after the date of deposit of the sixth instrument of ratification, acceptance or accession.
2. Subsequently, this Convention shall come into force in respect of each State three months after the date of deposit of its instrument of ratification, acceptance or accession.

CDR/111 rev. Drafting Committee
As in CDR/111.

CDR/125 rev. Final draft
As in CDR/111.

Convention Final text of Article 25
As in CDR/111.

ARTICLE 26 (formerly Article 21)

CDR/3 Draft
Proposed as Article 21 (effective application):
1. Each Contracting State undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of the present Convention.
2. At the time of deposit of its instrument of ratification, acceptance or accession, each State must be in a position under its domestic law to give effect to the terms of the present Convention.

CDR/55 Working Party on Final Clauses
As in CDR/3.

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
As in CDR/3.

CDR/111 Drafting Committee
As in CDR/3, except in paragraph 1 and paragraph 2, replace: the present *by:* this.

CDR/111 rev. Drafting Committee
As in CDR/111.

CDR/116 India
In CDR/3, replace: measures necessary *by:* necessary legislation.

CDR/125 rev. Final draft
As in CDR/111.

Convention Final text of Article 26
As in CDR/111.

ARTICLE 27 (formerly Article 25)

CDR/3 Draft
Proposed as Article 25 (territorial extension of the Convention):

Any Contracting State may, at the time of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that the present Convention shall extend to all or any of the territories for whose international relations it is responsible. The said notification shall take effect three months after the date of its receipt.

Variant (territorial extension of the Convention)

1. The present Convention shall apply to all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Contracting State is responsible; the Contracting State concerned shall, subject to the provisions of paragraph 2 of this Article, at the time of ratification or acceptance of, or accession to, the present Convention, declare the non-metropolitan territory or territories to which the present Convention shall apply *ipso facto* as a result of such ratification, acceptance or accession.
2. In any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Contracting State or of the non-metropolitan territory, that State shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of ratification, acceptance or accession, and when such consent has been obtained, notify the Secretary-General of the United Nations. This Convention shall apply to the territory or territories named in such notification three months after the date of its receipt by the Secretary-General.
3. After the expiry of the twelve-month period mentioned in the preceding paragraph, the Contracting States concerned shall inform the Secretary-General of the United Nations of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of the present Convention may have been withheld.

CDR/20 United Kingdom
Comments concerning CDR/3.
The first variant is preferred, because this is the form generally adopted by the United Kingdom. Paragraph 2 of the second variant allows only twelve months from ratification in which to secure the consent of any territory interested in applying the Convention. This may prove too short a time if certain legislative measures have to be taken before the Convention can be applied to a given territory.

CDR/33 Czechoslovakia
Delete both variants of CDR/3

CDR/41 Poland
As in CDR/33.

CDR/55 Working Party on Final Clauses
In CDR/3, after: responsible, *insert:* provided that the Universal Copyright Convention or the International Convention for the Protection of Literary and Artistic Works is applicable to the territories in question; *and delete:* Variant *of CDR/3.*

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
As in CDR/55.

CDR/111 Drafting Committee
As in CDR/55, except replace: the present *by:* this, *and replace:* applicable to the: *by:* applies to the territory or.

CDR/111 rev. Drafting Committee
As in CDR/111.

CDR/125 rev. Final Draft
As in CDR/111, except add the following paragraph 2:
The notifications referred to in paragraph 3 of Article 5, paragraph 2 of Article 6, and Articles 16, 17 and 18 may be extended to cover all or any of the territories referred to in paragraph 1 of this Article.

Convention Final text of Article 27
As in CDR/125 rev.

ARTICLE 28 (formerly Article 22)

CDR/3 Draft
Proposed as Article 22:
Denunciation
1. Any Contracting State may denounce the present Convention, on its own behalf, or on behalf of all or any of the territories for whose international relations it is responsible.
2. The denunciation shall be effected by a notification addressed to the Secretary-General of the United Nations and shall take effect twelve months after the date of receipt of the notification.
3. The right of denunciation contemplated by the present Article shall not be exercised by a Contracting State before the expiration of a period of five years from the date on which such State became a party to the Convention.
4. Each Contracting State which does not, within a year following the expiration of the period of five years mentioned in the preceding paragraph, exercise the right of denunciation provided for in the present Article, shall be bound for another period of five years and, thereafter, may denounce this Convention at the expiration of each period of five years under the conditions of this Article.

CDR/14 Austria
Add to CDR/3:
5. However, a Contracting State shall cease to be a party to this Convention on ceasing to be a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.

CDR/37 Japan
In CDR/3, make the following changes:
2. *Replace:* Secretary-General of the United Nations, *by:* Government of Italy.
3. *Delete old paragraph 3 and insert:* Any Contracting State which ceases to be a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works shall, as from the same date, cease to be a party to the present Convention.
4. *Delete.*

CDR/55 Working Party on Final Clauses
CDR/3 should read:
1. *As in CDR/3.*
2. *As in CDR/3.*
3. *As in CDR/3, except replace:* such State became a party to the Convention *by:* the Convention entered into force with respect to that State.
4. *As in CDR/14, paragraph 5, except replace:* on ceasing *by:* from the time it ceases.

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
As in CDR/55.

CDR/69 United States of America
Proposal concerning CDR/60/Annex rev., paragraph 4:
It should be clarified that only if a State

is no longer party to either of the two Copyright Conventions will it cease to be a party to the present Convention.

CDR/111 Drafting Committee
CDR/3 should read:

1. Any Contracting State may denounce this Convention, on its own behalf, or on behalf of all or any of the territories referred to in Article 21.
2. *As in CDR/3.*
3. The right of denunciation shall not be exercised by a Contracting State before the expiration of a period of five years from the date on which the Convention came into force with respect to that State.
4. A Contracting State shall cease to be a party to this Convention from that time when it is neither a party to the Universal Copyright Convention nor a member of the International Union for the Protection of Literary and Artistic Works.
5. This Convention shall cease to apply to any territory referred to in Article 21 from that time when neither the Universal Copyright Convention nor the International Convention for the Protection of Literary and Artistic Works applies to that territory.

CDR/111 rev. Drafting Committee
As in CDR/111.

CDR/125 rev. Final draft
As in CDR/111, except in paragraph 1 and paragraph 5, replace Article 21 *by:* Article 27.

Convention Final text of Article 28
As in CDR/125 rev.

ARTICLE 29 (formerly Article 23)

CDR/3 Draft
Proposed as Article 23 (revision):

1. After the present Convention has been in force for five years, any Contracting State may, by notification addressed to the Secretary-General of the United Nations, request that a conference be convened for the purpose of revising the present Convention. The Secretary-General shall notify all Contracting States of this request. If, within a period of six months following the date of notification by the Secretary-General of the United Nations, not less than one half of the Contracting States notify him of their concurrence with the request, the Secretary-General shall inform the Directors-General of the International Labour Office and the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, who shall convene a conference of revision.
2. In the event of adoption of a new Convention revising the present Convention in whole or in part, and unless the revising Convention provides otherwise
   (a) this Convention shall cease to be open to ratification, acceptance or accession as from the date of entry into force of the revising Convention;
   (b) the present Convention shall remain in force in relations with the Contracting States which have not become parties to the new Convention.
3. Such revision shall bind only those States which become parties to the revising Convention.

CDR/37 Japan
CDR/3, paragraph 1, should read:

1. The Director-General of the International Labour Office and the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union

for the Protection of Literary and Artistic Works shall convene a Conference for revision of this Convention whenever they deem necessary, or at the request of a majority of the Contracting States.

CDR/45 United States of America
In CDR/3, paragraph 1, after: the request, *substitute:* the Secretary-General shall inform the Intergovernmental Committee provided for in Article 27, which shall convene a conference of revision; *and delete paragraph 2(b).*

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
As in CDR/3, except at end of paragraph 1 insert: in co-operation with the Intergovernmental Committee provided for in Article 27.

CDR/69 United States of America
In CDR/60/Annex rev. delete paragraph 2.

CDR/72 Switzerland
Substitute the following paragraph in CDR/3:
2. A majority of two-thirds of the delegations present is required for the revision of this Convention in whole or in part.

CDR/111 Drafting Committee
CDR/3 should read:
1. After this Convention has been in force for five years, any Contracting State may, by notification addressed to the Secretary-General of the United Nations, request that a conference be convened for the purpose of revising the Convention. The Secretary-General shall notify all Contracting States of this request. If, within a period of six months following the date of notification by the Secretary-General of the United Nations, not less than one half of the Contracting States notify him of their concurrence with the request, the Secretary-General shall inform the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, who shall convene a conference of revision in co-operation with the Intergovernmental Committee provided for in Article 26 (*see text of CDR/111 under Article 32*).
2. In the event of adoption of a Convention revising this Convention in whole or in part, and unless the revising Convention provides otherwise:
   (a) this Convention shall cease to be open to ratification, acceptance or accession as from the date of entry into force of the revising Convention;
   (b) this Convention shall remain in force in relations with the Contracting States which have not become parties to the revising Convention.
3. Such revision shall bind only those States which become Parties to the revising Convention.

CDR/111 rev. Drafting Committee
As in CDR/111, except paragraph 3 should be deleted and paragraph 2(b) should read:
(b) this Convention shall remain in force as regards relations between or with Contracting States which have not become parties to the revising Convention.

CDR/121 Drafting Committee
Add the following paragraph 3 to CDR/111 rev.:

3. The adoption of any revision of this Convention shall require an affirmative vote by two-thirds of the States attending the revision conference, provided that this majority includes two-thirds of the States which, at the time of the revision conference, are parties to the Convention.

CDR/121 rev. Drafting Committee
As in CDR/121.

CDR/125 rev. Final draft
Article 29 should read:
1. *As in CDR/111 rev., except replace:* Article 26 *by:* Article 32.
2. *As in CDR/121 paragraph 3.*
3. *As in CDR/111 rev., paragraph 2.*

Convention Final text of Article 29
As in CDR/125 rev., except in paragraph 1 replace: conference of revision *by:* revision conference; *and in paragraph 3(b) replace:* of *by:* to.

ARTICLE 30 (formerly Article 24)

CDR/3 Draft
Proposed as Article 24 (disputes):
A dispute between two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it.

CDR/34 Czechoslovakia
CDR/3 should read:
Any dispute between two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation may, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice, in accordance with the provisions of its Statutes, for determination by it.

CDR/41 Poland
CDR/3 should read:
Any dispute between two or more Contracting States concerning the interpretation or application of the present Convention should be settled by negotiation. If the matter in dispute is not settled by negotiation, it may be brought before the International Court of Justice, with the consent of the parties to the dispute.

CDR/46 United States of America
CDR/3 should read:
Any dispute which may arise between two or more Contracting States concerning the interpretation or application of this Convention and which is not settled by negotiation shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

CDR/55 Working Party on Final Clauses
CDR/3 should read:
Any dispute which may arise between two or more Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of any one of the Parties to the dispute, be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
As in CDR/55.

CDR/111 Drafting Committee
As in CDR/55.

CDR/111 rev. Drafting Committee.
As in CDR/55, except replace: may *by:* might.

CDR/125 rev. Final draft
As in CDR/111 rev.

Convention Final text of Article 30
As in CDR/55, except after: Convention *insert:* and.

ARTICLE 31 (formerly Article 26)

CDR/3 Draft
Proposed as Article 26 (reservations):
Without prejudice to the provisions of Article 15, no reservation may be made to this Convention.

