

**Records
of the
International Conference
of States
on the Distribution of
Programme-carrying
Signals Transmitted
by Satellite**

**Brussels
6-21 May 1974**



**United Nations
Educational, Scientific and
Cultural Organization**



**World Intellectual
Property
Organization**

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International Conference of States
on the Distribution of Programme-carrying Signals
Transmitted by Satellite**

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Convention
concernant la distribution de
signaux porteurs de programmes
transmis par satellite

Convention
relating to the distribution
of programme-carrying signals
transmitted by satellite

Convenio
sobre la distribución
de señales portadoras de programas
transmitidas por satélite

Конвенция
о распространении
несущих программы сигналов,
передаваемых через спутники

Les Etats contractants,

Constatant que l'utilisation de satellites pour la distribution de signaux porteurs de programmes croît rapidement tant en importance qu'en ce qui concerne l'étendue des zones géographiques desservies;

Préoccupés par le fait qu'il n'existe pas à l'échelle mondiale de système permettant de faire obstacle à la distribution de signaux porteurs de programmes transmis par satellite par des distributeurs auxquels ils ne sont pas destinés et que l'absence d'un tel système risque d'entraver l'utilisation des communications par satellites;

Reconnaissant à cet égard l'importance des intérêts des auteurs, des artistes interprètes ou exécutants, des producteurs de phonogrammes et des organismes de radiodiffusion;

Convaincus qu'un système international doit être établi, comportant des mesures propres à faire obstacle à la distribution de signaux porteurs de programmes transmis par satellite par des distributeurs auxquels ils ne sont pas destinés;

Conscients de la nécessité de ne porter atteinte en aucune façon aux conventions internationales déjà en vigueur, y compris la Convention internationale des télécommunications et le Règlement des radiocommunications annexé à cette Convention, et en particulier de n'entraver en rien une plus large acceptation de la Convention de Rome du 26 octobre 1961 qui accorde une protection aux artistes interprètes ou exécutants, aux producteurs de phonogrammes et aux organismes de radiodiffusion,

Sont convenus de ce qui suit:

The Contracting States,

Aware that the use of satellites for the distribution of programme-carrying signals is rapidly growing both in volume and geographical coverage;

Concerned that there is no world-wide system to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors, and that this lack is likely to hamper the use of satellite communications;

Recognizing, in this respect, the importance of the interests of authors, performers, producers of phonograms and broadcasting organizations;

Convinced that an international system should be established under which measures would be provided to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors;

Conscious of the need not to impair in any way international agreements already in force, including the International Telecommunication Convention and the Radio Regulations annexed to that Convention, and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers, producers of phonograms and broadcasting organizations,

Have agreed as follows:

Los Estados contratantes,

Conscientes de que la utilización de satélites para la distribución de señales portadoras de programas aumenta rápidamente, tanto en volumen como en extensión geográfica;

Preocupados por la falta de una reglamentación de alcance mundial que permita impedir la distribución de señales portadoras de programas y transmitidas mediante satélite, por distribuidores a quienes esas señales no estaban destinadas; así como por la posibilidad de que esta laguna dificulte la utilización de las comunicaciones mediante satélite;

Reconociendo la importancia que tienen en esta materia los intereses de los autores, los artistas intérpretes o ejecutantes, los productores de fonogramas y los organismos de radiodifusión;

Persuadidos de que se ha de establecer una reglamentación de carácter internacional que impida la distribución de señales portadoras de programas y transmitidas mediante satélite, por distribuidores a quienes esas señales no estén destinadas;

Conscientes de la necesidad de no debilitar, en modo alguno, los acuerdos internacionales vigentes, incluidos el Convenio Internacional de Telecomunicaciones y el Reglamento de Radiocomunicaciones anexo a dicho Convenio, y, sobre todo, de no impedir en absoluto una adhesión más copiosa a la Convención de Roma del 26 de octubre de 1961 que protege a los artistas intérpretes o ejecutantes, a los productores de fonogramas y a los organismos de radiodifusión,

Han acordado lo siguiente:

Договаривающиеся Государства,

Сознавая, что использование спутников для распространения несущих программы сигналов быстро развивается как по своим масштабам, так и по географическому охвату;

Озабоченные отсутствием всемирной системы предотвращения распространения распространяющими органами несущих программы сигналов, передаваемых через спутники, которые не предназначались для этих распространяющих органов, и что это отсутствие, видимо, будет препятствовать использованию связи с помощью спутников;

Признавая в этой связи важность интересов авторов, артистов-исполнителей, производителей фонограмм и организаций вещания;

Убежденные в том, что должна быть создана международная система, в соответствии с которой будут обеспечены меры предотвращения распространения распространяющими органами несущих программы сигналов, передаваемых через спутники, которые не предназначались для этих распространяющих органов;

Сознавая необходимость в том, чтобы никоим образом не нанести ущерба тем международным соглашениям, которые уже вступили в силу, включая Международную конвенцию электросвязи и прилагаемые к этой Конвенции Регламенты радиосвязи и, в частности, никоим образом не помешать более широкому принятию Римской конвенции от 26 октября 1961 года, которая предусматривает защиту артистов-исполнителей, производителей фонограмм и организаций вещания;

Договорились о нижеследующем:

Article 1

Aux fins de la présente Convention, on entend par :

- i) « signal », tout vecteur produit électroniquement et apte à transmettre des programmes;
- ii) « programme », tout ensemble d'images, de sons ou d'images et de sons, qui est enregistré ou non et qui est incorporé dans des signaux destinés à être distribués;
- iii) « satellite », tout dispositif situé dans l'espace extraterrestre et apte à transmettre des signaux;
- iv) « signal émis », tout signal porteur de programmes qui se dirige vers un satellite ou qui passe par un satellite;
- v) « signal dérivé », tout signal obtenu par la modification des caractéristiques techniques du signal émis, qu'il y ait eu ou non une ou plusieurs fixations intermédiaires;
- vi) « organisme d'origine », la personne physique ou morale qui décide de quel programme les signaux émis seront porteurs;
- vii) « distributeur », la personne physique ou morale qui décide de la transmission des signaux dérivés au public en général ou à toute partie de celui-ci;
- viii) « distribution », toute opération par laquelle un distributeur transmet des signaux dérivés au public en général ou à toute partie de celui-ci.

Article 2

1. Tout Etat contractant s'engage à prendre des mesures adéquates pour faire obstacle à la distribution sur son territoire, ou à partir de son territoire, de signaux porteurs de programmes par tout distri-

Article 1

For the purposes of this Convention:

- (i) "signal" is an electronically-generated carrier capable of transmitting programmes;
- (ii) "programme" is a body of live or recorded material consisting of images, sounds or both, embodied in signals emitted for the purpose of ultimate distribution;
- (iii) "satellite" is any device in extra-terrestrial space capable of transmitting signals;
- (iv) "emitted signal" or "signal emitted" is any programme-carrying signal that goes to or passes through a satellite;
- (v) "derived signal" is a signal obtained by modifying the technical characteristics of the emitted signal, whether or not there have been one or more intervening fixations;
- (vi) "originating organization" is the person or legal entity that decides what programme the emitted signals will carry;
- (vii) "distributor" is the person or legal entity that decides that the transmission of the derived signals to the general public or any section thereof should take place;
- (viii) "distribution" is the operation by which a distributor transmits derived signals to the general public or any section thereof.

Article 2

(1) Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or

A efectos del presente Convenio, se se entenderá por:

- i) « señal », todo vector producido electrónicamente y apto para transportar programas;
- ii) « programa », todo conjunto de imágenes, de sonidos, o de imágenes y sonidos, registrados o no, e incorporado a señales destinadas finalmente a la distribución;
- iii) « satélite », todo dispositivo situado en el espacio extraterrestre y apto para transmitir señales;
- iv) « señal emitida », toda señal portadora de un programa, que se dirige hacia un satélite o pasa a través de él;
- v) « señal derivada », toda señal obtenida por la modificación de las características técnicas de la señal emitida, haya habido o no una fijación intermedia o más;
- vi) « organismo de origen », la persona física o jurídica que decide qué programas portarán las señales emitidas;
- vii) « distribuidor », la persona física o jurídica que decide que se efectúe la transmisión de señales derivadas al público en general o a cualquier parte de él;
- viii) « distribución », toda operación con la que un distribuidor transmite señales derivadas al público en general o a cualquier parte de él.

Artículo 2

1. Cada uno de los Estados contratantes se obliga a tomar todas las medidas adecuadas y necesarias para impedir que, en o desde su territorio, se distribuya cualquier señal portadora de un programa,

Для целей настоящей Конвенции:

- (i) « сигнал » — создаваемая с помощью электронных средств несущая частота, способная передавать программы;
- (ii) « программа » — совокупность материалов, получаемых непосредственно или в записи, состоящих из изображений, звуков или изображений и звуков, передаваемая посредством сигналов с целью последующего распространения;
- (iii) « спутник » — любое устройство, находящееся во внеземном пространстве, способное передавать сигналы;
- (iv) « излучаемый сигнал », или « сигнал, излучаемый » является любым несущим программы сигналом, который идет на спутник или через него;
- (v) « вторичный сигнал » — сигнал, получаемый путем преобразования технических характеристик излучаемого сигнала с промежуточными записями или без них;
- (vi) « орган-источник » — физическое или юридическое лицо, определяющее, какие программы будут нести излучаемые сигналы;
- (vii) « распространяющий орган » — физическое или юридическое лицо, решающее, должна ли иметь место передача вторичных сигналов широкой публике или любой ее части;
- (viii) « распространение » — действие, посредством которого распространяющий орган передает вторичные сигналы широкой публике или любой ее части.

Статья 2

(1) Каждое Договаривающееся Государство берет на себя обязательство принимать соответствующие меры по предотвращению распространения на своей или со своей

buteur auquel les signaux émis vers le satellite ou passant par le satellite ne sont pas destinés. Cet engagement s'étend au cas où l'organisme d'origine est ressortissant d'un autre Etat contractant et où les signaux distribués sont des signaux dérivés.

2. Dans tout Etat contractant où l'application des mesures visées à l'alinéa 1 ci-dessus est limitée dans le temps, la durée de celle-ci est fixée par la législation nationale. Cette durée sera notifiée par écrit au Secrétaire général de l'Organisation des Nations Unies au moment de la ratification, de l'acceptation ou de l'adhésion, ou si la législation nationale y relative entre en vigueur ou est modifiée ultérieurement, dans un délai de six mois à compter de l'entrée en vigueur de cette législation ou de celle de sa modification.

3. L'engagement prévu à l'alinéa 1 ci-dessus ne s'étend pas à la distribution de signaux dérivés provenant de signaux déjà distribués par un distributeur auquel les signaux émis étaient destinés.

Article 3

La présente Convention n'est pas applicable lorsque les signaux émis par l'organisme d'origine, ou pour son compte, sont destinés à la réception directe par le public en général à partir du satellite.

Article 4

Aucun Etat contractant n'est tenu d'appliquer les mesures visées à l'article 2,

passing through the satellite is not intended. This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal.

(2) In any Contracting State in which the application of the measures referred to in paragraph (1) is limited in time, the duration thereof shall be fixed by its domestic law. The Secretary-General of the United Nations shall be notified in writing of such duration at the time of ratification, acceptance or accession, or if the domestic law comes into force or is changed thereafter, within six months of the coming into force of that law or of its modification.

(3) The obligation provided for in paragraph (1) shall not apply to the distribution of derived signals taken from signals which have already been distributed by a distributor for whom the emitted signals were intended.

Article 3

This Convention shall not apply where the signals emitted by or on behalf of the originating organization are intended for direct reception from the satellite by the general public.

Article 4

No Contracting State shall be required to apply the measures referred to in Article

alinéa 1, lorsque les signaux distribués sur son territoire, par un distributeur auquel les signaux émis ne sont pas destinés,

- i) portent de courts extraits du programme porté par les signaux émis et contenant des comptes rendus d'événements d'actualité, mais seulement dans la mesure justifiée par le but d'information de ces extraits; ou bien
- ii) portent, à titre de citations, de courts extraits du programme porté par les signaux émis, sous réserve que de telles citations soient conformes aux bons usages et soient justifiées par leur but d'information; ou bien
- iii) portent, dans le cas où le territoire est celui d'un Etat contractant considéré comme un pays en voie de développement conformément à la pratique établie de l'Assemblée générale de l'Organisation des Nations Unies, un programme porté par les signaux émis, sous réserve que la distribution soit faite uniquement à des fins d'enseignement, y compris celui des adultes, ou de recherche scientifique.

Article 5

Aucun Etat contractant ne sera tenu d'appliquer la présente Convention en ce qui concerne les signaux émis avant l'entrée en vigueur de ladite Convention à l'égard de l'Etat considéré.

Article 6

La présente Convention ne saurait en aucune façon être interprétée comme limitant ou portant atteinte à la protection accordée aux auteurs, aux artistes inter-

2 (1) where the signal distributed on its territory by a distributor for whom the emitted signal is not intended

- (i) carries short excerpts of the programme carried by the emitted signal, consisting of reports of current events, but only to the extent justified by the informatory purpose of such excerpts, or
- (ii) carries, as quotations, short excerpts of the programme carried by the emitted signal, provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations, or
- (iii) carries, where the said territory is that of a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, a programme carried by the emitted signal, provided that the distribution is solely for the purpose of teaching, including teaching in the framework of adult education, or scientific research.

Article 5

No Contracting State shall be required to apply this Convention with respect to any signal emitted before this Convention entered into force for that State.

Article 6

This Convention shall in no way be interpreted to limit or prejudice the protection secured to authors, performers, producers of phonograms, or broadcasting

refiere el párrafo 1 del artículo 2, cuando la señal distribuida en su territorio por un distribuidor a quien no esté destinada la señal emitida

- i) sea portadora de breves fragmentos del programa incorporado a la señal emitida que contengan informaciones sobre hechos de actualidad, pero sólo en la medida que justifique el propósito informativo que se trate de llenar; o bien
- ii) sea portadora de breves fragmentos, en forma de citas, del programa incorporado a la señal emitida, a condición de que esas citas se ajusten a la práctica generalmente admitida y estén justificadas por su propósito informativo; o bien
- iii) sea portadora de un programa incorporado a la señal emitida, siempre que el territorio de que se trate sea el de un Estado contratante que tenga la consideración de país en desarrollo según la práctica establecida por la Asamblea General de las Naciones Unidas, y a condición de que la distribución se efectúe sólo con propósitos de enseñanza, incluida la de adultos, o de investigación científica.

Artículo 5

No se exigirá a ningún Estado Contratante que aplique el presente Convenio respecto de una señal emitida antes de que éste haya entrado en vigor para el Estado de que se trate.

Artículo 6

En ningún caso se interpretará el presente Convenio de modo que limite o menoscabe la protección prestada a los autores, a los artistas intérpretes o ejecu-

previsiónes en la Artículo 2 (1), si el сигнал, распространяемый на его территории распространяющим органом, для которого сигнал не предназначался:

i) несет короткие выдержки из передаваемой с помощью сигналов программы, содержащие сообщения о текущих событиях, но только в том объеме, который оправдан информационными целями таких выдержек, или

ii) несет в качестве цитат короткие выдержки из передаваемой сигналами программы при условии, что такие цитаты соответствуют честной практике и оправданы информационными целями таких цитат, или

iii) несет передаваемую сигналами программу, учитывая, что распространение ведется исключительно в целях просвещения, в том числе для образования взрослых, или в целях научных исследований там, где упомянутая территория является Договаривающимся Государством, рассматриваемым в качестве развивающейся страны в соответствии с установившейся практикой Генеральной Ассамблеи Организации Объединенных Наций.

Статья 5

Ни одно Договаривающееся Государство не обязано применять настоящую Конвенцию в отношении любого сигнала, переданного до того, как эта Конвенция вступит в силу в отношении этого государства.

Статья 6

Настоящая Конвенция ни в коем случае не может толковаться как ограничивающая или наносящая ущерб защите, предоставляемой

prêtes ou exécutants, aux producteurs de phonogrammes ou aux organismes de radiodiffusion, en vertu des législations nationales ou des conventions internationales.

Article 7

La présente Convention ne saurait en aucune façon être interprétée comme limitant la compétence de tout Etat contractant d'appliquer sa législation nationale pour empêcher tout abus de monopole.

Article 8

1. A l'exception des dispositions des alinéas 2 et 3, aucune réserve n'est admise à la présente Convention.

2. Tout Etat contractant, dont la législation nationale en vigueur à la date du 21 mai 1974 le prévoit, peut, par une notification écrite déposée auprès du Secrétaire général de l'Organisation des Nations Unies, déclarer que pour son application la condition prévue dans l'article 2, alinéa 1 (« au cas où l'organisme d'origine est ressortissant d'un autre Etat contractant ») sera considérée comme remplacée par la condition suivante: « au cas où les signaux émis le sont à partir du territoire d'un autre Etat contractant ».

3. a) Tout Etat contractant qui, à la date du 21 mai 1974, limite ou exclut la protection à l'égard de la distribution des signaux porteurs de programmes au moyen de fils, câbles ou autres voies analogues de communication, distribution qui est limitée à un public d'abonnés, peut, par une notification écrite déposée auprès du Secrétaire général de l'Organisation des Nations Unies, déclarer que, dans la mesure où et tant que sa législation nationale limite ou exclut la protection, il n'appliquera pas la présente Convention aux distributions faites de cette manière.

organizations, under any domestic law or international agreement.

Article 7

This Convention shall in no way be interpreted as limiting the right of any Contracting State to apply its domestic law in order to prevent abuses of monopoly.

Article 8

(1) Subject to paragraphs (2) and (3), no reservation to this Convention shall be permitted.

(2) Any Contracting State whose domestic law, on May 21, 1974, so provides may, by a written notification deposited with the Secretary-General of the United Nations, declare that, for its purposes, the words "where the originating organization is a national of another Contracting State" appearing in Article 2 (1) shall be considered as if they were replaced by the words "where the signal is emitted from the territory of another Contracting State".

(3) (a) Any Contracting State which, on May 21, 1974, limits or denies protection with respect to the distribution of programme-carrying signals by means of wires, cable or other similar communications channels to subscribing members of the public may, by a written notification deposited with the Secretary-General of the United Nations, declare that, to the extent that and as long as its domestic law limits or denies protection, it will not apply this Convention to such distributions.

(b) Any State that has deposited a notification in accordance with subpara-

tantes, a los productores de fonogramas o a los organismos de radiodifusión, por una legislación nacional o por un convenio internacional.

Artículo 7

En ningún caso se interpretará el presente Convenio de modo que limite el derecho de un Estado Contratante de aplicar su legislación nacional para impedir el abuso de los monopolios.

Artículo 8

1. Sin perjuicio de lo dispuesto en los párrafos 2 y 3 del presente artículo, no se admitirá reserva alguna al presente Convenio.

2. Todo Estado contratante, cuya legislación vigente en la fecha 21 de mayo de 1974 vaya en ese sentido, podrá declarar, mediante comunicación por escrito depositada en poder del Secretario General de las Naciones Unidas, que, para él, las palabras « cuando el organismo de origen posea la nacionalidad de otro Estado contratante », que figuran en el párrafo 1 del artículo 2, se han de considerar sustituidas por las palabras siguientes: « cuando la señal emitida lo haya sido desde el territorio de otro Estado contratante ».

3. a) Todo Estado contratante que, en la fecha 21 de mayo de 1974, limite o deniegue la protección relativa a la distribución de señales portadoras de programas mediante hilos, cables u otros medios análogos de comunicación, cuando esa distribución esté limitada a un público de abonados, podrá declarar, mediante comunicación por escrito depositada en poder del Secretario General de las Naciones Unidas, que, en la medida y en el tiempo en que su derecho interno limite o deniegue esa protección, no aplicará el

авторам, артистам-исполнителям, производителям фонограмм или органам вещания в силу национального законодательства или международных соглашений.

Статья 7

Настоящая Конвенция ни в коем случае не может толковаться как ограничивающая право любого Договаривающегося Государства применять его национальное законодательство для предотвращения злоупотреблений со стороны монополий.

Статья 8

(1) За исключением положений пунктов (2) и (3) этой Статьи, никакие оговорки к настоящей Конвенции не допускаются.

(2) Любое Договаривающееся Государство может на основании своего национального законодательства на 21 мая 1974 года посредством письменной нотификации, депонированной у Генерального Секретаря Организации Объединенных Наций, заявить, что для ее целей слова « когда орган-источник подпадает под юрисдикцию другого Договаривающегося Государства » в Статье 2 (1) следует рассматривать как ситуацию, « когда передаваемый сигнал передается с территории другого Договаривающегося Государства ».

(3) (а) Любое Договаривающееся Государство, которое на 21 мая 1974 года ограничивает или отрицает охрану в отношении распространения несущих программы сигналов посредством проводов, кабелей и других подобных каналов связи среди широкой публики, может посредством письменной нотификации, депонированной у Генерального Секретаря Организации Объединенных

b) Tout Etat, qui a déposé une notification en application du sous-alinéa a), notifiera par écrit au Secrétaire général de l'Organisation des Nations Unies, dans les six mois de leur entrée en vigueur, toutes modifications introduites dans sa législation nationale et en vertu desquelles la réserve faite aux termes de ce sous-alinéa devient inapplicable ou bien est limitée dans sa portée.

Article 9

1. La présente Convention sera déposée auprès du Secrétaire général de l'Organisation des Nations Unies. Elle restera ouverte jusqu'à la date du 31 mars 1975 à la signature de tout Etat membre de l'Organisation des Nations Unies, de l'une des institutions spécialisées reliées à l'Organisation des Nations Unies ou de l'Agence internationale de l'énergie atomique ou partie au Statut de la Cour internationale de Justice.

2. La présente Convention sera soumise à la ratification ou à l'acceptation des Etats signataires. Elle sera ouverte à l'adhésion des Etats visés à l'alinéa 1.

3. Les instruments de ratification, d'acceptation ou d'adhésion seront déposés auprès du Secrétaire général de l'Organisation des Nations Unies.

4. Il est entendu qu'au moment où un Etat devient lié par la présente Convention, il doit être en mesure, conformément à sa législation nationale, de donner effet aux dispositions de la Convention.

graph (a) shall notify the Secretary-General of the United Nations in writing, within six months of their coming into force, of any changes in its domestic law whereby the reservation under that subparagraph becomes inapplicable or more limited in scope.

Article 9

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until March 31, 1975, for signature by any State that is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice.

(2) This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1).

(3) Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nations.

(4) It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its domestic law to give effect to the provisions of the Convention.

presente Convenio a la distribución efectuada en esa forma.

b) Todo Estado que haya depositado una comunicación, de conformidad con el apartado anterior, comunicará por escrito al Secretario General de las Naciones Unidas, dentro de los seis meses siguientes a su entrada en vigor, todas las modificaciones introducidas en su derecho interno a causa de las cuales la reserva formulada de conformidad con dicho apartado resulte inaplicable, o quede más limitada en su alcance.

Artículo 9

1. El presente Convenio será depositado en poder del Secretario General de las Naciones Unidas. Quedará abierto hasta el 31 de marzo de 1975 a la firma de todo Estado miembro de las Naciones Unidas, de alguno de los organismos especializados que forman parte de las Naciones Unidas o del Organismo Internacional de Energía Atómica, o parte en el Estatuto de la Corte Internacional de Justicia.

2. El presente Convenio será sometido a la ratificación o a la aceptación de los Estados signatarios. Estará abierto a la adhesión de los Estados a que se refiere el párrafo anterior.

3. Los instrumentos de ratificación, de aceptación o de adhesión serán depositados en poder del Secretario General de las Naciones Unidas.

4. Queda entendido que, desde el momento en que un Estado se obligue por el presente Convenio, estará en condiciones de aplicar lo preceptuado en él de conformidad con su derecho interno.

Наций, заявить, что в том объеме и в той продолжительности, в какой национальное законодательство ограничивает и отрицает охранные меры, оно не будет применять настоящую Конвенцию для такого пространства;

(b) Любое Договаривающееся Государство, которое депонировало нотификацию в соответствии с подпунктом (a), должно письменно известить Генерального Секретаря Организации Объединенных Наций о любых изменениях в национальном законодательстве, в течение шести месяцев после вступления их в силу, в результате которых положение, содержащееся в данном подпункте, становится либо неприменимым, либо более ограниченным по своему объему.

Статья 9

(1) Настоящая Конвенция депонируется у Генерального Секретаря Организации Объединенных Наций. Она остается открытой для подписания до 31 марта 1975 года любым государством, являющимся членом Организации Объединенных Наций, одной из ее специализированных организаций, Международного агентства по атомной энергии или участником Статута Международного суда.

(2) Настоящая Конвенция подлежит ратификации или принятию подписавшими государствами. Она будет открыта для присоединения государств, упомянутых в пункте (1) настоящей Статьи.

(3) Ратификационные грамоты, акты о принятии или о присоединении будут депонированы у Генерального Секретаря Организации Объединенных Наций.

(4) При этом имеется в виду, что в тот момент, когда государство становится связанным настоящей

Article 10

1. La présente Convention entrera en vigueur trois mois après le dépôt du cinquième instrument de ratification, d'acceptation ou d'adhésion.

2. A l'égard de chaque Etat ratifiant ou acceptant la présente Convention ou y adhérant après le dépôt du cinquième instrument de ratification, d'acceptation ou d'adhésion, la présente Convention entrera en vigueur trois mois après le dépôt de son instrument.

Article 11

1. Tout Etat contractant aura la faculté de dénoncer la présente Convention par une notification écrite déposée auprès du Secrétaire général de l'Organisation des Nations Unies.

2. La dénonciation prendra effet douze mois après la date de la réception de la notification visée à l'alinéa 1.

Article 12

1. La présente Convention est signée en un seul exemplaire en langues anglaise, espagnole, française et russe, les quatre textes faisant également foi.

2. Des textes officiels sont établis par le Directeur général de l'Organisation des Nations Unies pour l'éducation, la science et la culture et par le Directeur général de l'Organisation Mondiale de la

Article 10

(1) This Convention shall enter into force three months after the deposit of the fifth instrument of ratification, acceptance or accession.

(2) For each State ratifying, accepting or acceding to this Convention after the deposit of the fifth instrument of ratification, acceptance or accession, this Convention shall enter into force three months after the deposit of its instrument.

Article 11

(1) Any Contracting State may denounce this Convention by written notification deposited with the Secretary-General of the United Nations.

(2) Denunciation shall take effect twelve months after the date on which the notification referred to in paragraph (1) is received.

Article 12

(1) This Convention shall be signed in a single copy in English, French, Russian and Spanish, the four texts being equally authentic.

(2) Official texts shall be established by the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director General of the World Intellectual Property

Конвенцией, оно должно быть в состоянии, в соответствии со своим национальным законодательством, претворять в жизнь положения настоящей Конвенции.

Artículo 10

1. El presente Convenio entrará en vigor tres meses después de depositado el quinto instrumento de ratificación, de aceptación o de adhesión.

2. Respecto de los Estados que ratifiquen o acepten el presente Convenio, o se adhieran a él, después de depositado el quinto instrumento de ratificación, de aceptación o de adhesión, el presente Convenio entrará en vigor tres meses después del depósito del instrumento respectivo.

Artículo 11

1. Todo Estado contratante tendrá la facultad de denunciar el presente Convenio mediante comunicación por escrito depositada en poder del Secretario General de las Naciones Unidas.

2. La denuncia surtirá efecto doce meses después de la fecha en que la comunicación a que se refiere el párrafo anterior haya sido recibida.

Artículo 12

1. El presente Convenio se firma en un solo ejemplar, en los idiomas español, francés, inglés y ruso, siendo igualmente auténticos los cuatro textos.

2. El Director General de la Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura y el Director General de la Organización Mundial de la Propiedad Intelectual,

Статья 10

(1) Настоящая Конвенция вступит в силу спустя три месяца после депонирования пятой ратификационной грамоты, акта о принятии или о присоединении.

(2) Настоящая Конвенция вступит в силу для каждого государства, которое ратифицирует или примет настоящую Конвенцию или присоединится к ней после депонирования пятой ратификационной грамоты, акта о принятии или о присоединении, спустя три месяца после депонирования его грамоты или акта.

Статья 11

(1) Каждое Договаривающееся Государство может денонсировать настоящую Конвенцию путем письменной нотификации на имя Генерального Секретаря Организации Объединенных Наций.

(2) Денонсация вступает в силу спустя двенадцать месяцев после получения нотификации, упоминаемой в пункте (1) настоящей Статьи.

Статья 12

(1) Настоящая Конвенция подписывается в единственном экземпляре на русском, английском, испанском и французском языках; все четыре текста имеют одинаковую силу.

(2) После консультации с заинтересованными правительствами Генеральным Директором Организации Объединенных Наций по вопро-

Propriété Intellectuelle, après consultation des gouvernements intéressés, dans les langues allemande, arabe, italienne, néerlandaise et portugaise.

3. Le Secrétaire général de l'Organisation des Nations Unies notifie aux Etats visés à l'article 9, alinéa 1, ainsi qu'au Directeur général de l'Organisation des Nations Unies pour l'éducation, la science et la culture, au Directeur général de l'Organisation Mondiale de la Propriété Intellectuelle, au Directeur général du Bureau international du travail et au Secrétaire général de l'Union internationale des télécommunications :

- i) les signatures de la présente Convention;
- ii) le dépôt des instruments de ratification, d'acceptation ou d'adhésion;
- iii) la date d'entrée en vigueur de la présente Convention aux termes de l'article 10, alinéa 1;
- iv) le dépôt de toute notification visée à l'article 2, alinéa 2, ou à l'article 8, alinéas 2 ou 3, ainsi que le texte l'accompagnant;
- v) la réception des notifications de dénonciation.

4. Le Secrétaire général de l'Organisation des Nations Unies transmet deux exemplaires certifiés conformes de la présente Convention à tous les Etats visés à l'article 9, alinéa 1.

EN FOI DE QUOI, les soussignés dûment autorisés à cet effet ont signé la présente Convention.

FAIT à Bruxelles ce vingt et un mai 1974.

Organization, after consultation with the interested Governments, in the Arabic, Dutch, German, Italian and Portuguese languages.

(3) The Secretary-General of the United Nations shall notify the States referred to in Article 9 (1), as well as the Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director General of the World Intellectual Property Organization, the Director-General of the International Labour Office and the Secretary-General of the International Telecommunication Union, of

- (i) signatures to this Convention;
- (ii) the deposit of instruments of ratification, acceptance or accession;
- (iii) the date of entry into force of this Convention under Article 10 (1);
- (iv) the deposit of any notification relating to Article 2 (2) or Article 8 (2) or (3), together with its text;
- (v) the receipt of notifications of denunciation.

(4) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to all States referred to in Article 9 (1).

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

DONE at Brussels, this twenty-first day of May, 1974.

después de haber consultado a los gobiernos interesados, redactarán textos oficiales en lengua alemana, árabe, italiana, neerlandesa y portuguesa.

3. El Secretario General de las Naciones Unidas notificará a los Estados a que se refiere el párrafo 1 del artículo 9, así como al Director General de la Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura, al Director General de la Organización Mundial de la Propiedad Intelectual, al Director General de la Oficina Internacional del Trabajo y al Secretario General de la Unión Internacional de Telecomunicaciones:

- i) las firmas del presente Convenio;
- ii) el depósito de los instrumentos de ratificación, de aceptación o de adhesión;
- iii) la fecha de entrada en vigor del presente Convenio, de conformidad con el párrafo 1 del artículo 10;
- iv) el depósito de toda comunicación a que se refiere el artículo 2, párrafo 2 o el artículo 8, párrafo 2 ó 3, junto con el texto de las declaraciones que la acompañen;
- v) la recepción de las comunicaciones de denuncia.

4. El Secretario General de las Naciones Unidas transmitirá dos ejemplares autenticados del presente Convenio a todos los Estados a que se refiere el párrafo 1 del artículo 9.

EN FE DE LO CUAL, los infrascritos, debidamente autorizados para ello, firman el presente Convenio.

HECHO en Bruselas el veinte y uno de mayo de 1974.

сам образования, науки и культуры и Генеральным Директором Всемирной организации интеллектуальной собственности будут выработаны официальные тексты на арабском, голландском, итальянском, немецком и португальском языках.