CDR/35 Czechoslovakia
CDR/3 should be deleted.

CDR/41 Poland
CDR/3 should read:
1. Each Contracting State may declare in its instrument of ratification or accession to the present Convention its reservations with respect to any provision of the Convention.
2. If a Contracting State makes such a declaration, the other Contracting States shall not be bound, in their relations with the Contracting State which has made such a reservation, to apply the provision or provisions to which its reservation or reservations apply.

CDR/55 Working Party on Final Clauses
As in CDR/3.

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
As in CDR/3.

CDR/111 Drafting Committee
As in CDR/3, except replace: Article 15 *by:* Article 14.

CDR/111 rev. Drafting Committee
As in CDR/111.

CDR/125 rev. Final draft
Article 31 should read:
Without prejudice to the provisions of paragraph 3 of Article 5, paragraph 2 of Article 6, and Articles 15, 16 and 17, no reservation may be made to this Convention.

Convention Final text of Article 31
As in CDR/125 rev., except replace: and Articles 15, 16 and 17 *by:* paragraph 1 of Article 16 and Article 17.

ARTICLE 32 (formerly Article 27)

CDR/3 Draft
Proposed as Article 27 (control of the application of the Convention):
1. Each Contracting State shall prepare every . . . years a report containing information concerning any measures taken, under preparation, or contemplated by its administration in fulfilment of the present Convention. This report shall be communicated to the Directors-General of the International Labour Office and the United Nations Educational, Scientific and Cultural Organization, and to the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works.
2. The reports thus received shall be submitted to a Committee composed of twelve experts, of whom four shall be designated by the International Labour

Organisation, four by the United Nations Educational, Scientific and Cultural Organization and four by the International Union for the Protection of Literary and Artistic Works.
3. Officials of the three organizations concerned, designated by them, shall constitute the Secretariat of the Committee of Experts.
4. The Committee shall establish its own rules of procedure.
5. The Committee shall adopt at the end of each of its sessions, a report which shall be addressed to the three organizations with a view to its consideration by the competent bodies of the said organizations.

CDR/20 United Kingdom
In CDR/3, paragraph 1, replace: any *by:* the.

CDR/44 United States of America
CDR/3 should read:
1. An Intergovernmental Committee is hereby established with the following duties:
   (a) to study questions concerning the application and operation of this Convention and any other questions concerning the international protection of performing artistes, makers of phonograms, and broadcasting organizations;
   (b) to make preparations for possible revisions of this Convention.
2. The Committee shall consist of representatives of the Contracting States. The number of members shall be six if there are twelve Contracting States or less, nine if there are eighteen or less, and one-third of the number of Contracting States if there are twenty-seven or more.
3. Membership in the Committee shall be by election in which all Contracting States shall have one vote. Voting may be in an *ad hoc* assembly of all Contracting States or by mail ballot, organized by the Directors-General of Unesco and ILO and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works.
4. The Committee shall be constituted as soon as the Convention enters into force.
5. The normal term of each member shall be six years. One third of the number closest to one-third shall retire every three years.
6. The Committee shall elect its Chairman and other officers and establish its own rules of procedure.
7. Officials of Unesco, ILO and the Bureau of the International Union for the Protection of Literary and Artistic Works designated by the Directors-General and Director respectively of these Organizations shall constitute the Secretariat of the Committee.

CDR/44 rev. United States of America
CDR/3 should read:
1. *As in CDR/44.*
2. The Committee shall consist of representatives of the Contracting States. The number of members shall be six if there are twelve Contracting States or less, nine if there are thirteen to eighteen, and twelve if there are more than eighteen Contracting States.
3. Initial membership in the Committee shall be by election in which all Contracting States shall have one vote. Voting may be by ballot organized by the Directors-General of Unesco and the ILO and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works.
4. The Committee shall be constituted twelve months after the Convention enters into force,
5. One-third of the members of the Committee shall retire every three years.

6. *As in CDR/44.*
7. *As in CDR/44.*
8. Meetings of the Committee, which shall be convened whenever a majority of the members of the Committee deems it necessary, shall be held at the headquarters of Unesco, ILO and the Bureau of the International Union for the Protection of Literary and Artistic Works in succession.
9. Expenses of members of the Committee shall be borne by their respective Governments.

CDR/47 Japan
Add at end of CDR/3, paragraph 2:
Upon designation, the said organizations shall pay due consideration to fair geographical representation in the Committee.

CDR/55 Working Party on Final Clauses
CDR/3 should read:
1. An Intergovernmental Committee is hereby established with the following duties:
   (a) to study questions concerning the application and operation of this Convention;
   (b) to collect proposals and to prepare documentation for possible revision of this Convention.
2. *As in CDR/44 rev., except add at end of first sentence:* with due regard to the need for equitable geographical representation on the Committee.
3. Initial membership in the Committee shall be by election in which all Contracting States shall have one vote. Election shall be by ballot organized among the Contracting States by the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, in accordance with rules previously approved by the majority of Contracting States.
4. *As in CDR/44 rev.*
5. The Committee shall elect its Chairman and other officers. It shall establish its own rules of procedure with special reference to its future operation and the mode of its renewal and in such a way as to ensure *inter alia* the application of the following rules:
   (a) the normal term of office of the members of the Committee shall be six years, one-third of its membership being renewed every two years;
   (b) new members shall be elected by a system permitting of rotation between the various Contracting States.
6. Officials of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization, and the Bureau of the International Union for the Protection of Literary and Artistic Works, designated by the Directors-General and the Director of the three aforementioned bodies respectively, shall constitute the Secretariat of the Committee.
7. Meetings of the Committee, which shall be convened whenever a majority of the members of the Committee deems it necessary, shall be held at the headquarters of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works in succession.
8. *As in CDR/44 rev. paragraph 9.*

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
CDR/3 should read:

1. *As in CDR/55.*
2. *As in CDR/55.*
3. *As in CDR/55.*
4. *As in CDR/44 rev.*
5. *As in CDR/55, except after:* ensure, *the text should read:* rotation, among the various Contracting States.
6. *As in CDR/55.*
7. *As in CDR/55.*
8. *As in CDR/55.*

CDR/69 United States of America
Add at end of CDR/60/Annex rev., paragraph 1(a): and other questions concerning the international protection of performers, producers of phonograms and broadcasting organizations.

CDR/69 United States of America
Delete paragraph 8 of CDR/60/Annex rev.

CDR/111 Drafting Committee
CDR/3 should read:
1. *As in CDR/55, except add:* and *at end of paragraph 1(a).*
2. *As in CDR/55, except insert:* chosen *before:* with, *and replace:* representation on the committee *by:* distribution.
3. The Committee shall be constituted twelve months after the Convention comes into force, by an election organized among the Contracting States—each of which shall have one vote—by the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, in accordance with rules previously approved by the majority of Contracting States.
4. The Committee shall elect its Chairman and officers. It shall establish its own rules of procedure. These rules shall in particular provide for the future operation of the Committee and for a method of selecting its members for the future in such a way as to ensure rotation among the various Contracting States.
5. *As in CDR/55, paragraph 6, except replace:* of the three aforementioned bodies respectively *by:* thereof.
6. Meetings of the Committee, which shall be convened whenever a majority of its members deems it necessary, shall be held successively at the headquarters of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works.
7. *As in CDR/55, paragraph 8.*

CDR/111 rev. Drafting Committee
CDR/3 should read:
1. *As in CDR/111.*
2. *As in CDR/111, except after:* thirteen to eighteen, *insert:* Contracting States.
3. *As in CDR/111, except replace:* the majority *by:* a majority.
4. *As in CDR/111.*
5. *As in CDR/111.*
6. *As in CDR/111.*
7. *As in CDR/111.*

CDR/125 rev. Final draft
As in CDR/111 rev., except in paragraph 3 replace hyphens by commas.

Convention Final text of Article 32
As in CDR/125 rev., except in paragraph 3, after: majority of *insert:* all.

ARTICLE 33 (formerly Article 28)

CDR/3 Draft
Proposed as Article 28 (Languages):
The present Convention is drawn up in English, French and Spanish, the three texts being equally authoritative.

CDR/39 Austria, Brazil, Federal Republic of Germany, Italy, Switzerland.
Add to Article 28 the following paragraph 2: Official texts of the present Convention shall be drawn up in German, Italian and Portuguese.

CDR/55 Working Party on Final Clauses
As in CDR/39, except in paragraph 1 replace: authoritative *by:* authentic; *and in paragraph 2 insert:* In addition, *before:* official.

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
As in CDR/55.

CDR/111 rev. Drafting Committee
As in CDR/55.

CDR/125 rev. Final draft
As in CDR/55.

Convention Final text of Article 33
As in CDR/55.

ARTICLE 34 (formerly Article 29)

CDR/3 Draft
Proposed as Article 29 (notification)

1. The Secretary-General of the United Nations shall notify the States referred to in Articles 18 and 19, as well as the Directors-General of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, of the deposit of each instrument of ratification, acceptance or accession mentioned in Article 19, as well as of notifications contemplated by Articles 22 and 25.
2. The Secretary-General of the United Nations shall also notify the Directors-General of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works of the requests communicated to him in accordance with Article 23, as well as of any communication received from the Contracting States on this subject.

CDR/20 United Kingdom
In CDR/3, paragraph 1, text after: Article 19 *should read:* the date of entry into force of the Convention in accordance with Article 20 and the receipt of notifications contemplated by Articles 22 and 25.

CDR/55 Working Party on Final Clauses
As in CDR/20, except insert: of *before:* the date, *and delete:* the receipt.

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
CDR/3 should read:
1. *As in CDR/55.*
2. *As in CDR/3.*

CDR/111 rev. Drafting Committee
CDR/3 should read:

1. The Secretary-General of the United Nations shall notify the States invited to the Conference referred to in Article 17 (*see text of CDR/111 rev. under Article 23*) and every State Member of the United Nations, as well as the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for

the Protection of Literary and Artistic Works:

(a) of the deposit of each instrument of ratification, acceptance, or accession;

(b) of the date of entry into force of the Convention, and

(c) of notifications contemplated by Articles 21 and 22 (*see text of CDR/111 rev. under Articles 27 and 28*).

2. The Secretary-General of the United Nations shall also notify the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works of the requests communicated to him in accordance with Article 23 (*see text of CDR/111 rev. under Article 29*), as well as of any communication received from the Contracting States on this subject.

CDR/121 Drafting Committee
CDR/111 rev., paragraph 1(c), should read: of all notifications, declarations or communications provided in this Convention.

CDR/121 rev. Drafting Committee
CDR/111 rev., paragraph 1(c) and (d), should read:

(c) of all notifications, declarations or communications provided for in this Convention;

(d) if any of the situations referred to in Article 22, paragraphs 4 and 5, arise (*see text of CDR/111 rev. under Article 28*).

CDR/125 rev. Final Draft
CDR/3 should read:

1. *As in CDR/111 rev., except replace:* Article 17 *by:* Article 23.
2. (a) *As in CDR/111 rev.;*
   (b) *As in CDR/111 rev. except replace:* the Convention *by:* this Convention;
   (c) *As in CDR/121 rev.;*
   (d) *As in CDR/121 rev. except after:* in *text should read:* paragraphs 4 and 5 of Article 28 arise.
3. *As in CDR/111 rev., except replace:* Article 23 *by:* Article 29, and *replace:* on this subject *by:* concerning the revision of the Convention.

Convention Final text of Article 34
As in CDR/125 rev., except in paragraph 1(b) replace: this *by:* the *and in paragraph 1(c) insert:* all *before:* notifications.

FINAL PARAGRAPH

CDR/3 Draft
Proposed as final paragraph.
In faith whereof, the undersigned, duly authorized, have signed the present Convention.

Done at . . . , the . . . 1961, in a single copy. Certified true copies shall be delivered by the Secretary-General of the United Nations to all the States referred to in Articles 18 and 19, as well as to the Directors-General of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works.

CDR/20 United Kingdom
In CDR/3, insert: thereto *after:* authorized.

CDR/55 Working Party on Final Clauses
In CDR/3 insert: to that end *after:* authorized.

CDR/60 rev. Report of the Working Party on Final Clauses
See text on page 272.

CDR/60/Annex rev. Working Party on Final Clauses
As in CDR/55.

CDR/111 rev. Drafting Committee
The final paragraph should read:
In faith whereof, the undersigned, duly authorized to that end, have signed this Convention.

Done at Rome the 26 October 1961, in a single copy in the English, French and Spanish languages. Certified true copies shall be delivered by the Secretary-General of the United Nations to all the States invited to the Conference referred to in Article 17 (*see text of CDR/111 rev. under Article 23*) and to every State Member of the United Nations, as well as to the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works.

CDR/125 rev. Final draft
As in CDR/111 rev. except replace: the 26th *by:* this twenty-sixth day of, *and replace:* Article 17 *by:* Article 23.

Convention Final text of final paragraph
As in CDR/125 rev.

Final Act (New)

CDR/125*bis* Final draft
The Final Act should read:
The Conference convened jointly by the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization and the International Union for the Protection of Literary and Artistic Works,

With a view to adopting an international Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations,

Was held at Rome on the invitation of the Government of Italy from 10 to 26 October 1961 under the Chairmanship of His Excellency Mr. Giuseppe Talamo Atenolfi (Italy),

And held discussions on the basis of the Records of the Committee of Experts of the International Protection of Performers, Producers of Phonograms and Broadcasting Organizations, which met at The Hague from 9 to 20 May 1960, and of Draft Final Clauses submitted jointly by the Secretariats of the three Organizations convening the Conference.

The Conference drew up the text of the International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

In faith whereof the undersigned, delegates of the States invited to the Conference, have signed this Final Act.

Done at Rome this twenty-sixth day of October 1961 in the French, English and Spanish languages, the original to be placed in the archives of the United Nations.

Miscellaneous documents

CDR/2 rev. Provisional agenda

1. Opening of the Diplomatic Conference.
2. Election of the President.
3. Adoption of the agenda.
4. Adoption of Rules of Procedure.
5. Election of officers.
6. Presentation of the Draft Convention drawn up by the Committee of Experts (The Hague, May 1960).
7. General discussion and examination of the Draft Convention.
8. Presentation and adoption of the Report.
9. Adoption and signature of the International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.
10. Closing of the Diplomatic Conference.

CDR/4 Draft Rules of Procedure

I. MEMBERSHIP OF THE CONFERENCE

Rule 1. Delegations
Delegations of States invited to the Conference 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
The following may take part in the Conference as observers, without the right to vote:

(a) representatives of the United Nations, the Specialized Agencies and the International Atomic Energy Agency;

(b) representatives of intergovernmental organizations invited to the Conference;
(c) representatives of international non-governmental organizations invited to the Conference.

II. CREDENTIALS

Rule 3. Presentation of credentials
The credentials of delegates 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 shall also be communicated to the Secretariat.

Rule 4. Provisional admission
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.

III. ORGANIZATION OF THE CONFERENCE

Rule 5. Elections
The Conference shall elect its President, Vice-Presidents and General Rapporteur

Rule 6. Subsidiary bodies
The Conference shall institute a Credentials Committee, a Main Commission, a Bureau and a Drafting Committee.

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 six members elected by the Conference no the proposal of the President. The Committee shall elect its own Chairman; it shall examine and report to the Conference without delay on the credentials of the 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 preliminary Draft Convention and shall prepare a final draft for submission to the Conference at a plenary meeting. The President and the General Rapporteur of the Conference shall act as Chairman and Rapporteur respectively of the Main Commission.

Rule 9. Bureau
The Bureau shall consist of the President, Vice-Presidents and General Rapporteur of the Conference and the Chairman of the Credentials Committee. Its function is to co-ordinate 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 six 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 text of the Convention in the three working languages of the Conference. Representatives of the legal services of the three convening organizations shall participate in the work of the Committee.

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 those 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. He shall not vote.

If the President is absent during a meeting or any part thereof, he shall be replaced by one of the Vice-Presidents. A Vice-President acting as President shall have the same powers and duties as the President.

The Chairmen and Vice-Chairmen of the Commission, committees and working parties shall have the same duties with regard to the bodies over which they are called upon to preside.

IV. CONDUCT OF BUSINESS

Rule 12. Public meetings
All plenary meetings and meetings of the Main Commission shall, unless the body concerned decides otherwise, be held in public.

Rule 13. Order and time-limit of speeches
The President shall call upon speakers in the order in which they signify their wish to speak.

For the convenience of the discussion, the President may limit the time to be allowed to each speaker.

The consent of the President must be obtained whenever an observer of an international non-governmental organization wishes to make a verbal communication.

Rule 14. 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.

Rule 15. Suspension, adjournment and closure
Any delegate may, at any time, propose the suspension, adjournment or closure of a debate or a meeting. Such a motion shall be put to the vote immediately.

Rule 16. Resolutions and amendments
Draft resolutions and amendments shall be transmitted in writing to the Secretariat, 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 appropriate working languages.

Rule 17. 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 18. Voting
Each delegation shall have one vote in the Conference and in each of the subsidiary bodies on which it is represented.

In plenary meetings, the decisions of the Conference shall be taken by a two-thirds majority of the delegations present and voting, except in the case of Rules 5, 6, 7, 8, 10, 12, 14 and 15, 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' shall mean delegations casting an affirmative or negative vote. Delegations abstaining from voting shall be considered as not voting.

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, if necessary, on the amendment next furthest removed, and so on. If one or

more amendments are adopted, a vote shall thereafter be taken on the proposal so modified. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Rule 19. Summary records
A summary record shall be prepared of all 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 in each of the working languages after the Conference by the International Labour Office, the Secretariat of the United Nations Educational, Scientific and Cultural Organization, and the Bureau of the International Union for the Protection of Literary and Artistic Works.

V. SECRETARIAT OF THE CONFERENCE

Rule 20. Secretariat
The Secretariat of the Conference and its bodies shall be provided by officials of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works, who have been duly appointed for that purpose.

Rule 21. 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.

With the approval of the President, the Secretariat may at any time address to the Conference or its bodies any communication, either oral or written, concerning any matter under consideration.

VI. AMENDMENTS TO THE RULES OF PROCEDURE

Rule 22
The present Rules may be amended by a decision of the Conference taken in plenary session.

CDR/10 First report of the Credentials Committee

The Credentials Committee, set up by the Conference at the end of its first plenary meeting, met for the first time on 10 October.

The following delegates were present: Professor Mascarenhas da Silva (Brazil), Mr. Winter (United States of America), His Excellency Mr. Takahashi (Japan), Mr. Drabienko (Poland), Mr. Patterson (United Kingdom) and Mr. Fersi (Tunisia).

The committee elected His Excellency Mr. Takahashi Chairman and requested him to report to the Conference.

1. The committee noted that the delegations of the following States had submitted credentials in due form issued by the Head of State, the Head of Government, or the Minister of Foreign Affairs, in accordance with Rule 3 of the Draft Rules of Procedure as adopted provisionally by the Conference: Australia, Austria, Cambodia, Denmark, Finland, France, Federal Republic of Germany, Holy See, Iceland, Ireland, Japan, Mexico, Monaco, Morocco, Norway, Poland, Switzerland, Tunisia, Republic of South Africa, United Kingdom and Yugoslavia.

2. The committee noted, on the other hand, that certain credentials had not been issued either by the Head of State, the Head of Government, or the Minister of Foreign Affairs, but had been established by other government authorities. These were the credentials of the delegations of the following States: Argentina, Belgium, Burma, Congo (Leopoldville), Czechoslovakia, Dominican Republic, Ghana, Israel, Italy, Luxembourg,

Mauritania, Netherlands, Nicaragua, Peru, Spain, Sweden and United States of America.

In addition, the committee noted that the Secretariat had received a letter from the Portuguese Ambassador to Italy, announcing the participation of his country in the Conference, but without mentioning any names of delegates. The committee considered that if the Portuguese delegation arrived as announced, its admission could be approved provisionally and that Portugal could take its seat at the Conference.

For such delegations, the right to take part in the discussions and the right to vote may be exercised pending receipt of their credentials in due form. Failing the submission of such credentials in due course, the said delegations will not be able to sign the Convention unless they have by that time a letter of confirmation specifying at least that they are empowered to sign.

3. The committee noted that no official communication had been submitted by Brazil or India. It left it to the Secretariat to approach the delegates of those States with a view to obtaining the requisite documents from them.

4. In accordance with Rule 7 of the Conference's Draft Rules of Procedure, the committee also examined, in concert with the Secretariat, the document accrediting the observers whose names appear in the provisional list of participants in the Conference and found them in conformity with that list.

5. Before closing its first meeting, the Credentials Committee agreed that it would submit additional reports on any delegations that might arrive or on those presenting credentials which satisfied the requirements of Rule 3 of the Conference's Draft Rules of Procedure.

CDR/21 Working Party No. I

The suggested terms of reference of Working Party No. I are to examine the following provisions of the Draft Convention (document CDR/1):

(a) Article 3 (national treatment);
(b) Article 4 (country of origin);
(c) Articles 7 and 10 (definitions—including that of the expression 'literary and artistic works');
(d) Articles 1, 2, 18 and 19 (relations to copyright).

The working party will report to the Main Commission.

CDR/22 Working Party No. III

The suggested terms of reference of Working Party No. III are to examine the Draft Final Clauses (Articles 20 to 29) (document CDR/3).

Articles 18 and 19 will be considered as to substance and in relation to Articles 1 and 2 by Working Party No. I.

Working Party No. III will report to the Main Commission.

CDR/40 Rules of Procedure

As in CDR/4, except in Rule 10, replace: six *by:* twelve; *in Rule 16, after amendments insert:* may be proposed by the delegations and; *and in Rule 18, after:* 15, *insert:* above.

CDR/68 Working Party No. II

The suggested terms of reference of Working Party No. II are to examine the following provisions of the Draft Convention (CDR/1):

(a) Articles 5, 6, 8, 11, 12 (minimum rights of performers, makers of phonograms and broadcasters including secondary uses);
(b) Article 13 (protection period);
(c) Article 14 (exceptions);
(d) Article 15 (reservations);
(e) Article 16 (effect of the Convention on films).

The working party will report to the Main Commission.

CDR/91 Second report of the Credentials Committee

The Credentials Committee, set up by the Conference at the end of the first plenary meeting, held its second meeting on 18 October under the chairmanship of His Excellency Mr. Takahashi (Japan).