(3) Генеральный Секретарь Организации Объединенных Наций сообщает государствам, указанным в пункте (1) Статьи 9, а также Генеральному Директору Организации Объединенных Наций по вопросам образования, науки и культуры, Генеральному Директору Всемирной организации интеллектуальной собственности, Генеральному Директору Международной организации труда и Генеральному Секретарю Международного союза электросвязи:

- i) о подписаниях настоящей Конвенции;
- ii) о депонировании ратификационных грамот, актов о принятии или о присоединении;
- iii) о дате вступления в силу настоящей Конвенции в соответствии с пунктом (1) Статьи 10;
- iv) о депонировании любых нотификаций, указанных в пункте (2) Статьи 2 или в пунктах (2) и (3) Статьи 8, вместе с их текстами;
- v) о получении нотификаций о денонсации.

(4) Генеральный Секретарь Организации Объединенных Наций направит по две заверенные копии настоящей Конвенции всем государствам, указанным в пункте (1) Статьи 9.

В УДОСТОВЕРЕНИЕ ЧЕГО нижеподписавшиеся, должным образом уполномоченные, подписали настоящую Конвенцию.

СОВЕРШЕНО в Брюсселе двадцать первого мая 1974 года.

FINAL ACT
OF THE INTERNATIONAL CONFERENCE OF STATES
ON THE DISTRIBUTION
OF PROGRAMME-CARRYING SIGNALS
TRANSMITTED BY SATELLITE

The International Conference of States on the Distribution of Programme-Carrying Signals Transmitted by Satellite, convened jointly by the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization,

Was held at Brussels on the invitation of the Belgian Government, from May 6 to 21, 1974, under the Chairmanship of Mr. Gérard de San (Belgium).

The principal bodies established by the Conference were a Main Commission, chaired by Mr. João Frank da Costa (Brazil), a Drafting Committee, chaired by Mrs. Elizabeth Steup (Federal Republic of Germany) and a Credentials Committee, chaired by Mr. N'Déné N'Diaye (Senegal).

The Conference held discussions on the basis of the Draft Convention drawn up by the Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission via Space Satellites held at Nairobi (Kenya) from July 2 to 11, 1973.

The Conference established the text of the Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite as well as a report on its work, drafted by its General Rapporteur, Ms. Barbara Ringer (United States of America).

The text of the Convention, established in the English, French, Russian and Spanish languages, the four versions being equally authentic, is attached to the present Act. Official texts of the Convention will be established in the Arabic, Dutch, German, Italian and Portuguese languages.

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

DONE at Brussels, at the Palais d'Egmont, this twenty-first day of May 1974, in the English, French, Russian and Spanish languages, the original to be deposited in the archives of the United Nations.

SIGNATORIES

Signatories

ALGERIA Final Act	Salah Abada	21 May 1974
ARGENTINA* Final Act	Arturo A. Iglesias Echegaray	21 May 1974
Convention	Carlos Ortiz de Rozas	26 March 1975
AUSTRALIA Final Act	L. J. Curtis	21 May 1974
AUSTRIA Final Act	Robert Dittrich	21 May 1974
Convention	Wolfgang Wolte	26 March 1975
BELGIUM Final Act and Convention	Gérard L. de San	21 May 1974
BRAZIL Final Act and Convention	João Frank da Costa	21 May 1974
BYELORUSSIAN SOVIET SOCIALIST REPUBLIC Final Act	Anatoly Kashel	21 May 1974
CANADA Final Act	Finlay Simons	21 May 1974
CENTRAL AFRICAN REPUBLIC Final Act	Gilbert Tokpan	21 May 1974
CYPRUS Final Act and Convention	Titos Phanos	21 May 1974
CZECHOSLOVAKIA Final Act	Otto Kunz	21 May 1974
DENMARK Final Act	W. Weincke	21 May 1974
ECUADOR Final Act	Armando Pesantes	21 May 1974
ARAB REPUBLIC OF EGYPT Final Act	Abdel Rahim Mohamed Sorour	21 May 1974
FINLAND Final Act	Unto Tanskanen	21 May 1974
FRANCE Final Act	Francis Hurré	21 May 1974
Convention	Jacques Lecompt	27 March 1975

Signatories

GERMAN DEMOCRATIC REPUBLIC Final Act	Siegfried Wagner	21 May 1974
GERMANY, FEDERAL REPUBLIC OF Final Act and Convention	Felix O. Gaerte Elisabeth Steup	21 May 1974
GHANA Final Act	E. A. Sai	21 May 1974
GUATEMALA Final Act	J. Antonio Palacios García	21 May 1974
HUNGARY Final Act	István Timár	21 May 1974
ISRAEL Final Act and Convention	Mayer Gabay	21 May 1974
ITALY Final Act and Convention	Giuseppe Meschinelli Gino Galtieri	21 May 1974
IVORY COAST Final Act and Convention	Kitty-Lina Liguer-Laubhouet	21 May 1974
JAPAN Final Act	Chiyuki Hiraoka	21 May 1974
KENYA Final Act and Convention	D. J. Coward	21 May 1974
LEBANON Final Act and Convention	Emile Bedran Gaby Gresh	21 May 1974
LUXEMBOURG Final Act	Marcel Fischbach	21 May 1974
MEXICO Final Act and Convention	Gabriel Ernesto Larrea Richerand	21 May 1974
MOROCCO Final Act and Convention	Abdallah Chakroun	21 May 1974
NORWAY Final Act	Trude Saebø	21 May 1974

Signatories

SENEGAL		
Final Act and Convention	N'Déné N'Diaye	21 May 1974
SPAIN		
Final Act and Convention	Juan Manuel de la Vega Gomez-Acebo	21 May 1974
SWEDEN		
Final Act	Agne Henry Olsson	21 May 1974
SWITZERLAND		
Final Act and Convention	Walter Stamm	21 May 1974
UKRAINIAN SOVIET SOCIALIST REPUBLIC		
Final Act	Constantin Alexeev	21 May 1974
UNION OF SOVIET SOCIALIST REPUBLICS		
Final Act	Yuri Zharov	21 May 1974
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND		
Final Act	I. J. G. Davis	21 May 1974
UNITED STATES OF AMERICA		
Final Act and Convention	Harvey J. Winter Barbara Ringer	21 May 1974
YUGOSLAVIA		
Convention	Jaksa Petric	31 March 1975

* Upon signing the Convention, the Government of Argentina made the following declaration: 'With reference to article 8(2) the Government of the Argentine Republic states that the words "where the originating organization is a national of another Contracting State" appearing in article 2(1) are to be considered as if the were replaced by the words "where the signal is emitted from the territory of another Contracting State".'

LIST OF
PARTICIPANTS,
OFFICERS AND SECRETARIAT
OF THE CONFERENCE

LIST OF PARTICIPANTS, OFFICERS AND SECRETARIAT OF THE CONFERENCE

LIST OF PARTICIPANTS⁽¹⁾

I. STATES

ALGERIA

Head of the delegation

M. Abdelkader Kasdali
Secrétaire général,
Ministère de l'Information
et de la Culture

Alternate Heads of the
Delegation

M. Ahmed Derradji
Ministre plénipotentiaire,
Délégué permanent p.i. auprès
de l'Unesco, Paris

M. Salah Abada
Chef du Service juridique,
Ministère de l'Information
et de la Culture

Delegate

M. Rabia Hamimi
Chef du Service juridique,
Radio Télévision algérienne

ARGENTINA

Delegate

M. Arturo A. Iglesias Echegaray
Conseiller d'Ambassade,
Ambassade d'Argentine en Belgique

AUSTRALIA

Head of the Delegation

Mr. L.J. Curtis
First Assistant Secretary,
Attorney-General's Department

AUSTRALIA (Cont'd.)

Delegate

Mr. L. MacDonald
Assistant Secretary,
Department of the Media

Advisers

Ms. Lydia Morton
Third Secretary,
Embassy of Australia in Belgium

Mr. Harry Bluck
Musicians' Union of Australia

AUSTRIA

Head of the Delegation

Dr. Robert Dittrich
Directeur de service,
Ministère fédéral de la Justice

Delegates

M. Karl Rössel-Majdan
Président,
Syndicat "Art et Professions libres"

M. Walter Dillenz
Chef du Service juridique,
Société autrichienne des Auteurs,
des Compositeurs et des Editeurs
de Musique

M. Radel
Conseiller juridique,
Radiodiffusion-Télévision autrichienne

Dr. Elfriede Stamminger
Law Department,
Austrian Broadcasting Corporation

(1) Names and titles in the following list are reproduced as handed in to the Secretariat by the delegations concerned.

List of participants

BELGIUM

Heads of the Delegation

M. Gérard L. de San
Directeur général honoraire du
Ministère de l'éducation
nationale et de la culture
Président, Commission du droit
d'auteur

M. le Professeur Frans Van Isacker
Professeur à l'Université de Gand

Alternate Head of the Delegation

M. W. Juwet
Secrétaire
Commission du droit d'auteur

Delegates

M. Albert C.J.G. Namurois
Directeur d'administration,
Radiodiffusion-Télévision belge

M. Jan Vermeire
Conseiller,
Radiodiffusion-Télévision belge

M. J. Bierlaire
Conseiller juridique,
Radiodiffusion-Télévision belge

BRAZIL

Head of the Delegation

M. le Ministre João Frank da Costa
Ministère des Relations extérieures

Alternate Delegate

M. Luiz Fernando Gouvêa de Athayde
Secrétaire d'Ambassade,
Membre de la Délégation permanente
auprès de l'Unesco, Paris

Advisers

M. Saint-Clair da Cunha Lopes
Association brésilienne de Radio
et Télévision (ABERT)

M. José Octavio de Castro Neves
Ministère des Communications,
Association brésilienne des
Entreprises de Télévision
(ABRATE)

BRAZIL (cont'd.)

M. Luiz Eugenio Muller
Association brésilienne des
Entreprises de Télévision (ABRATE)

M. Cláudio de Souza Amaral
Société d'Interprètes et
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REPORT OF THE GENERAL RAPPORTEUR

Report of the General Rapporteur

INTRODUCTION

1. I am honoured to present the Report of the General Rapporteur of the International Conference of States on the Distribution of Programme-Carrying Signals Transmitted by Satellite. The International Conference of States (which will be referred to as "the Conference" in this Report) met at the Palais d'Egmont in Brussels from 6 to 21 May 1974, at the generous invitation of the Belgian Government.

2. The verbatim record of the Conference contains a complete chronological transcript of the work of the plenary sessions and of the Main Commission. The purpose of this Report is not to summarize the debates, but rather to analyze the accomplishments of the Conference, including the Convention adopted by the delegates, and to synthesize the interpretations given to particular provisions of the Convention.

3. For the sake of clarity and simplicity, I have tried to divide this Report by subject matter, without indicating the chronology of the debates or differentiating between discussions during plenary sessions and those in the Main Commission. In certain cases, for the sake of completeness and comprehensibility, I have also drawn upon the discussions in subsidiary bodies and from earlier reports.

CONVOCATION OF THE CONFERENCE

4. The Conference was convened jointly by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO), in accordance with decisions of their governing bodies.

BACKGROUND AND PREPARATORY WORK

5. During the second half of the 1960s, with the introduction and increasing use of satellites in international telecommunications, experts began expressing concern about the new or potential legal problems raised by intercontinental transmissions of television programmes by satellite. The subject was considered in a preliminary way at several international meetings in 1968 and 1969, and these resulted in decisions by the governing bodies of Unesco and WIPO's predecessor organization, BIRPI (International Bureaux for the Protection of Intellectual Property), to convene jointly a committee of governmental experts to consider "problems in the field of copyright and the protection of performers, producers of phonograms and broadcasting organizations raised by transmission via space satellites."

6. As it turned out, this meeting of the Committee of Governmental Experts was the first of three preparatory meetings, held in 1971, 1972, and 1973, leading directly to the present diplomatic conference in Brussels in 1974. The essential problem, which has been referred

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to loosely and perhaps a bit pejoratively as "satellite piracy" or "poaching of signals", results from the capacity of satellites to expand enormously the geographic coverage of broadcast signals, particularly signals carrying television programmes.

7. Before it became practical to launch satellites for public communications, the constraints of technology to a certain extent protected a broadcaster who originated programming as against other broadcasters who might wish to intercept and retransmit his programmes to a different market. The geographic coverage of signals transmitted through a geostationary satellite is one-third of the earth's surface, and it is now possible for ground stations anywhere within that vast territory to pick up signals from the satellite and send them on to an entirely new and unintended audience without any licensing arrangements whatever.

8. It has been recognized from the outset that this problem is a dangerous one, with potentially serious effects not only upon the legitimate interests of originating broadcast organizations, authors and other copyright owners, performers, and phonogram producers, but also upon the future of satellite communications itself. At the time of the meeting of the First Committee of Governmental Experts, in Lausanne, Switzerland, in April 1971, the practical effects of the problem had barely begun to be felt, since the satellites then in use were exclusively of the "point-to-point" variety, requiring ground stations with very powerful and expensive receiving equipment. In the three years intervening between the Lausanne meeting and the Brussels Conference, the predictable if still astonishing progress in space technology has led the way to widespread use of "distribution" satellites. These are not "direct broadcasting satellites" capable of transmitting signals directly to receiving sets in homes or community centres, but are considerably larger, heavier and stronger than "point-to-point" satellites, thus requiring receiving earth stations that are much less powerful and costly than those needed previously. The proliferation of satellite earth stations, and an increase in the number of countries having them, seems to be an inevitable consequence of progress in the power and sophistication of communications satellites. In a sense, therefore, the preparation of the Brussels Conference represented a race between law and technology.

9. Recognizing the urgency of the problem, all three of the Committees of Governmental Experts considered alternative possibilities for solving it: (1) revision of the International Telecommunication Convention or of the Radio Regulations annexed to it; (2) revision of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the so-called "Rome Convention" or "Neighbouring Rights Convention", adopted at Rome in 1961); (3) a new multilateral convention; or (4) some other method, such as reliance on existing international agreements or adoption of a simple resolution condemning satellite piracy. As the preparatory work went forward a consensus emerged favouring the third of these alternative solutions. The debates at all three Experts Committee meetings centred for the most part around various drafts

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of a new multilateral convention to prevent retransmission of satellite signals by unintended distributors, but general agreement upon the content and wording of such a convention proved to be unusually difficult to achieve.

10. The principal difficulty emerged at the meeting of the First Committee of Governmental Experts at Lausanne in April 1971, and occupied much of the debates at all three preparatory meetings. The question was whether, if affirmative rights were to be accorded to originating broadcast organizations as a matter of private law under a new international convention, these should be counter-balanced by granting correlative rights to contributors to programmes, particularly authors and other copyright owners. There was sentiment for a simple, globally acceptable treaty that would give wide discretion to States as to the legal means for implementing it. At the same time, to quote the Lausanne report (UNESCO/WIPO/SAT/22): "Several delegations said that they could accept an independent treaty only if it contained provisions safeguarding the interests of authors, performers and producers of phonograms, and did not prejudice the future of the Rome Convention." The Lausanne Committee appointed a working party which produced a draft convention offering affirmative protection to originating organizations and containing three alternative provisions dealing with the rights of programme contributors. The Committee annexed this draft to its report, and recommended that further preparatory work be undertaken.

11. The meeting of the Second Committee of Governmental Experts, which was held in Paris at Unesco House from 9 to 17 May 1972, refined the Lausanne draft in a number of positive ways and included the revised text of the draft Convention in its report. On the central issue of balancing the rights of programme contributors, however, the debates in Paris intensified the differences of opinion and led the delegates to postpone a decision on the convening of a diplomatic conference on the subject. The Second Committee recommended that the Secretariats of Unesco and WIPO prepare a detailed commentary on the Paris draft, and that a third committee be convened to consider this commentary and the comments received on it and to decide on the advisability of holding a diplomatic conference.

12. The results of the Third Committee of Governmental Experts, which met in Nairobi, Kenya, from 2 to 11 July 1973, have been described variously as a break-through, a turning-point, and a Columbus' egg. As explained in some detail in paragraphs 54-64 of the Report of the Nairobi meeting (document UNESCO/WIPO/SAT.3/23, which was also attached to document UNESCO/WIPO/CONF/SAT/3 of the Brussels Conference), the philosophy and legal framework of the draft Convention underwent a fundamental change as a result of a proposal put forward by the delegations of Morocco, Brazil, India and Mexico. The Nairobi draft proposed to transport the Convention from the field of international private law to that of international public law, by eliminating any notion of private rights and leaving the States free to decide for themselves the most appropriate means for suppressing piracy on their territory. Rather than obliging States to enforce individual property rights in the form of an

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exclusive right of authorization, the Nairobi approach required States to take all appropriate measures against distribution on their territory of satellite signals by distributors for whom those signals were not intended. Since the Convention itself would confer no new rights upon broadcasters, the majority of the delegations present at Nairobi and almost all observers from international non-governmental organizations felt that there was no longer any corresponding need to create additional new rights in the Convention to safeguard the interests of programme-contributors.

13. The text of the draft Convention, as revised in line with this new philosophical approach, received widespread support at the Nairobi meeting. At the conclusion of its work, the Third Committee adopted a resolution characterizing the Nairobi draft as "susceptible of general acceptance" and recommending that a diplomatic conference to conclude an international convention on the subject be convened in 1974.

DOCUMENTATION

14. The principal document before the Conference was the report of the Nairobi meeting, which was attached to document UNESCO/WIPO/CONFESAT/3.

PARTICIPATION

15. In all, 57 States sent delegations to the Conference, 47 as voting participants and 10 as observers. The Conference was also attended by observers from 5 intergovernmental organizations and observers from 17 international non-governmental organizations. A final list of the participants in the Brussels Conference will be found in Annex A to this Report.¹ As noted in paragraph 28 of this Report, 57 States were empowered to sign the Final Act of the Conference and 18 States were empowered to sign the Convention.

16. In accordance with Rule 1 of the Rules of Procedure adopted by the Conference, 47 of the States invited to the Conference by the Director-General of Unesco in the name of the Executive Board of Unesco, and by the Director General of WIPO, participated in the Conference's work. Delegations from the following States participated: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Byelorussian Soviet Socialist Republic, Cameroon (United Republic of Cameroon), Canada, Central African Republic, Cyprus, Czechoslovakia, Denmark, Ecuador, Arab Republic of Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Guatemala, Hungary, Iran, Iraq, Israel, Italy, Ivory Coast, Japan, Kenya, Lebanon, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Norway, Senegal, Spain, Sweden, Switzerland, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

17. Representatives of the following 10 States registered as

1. See page 13

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observers: Bangladesh, Bulgaria, Colombia, Holy See, Poland, Romania, San Marino, Turkey, Republic of Viet-Nam, Zaire.

18. The following 5 intergovernmental organizations were represented at the Conference: United Nations, International Labour Organisation, Council of Europe, Organization of Arab States for Education, Culture and Science (ALECSO), International Telecommunications Satellite Organization (INTELSAT).

19. Representatives of the following 17 international non-governmental organizations attended the Conference as observers: European Broadcasting Union (EBU), Inter-American Association of Broadcasters (AIR), International Confederation of Professional and Intellectual Workers (CITI), International Confederation of Societies of Authors and Composers (CISAC), Internationale Gesellschaft für Urheberrecht (INTERGU), International Federation of Actors (FIA), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Federation of Variety Artists (IFVA), International Film and Television Council (IFTC), International Literary and Artistic Association (ALAI), International Music Council (CIM), International Publishers Association (IPA), International Secretariat of Entertainment Trade Unions (ISETU), International Theatre Institute (ITI), International Writers Guild (IWG), Union of National Radio and Television Organizations of Africa (URTNA).

ORGANIZATION OF THE CONFERENCE

20. Under the Rules of Procedure adopted by the Conference, the plenary sessions and meetings of the Main Commission were held in public. The working languages of the Conference were English, French, Russian and Spanish.

21. The Secretariat of the Conference was provided jointly by the Director-General of Unesco and the Director General of WIPO. The Co-Secretaries General of the Conference were Ms. Marie-Claude Dock (Unesco) and Mr. Claude Masouyé (WIPO). The names of all members of the Secretariat appear in Annex A to this Report.¹

22. The Secretariat proposed a programme of work for the Conference (document UNESCO/WIPO/CONF/SAT/INF.2), and it proved possible to adhere to its recommended timetable for the most part. The opening ceremony of the Conference took place at 4 p.m. on Monday, 6 May 1974, and the Main Commission began its work at 3 p.m. on Wednesday, 8 May 1974. After 11 sittings, the Main Commission adopted the text of the draft Convention on Friday, 17 May 1974, and the plenary of the Conference adopted the Convention in its sitting on Saturday, 18 May 1974. This Report was examined in draft form and adopted at the final plenary session, on the morning of Tuesday 21 May 1974, and the closing speeches were followed by the ceremony of the signing the Final Act and the Convention. At that ceremony, 39 States signed the Final Act and, of these, 15 States signed the Convention.

1. See page 27.

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23. The Intergovernmental Committee established under Article 32 of the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) held its second extraordinary session in Brussels at the Palais d'Egmont, 6 and 10 May 1974, to consider the text of a draft model law concerning the protection of performers, producers of phonograms and broadcasting organizations, together with a commentary on that text. Following debates which consisted in major part of interventions from observers representing international non-governmental organizations, the Committee adopted the draft text and commentary with some revisions. As shown by the report of that meeting (ILO/UNESCO/WIPO/ICR (Extr.)/II/5), and by certain interventions during the Brussels Conference (see paragraphs 37, 38, 60, 111 and 113 of this Report), the results of the two meetings are closely related to each other.

OPENING SESSION

24. The opening session of the Conference heard introductory addresses by Mr. Jean-Pierre Grafé, the Minister of French Culture of Belgium, by Mr. René Maheu, Director-General of Unesco, and by Dr. Arpad Bogsch, Director General of WIPO. On behalf of himself and Madame H. de Backer-Van Ocken, Minister of Netherlands Culture and Flemish Affairs, Mr. Grafé extended the cordial greetings of his Government to all of the participants in the Conference. Recognizing both the importance and the difficulty of the Conference's work, he expressed his confidence that, through foresight and good will, the delegates would be able to surmount the obstacles facing them.

25. In turn, Mr. Maheu and Dr. Bogsch expressed their warm thanks and appreciation to the Belgian Government for its hospitality and assistance in convening the diplomatic conference. Each of the Directors-General also expressed complete satisfaction with the efficient and cordial relations existing between their two Secretariats and with the effectiveness of their collaboration in the preparatory work for the Conference. Mr. Maheu reviewed the background of this preparatory work, in the context of broad responsibilities of Unesco in the field of space communications, and both he and Dr. Bogsch affirmed their ardent hopes for success in the Conference's endeavours.

26. Following the opening ceremonies, the Conference proceeded to elect the Chairman of the Plenary Assembly. On the proposal of Mr. Rafik Saïd, Head of the delegation of Tunisia, supported by the delegation of Morocco, Mr. Gérard de San, Honorary Director-General of the National Ministry of Education of Belgium, was elected Chairman of the Conference by acclamation.

27. In accepting his office, Mr. de San warmly thanked the Conference for the honour accorded to him and to his country. Referring to the difficulties encountered during the preparatory work, he spoke with admiration of the ingenious proposal put forward at Nairobi by the delegations of Morocco, Brazil, India and Mexico. In his view, the Nairobi compromise had enabled the impasse to be broken, and convinced him that, through the same spirit of conciliation, the work of the Brussels Conference would succeed for the benefit of mankind.

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CREDENTIALS COMMITTEE

28. The Conference then proceeded to elect a Credentials Committee consisting of delegates from seven countries: Canada, France, Ghana, Hungary, Japan, Mexico and Senegal. The Credentials Committee elected as its Chairman Mr. N'Déné N'Diaye, head of the delegation of Senegal. The Committee submitted its first report to the Plenary Assembly on 7 May 1974 (document UNESCO/WIPO/CONFSAT/22) and submitted its final report on 21 May 1974 (document UNESCO/WIPO/CONFSAT/41). In accordance with this report, 57 States were empowered to sign the Final Act, and 18 States were empowered to sign the Convention.

RULES OF PROCEDURE

29. The Conference approved the Draft Rules of Procedure (document UNESCO/WIPO/CONFSAT/2) without extensive discussion and without change. As adopted, the Rules of Procedure established a bureau consisting of the Chairman of the Conference, the five Vice-Chairmen of the Conference, the General Rapporteur of the Conference, the Chairman of the Main Commission, the Chairman of the Credentials Committee and the Chairman of the Drafting Committee. The size of the latter Committee was set at eight elected members, with the Chairman of the Main Commission and the General Rapporteur also serving in an ex officio capacity.

OFFICERS, COMMITTEES AND ADOPTION OF AGENDA

30. Following a meeting of the heads of all delegations present at the Conference, the Chairman proposed that the heads of the delegations of Hungary, Lebanon, Mexico, Morocco and the United Kingdom be elected as the five Vice-Chairmen of the Conference. These individuals were elected unanimously. The undersigned was honoured to be elected as General Rapporteur of the Conference, and it was agreed that the General Rapporteur would also serve as Rapporteur of the Main Commission.

31. In accordance with the views expressed during the meeting of heads of delegations, and upon the proposal of the Chairman, Mr. João Frank da Costa, head of the delegation of Brazil, was unanimously elected as Chairman of the Main Commission, and the heads of the delegations of Japan and Sweden were unanimously elected as Vice-Chairmen of the Main Commission.

32. Also reflecting the views of the meeting of heads of delegations, the Chairman proposed that the Drafting Committee consist of representatives from the delegations of Canada, Czechoslovakia, France, the Federal Republic of Germany, Ivory Coast, Kenya, Spain and the Union of Soviet Socialist Republics. These delegations were elected unanimously. It was agreed during the Plenary Assembly that, although the formal decision as to its officers was the responsibility of the Drafting Committee itself,

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the Chairmanship of that Committee should be entrusted to Ms. Elisabeth Steup, alternate head of the delegation of the Federal Republic of Germany, and that Mr. Yuri Zharov, head of the delegation of the Union of Soviet Socialist Republics, should be elected as Vice-Chairman. Under the Rules of Procedure, the Chairman of the Main Commission and the General Rapporteur of the Conference also serve as ex officio members of the Drafting Committee.

33. Following these elections, the Provisional Agenda (document UNESCO/WIPO/CONF/SAT/1) was adopted without change.

GENERAL OPENING DISCUSSION

34. The Chairman offered the floor to any delegation wishing to make a general statement on the work of the Conference, and 35 delegations responded to this invitation, in the following order: Netherlands, Senegal, United States of America, United Kingdom, Union of Soviet Socialist Republics, Brazil, Mexico, Israel, Denmark, Kenya, Argentina, Japan, Austria, France, Ghana, Sweden, Algeria, Federal Republic of Germany, Italy, Canada, Australia, Hungary, Morocco, German Democratic Republic, Cyprus, Switzerland, Czechoslovakia, Ivory Coast, Tunisia, Finland, Ukrainian Soviet Socialist Republic, Norway, Spain, Yugoslavia and Ecuador. A large majority of the speakers recognized the growing importance of satellites as one of the most powerful means of communications ever devised, and the corresponding need for an effective international instrument to prevent transmission of satellite signals by unintended distributors. There was no opposition to using the Nairobi text as the basis for the Conference's work, and many delegations praised its realistic approach to the problem and its simplicity, clarity, flexibility, and balance. A number of these delegations referred to the impasse reached during the preparatory work preceding the Nairobi meeting and regarded the compromise reached there as the only framework in which a solution to the problem could be found.

35. Many delegations stressed that, in addition to the need to protect the legitimate interests of broadcasters in this situation, it was vital to insure that the equally legitimate interests of authors and performers were not adversely affected. A number of those who spoke on this point regarded the neutral approach of the Nairobi text as satisfactory for this purpose, since it left the question of balancing to domestic law and to contractual arrangements among the interested parties. The delegations of France and of the United States of America particularly stressed that, under the international public law approach of the Nairobi draft, complete contractual rights of authorization to programme-contributors would be preserved: even if broadcasting organizations were given a power of decision over terrestrial distribution of the signals they send to satellites, contributors to programmes would remain free to negotiate in their contracts with broadcasting organizations the destination of the signals carrying their contributions. This point, which was made by other delegations during the debates, was not disputed at the Conference.

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36. Other delegates, including those of Austria, Israel and the Federal Republic of Germany, accepted the Nairobi text as a compromise, but would have preferred the approach of Alternative A of Article IV of the Paris text, offering affirmative protection to authors, performers, and other creative contributors to programmes. The representatives of several delegations, including those of Denmark, Hungary, Japan, Sweden and the United Kingdom, while pledging to cooperate constructively in the work of the Conference, regarded the Nairobi text as insufficient to protect the interests of authors and performers, and doubted its efficacy to achieve the goals of the Conference.

37. A related question, referred to by a number of speakers in their opening remarks, involved the interrelationship between the proposed Brussels Convention and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. The prevailing view among those who spoke to the point was that the Rome Convention offered within its scope the protection of broadcasters against unauthorized retransmission of their signals transmitted via satellite. Nevertheless, it was acknowledged that, mainly because of the relatively small number of adherents to the Rome Convention, this protection was insufficient to solve the immediate problem on a world-wide basis. Assuming that a new and separate convention was necessary, several delegations emphasized very strongly that the two Conventions must be complementary rather than competing, and that the Brussels Convention must not be permitted to undermine the growth of the Rome Convention.

38. Going beyond the interrelationship between the two Conventions as such, several speakers referred to the interrelationship between developments leading to the Brussels Conference and the preparation of a model law to implement the Rome Convention (see paragraph 23, above). The situation was a dynamic one, the key factors being the possibility of a change in attitude toward the Rome Convention by broadcasters, both nationally with respect to individual ratifications and internationally with respect to presentation of the model law. The opening remarks of the delegate of the United Kingdom were largely devoted to this question; he was frank to say that, unless and until the broadcasters and their representatives manifested a substantial change in approach to the Rome Convention, his Government would be unlikely to consider signing or adhering to the new treaty on satellites. The urgency of a change in attitude toward the Rome Convention by broadcasters was also stressed in the remarks of the delegates of Brazil, Mexico, Denmark, Austria, Australia and the Federal Republic of Germany, during which some hope was expressed that the present Conference would represent a turning point in achieving peaceful, symbiotic relations between broadcasters and the other beneficiaries of the Rome Convention and a step forward in the history of that Convention. The question was also referred to in interventions by observers representing various non-governmental organizations at several points during the Conference. The delegate of Mexico referred to a resolution bearing on this subject adopted by the Assembly of the First National Symposium for Intellectual Workers held in March 1974, which is

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reproduced in document UNESCO/WIPO/CONF/SAT/4.

39. The International Telecommunication Convention, the other major convention in the field, was also discussed during the opening statements. The delegation of Switzerland maintained its preference for the ITU Convention as a means for solving the problem of satellite piracy. For its part, the delegation of Canada considered that, although there was some overlapping between the ITU Convention and Radio Regulations and the proposed Brussels Convention, the latter in the form of the Nairobi text was more specific and better drafted, and was therefore worthy of support. There might well be situations in future, however, in which Canada would choose to rely on the provisions of the ITU Convention to support its interests. The representative of Canada also stressed the importance to his Government of the issue of cable television, as raised by the proposed reservation on the subject under Article 11 of the Nairobi draft.

40. A number of speakers from both developed and developing countries referred to the vital importance of orderly progress in satellite communications to educational and cultural development. It was recognized as significant that the Nairobi compromise was reached in a meeting held in a developing country, and that, as said by the delegate of the Ivory Coast, for the first time representatives of developed and developing countries were working together in perfect harmony in an effort to control technology and place it at the service of intellectual property. The importance of retaining the exceptions provided in Article 4 of the Nairobi draft was stressed by several speakers, and sentiment was also expressed in favour of opening the Convention to adherence to as many countries as possible, and to deleting the provisions in paragraph (3) of Article 9 of the Nairobi draft dealing with application of the Convention to territorial dependencies.