The following delegates were present: Professor Mascarenhas da Silva (Brazil), Mr. Winter (United States of America), Mr. Drabienko (Poland), Mr. Anderson (United Kingdom), and Mr. Fersi (Tunisia).

1. The committee noted that the delegations of the following States had submitted credentials in due form issued by the Head of State, the Head of Government, or the Minister of Foreign Affairs, in accordance with Rule 3 of the Conference's Rules of Procedure: Argentina, Belgium, Brazil, Chile, Congo (Leopoldville), Cuba, Czechoslovakia, India, Israel, Luxembourg, Mauritania, Netherlands, Peru, Portugal, Sweden, United States of America.

These sixteen States are to be added to the list of the twenty-two States mentioned in the committee's first report, thus bringing up to thirty-eight the number of delegations holding credentials in due form.

2. The committee noted that the credentials presented by the delegations of Burma, Dominican Republic, Nicaragua and Spain had been established by government authorities other than those specified in Rule 3 of the Rules of Procedure. These delegations may exercise the right to take part in discussions and the right to vote but unless they produce credentials in due form, or at least a letter of confirmation explicitly giving them power of signature, they will not be able to sign the Convention. The committee accordingly draws their attention to this point.

Furthermore, with respect to Burma, the committee was informed by its Chairman of his conversations with the present representative of that country, who is at the same time the duly accredited representative of Monaco. The committee is awaiting a reply by cable from Burma in order to see whether that country maintains its participation in the Conference through the medium of the representative in question. The latter has declared that, for the time being, he will refrain from taking part in any vote on Burma's behalf and that he will not sign the Convention for that State unless he receives credentials in due form from the Burmese Government before the end of the Conference. The Committee took note of this declaration.

3. The committee noted that a forty-third State, Ghana, had announced its participation in the Conference and sent credentials which were regarded as provisional. So far, however, no delegation from that country has put in an appearance. Finally, it noted that a forty-fourth country, Rumania, had registered as participating in the Conference, but that its representative had not so far presented his credentials.

4. Before closing the meeting, the Credentials Committee agreed that it would submit a final recapitulatory report after holding a last meeting before the end of the Conference.

CDR/126 Third report of the Credentials Committee

The Credentials Committee, which was set up by the Conference at the end of the first plenary meeting, in accordance with Rule 7 of its Rules of Procedure, held its third meeting on 23 October 1961 under the chairmanship of His Excellency Mr. Takahashi (Japan).

The following delegates were present: Professor Mascarenhas da Silva (Brazil), Mr. Drabienko (Poland), Mr. Fersi (Tunisia), Mr. Anderson (United Kingdom) and Mr. Winter (United States of America).

1. The committee noted that, since its second meeting, the delegation of Spain had submitted credentials in due form issued by the Minister of Foreign Affairs of that country.

2. Consequently, the delegations of the following thirty-nine States have submitted credentials in due form issued by the Head of State, the Head of Government or the Minister of Foreign Affairs: Argentina, Australia, Austria, Belgium, Brazil, Cambodia, Chile, Congo (Leopoldville), Cuba, Czechoslovakia, Denmark, Finland, France, Federal Republic of Germany, Holy See, Iceland, India, Ireland, Israel, Italy, Japan, Luxembourg, Mauritania, Mexico, Monaco, Morocco, Netherlands, Norway, Peru, Poland, Portugal, Republic of South Africa, Spain, Sweden, Switzerland, Tunisia, United Kingdom, United States of America, Yugoslavia.

3. The committee noted that certain credentials specifically mentioned the right to sign the Convention, whilst others were drawn up in far more general terms, merely empowering delegates to represent their respective governments or to take part in the Conference.

Although the committee had understood that the delegations of certain States would not have the necessary powers, under the domestic law of those States, to sign the Convention without a special authorization to that effect from their governments, it came to the conclusion that all the credentials which had been submitted to it implied the right to sign as well as to negotiate the Convention. The delegate of any State listed in paragraph 2 above will therefore be entitled to sign the Convention, if the State concerned fulfils the conditions prescribed by the latter.

Reports of the working parties[1]

CDR/67 rev. Report of Working Party No. I

The original terms of reference of this party were to discuss all questions relating to national treatment (Article 3 of the Hague Draft), points of attachment of the Convention (Article 4) and definitions (Articles 7 and 10). It was also decided to refer to this party the question of what countries might be members of the Convention and,

1. The working party reports refer in all cases to Articles in the Hague Draft Convention (CDR/1) or the Secretariat Draft Final Clauses thereto (CDR/3). The evolution of the Hague-Secretariat Articles into the Convention as adopted is documented in the section 'Working documents' (cf., note on page 204). That section also analyses all changes in the Hague-Secretariat Articles proposed by the working parties and originally annexed to their reports. Finally, the original terms of reference of the working parties have been set out in the sub-section entitled 'Miscellaneous documents' (page 250).

in particular, whether adhering States must also be members of multilateral copyright conventions, especially the Berne Convention and the Universal Copyright Convention. The terms of reference were contained in document CDR/21. (The reference to Article 2 in that document was inadvertent.)

At the first meeting of the Working Group *Professor Bodenhausen* (Netherlands) was elected Chairman and *Mr. Wallace* (United Kingdom) Rapporteur.

Title of the Convention

One of the first questions raised related to the title of the draft Convention (and indeed throughout). It applied, however, only to the Spanish and French texts. The Delegate of Argentina proposed, that in the title, the particle '*or*' between the words '*interprètes*' and '*exécutants*' should be replaced by a comma. The Delegate of Italy explained that the formulation adopted came originally from the Italian law, and said that the term '*interprete*' in Spanish and French included actors performing dramatic works and that the term '*ejecutante*' in Spanish and '*exécutant*' in French included musicians without any distinction. It was the feeling of the party that the intention was to include both categories and that this was mainly a matter of drafting; in the circumstances the formal proposal of the Delegate of Argentina was withdrawn on the understanding that it would be mentioned in the report.

Articles 1, 18 and 19

There were a large number of amendments touching on this point, but the main question of principle involved was whether only States members of the Berne or Universal Copyright Convention might join this Convention. A number of countries, including France and Italy, were strongly of this view, Czechoslovakia proposed a compromise whereby any country might join, but that signatory States might declare on joining that they would give protection only in the case of those countries which were members of one of those Copyright Conventions (CDR/42). After discussion of this and other amendments the proposal in CDR/42 was voted on and rejected by 15 votes to 3, with 7 abstentions. The Austrian proposal in CDR/14 was then adopted (subject to the right of delegates to raise drafting amendments) by 18 votes to 2, with 4 abstentions. The Czechoslovak delegate said that he would raise the point again in the Main Commission.

Articles 3 and 4. General

One of the first questions here was whether the Convention should cover national as well as international situations, i.e., should it regulate the rights of performers, record makers and broadcasting authorities in their own countries, as well as their rights in other Contracting States. This was discussed on a Belgian amendment (CDR/13). A compromise suggestion was made that the Convention should cover national situations as well as international, but that countries might be permitted to make a reservation to the effect that they only proposed to grant protection in the case of international ones. After the Chairman had remarked that too many reservations in the Convention would be undesirable, the Belgian delegation withdrew their amendment and this point was therefore left as in the Hague Draft.

Another question, of interest mainly to countries in which conventions, when ratified, become part of the national law, was the terms in which Article 3 should be drawn up, i.e., whether it should say 'each country *shall grant* national treatment' or whether it should say 'each country

grants national treatment'. It was agreed that this question was of importance in relation not only to Article 3, but other articles, e.g., Article 5, and therefore it was sufficient to mention the problem in this report as being one of general drafting application.

The main problem on both these articles was that of determining the points of attachment of the Convention, i.e., which performers, record makers and broadcasting organizations were to be protected. A subsidiary difficulty was to ensure that Articles 3 and 4 were consistent with each other.

The United States delegation presented document CDR/43, not necessarily as their own proposal, but as an attempt to clarify discussion while still adhering as closely as possible to The Hague principles. The main defect of the Hague Draft was that in certain circumstances it was ambiguous as to the country of origin of any given performance, record or broadcast, and that this was important when considering such things as comparison of term of production and reciprocity on secondary uses.

It was agreed to adopt this document as the basis of discussion. There was not much dissent in principle over Articles 3*bis* (broadcasting) and 3*ter* (performances), but at the outset it was clear that Article 3 (phonograms) was highly controversial.

Article 3. Phonograms

These were first discussed in relation to CDR/43.

The five Nordic countries proposed that all phonograms should be protected on the basis only of place of fixation, the new laws in Denmark, Finland, Norway and Sweden having chosen that solution. This was supported by a number of other countries. A number of others, including the United States, were firmly of the view that for published phonograms the place of first publication should, as in the Hague Draft, be decisive. Another school of thought, which included Germany, was that the nationality of the maker should be the criterion for the protection of records. The European Broadcasting Union supported the solution 'place of fixation' and the International Federation of the Phonogram Industry that of the 'place of publication', saying that this was also the best solution from the performer's point of view.

Votes were taken on these three proposals; the 'place of fixation' principle of document CDR/24 received 11 votes; the French proposal, CDR/51 (which would have protected phonograms if either fixed in or made by a national of a contracting State), 5 votes; and the solution in Article 3 of CDR/43 'place of first publication', 10 votes. The matter was then referred to a working party of eight countries (Sweden, United Kingdom, United States, France, Monaco, Germany, Italy and Czechoslovakia) in order to seek a compromise solution.

This group was unable to reach a unanimous agreement. The Chairman, however, recommended that the compromise contained in paragraphs 1 to 3 of Article 3 in the annex to this report. Briefly, this provided that each contracting State shall protect phonograms (whether published or unpublished) if either:

i. the maker of the phonogram was a national of another Contracting State, or
ii. if the first fixation was made in another Contracting State, or
iii. if the phonogram was first published in another Contracting State.

However, any State might declare on ratification that it did not propose to apply the criterion of first fixation or alternatively the criterion of first publication. All States were, however, bound to protect phonograms made by a national of a Contracting State.

In relation to *published* phonograms, the provision means that there may be three

categories of Contracting States, namely:

1. Those which make no declaration under paragraph 3; these will have to protect published phonograms if any of the three criteria (nationality, publication, fixation) is present.
2. Those which, by a declaration under paragraph 3, exclude the application of the criterion of fixation; these will have to protect published phonograms if any of the remaining two criteria (nationality, publication) is present.
3. Those which, by a declaration under paragraph 3, exclude the application of the criterion of fixation; these will have to protect published phonograms if any of the remaining two criteria (nationality, fixation) is present.

In relation to *unpublished* phonograms, the exclusion of the application of the criterion of publication being, of course, of no relevance, the provision means that there may be two categories of Contracting States, to wit:

1. Those which make no declaration under paragraph 3; these will have to protect unpublished phonograms if any of the two criteria (nationality, fixation) is present.
2. Those which, by a declaration under paragraph 3, exclude the application of the criterion of fixation; these will have to protect unpublished phonograms if, and only if, the criterion of nationality is present.

A minority of this group felt that Contracting States should be allowed to apply only the criterion of fixation. An amendment to this effect, presented by the five Nordic countries (CDR/59), was defeated by 14 votes to 11, with 3 abstentions. Paragraphs 1 to 3, of Article 3, as in the annex, were then agreed to by 25 votes to nil, with 5 abstentions.