41. Several of these points were made by the delegate of Tunisia, speaking for himself but reflecting the considered opinions of 24 African and Arab States. In his view, the new technology required the adoption of a new international instrument, and he expressed the hope that the results of the Conference would be realistic and would produce a text that all could ratify. Among other things, he supported in principle the proposals put forward by the delegation of India at Nairobi concerning compulsory licensing (paragraph 110 of the Nairobi report) and abuses of monopoly (Article 7 of the Nairobi text).

42. The delegate of Kenya raised a question as to whether the Convention should cover retransmissions by unintended distributors of signals received from direct broadcast satellites. His view, which was that these activities might profitably be deleted from the scope of the Convention, was shared by the delegation of Canada.

43. During the opening statements, the delegate of the Union of Soviet Socialist Republics explained that, although his Government had been represented by observers at earlier preparatory meetings,

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the Brussels Conference marked its first full participation in the project. He noted the present trend toward an easing of tensions and a more wholesome atmosphere in international relations, and that further effort is needed to make this trend irreversible. To that end, he proposed that the draft Convention could be supplemented by provisions safeguarding the peaceful uses of satellites and imposing conditions on international television broadcasting to prevent interference by one State in the internal affairs of another. At the final plenary session of the Conference, the delegate of the Union of Soviet Socialist Republics requested that the following be added to this report of his opening statement: "The delegate of the Union of Soviet Socialist Republics recalled the memorandum of 8 August 1972 from the Soviet Government to the Secretary-General of the United Nations concerning the principles of use by States of artificial earth satellites for direct television broadcasting. He stressed the necessity of providing such conditions, under which television broadcasting would serve exclusively the noble purposes of peace and friendship among nations. For this purpose he declared that the draft Convention would gain considerably if it included provisions concerning the obligations of each State to exclude from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions, and if it also included provisions concerning the international responsibility of States for all national activities connected with the use of satellites for broadcasting".

The proposals of the delegate of the Union of Soviet Socialist Republics in this regard were supported directly during the opening statements by the delegations of the German Democratic Republic, the Ukrainian Soviet Socialist Republic, Hungary, Czechoslovakia and Tunisia. Other delegations, including those of Kenya, France, Morocco, the United States of America and Spain took the view that the proposals were outside the competence and mandate of the Conference and did not appropriately fall within the scope of the Convention, and that the issue of programme content, which was related to the whole matter of direct broadcast satellites, was quite properly being considered in the competent bodies of the United Nations. The Conference also heard a statement from the representative of Unesco concerning the status of activities in the United Nations and other intergovernmental bodies dealing with various problems raised by satellite communications.

The proposals of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic were submitted later in the form of amendments to the Nairobi text sponsored by the Union of Soviet Socialist Republics, The Ukrainian Soviet Socialist Republic, and the Byelorussian Soviet Socialist Republic (documents UNESCO/WIPO/CONFESAT/8, 31, and 32) and by the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic, the Byelorussian Soviet Socialist Republic, the German Democratic Republic, Czechoslovakia and Hungary (documents UNESCO/WIPO/CONFESAT/23 and 28). These proposed amendments are discussed below in paragraphs 133 - 142.

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44. Following the general statements from Government delegations, the Chairman offered the floor to international organizations represented at the Conference by observers. The representative of one intergovernmental organization (the Organization of Arab States for Education, Culture and Science) and seven non-governmental organizations (European Broadcasting Union, International Federation of the Phonographic Industry, International Federation of Actors, International Federation of Musicians, International Confederation of Professional and Intellectual Workers, International Copyright Society, and Union of National Radio and Television Organizations of Africa) addressed the Conference.

45. At the end of the opening statements, the Chairman complimented the delegates on the good will, realism, spirit of moderation and cooperation manifested in their remarks. He was greatly encouraged by their support for the Nairobi draft as the basis for their discussions in the Main Commission to follow, and, on the basis of the groundwork that had been laid, he considered that the prospects for success of the Conference were most auspicious.

WORK OF THE MAIN COMMISSION

46. Rule 8 of the Conference's Rules of Procedure provides: "The Main Commission, in the work of which all delegates are invited to participate, shall make a detailed study of the proposals for revision of the Draft Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, and shall prepare draft texts for submission to the Conference at a plenary meeting." Upon assuming the chair of the Main Commission, Mr. da Costa reviewed the various positions taken in the course of the opening statements, and concluded that a real consensus existed only on one fundamental point: that the best solution must be sought on the basis of the Nairobi draft. In his opinion, if the Brussels Convention were to stray too far from the framework adopted at Nairobi, it would not be likely to be widely signed or ratified and would, indeed, be still-born.

47. At the outset of its work, before considering the text drafted at Nairobi, the Main Commission took a decision to exclude from the scope of the Convention distribution of signals received from direct broadcast satellites, and entrusted the task of amending the Convention to accomplish this result to the Drafting Committee. The provision adopted for this purpose now appears in Article 3 of the Convention, and will be analyzed below in paragraphs 102-106.

48. After settling this fundamental point, the Main Commission began its review of the Nairobi draft, but not precisely in the order in which the provisions appeared in that text. Upon the suggestion of the Chairman, the Main Commission agreed to start with a consideration of Article 1 of the Nairobi draft, leaving the title and preamble to be considered after all numbered articles had been reviewed. Because of their technical nature

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the definitions in Article 2 were also deferred for consideration after Article 12. After completing its review of Article 1, the Main Commission encountered difficulties arising from differences of opinion over Article 3, the provision dealing with the duration of the measures a Contracting State is obligated to provide under Article 1. It was necessary to convene a working group, consisting of twelve delegations under the chairmanship of Sr. Lic. Gabriel Ernesto Larrea Richerand, head of the delegation of Mexico, to find a way out of this surprisingly difficult and time-consuming point. The delegations represented on this Working Group were: Canada, Germany (Federal Republic of), Hungary, Italy, Ivory Coast, Japan, Mexico, Morocco, Senegal, Tunisia, the Union of Soviet Socialist Republics and the United States of America. The outcome of the Main Commission's work on Article 3 of the Nairobi text is now reflected in paragraph (2) of Article 2 of the Convention, and is discussed below in paragraphs 85-98 of this Report.

49. Meanwhile, the delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic had introduced a document (UNESCO/WIPO/CONF/SAT/8) containing a series of amendments to implement the proposals broached during the opening statements (see paragraph 43, above). Discussion of these proposals began after the Main Commission's consideration of Article 3 of the Nairobi text, but following a procedural discussion were deferred for consideration until after Article 4 of the Nairobi text, involving exceptions. That Article was adopted by the Main Commission without extensive debate, and is discussed below in paragraphs 107-111.

50. When the proposals of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic in document UNESCO/WIPO/CONF/SAT/8 came up for debate on Friday afternoon, 10 May 1974, the discussion was opened on the proposal for a new article reading: "Each Contracting State shall undertake to exclude from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred or otherwise aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions." At the final plenary session of the Conference the delegate of the Union of Soviet Socialist Republics asked that the following statement be inserted at this point in the report of the Conference: "Speaking at the Conference the Soviet Delegation stressed the fact that a signal and the programme carried by this signal should not be artificially separated, and also the fact that the submitted proposal concerns not only direct television broadcasting via satellite, but also and equally any programme irrespective of its distribution system. The inclusion of such an article would correspond to the spirit of international treaties on neighbouring issues that have been adopted earlier."

There was another short procedural debate, whereupon the delegate of the Federal Republic of Germany moved formally, under

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Rule 18(2)(a), to suspend the meeting. In accordance with the rule this motion was put immediately to the vote, and was carried, with 22 delegations voting in favour, 12 against and 5 abstentions. The meeting was therefore suspended until Monday morning, 13 May 1974.

51. Following resumption of the debate on the proposal, the Main Commission received separate proposals from the delegations of Algeria and the United States of America for a procedural compromise. A working group was set up to consider these proposals, consisting of the delegations of Algeria, Canada, Hungary, Mexico, the Union of Soviet Socialist Republics, and the United States of America, under the chairmanship of Mr. da Costa, Chairman of the Main Commission. It was agreed that the discussion of the results of this Working Group, and of the proposals put forward in documents UNESCO/WIPO/CONFISAT/8 and 23, 28 and 31, should take place after the Main Commission had finished its article-by-article review of the Nairobi draft.

52. As explained below in paragraph 142, the Conference agreed that its Chairman, Mr. de San, should send a specifically-worded letter to the Secretary-General of the United Nations, transmitting this Report and the verbatim records of the Conference relating to this subject, in order that they could be sent, as official documents, to the Member States of the United Nations, and forwarded to the Committee on the Peaceful Uses of Outer Space for use in its work. Thus, although the discussions of the issue took place at a number of different times throughout the Conference, they are all brought together in one place in this Report, following the article-by-article analysis of the text of the Brussels Convention. This section of the Report comprises paragraphs 133-142, below.

53. In addition to the two working groups already mentioned, the Chairman appointed a small working group, consisting of the delegations of the Ivory Coast and Kenya, to draft a section for insertion in this Report concerning Article 7 on abuses of monopoly (see paragraphs 119-123 below). At the Chairman's suggestion, an informal working group, consisting of delegates from Australia, Canada, the Federal Republic of Germany, Kenya, the United Kingdom, and the United States of America, also met to discuss the problem raised by paragraph (3) of Article 11 of the Nairobi draft (Article 8 of the Brussels Convention) concerning distribution by cable systems. This point is considered in paragraphs 127-129, below.

ARTICLE-BY-ARTICLE ANALYSIS OF THE BRUSSELS CONVENTION

54. The following synoptical table is intended to help in tracing the various provisions of the Brussels Convention in inverse chronological order back to their origins:

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BRUSSELS (1974)	NAIROBI (1973)	PARIS (1972)	LAUSANNE (1971)
<u>Preamble</u>	<u>Preamble</u>	<u>Preamble</u>	<u>Preamble</u>
Para. 1	(a)	(a)	(a)
2	(b)	-	-
3	(c)	(b)(in part)	(b) (in part)
4	(d)	(c)(in part)	(c) (in part)
5	(e)	(d)	(d)
<u>Article 1</u>	<u>Article 2</u>	<u>Article I bis</u>	<u>Article I</u>
(i)	(i)	(i)	-
(ii)	(ii)	(ii)	(iv)
(iii)	(iii)	(iii)	(i)
(iv)	(iv)	-	-
(v)	-	-	-
(vi)	(vi)	(iv)	(iii)
(vii)	(viii)	-	-
(viii)	(vii)	(v)	(ii)
<u>Article 2</u>			
(1)	Art. 1(1)	Art. I,II(1), III(1)	Art.II(i),(ii), (iii)
(2)	Art. 3	Art.III(2)	Art. III
(3)	Art. 1(2)	Art.II(2)	Art. II(iv)
<u>Article 3</u>	-	-	-
<u>Article 4</u>	<u>Article 4</u>	<u>Article V</u>	<u>Article V</u>
(i)	(i)	(i)	ALT.A(i)
(ii)	(ii)	-	-
(iii)	(iii)	(ii)	ALT.A(ii)
<u>Article 5</u>	<u>Article 5</u>	<u>Article IVbis</u>	<u>Article IV</u> ALT.A(4) ALT.B(3)
<u>Article 6</u>	<u>Article 6</u>	<u>Article IV(1)</u>	<u>Article IV(1)</u>
<u>Article 7</u>	<u>Article 7</u>	-	-
<u>Article 8</u>	<u>Article 11</u>	<u>Article IX</u>	<u>Article IX</u>
<u>Article 9</u>	<u>Article 8</u>	<u>Article VI</u>	<u>Article VI</u>
<u>Article 10</u>	<u>Article 9</u>	<u>Article VII</u>	<u>Article VII</u>
<u>Article 11</u>	<u>Article 10</u>	<u>Article VIII</u>	<u>Article VIII</u>
<u>Article 12</u>	<u>Article 12</u>	<u>Article X</u>	<u>Article X</u>

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TITLE

55. The Conference adopted the title of the Convention in the form in which it had been drafted at Nairobi, in accordance with the "new philosophy" under which a State would be free to implement its obligations in any way it chooses. The formulation is a completely neutral one, avoiding terms such as "prohibit", "unauthorized", and "against" which had been used in the titles of earlier drafts.

56. Four of the words used in the title -- "distribution", "programme", "signals", and "satellite" -- are defined in Article 1. As decided by the Conference, Article 3 excludes from the scope of the Convention distribution of signals taken from direct broadcasting satellites; in view of the clear-cut exclusion expressed in that Article, no need was felt to change the formulation in the title.

PREAMBLE

57. The Conference made only one change in the preamble of the Convention as drafted at the Nairobi meeting. In the form adopted, the preamble reflects as accurately as possible the thinking behind the concept on which the Nairobi draft, and now the Brussels Convention, are based.

58. The Conference adopted the first four preambular paragraphs of the Nairobi text without change. Proposals for three new paragraphs submitted by the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic (document UNESCO/WIPO/CONFESAT/8, 31 and 32) are discussed below in paragraphs 133-142. Consistent with its withdrawal of a proposal to amend Article 1(1) of the Nairobi draft, which is discussed below at paragraph 80, the delegation of Japan withdrew a proposal to amend the second and fourth paragraphs of the preamble (document UNESCO/WIPO/CONFESAT/7).

59. Discussion of the preamble by the Conference centred around the fifth paragraph. The United States of America had submitted a proposal (document UNESCO/WIPO/CONFESAT/6) to add provisions specifically safeguarding the International Telecommunication Convention and Radio Regulations both to the preamble and to Article 6 of the Convention. The proposal to amend Article 6 was withdrawn after discussion (see paragraph 114, below), but the proposal to add a reference to the ITU Convention and Regulations to the last paragraph of the preamble was widely supported, and the Conference amended the paragraph accordingly.

60. A bone of contention at all three of the preparatory meetings was the specific reference to the Rome Convention in the last paragraph of the preamble. The delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic had proposed, in

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document UNESCO/WIPO/CONFESAT/8, that the reference be deleted, leaving the general declaration as to the need not to prejudice any international agreements already in force; it was considered that no separate mention of the Rome Convention was necessary in view of this general statement, and also because many of the States participating in the work of the Conference were not parties to the Rome Convention. A proposal from the delegation of Argentina (document UNESCO/WIPO/CONFESAT/24) would have deleted the entire section.

A number of delegations spoke in favour of retaining a specific reference to the Rome Convention in the preamble. They considered that a special relationship existed between the two Conventions; for countries seeking establishment of affirmative rights on behalf of programme-suppliers, acceptance of the Nairobi text already represented a compromise, and explicit mention of the Rome Convention in the preamble was a part of that compromise. The proposals of Argentina and the Union of Soviet Socialist Republics were withdrawn, but it was agreed that this Report should reflect a point stressed by several speakers and accepted by the Conference without dissent: reference to the Rome Convention in the preamble in no way implies any legal or moral obligation on the part of a State party to the Brussels Convention to adhere to the Rome Convention.

ARTICLE 1: DEFINITIONS

61. The Conference adopted a proposal made by the delegation of Austria at Nairobi to reverse the order of Articles 1 and 2 of the draft, thus for the sake of clarity and convenience having the definitions appear first in the Convention. It also agreed to drop the definition of "distributed signal" as superfluous.

62. The delegation of Argentina recommended, in document UNESCO/WIPO/CONFESAT/27, that "the technical definitions in the Convention be taken from CAMTE (Geneva, 1971) (World Administrative Conference on Telecommunications) and the terminology used be that adopted by the International Telecommunication Union." The Conference, whose delegations included leading communications experts from several countries, sought to make its definitions and use of terminology as technically accurate as possible, and in Article 3 it drew wording directly from the ITU Radio Regulations. However, it was agreed as a principle of drafting that, since the purpose of the Convention was fundamentally a juridical one, the terms used and their definitions should be made to serve legal purposes rather than conform to definitional standards developed for technical ends. For example, because of the well-known legal difficulties with the term, the Convention does not use "broadcasting" or any of its variants as an operative word.

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"Signal"

63. The definition of "signal" has survived intact from the Paris draft. The term is intended to mean the electronic vector or "carrier" capable of transmitting a programme from its point of origin. As long as a signal has the potential capacity of transmitting programmes, it makes no difference what electronic means or combination of means, including radio waves of all sorts and laser beams, are used to generate or regenerate it.

"Programme"

64. The Brussels Convention deals with signals and not the messages those signals carry; as was often said, the subject of the treaty is the container and not the content. But the scope of the Convention is limited to those signals that carry "programmes" and, as defined, this term refers to bodies of material put together for transmission through a satellite to the general public. As it emerged in the Paris text, the concept of "programme" would include material such as privately-made films or tapes not initially intended for public consumption, but would exclude scientific and technical data, military intelligence, private communications, and other masses of material now being transmitted via satellite for specialized uses. Although the terms "body" and "material" might otherwise carry a connotation of corporeality, the definition makes clear that a programme may be either live or recorded or a combination of both.

65. It finally became necessary at Brussels to decide whether the Convention should be limited to television signals ("images or a combination of sounds and images") or should cover sound broadcasting as well ("images, sounds or both"). The delegation of Morocco, supported by the delegation of Algeria, urged that the scope of the Convention should be narrowed to cover television signals only. From its beginnings in Lausanne, the basic purpose of the Convention was to combat piracy of television transmissions by satellite; since satellite transmissions of radio programming are rare and lack a realistic economic basis, and since the ITU Convention is adequate to deal with them, it was argued that programmes consisting of sounds alone should not be included in the definition. The contrary view was taken by a large number of delegations. The delegate of Kenya pointed out that satellites are increasingly being used for sound transmissions and that, since they are the same for both television and radio on this point, the ITU Regulations would be ineffective to combat piracy of sound programming transmitted by satellite. The Conference therefore decided in favour of the broader definition.

"Satellite"

66. Under this definition, which also comes from the Paris text, a "satellite" is a man-made object for transmitting signals, located in orbit around the earth or on a celestial body. It includes both an active satellite which transmits or retransmits

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signals, and a passive satellite which is intended for transmission by reflection. The word "extraterrestrial" in the definition means that, at least during part of its orbit, the satellite must be located outside the earth and its atmosphere. However, the definition is not intended to exclude satellites, such as those in elliptical orbit, which pass through the earth's atmosphere during part of their orbital path.

"Emitted signal" and "derived signal"

67. Before Nairobi, the drafts of the Convention had been based on the principle that, as long as it was still possible to derive a message from it, a signal remained the same signal no matter how many times it was amplified, modulated, changed in frequency, recorded, re-recorded, or otherwise changed in its physical characteristics. This principle continues to underlie the Convention, but as a matter of drafting it has been considered desirable to characterize three different stages in the life of a signal: when it is "emitted"; when it is "derived"; and when it is "distributed". The first two of these terms are defined explicitly in Article 1, and the meaning of a "distributed signal" is carried in the definition of "distribution". When these terms are used, they are intended to refer to the signal as it exists after certain acts have taken place with respect to it, and not to suggest that a different signal is involved or that the obligations of the Convention cease to exist when any of these events occur.

68. The Nairobi text adopted the term "emitted signal" to refer to a signal that had been transmitted to a satellite, or that had passed through a satellite. This concept was combined with some rather intricate drafting in Article 1 (now Article 2), which drew distinctions between emitted signals, signals derived from emitted signals, signals derived from fixations of emitted signals, and signals derived from signals derived from fixations of emitted signals. No one was sure exactly what this meant, much less whether it covered all the possibilities, and at Brussels an effort was made to simplify and clarify the text.

69. The key to this change was a new definition of "derived signal" to cover signals whose physical characteristics have been modified in some way because of technical requirements, regardless of how many times these modifications have taken place or how many intervening fixations or duplications of fixations have been made. The decision to include a definition of "derived signal" was based on a proposal by the delegation of Algeria (document UNESCO/WIPO/CONF/SAT/11), and its adoption resulted in some consequential amendments in Articles 1 and 2.

70. As it emerged in the final text, the concept of "emitted signal" covers any signal that goes to a satellite (the "up-leg") and any signal that has passed through a satellite and has been beamed back down to earth (the "down-leg"). As soon as the signal has passed through the satellite it also becomes a "derived signal"

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since technically it becomes necessary to change the signal's physical characteristics in order to transmit it back to earth without interference. Thus, in fact, on the down-leg and thereafter, the signal is both an "emitted" and a "derived" signal for purposes of the Convention.

"Originating organization"

71. The definition of "originating organization" adopted by the Conference was based on the Paris text, and refers simply to the "person or legal entity that decides what programme the emitted signals will carry". Thus, the definition was intended to exclude telecommunications authorities and common carriers who exercise no control over what programmes signals carry, and a proposal by the delegation of Italy for a new definition (document UNESCO/WIPO/CONFESAT/12) was not accepted by the Conference because of this concern.

72. The definition of "originating organization" in the Convention is also intended to exclude the creators and producers of programmes as such, since their control is over the content of programmes, not signals. The delegation of the United Kingdom submitted a proposed amendment (document UNESCO/WIPO/CONFESAT/13) which would have defined "originating organization" to include the person or legal entity entitled "to decide, or delegate the right to decide, what programme the signals will carry". This suggestion was based on the situation in the United Kingdom and other countries where an official public broadcasting authority owns rights in programmes but delegates production authority to contractors in various regions. The Conference felt that, in this situation, the originating organization would be the broadcasting authority rather than the contractor since it possesses the ultimate power of decision, but that the proposed language in document UNESCO/WIPO/CONFESAT/13 might introduce uncertainties into the definition. The delegate of the United Kingdom therefore did not press his amendment, on the understanding that the discussion on the point would be reflected here.

73. A question was raised as to the meaning of the phrase "person or entity" in the definitions of "originating organization" and "distributor" in the Nairobi text. It was pointed out that, in some countries, it would not be possible for an individual human being to exercise the powers of decision referred to in those two definitions, but that in other countries licensing regulations made this possible, and that broadcasting licenses were commonly held by individuals in some places. To clarify the English text, the word "legal" was added before the word "entity" in both definitions.

"Distributor" and "distribution"

74. The concept of "distribution" is the most important one in the Convention, since this is the act that Contracting States are obliged to prevent under certain circumstances. Proposals for amendment of the definition of "distribution" were put forward by

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the delegations of Switzerland (document UNESCO/WIPO/CONFESAT/9) and Algeria (document UNESCO/WIPO/CONFESAT/11), but were not taken up by the Drafting Committee, which accepted the Nairobi text with some minor consequential changes. The key element in the concept of "distribution" is that there must be a transmission of programme-carrying signals "to the general public or any section thereof", and the "distributor" is the natural or legal person with ultimate decision-making responsibility in the distribution process.

75. The phrase "general public or any section thereof" also appears in the 1971 Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, and means any part of the public in any place on earth. Acts consisting merely of reception or fixation of signals would not be a "distribution", and would be outside the scope of this Convention, especially as testing and technical and experimental reception or fixation may be necessary from time to time in order to check the reception equipment as well as the orbital position of the satellite.

76. A transmission would constitute "distribution" within the meaning of the Convention whether it is made simultaneously with the original emission to the satellite or from a fixation. The word "transmits" does not include the marketing or supply of fixations such as phonograms or video tapes. However, the definition is broad enough to cover any present or future telecommunications methods for transmitting signals, including not only traditional forms of broadcasting, but also transmission by cable or other fixed communications channels, laser transmission, and transmission by direct broadcasting satellites.

77. With respect to the latter, it should be noted specially that Article 3, which excludes from the scope of the Convention re-transmissions of signals taken from direct broadcast satellites, does not affect the obligation of a Contracting State to prevent the distribution by means of a direct broadcast satellite, by an unintended distributor, of signals received from an ordinary ("point-to-point" or "distribution") satellite. In other words, where the signals are coming down from a DBS, their distribution is now outside the Convention by virtue of Article 3, but where the signals are received from another type of satellite, they cannot be retransmitted by an unintended distributor, even if he is using a DBS for the purpose.

ARTICLE 2: SCOPE OF THE CONVENTION

Paragraph (1): Subject Matter and Obligation

78. The basic provision of the Brussels Convention is found in paragraph (1) of Article 2, which incorporates the substantive content and, with some minor changes, the wording of the "Nairobi Compromise". The essential point here is that, instead of conferring an exclusive right of authorization upon broadcasters with respect to distribution of signals transmitted by satellite, the

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Convention imposes an obligation on Contracting States to "take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended". The four key phrases in this formula -- "adequate measures" *, "prevent", "distributor" and "not intended" -- are all taken verbatim from the original proposal made by the delegations of Morocco, Brazil, India and Mexico that became the basis for the Nairobi compromise.

79. Since the wording of the Nairobi draft of this provision was accepted as the basis for the Brussels Convention, the Conference did not discuss at any great length the meaning of the operative words used in Article 2(1). It was clear, however, that Contracting States are left completely free to implement the basic requirement of the Convention in any way they see fit. While the obligation of the Convention might well be undertaken within the legal framework of intellectual property laws granting protection to signals under theories of copyright or neighbouring rights, a Contracting State could just as rightly adopt administrative measures, penal sanctions, or telecommunications laws or regulations on the subject. As was stated in paragraph 62 of the Nairobi report: "The good faith of the States in providing effective measures against piracy could and should be assumed".

80. The key factor in determining whether a distribution is to be prevented or permitted is whether or not the signal was intended for the distributor. On this point, the Nairobi report stated, in paragraph 61: "While it was true that the originating organization would often be the one making the decision as to the distributors for whom the signals were intended, this did not imply the creation of any economic rights under the Convention". In this connexion, the delegation of Japan tabled a proposal (document UNESCO/WIPO/CONF/SAT/7) to change the operative language from "to prevent the distribution ... by any distributor for whom the signal is not intended" to "to prevent any distributor from distributing ... without the consent of the originating organization or, as the case may be, of both the originating organization and the other contributors to the programme". The delegate of Japan explained that his Government accepted the Nairobi philosophy and that the purpose of its proposal was not to undermine it but to improve it technically. He found the vagueness of the word "intended"

* The original French draft used the phrase "mesures adéquates", which was translated as "all appropriate measures" in the English version of document UNESCO/WIPO/SAT.3/10. This translation was carried over into the English text of Article 1(1) in the Nairobi draft. At Brussels, however, the delegation of Australia suggested that a more accurate English translation should be sought, and on the recommendation of the Drafting Committee, the Conference agreed to use the words "adequate measures" in the English text.

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particularly troublesome, and considered that consent by the originating organization, which is not the same as authorization, was fundamentally the same as "intended". The reference to consent by other contributors "as the case may be" was intended to cover situations in which Contracting States choose to implement the Convention by means of private rights alone or in combination with other means.

81. Several delegations saluted the good intentions behind the proposal of the delegation of Japan but having received little or no support and considerable opposition, it was withdrawn without a vote. In general, the opponents considered the legal framework of the proposal of the delegation of Japan as necessarily establishing private rights, and thus running counter to the Nairobi compromise.

82. At Nairobi, the reference to "on its territory" was changed to "on or from its territory", thus imposing an obligation upon a Contracting State to prevent piratical transmission from a sending station located on its territory, even where the members of the public for whom the transmission is intended are entirely outside its territory. The Conference accepted this change without discussion.

83. It was pointed out in the course of the debates that the phrase "emitted to or passing through a satellite" could probably be deleted as a technical matter, but the Conference decided that, since paragraph (1) of Article 2 is the pivotal provision in the Convention, it should state explicitly that it is dealing with signals emitted to or passing through a satellite rather than relying upon definitions to convey the thought. As it came out, the language makes doubly clear that the Convention applies not only to poaching at the end of the "down-leg" of a transmission or thereafter, but at any point during the "up-leg" or "down-leg" or from the storage unit of the satellite itself. It was pointed out during the Conference that interception of signals on the "up-leg" while extremely unlikely as a practical matter, is technically possible by use of a second satellite.

84. As already noted, the Conference decided to exclude distributions of signals taken from direct broadcast satellites from the scope of the Convention. This could have been done in Article 2, but the Conference agreed that the point was important enough to be covered in a separate article. The discussion of this provision, which became Article 3, appears in paragraphs 102-106.

Paragraph (2): Duration of Measures

85. Throughout the preparatory work on the Convention, from its earliest beginnings in Lausanne, there had been a division of opinion as to whether a minimum limit should be attached to the length of time a Contracting State must take the measures required. At Nairobi, because of the fundamental change in

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philosophy, additional questions were raised as to whether a provision establishing a minimum term remained appropriate since the treaty was no longer based on private rights. The question finally had to be decided at Brussels, and it proved a very tough nut to crack. Formal proposals dealing with the matter were put forward in the following documents: UNESCO/WIPO/CONFESAT/9 (Switzerland); 12 (Italy); 14 (Mexico); 15 (United Kingdom); 17 (Australia); 18 (France); 19 (Japan); 21 (Working Group); and 33 (Algeria, Brazil, Central African Republic, Czechoslovakia, Arab Republic of Egypt, Ghana, Guatemala, Hungary, Ivory Coast, Mexico, Morocco, Senegal, Tunisia, Union of Soviet Socialist Republics, Ukrainian Soviet Socialist Republic).

86. The debates on this question began with a series of general statements iterating the various points of view. Those favouring the retention of a minimum term took the position that, without a provision such as Article 3 of the Nairobi draft, the Convention could be interpreted either as imposing a permanent obligation with respect to signals that have been recorded, or as presenting the opposite danger: that States might regard their obligation to take "adequate measures" as fulfilled shortly after the satellite emission. Some concern was also expressed as to whether countries party to the Rome Convention could adhere to a convention not requiring a minimum term of twenty years for broadcasts; however, this problem appeared to have lost much of its importance in the context of the Nairobi compromise.

87. Several delegations urged complete deletion of the article on the ground that a provision creating a minimum term would be inconsistent with a treaty carrying no obligation to protect private property rights and leaving States free to decide for themselves the most effective means for preventing distribution of satellite signals by unintended distributors. It was also argued that, although a specified minimum term may be relevant when it comes to the programme-content of a signal, it becomes difficult to apply logically if one is speaking only of the signal as such. Some delegates were also troubled by a legal situation in which new terms would start for particular signals upon each new emission, even though the programme contained in the signal might be old or even in the public domain.

88. At the outset of these debates, the Conference examined the proposal of the delegation of Switzerland (document UNESCO/WIPO/CONFESAT/9) to delete Article 3 entirely. This proposal, which was intended to impose permanent obligations upon Contracting States, was linked to a proposed amendment of the definition of "distribution"; rather than allow his proposal to delete Article 3 to be considered separately, the delegate of Switzerland withdrew it, whereupon it was taken up formally by the delegation of Tunisia. Several delegations stated that their Governments could not accept a treaty requiring protection without a limit of time (i.e., in perpetuity). The proposal of the delegation of Italy in document UNESCO/WIPO/CONFESAT/12 to substitute the words "the measures provided" for "the obligation provided" was examined in

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this connexion. This proposal was aimed at drawing a conceptual line between the treaty obligations themselves, which presumably last indefinitely, and the measures taken to implement these obligations, which can be limited in time. The Conference eventually adopted this suggestion, and amended the text of what became Article 2(2), as well as that of Article 4, accordingly.

89. As the Chairman noted, the Main Commission appeared to be divided both badly and evenly on this issue. It seemed to him that, with the growth of the copyright and Rome Conventions, the problem might prove less important than it seemed. He therefore put forward a personal compromise proposal which, in general terms, would have involved deleting Article 3, based on the distinction between the right and its sanction. This Report would then state that the States pledge themselves to implement this protection in a spirit of good faith, without insisting that protection either be perpetual or without any term at all. The Report would add that the States will adopt practical measures under their domestic law to implement the treaty and that a term of twenty years, from one starting point or another, would be considered reasonable under domestic law.

90. The delegation of France also advanced a compromise proposal to delete Article 3 and to add a new paragraph to Article 1 (now Article 2) stating that the duration of the "adequate measures" is a matter for domestic law to determine, but that each Contracting State is obliged to notify the Secretary-General of the United Nations of the duration chosen under its law. The delegation of Japan also referred to its proposal (document UNESCO/WIPO/CONFESAT/19) to solve the problem as in Article 4 of the Phonograms Convention, leaving duration to domestic law in each State but requiring that, if a specific duration is provided, it must be at least twenty years from emission. Proposals concerning the date from which the term was to be computed had also been placed before the Main Commission in documents UNESCO/WIPO/CONFESAT 14, 15, 17 and 18.