A further small group, consisting of Czechoslovakia, the United States and Germany, was asked to redraft the provisions relating to country of origin (the final paragraphs of Articles 3, 3*bis* and 3*ter* in CDR/43) in the light of this decision. The result of the work of this group, in which the delegate of Sweden also participated by invitation, is contained in the final paragraphs of these three articles, as set out in CDR/64.

When these paragraphs were discussed, however, it was the feeling of the meeting that it was impossible to decide on country of origin until delegates knew the effect this was going to have in relation to other Articles of the Convention. For example, was country of origin of importance only in relation to comparison of term, or would it also have importance in relation to such things as reciprocity on secondary uses? The committee therefore felt it necessary to postpone discussion of these paragraphs until it was known with more certainty the context (if any) in which the expression 'country of origin' would be used elsewhere in the Convention.

*Article 3*bis. *Broadcasts*

The proposals as to these were to the same effect as those in the Hague Draft, and only minor changes were suggested. The final draft of this Article appears in the annex.

*Article 3*ter. *Performances*

There was general agreement on paragraph (i), which protects performances on the basis of the place in which they took place; but several delegates felt that paragraphs (ii) and (iii) raised a number of complications and might perhaps with advantage be deleted. The United States delegate pointed out that the complications were implicit in the Hague Draft itself. He said that what the proposal tried to accomplish was the establishment of a system in which a performance recorded on a phonogram is

always protected when the maker of that phonogram is protected; or in which a live performance which is broadcast is always protected when the broadcasting organization transmitting it is protected. No one pressed the matter to a vote and the article was adopted provisionally.

There was some discussion of a German proposal for a new Article 4*bis* (CDR/29) but this was eventually withdrawn.

Article 4

The general feeling was that so far as paragraph 1 of CDR/43 was concerned, The Hague text of Article 3 (subject to the necessary drafting changes) was preferable, and it is this text which was eventually adopted and forms paragraph 1 of Article 4 in the Annex.

The second paragraph of that Article contains two ideas which were implicit in The Hague text but are now stated in terms:

(a) that in addition to national treatment, the beneficiaries of the rights under the Convention are entitled to demand the minima provided for in the particular Articles which enumerate their rights and

(b) that where the Convention permits reciprocity to be applied, e.g., as to term of protection (Article 13 and secondary uses (Articles 11 and 15), this was permitted notwithstanding that less than national treatment was accorded.

The expression 'headquarters'—translated as '*siège social*' in the French text in this Article and in Article 3*bis*—raised a discussion as to whether it might not be better translated as '*siège statutaire*'. It was decided to use the expression '*siège social*' in the sense that this meant '*siège statutaire*' and that the drafting committee should seek to find a suitable English equivalent.

Article 7

The main policy question was whether the protection of the Convention should cover only performers who perform 'works' in the copyright sense, or whether it should go wider so as to protect artistes like variety artistes and circus performers. An Austrian proposal intended to widen the field of application (CDR/23) was defeated by 18 votes to 2, with 5 abstentions.

The party then discussed the United States proposed definition of 'performer' (paragraph 4 of CDR/52). The first sentence of this definition was agreed to unanimously (with three abstentions) subject to the insertions of the words 'literary and artistic' before the word 'works'. It was also agreed that the report should say:

(a) that 'literary and artistic works' had the meaning which those words have in the Berne and Universal Copyright Conventions, and in particular include musical, dramatic and dramatic-musical works:

(b) that conductors of musicians or singers should be considered as performers.

Although not formally decided it was the general feeling that this definition made the first sentence of Article 7 unnecessary.

It was, however, agreed that it was necessary to retain the second sentence of Article 7.

Article 10

After the Indian proposal for a new definition of 'phonogram' (contained in CDR/50) had been defeated, the definition in Article 10(a) of the Hague Draft which corresponded closely to paragraph 1 of CDR/52, was adopted (subject to drafting) as was The Hague definition of 'maker of phonograms' in Article 10(b).

The most important change was made in Article 10(c). There, the United Kingdom amendment in CDR/20 and the Austrian

amendment in CDR/27 to define 'publication' as the 'offering of copies of a phonogram to the public in reasonable quantity' was adopted by 10 votes to 7, with 7 abstentions. This decision was taken before the decision on Article 3—points of attachment for phonograms—and four delegations—Italy, France, Argentina and Monaco—felt that the latter decision made this definition of publication of phonograms a matter to be re-examined in the Main Commission.

These and other definitions adopted are set out in the annex.

India withdrew the proposals in CDR/30 and 50; the question of the definition of 'rebroadcasting' in CDR/49 was postponed until discussion of Article 12, and the Belgian proposal relating to 'live performance' was postponed until discussion of Article 5. The United States also withdrew their definition of 'broadcasting organization' in paragraph 6 of CDR/52.

In view of the interrelation between the Articles discussed by this working party and those to be discussed by Working Party No. II, it was the general feeling that it would be advantageous if possible to postpone discussion of this report in this Main Commission until the report of Working Party No. II was also available for discussion at the same time.

CDR/112 rev. Report of Working Party No. II

COMPOSITION, OFFICERS AND TERMS OF REFERENCE OF WORKING PARTY NO. II

The working party was composed of representatives of the following States: Argentina, Australia, Austria, Belgium, Brazil, Cambodia, Cuba, Czechoslovakia, Denmark, Finland, France, Federal Republic of Germany, India, Ireland, Israel Italy, Japan, Luxembourg, Mauritania, Mexico, Monaco, Netherlands, Norway, Peru, Poland, Sweden, Switzerland, Tunisia, United Kingdom, United States of America, Yugoslavia.

Observers from several international organizations represented at the Diplomatic Conference also attended the meetings of the working party which took place on 17, 18, 19, 20 and 23 October 1961.

At the party's first meeting, *Professor E. Ulmer* (Federal Republic of Germany) was unanimously elected Chairman and *Mr. V. De Sanctis* (Italy) rapporteur.

The working party's terms of reference were to examine the following provisions of the Hague Draft Convention (CDR/1): (a) Articles 5, 6, 8, 11, 12 (minimum rights of performers, producers of phonograms and broadcasting organizations including secondary uses); (b) Article 13 (protection period); (c) Article 14 (exceptions); (d) Article 15 (reservations); (e) Article 16 (effect of the Convention on films).

PERFORMERS
(Articles 5 and 6)

Form of protection
(Article 5, paragraph 1)

The delegations of the United Kingdom and of Czechoslovakia submitted draft amendments on this subject (CDR/20 and CDR/31)

The general question examined by the party concerned the form that the protection given to performers under the Convention should take. Should the Convention accord them direct protection by the recognition *jure conventionis* of a subjective right or should it confine itself to the seemingly more flexible formula of The Hague, leaving national laws and regulations great liberty of choice between protection backed by penal sanctions and protection based on other legal principles? During the discussion, some representatives

observed that the formula adopted in Article 5 of the Hague Draft really seemed somewhat illogical by comparison with the one employed for the protection of phonograms (Article 8) and broadcasting organizations (Article 12). However, after the Chairman, among others, had explained the practical consideration involved by reason of the position in certain countries (the United Kingdom and Italy, for example), the party decided to keep to the wording of the Hague Draft on this point.

The question whether the phrase 'possibility of preventing' permitted the introduction of compulsory licences was settled in the negative.

Definition of live and other than live performances
(Article 5, paragraph 1)

The Belgian delegation submitted two draft amendments (CDR/57 and CDR/84) on this question.

The general question of defining the term 'live performances' in paragraph 1 of Article 5 was considered at length by the group. After proposals had been made by several delegations (Belgium, Czechoslovakia, United States of America, etc.) and an explanation given by the International Federation of Musicians, the party was unanimous in adopting the Chairman's proposal not to include any provision on this point in the text of the Convention but to point out in the report that by 'live performance' was to be understood the personal performance of the artistes before a specific public, even if it were made with the assistance of a loudspeaker, any other form of communication, e.g., by fixation or by broadcasting, being regarded as indirect.

Nature of protection

Article 5, paragraph 1(a). Following some observations by the delegation of Monaco on the fact that fixation is not a frequent occurrence in international relations, and comments by the observer of the International Federation of Actors, the working party broached the question whether it was desirable or not to delete all reference to the protection of performers against communication to the public; this is the fundamental problem arising in connexion with paragraph 1(a), all other questions being a matter of drafting.

In this connexion, the United Kingdom draft amendment (CDR/20) proposing the suppression of protection against communication to the public—the case covered by this provision not being likely to arise often in international relations—was rejected by 16 votes to 3, with 6 abstentions. The text of paragraph 1(a) of the Hague Draft was accordingly maintained, its final wording being left to the Drafting Committee.

Article 5, paragraph 1(b). The delegations of Austria and the Federal Republic of Germany submitted draft amendments on this subject.

In connexion with the terms of paragraph 1(b), the question of 'live performances' was raised once again, in view of a reference in the paragraph to 'live broadcast performances' (cf., the definition given above of live and other than live performances). The draft amendment submitted by the Austrian delegation (CDR/63), proposing to add the words 'or communicated by any other means' to paragraph 1(b), was adopted unanimously with two abstentions. The proposal of the Federal Republic of Germany (CDR/74) was withdrawn.

Article 5, paragraph 1(c) and paragraphs 2 and 3. The working party had before it a United States proposal (CDR/80) to omit items (i) (ii) and (iii) of paragraph 1(c) or, as an alternative, to insert the following new item between items (i) and (ii): 'if the reproduction is made without the consent

of both the performer and the person whom the performer had authorized to make the original fixation'. The party had also before it an Austrian proposal (CDR/63) to omit paragraph 2 of the Hague Draft and to insert a new paragraph 2. A discussion ensued on the question whether performers should be granted general protection against the reproduction of the fixation, or whether this protection should be restricted to certain clearly defined cases. On this point, Czechoslovakia submitted a proposal (CDR/31) designed to secure similar results to those sought by the United States amendment. During the debate on the questions raised by paragraph 1(c), the delegates of Monaco and France, among others, drew attention to the very close relationship between these provisions and those contained in paragraphs 2 and 3 of the same Article 5. The chairman thereupon proposed the establishment of a working group to work out a compromise solution for paragraphs 2 and 3 of Article 5. The United Kingdom draft amendment (CDR/77) proposing to add a provision to paragraph 3 was also retained with a view to redrafting the provisions concerned. The working group entrusted with the drafting of this compromise solution consisted of the representatives of the following countries: Argentina, France, Netherlands, Sweden, United Kingdom and the United States of America.

The working group of which the Chairman is Mr. Wallace (United Kingdom) and the Rapporteur Mr. Bogsch (United States of America) submitted its first report (CDR/94) to the working party; this draft is based on the principle of the pre-eminence of contracts, national laws not being required to lay down imperative rules in this respect. During the discussion of the text prepared by the working group, the delegate of Cuba submitted a verbal amendment which consisted in inserting a new sub-paragraph (e) ('any other gain accruing to a broadcasting organization') in the above-mentioned text; this proposal was, however, rejected by 23 votes to 2, with 4 abstentions. Objections having been raised by several delegates, the working party rejected by 26 votes to 3, with 3 abstentions, a draft amendment of the Polish delegation (CDR/41), allowing for the possibility of legal licences being introduced under national laws and regulations, and unanimously decided to retain paragraph 1(c) and paragraphs 2 and 3 of The Hague text, with the addition of a new paragraph representing a slightly amended version of the United Kingdom proposal.