91. During the debate, the delegation of Israel, supported by the delegation of Canada, had suggested the formation of a small working group, and a similar idea had been broached by the delegation of the Ivory Coast. Later the same idea was put forward by the delegation of the United States of America and was widely supported. As noted above in paragraph 48, a Working Group under the chairmanship of Sr. Lic. Gabriel Ernesto Larrea Richerand was convened. It was agreed that the Working Group should be asked to search for a widely-acceptable compromise solution, and that it should start its work with an examination of the proposals put forward orally by the Chairman of the Main Commission and by the delegation of France.

92. The results of the Working Group's efforts, consisting of alternative proposals, appear in document UNESCO/WIPO/CONFESAT/21. Both alternatives would delete Article 3 of the Nairobi draft and add a new paragraph to Article 1 (now Article 2) stating: "In any

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Contracting State in which the application of the measures referred to in paragraph 1 of this Article is limited in time, the duration thereof shall be fixed by national legislation". Both alternatives also required that a State notify the Secretary-General of the United Nations of the provisions of its legislation on duration, if any. Under Alternative A, this is all the treaty provision would provide, but the General Report would add the following (which includes two sub-alternatives): "With respect to the duration of the measures referred to in Article 1(1) ~~the Conference considered~~ it was generally considered that a period of twenty years was a reasonable period." Under Alternative B, the new paragraph in the Convention would insert the underlined phrase "the duration thereof must be reasonable and fixed by the national legislation". Under this alternative "the General Report would not contain any commentary on the interpretation of the word 'reasonable'."

93. After a debate in the Main Commission on this alternative proposal and a minor change in language, the Chairman called for two straw tallies or votes by show of hands, first on which of the sub-alternatives to retain in Alternative A, and then on the choice between the two Alternatives. In the first tally, the sub-alternative that was accepted, by a vote of 20 to 17 with 3 abstentions, read as follows: "... the Conference considered that a period of twenty years would constitute a reasonable period." In the second tally, Alternative B won by 22 to 18 with 2 abstentions. Under this alternative, "the General Report would not contain any commentary on the word 'reasonable'", and there was a sharp difference of opinion as to whether this precluded delegates from having individual explanations of views on the article inserted in the General Report. The Chairman of the Main Commission declared that it was impossible for him to announce the final result of these votes or straw tallies, since a certain number of delegations were in doubt on the question and had indicated that they would have taken different positions depending upon whether the tally was considered a vote or a straw tally. Thus, under a broad interpretation of Rule 23 of the Rules of Procedure, under which the Chairman is authorized to call for a new vote in cases of any doubt, he rules that the tallies would be considered as straw tallies, and that therefore the Main Commission would not be definitively bound by them. This ruling was not formally appealed, although certain delegations did not regard it as appropriate.

94. The delegation of the Federal Republic of Germany suggested that, rather than proceeding to a formal vote, the Main Commission should consider whether or not it would be possible to achieve a consensus on Alternative A with the second sub-alternative (i.e., "... it was generally considered that a period of twenty years constituted a reasonable period."). A number of delegates supported this proposal, including the delegate of the Ivory Coast, who considered the whole matter very serious and hoped that the Chairman's diplomacy had saved the Main Commission from a tragic situation. She felt that the test votes indicated that some delegates did not trust certain Governments to be reasonable; she

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stressed that this attitude was wholly unjustified, and that any Government can be depended upon to adopt a reasonable period. At the final plenary session it was agreed that this Report should reflect the fact that the opinion expressed by the delegate of the Ivory Coast, that any government can be depended upon to adopt a reasonable period, was shared by the other delegations participating in the Conference.

95. Shortly before the Main Commission took action on this suggestion, the delegate of Guatemala proposed that the language be changed to read, in part, "a period of twenty years could constitute...". In responding to the delegate of Guatemala, the Chairman stated that the Main Commission had decided to choose between the two alternatives, and he therefore asked the delegate not to press his amendment at that point, but, instead, to hold it for presentation at the plenary assembly, at which a two-thirds majority would be necessary. He urged the Main Commission to adopt the proposal of the delegation of the Federal Republic of Germany by consensus. This action was taken with the delegations of Tunisia and Algeria expressing reservations as to the procedure. The delegate of Guatemala also expressed his reservations, and indicated that he would raise his proposal again in the plenary assembly.

96. This proposal was incorporated in document UNESCO/WIPO/CONFESAT/33, co-sponsored by fifteen delegations. In introducing the proposal, the delegation of Algeria stressed again the view that protection of the signal as a physical phenomenon, for a period of twenty years would be neither practical nor useful. In its opinion, if the signal carries material protected by copyright, the copyright law would be applicable; but if the signal carries sporting events, the copyright law would not protect them, and they should not be given inflexible protection for twenty years under the guise of this treaty. The proposal was supported by several delegations and was not expressly opposed. In speaking for it, the delegation of Guatemala explained that the change was a modest one and was needed to obtain favourable consideration for the Convention in certain national legislatures. He added that, unless the Conference as a whole adopted the proposed language as an interpretation in this Report, certain delegations including his own would be forced to vote against paragraph (2) of Article 2.

97. The delegation of Kenya explained that, although it had not co-sponsored the proposal, it considered the problem more theoretical than practical. In countries that have copyright legislation, the delegate of Kenya felt that in transmissions of a sporting event there are copyrightable elements, in the camera-work, direction, and editing among other things, that will make them subject to copyright protection without regard to the present Convention.

98. Paragraph (2) of Article 2 was adopted by the Conference without dissent. It was understood that this Report would recount

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the events leading to the adoption of this paragraph, and would conclude with the following interpretative paragraph, which was also adopted without objection by the Conference: "With respect to the duration of the measures referred to in Article 2(1), it was generally considered that a period of twenty years could constitute a reasonable period."

Paragraph (3): Signals already distributed by intended distributor

99. Since it was adopted by the Conference without debate or objection and with only minor consequential changes, the form of wording discovered at Nairobi to express the difficult point covered in Article 2(3) is apparently a success. As explained in paragraph 92 of the Nairobi report: "Essentially, the case involves the following elements: (1) a signal that has passed through a satellite; (2) a chain of distributions of the signal taking place after the passage through the satellite; (3) a distributor, for whom the signal was not intended, who intercepts a signal along the chain; and (4) a distribution on or from the territory of a Contracting State."

100. The basic idea behind Article 2(3) is that the Convention is intended to deal primarily with space communications, and should not cover situations that are essentially terrestrial. Thus, where an unintended distributor derives the signal he is distributing from another terrestrial distributor at the end of a chain of terrestrial distributions, and at least one of the distributors further up the chain was intended to receive the signals, the fact that the signals were emitted through a satellite would not make the Convention applicable. This is a case of rebroadcasting, fully covered by the Rome Convention, and it was felt by the preparatory Committees that the new treaty should not also attempt to cover this same terrestrial ground.

101. On the other hand, if none of the distributors up the line were intended to receive the signals emitted to or through the satellite, the situation would be different and the Convention would apply. For example, if the first distribution was made by an unintended distributor in a non-Contracting State, it would not be prevented under the Convention, but if the signals were picked up from that distribution and redistributed by an unintended distributor in a Contracting State, the Convention should apply.

ARTICLE 3: DISTRIBUTION OF SIGNALS FROM DIRECT BROADCAST SATELLITES

102. At the very outset of its work, the Main Commission considered a proposal by the delegation of Algeria to exclude from the scope of the Convention distributions of signals taken from direct broadcast satellites (DBS). As explained during the debate, a DBS system or satellite broadcasting service can be described as a service in which a broadcaster, instead of using an aerial located on the earth's surface, uses an aerial located on a

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satellite in space with a very powerful transmitter capable of sending images directly to individual receiving sets on earth. In the context of the treaty, the originating organization and the distributor are one and the same, since no further distribution is needed to pick up signals from the satellite and send them on. As explained in paragraph 89 of the Nairobi report, the status of distributions from DBS signals was not thoroughly delineated in the Nairobi draft.

103. The proposal of the delegation of Algeria was widely supported, and the Main Commission accepted it in principle, subject to one qualification. The delegate of Kenya, supported by other delegations, proposed that the exclusion of DBS signals from the scope of the Convention not be so wide as to remove from the obligation in Article 2(1) the situation in which an unintended distributor picks up signals from a conventional satellite and distributes them by means of a direct broadcast satellite. The Conference agreed with this proposal also, and referred the whole question to the Drafting Committee.

104. The Drafting Committee's proposed text of Article 3 (document UNESCO/WIPO/CONFESAT/36 is a combination of the proposal of the delegation of Algeria for a separate article clearly expressing the exclusion (UNESCO/WIPO/CONFESAT/26) and a proposal made by the delegations of Canada and the United States of America (UNESCO/WIPO/CONFESAT/16), which would have dealt with the exclusion as a paragraph in Article 1 (now Article 2). The Conference accepted the Drafting Committee's draft without change.

105. Article 3 expressly excludes from the scope of the Convention signals that are "emitted by or on behalf of the originating organization" and are "intended for direct reception from the satellite by the general public". The reference to the originating organization is needed to make clear that, as proposed by the delegate of Kenya, the exclusion does not go so far as to exempt the activities of a "pirate" distributor using a DBS system for his distributions of conventional satellite signals. As explained above in paragraph 77, the definition of "distribution" is also concerned with this point.

106. Number 84AP Spa 2 of the ITU Radio Regulations, as amended in 1971, defines a "Broadcasting - Satellite Service" as "A radio-communication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public." The wording of Article 3 deliberately tracks this formulation as closely as possible, thereby conveying exactly the same meaning as the regulation without using the word "broadcasting." The Conference decided not to add the words "or any section thereof" to the phrase "general public" in this article, even though the longer wording is taken from the Phonograms Convention and is used in two of the definitions in Article 1 of this treaty. Aside from the obvious advantages of using the same language as that used in the ITU Regulations to define the same concept, the latter includes a footnote making clear that, "In

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the broadcasting-satellite service, the term 'direct reception' shall encompass both individual reception and community reception."

ARTICLE 4: EXCEPTIONS

107. Thanks to the high quality of the preparatory work, Article 4 represents another case in which an important and previously-controversial provision was adopted with little debate and no substantive revisions. The only two proposals submitted in connexion with this Article -- UNESCO/WIPO/CONFESAT/7 (Japan) and 12 (Italy) -- were withdrawn before the debate in the Main Commission, although the specific suggestion made in the latter for a technical change in wording was later adopted.

108. The discussion of this provision during the Main Commission consisted mainly of statements approving the content and balance of the article as drafted. No objections were raised, although a few interpretative remarks were made and will be reflected here. Following the debate, the Nairobi text, with some minor technical amendments, was accepted without dissent.

109. A point of interpretation included in the report on the Paris text, and elaborated in the UNESCO/WIPO Secretariat commentary on that text, was explicitly accepted by the Conference and is repeated here: "Under paragraph (i), short excerpts of a contest or spectacle could be distributed if the genuine purpose was the reporting of a newsworthy event, but only to the extremely brief extent 'justified by the informatory purpose'. To warrant the use of a short excerpt under this provision, the programming must be done as part of a report of general news of the day and would therefore, as a rule, have to be transmitted on the basis of a fixation. The possibilities of distributing all or any part of a sporting event under paragraph (iii) seem even more limited, since the sole purpose of the distribution must be teaching."

110. At Nairobi, the term "teaching" in paragraph (iii) was amplified to include "teaching in the framework of adult education." The delegation of the United States of America suggested that the Conference interpret these terms in a general way to include any kind of "systematic instructional activities." This phrase, which also appears in the 1971 texts of both the Berne and Universal Copyright Conventions, includes all conventional forms of teaching at every level of educational and instructional television as distinguished from general programming that is cultural or informational in character. At the final plenary session it was agreed that the Conference as a whole should adopt this interpretation of the phrase.

111. A point made several times during the Conference, with specific reference to Article 4, was that the exceptions allowed by that article have applicability only with respect to the measures a State is required to take under this Convention. In other words, if the State has obligations under another treaty,

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such as the copyright conventions, the Rome Convention or the ITU Convention, these are not superseded by the exceptions in Article 4. Similarly, it was stressed that the Brussels Convention applies exclusively to international situations, and none of its provisions can have any sort of binding effect on the law governing exclusively domestic situations in a Contracting State.

ARTICLE 5: NON-RETROACTIVITY

112. This Article, which is patterned on Article 7(3) of the 1971 Phonograms Convention, was approved by the Conference without discussion. It means that, unless a Contracting State chooses to provide otherwise, the entry into force of the Convention in that particular State does not alter the legal status of signals that have already been emitted to a satellite.

ARTICLE 6: SAFEGUARD OF INTERESTS OF CONTRIBUTORS TO PROGRAMMES

113. As the Nairobi report says in paragraph 108, retention of what is now Article 6 was considered an integral part of the Nairobi compromise. Its purpose, which was acknowledged to be substantively important, was to make clear that, under the new Convention, none of the "adequate measures" adopted by a Contracting State could be allowed to impinge in any way upon the present or future rights of authors, performers, phonogram producers or broadcasting organizations, whether the protection of those rights derived from domestic law, from either of the copyright conventions, or from the Rome Convention.

114. The delegation of the United States of America, as noted above, in paragraph 59, submitted a proposal (document UNESCO/WIPO/CONF/SAT/6) for amendment of the preamble and for a new paragraph in Article 6 to safeguard the International Telecommunications Convention and Radio Regulations against any interpretation under this treaty that would supersede or limit its application. It was pointed out that, throughout the many discussions of the ITU during the preparatory work, it had never been suggested that the present Convention should in any way impinge upon the obligations States have already assumed in the telecommunications field. The purpose of the Brussels Convention is to complement and supplement the ITU, not to compete with or weaken it. There was considerable support for this proposal in principle, and no dissent from the thinking underlying it, but the Conference agreed to place the amendment in the preamble rather than in the body of the Convention.

115. A proposal for the addition of a new paragraph dealing with rights of contributors to programmes being distributed via direct broadcast satellites, sponsored by the delegations of the Federal Republic of Germany and Austria (document UNESCO/WIPO/CONF/SAT/10), was withdrawn in view of the Conference's decision concerning DBS signals. However, the delegations of Austria and the Federal

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Republic of Germany asked that the following statement be inserted in the Report: "Among the governmental experts meeting in Paris (1972) and Nairobi (1973) it was undisputed that where a satellite is used for the distribution of programme-carrying signals made directly by the satellite itself, the originating organization, even without the insertion of such a provision in the Convention, is responsible for the distribution vis-à-vis the authors, performers, producers of phonograms and broadcasting organizations and cannot plead that the distribution was made in space and thus outside the sphere of application of any national law." The delegations of Austria and the Federal Republic of Germany stressed that withdrawal of their proposal in no way implied any departure from this unanimous view, but was merely in response to the Conference decision to exclude from the Convention signals emitted by originating organizations to direct broadcast satellites.

116. The Main Commission also considered a proposal by the delegations of Denmark and Mexico (document UNESCO/WIPO/CONFESAT/20) that would have imposed an obligation on broadcasters to notify authors, performers and other contributors to programmes, in advance of a satellite broadcast using their contributions, of the distributors for whom the programme-carrying signals were intended. The obligation would have arisen only in cases where the contributions were protected against broadcasting in the Contracting State to which the broadcaster belonged, and the sponsors of the proposal also suggested that it might be made applicable only when the parties had not agreed otherwise.

117. The Main Commission expressed unanimous appreciation for the spirit behind this proposal, which had its counterpart in both Alternatives A and B of Article IV of the Paris draft. Several delegations supported the proposal, and there was also widespread support for the general principle involved: that, where the law of a broadcaster's country recognizes broadcasting rights in a contribution to a programme being transmitted by satellite, the contributor or his representative should be able to know in advance where the signals carrying the programme are intended to go, at least in cases where the contributor has not previously transferred or waived his rights. There was, however, opposition to the specific proposal on various grounds: that it would create insuperable practical difficulties in certain countries because of their legal framework or business or labour practices, especially with respect to permanent employees; that if not actually inconsistent with the compromise achieved in Nairobi, the proposal could upset the new balance of interests established under the Nairobi formula; and that, by limiting itself to an obligation to give advance notice, the proposal might adversely affect exclusive rights to control broadcasting already held by contributors under other international conventions. The proposal was therefore withdrawn on the understanding that the principle on which it was based, and the useful discussion of it in the Main Commission, should be reflected in this Report.

118. Several observers representing international non-governmental

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organizations made interventions at the end of the debate on this proposal. During these remarks a point was raised concerning the meaning of "secured" in the text of Article 6, and it was agreed that this Report should make clear that the term means "the right existing at the time when the distribution was made" rather than "rights secured in the past."

ARTICLE 7: ABUSES OF MONOPOLY

119. At Nairobi, the delegation of India, supported by the delegation of Mexico, put forward a proposal intended to preserve the right of a Contracting State to prevent abuses of monopoly under its domestic law. The Third Committee of Experts was divided on this proposal, and therefore decided to include the text in the draft Convention within square brackets. Within the bracketed section the word "international" was included in separate brackets, before the term "abuse of monopolies."

120. As at Nairobi, opinion on this article was divided at the outset. The delegate of Tunisia took the lead in urging adoption of the article without the word "international", which everyone agreed to drop as confusing and unnecessary. The section as thus amended received some fairly broad support, but was opposed by other delegations, mainly on the ground that the article would be out of place and would serve no purpose in this Convention. The delegations of Italy (document UNESCO/WIPO/CONFESAT/12) and Argentina (document UNESCO/WIPO/CONFESAT/24) made formal proposals to delete the provision, and questions were raised as to the possible impact of the provision upon the construction of existing copyright conventions, which contain no such safeguard clause.

121. The Chairman summarized the situation by suggesting that, even if it were true that the article was redundant, certain delegations were urging its adoption in order to assert the principle involved. If no compromise were possible, it would be necessary to vote the provision up or down. The delegation of the Ivory Coast urged delegations opposing the article to avoid a vote and to participate in drafting a satisfactory explanation of the provision for insertion in this Report. This appeal was answered and a small working group was formed to prepare an explanatory statement (document UNESCO/WIPO/CONFESAT/30). After a long debate over the wording of this statement, a compromise was reached on a text and, with the understanding that the agreed wording would appear in this Report, the article was adopted without dissent, but with certain qualifications expressed by the delegations of Hungary and Italy. I am therefore indebted to the Main Commission for the next two paragraphs.

122. Article 7 is intended to preserve fully the application of domestic laws against abuses of monopoly. For purposes of this Convention, the application of these laws means that, if the conditions required for the enforcement of the law exist, a distributor not designated by the originating organization may be

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authorized by the competent national authorities to distribute programme-carrying signals. However, such a measure may not be applied when the originating organization does not possess the rights to distribute the signals on the territory of the State in question. A measure under Article 7 would also not be justified by the simple fact that the originating organization is asking for the signal a price considered too high, if it has not been determined that this price is not justified by the production and transport costs of the signal.

123. In short, the Conference adopted Article 7 with the clear understanding that Contracting States shall apply it in good faith and only where its application appears to them entirely legitimate.

ARTICLE 8: RESERVATIONS

124. This article on reservations, which had figured as Article 11 in all three of the earlier drafts, was brought forward to appear between the substantive and procedural articles of the Convention. The provision of paragraph (1), forbidding reservations except in the situations specified in paragraphs (2) and (3), was adopted without discussion.

125. Since, under Article 2(1), the nationality of the originating organization is the sole criterion for the applicability of the Convention, a reservation is necessary to deal with the situation in a few countries whose present law is based on the criterion of the place from which the signals are emitted. A proposal for amendment of this paragraph put forward by the Republic of Argentina (document UNESCO/WIPO/CONFESAT/27) was referred to the Drafting Committee and was later accepted in part. However, a proposal by the United Kingdom (document UNESCO/WIPO/CONFESAT/15) aimed at facilitating adherence by that country was withdrawn when certain technical difficulties with the proposal were pointed out.

126. The delegation of Australia had submitted a proposal (document UNESCO/WIPO/CONFESAT/29) for a new reservation based on the fact that Australian law protecting broadcasts provides that a repeat broadcast made more than fifty years after the original broadcast does not revive the term of protection. The delegate of Australia withdrew his proposal, explaining that, after discussions with other delegations, he was convinced that Article 1 would offer no impediment to adherence by his Government on the basis of its present law.

127. Paragraph (3) of Article 8 involves the difficult problem of reconciling the present Convention with the domestic law of a few countries, under which retransmissions of broadcasts to subscribers of wire and cable systems are considered to fall outside the control of copyright owners. It has been recognized that a provision allowing reservations on this point would be necessary

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to achieve widespread ratification of the Convention, but efforts have been made to narrow the scope of the reservation as much as possible. To this end, the delegation of the Federal Republic of Germany tabled a compromise proposal (document UNESCO/WIPO/CONFESAT/25) intended to be a substitute for the bracketed proviso in Article 11(3) of the Nairobi draft, under which a cable system would be prohibited from distributing signals picked up directly from a satellite, and not obtained from an intervening terrestrial distribution of the signals by wireless means. While sympathetic with the aims of this proposal, the delegations of some of the countries affected were uncertain whether, if the scope of the reservation were narrowed in this way, their Governments would be able to adhere to the Convention.

128. An informal working group met to seek a way out of this dilemma. As a result of its discussions, the Conference accepted a proposal involving the withdrawal of the proposal in document UNESCO/WIPO/CONFESAT/25 and deletion of the bracketed proviso, substitution of the date of signature of the Convention as the operative date for determining conditions justifying a reservation, and an interpretative statement in this Report. Changing the operative date narrows the possibilities for making a reservation; however, it was agreed in response to a point made by the delegations of the Netherlands and Canada that a retrospective declaration could be deposited under this paragraph after the country became bound by the Convention, if a later court decision interpreted a statute in force on 21 May 1974, as limiting or denying protection to distributions by cable or similar means.

129. The Conference agreed that, bearing in mind the provisions of the ITU Convention and the aims of the present treaty, a cable system should not, relying on a reservation under Article 8(3), pick up and distribute signals from a satellite before those signals have been terrestrially distributed in an area where the cable system can receive the terrestrial broadcast.

ARTICLE 9: APPLICATION OF THE CONVENTION

130. Article 8(1) of the Nairobi draft (now Article 9(1) of the Convention) presented the Conference with a choice as to the field of application of the treaty. Under one alternative, supported by the delegations of France and Mexico, among others, adherents would be required to be party to the Universal Copyright Convention or members of the Berne Union. In favour of this alternative it was argued that countries should be induced to belong to the international copyright community before enjoying the benefits of the new treaty. The second alternative, opening the Convention to members of the United Nations or certain other intergovernmental arrangements, was supported by Italy (document UNESCO/WIPO/CONFESAT/12) among many others. A proposal by the delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic (document UNESCO/WIPO/CONFESAT/8) proposed that only the first part

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of the article be retained and that both alternatives be deleted, leaving the Convention completely open. It was put forward by its sponsors with the support of other delegations, as a formula designed to foster the principle of universality, which was considered particularly relevant in a treaty involving global communications. A motion by the delegation of the Federal Republic of Germany to close the debate on this issue was carried, 32 to 6 with 4 abstentions, and the proposal in document UNESCO/WIPO/CONFESAT/8 was defeated 24 to 11 with 7 abstentions. Thereupon, the intermediate alternative was adopted without a vote.

131. The sponsors of document UNESCO/WIPO/CONFESAT/8 also proposed in the same document to delete paragraph (4) of Article 8 (now Article 9), arguing that, since the Nairobi draft leaves States free to choose the means of enforcing the Convention obligation, the provision is superfluous. This proposal received some support but also some strong opposition, and was defeated 21 to 12 with 10 abstentions. At the suggestion of the delegation of Israel, however, the Conference agreed that the provision does not necessarily imply that a country must pass new statutory legislation; as long as the obligations of Article 2 are met, the means chosen can be statutory or non-statutory.

ARTICLE 10: ENTRY INTO FORCE

132. Document UNESCO/WIPO/CONFESAT/8 submitted by the delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic also proposed to delete paragraph (3) of Article 9 (now Article 10), the so-called "territorial dependency" clause. In support of their proposal, the delegates of the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics stated that paragraph (3) of Article 9 (now Article 10) and paragraph (1) of Article 10 (now Article 11) were obsolete and in contradiction with the Declaration of the United Nations General Assembly on the granting of independence to colonial countries and peoples (resolution 1514 (XV) of 14 December 1960). This point of view was fully supported by several delegations, including that of Algeria; they urged that the historical evolution toward national independence would make it very difficult for many developing countries to place a treaty containing such a clause before their legislatures for ratification. The delegations of the United Kingdom and the Netherlands explained the practical difficulties that deletion of the clause, which appears in a great number of treaties, including treaties on intellectual property, would cause for them, and their viewpoint was supported by several delegations. However, it was apparent to the Chairman that the question was one of principle for a number of delegations, and that there was no possibility of the provision attaining a two-thirds vote in the plenary. At his suggestion, therefore, the two parts of the paragraph were deleted without a vote. The delegates of the United Kingdom and the Netherlands later made formal statements dissenting from this action. The delegate of the Netherlands stressed that for his Government there

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was no question of colonialism, obsolete or modern, and that the deletion of what should preferably have been called the "metropolitan" rather than the "colonial" clause would form a very serious obstacle for adherence to the Convention. At the final plenary session it was agreed for this Report to state that deletion of the clause did not mean that the Conference considered that a country having dependent territories should not be able to accede to the Convention in respect of its own territory; it was stated without dissent that, even without the clause, a country should be able to find the practical means necessary to deal with the problem of making the Convention applicable in dependent territories.

PROPOSALS RELATING TO PROGRAMME-CONTENT

133. As indicated above in paragraph 52, it is my purpose in this section of the Report to bring together in one place, and to summarize as briefly as possible the various discussions of the proposals contained in documents UNESCO/WIPO/CONFESAT/8, 23, 28, 31 and 32. All of these proposals bear in one way or another on the question of the content of television programmes transmitted internationally by satellite. For the sake of reference, and to make the discussion comprehensible, it is necessary to tabulate these documents, and their contents here:

<u>Document Number and date</u>	<u>Sponsors</u>	<u>Proposed Amendment</u>
CONFESAT/8	USSR, Ukrainian SSR, Byelorussian SSR	(1) New paragraph in Preamble: " <u>Admitting</u> the necessity for an international agreement on principles governing the use by States of artificial earth satellites for direct television broadcasting in accordance with Resolution 2916 (XXVII) of the United Nations General Assembly." (2) New article after Preamble: "Each Contracting State shall undertake to exclude from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred or otherwise aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions."

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<u>Document Number and date</u>	<u>Sponsors</u>	<u>Proposed Amendment</u>
		(3) New article after Preamble: "Each Contracting State shall undertake to broadcast via satellite to foreign States only with the express consent of the latter."
		(4) New article after Article 7: "Contracting States shall consider as unlawful and incurring international responsibility, any broadcasts which are especially intended for a foreign State but which are made without the express consent of that State, and also any broadcasts which contain material which should not be included in programmes under the terms of this Convention."
		(5) New article after Article 7: "Contracting States shall bear international responsibility for all national activities connected with the use of satellites for broadcasting, irrespective of whether such broadcasting is carried out by governmental agencies or by non-governmental organizations and juridical persons."
CONFSAT/23 May 10, 1974	Same as CONFSAT/8 plus German Democratic Republic, Czechoslovakia and Hungary	(6) New Article 3: (Essentially the same as item 2)
CONFSAT/28 May 14, 1974	Same as CONFSAT/23	(7) New Article 7 <u>bis</u> : (Same as item 5)

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<u>Document Number and date</u>	<u>Sponsors</u>	<u>Proposed Amendment</u>
CONFESAT/31 May 14, 1974	Same as CONFESAT/8	(8) New paragraph in Preamble: "Recognizing the obligation of States to exclude from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of national and racial hatred and aimed at interfering in the domestic affairs of other States." (Similar to item 2)
CONFESAT/32 May 14, 1974	Same as CONFESAT/8	(9) New paragraph in Preamble: "Recognizing the international responsibility of States for all national activity conn- ected with the use of sat- ellites for broadcasting." (Similar to item 5)

134. The first preliminary discussions of the subject in the Main Commission took place in the context of item 2 (later item 6) on the above list. The sponsors argued that the distinctions between programmes and signals (content and container) are artificial and illusory, as evidenced by the debates over the term of protection, and the importance of fixations in the treaty. It was urged that the existence of the 1967 Treaty on Outer Space does not pre-empt the field or remove the moral obligation of this Conference to deal with the matter. At the outset, four delegations spoke generally in favour of the proposal or the principle expressed in it, but one of them wished to make sure there was no conflict between it and the Conference's decision to exclude distribution of signals from direct broadcast satellites from the treaty's scope. Two delegations opposed consideration of these proposals on the ground that questions of programme-content are outside the scope and purpose of the treaty and beyond the mandate and competence of the Conference. Reference was made to the intervention of the Unesco representative, who had explained in detail the fundamental difference between this treaty and questions of programme-content now being studied actively by other international bodies. It was argued that, since the Conference had taken DBS signals out of the treaty, the proposals were irrelevant.

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135. The second discussion in the Main Commission, which was interrupted by a suspension, was also devoted to item 6 (earlier item 2) on the above table. There were a large number of interventions. The same arguments were made again by the proponents of the proposal and the delegations opposed to considering the proposal. The sponsors cited the exceptions in Article 4 as demonstrating that the treaty really deals with programme-content, and emphasized that their proposals were offered in the same spirit. These proposals, their sponsors emphasized, were aimed at settling the principles that should govern programme-carrying signals transmitted by satellite, and the workability of these principles could be tested in the context of point-to-point transmissions; in any case, the principles are equally applicable to DBS and point-to-point satellite transmissions. It was argued that these proposals are consistent with earlier treaties and standards of international law.

136. A number of delegations spoke against including the proposals in the Convention. Several of them took the view that the Conference lacked competence to deal with the matter. Others argued that, whether or not the Conference had technical competence, as a legal matter, it was inappropriate for it to do so, in view of the current activities of other international bodies in the field, the irrelevance of the subject matter now that DBS had been excluded from the treaty, and the lack of any real consideration on the question in the three years of preparatory work. It was also pointed out that the Nairobi draft deals only with signals, and is focused upon setting obligations for receiving States, not creating obligations for transmitting States. Some of the delegations expressed appreciation and understanding for the principle of the proposal, but said that they were unable or hesitant to see it included in the text, or even in the Preamble, of the Convention. Finding himself in this category, the delegate of Kenya proposed that the proposals be reflected in this Report. This proposal received support from several delegations, including that of Senegal whose preference, however, was to reflect the proposal in the Convention's Preamble or text.

137. As explained above, in paragraph 51, the Main Commission received procedural proposals from the delegations of Algeria and the United States of America which, although quite different, had certain common features. Essentially they both involved having the Conference adopt a document (possibly a resolution, recommendation or letter) which would be transmitted with documentation from the Conference to the officials of other bodies dealing with the subject matter. A working group was formed to make recommendations for a solution to the problem, and full-scale discussion of the other proposals was eventually postponed until the Group had completed its task.

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138. At the end of the discussion of Article 7, and before this postponement had been made, however, the proponents of document UNESCO/WIPO/CONFESAT/28, proposing a new Article 7bis (item 7, previously item 5 on the above list) had begun an introduction of their proposal. At the outset the delegate of the Union of Soviet Socialist Republics withdrew two of the proposals in document UNESCO/WIPO/CONFESAT/8 because they deal with DBS situations, about which there are differences as to coverage, on condition that they be mentioned in this Report. These are items 3 and 4 in the table above, where their texts are reproduced in full.

139. Speaking for the first time to the proposal for a new Article 7bis (items 5 and 7 on the above table), the delegates of the Union of Soviet Socialist Republics and the German Democratic Republic cited several multilateral agreements to support the proposal that individual States should assume responsibility for satellite emissions, and asserted that the principles of international law enunciated in these arrangements affect all satellite broadcasting, whether direct or point-to-point. They felt that the proposal therefore logically came within the scope of the Convention, which, they reiterated, deals with programmes as well as signals.

140. The Working Group produced a compromise proposal (document UNESCO/WIPO/CONFESAT/34), consisting of a draft letter. Before it was discussed, however, the Main Commission turned to a full-scale discussion of the proposal for a new Article 7bis (item 7, above) and for a corresponding paragraph in the Preamble (document UNESCO/WIPO/CONFESAT/32; item 9, above). At the outset of this debate, an effort was made to determine which of the nine proposals in the five documents were still before the Main Commission. In effect, the position appeared to be that, if the letter and procedure proposed by the Working Group were accepted, the sponsors would withdraw other corresponding amendments, except that for a new Article 7bis (item 7 on the above table). It was understood that, since they were addressed to the same point, the fate of the proposal in document UNESCO/WIPO/CONFESAT/32 (item 9 on the table) depended upon the Conference's decision with respect to the proposed Article 7bis.

141. The full-scale debate on the proposal in document UNESCO/WIPO/CONFESAT/28 (item 7 of the above table) began with the delegation of Czechoslovakia, which made the same points as the previous proponents. His views were supported in principle by the delegations of Algeria and Hungary, and were greeted sympathetically by Tunisia. Other delegations argued that the Outer Space Treaty was not intended to deal with the question of satellite broadcasting, which is now being considered by the Legal Subcommittee of the United Nations Outer Space Committee; others repeated the argument that the proposal was academic in light of the exclusion of DBS. The delegations of the Ivory Coast and Ghana asked for a clarification of the procedural situation. The delegation of the United Kingdom moved formally to close the debate and called for a vote. The vote was taken, and the proposal in document UNESCO/WIPO/CONFESAT/28 (together with the corresponding proposal in document UNESCO/WIPO/CONFESAT/32), was rejected, 24 to 9 with 9 abstentions.

Report of the General Rapporteur

142. Thereafter, the Main Commission considered the text of the letter prepared by the Working Group (document UNESCO/WIPO/CONFESAT/34) and adopted it subject to polishing by the Drafting Committee. The Drafting Committee's text (document UNESCO/WIPO/CONFESAT/34 Rev.) was then adopted by the Main Commission and in turn by the Plenary Assembly (document UNESCO/WIPO/CONFESAT/37). The text of this letter is appended to this Report as Annex B.

ARTICLE 11: DENUNCIATION

143. As a result of the decision taken by the Conference to delete paragraph (3) of Article 9 of the Nairobi draft (now Article 10 of the Convention), and in accordance with the proposal of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic (document UNESCO/WIPO/CONFESAT/8), the reference to the last clause of paragraph (1) was deleted.

ARTICLE 12: NOTIFICATIONS

144. This Article was reworded to conform more closely with the equivalent provision in the 1971 Phonograms Convention. The Conference agreed that, in addition to the original texts in English, French, Russian and Spanish, official texts should be established by the Directors-General of Unesco and WIPO, after consultation with the Governments concerned, in Arabic, Dutch, German, Italian and Portuguese.

FINAL ACT

145. It was decided that the Brussels Conference should produce a Final Act, which all participating States could sign as attesting to the facts of the Conference. A draft was prepared by the Secretariat and put forward to the Main Commission (document UNESCO/WIPO/CONFESAT/35) and, after some revisions, to the Plenary Assembly (document UNESCO/WIPO/CONFESAT/39). With certain further amendments it was adopted and signed by 39 States on 21 May 1974.

ADOPTION OF THIS REPORT

146. At the final plenary session of the Conference the draft text of this Report (document UNESCO/WIPO/CONFESAT/42 (prov.)) was considered and, with certain amendments, was adopted without dissent.

RESOLUTION

147. Upon a proposal presented by the delegation of France (document UNESCO/WIPO/CONFESAT/40), and following a large number of interventions expressing enthusiastic agreement, the Conference adopted a resolution (Annex C of this Report), thanking the Government of Belgium for its hospitality, and for its efforts that had ensured the success of the meeting.

Report of the General Rapporteur

ANNEX A

LIST OF PARTICIPANTS, OFFICERS AND SECRETARIAT OF THE CONFERENCE

(see pages 13 to 29)

Report of the General Rapporteur

ANNEX B

LETTER RELATING TO DOCUMENT UNESCO/WIPO/CONFSAT/23
AS ADOPTED BY THE CONFERENCE

Sir,

1. The International Conference of States on the distribution of programme-carrying signals transmitted by satellite has been seized with a proposal of the Byelorussian Soviet Socialist Republic, the Czechoslovak Socialist Republic, the German Democratic Republic, the Hungarian People's Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics to insert in the Convention a new article the text of which is as follows:

"Each Contracting State shall undertake to exclude in all cases from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred and aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions."

2. Although the issue mentioned in paragraph (1) was thought to be an important one by a significant number of delegations, the Conference considered that it was not within the scope of the Conference.

3. I am transmitting to you the attached report and the verbatim records of the Conference relating to this subject, in order that these documents may be sent to Member States as official documents of the United Nations Organization, and submitted to the Committee on the Peaceful Uses of Outer Space so that it may take them into account in its work.

Please accept, Sir, the assurances of my highest consideration.

The President of the Conference

Mr. Kurt Waldheim
Secretary-General
United Nations Organization

Report of the General Rapporteur

ANNEX C

RESOLUTION SUBMITTED BY THE DELEGATION OF FRANCE
AND ADOPTED BY THE CONFERENCE

The International Conference of States which met at Brussels from May 6 to May 21 1974, for the purpose of drawing up an international convention on the distribution of programme-carrying signals transmitted by satellite wishes, before concluding its work, to convey to the Belgian Government its immense gratitude and its most sincere thanks for the generous hospitality it has enjoyed as well as for the care taken both to provide for the organization and to ensure the success of the meeting.

VERBATIM RECORDS

In paragraphs 1 to 1249 of these Verbatim Records any references to the Draft Convention or to individual articles of the Draft Convention refer, unless otherwise indicated, to the Nairobi Draft Convention (see Annex A of document UNESCO/WIPO/CONFISAT/3). In paragraphs 1250 to 1462 they refer to the Draft Convention submitted to the Main Commission by the Drafting Committee (see document UNESCO/WIPO/CONFISAT/36); and from paragraph 1463 onwards, they refer to the Draft Convention submitted to the Plenary Meeting by the Main Commission (see document UNESCO/WIPO/CONFISAT/38). This text is almost identical to the Convention.

Opening Meeting¹

Monday, 6 May 1974 at 4 p.m.

1.1 THE MINISTER OF FRENCH CULTURE (Belgium) [F]²: The Belgian government is happy to welcome to Brussels the International Conference of States on the distribution of programme-carrying signals transmitted by satellite.

1.2 As the Minister of French Culture of this government, and in the name of the government, my colleague, the Minister of Netherlands Culture, and I greet Mr. René MAHEU, Director-General of Unesco and Mr. Arpad BOGSCH, Director General of WIPO; I am delighted that they are present for the opening of this Conference.

1.3 Belgium is happy to belong to both these institutions, with which it works in close collaboration and which, once again, have proven their expertise in the excellent, detailed preparation for this joint international meeting.

1.4 I extend a cordial welcome to the numerous delegations of States from all over the world, to the representatives of the specialized institutions of the United Nations and to those of the intergovernmental and international non-governmental organizations who have come here to lend their valuable co-operation and experience in a constructive spirit.

1.5 As is evident from the title of the Conference, the task before you is directly concerned with the spiritual, cultural and even material developments of peoples.

1.6 Thanks to the brilliant achievement of modern technology that has given us artificial satellites functioning in extra-terrestrial space, it is now possible for news and the most

-
1. Cf. document UNESCO/OMPI/CONFESAT/VR.1 (prov.).
 2. The name of each speaker is followed by a letter E (English), F (French), R (Russian) or S (Spanish), indicating the language in which the statement was made and in which it appeared in the provisional verbatim records.

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diverse happenings to be instantaneously communicated to the farthest corners of the earth. However, it soon became evident that the development of such activities was encountering serious obstacles, in particular that of ensuring the necessary respect of contractual obligations with respect to the contributors to the programmes transmitted via space. The result is that broadcasting by satellite cannot be carried out as widely as is possible and desirable until there are legal guarantees protecting it from illegal capture.

1.7 You therefore have before you a rather complex problem. On three occasions already, committees of governmental experts have tried to find a solution. Finally, the Third Committee opted for a simplified formula which, it stated, would be generally acceptable.

1.8 I believe, therefore, that your Conference opens under favourable auspices. However this may be, I trust that any difficulties that may still arise will be surmounted through the foresight and the goodwill of all of you.

1.9 What is at stake is indeed important: the successful conclusion of your task will substantially contribute to the rapprochement of nations.

1.10 I give the floor to Mr. René Maheu, Director-General of Unesco.

2.1 THE DIRECTOR-GENERAL OF THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (Unesco) [F]: It is a great honour for me, on behalf of the United Nations Educational, Scientific and Cultural Organization, to open the International Conference of States, convened jointly by Unesco and the World Intellectual Property Organization with a view to adopting a convention on the distribution of programme-carrying signals transmitted by satellite.

2.2 Allow me first of all to convey to the Belgian Government my warm gratitude for the generous hospitality it has extended to this Conference. No place could be more propitious for such a meeting than the Palais d'Egmont, which, in the course of its history, has opened its doors to so many eminent people.

2.3 I am sure that I am speaking for all of us in thanking H.E. Mrs. H. de Backer-Van Ocken, Minister of Netherlands Culture and Flemish Affairs and Mr. Jean-Pierre Grafé, the Minister of French Culture, who have kindly consented to honour this opening session with their presence, for the excellent working conditions with which we have been provided in Brussels.

2.4 I address my most cordial greetings to the governmental delegates and observers - diplomats, jurists, copyright specialists and experts in broadcasting matters - who are gathered here today.

2.5 I should also like to welcome the representatives of the other United Nations agencies and intergovernmental organizations

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which are closely associated with Unesco's work in connexion with space communication, where an integrated inter-agency approach is clearly needed.

2.6 I am likewise happy to see here observers from international non-governmental organizations which, from different points of view but with the same fervent interest, are concerned with the protection of television signals transmitted by satellite.

2.7 And finally, I take particular pleasure in greeting Mr. Arpad Bogsch, the Director General of the World Intellectual Property Organization (WIPO), which, as I have said, is jointly responsible with Unesco for convening this International Conference of States. Here I should like to make it clear that the Secretariat which is to serve the Conference is composed of specialists from the staffs of both our organizations.

2.8 The General Conference of Unesco, in adopting resolution 5.134 at its sixteenth session, in 1970, decided that the questions of intellectual property raised by space communication should be closely studied, and authorized me, for that purpose, to convene, jointly with the Director General of WIPO, a Committee of Governmental Experts to determine, among other things, whether or not the protection of television signals transmitted by communications satellites required the preparation of a new international instrument.

2.9 This Committee met in Lausanne from 21 to 30 April 1971. Without attempting to give a complete account of the preparatory work which resulted in the final version of the draft Convention you have before you, I would remind you that, after considering various possible ways of ensuring the protection of television signals transmitted by satellite, the Lausanne Committee, even though it had prepared a draft, noted that "the exchange of views which have taken place have not, in spite of their undeniable value, led to proposals which would enable a position to be adopted on the advisability of convening a diplomatic conference", and consequently expressed the wish that it might be "convened at least once more to attempt to achieve a greater degree of reconciliation between the positions both of governments and of the interested circles."

2.10 In response to the desire thus expressed, the Executive Board of Unesco by decision 4.5.1 adopted at its 88th session, authorized me, acting jointly with the Director General of WIPO, to convene a Second Committee of Governmental Experts.

2.11 This Committee, which met in Paris from 9 to 17 May 1972, made a number of amendments to the Lausanne draft. As, however, this Second Committee of Governmental Experts was no more successful than the first in achieving results which would make it possible for a diplomatic conference to be held, it adopted a resolution recommending that a Third Committee be convened. This the General Conference of Unesco, at its seventeenth session,

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authorized me to do, jointly with the Director General of WIPO, in 1973.

2.12 The General Conference further decided that, if this Third Committee so recommended, an intergovernmental conference should be convened in 1974 to draw up and adopt an appropriate international convention on the protection of television signals transmitted by satellite.

2.13 In pursuance of this resolution of the General Conference, and of decision 9.1.3 adopted by Unesco's Executive Board at its 91st session, the Third Committee met in Nairobi from 2 to 11 July 1973, at the kind invitation of the Government of Kenya. This Third Committee, as you know, radically changed the general trend of the draft drawn up by the two previous Committees, and its legal framework. Where before the draft Convention had been based on ideas familiar in the field of copyright and what are known as "neighbouring rights", the Nairobi text has the effect of transporting the proposed convention from the sphere of private international law to that of public international law, in that it recognizes no exclusive rights and specifies that the Contracting States will undertake to take all appropriate measures to prevent the distribution of signals by distributors for whom those signals are not intended and will be free to carry out the obligation thus imposed by the Convention in any way they see fit: by administrative measures, laws or regulations governing telecommunications, special penalties, etc. At the conclusion of its work, the Nairobi Committee considered that it had "entirely fulfilled its mandate by drawing up a draft Convention susceptible of general acceptance" and recommended that "a diplomatic conference for the purpose of concluding an international convention on this subject be convened in 1974".

2.14 Soon after, the Executive Board of Unesco, at its 93rd session, recalling the resolution adopted in this connexion by the General Conference at its seventeenth session and "taking note with gratitude of the invitation made by the Belgian Government to hold this Conference in Belgium", decided that it should be held at Brussels from 6 to 21 May 1974 and requested me to consult with the Director General of WIPO, in the light of the decisions taken on the subject by the competent bodies of the World Intellectual Property Organization, so that the arrangements for the organization of the Conference could be made in full co-operation and agreement with the Director General of WIPO. The fact that this Conference is now being held under the joint auspices of the two Organizations is evidence that the wish expressed by Unesco's Executive Board found an entirely favourable reflexion in the decisions taken by WIPO.

2.15 The Conference which opens today is of outstanding importance and significance when Unesco's constitutional responsibilities within the framework of the United Nations system are considered.

2.16 As is borne out by various resolutions adopted by the

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United Nations General Assembly, the United Nations is particularly desirous of defining principles, and taking or recommending measures, calculated to promote international co-operation in the use of space communications, so that such communications may serve the best interests of mankind and benefit all States, regardless of their stage of scientific or economic development.

2.17 The resolutions of the General Assembly and the reports of the Working Group on Direct Broadcast Satellites highlight some of the essential characteristics of the distribution of responsibilities between the United Nations itself and the Specialized Agencies which are associated with it. While the United Nations is concerned with general matters relating to satellites in so far as they concern the peaceful uses of outer space, and while the International Telecommunication Union has charge of technical matters involved in ensuring international co-ordination and the rational use of all forms of telecommunication, very broad responsibilities fall to Unesco with regard to space communication since, under the terms of its Constitution, the Organization is required "to promote the free flow of ideas by word and image" and to recommend to that end "such international agreements as may be necessary".

2.18 Accordingly, as early as its eleventh session, in 1960, the General Conference expressed the view "that the conquest of outer space must be put to peaceful ends and that it is already possible to discern how artificial satellites or machines positioned nearer to the earth could enable educational programmes covering vast areas to be disseminated" (resolution 1.1322).

2.19 In point of fact, on account both of the increased range and flexibility which they offer and of the new methods of remote teaching now being used, satellite communications appear likely to provide technical solutions to certain major problems encountered by developing countries in the field of education, whether these relate to the general provision of school education, mass literacy programmes, or life-long education for adults.

2.20 So far as science and technology are concerned, in the face of the growing volume and increasing specialization of documentation to which it is necessary to have full and speedy access, the many possibilities that satellites can offer for the dissemination of information will enable permanent or instantaneous long-distance communication to be established between universities or research centres situated in different regions. In this connexion, it may be well to remind you that, at its seventeenth session, the General Conference decided, by resolution 2.131, to launch a long-term international programme on transfer of scientific and technical information, to be known as UNISIST, the Steering Committee of which met for the first time in November 1973.

2.21 Finally, in regard to cultural exchanges, it is now possible by means of space communication to acquaint people throughout the world with the great works of the mind in such fields as music,

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drama, the visual arts and the dance, in which aesthetic communion, requiring the physical presence of listeners or spectators, has hitherto been limited to small audiences.

2.22 From the point of view of communication services, we can see how wide is the range of possible uses to which satellites can be put. Besides providing all the standard telecommunication services (telephone, telegraph, telex, facsimile reproduction, broadcasting, etc.), they can also make possible new ones, such as video-phonics, data-transmission and closed-circuit television.

2.23 But - and this is a point which cannot be overstressed - as the various uses of satellite communications multiply and become more clearly defined, responsibilities likewise need increasingly to be faced. At its sixteenth session, in 1970, the General Conference of Unesco, after recalling the great possibilities offered by space communication for contributing to education and national development, authorized me, inter alia, by its resolution 4.132, to prepare for its consideration at its next session "a draft declaration on guiding principles for the use of space communication for the free flow of information, the spread of education and greater cultural exchange". This Declaration was in fact prepared and approved by the General Conference at its seventeenth session, in 1972. I have, I think, a duty to remind you, in this connexion, that the Declaration, in its preamble, proclaims the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production. The same basic concern lies behind the convening of this Conference.

2.24 It is thus your responsibility to draw up such rules as will ensure that the unprecedented possibilities of dissemination offered by communication satellites will be used for the good of mankind as a whole. I know how complex and delicate this task is. But I also know how able and persistent you are and what a lofty sense you have of your responsibilities. You have my heartiest good wishes for the success of your important work.

3. THE MINISTER OF FRENCH CULTURE (Belgium) [F]: I now give the floor to the Director General of the World Intellectual Organization, Dr. Arpad Bogsch.

4.1 THE DIRECTOR GENERAL OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) [E]: In the name of the World Intellectual Property Organization, I should like to express thanks and appreciation for the assistance which the present diplomatic Conference is receiving from the Government of Belgium. This extremely pleasant conference room, in a historic building, in the midst of beautiful trees and a picturesque garden is certainly an excellent choice and a valuable contribution to the serenity which is indispensable for any multi-national negotiation to succeed.

4.2 I should like, Mr. Director-General Maheu, to thank you for

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the cordial words you addressed to WIPO, and to use this occasion to emphasize the importance I attach to the very close and friendly collaboration which exists between our Secretariats. Such a collaboration is desirable for many reasons among which, however, the most important is that the two Organizations, by a joint effort, are more likely to achieve good results, rapidly and at a lesser cost than if each of them had worked separately. We shall continue to do our best that the efficient and cordial relations that exist should continue.

4.3 May I close by expressing the hope that your discussions will be interesting and the outcome of the Conference satisfactory to all of you. Such a result is, I am sure, the ardent wish both of our hosts, the Belgian Government, and of the two Organizations which sponsor this diplomatic Conference.

5. THE MINISTER OF FRENCH CULTURE (Belgium) [F]: I believe you are going to hold your first meeting in a few moments. I wish you again an excellent stay in Brussels and a profitable meeting.

6. The meeting rose.

First plenary meeting¹

Monday, 6 May 1974, at 4.45 p.m. Chairman: Mr. René MAHEU (Director-General of Unesco)

Later: Mr. Gérard de SAN (Head of the delegation of Belgium)

7.1 THE DIRECTOR-GENERAL OF UNESCO [F]: The provisional agenda invites you to proceed today to the election of your Chairman. Are there any proposals?

7.2. The delegate of Tunisia.

8. Mr. SAID (Tunisia) [F]: It is not just to follow the tradition that the head of the delegation of the host country be proposed for the chairmanship, that the delegation of Tunisia proposes Mr. de San for this position, but by reason of his eminent qualities of courtesy and competence. Mr. de San, honorary Director-General of the National Ministry of Education of Belgium, is well known to the majority of us and we have had many opportunities to appreciate his constructive and conciliatory contributions at copyright conferences at which he has represented Belgium for a number of years.

9. THE DIRECTOR-GENERAL OF UNESCO: [F]: The delegate of Morocco.

10. Mr. CHAKROUN (Morocco) [F]: The delegation of Morocco is happy to second this proposal and to support all that the delegate

1. Cf. document UNESCO/OMPI/CONF/SAT/VR.2 (prov.).

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of Tunisia has just said.

11.1 THE DIRECTOR-GENERAL OF UNESCO [F]: Since this proposal has been put forward and seconded and there are no other proposals, may I ask you to vote in the usual manner in such cases, i.e. by acclamation.

11.2 I invite the head of the delegation of Belgium to take the chair. My congratulations.

12.1 THE CHAIRMAN [F]: I am fully aware of the honour that you have accorded me and through me my country in conferring on me the chairmanship of this diplomatic Conference, and I thank you sincerely.

12.2 I assure you that I am conscious of just how important it is that our discussions here meet with the satisfaction of all participants. I think, in fact, that the latter will consider favourably the draft Convention that was the result of an ingenious proposal presented at the Third Committee of Governmental Experts by the delegations of Morocco, Brazil, India and Mexico. That Committee welcomed this proposal all the more favourably because the first two Committees, and the third one as well, had encountered insurmountable difficulties which amounted to an impasse, while they continued to try and base the instrument on the principles of private law. We are therefore resolutely optimistic. I am firmly convinced that thanks to the excellent preparatory work that has already been done, and also to the desire of the Conference to conclude in a spirit of conciliation, it will accomplish a work which will be beneficial to mankind.

12.3 I think that we can consider to-day the composition of the Credentials Committee and I propose nominating the delegations of Canada, France, Ghana, Hungary, Japan, Mexico and Senegal.

12.4 Are there any observations? May I conclude that your silence is a sign of approval and consider these delegations unanimously elected? It is so decided and I thank you.

12.5 The Credentials Committee will meet tomorrow morning at 9.30 in the Blue Room which is located in this building.

12.6 The Plenary Meeting will then continue at 10.30 and at that time we shall proceed to the election of the other members of the Bureau: the Vice-Chairmen, the General Rapporteur, the Chairman of the Main Commission, and to the constitution of the Drafting Committee before proceeding to the adoption of the agenda.

12.7 I think that concludes the meeting for to-day.

13. The meeting rose.

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Second plenary meeting¹

Tuesday, 7 May 1974, at 10.45 a.m. Chairman: Mr. G. de San (Belgium)

14. THE CHAIRMAN [F]: We shall now ask the Chairman of the Credentials Committee to report on the work of that Committee which met this morning. The Chairman of the Committee is the head of the delegation of Senegal. He has the floor.

15.1 Mr. N'DIAYE (Senegal, Chairman of the Credentials Committee) [F]: The Credentials Committee, set up by the Conference on 6 May 1974, held a session at 9.30 a.m. this morning. The Committee consists of delegates from the following States: Canada, France, Ghana, Hungary, Japan, Mexico and Senegal. On the proposal of the delegation of France, the Committee unanimously elected as its Chairman, the head of the delegation of Senegal.

15.2 The Committee proceeded, in accordance with the provisions of Rules 3, 4 and 7 of the Provisional Rules of Procedure, to examine the credentials received by the Secretariat of the Conference. The Committee noted that the delegations of States listed below, which were invited to the Conference under Rule 1 of the Provisional Rules of Procedure, were, in accordance with Rule 3(1) and (2) of the said Rules, duly accredited to participate in the Conference and also had full powers to sign the Convention adopted by the Conference. These States are, in alphabetical order: Brazil, Cyprus, Israel, Ivory Coast, Kenya, Lebanon, Morocco, Senegal, Spain, Switzerland, United Arab Emirates, United States of America.

15.3 The Committee noted that the delegations of the following States, which were invited to the Conference under Rule 1 of the Provisional Rules of Procedure, were duly accredited, in accordance with Rule 3(1) of the said Rules, to participate in the Conference: Byelorussian Soviet Socialist Republic, Canada, Denmark, Finland, France, Federal Republic of Germany, Ghana, Hungary, Japan, Netherlands, Norway, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom.

15.4 The delegations of the States listed below submitted documents which do not conform with the conditions provided for in Rule 3(1) of the Rules: Algeria, Australia, Austria, Belgium, Cameroon (United Republic of), Czechoslovakia, Ecuador, Egypt, German Democratic Republic, Guatemala, Iran, Iraq, Italy, Luxembourg, Mexico, Monaco, Tunisia.

15.5 The Committee proposes that these documents be accepted as the provisional credentials of the delegations of these States, subject to their subsequent compliance with the provisions of Rule 4(2) of the Provisional Rules of Procedure, and that meanwhile, these delegations be admitted to participate in the work of the Conference and be seated provisionally with the same rights as the

1. Cf. document UNESCO/OMPI/CONFESAT/VR.3 (prov.).

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other delegations.

15.6 The Committee then examined the documents accrediting the observers of international organizations. I shall list them. First, the intergovernmental organizations: United Nations, International Labour Organisation, Organization of American States, Council of Europe, Organization of Arab States for Education, Culture and Science, International Telecommunications Satellite Organization.

15.7 Finally, the Committee examined the documents accrediting the observers of international non-governmental organizations invited to the Conference in conformity with Rule 2(c) of the Provisional Rules of Procedure: European Broadcasting Union, Inter-American Association of Broadcasters, International Confederation of Professional and Intellectual Workers, International Confederation of Societies of Authors and Composers, Internationale Gesellschaft für Urheberrecht, International Federation of Actors, International Federation of Musicians, International Federation of the Phonographic Industry, International Federation of Variety Artistes, International Film and Television Council, International Literary and Artistic Association, International Music Council, International Publishers Association, International Syndicate of Entertainment Trade Unions, International Theatre Institute, International Writers Guild, Union of National Radio and Television Organizations of Africa.

15.8 The Committee, having noted that some States invited to the Conference have not yet sent credentials accrediting a delegation, expressed the wish that such powers be submitted to the Secretariat as soon as possible.

15.9 During the discussions of the Credentials Committee the question was raised of whether a Final Act was to be established when the Conference had completed its work.

15.10 The delegation of Japan indicated that it was the custom in international conferences of States that a Final Act be submitted for signature, including as an annex a copy of the Convention adopted, and that the signature of the Final Act by the delegations taking part in the Conference legally had the effect of explicitly finalizing the text of the Convention.

15.11 The Secretariat, referring to certain precedents, observed that the question of whether a Final Act should be established at the close of the deliberations of the Conference and what should be its content, was within the competence of the Conference itself and that, in the affirmative, it was a matter for the delegations present at the Conference to decide whether they were empowered to sign such an Act.

15.12 Since we received the credentials of the German Democratic Republic after the meeting, we have not yet had the time to have this document translated. We shall examine it at the next meeting of the Committee.

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16.1 THE CHAIRMAN [F]: Does the meeting have any observations on this report? In particular I should like to know whether there is agreement to authorizing those delegations whose credentials do not yet comply with the Rules of Procedure to take part in our debates with the same rights as the other delegations. I presume that this is agreed unanimously. I should like to stress the importance of depositing credentials and I should like to insist that the delegations ensure that credentials arrive on time and that they are handed to the Secretariat.

16.2 I give the floor to the delegate of Romania.

17. Mr. SOARE (Romania) [F]: I note that my country has been omitted. I should like to state that Romania is taking part in this Conference as an observer without voting rights.

18. The CHAIRMAN [F]: I give the floor to the Chairman of the Credentials Committee.

19. Mr. N'DIAYE (Senegal, Chairman of the Credentials Committee) [F]: I must apologize to the delegation of Romania. The delegations of Romania, Poland and Bulgaria have indeed been registered as observers. I omitted this from my report; we have received registration forms indicating that they are taking part as observers.

20.1 The CHAIRMAN [F]: Does any other delegation wish to take the floor? I think we can conclude that everyone is in agreement. We can therefore continue with our work.

20.2 Before proceeding to the next point I should like to ask your permission to hold an unofficial meeting of the heads of delegations so that proposals for the composition of the Bureau can be made in the most favourable conditions possible.

21. The meeting rose.

Third plenary meeting¹

Tuesday, 7 May 1974, at 12.20 p.m. Chairman: Mr. G. de San
(Belgium)

22.1 The CHAIRMAN [F]: I regret the rather extended break in the Conference but the discussion was a very thorough one and we have reached an agreement on some proposals of which you will be informed.

1. Cf. document UNESCO/OMPI/CONFSAT/VR.4 (prov.).

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22.2 We should now proceed to an examination of the draft Rules of Procedure. With regard to this text, the meeting of the heads of delegations which has just taken place proposes that in Rule 5 of the Rules of Procedure the number of Vice-Chairmen of the Conference should be five and that there should be one General Rapporteur for the Conference and for the Main Commission. It proposes that the Main Commission have two Vice-Chairmen and that the Drafting Committee should consist of eight members. Is there agreement on the number of Vice-Chairmen and the members of the Drafting Committee? I shall ask you first to discuss the Rules of Procedure that you have before you in document UNESCO/WIPO/CONF/SAT/2. I shall take them rule by rule.

22.3 Rule 1 which concerns the composition of the Conference. Are there any objections to this provision?

22.4 Rule 1 is adopted.

22.5 Rule 2 concerning observers and representatives. No objection?

22.6 Rule 2 is adopted.

22.7 Rule 3 - presentation of credentials. No objection?

22.8 Rule 3 is adopted.

22.9 Rule 4 - provisional admission. No objections?

22.10 Rule 4 is adopted.

22.11 Rule 5 - does the Conference agree to accept five Vice-Chairmen?

22.12 Rule 5 is adopted.

22.13 Rule 6 which concerns subsidiary bodies. No objection?

22.14 Rule 6 is adopted.

22.15 Rule 7 - Credentials Committee.

22.16 Rule 7 is adopted.

22.17 Rule 8 - Main Commission. Is there agreement on two Vice-Chairmen?

22.18 I give the floor to the delegate of the United States of America.

23. Mr. WINTER (United States of America) [E]: I think this is merely drafting at this point. Since the proposal was made

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that there be one General Rapporteur for the Conference, in Rule 8 I believe you should omit the reference to the Rapporteur.

24.1 The CHAIRMAN [F]: I think this is a pertinent point and it seems to me that it is shared by the meeting.

24.2 I give the floor to the delegate of Tunisia.

25. Mr. SAID (Tunisia) [F]: It would indeed be appropriate to delete the last three words of Rule 8 but if we delete them there will be a contradiction with paragraph 2 of Rule 6. I think it would be preferable to leave these words but the Rapporteur will be the same person: we shall elect the same Rapporteur for the Plenary Meetings and for the Main Commission and thus we shall not have to change both Rule 6 and Rule 8.

26.1 The CHAIRMAN [F]: I therefore ask the Secretariat to draft the text accordingly. Everyone is in agreement?

26.2 Rule 9 concerning the Bureau. No objection?

26.3 Rule 9 is adopted.

26.4 Rule 10 - the Drafting Committee should consist of eight members.

26.5 Rule 10 is adopted.

26.6 Rule 11 - Duties of the Chairman.

26.7 Rule 11 is adopted.

26.8 Rule 12 is adopted.

26.9 Rule 13 is adopted.

26.10 Rule 14 is adopted

26.11 Rule 15 is adopted.

26.12 Rule 16 is adopted.

26.13 In fact these are, on the whole, clauses that are usually found in drafts of this type.

26.14 Rule 17 is adopted.

26.15 Rule 18 is adopted.

26.16 Rule 19 is adopted.

26.17 Rule 20 is adopted.

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26.18 Rule 21 is adopted.

26.19 Rule 22 is adopted.

26.20 Rule 23 is adopted.

26.21 Rule 24 is adopted.

26.22 Rule 25 is adopted.

26.23 Rule 26 is adopted.

26.24 Rule 27 is adopted.

26.25 Rule 28 is adopted.

26.26 Rule 29 is adopted.

26.27 Rule 30 is adopted.

26.28 Rule 31 is adopted.

26.29 Rule 32 is adopted.

26.30 Is this unanimous? Thank you.

26.31 I shall now inform you of the proposals made by the meeting of heads of delegations which has just been held. This meeting proposed as Vice-Chairmen of the Conference the heads of the delegations of Hungary, Lebanon, Mexico, Morocco, and the United Kingdom. Is this proposal adopted? Thank you.

26.32 For the Main Commission the Chairman proposed is the head of the delegation of Brazil, Mr. da Costa, and as Vice-Chairmen, the delegates of Japan and Sweden.