The new text of Article 5, as drafted by the working group (CDR/114 rev.), was unanimously adopted by the working party, subject to two drafting changes.

Assignability of rights

One question of particular importance is that of the assignability of the rights of performers.

On this point, the observer from the International Federation of Musicians expressed his opposition to any provision which would prevent assignment of the performer's rights. After a number of other statements opposing any such provision, the working party concluded that this question, even as far as the interpretation of contracts was concerned, should not be regulated in the Convention, but should be left to national laws and regulations to settle, as appropriate.

Consequently, the proposals contained in the draft amendment proposed by the Austrian delegation (CDR/63) were rejected by the working party by 21 votes to 8 with 3 abstentions.

GROUP PERFORMANCES

Article 6

Draft amendments to Article 6 were submitted by the delegations of Monaco (CDR/32), Belgium (CDR/66) and United States of America (CDR/82 and 101).

The provisions of Article 6 of the Hague Draft relate to the concept of group performances and leave each State free to legislate as it sees fit in this field.

However, whereas The Hague Draft says that any Contracting State may specify the conditions under which performers exercise their rights if several of them participate in the same performance, the proposals of Belgium and Monaco tend to place an obligation upon States to regulate this question.

Moreover, one of the amendments proposed by the United States of America places a condition on the intervention of domestic law, namely, that it can intervene only if the performers are unable to agree among themselves as to the joint exercise of their rights.

The working party rejected this United States amendment by 26 votes to 2, with 3 abstentions, and the proposals of Monaco and Belgium were withdrawn. The United States delegation then made a new proposal (CDR/101), which was adopted by 18 votes to 5, with 7 abstentions.

After the voting, the working party asked that the French and Spanish texts of the draft article be revised by the Drafting Committee. The view was also expressed that the word '*collectivement*' should be inserted after the word '*participent*'.

Finally, the working party adopted a new text which is reproduced in document CDR/114 rev.

PRODUCERS OF PHONOGRAMS
(Articles 8 and 9)

Form of protection
(Article 8)

Referring to a memorandum submitted to the Conference by his Association, the observer of the ILAA expressed the view that producers of phonograms and broadcasting organizations should not enjoy a subjective right *ex jure conventionis* but merely be entitled to protection against unlawful uses, which protection could be secured by national laws and regulations on the basis of other legal principles, such as the legal measures against unfair competition.

The Chairman noted that some national legislations already ensured the protection of producers of phonograms, conferring on them a veritable property right. At the close of this discussion, the working party retained the formula adopted at The Hague.

Nature of protection

Direct or indirect reproductions—exceptions. The delegations of the following countries submitted draft amendments on this point: Denmark (CDR/62), Belgium (CDR/70), Austria (CDR/76) and Portugal (CDR/88). The working party was chiefly concerned with the question whether to specify that the term 'reproduction'—used in The Hague text—covered both direct and indirect reproduction. The working party unanimously decided to add a clause to The Hague text specifying that it did.

The purpose of the draft amendment submitted by Portugal on the concept of ephemeral recordings was to establish *ex jure conventionis* an exception in the case of reproductions made by broadcasting organizations for technical reasons. After discussion, decision on the question was deferred until it could be considered in conjunction with Article 14. Later, when the latter Article was discussed, the Portuguese proposal was rejected by 21 votes to 8, with 1 abstention.

Putting into circulation. In a draft amendment bearing the symbol CDR/76, the Austrian delegation proposed that protection be given against the putting into circulation of copies of phonograms without the consent of the producers of such phonograms, or exceeding the terms of their consent. Several delegations having expressed objections, this proposal was withdrawn.

Unlawful importation. The working party was presented with a proposal to introduce a clause into the Convention analogous to Article 16 of the Berne Convention concerning the seizure of works infringing copyright and providing for the seizure of any unlawful phonogram at the time of its importation. This was the purpose of a draft amendment submitted by the delegation of India (CDR/104) whilst a proposal made jointly by the Nordic States—Denmark, Finland, Iceland, Norway and Sweden—(CDR/24) provided for the seizure of any unlawfully made phonogram or fixation of a performance or a broadcast protected under the Convention.

After statements had been made on the subject by the representatives of several countries (Belgium, Cuba, France, Italy, Monaco, Netherlands, Sweden, United Kingdom and United States of America), the working party considered the principle stated in the draft amendment with interest, but did not deem it necessary to insert a special clause in the Convention. The amendment of the Nordic countries was rejected by 20 votes to 11, with 2 abstentions, and that of India by 19 votes to 12, with one abstention.

The new text of Article 8, as drafted by the working group (CDR/114 rev.), was unanimously adopted.

FORMALITIES
(Article 9)

This Article was held over for consideration by the Main Commission.

SECONDARY USES
(Article 11)

Draft amendments were submitted by the following delegations: United Kingdom (CDR/20), Netherlands (CDR/38), Belgium (CDR/65), France (CDR/71), Portugal (CDR/73), Norway (CDR/79), Argentina (CDR/85) and the Congo (Leopoldville) (CDR/87).

The working group devoted close attention to the system of protection proposed in The Hague for so-called 'secondary uses'. According to this system, a single equitable remuneration would be paid to the performers, to the makers of phonograms or to both, in the event of a published phonogram being used directly by a broadcasting organization or being communicated to the public.

The purpose of the French delegation's amendment, which is based on Article 4 of the Monaco Draft, was to replace the obligation proceeding from Article 11 of The Hague Draft by a commitment on the part of Contracting States to grant protection on a reciprocal basis in this matter. The French delegation's amendment, which was similar to the proposals of Portugal and the Netherlands, gave rise to a lengthy debate. During the discussion, the observer from the International Confederation of Authors' and Composers' Societies said that authors' organizations were extremely disquieted by Article 11, since the recognition of a right to remuneration for secondary uses was likely to lead to very heavy costs for users and consequently to unpredictable repercussions on the existing economic balance.

Further, the observer from the International Federation of Musicians pointed out that the free use of commercial records was an unfair practice, whilst the observer from the International Federation of the Phonographic Industry argued in favour of a right to remuneration in the case of secondary uses. The French, Portuguese and Netherlands amendments were first rejected by 14 votes to 12, with 10 abstentions. After these votes, the Chairman asked the Group to consider the proposals of the delegation of the Republic of the Congo (Leopoldville) to replace the words of the the Hague Draft 'shall be paid (by

the user)' by the words 'shall be due', and to delete the word 'single' also figuring in the same draft. The first proposal was referred to the Drafting Committee and the second rejected by 26 votes to 4, with 7 abstentions.

The working party then examined the proposals of the delegations of Belgium and Argentina, concerning the recipients of the equitable remuneration mentioned in the said Article 11. The Belgian amendment was rejected by 25 votes to one, with 6 abstentions. The Argentinian proposal was withdrawn but, having been taken up again by the delegate of Cuba and put to the vote, it was rejected by 18 votes to 3, with 8 abstentions.

The Chairman having announced his intention of taking a vote on the text of Article 11 of the Hague Draft, a motion on a point of order was put by the Polish and Italian delegations, who wished Article 11 to be put to the vote in conjunction with Article 15 (which provides for the possibility of reservations). This motion having been defeated, the text of Article 11 of the Hague Draft was adopted by 24 votes to 8, with 3 abstentions.

The new text of Article 11, prepared by the working party (CDR/114 rev.), was referred, after consideration, to the Main Commission for final decision.

BROADCASTING ORGANIZATIONS
(Article 12)

The Austrian and Swiss delegations submitted draft amendments on the protection to be granted to broadcasting organizations under the said Article (CDR/89 and 92 respectively). The following points were examined by the working party.

Concept of rebroadcasting
(Article 12(a))

After discussion, the view was expressed that the concept of 'rebroadcasting' was analogous to that of simultaneous relay of a broadcast. Consequently, a draft amendment submitted by the Austrian delegation (CDR/98) proposing the addition to Article 10 of a definition on those lines was adopted by 30 votes, with 2 abstentions.

Later, a proposal by the sub-group to add to the Article on Definitions an addendum on the meaning of rebroadcasting (CDR/114 rev.) was unanimously accepted.

In this connection, following statements by the delegates of Argentina, Cuba and Spain, it was agreed that the attention of the Drafting Committee should be drawn to the problem of the Spanish translation of 'rebroadcasting'.

Fixation of part of a broadcast
(Article 12(b))

Sub-paragraph (b) of Article 12 of The Hague text deals with the fixation of broadcasts. The problem was whether this expression also covered fixation of part of a broadcast, and more specifically of a single image. After discussion, the working party indicated its agreement in principle with the interpretation given in the Austrian and Swiss draft amendments (CDR/89 and 92). It felt, however, that it was for national laws and regulations to determine whether a single image could or could not be considered as part of a broadcast, the question of parts of broadcasts being certainly covered by the provisions of Article 12, sub-paragraph (b). The working party did not think it necessary to include special provisions on the point in the Convention.

Unlawful fixations
(Article 12(c))

Some delegates, particularly the delegate of Czechoslovakia, thought that the expression 'unlawful' was ambiguous. In order to clarify it, the Austrian amendment proposed

that the term 'unlawful fixations', used in The Hague text, be replaced by 'fixations made without the consent of the broadcasting organizations'. This proposal was adopted unanimously by the group, with three abstentions.

Communication to the public
(Article 12(d))

The Hague text makes 'payment of an entrance fee in places accessible to the public' the condition for the enjoyment of the right of communication to the public. The Swiss amendment proposed to replace 'payment of an entrance fee' by the phrase 'for pecuniary gain', while the Austrian amendment proposed the deletion of the phrase in the Hague Draft, as it constituted a limitation of the protection. During the discussion, the view was expressed that States making use of reservations could state that performances given in a public place but not for pecuniary gain (e.g., charity performances), although subject to the payment of an entrance fee, should not be covered by this provision. The United States delegation opposed the provisions of sub-paragraph (d) as a whole, while the delegate of Belgium asked for the deletion of the second sentence. The United States proposal was rejected by 25 votes to 2, with 5 abstentions, and that of Belgium by 22 votes to 2, with 7 abstentions. Sub-paragraph (d) of Article 12 of The Hague text was adopted by 23 votes to 2, with 2 abstentions.

Putting into circulation
(Article 12(e))

The question of the protection to be given to broadcasting organizations against the putting into circulation of fixations of their broadcasts was examined in the light of an Austrian amendment proposing to add a new sub-paragraph (e) to Article 12. After some discussion this proposal was withdrawn, as the problem is closely linked with the question of unlawful importation of phonograms, which is dealt with above, under sub-paragraph (b). The new text of Article 12 as drawn up by the sub-group (CDR/114 rev.) was unanimously adopted.

PERIOD OF PROTECTION
(Article 13)

The following countries submitted amendments on this question: the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), Poland, Austria, the United States of America and Czechoslovakia (CDR/24, 41, 90, 102, and 107).

Article 13 of The Hague text, while leaving the determination of the period of protection to the law of the country where the protection is claimed, qualifies this with the rule of comparison of protection periods and a further provision fixing a twenty-year minimum period of protection for the three categories concerned. Certain proposals submitted to the Conference aimed at extending the minimum periods stipulated by the Hague Draft Convention (Austria 30 years, the United States, 25 years), whereas the Polish delegation, supported by those of Congo and Mauritania, proposed to reduce the period to 10 years in each case.

The United States amendment also proposed to redraft the second sentence of Article 13, paragraph 1, so as to avoid the use of the phrase 'country of origin'.

After discussion of these questions, the group rejected the Austrian proposal (by 17 votes to 6, with 5 abstentions), and the United States' proposal (by 14 votes to 9, with 6 abstentions), and decided (by 24 votes to one, with 5 abstentions) to maintain the minimum period laid down in The Hague text.

With regard to the date of commencement of the period of protection, the proposal of the Nordic countries was that the period

of protection for phonograms should date from the end of the year of the first fixation.

With regard to the United States' proposal already referred to above, which concerns the second sentence of Article 13, paragraph 1, and aims at avoiding the use of the term 'country of origin', the Chairman made an explanatory statement and proposed that the question, as well as all others relating to the country of origin, be referred to the sub-group set up to examine Article 5. The working party accepted this suggestion. Reference is made under Article 15 to the proposal of the sub-group in this connexion. It should, however, be noted here that the second sentence of Article 13, paragraph 1, has been deleted by the working party. When the definition text of Article 13 (CDR/118 rev.) was examined, the view was expressed that the Article provided only a minimum period of protection. The text of the Article was later adopted unanimously, with two abstentions.

EXCEPTIONS TO THE PROTECTION GRANTED BY THE CONVENTION (Article 14)

Draft amendments relating to exceptions were proposed by the delegations of the following countries: Poland (CDR/41), the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) (CDR/61), Switzerland (CDR/75), Portugal (CDR/88) and the Federal Republic of Germany (CDR/100).

The questions before the working party on this subject concerned primarily the possibility of adopting a general formula for Article 14 (proposal of the Federal Republic of Germany) and also the specific cases listed in the text of The Hague. The working party first considered the draft amendment proposed by the delegation of the Federal Republic of Germany which runs as follows: 'Any Contracting State may place the same limitations, under its laws and regulations, on the protection granted to performers, producers of phonograms and broadcasting organizations as it places on the protection of the rights of authors of literary and artistic works. However, compulsory licences may be introduced only in cases where they are compatible with the terms of this Convention'. The working party approved this amendment by 24 votes to one, with 7 abstentions, on the understanding that it should constitute paragraph 2 of Article 14 and should be introduced by the words 'in addition', following, as it did, on paragraph 1 relating to specific exceptions.

The working party then reviewed the special objections. The Swiss amendment proposed the deletion of sub-paragraph (a) of Article 14 and its replacement by a general provision on personal and private use. After discussion, however, this proposal was withdrawn and sub-paragraph (a) was retained by 11 votes to 6, with 14 abstentions.

It was unanimously decided to retain sub-paragraphs (b) and (c).

With respect to sub-paragraph (d), it was understood that use solely for teaching purposes should be interpreted strictly as an exception for purposes of instruction in schools and similar institutions. It was further agreed, on the proposal of the representative of India, and by 22 votes to one, with 3 abstentions, that this exception should also cover use for purposes of scientific research.

The proposal of the Nordic countries (CDR/61), designed to allow freedom of quotation, was withdrawn, its purpose having been achieved by the addition of a new paragraph 2 to Article 14.

With regard to an Austrian proposal (CDR/95) to add a further exception the majority of the working party considered that the situations envisaged should preferably be covered by contractual arrangements

between theatrical undertaking and the performers.

The representative of India reserved the right to submit to the Main Commission a proposal for a new exception with respect to amateur performances of literary, musical and dramatic works, such a provision, in his opinion, being of particular importance for the spread of culture in countries in course of economic development.

The new text of Article 14 as drawn up by the sub-group (CDR/118 rev.) was unanimously adopted.

RESERVATIONS
(Article 15)

The working party had before it proposals from the delegations of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) (CDR/24), the Netherlands (CDR/38, 53 and 54), Poland (CDR/41,) France (CDR/71 and 97), Portugal (CDR/73), Switzerland (CDR/75), Ireland (CDR/99) and Denmark, Finland and Sweden (CDR/106).

Article 15 of the Hague Draft would enable the different Contracting States to become parties to the Convention while making certain reservations with regard to Articles 11 and 12 and by inserting a declaration in its instrument of ratification or accession.

The Polish amendment (CDR/41) proposing the deletion of all possibility of reservations having been withdrawn, the Group examined the French proposal (CDR/97) that, for reasons of balance the reservation provided in paragraph 1 (b) of Article 15 with regard to broadcasting, should be limited to the provisions of Article 12, sub-paragraph (d) (communication to the public). This proposal was adopted by 25 votes to 5, with 5 abstentions.

The delegate of Ireland said he would be willing to withdraw his draft amendment (CDR/99) if necessary. However, the problems raised by this draft amendment and by that of Denmark, Finland and Sweden (CDR/106) were referred, after discussion, to the working sub-group which had already been set up.

The proposal of the Netherlands delegation (CDR/53) was adopted by 20 votes to 3, with 6 abstentions, the delegate of Czechoslovakia opposing it on grounds of principle. A second proposal of the Netherlands delegation (CDR/54) was then unanimously adopted.

In later discussions the working party first of all examined the proposals of the sub-group contained in document CDR/113.

It then examined new proposals, also submitted by the sub-group (CDR/119) providing two alternative solutions within the framework of paragraph 1(c) (iii) in respect of rights of reservation, where according to national laws and regulations the beneficiaries mentioned in Article 11 are either the performers, or the producers of phonograms, or both. After a very full explanatory statement by the chairman, there was a debate in which the delegates of the following countries took part: Argentina, Brazil, Ireland, Italy, Monaco, Spain, the United Kingdom, the Republic of South Africa and Switzerland. The three international federations of performers having expressed themselves in favour of the first alternative (CDR/119), paragraph 1(a) (iii) (the sentence in brackets at the end of the paragraph), this alternative was adopted by 18 votes to 9, with 10 abstentions, subject to some changes of form.

The other provisions of Article 15 were unanimously adopted.

After the voting, the delegate of France reserved the position of his country with regard to Article 15 pending the final decision on Article 11.

With regard to the drafting of Article 15, after a long debate in which many delegates took part, a number of changes of detail were made to the text in order to render it more explicit and clear. Thus, in Para-

graph 1, sub-paragraph (a) (ii) it was made clear that it related to 'specified uses referred to in the said Article (i.e., Article 11), and it was left to the Drafting Committee to put the text into proper form. In paragraph 1(a) (iii) the word 'Contracting' was deleted, and the last three lines were amended as follows: 'in respect to phonograms fixed by a national of the State . . .'.

Concept of country of origin

In the Report of Working Party No. I (CDR/67 rev.), it is stated (page 3) that 'the main defect of the Hague Draft was that in certain circumstances it was ambiguous as to the country of origin', and, further on (page 5), that 'it was the feeling of the meeting that it was impossible to decide on the country of origin until delegates knew the effect this was going to have in relation to other Articles of the Convention'.

In order to give a specific answer to these general questions raised by Working Party No. I, the chairman, following a statement by the delegate of Italy, remarked that the working party, in approving the provisions proposed by its working group, together with the above-mentioned amendments, had replied implicitly to those questions, so that the expression 'country of origin' should be deleted from the text of the Convention. For the concept of country of origin in the Hague Draft affects the question of who is to enjoy protection under the Convention and how long the period of protection should be, particularly in regard to the application of the principle of comparison of periods of protection.

Following the approval by Working Party No. I of Articles 3, 3*bis* and 3*ter*, relating to those enjoying protection (Annex to CDR/67 rev.), use of the expression 'country of origin' could be avoided by providing for the different points of attachment in regard to national treatment granted to the three categories of beneficiaries.

With regard to the duration of protection, the question whether comparison of periods should be applied to the secondary uses covered by Article 11 was resolved *ipso facto* by the solution provided in the new version of Article 15, paragraph 1(a)(iii).

The problem of comparison of periods in relation to the reproductions of phonograms still had to be considered, but it was noted in this connexion—in particular by the chairman—that the question had little importance in practice, since a great many national legislations included clauses on unfair competition.

The working party, agreeing with the arguments advanced on this subject in the course of a long debate, unanimously agreed to delete from Article 13, relating to the duration of the protection, the clause on the comparison of periods for phonograms and broadcasts and, by 29 votes, with one abstention, the corresponding clause relating to performances.

EXCEPTIONS AFFECTING ARTICLE 3 (Article 15*bis*)

The United Kingdom delegation submitted a draft amendment (CDR/110) designed to entitle every Contracting State which, at the date of the Convention, grants protection to phonograms solely on the basis of the place in which the fixation was made, to adhere to the Convention on that basis.

The chairman recalled in this connexion that the new draft text provided for three points of attachment for phonograms, namely, nationality, publication and fixation, Contracting States being free to apply either the criterion of publication or that of fixation, but always together with the criterion of nationality. That being so, it would not be possible to secure the desired accession of certain countries which had already introduced the principle of fixation alone into their national laws and regulations.

After a debate, during which other proposals were made, the working party approved the proposal of the United Kingdom by 29 votes to 0, with 4 abstentions, subject to drafting changes.

The new text as drawn up by the subgroup (CDR/120) was unanimously adopted, subject to two changes clarifying the sense of this provision.

EFFECT OF THE CONVENTION ON FILMS (Article 16)

The working party had before it proposals presented by the delegations of Austria (CDR/103), the United States of America (CDR/105), and Czechoslovakia (CDR/107).

It should be recalled that an attempt was made in Article 16 of the Hague Draft to find a compromise between the text of the Monaco draft (Article 6), according to which no provision of the Agreement might be interpreted as applying to the copying or any use (exhibition, broadcasting or otherwise) of motion pictures or other visual and audio-visual fixations, and the need mentioned in the Report of the Committee of Experts at The Hague 'to have the performer protected against clandestine filming, either live or off-the-air, and the broadcasting organization protected for its television broadcasts even if these included films'.

However, it was not intended, according to this same report, 'to impose any obligations on States or to affect any rights of film makers or any other rights in visual or aural-and-visual fixations'.

Opening the debate on Article 16, the chairman pointed out that it dealt with a very complicated question, since technical developments had made it difficult to draw a clear dividing line between motion pictures and visual and audio-visual fixations for television in general. In that connexion, he drew attention to the studies undertaken on the international protection of films by the intergovernmental organizations concerned. This state of affairs should be taken into account when Article 16 of the Convention was discussed.

The working party first examined the Austrian proposal which made a distinction between motion pictures, including those initially produced for broadcasting, and other visual and audio-visual fixations. It then went on to consider the proposal of the United States of America. Several delegates emphasized how difficult it was to distinguish between motion pictures and other visual and audio-visual fixations and referred in this connexion to certain legal systems, such as that of England, in which film copyright covers any visual or audio-visual fixation. The United States proposal, according to which Article 5 would have no further application once a performer had consented to the incorporation of his performance in a visual or audio-visual fixation, consequently interested many delegates.

During the debate on this question, certain delegates were, however, strongly in favour of the formula in Article 16 of the Hague Draft, whilst the Czechoslovak delegation submitted an amendment designed to bring Article 5 entirely within the field of application of the Convention.

The observer from the International Federation of Actors pointed out, for his part, that at the present time visual or audio-visual fixations are made of a very large proportion of the performances of artistes, and he therefore considered it necessary to improve Article 16 of The Hague text. On the other hand, he agreed that films made for showing in cinemas should not be covered by the terms of the Convention.

The proposal of the United States of America was adopted by 19 votes to 5, with 8 abstentions.