26.33 The General Rapporteur, the only one, will be the representative of the United States of America.

26.34 As for the Drafting Committee, the chair will be entrusted to the delegate of the Federal Republic of Germany; the Vice-Chairmanship to the delegate of the Union of Soviet Socialist Republics and the other members will be the delegates of Canada, Czechoslovakia, France, Ivory Coast, Kenya and Spain.

26.35 I give the floor to the delegate of Cyprus.

27. Mr. PHANOS (Cyprus) ^[E]: There is a point of order here. I am afraid that under the Rules of Procedure which have already been approved by the Conference, the Drafting Committee shall elect its own Chairman and Vice-Chairman. I would like to explain that my delegation fully supports the election of the delegates of the Federal Republic of Germany and the Union of Soviet Socialist Republics as Chairman and Vice-Chairman, respectively, of this

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Committee, but I am afraid that this decision has to be taken by the Committee and not by the Conference. It will, of course, be a formal decision because everybody is in agreement.

28.1 The CHAIRMAN [F]: Agreed. It is understood that this point is not to be decided by this meeting. The various bodies should elect their respective Chairmen and Vice-Chairmen.

28.2 I therefore consider that the list of members of the Drafting Committee is adopted.

28.3 The meeting is therefore adjourned and will begin again at 3 p.m.

29. The meeting rose.

Fourth plenary meeting¹

Tuesday, 7 May 1974, at 3.05 p.m. Chairman: Mr. G. de SAN (Belgium)

30.1 The CHAIRMAN [F]: We shall first proceed to the adoption of the Agenda. Are there any objections or comments with regard to the text which is to be found in document UNESCO/WIPO/CONF/SAT/1? I therefore consider that this Agenda is approved.

30.2 I propose that we proceed to the general discussion of the draft Convention. I give the floor to the delegate of the Netherlands.

31.1 Mr. VERHOEVE (Netherlands) [F]: My intervention will be brief so as not to prolong our debates. The position of the Government of the Netherlands remains fundamentally unchanged. Since the First Committee of Experts which met at Lausanne, we have stated, after some hesitation, it is true, that we were ready to co-operate with those who consider that a new instrument for the protection of broadcasts against unauthorized distribution should be drawn up. Piracy has already begun in this field and it will continue to increase as technology progresses. The question is how are we to organize protection against this piracy.

31.2 At first, our experts indicated their preference for control within the framework of the Rome Convention on neighbouring rights, in spite of the fact that we have not yet acceded to this Convention. However, the argument that this Convention has had few ratifications in the twelve years of its existence, that it is out of date and

1. Cf. document UNESCO/OMPI/CONF/SAT/VR.5 (prov.).

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that its scope is too limited to exert sufficient control in this field, has convinced our Government that we should not proceed in this direction. To protect the broadcasting organizations from piracy, a more efficient means is required, for the interest that broadcasting has in such protection has always seemed evident to us. It is above all the broadcasting organizations who would suffer from piracy for they would not be reimbursed the costs of broadcasts which are often expensive and which, in many cases, require a great deal of effort on the part of the collaborators. But the broadcasting organizations are not alone in suffering from piracy. It is also prejudicial to authors and performers. During the three successive expert committees, the representatives of our country have always come to the defence of these interests. Thus, since 1971, our experts have been sympathetic to the efforts to introduce into this new instrument - in parallel with the right of authorization to broadcast - the right of authorization for authors and of information for performers.

31.3 The balance between the various interests involved thus seems to us to be guaranteed. As we all know, at Nairobi the right of authorization disappeared from the text of the draft Convention. The new philosophy inspired by the Moroccan proposal was, for us, as it was for many other delegations of the countries represented here, a great surprise. On reflexion and after hearing divergent opinions, we are not, however, unhappy with this solution for several reasons. First, although it was not accepted unanimously, it was received favourably by the great majority of States, which would guarantee a large number of ratifications. Secondly, the new instrument has remained a simple instrument as desired from the beginning. The text has not been complicated by any new provision from a different field, i.e., that of the international copyright and neighbouring rights conventions, a provision that was much debated and which could have led to the failure of any attempt to arrive at a text acceptable to a large number of States. If the international conventions existing in this field contain certain gaps in the protection they afford - which in our opinion is not absolutely certain - it is these conventions that should be completed and brought up to date. Above all, the fact that this protection has been moved to the field of international public law and that States have great freedom in choosing the most appropriate means of guaranteeing this protection, seems to us to be the main advantage of the new instrument. Thus, its flexibility, in our opinion, means that it is a very appropriate instrument that will keep pace on the legal plane with the very rapid and doubtless spectacular technical progress of satellites. With regard to the position of authors and performers in the field of satellite broadcasts, our delegation remains faithful to the position it took during the meetings of the Committees of experts. It is sympathetic to any attempt to clarify this position, to strengthen it if necessary, without wishing to compromise in any way the support for it that is already evident internationally.

32. The CHAIRMAN [F]: I give the floor to the delegate of Senegal.

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33.1 Mr. N'DIAYE (Senegal) [F]: The delegation of Senegal would like to state, very rapidly and in general terms, its point of view on the subject which concerns us to-day. It wishes to affirm once more its support for the Moroccan proposal, which permitted the Third Committee to avoid reporting negatively. And it is because this proposal is the only one that is acceptable to the majority of delegations, that the draft before us has met with approval because it does not upset the desired balance.

33.2 But also, a contrario, the delegation of Senegal will adopt an appropriate position if, on any pretext whatsoever, there is any attempt to upset this balance that has been achieved with so much difficulty. What does it in fact consist of? The need to facilitate the circulation and dissemination of educational, cultural and artistic programmes on the one hand, and the need to protect the various holders of rights on the other, led Unesco and WIPO - as the Director-General of Unesco recalled yesterday - to turn their attention to this problem because they considered that this could accelerate the educational process thanks to the progress in telecommunications. And this resulted in the series of Committees of Experts. We should not forget their mandate: the study of problems in the field of copyright and of the protection of performers, producers of phonograms and broadcasting organizations raised by transmission via space satellites. This assumed, therefore, that we were not dealing with the signals but with the programmes carried by these signals. We are familiar with what followed. I will not speak here of the difficulties encountered and the life line extended to us by the delegation of Morocco. Does this proposal provide an answer to the preoccupations of Unesco and WIPO that we have just mentioned? It is true that a jurist interested in exegesis would find a great deal to say. He might even be tempted to reply in the negative; but if we are capable of being realistic we can reply only in the affirmative. I mean 'realistic' for the Convention before us will not have the desired balance: its objective is no longer the programmes carried by the signals, which has perhaps shocked jurists, but the signals themselves. Thus, no category of contributor to the programmes shall be treated more favourably than any other category. I am thinking, therefore, of the reference that certain delegations wished to make to the Rome Convention. Senegal does not belong to the Rome Convention but has nothing against it - perhaps one day we will accede to this Convention - but if we have arrived at a consensus, we have done so with due deliberation. The experts set aside the problem of programme contributors and in the end dealt only with the signals - and if we wish to maintain this balance, we should no longer lose ourselves in these considerations which, for three years, kept us from finding a solution.

33.3 I shall conclude by affirming once again the strong determination of my delegation to support the Moroccan proposal, i.e. the draft Convention before us, because we consider that it is the only one that can break the impasse.

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34. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

35.1 Mr. WINTER (United States of America) [E]: The United States Government is most pleased to participate in this very important international Conference which is being held in Brussels by the kind invitation of the Belgian Government. As we all know, the purpose of this Conference is to adopt a Convention relating to the distribution of programme-carrying signals transmitted by satellite.

35.2 Communications satellites are extraordinary instrumentalities, presenting the peoples of the world unique opportunities for cultural enrichment and greater understanding among each other. Improved communication and exposure to other countries must, we believe, advance us closer to the goal of harmonious relations among all inhabitants of this planet. The United States salutes this development and encourages the greatest possible use of the potential of communications satellites.

35.3 At the same time, we recognize that the advent of satellite communications has substantially increased the geographic area of coverage for television broadcasts. This has raised important problems, not only for broadcasters but also for everyone who contributes to the programmes carried by satellites.

35.4 In the first instance, I think most people will recognize the simple justice of preventing the improper use of programme-carrying signals. Broadcasters are entitled to some type of legal protection against having their signals picked up and transmitted by distributors who were not intended to receive them. Since there is broad recognition of the reasonableness of this view, adoption of an international agreement on this subject certainly appears to be justified.

35.5 In the United States, as elsewhere, television broadcasts are made on the basis of contractual agreements obligating broadcasters to pay for the broadcasting of a programme in specified geographical areas. Payment is directly related to the size of the broadcast area. Accordingly, if it is not possible to control the distribution of programme-carrying signals, programme owners, performers, and broadcasters have no basis for agreement on the appropriate payment for broadcast of a programme carried by satellite. The programme may not be carried at all in certain areas of the world under these circumstances. If the programme is carried by satellite, it probably will be done so only on payment of a fee covering the widest possible area reached by the satellite signal. This results in increased costs for programmes transmitted by satellite and undermines the enormous potential of satellites as a cheaper, more effective means of communication.

35.6 Although this problem has not had widespread impact so far, it is certain to do so in the future. My delegation fully supports the creation of a convention to protect against unauthorized

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distribution of programme-carrying satellite signals before the problem grows and it becomes difficult to institute controls. Moreover, in a period of rapid change, the problem may soon reach serious proportions. It is in the interest of all Governments - developing as well as developed - to resolve this problem before it becomes more serious.

35.7 The proposal for an international agreement to deal with poaching of television signals transmitted by satellites originated with broadcasters, but, throughout the preparatory work of the three Committees of Governmental Experts, careful consideration was given to the concerns of authors, performers, and programme producers. The United States takes this opportunity to express its admiration for, and appreciation of, the efforts of the preparatory committees at Lausanne, Paris, and Nairobi which succeeded in the development of a viable draft Convention. The compromise reached by the Nairobi Committee that many speakers have referred to here and at other meetings accommodates the interests of all creative groups involved in the production and transmission of programmes by satellites since the precise method of implementing the obligations of the Convention will be left to decision by each Contracting State. We support this compromise in principle, and we hope that the spirit of goodwill in which it was achieved will be maintained throughout this Conference.

35.8 Under the proposed Convention as it is now drafted, a Contracting State would have complete flexibility in implementing the Convention. As long as distribution of signals by an unintended distributor is effectively prevented, a government may accomplish this result by any of several legal means, including not only statutory methods such as copyright or penal sanctions, but also administrative measures or telecommunications regulations. As was stated clearly at Nairobi, the treaty presupposes that broadcasting organizations will be given a power of decision over the terrestrial distribution of the signals they send to satellites, but this is done in a framework of public law rather than private rights. Since broadcasters are not given protection as a matter of private rights, there is no longer a need in the Convention to counterbalance their rights against those of authors, copyright owners, performers, and other contributors whose interests are equally involved. Poaching of programme-carrying signals would effectively be prevented, but contributors to programmes would remain free to negotiate in their contracts with broadcasting organizations the destination of the signals carrying their contributions.

35.9 It is the firm belief of the United States Government that this Conference will be rated as one of the landmarks in the history of intellectual property. In a sense there is a historical precedent for it for you may recall that about a quarter of a century ago - in 1948 to be exact - a revision conference of the Berne Copyright Convention was held here in Brussels, which was another landmark in the history of intellectual property. As a footnote to history, it is interesting to note that a member of the Hungarian delegation at the Brussels Conference in 1948 was a

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young lawyer by the name of Dr. Arpad Bogsch, who is attending the Brussels Conference of 1974 in a different capacity.

35.10 In conclusion, my Government sincerely believes in the goals of this proposed Convention and agrees with its general approach toward achieving them. We look forward to working actively in co-operation with the many other distinguished delegations represented here in the creation of an instrument that will deal effectively and fairly with problems concerning the distribution of programme-carrying signals transmitted by satellite. We are confident that such an instrument will be widely accepted throughout the world.

36. The CHAIRMAN [F]: I now give the floor to the delegate of the United Kingdom.

37.1 Mr. DAVIS (United Kingdom) [E]: I think that most of the distinguished delegates present will know that the United Kingdom is a member of the Rome Convention. For us, therefore, the problem becomes one not simply of the protection of satellite broadcasts but also the preservation of the rights and obligations which we have already incurred on behalf of certain interests under the Rome Convention. We are willing to go forward with the one if we are confident that the position of the other is preserved. It is, therefore, impossible for me to consider the satellite Convention as if it existed in a vacuum. I have to consider it in relation to the Rome Convention and with your permission, Mr. Chairman, I would like to go back a little to recapitulate some of the events of the past month or two for the benefit of those members here present who are not members of the Rome Intergovernmental Committee because I think that what happened is relevant.

37.2 Last December the Intergovernmental Committee of the Rome Convention agreed that the non-governmental organizations involved in the preparation of a draft model law for the countries wishing to accede to Rome should try once again to reach agreement on this draft. It was stated by the broadcasting interests that should agreement be possible they might be able to withdraw their opposition to the Rome Convention. Now on the face of it there is no obvious reason why agreement on a draft model law should fundamentally change the policy of one of the interests of the Rome Convention - the thing sounds absurd. But what lay behind their offer was the fact that various aspects of the Rome Convention are unpalatable to broadcasters; they might be able to accept the Rome Convention as a package if the draft model law so interpreted the Convention as to make those aspects more acceptable. I cannot pretend that I think this is strictly right. Treaties in my view should be revised and clarified at diplomatic conferences. But the members of the Intergovernmental Committee knew only too well of the slow progress of Rome and were prepared to accept this view.

37.3 The question of the satellite Convention as such was not discussed, although obviously it was mentioned, and yet behind the

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effort to reach agreement was the inter-relation between the Rome Convention and the satellite Convention. The United Kingdom, in common with all but one of the member countries of Rome, all those who declared themselves, I think, adheres firmly to the view that satellite broadcasts come within the scope of the Rome Convention and therefore, this is the proper instrument to which countries should look for their protection. However, the Rome Convention has comparatively few members and, therefore, necessarily offers only limited protection to satellite broadcasts. Now, what are the reasons for this?

37.4 It has been argued that the Rome Convention is a complex instrument that requires correspondingly complex legislation from countries wishing to accede. But I do not believe that this is the real trouble. I would like to read to you from document ILO/UNESCO/WIPO/MLRC/9. I think few persons here present will have it before them but it is the Report of the meeting of non-governmental organizations discussing the draft model law in Geneva last September. I read from the Secretariat Report:

37.5 "The representative of the European Broadcasting Union (EBU) admitted that there had been organized opposition by broadcasters in the past to further ratification of the Rome Convention. At the World Conference of Broadcasting Organizations 18 months ago, a recommendation to all broadcasting organizations had been adopted urging them to oppose ratification unless the proposed national law presented a real interest to them. This opposition had been extremely effective: in 12 years only 14 out of the 135 to 140 States had ratified the Convention."

37.6 We see from this that the broadcasting interests have pursued a longstanding, and I think it fair to say, unrelenting campaign against Rome. And, we believe, indeed, with the broadcasters that this campaign has been to a large extent successful, indeed the document rather boasts of it. The reasons for this are to be found in statements by the broadcasting interests themselves. The Rome Convention, they say, gives them nothing. It does not protect cable television broadcasts and it does not protect satellite broadcasts. Since it gives them nothing while at the same time laying obligations upon them they felt entitled to resist its extension. The United Kingdom feels that this would be an understandable attitude if the obligations that it lays on them were in any way unreasonable or unfair. It is the belief of the United Kingdom delegation that they are not. We believe that the truth is that as far as conventional broadcasts go, broadcasters are confident of their inter-union arrangements and they have felt that they do not need to rely on governments to prevent piracy of these broadcasts.

37.7 But the position of broadcasters is not one to be considered in isolation. It is to be considered, so the United Kingdom believes, with that of the other beneficiaries of the Rome Convention. By impeding the progress of the Rome Convention the broadcasting interests have cut those other beneficiaries off not only

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from those rights conferred by the Convention which are directly related to broadcasting but also from those rights which in no way bear on broadcasting. However, the situation now has changed. Satellite broadcasting is becoming common-place and it appears that those interests are by no means as confident as they were, of their ability to control piracy, and so the support of the government representatives here present is solicited for the satellite convention.

37.8 But this is not done by an approach which says straightforwardly "we are in trouble, satellites need protection". It is done on the basis of seeking a reinterpretation of Rome, and by an indication that reinterpretation in a way that suits them is a precondition of their altering their attitude to the Rome Convention.

37.9 Now I would like to summarize what happened in the Intergovernmental Committee yesterday. The meeting as a whole will not know the details of what passed there but it goes as follows:

The Intergovernmental Committee has agreed on a text and commentary for the draft model law. The performers and phonogram producers have accepted both. The European Broadcasting Union representatives have indicated that they will seek acceptance by their administrative council when it meets amazingly on 24 May, after this Conference ends. The situation, therefore, is that the Intergovernmental Committee of the Rome Convention is to be put to the test by broadcasters. They will see if they like our draft. If so, they will withdraw their opposition to Rome. I cannot say that I regard this as at all proper. I have indicated that we regard the past attitude of the broadcasters to Rome as unreasonable and I am bound to say that to persist in it, unless we effectively modify the meaning of the Convention in their favour, does not argue the desperate nature of the need for protection of satellite broadcasts. Were the need so desperate I cannot help thinking that the question of a draft model law would not loom so terribly large. I would like also to refer to the question of Article 12. As everyone here will know, Article 12 of the Rome Convention is an optional article. One takes it or one does not, as one feels inclined. But the broadcasting interests are not content that each country should consider this matter for itself. Presumably we are to understand that their indication that they will continue their opposition to Article 12 means that a campaign of the sort which has gone on against Rome since its inception will continue against Article 12. Without regard to the merits of Article 12 or its provisions, the United Kingdom delegation regards this as totally wrong. It is reasonable that any country should consider its own circumstances in relation to Article 12 as should the broadcasting interests in that country. It is not reasonable for international associations of broadcasters to seek to prevent acceptance of a particular article, whatever the situation in the country under discussion.

37.10 I come now to the meeting of the administrative council of the European Broadcasting Union on 24 May: again, there is no great sense of urgency here. One might have thought that this Council

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would have met and would have presented us with a statement of their position. On the contrary, they leave it with us; we have to prove it to them. We have to prove to the EBU that we have done right by them before they will move. The United Kingdom considers the situation to be the reverse. Given the alleged serious situation in regard to satellite piracy which now exists, it appears that the broadcasters are still willing to seek to extract a little more from their own countries - in my view a much-damaged group of persons.

37.11 Now the broadcasters have said that Rome gives them nothing. The situation therefore is that if the Satellite Convention is created, comes into force, is effective, they are perfectly free to maintain their opposition to the Rome Convention and the position of the Rome Convention is prejudiced indefinitely. Now I am well aware, of course, that the United Kingdom could sign this Convention and could stop ratification if the broadcasting interests failed to implement those undertakings that we hope they will make to us on 24 May. But this is not the United Kingdom way. If we sign a Convention, it is because we expect to ratify it. We feel that it may be no more than a gesture, but we would wish to see actions before we accede.

37.12 Therefore, the United Kingdom delegation comes to this Conference with no powers to sign. As to the merits of the Convention, as has been said by my colleagues in Nairobi and Paris, we have the gravest doubts as to its possible effectiveness. We have repeatedly made the point that broadcasters are government-controlled and piracy must take place at least with the acquiescence of those governments. We have never heard this point convincingly answered. Nevertheless, there may well be more to this than we know and so, the United Kingdom policy is not to obstruct this Convention - we are willing to co-operate in the creation of this instrument. We are willing to see it prepared for all to sign. But our own attitude is that until we see actions, we are not ourselves willing to accede to it.

38. The CHAIRMAN [F]: The floor is now given to the delegate of the Union of Soviet Socialist Republics.

39.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: As you know, this is the first time that a Soviet delegation is participating officially in the work of the Conference and I would therefore like to state our position in somewhat more detail than my colleagues who spoke before me.

39.2 This highly representative Conference has been convened and is carrying out its work in a new political atmosphere. The collective efforts of States and their Governments have brought about an improvement in the international climate. I think there is every reason to say that the trend towards detente is the dominant feature of the present-day evolution of the world situation. As we know, the second stage of the Conference on

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European Security and Co-operation was renewed in Geneva on 22 April. We are also aware that the Warsaw Pact Political Consultative Committee has recently appealed to statesmen and politicians urging them to concentrate their efforts so as to ensure the success of the European Conference, to further promote and consolidate the process of detente in Europe. We may well state that it is for the first time in the history of Europe that such an attempt has been made to solve a whole series of crucial political, economic and cultural issues on the positive basis of peaceful coexistence. Certain positive steps have been taken to bring into line the participants' positions on specific issues; notably a text was passed with a view to facilitating profound mutual understanding and appreciation of different cultural values between peoples, and an agreement was reached on the wording of provisions for the mutually acceptable circulation of audio and printed information. The texts adopted by the Sub-committee on Communication need no comment. All this allows us to state that co-operation in the field of the humanities based on the principles of non-interference in the internal affairs of States and respect for their laws and customs is being successfully developed.

39.3 I would like to stress once again that the Conference on European Security and Co-operation has achieved some success. But, naturally, considerable efforts are still needed to consolidate what has been achieved and to establish reliable guarantees of its irreversibility.

39.4 The Soviet Union is firmly and consistently implementing its foreign policy, the essence of which is set out in the Peace Programme adopted at the most recent Congress of our Party. The USSR continues to be in favour of the promotion of co-operation in all fields among all countries.

39.5 In this connexion allow me to recall the words of the Secretary-General of our Party, Leonid Brezhnev, on the occasion of the 50th Anniversary of the Soviet State. He emphasized that the Soviet Union stood for the exchange of ideas, the promotion of communication and contacts among peoples provided that, I quote, "such co-operation is based on respect for sovereignty, laws and customs; it would promote the mutual spiritual enrichment of peoples, the growth of mutual trust between them and consolidation of the ideals of peace and good neighbourly relations."

39.6 The draft Convention relating to the distribution of programme-carrying signals transmitted by satellite submitted to this Conference for consideration might, in our opinion, be considerably enriched if it were to include certain provisions for the peaceful use of satellites and guarantees against interference in the internal affairs of other States. I have already mentioned that the Soviet Union was represented on the Committees of Governmental Experts by observers only. In our opinion the Committees have performed a great deal of work and have undoubtedly made progress in solving the problems before them. However, the proposed draft Convention provides a solution for only some

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satellite broadcasting issues in a situation where the basic legal problems of controlling the activities of States in the field of satellite-based communications, notably direct broadcast satellites, have not been solved.

39.7 I would like to remind you that the Government of the USSR addressed to the Secretary-General of the United Nations, a request to include in the agenda of the XXVIIth Session of the U.N. General Assembly under a separate heading, the "Preparation of an international instrument on the principles of the use of artificial earth satellites by States for direct television broadcasting" and submitted a draft of the relevant Convention. In his letter of 8 August 1972 to the UN Secretary-General, the USSR Minister of Foreign Affairs noted that the development of direct television broadcasting would serve the cause of bringing the peoples of the world closer together, would promote the exchange of cultural values and provide better education to the peoples of various countries. It was also emphasized that this gave rise to important issues involving the necessity of ensuring provisions under which television broadcasting would serve exclusively the noble causes of peace and friendship among peoples and that the most urgent priority was to safeguard the sovereignty of States against any outside interference and not to allow direct television broadcasting to become a source of international conflict and aggravation of interstate relations.

39.8 The delegations present at this Conference are aware that this Soviet proposal was given an important place in the work of the UN Committee on Outer Space and the working group established by it.

39.9 By virtue of its visual effect, television is distinct from other mass media in the very special power of its impact on the human mind and feelings. It can easily reach any point on earth. These circumstances require recognition by States of an obligation to conduct satellite broadcasting intended for the population of other States only with the explicit consent of the governments concerned. It is evident that such consent should be expressed by means of a formal agreement. Any agreement of this kind should be based on the strict observance of the principles of the sovereignty of States, equality and mutual benefit, due consideration for each other's interests, non-interference in the internal affairs of other States. At the same time any such agreement should be considered invalid if it is in contradiction with any of the generally recognized tenets of international law (jus cogens).

39.10 Recognition of the legal equality of States in the field of satellite broadcasting and the obligation of each State to broadcast exclusively for the benefit of peace, social progress, the promotion of mutual understanding and friendly relations between States should become the necessary prerequisites for the use of direct television broadcasting in mass communication operations. Such provisions would be in line with the 1967 Outer Space Treaty in which it is recognized that outer space is free for use by all

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States without any discrimination but on the basis of equality and subject to international law. This would also correspond to Article III of the Treaty under the terms of which activities involving the use of outer space should be pursued in the interests of maintaining international peace and security and promoting international co-operation and understanding.

59.11 I would also like to refer to the Declaration of the Principles of International Cultural Co-operation adopted by the General Conference at its fourteenth session on 4 November 1966. This Declaration recognizes that every culture has its own merits and values which must be respected and preserved and that the development of its culture is the right and duty of every nation. The Declaration emphasized that in endeavouring to achieve international co-operation States should respect and observe the unalienable rights and equality of States and refrain from interference in affairs which fall essentially under the internal jurisdiction of other States.

39.12 The rather narrow scope of the draft Convention under examination and its failure to incorporate a number of important provisions ensuring international and national control of the transmission of programme-carrying signals by satellite was noted by the representatives of a number of States at previous meetings of governmental experts.

39.13 I think that it would be neither justifiable nor logical to consider this Convention and the questions it is designed to control in the light of private law alone, separately from and unrelated to an examination of direct television broadcasting, including the discussions on satellite-based broadcasting taking place in the United Nations, its functional bodies and various international meetings, particularly the European Security and Co-operation Conference. This would naturally call for some modification of the Convention's philosophical and legal framework.

39.14 In view of all that has been said above, the USSR delegation proposes incorporating in the draft Convention relating to the distribution of programme-carrying signals transmitted by satellite the following provisions:

- an obligation on the part of States to broadcast by satellite into the territory of other States only with the explicit consent of the latter;

- secondly, an obligation on the part of all States to exclude from satellite-transmitted programmes any material prejudicial to the cause of maintaining international peace and security, promoting the ideas of war, national and racial hatred or otherwise aimed at interfering in the internal affairs of other States or undermining national laws, customs and traditions;

- thirdly, the international responsibility of States for all national activities involving the use of satellites for

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broadcasting purposes regardless of whether they are carried out by governmental bodies or non-governmental organizations and public entities.

39.15 The global nature of satellite-based television broadcasting makes it impossible to limit the communication of messages to certain areas and it would therefore be contrary to the established norms of law to try and limit participation in such a convention. Therefore the Soviet delegation suggests that Article 8 of the draft be clarified. The Convention must be open for signature by any State without any discrimination and it would be advisable to retain in the final text the main part of Article 8 deleting the Alternatives.

39.16 The necessity of ensuring the universal participation of all interested States in this Convention which covers such a wide range of problems of vital importance for every State requires the modification of Article 9 of the draft. Paragraph (3) of Article 9 and paragraph (1) of Article 10 provide Contracting States with the possibility of applying or not applying this Convention in the territories for the foreign relations of which they are responsible; such provisions are obsolete and contradict the UN General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514/XV of December 14, 1960). We are of the opinion that paragraph (3) (with its subparagraphs (a) and (b)) of Article 9 should be deleted. Accordingly the text of paragraph (1) of Article 10 should be modified.

39.17 We shall submit the relevant amendments of the draft Convention to the Conference Secretariat without delay.

39.18 In concluding may I express the hope that our position will find proper understanding and support among the delegations present here. The principles of the sovereignty of States, mutual respect and non-interference in the internal affairs of States constitute a basis for normal good-neighbourly relations between countries in the implementation of any kind of activities. Observance of the principles of interstate relations is of particular importance in the sphere of mass communication. We must not allow artificial earth satellites to be used to breed distrust and animosity between peoples and States and to obstruct detente. Our duty is to combine our efforts with those of the European Security and Co-operation Conference and co-operate with other international agencies dealing with the problems of controlling television broadcasts by artificial earth satellites.

40. The CHAIRMAN [F]: I give the floor to the delegate of Brazil.

41.1 Mr. da COSTA (Brazil) [F]: The position of Brazil on the subject under consideration is, I think, familiar to you all. It is stated in paragraph 14 of the report of the Third Committee of Experts held at Nairobi; it is stated in paragraph 19 of the

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report of the meeting of the Rome Committee held last December.

41.2 Brazil considers that the Rome Convention, in its present drafting, covers transmissions by satellite. Consequently, the broadcasting organizations covered by the Rome Convention are already protected, where necessary, in Brazil. However, Brazil admits that, on the one hand, the Rome Convention has not as yet obtained a large number of ratifications for obvious reasons, and, secondly, that certain members of the Rome Convention consider that at least a commentary would be necessary for signals transmitted by satellite to be covered by this instrument.

41.3 In view of the widespread, legitimate desire for the immediate protection of satellite broadcasts, Brazil is in no way opposed to this additional instrument and the best proof of this is that at Nairobi we tried, together with our colleagues from Morocco, India and Mexico, to find a formula that would permit us to get out of the impasse of private law in which the first two expert committees had floundered.

41.4 Therefore, Brazil is quite open to finding, in the course of this Conference, an adequate instrument. The opinion of the delegation of Brazil is that the Nairobi draft is fairly satisfactory and that it provides the necessary framework for an acceptable text. The Nairobi text is flexible, it is neutral and, because it is neutral, it is balanced.

41.5 It is this question of balance that is fundamental and it is for this reason that we believe that if we attempt to stray from the basis established at Nairobi, we shall be heading for failure.

41.6 In fact, the Nairobi text provides a balance between States which are, shall I say, producers of signals and States which are users of signals - between developed and developing States. It is said that the Nairobi text does not give us the same balance between the various parties directly concerned in the programme, i.e. the performers, producers of phonograms and broadcasting organizations.

41.7 The delegation of Brazil is of the opinion that we should not look for this balance in the text of the Convention. It would be useless to try and go back to the formulae of private law to protect these rights, which Brazil is the first to put in the forefront. We believe that this balance may be found in the implementation of the instrument since it is for each State to find the practical means, which may be of any nature, of preventing the capture and dissemination of a signal. Consequently, it is for the States themselves, when seeking the means of implementing the Convention, to guarantee the best possible balance between the parties concerned, in particular by studying the contracts. That is what I have to say, in the name of my delegation, on the Nairobi text.

41.8 The delegate of the United Kingdom has spoken of the

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relations between the future Brussels Convention and the Rome Convention. I repeat: Brazil is one of the countries party to the Rome Convention and one of the countries that finds that the Rome Convention truly provides a satisfactory framework for the balanced protection of performers, producers of phonograms and broadcasting organizations, even as far as the developing countries are concerned. Consequently, if Brazil is prepared for a new satellite Convention, it is because it considers that it will not conflict with the Rome Convention. The delegate of the United Kingdom has reminded us of the complicated, too complicated, vicissitudes that surrounded the approval by the Rome Committee yesterday of the draft model law. This draft model law is very important, not in itself, but because it is a symbol of peace between the broadcasting organizations and the Rome Convention.

41.9 It is on this assumption - and I mean assumption - that such peace exists, that it has already begun and that it will continue, that Brazil finds that a symbiosis between the Brussels Convention and the Rome Convention is possible. But, as the delegate of the United Kingdom has already stated, we must not be too hasty; we must make quite sure that this peace truly exists for, if it did not exist, we would have been duped and indeed there would be no reason for States, at least those that are members of the Rome Convention, to give additional protection which would in fact create just the imbalance that we are trying to avoid.

42. The CHAIRMAN [F]: The delegate of Mexico has the floor.

43.1 Mr. LARREA RICHERAND (Mexico) [S]: As you all know, Mexico is also party to the Rome Convention. For Mexico, which is a developing country, the effects of the Rome Convention have been on the whole satisfactory and have forged a situation of unity and understanding with regard to problems of intellectual creativity in Mexico. In proof of this, the delegation of Mexico to this diplomatic Conference comprises representatives of authors, performers and broadcasting organizations, and there exists among them a full understanding of their mutual problems. In subsequent statements we shall refer to a document published by our country during the First National Symposium for Intellectual Workers where we had the opportunity of bringing together intellectual workers, broadcasting organizations, producers of phonograms, in order to discuss their mutual problems.