In view of this vote, there was no need to take a decision on the Austrian and Czechoslovak proposals.

The final text of this Article (CDR/118) was unanimously approved.

The present report was unanimously adopted by Working Party No. II at its last meeting, held on 23 October 1961.

CDR/60 rev.
Report of the Working Party on Final Clauses

The Working Party in Final Clauses met on 12, 13, 14 and 16 October 1961. It consisted of the representatives of the following States: Argentina, Austria, Cuba, Czechoslovakia, Finland, France, Federal Republic of Germany, Italy, Japan, Mexico, Netherlands, Sweden, Switzerland, United Kingdom, United States of America and Yugoslavia, together with the representatives of the Congo (Leopoldville) and of the International Federation of Actors and the International Federation of the Phonographic Industry.

The working party took as a basis for its work the Draft Final Clauses submitted jointly to the Diplomatic Conference by the International Labour Office, the Secretariat of the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works. This draft is contained in the printed document with the symbol CDR/Doc. No. 3.

Articles 20 to 29 of the Draft Convention were therefore included in the working party's agenda; the latter was also required to consider the wording of Articles 18 and 19, as well as that of Article 1, after Working Party No. I—responsible for dealing with problems of national treatment, country of origin and definitions, as well as minimum protection, exceptions and reservations—had itself examined these three Articles from the point of view of substance.

At its first meeting, the working party unanimously elected *His Excellency Mr. Sture Petrén*, (Sweden) as its Chairman, to whom it entrusted the task of reporting to the Main Commission.

1. The Working Party on Final Clauses was informed that Working Party No. I had taken a decision on the proposal of the Austrian delegation to delete Article 1, as adopted at The Hague, which provided that the Convention should be effective only in respect to States parties to the Universal Copyright Convention or members of the Berne Union for the Protection of Literary and Artistic Works, on the understanding that Articles 18 and 19 of the Draft Final Clauses, as prepared by the three Secretariats, would be so amended as to make it clear that such States alone could become parties to the Convention.

The text of Article 18 (Date, signature and deposit), as approved by Working Party No. I, stipulated that the Convention, 'which shall bear the date of . . . 1961' would be deposited with the Secretary-General of the United Nations and would remain open for signature by States until 31 December 1961. On the proposal of the delegation of the United Kingdom, the words 'which shall bear the date of . . . 1961' were deleted. At the proposal of the representative of Switzerland, the date of 31 December 1961 was replaced by that of 30 June 1962, to enable Governments to proceed, if they wished, with all the necessary consultations before signing the Convention.

Article 19 (Ratification, acceptance, accession), as approved by Working Party No. I, was retained unchanged.

2. Article 20 (Entry into force) made the entry into force of the Convention conditional, in the first instance, upon the deposit of three instruments of ratification, acceptance or accession. After having rejected a proposal of the Italian delegation, supported by the representatives of France and the United States of America, to increase this number to twelve, the working party reached agreement on a compromise solution fixing this number

at six, put forward by the delegation of the Federal Republic of Germany and supported by the representatives of Austria, Czechoslovakia, Switzerland and the United Kingdom.

3. With regard to Article 21 (Effective application) the working party agreed with the opinion expressed by the representative of the United States of America that even if the two paragraphs of this Article might appear to some extent to be redundant, it was wise to lay emphasis on the obligation of States to adopt the measures required to ensure the application of the terms of the Convention on its ratification. The working party therefore approved Article 21 of the draft submitted by the three Secretariats, merely introducing, at the request of the representative of Mexico, a purely drafting amendment to the Spanish text.

4. Three problems were raised in connexion with Article 22 (Denunciation).

The first concerned the organ responsible for the reception and communication of the instruments of denunciation. The representative of Japan having asked whether the Secretariat of the United Nations was prepared to undertake the tasks listed in Article 19(3), 22(2), 23(1), 25 and 29, Mr. Wolf (ILO) explained that the Secretariat had, of course, been consulted and had no objection to undertaking the tasks concerned. Following this explanation, the working party adopted the first two paragraphs of Article 22 without amendment.

The second problem related to paragraphs 3 and 4, which stipulated that States could not denounce the Convention before the expiration of a period of five years and would subsequently remain bound for further succeeding periods of five years.

With regard to the first period of five years mentioned in paragraph 3, the majority of the working party considered that such a long period was justifiable and therefore rejected, in turn, a proposal by the delegations of Japan and the United States of America to delete paragraph 3, and an amendment presented by the representative of the Netherlands, which would have reduced this period to three years. Furthermore, on the proposal of the representative of the Netherlands, the working party deemed it advisable to specify the date from which this five-year period was to take effect; it therefore decided to fix, as the beginning of this period for each State, the date on which the Convention entered into force with respect to that State.

As for the subsequent periods at the end of which the right of denunciation can be exercised, once the first period of five years has elapsed (paragraph 4), the majority of the working party considered that States should be free to denounce the Convention at any time, after the initial period, provided that they gave the twelve months' notification prescribed in paragraph 2 of that Article 22. The majority therefore accepted the proposal made by the representatives of France, Japan, the Netherlands and the United States of America and deleted paragraph 4.

Lastly, the working party endeavoured to bring the provisions of Article 22 into line with the stipulations of Articles 18 and 19; to this end, it adopted an amendment submitted by the Austrian delegation, specifying that a State would cease to be a party to the Convention from the time when it ceased to be a party to the Universal Copyright Convention or a member of the Berne Union.

5. Article 23 (Revision) gave rise to a thorough discussion.

Concerning paragraph 1, the majority of the working party rejected two amendments submitted by the delegation of Japan. The first of these would not have made the convening of revision conference conditional on the Convention's having been in force for five years, while the second would have given the executive heads of the three international administrations the power to convene a revision conference themselves, whenever they deemed it necessary.

The working party did, on the other hand,

approve a proposal by the United States representative to specify that the executive heads of the three international administrations would convene the revision conference in collaboration with the intergovernmental Committee provided for in Article 27.

Although no amendment was submitted with reference to paragraph 2, the working party was led to discuss, on the instance of the Swiss representative, the question whether the Convention should specify the number of votes required for the adoption of a revised Convention and, more particularly, whether it should adhere to the unanimity rule or decide in favour of a majority vote system.

The working party considered the possibility of inserting after the words 'In the event of adoption of a new Convention revising the present Convention...' a reference to the rules for voting on the matter. The representative of Switzerland was initially in favour of the unanimity rule, whereas the Netherlands representative submitted for discussion the principle of a straight majority. Thereupon, the French representative proposed that the working party adopt as a compromise the rule of a two-thirds majority.

After Mr. Wolf (ILO) had explained the difficulties that might arise, in the present circumstances, from the adoption of a unanimity rule, which would deprive the system of the flexibility required for making even the slightest change of the instrument in one direction or another in the light of experience, the representative of Switzerland announced his abandonment of the principle of unanimity and withdrew his original proposal in favour of the solution requiring a two-thirds majority.

The working party noted, however, that some delegates were unable to take a final decision on a question of such importance without prior consultation. The working party accordingly decided to leave the question to the discretion of the Main Commission, while drawing its attention to the importance of the decision to be taken and to the exchange of views summarized above.

Paragraph 3 was adopted as it stands in the three-Secretariat Draft.

6. Turning to Article 24 (Disputes), the working party rejected a proposal by the Czechoslovak delegation to replace the words 'a dispute . . . shall . . . be brought before the International Court of Justice' by the words 'may be brought before the International Court of Justice', the majority of the working party regarding such a change as likely to prejudice the compulsory character of the jurisdictional clause.

The working party unanimously approved a proposal of the United States representative to stipulate that the request of one of the parties to the dispute only was sufficient to bring the matter before the International Court.

7. Article 25 (Territorial extension of the Convention) was adopted in the form given in the first variant, on the proposal of the United Kingdom delegation supported, among others, by the representatives of the United States, Netherlands and France, and despite the desire of the representative of Czechoslovakia to have the whole article deleted, since it did not, in his opinion, take the declaration adopted by the United Nations General Assembly at its XVth session (Resolution 1514) into account. However, on a proposal of the Netherlands representative, a proviso was added to the text of the draft prepared by the three Secretariats that the scope of the Convention might be extended by a Contracting Party to one of the territories for whose international relations it was responsible, only if the Universal Copyright Convention or the Berne Convention was applicable to that territory.

8. Article 26 (Reservations) was adopted unchanged, a proposal by the Czechoslovak representative to delete the provision having been rejected.

9. Article 27 (Control of the application of the Convention) gave rise to a lengthy debate and several proposals. The

United Kingdom representative's suggestion that there be no permanent machinery at all for controlling the application of the Convention was not supported. The working party then had to decide between the system envisaged in the three-Secretariat Draft (establishment of a Committee of Experts which would take cognizance of the periodical reports by Contracting States on the application of the Convention, and communication of those reports to the three international bodies concerned) and the system proposed in an amendment by the United States delegation whereby an intergovernmental committee of representatives of Contracting States would study questions concerning the application and operation of the Convention. Mr. Wolf (ILO) explained in detail the reasons underlying the wording of Article 27 in the draft of the three Secretariats, the precedents on which it was based, and the safeguards which the solution suggested appeared to offer. However, after close scrutiny of the two alternatives, the working party declared in favour of a slightly modified version of the United States proposal.

A proposal to add to the draft presented by the United States representative the obligation on Contracting States to submit periodical reports—every two years for example—on the application of the Convention (an obligation provided for only in the three-Secretariat Draft) was submitted by the representative of Argentina and seconded by the representative of Mexico. This proposal obtained five votes in favour, with five against and three abstentions, and could not therefore be taken as adopted. It was agreed that the attention of the Main Commission be specially drawn to this point.

There was also some discussion on the mode of electing the Intergovernmental Committee. On this matter, the working party adopted the suggestion made by Professor Secretan (Director of the Bureau of the Berne Union) and Mr. H. Saba (Unesco Legal Adviser), deciding that the initial election should be by ballot organized among the Contracting States by the executive heads of the three international bodies concerned, in accordance with rules previously approved by the majority of Contracting States. As for the renewal of the Committee, it was agreed that this was a question to be settled by that body itself when adopting its rules of procedure: the Committee will be called upon to determine how the elections are to be held and in particular to decide whether they should be conducted by the Contracting States or by the Committee itself, it being understood that the rules for the renewal of the Committee must permit of rotation among the various Contracting States, and also, as the Japanese delegation proposed, that these rules must allow for the need for equitable geographical representation.

10. Article 28 (Languages) of the three-Secretariat Draft was retained. However, at the proposal of the delegations of Austria, Brazil, Federal Republic of Germany, Italy and Switzerland, a new provision was added that, apart from the authentic texts in English, French and Spanish, official texts should be prepared in German, Italian and Portuguese. It was understood that the latter texts should be prepared by the Governments concerned at their own expense and communicated to the three international bodies for publication.

11. Article 29 (Notifications) was adopted as drafted by the three Secretariats, subject to an amendment proposed by the United Kingdom Government asking that Contracting States be likewise notified by the Secretary-General of the United Nations of the entry into force of the Convention.

12. Finally, a purely drafting change was made in the final signature clause of the draft Convention.

13. The texts of Articles 18 and 29 as adopted by this working party are annexed to the present report.

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CDR/*6bis* (Analysis of the replies of Governments on the Draft International Convention—Replies received on 1 September 1961)
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