43.2 In addition, Mexico is totally convinced, as stated in its declaration made last year at Nairobi which appears in paragraph 21 of the report of that meeting, that it is necessary to protect authors, performers, producers of phonograms and broadcasting organizations in relation to transmissions by satellite. We must also admit, as we stated then, that the Rome Convention has at present very few signatories, and what is more, there does not exist among them any definitive agreement concerning the criterion for the protection of authors and performers within the protection afforded by the Rome Convention in respect of satellite transmissions. It is for this reason that Mexico is taking part in this

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diplomatic Conference with the fervent hope that the balance established by the Rome Convention with regard to the rights of authors, performers, producers of phonograms and broadcasting organizations will in no way be lost.

43.3 Like the delegation of Brazil, the delegation of Mexico considers that the Nairobi draft constitutes an adequate basis for solving the problem before us. Moreover, Mexico too has read with much interest the comments of the European Broadcasting Union that appear in the document that has been distributed to us by the Secretariat but considers, with due respect, that no new philosophy exists as claimed by the representatives of the European Broadcasting Union, for this new philosophy was presented to us at Lausanne, and again interminable discussions were necessary. What is more, Mexico is prepared to sign the Convention only if it in no way affects the rights of the intellectual producers, the intellectual creators of programmes transmitted by satellite.

43.4 In line with the statements and declarations made by the Director-General of Unesco in his opening address, the delegation of Mexico would also like to point out that special attention should be given to the following points: in the first place, the facility of satellite transmissions and the way in which they may become a real medium for adding to the culture of nations and cultural exchanges between peoples. In addition, account should be taken of the free flow of information, when such freedom in no way affects the internal or the public interests of each State. Consideration should also be given to satellite transmissions as an effective medium in the field of education, especially in the developing countries. Special assistance should be accorded to the developing countries so that the vast field of modern communications such as satellite transmissions, can serve to educate the developing peoples. Finally, we should take into account that television by satellite should serve as an effective medium for the free flow of ideas and also permit acquaintance with the intellectual works of nations.

44. The CHAIRMAN [F]: I give the floor to the delegate of Israel.

45.1 Mr. GABAY (Israel) [E]: I must admit that we have come to this Conference with some mixed feelings. The Israeli delegation has supported the continuing efforts to prepare an international instrument which will protect satellite transmissions of programme-carrying signals from unauthorized distributions.

45.2 The increased incidence of poaching, which has followed the rapid expansion of the area of telecommunications, highlights the current importance of this work. It is to be stressed, however, that such a Convention should not upset the carefully weighted balance of interests which has been achieved between broadcasting organizations, performers, producers of phonograms and authors. As we all know, the Rome Convention which was prepared to protect neighbouring rights, taken with the various international copyright

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agreements, provides a delicate balance of all rights involved. But the developments in satellite telecommunication in the period since the Rome Convention was adopted has rendered its application to current needs at best problematic. Thus, rather than attempt to revise the Rome Convention, the Committee of Government Experts decided that the problem could be dealt with best in a separate instrument. Yet it has been constantly stressed that the current Convention should not derogate from the rights protected by the various copyright conventions as well as the Rome Convention.

45.3 For these reasons the Israeli delegation felt that the Paris draft with its Article IV, Alternative A was the best solution. As a compromise, you may recall, the Israeli delegation in Nairobi proposed a solution which would have left Article IV, Alternative A of the Paris draft unchanged but with reservations by those countries that could not accept the provision. It is still our feeling that that compromise solution could have solved the problem in a more adequate manner.

45.4 However, we see that many delegations, as indicated already by the delegations of Mexico and Brazil, feel that the Nairobi draft could at least solve part of the problem. We also see that at this late stage of the diplomatic Conference it will not in fact be possible to merge the Paris and Nairobi drafts. We regret this because we think that even from the point of view of the broadcasting organizations it would have been much better to have a more balanced convention because we cannot look and consider the problem from the short-run outlook of this Conference. We have to consider the process of ratifications; and we all know what difficulties the Rome Convention has faced. I must say that in the long run we feel that this Convention, which covers only part of the problem, may not have the same public support as it would have had if it covered the interests of all the parties concerned. But as indicated, and not withstanding our observations, we feel that since many countries for different and divergent reasons would prefer to accept the Nairobi draft, we, for this reason, also accept the text and will co-operate in its improvement while maintaining our basic position that it does not provide a fully adequate solution to the problem.

45.5 We should furthermore indicate that in any text those provisions which cover the interests of developing countries, that is to say the distribution of programmes for the purpose of teaching or scientific research, should be maintained.

46.1 The CHAIRMAN [F]: The following delegations have asked for the floor. They will speak in the following order: Denmark, Kenya, Argentina, Japan, Austria, France, Ghana and Sweden. In addition, Algeria, Morocco, the Federal Republic of Germany, Italy, Canada, Australia.

46.2 After these delegations, the international non-governmental and intergovernmental organizations will also be given the floor.

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46.3 We shall now listen to the intervention of the delegate of Denmark.

47.1 Mr. WEINCKE (Denmark) [E]: During the preparatory work preceding the diplomatic Conference the Danish governmental experts adopted a rather sceptical attitude to the plans for a new international Convention to prevent distribution of programme-carrying signals transmitted via satellite by broadcasters other than those for which these signals were intended.

47.2 In the period that has passed since the last expert meeting in Nairobi, very little has happened that might at this moment justify a change in our general attitude. The Danish Government, which has ratified the Rome Convention, considers it doubtful whether such a new international instrument is desirable or necessary. Our position is, in this respect, very close to that of the United Kingdom and we do not intend to sign any Convention or text at the end of this Conference.

47.3 If it is felt by a majority of States, however, that there is a need for a special satellite Convention, we are not only ready but even interested in making our contribution to ensuring that the text of the Convention be drafted in the best possible way. The principal point of view held by us and by a number of other States is that a new Convention must have no detrimental effect on the existing conventions within the field of copyright and neighbouring rights and in particular the Rome Convention; and that the protection which a new Convention would actually give to the broadcasting organizations ought to be balanced, offset, by some kind of guarantee which would to some extent safeguard the legitimate interests of the authors and those of the performers. The draft text submitted by the expert meeting in Paris in May 1972, constituted in our opinion a step towards a fulfilment of these requirements. I refer, of course, to Alternative A. But at the same meeting, as we all know, I believe it became evident that a considerable number of States would not be able to accept the specific provisions contained in the Paris text in favour of copyright holders or holders of neighbouring rights or of provisions of a similar kind.

47.4 It was on this background that it was decided at the expert meeting in Nairobi to revert to an idea, which was not new and which had been previously entertained, to transfer the Convention from the field of individual rights to that of public law, or in other words, to confine ourselves to provisions which do not grant individual rights to the broadcasters but exclusively impose upon the States an obligation to prevent the distribution of satellite-transmitted signals.

47.5 It was maintained at the Nairobi meeting that the introduction of such a change in the fundamental philosophy would eliminate the need for provisions relating to authors and performing artists, a point of view which was also adopted by the representatives of the international organizations of authors.

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47.6 In the light of what was a mandate of the three Committees of governmental experts, we cannot but feel a certain uneasiness with the new philosophy. The mandate of the three Committees was not, it must be remembered, to propose a Convention for the sole benefit of broadcasters but to look into the problems in the field of copyright and neighbouring rights raised by satellite transmissions.

47.7 In our opinion, there are copyright and neighbouring rights' problems connected with satellite transmissions. I understand that the adherents of the Nairobi draft would say that such problems must be solved within a framework of the existing conventions, i.e. the Berne Convention, the UCC and the Rome Convention; and from a logical point of view, this may be right. The Danish delegation is, however, not convinced that nothing at all should be done or could be done on this occasion to safeguard the interests of copyright and neighbouring rights' holders if and when we adopt the new Convention. Satellite transmissions involve very considerable risks to authors and performing artists. The use of satellites implies that their works and performances will be the objects of distribution in a vast and unpredictable number of countries. There will thus be a considerable risk that they cannot effectively safeguard their rights in places where rights have actually been granted to them. This will especially be the case if they are not given any advance knowledge of the countries where distribution will take place. The use of satellites means more work, but their works and performances may, to a greater extent than has previously been the case, be distributed in countries in which they have no protection and without their having any possibility whatever for influencing the decisions as to the countries for which the transmissions are intended.

47.8 Generally, authors and performers have to accept what happens to their products in such countries. But is it also reasonable to expect them to accept that their works or performances be made available to the public in these States on the initiative of an originating organization in a country recognizing international copyright protection?

47.9 If, according to a new Convention, the broadcasting organizations are given actual protection against unauthorized distribution of satellite signals - and that will in fact be the case even if formally these organizations are granted no individual rights, we are of the opinion that the originating organizations carrying out satellite transmissions should at least be bound to inform, at the earliest possible stage, authors and performers whose contributions form a part of such transmissions, of the names of the distributing organizations for which the signals are intended. If it cannot be made perfectly clear that the broadcasting organizations are ready to give such information, this Conference should in our opinion consider the possibility of an express provision in the Convention imposing upon the broadcasters an obligation to inform in this way.

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47.10 Finally, a few words on another question. We believe that there are problems with regard to the transmissions of direct broadcasting satellites which should be studied carefully by this Conference. If the idea is that a convention shall cover such transmissions we feel that it should be made clear in some way that the party to be responsible via-à-vis those that contribute to the programmes shall always be the originating organizations.

47.11 The Danish delegation wishes to reserve its right to return to some of these questions when examining the individual provisions of the draft Convention.

48. The CHAIRMAN [F]: The delegate of Kenya has the floor.

49.1 Mr. STRASCHNOV (Kenya) [E]: The delegation of Kenya fully supports the draft Convention as prepared by the Third Committee of Experts. We have some minor points to raise and will do so with your permission during the discussion of certain articles, but on the whole, we agree with the basic framework established in Nairobi.

49.2 One of the fundamental principles of the draft Convention is that the subject matter protected is the signal not the programme which is being carried by the signal. In other words the draft is not dealing with the content, but with the container. The question just raised by the delegate of Denmark was one we also wish to raise.

49.3 We do not feel that the question whether the draft is applicable to direct broadcasting satellites has been sufficiently studied and we believe that a certain amount of time should be devoted to that question to determine to what extent direct broadcast satellites should come within the purview of this Convention; we might come to the conclusion that it should not be so or perhaps only to a certain extent. The question of direct broadcast satellites is very closely linked with the very interesting speech we heard a few minutes ago from our colleague from the USSR; and I would like to make some observations in this respect.

49.4 It is perfectly true, as the delegate of the USSR stated, that on 8 August 1972 the Foreign Minister of the Soviet Union tabled before the General Assembly of the United Nations a draft Convention under which States would undertake certain obligations in the field of direct television by satellite. In other words, the draft convention as submitted by the Soviet Union was limited to (a) television and (b) to television by direct broadcast satellite, that is, only a sector of the draft under consideration. What happened to that draft convention submitted by the Soviet Union? It was referred by a very large majority, with only one against, by the General Assembly of the United Nations to its Committee on the Peaceful Uses of Outer Space; and that Committee entrusted the work on this convention to its Working Group on Direct Broadcast Satellites.

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49.5 When this Working Group met for the first time in New York in June 1973, it considered two documents - two basic working papers - one was the Soviet draft convention and the other a set of principles put forward by Canada and Sweden. A second meeting took place recently in March in Geneva where papers submitted by Argentina and the United States were examined, together with an explanatory note submitted by Canada and Sweden.

49.6 The Working Group on Direct Broadcast Satellites tried to define and identify the zone of consensus on certain principles, and to record the differences; it was finally decided that the Report of this Working Group of the United Nations was to be handed over to the Legal Sub-committee of the Committee on the Peaceful Uses of Outer Space which is presently sitting in Geneva and will continue to do so until the end of the month. Among the questions on the agenda of the Legal Sub-committee, there is the registration of space bodies, the legal status of the moon, and the principles for the use of satellites for direct broadcasting.

49.7 During the discussion in the recent meeting of that Working Group of the United Nations there was some measure of consensus on certain principles and there was, of course, a certain measure of disagreement; there was the conflict between the principle of sovereignty of states and the principle of free flow of information; there was a conflict between those, who, as the Soviet Union just explained to us, advocate the prior consent of the State at which a direct television broadcast by satellite is beamed and those who considered that this would be contrary to the free movement and flow of information. There are questions of the content of the programme which could or could not be transmitted to outer space by direct broadcasting satellites and so on.

49.8 What I wish to stress here is that the political aspect of direct broadcasting satellites is being dealt with by the United Nations and by the competent bodies of the United Nations. Since 1972, there has been a body of principles adopted by the Unesco General Conference which specifically refers to the prior consent of the State to which broadcasts by satellite are beamed; and, since 1971, there is a rule in the Radio Regulations (No. 428) that the characteristics of satellites in the direct broadcasting service must be such that there should be no spill-over on the territory of other States unless the other States give their consent. Thus, there is a whole body of international documents dealing with the political aspects of satellite broadcasting and more specifically of satellite television by direct broadcast satellite. There exists, of course, as our Soviet colleague said, the United Nations Outer Space Treaty of 1967, which provides in its Article VI that States are responsible and bear international responsibility for outer space activities even if these are carried out by non-governmental organizations. Should we determine that the new treaty would apply to direct broadcast satellites, I believe it would still not be possible to include the proposals submitted to us by the delegate of the Soviet Union: in the first place, they deal with the programme content and not with the container, i.e.

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the signal; secondly, they are of a political rather than strictly legal nature, and thus have nothing to do with the protection of the signals against unauthorized distribution; and finally, we would be interfering with the clearly defined activities of other bodies of the United Nations family and the United Nations itself.

49.9 Our delegation simply wanted to state that we could not consider that any such clauses as proposed by the Soviet delegation should be included here. I should like to add that Kenya is a member of the Outer Space Committee of the United Nations, and at the last meeting of the Committee in March 1974 it supported the idea of prior consent etc. as advocated by the Soviet Union. However, it is our view that such provisions would be totally out of place in the present context.

50. The CHAIRMAN [F]: The delegate of Argentina has the floor.

51. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: I should like to indicate again the position of my Government - that corresponds to the Argentine position at the United Nations in the Working Group on Direct Broadcast Satellites and the Legal Sub-committee of the Committee on Outer Space, which is that there should be a convention both separate and different from the Rome Convention, and specifically adapted to transmission by satellite. In general, I should like to suggest that in the drafting of the same I shall insist on the following points: the Convention should distinguish clearly between the container, i.e. the signal, and the content, i.e. the programme, referring the latter to copyright and performers' rights. The Convention should duly distinguish between the originating organization and the producer, defining the concept and protection of the rights of both. Finally, the Convention should establish that with regard to the authorization of the originating organization, this must be prior and express.

52. The CHAIRMAN [F]: The delegate of Japan now has the floor.

53. Mr. HIRAOKA (Japan) [F]: As you will recall, my delegation at the Nairobi meeting made a general reservation on the draft adopted. This draft does not provide for any effective protection of the interests of the programme contributors and does not seem to us to be an appropriate solution. However, my delegation would like to collaborate - also in a spirit of compromise - with the other delegations at this Conference so that we may finally adopt a Convention with reasonable content. This is the sincere objective of my delegation.

54. The CHAIRMAN [F]: The delegate of Austria has the floor.

55.1 Mr. DITTRICH (Austria) [E]: As all or most of you know, my country is also a member of the Rome Convention. My delegation has, therefore, always been anxious during the preparatory work for

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this diplomatic Conference in no way to prejudice the acceptance of the Rome Convention. We have stated this on many occasions, and have not changed our view on this fundamental point.

55.2 At the close of the Nairobi meeting I stated frankly that my delegation was unhappy with the so-called new philosophy; and even now my delegation would prefer a draft established on the Paris philosophy as a basis for the present discussions. Nevertheless, we are very willing to contribute to the negotiations of this diplomatic Conference in a spirit of international co-operation and mutual understanding.

55.3 My delegation and I are personally very satisfied that the international organizations of performers, the International Federation of the Phonographic Industry and the European Broadcasting Union achieved yesterday full agreement on the model law, subject to definitive approval by the administrative council of the EBU which meets after this Conference. We, too, hope that this agreement will be the starting point of a wider acceptance of the Rome Convention, toward which the atmosphere between the international organizations concerned and the end of the negative attitude of the EBU to the Rome Convention are the most important contributing factors.

55.4 Whether or not my government will sign the upcoming text of this Convention and then propose the ratification of the results of this diplomatic Conference to Parliament depends not only on the text itself, but to some extent on the further development of the Rome Convention.

55.5 My delegation stated during the preparatory work for this diplomatic Conference that we preferred this as a solution to the wish of the broadcasting organizations to have satellite signals protected by a new independent treaty that would neither be a revision of the Rome Convention nor another solution within an existing international instrument. We have not changed our view on this matter; every other attempt seems to me to be unrealistic today. Nevertheless, we would be very happy in the future to see a link between the new Convention and the Rome Convention.

56. The CHAIRMAN [F]: The delegation of France has the floor.

57.1 Mr. KEREVER (France) [F]: The delegation of France would like, first of all, to say a few words on the nature of the problems which are being dealt with here. We believe that to be fully aware of their complexity it is necessary to remember that the text now being studied is the result of three Committees of governmental experts constituted by Unesco and WIPO on - and this is almost a literal quotation - the problems in the field of copyright and of the protection of performers, producers of phonograms and broadcasting organizations raised by transmissions via space satellite.

57.2 This sequence shows clearly that this is essentially a matter of private rights, and especially of the way in which the

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rights of the broadcasting organizations which originate the signals can be combined with the rights of the contributors to the programmes which are transmitted by these signals and, in particular, the intellectual contributors. Doubtless the Nairobi text is designated a public law convention and it is true that it institutes obligations on the part of States; however, these obligations on the part of States are concerned with private rights, with economic rights. It is, therefore, very clear that the subject of this Convention is completely outside and cannot treat the political aspects raised by transmission via satellite.

57.3 The delegation of France, like all the other delegations, has listened with great attention to the statements of the delegate of the Union of Soviet Socialist Republics and was aware of the skill with which he developed the notion of sovereignty and non-interference in the domestic affairs of a country. But in our opinion these political considerations cannot be combined with questions that are essentially private, questions of an economic and material order concerning individuals or organizations.

57.4 That said, as for the substance of the problem, the delegation of France would like to state once again that it has always had great esteem for the opinion expressed almost unanimously by the countries members of the Rome Convention that the problem thus raised is already covered by the Rome Convention.

57.5 The delegation of France abstained from taking a position on this point since France is not a member of the Rome Convention - and I should like to take this opportunity to state that we have not yet acceded to this Convention for strictly domestic reasons; therefore, not belonging to this Convention, the delegation of France did not consider that it had the right to take part in the discussions on its interpretation.

57.6 On the other hand, we could not but be impressed by the fact that a large number of States did not think that it was possible to solve the problems involved in the protection of signals by a simple reference to or within the framework of the Rome Convention and that it would be preferable to try and draft a separate Convention.

57.7 You all recall the origins of this separate Convention. Protection by the creation of a new legal concept emerged from the first two Committees : the right of distribution, i.e. the right which comes into being when the programme-carrying signals are placed at the disposal of the public. It is in this perspective that France considered it indispensable to state clearly the respective rights, brought into being by the distribution, of the broadcasting organizations and the various contributors to the protected works. This point of view gave rise to what may be called the Paris philosophy, as the delegate of Austria has indicated. The delegation of France states very clearly that of all the texts which have followed one another up to the present - including the present text now being discussed - it is Alternative A

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of the Paris text which we find preferable. But the delegation of France was obliged to admit that this text and this philosophy were not accepted by a large number of States and that it was necessary to modify the approach to the question thus raised. It considers that the approach and the philosophy which governed the drafting of the Nairobi text, i.e. the absence of any reference to international or conventional private law and its replacement by State obligations seemed the only possible way to obtain, if not unanimous agreement, at least as wide an agreement as possible, and it is the profound belief of the French delegation that only the Nairobi text is capable of achieving this goal.

57.8 However, in the framework of the Nairobi text a certain number of questions remain. The main ones, as we all know, are whether or not any term of protection will be specified in the Convention; also whether the Convention will be open or closed, (this latter point seems to us relatively important); and, finally, the scope of the reservations to the provisions of the new Convention - reservations which are indispensable if certain countries are to be able to accept the new text that emanated from the Nairobi Committee.

57.9 This is the spirit in which the French delegation has come to this Conference: it hopes for its successful conclusion and is convinced that this success will be the more certain the closer we keep to the Nairobi text.

58. The CHAIRMAN [F]: The delegate of Ghana has the floor.

59. Mr. SAI (Ghana) [E]: I must confess, first of all, that previous speakers have taken the wind out of my sails. Even so, I still want to keep afloat with one or two observations on the Nairobi text as prepared by the Third Committee of Experts. As members are no doubt aware, Ghana was a party to the Nairobi meeting that produced the text, but that is not to say that our delegation has any preconceptions as to the ultimate acceptability or otherwise of the Nairobi text. What my Government feels is that the Nairobi text is undoubtedly a landmark in this whole process of evolving an acceptable international instrument on the control and use of satellites for transmitting programme-carrying signals. We see the Nairobi text as fulfilling a wish, namely the wish of many of the developing countries. The extent of the Nairobi text, I believe, should be seen in its weaknesses because the purpose of spotting weaknesses in the Nairobi text should be to try and reinforce it, to become a working document for a future internationally accepted Convention. It is the hope of my Government that the Nairobi text should not only be a landmark but possibly the cornerstone on which the future international instrument on the use of satellites could be constructed. As regards the details of the text itself, we may wish to raise one point among the others named by other speakers, namely the extent to which the recipients of satellite transmissions themselves can be protected against unrestricted bombardment by satellite transmissions.

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60. The CHAIRMAN [F]: The delegate of Sweden now has the floor.

61.1 Mr. DANELIUS (Sweden) [F]: We are gathered here to discuss a problem which, in the opinion of the Swedish delegation, is of great importance. It is true that up to the present the number of acts of illegal distribution of signals transmitted by satellite does not appear to have been very high. But this does not mean that the situation will always be thus. We cannot exclude the idea that in the future this problem could become a more urgent one.

61.2 As far as Sweden is concerned, a Convention on the protection of these signals would present no major problem on the legislative plane. The Swedish copyright law grants the broadcasting organizations a neighbouring right and, although the law does not state it expressly, it is generally considered that the term "broadcasting" as it appears in the Swedish law covers also the transmission of these signals by satellite, on condition, of course, that the ultimate aim be to transmit to the public the programmes contained in these signals.

61.3 I think, therefore, that I can affirm that the Swedish law already provides the protection to be given by the Convention now under discussion at this Conference.

61.4 Thus, although there is no difficulty from the point of view of Swedish domestic law, the delegation of Sweden considers that a new Convention of this type could pose certain problems of a more general nature.

61.5 These problems are relative above all to the repercussions that the new Convention would have on the interests of other categories of persons, notably authors and performers. At first we had envisaged creating, for the benefit of broadcasting organizations, a specific right in the signal transmitted by satellite; at Nairobi, this idea was abandoned. In the Nairobi draft, all reference to this right was omitted and there is an attempt to transform the protection into a protection under public rather than private law. In choosing this direction we wish to avoid the problem posed by authors' and performers' interests. The Swedish delegation is not convinced that there is such a great difference between these two solutions. Without entering into too theoretical an argument, I believe that I should say that what is important is not the use of the word "right" but the fact that in both cases the new Convention would give a protection which the broadcasting organizations would be the first to benefit from. It is they who decide for whom the signal is destined and the ban on distributing the signal to others tends to reinforce the legal position of the broadcasting organizations. We are not giving them a new right, but we are putting them in a situation which, in certain respects, resembles a right.

61.6 For this reason, we are not sure that in choosing this new formula we have in fact succeeded in avoiding the problem which preoccupied us previously. What I have said up to now concerns the

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structure of the new Convention, but there is also a problem of a more general nature. We should ask ourselves whether the existence of a new Convention in this field could lead certain States to no longer envisage acceding to the Rome Convention, which, indirectly, would be prejudicial to those who, to a large extent, depend on the Rome Convention for international protection. Here we should above all take into account the interests of performers, for it is they who have a particular interest that the Rome Convention does not lose any ground and that an increasing number of States accede to it.

61.7 I have tried to explain the perspective in which we envisage the new Convention. Since we are still at the stage of the general discussion, I shall content myself with these few remarks and I shall not draw any precise conclusions from what I have said. In fact, I should like to be able to take into account the arguments put forward by other delegations and to wait for the continuation of our work before taking any clear-cut position with regard to the problems before us.

62. The CHAIRMAN [F]: The delegate of Algeria has the floor.

63.1 Mr. ABADA (Algeria) [F]: We are meeting here to adopt an international Convention on the protection of signals transmitted by satellite. Our Conference has been in preparation for a long time, as has already been emphasized. Three intergovernmental Committees met successively to study the problems raised by the drafting of such an international instrument and to prepare a draft Convention which would serve as a basis for the discussions of this Conference.

63.2 The divergence of opinion which appeared during all these sessions was fortunately overcome at the Nairobi meeting thanks to the Moroccan proposal which was seconded by the delegations of Brazil, India and Mexico. The Nairobi Committee reached a compromise and all the States taking part agreed to the drafting of the Convention which is before us today.

63.3 We believe that this Nairobi draft has been arrived at with difficulty. We must remain within its framework and its approach if we want our work to succeed. In our opinion it is, on the whole, acceptable to all.

63.4 In any case, the Algerian delegation came here convinced that the Nairobi discussions had effectively prepared the success of this Conference and with the intention of supporting this text. It is true that the Nairobi draft is not perfect, but it has the merit of striking a balance between the various interests of States, as the delegate of Brazil has already stressed.

63.5 In our opinion, its advantage is that it has separated the protection of the signal, which is a separate phenomenon, from the protection of the works of the mind which belongs to the field of copyright. It also has the merit of entrusting States with taking

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adequate measures to counteract the poaching of signals transmitted by satellite. But the Nairobi draft has some deficiencies, in our opinion, and we shall intervene on these during the article-by-article discussion of the draft. But we can state as of now that the definitions given in Article 2 are not, in our opinion, complete. For example, there is no definition at all of 'derived signal'; whereas this term seems to us very much in question and very little understood. For many delegations, in our opinion, this term is not clear. Also, the definition of 'distribution' seems to us so wide that it includes direct distribution which, from our delegation's point of view, is not the subject of this Convention and which, in any case, is not acceptable to us.

63.6 In our opinion, the problem of direct distribution is a serious one. It concerns the defence of the interests of States against all sorts of interference, including propoganda included in programmes transmitted by satellite.

63.7 Our delegation also considers that sub-paragraphs 3(a) and (b) of Article 9 are superfluous, especially at a time when colonized peoples are gaining their freedom and the principle of the freedom of peoples to decide their own fate is universally accepted.

63.8 These are the few points to which our delegation considered that we should draw the attention of delegates at this stage in the general discussion. We, of course, reserve the right to intervene subsequently on other problems during the article-by-article discussion of the draft.

64. The CHAIRMAN [F]: The delegation of the Federal Republic of Germany.

65.1 Ms. STEUP (Germany, Federal Republic of) [E]: The delegation of the Federal Republic of Germany is in agreement with the vast majority of the delegations represented at this Conference that new rules for the protection of television broadcasts transmitted by satellite must be provided. The importance of satellite transmissions for the free flow of information and the considerable technical and financial efforts connected with such transmissions make it necessary that legal provisions be provided against the illicit distribution of such broadcasts. The Federal Republic of Germany, being a Contracting State of the Rome Convention for the protection of performers, producers of phonograms and broadcasting organizations, would have very much preferred a solution by which the necessary worldwide control over the distribution of programme-carrying signals transmitted by satellite would have been secured by this Convention. In view of the relatively small number of Contracting States which adhere at present to this Convention, we must, however, acknowledge that the necessary worldwide effect can be achieved only by a new Convention which can be ratified quickly by a large number of States.

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65.2 The Government of the Federal Republic of Germany, therefore, took an active part in the preparatory meetings preceding the present Conference. Like some other delegations, we would have preferred a Convention taking into account in explicit provisions, the interests of authors, performers and other contributors to the programmes. But since the Nairobi draft seems to be the only way to find the necessary widespread support, we are willing to give it our agreement in principle. But in giving this agreement in principle, we are also very anxious not to prejudice wider acceptance of the Rome Convention and therefore we, too, hope that the conclusion of this new agreement will not be an obstacle to wider acceptance of the Rome Convention but will help especially the organizations of broadcasters, to change their attitude vis-à-vis the Rome Convention.

65.3 In concluding, I wish to underline that my delegation is prepared at this Conference to play its part towards a successful conclusion of our joint efforts.

66. The CHAIRMAN [F]: The floor is now given to the delegate of Italy.

67.1 Mr. MESCHINELLI (Italy) [F]: Since the end of the last century, Italy has been among the limited number of countries which, through the Berne Convention, first achieved international copyright protection. Since then we have taken part in all the initiatives destined to develop and extend this protection to all the countries of the world including the developing countries, inter alia Unesco's important Universal Convention in 1952.

67.2 In 1961, a Conference took place in Italy which adopted the Rome Convention for the international protection of neighbouring rights, which affords fair protection to all users of works of the mind without prejudice to authors' rights.

67.3 Although the Italian Government is convinced that the said Convention, which will finally be ratified by Italy as well, is a most complete instrument, it has given its active support to all initiatives designed to protect some of these rights, with the aim of obtaining the accession of various countries which are not yet able to participate in the Rome Convention.

67.4 The Italian delegation is fully aware of the importance of the new instrument for the control of the distribution of signals in all countries of the world and is therefore delighted to take part in this Conference - all the more so in that the envisaged agreement fully respects the rights of authors, expressly safeguards the Rome Convention and puts into effect a proposal which Italian experts were among the first to put forward, i.e. that of adopting an instrument based on international public law, restricted to the distribution of programme-carrying signals and not applying to the programmes themselves.

67.5 While safeguarding the rights of authors and other rights

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which thus remain outside the proposed Convention, and although it reserves the right to propose some amendments which do not affect the substance of the treaty but which, in its opinion, serve to clarify its structure and its goal, the Italian Delegation wishes to state that it is in principle favourable to the new Convention.

68. The CHAIRMAN [F]: The delegation of Canada now has the floor.

69.1 Mr. CORBEIL (Canada) [F, then E]: Canada has the advantage of having two official languages and many multi-cultural activities; it also benefits from an increase in the creation of works of the mind subject to copyright. Canada has coped with the necessity of extending to the whole of its territory the diffusion of these works. To this end, our country set up the first domestic system of transmission by geostationary satellite - a system capable of serving the distant northern regions as well as the more populated regions of the south. Thus, Canada very quickly felt the necessity for seeking an agreement with other States on the protection of signals transmitted by satellite, protection which, in our opinion, only an international treaty can ensure.

69.2 Our country has actively contributed to the efforts made at each of the preparatory meetings for this diplomatic Conference: the working group in Geneva in 1968, the Lausanne meeting, the Paris meeting and the meeting held in Nairobi in 1973.

69.3 Following the changes in approach introduced at Nairobi, and in particular the deletion in the draft treaty of any specific reference to private law, the Canadian Government reviewed again possible relations between the present draft and the ITU Convention. We admit that the prime objective of the draft is to protect signals transmitted by satellite against unauthorized distribution by those for whom such signals are not intended and that, in addition, the present text is exclusively limited to such protection. In our opinion, the ITU Convention has, to a certain extent, similar objectives in prohibiting, in the absence of authorization, the interception or divulgation of the contents, or simply the existence of the communication, its publication or any other use, whatever it may be, insofar as this involves communications which are not destined for general use by the public.

69.4 Conventional transmissions by satellite between different States include the transmission of programme-carrying signals in accordance with the specific characteristics of telecommunications. Such signals would be specifically protected under the ITU Convention, notwithstanding the fact that the programmes are in the end channelled for broadcasting to the general public. We recognize, however, that the protection as defined in the draft treaty is more precise, better adapted to the requirements and goes much further than the protection granted by the ITU Convention and its Radio Regulations. Consequently, we give our continued support to the draft now being studied. However, our support should not be inter-

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preted as meaning that we shall renounce invoking the ITU Convention when we consider it appropriate. In this respect, we should like to remove any misunderstanding that might prejudice the role assigned to the ITU in the field of the protection of telecommunications signals. My delegation proposes including in the draft treaty a mention that the provisions of this treaty cannot be interpreted in any way that would be prejudicial to the protection provided by the ITU Convention. We were pleased to find that this idea has had a favourable reception and even provoked concrete action in the form of a draft amendment distributed to-day.

69.5 With your permission and with the co-operation of our interpreters, I should like to continue this intervention in our other national language.

69.6 My delegation has noted the report adopted by the Committee of Experts at the Nairobi meeting to the effect that the distribution includes distribution by direct broadcast satellite and that a distributor includes a broadcasting organization that is distributing signals directly to the public via such a satellite. However, after careful reflexion, my delegation believes that it would be preferable to exclude this type of signal from the ambit of the proposed treaty before it. At the outset, it is worth noting that direct broadcasting from satellites is a relatively new phenomenon which has so far emerged only in experimental form and thus has not yet achieved its full potential. At the present time it is not an important factor in the transmission of programme-carrying signals. In the United Nations Working Group on Direct Broadcast Satellites - and many delegates have made reference to this important group - in whose deliberations Canada has been pleased to co-operate with other States - and here I must underline a close collaboration with Sweden - the proceedings have aimed at the elaboration of a draft declaration of guiding principles rather than a treaty. This approach has been promoted by Canada and Sweden and other States precisely in order to retain flexibility in dealing with the new technology as it develops. Accordingly, we consider that it is premature at this time to enshrine in treaty form any given aspect of direct broadcasting by satellite and would prefer to exclude this subject from any instrument which this Conference might wish to adopt.

69.7 The question of whether the treaty should apply to cable distribution is of very great concern to us and we have voiced this concern at every international meeting which has preceded this diplomatic Conference. With its vast territory and varied population distribution, Canada is currently the largest user in the world of cable diffusion systems per capita. Our examination of the implications of this treaty in light of our needs has led us to the conclusion that it is essential for us that the treaty include provisions that would permit the continuation of our cable operations. Our Bureau of Intellectual Property is presently undertaking a complete review of our copyright legislation with a view to revision. The question of Canada's adherence to this treaty, which we hope to adopt during our stay in Brussels, will be examined in the context of this revision of our legislation.

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69.8 Nevertheless, we agree in principle with the purpose of this treaty and in conformity with our usual policy with respect to international conventions, we believe that it should be made universally accessible.

70. The CHAIRMAN [F]: The delegate of Australia has the floor.

71.1 Mr. CURTIS (Australia) [E]: That the Australian delegation speaks so late in the list in no way reflects on the importance that Australia attaches to this meeting. The very distance of Australia from other centres of population means that satellite transmission of broadcast programmes has a special significance for us. Only by means of satellite transmissions are we enabled to have instantaneous visual access to major events in other parts of the world. Likewise, only by satellite transmission can events of international interest appearing in Australia be brought immediately by television to the rest of the world. Australia, therefore, has a real interest in co-operating to bring about an orderly system that will ensure access by Australian broadcasters on reasonable terms to the programmes transmitted by satellite. As a point of origin of satellite broadcasts originating in our country, Australia also has an interest in ensuring that their further transmission is confined to those organizations for which the transmissions are intended.

71.2 At the same time, however, Australia believes that these advances in communications made possible by technology should not be achieved at the expense of the proper interests of authors, composers, artists and performers whose creative or interpretive activity serves to make programmes possible. That the greater part of satellite transmission of programmes has hitherto been confined to sporting events and current affairs should not cause us to overlook that the further development of technology will almost certainly lead to the use of satellite transmission for programmes of cultural events and of entertainment.

71.3 Australia, therefore, holds strongly to the view that a new international régime for the protection of satellite broadcasts should recognize the proper interests of copyright owners and of performing artists. Though, as we have previously made clear at the meetings of Committees of experts, we would have preferred to see the regulation of satellite broadcasts achieved through the development of existing international agreements on copyrights and neighbouring rights, we accept the practical need for a new instrument. But that instrument should be such as to give due recognition to existing international agreements by which a certain balance of rights and interests have been achieved.

71.4 I should also add that Australia is conscious that satellite broadcasting can have a particular significance for developing countries, and is sympathetic to the need for an instrument that will take account of their special interests. Thus, providing the broadcasting organizations are prepared to modify their attitudes to the rights of contributors to programmes, the Australian

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delegation believes that it would be possible to find a satisfactory solution within the framework of the Nairobi draft.

72. The CHAIRMAN [F]: We could leave our work here and continue the general debate tomorrow morning. We shall listen to the interventions of the delegations of: Hungary, Morocco, the German Democratic Republic, Cyprus, Switzerland and Czechoslovakia who have asked for the floor, as well as the interventions of the representative of the Organization of Arab States for Education, Culture and Science, and of the European Broadcasting Union. I am told that I should add to the States who have asked for the floor the Ivory Coast and Tunisia.

73. The meeting rose.

Fifth plenary meeting¹

Wednesday, 8 May 1974, at 10 a.m. Chairman: Mr. G. de SAN (Belgium)

74.1 The CHAIRMAN [F]: We shall proceed this morning with the debate which began yesterday and which is the general discussion of the Nairobi draft.

74.2 I give the floor to the delegate of Hungary.

75.1 Mr. TIMAR (Hungary) [F]: The Government of Hungary has followed with great interest the preparatory work for this Conference and has studied the text of the Nairobi draft in detail. We very much regret that this draft did not succeed in finding an adequate solution for the protection of authors' rights. It seems to us totally artificial to rigorously separate the programme-carrying signals transmitted by satellite from the programmes themselves. In fact, the signals are merely the technical means of distributing cultural works, educational programmes, news, etc.

75.2 In this context, permit me to remind delegates that the mandate of the Committee of governmental experts was to prepare the draft of an international Convention on problems in the field of copyright and of the protection of performers, producers of phonograms and broadcasting organizations raised by transmission via space satellite. We must note with regret that only one of the tasks in question has been achieved, that involving the protection of the broadcasting organizations. Nevertheless, the delegation of Hungary is prepared to discuss this draft in detail. In so doing,

1. Cf. document UNESCO/OMPI/CONF/SAT/VR.6 (prov.).

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our attitude will be in line with our permanent policy which is to promote mutual understanding among nations.

75.3 Above all, we consider it indispensable to clarify several important questions. We cannot say that we are in agreement with the analyses expressed by several delegations, in particular those who admit the public law approach of the draft but at the same time hesitate to accept the conclusions deriving from that situation. We are convinced that all the delegates present here are in agreement with the basic ideas that have been formulated in the course of the development of international law since the Second World War, in particular the ban on propaganda in favour of war, racism and hatred among nations. We are also sure that all delegates respect the idea of non-interference in the domestic affairs of other countries. It is a fact that these ideas have become an integral part of contemporary international law as jus cogens. It is quite evident that in this international Convention which is intended to establish regulations for satellite transmissions and which is expressly based on public law, we cannot omit a reference to the said fundamental principle. It is, therefore, unquestionable that this magnificent technological discovery can efficiently promote human culture, principally in the developing countries. At the same time, it is quite clear that this medium can be abused.

75.4 The second question that requires clarification is to define the scope of the proposed Convention. Our position is that the draft does not apply to direct satellite broadcasts. It is true that this point of view can be deduced from the text of Article 1, but we consider it indispensable that it be included expressis verbis in the final text. After hearing the various reflexions made during the meeting yesterday, we are of the opinion that a decision on this problem is primordial. It is only when we have taken a decision on this fundamental question that we can decide on the question of whether or not the express authorization of the receiving State is indispensable.

75.5 The third problem that our delegation wishes to raise is the following: one vital condition for providing effective copyright protection is the prior information of authors when there is an intention to transmit their works in a given country. In our opinion the Convention should contain appropriate provisions in this connexion.

75.6 In addition, the delegation of Hungary supports the proposal made by the delegation of the Union of Soviet Socialist Republics concerning the modification of Article 8 to ensure that the new Convention remains open to accession by all States.

75.7 We consider that this is sufficient for the moment but hope that subsequently we shall have the opportunity to explain our views on other important questions before this Conference.

76. The CHAIRMAN [F]: The delegate of Morocco.

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77.1 Mr. CHAKROUN (Morocco) [F]: With regard to the problems under discussion, the delegation of Morocco wishes to inform you of the following: Morocco is pleased to note that the spirit of the draft Convention on the distribution of programme-carrying signals transmitted by satellite established by the Third Committee of governmental experts at Nairobi in July 1973 has for the most part received favourable comments from the delegates present here. My country expresses the wish that the work of this Conference may result in the final drafting of such an international legal instrument.

77.2 Morocco remains in favour of as simple a text as possible for the proposed Convention. To this end, we would be prepared to consider favourably any suggestion that would simplify the draft even further, on condition, of course, that it did not in any way prejudice the philosophy which led to the balance struck at Nairobi.

77.3 My country considers that, as in the case of the international Convention already established in October 1971 for the protection of producers of phonograms, the proposed Convention relating to the distribution of programme-carrying signals transmitted by satellite should not in any way minimize or restrict the application or scope of the Rome Convention on neighbouring rights. On the contrary, we are witnessing a certain trend in favour of the latter. In this connexion, we should not forget that it is only for economic reasons that the developing countries, such as Morocco, cannot, as yet, adopt the treaty of 26 October 1961.

77.4 The preparatory work being undertaken at present under the auspices of the ITU for the allocation of frequencies, which will be examined at the next technical meeting fixed for October 1974 in Geneva, provides that sound-carrying signals will also be the subject of allocations between the countries of the world during the 1977 World Conference. It is, therefore, necessary to reflect seriously on the legal scope of this Convention with regard to radio. Should it cover only picture-carrying signals or also sound-carrying signals? As the developing countries depend a great deal on sound broadcasting the delegation of Morocco considers that it would be desirable to limit the new instrument to television.

77.5 It seems to the delegation of Morocco that the distinction between the problems relating to politics and those which are of a purely economic nature should remain intact as in the draft prepared at Nairobi. It would be desirable and we would recommend that we should consequently avoid any confusion contrary to the formula that we advocate, i.e. simplified, clear and limited in its scope.

77.6 The delegation of Morocco insists here and now on the necessity for retaining the provisions contained in Article 4 of the draft on exceptions relative to short extracts of the programme carried by the emitted signals.

77.7 Finally, Morocco desires that the Convention relating to the distribution of programme-carrying signals transmitted by satellite

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should be truly universal, and, to this end, open to all States in the world without restriction.

77.8 Moreover, my delegation reserves the right to intervene at the appropriate time, on the subject of its position with regard to retransmissions by direct broadcast satellite, for this is a question that has to be clarified and defined in relation to the legal instrument under consideration.

78. The CHAIRMAN [F]: The delegation of the German Democratic Republic has the floor.

79.1 Mr. WAGNER (German Democratic Republic) [E]: I have the honour to express to you the point of view of the delegation of the German Democratic Republic with regard to the existing draft of a Convention on the problems of the distribution of programme-carrying signals transmitted by satellite.

79.2 The German Democratic Republic is very interested in the results of this Conference and appreciates very much the valuable work done by so many eminent experts. We are sure that the objectives of the proposed Convention are very valuable. We want to support its progressive aims according to our possibilities. It is a generally recognized fact that the use of satellites for the transmission of programme-carrying signals tends to increase steadily and thus represents one of the most positive opportunities for using outer space for the fulfilment of important requirements of mankind.

79.3 The German Democratic Republic is of the opinion that such use of outer space should be carried out on the basis of international law and therefore, the German Democratic Republic participates actively and constructively not only in this Conference, but also in the conferences of the respective organs of the United Nations, especially in the Committee on the Peaceful Uses of Outer Space.

79.4 The key principle of the existing draft, that each Contracting State undertakes to take all appropriate measures to prevent the distribution of signals by any distributor for whom the signals are not intended, requires, however, in the opinion of the delegation of the German Democratic Republic, some essential complements.

79.5 In the first place, regulation by international law should ensure that the distribution of programme-carrying signals should only take place in the interests of peace, of social and cultural progress and of co-operation between peoples and should also be based on the generally recognized principles of international law. Therefore, the German Democratic Republic supports the proposal of the delegation of the Soviet Union, to include in the Convention an article regarding the respect of the principles of sovereignty of States and of non-interference in internal affairs.

79.6 Regarding the questions raised in the debate, I would like to

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explain why it is of great importance to include these principles. It is an undisputed fact that the transmission of signals to and from satellites and back to earth touches not only questions of the sovereignty of the sending and receiving States, but other sovereign rights as well. The practically unlimited emitting, transmitting and receiving possibilities raise - and this is obvious to everyone - political and ideological problems. The principles of sovereignty and non-interference in internal affairs are without any doubt generally accepted principles of international law. In this respect the delegation of the German Democratic Republic believes that the inclusion of these principles would in no way harm the Convention and - that is another aspect - only the incorporation of these principles would guarantee real protection of copyrights and neighbouring rights. It is our opinion that this Conference should have as one of its special aims the consideration of these problems.

79.7 The German Democratic Republic is a member of the Berne Convention and of the Universal Copyright Convention. True to the principles of the Universal Copyright Convention which stipulates that such a regulation for the protection of copyright, destined for all countries, should promote the distribution of intellectual works and contribute to a better understanding between nations, the German Democratic Republic respects strictly the rules of the existing international conventions. For the practical realisation of these conventions, the Copyright Association of our country works within the framework of the international copyright associations in close collaboration with CISAC (International Confederation of Societies of Authors and Composers) and BIEM (International Bureau of the Societies administering the Rights of Mechanical Recording and Reproduction). We think that our opinions are in full harmony with the preamble and with Article 1 of the Universal Copyright Convention.

79.8 The delegation of the German Democratic Republic supports the proposals of the delegation of the Soviet Union concerning Articles 9 and 10 with regard to Resolution 1514, adopted by the General Assembly of the United Nations.

79.9 Regarding accession to the Convention, the German Democratic Republic is also of the opinion that an all-State clause should be included in the said Convention.

80. The CHAIRMAN [F]: The delegate of Cyprus.

81.1 Mr. PHANOS (Cyprus) [E]: On behalf of the Government of Cyprus I would like to express our satisfaction that this diplomatic Conference on the distribution of programme-carrying signals transmitted by satellite is under way. Cyprus participated actively in the first two preparatory meetings of governmental experts in Lausanne and Paris and sent, being unable to attend, detailed comments for the Nairobi meeting.

81.2 We are glad that the draft text of the proposed Convention reflects some of the fundamental principles that we have supported from the beginning. It provides for a new instrument - simple, concise and flexible - which affords adequate protection to

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programme-carrying signals and at the same time takes into account the needs of the developing countries. This is a very important aspect of the Conference, the aim of which is to bring about a balanced and fair symbiosis of the various interests involved.

81.3 It is evident from the draft text before us - and we are happy to note it - that a great number of problems, with which the experts dealt during three long meetings, have been resolved. We do hope that the remaining problems will find their appropriate solution at this Conference. For our part, we shall do our best to this end.

81.4 At this stage I do not consider it necessary to express our position on the various proposals and points under consideration. We intend to make our contribution, whenever necessary, during the deliberations, which will follow, concerning the draft text of the Convention.

82. The CHAIRMAN [F]: The delegate of Switzerland has the floor.

83.1 Mr. STAMM (Switzerland) [F]: The Swiss authorities consider that it is necessary to take measures on a world soale to control the distribution of programme-carrying signals when these signals pass through space satellites.

83.2 However, the delegation of Switzerland considers that it is its duty to reiterate the preference it has always indicated for integrating this new protection in the agreements administered by the International Telecommunications Union. The propinquity of the future regulations to the instruments of the ITU has been accentuated with the Nairobi version of the draft. Our regret is, therefore, all the more deep in that this protection is to be the subject of a separate agreement.

83.3 It is, nevertheless, in a spirit of frank collaboration that our delegation is present in Brussels. It expresses the wish that the work of the Conference will culminate in an instrument that the delegations will be able to present to their Governments with a clear conscience.

84. The CHAIRMAN [F]: The delegation of Czechoslovakia has the floor.

85.1 Mr. KUNZ (Czechoslovakia) [F]: Czechoslovakia is a member of the Berne Union and of the Universal Copyright Convention, as well as of the Rome Convention, and has always been hostile to the illegal distribution of television and radio programmes, whether by what we may call traditional means or by programme-carrying signals transmitted by satellits, and attaches great importance to the satisfactory regulation of this problem at the international level.

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85.2 It is natural that in Czechoslovakia as well we wonder whether the existing protection of the international Conventions to which Czechoslovakia is a party is not sufficient to attain the goals mentioned above, and we have reached the conclusion that truly effective protection against illegal distribution - above all of direct broadcasts - can only be achieved if we seek it not only in the field of international private law but also in the field of international public law, and here the Nairobi draft presents, in our opinion, a distinct step forward.

85.3 However, in our opinion - an opinion that we have in fact expressed elsewhere, for example, in Paris in December 1973 - it would be necessary to include in this Convention giving States reciprocal rights and obligations, stipulations which would ensure that the distribution of programme-carrying signals would be carried out in the interests of peace and of cultural and social progress, and should in no way prejudice the fundamental principles of international public law, such as, for example, the principle of respect for the sovereignty of States, the principle of non-interference in the internal affairs of States, etc.

85.4 Based on this point of view, it also seems necessary to us that the distribution of programmes by satellite on the territory of another State should be carried out only with the consent of the latter.

85.5 In addition, we do not see any objection to certain principles of international public law being applied to this Convention, to the questions dealt with and consequently mentioned in it. Such, for example, would be the case of the international responsibility of States for the activities of their governmental and non-governmental organizations and the duty of States to carry out their activities in outer space in conformity with international law, including the Charter of the United Nations, and in the interests of the safeguard of peace and international security. The fact that these principles are also contained in the Treaty of 27 January 1967 on principles governing the activities of States in the exploration and use of outer-space, including the moon and other celestial bodies does not, in our opinion, present any obstacle to their also being included in the Convention which we are about to consider. In view of the fact that the principles of which I have spoken are contained in the relevant proposals of the delegate of the Soviet Union, as well as in his other proposals concerning, for example, Articles 9, 10, etc., the delegation of Czechoslovakia will support these proposals and reserves the right to come back to them during the discussion in the Main Commission.

85.6 The delegation of Czechoslovakia is persuaded that the inclusion of these principles would result in a broader, more balanced and more effective protection, and would also contribute to better international understanding which is also the expressly mentioned goal of, for example, the Universal Copyright Convention.

85.7 In conclusion, the delegation of Czechoslovakia expresses its desire to join its efforts with those of other delegations in order to contribute to the drafting of an international instrument

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which would in no way prejudice the existing Conventions and would at the same time be evidence of the principles of friendly international co-operation among States.

86. The CHAIRMAN [F]: The delegate of the Ivory Coast has the floor.

87.1 Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: The delegation of the Ivory Coast is in complete agreement with the analysis, outlined yesterday by the delegate of Algeria, of the draft before the Conference. The delegation of the Ivory Coast could have ended its intervention here if it had not contracted the speech disease which is rampant at every conference and which now leads it to make a few observations of its own. On the text first of all, apart from some changes which we reserve the right to propose during the discussion of the draft, the delegation of the Ivory Coast believes that this text, far from being a compromise - a solution which never satisfies anyone - thanks to the new philosophy applied to the problem in the field of copyright and the protection of performers, producers of phonograms and broadcasting organizations raised by the distribution of programme-carrying signals transmitted by satellite, has the merit that it satisfies, or will at least lead to the accession of the majority of countries. The delegation of the Ivory Coast recalls that the developing countries are more than others anxious to protect performers for, in Africa in particular, they are the instruments, the witnesses and transmitters of oral culture and civilization.

87.2 The delegation of the Ivory Coast would especially like to stress the vision and spirit of co-operation manifested by the delegations of Brazil, the Federal Republic of Germany and Italy, all members of the Rome Convention, in their analysis of the draft; the delegation of the Ivory Coast affirms that the drafting of this Satellite Convention has a symbolic value. Indeed, for the first time, technology assimilated to art, is as such afforded copyright protection. For the first time, an international instrument, which is simple and clear, admits that Governments have the necessary wisdom to establish freely the control of the modern weapons constituted by the highly sophisticated media. For the first time, the developing countries were completely associated, from the beginning, with the drafting of a Convention in the field of intellectual property. For the first time, the interests of the developing countries and those of the developed countries coincide perfectly. Finally, for the first time, a draft Convention has been established in a developing country, which might lead us to think that at Nairobi the delegates were influenced or inspired by the ecological purity of Kenya and by the wisdom of Africa.

87.3 The three latter remarks prove that from now on the will of the developed countries to help the developing countries to extricate themselves, to consider them as equal partners, goes beyond speech-making and has become a reality.

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87.4 The Ivory Coast hopes that the genius of Belgium, a country with a vocation for conciliation and co-operation, will influence the spirit in which the work of this Conference takes place and that the congratulations which have been unanimously addressed to you, Mr. Chairman and your Government, will be confirmed by the success of this diplomatic Conference at Brussels where the Nairobi Convention will be signed, and the assurance of subsequent satisfaction.

88. The CHAIRMAN [F]: I give the floor to the delegate of Tunisia.

89.1 Mr. SAID (Tunisia) [F]: I think it would be superfluous to remind such eminent specialists as those present here of the importance of satellite communications both in facilitating throughout all the countries of the world the free circulation of ideas by word and image and in helping three-quarters of those countries - I am referring to the developing countries - to solve a little more easily some of their problems in the field of education and teaching. But if such communication media are to develop, to make progress, it is both necessary and legitimate to ensure their protection. I think that we are all in agreement on this point. However, differences begin to appear when we consider the means of protecting them, i.e. the instrument of protection. Some consider that the protection of the signals transmitted by satellite is both necessary and legitimate but that the adoption of a new international instrument, which may not be widely ratified, is not perhaps the best solution to the problem and that a recommendation or a resolution condemning the poaching of signals transmitted by satellite adopted by the General Conference of a competent international body, which means by the international community, would in the end be more effective. This is a valid opinion that can be defended. Others consider that this protection of the signals transmitted by satellite is both necessary and legitimate, but that it is already assured by other international Conventions already in force - such as the Rome Convention or the ITU Convention - and that we could perhaps have avoided a new international Convention by means of a revision or a more detailed interpretation of those already in existence. This second opinion is also valid and can be defended. Finally, others believe that in view of the new technology and new situation, it would be appropriate to elaborate new texts, that those already in force provide only partial protection, which is in any case insufficient to prevent the poaching of signals, and that the most satisfactory solution would be the adoption of a new instrument. It is this third opinion which seems finally to meet with the approval of the majority of delegations, including those defending the first two opinions.

89.2 My delegation approves this third method and would certainly like our work to be effective, but also - and above all - useful. What I mean is that my delegation does not wish the results of our work to remain a pious wish. Although all conventions are restrictive, they are only restrictive once a State has ratified them; and any State may or may not ratify a convention. If we want our work to

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produce concrete results that will have some effect, we should not lose sight of this elementary idea and should make sure that the clauses that we incorporate or retain in our text safeguard the essential which remains, of course, the protection of signals transmitted by satellite, and that they be flexible with regard to what is accessory and take account especially of the specific interests of States and in particular of the developing countries, as has been indicated by certain delegations and notably that of Australia to which I should like to pay tribute. It would also be appropriate, not to introduce here the protection afforded by copyright and neighbouring rights which is afforded and better afforded by other international instruments, but rather to make some reference to these rights and to ensure that the new instrument in no way prejudices them, for although it is true that what concerns us is the signal, i.e. the container, it is also true that the container in this instance exists only because the contents exist - or better that the container is worth only what its contents are worth.

89.3 It is in view of these preoccupations and general concepts, and in the hope of arriving at a text susceptible of ratification by the greatest possible number that my delegation would like to put forward some concrete proposals that will, of course, be discussed by the meeting, but which we consider it would be highly desirable to adopt. I shall limit myself to stating them simply without developing them, and shall return to them when we study the articles concerned in detail:

- (1) To avoid anything that may suggest that the new instrument may prejudice the interests of authors, performers and producers of phonograms, but keeping Article 6 of the draft, of course, and completing it by the addition, proposed at Nairobi by the delegation of India, which appears in paragraph 110 of the Nairobi report.
- (2) To retain, in their present form at least, the exceptions set out in Article 4 to take account on the one hand of certain specific situations and interests and, on the other hand, of a certain right of information.
- (3) To guarantee every Contracting State against any monopoly and consequently to retain Article 7 of the draft - although perhaps not in its present form which is not perfect; but my delegation is convinced that the Convention would gain a great deal if this idea were retained.
- (4) As some delegations, in particular the delegations of the Union of Soviet Socialist Republics and Algeria, have already requested, to delete in Article 9 paragraph (3), sub-paragraphs (a) and (b) and in Article 10, the reference to paragraph (3) of Article 9. This clause, it must be admitted, has no longer any sense to-day; it is in contradiction with the principles openly preached by the United Nations and it can have only one consequence: to make the Convention less attractive to the countries of the third world in general and to the African and Arab States in particular.

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(5) To ensure that our Convention does not in any way prejudice any of the international conventions already in force and to this end, my delegation supports the proposal of the United States of America that paragraph (e) of the Preamble be strengthened, in particular by mentioning the International Telecommunication Convention and the Regulations annexed to this Convention.

(6) I shall conclude by stating that, although my delegation is in agreement with the delegate of Kenya that our Convention should not interfere in problems dealt with by the United Nations, it considers on the contrary that our Convention can and should be in harmony with decisions already taken by the United Nations.

89.4 It is for this reason that my delegation supports the addition to the Preamble proposed by the delegation of the Union of Soviet Socialist Republics, an addition which consists of admitting the necessity for an agreement on principles for the use of direct transmission by satellite. This is in keeping with the position of the United Nations and with that adopted on this subject by the General Conference of Unesco at its session in 1972. And it seems to me that it is precisely the opposite position - that of protecting as of now direct broadcast signals which do not yet exist - that would constitute interference in the affairs dealt with by the United Nations and, what is more, would be contrary to decisions already taken by that gathering.

89.5 Now, if we consider that we should not go that far in this convention at the present stage of things (and in truth it is not going very far) then we should abstain purely and simply from touching this complex and difficult problem for which a definitive solution has not yet been found. In any case, we should avoid prejudicing any solutions which may be found in the future.

89.6 My delegation is very sincerely afraid that many countries may hesitate to ratify the Convention if it does not take care to remain neutral with regard to this essentially political problem for which solutions will be found in an appropriate body.

89.7 Before coming to Brussels I had occasion to discuss the goals of our Conference during the course of a meeting with the qualified representatives of twenty-four Arab and African developing countries. The opinions that I have just expressed are those of my delegation but they also take account, to a large extent, of the opinions and positions of my interlocutors.

90. The CHAIRMAN [F]: The delegate of Finland.

91.1 Mr. SLOTTE (Finland) [E]: The view of the Finnish government has been and is that satellite broadcasts have become an increasingly important instrument in the field of international co-operation and that, therefore, it is of utmost importance to achieve worldwide agreement on the prevention of unauthorized use of satellite broadcasts. My delegation concurs with the opinion very

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eloquently expressed by several other delegations that this should in no way harm the legitimate interests of the contributors to the programmes. The diligent efforts of the governmental expert committees have resulted in the present draft Convention which, for the time being, seems to be acceptable to a great majority of States as well as to the organizations concerned. Therefore, we sincerely hope that the ideals and principles expressed in this draft can meet with the approval of the participants to this Conference. Otherwise, we fear that this Conference may not achieve its purpose and we might be back again at the beginning.

91.2 In this connexion, I would like to point out that Finland has not ratified the Rome Convention for purely domestic reasons. We wish, however, to emphasize that our legislation closely corresponds to the contents of that Convention, which is aimed at safeguarding the interests of performers, producers of phonograms and broadcasting organizations.

91.3 Finally, I would like to underline that the Finnish delegation is fully prepared to contribute to achieving constructive results in the spirit of co-operation.

92. The CHAIRMAN [F]: The delegate of the Ukrainian Soviet Socialist Republic.

93.1 Mr. ALEXEEV (Ukrainian Soviet Socialist Republic) [R]: The culture of each people develops in interaction with the cultures of other peoples. The exchange of cultural achievements promotes the social progress of mankind. Therefore, co-operation and exchanges in the field of culture, science, and information constitute an essential part of international relations.

93.2 Due to the rapid development of radio and television in the whole world the time is near when it will be possible to receive television broadcasts at practically any point on earth - as is already the case with radio - and the audience of any single television broadcaster will assume global dimensions. It would then not be feasible to prevent in any conceivable manner unauthorized interception or tapping of programme-carrying signals. It is these circumstances, this objectively real possibility that should be contemplated in the first place - or so the delegation of the Ukrainian Soviet Socialist Republic believes - in the examination of the draft Convention. Several delegates expressed an opinion yesterday that the issue of direct broadcast satellites is not an urgent problem and does not have to be provided for in the present Convention. I should like to remind you all, and my Canadian colleague in particular, that some countries - India and Canada in particular - plan to launch experimental direct broadcast satellites as early as 1974 and 1975, i.e. in the very near future.

93.3 That is why it is essential to develop now the legal framework to govern not only the issues covered by the draft Convention but also direct broadcast satellites.

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93.4 On the basis of these considerations and guided by the principles of the sovereignty of States, equality, non-interference in the internal affairs of other States, maintenance of world peace and security, respect for national laws, customs and traditions, and considering further that all States should bear international responsibility for all national activities involving the use of satellites for communication purposes regardless of whether they are carried out by governmental bodies or non-governmental organizations and public entities, the delegation of the Ukrainian Soviet Socialist Republic supports the proposal of the delegation of the USSR and thus has co-signed the submitted amendments to the draft Convention.

94. The CHAIRMAN [F]: The delegation of Norway has the floor.

95. Ms. HOLMØY (Norway) [E]: The Norwegian delegation is fully aware of the importance of getting international protection of programme-carrying signals transmitted by satellite. In the opinion of my delegation, it is, however, also important to obtain a fair balance between the various interests in the programmes, i.e. the interests of the broadcasting organizations as well as the interests of the different groups of contributors to the programmes dealt with in international conventions in force. Norway is not a member of the Rome Convention. The question of adherence to that convention is, however, being considered by our Government. In accordance with the principles just mentioned, the question of adherence to the Rome Convention and the acceptance of the special Convention which is the subject of this Conference, as well as the Phonograms Convention, will probably be considered simultaneously. My delegation will also seriously consider supporting proposals which may, within the framework of a satellite convention, give some guarantees to the other interests.

96. The CHAIRMAN [F]: The delegation of Spain has the floor.

97.1 Mr. de la VEGA GOMEZ-ACEBO (Spain) [S]: There is clearly a necessity for adequate protection for transmissions by satellite, in light of the obvious importance that this medium has already acquired. The Spanish position in the three Working Groups which preceded this diplomatic Conference, constitutes sufficient proof in itself.

97.2 It is obvious to all that, independently of its intrinsic merits, the Rome Convention does not seem to offer in practice any great possibilities for protection, perhaps on account of the small number of ratifications that it has received up to now. However, this does not mean that the delegation of Spain does not strongly support the safeguarding of the rights of performers in programmes transmitted by satellite.

97.3 For all these reasons, it is necessary to have an international legal instrument that can achieve this goal of protection

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and, in this connexion, I should like to reiterate how important it is that this Convention be open to the largest possible number of countries.

97.4 Another aspect that is receiving the attention of the delegation of Spain is the fact that the draft does not include any protection of direct satellite broadcasts.

97.5 The delegation of my country, therefore, supports the project drafted at Nairobi by the Third Committee of Experts, in view of the fact that, as has already been indicated by numerous delegations, it implies a balance that takes due consideration of the interests of authors, performers, producers of phonograms and broadcasting organizations.

97.6 For this reason, my delegation considers that in our debates this compromise solution, i.e. the Nairobi draft, should be retained, not forgetting the considerations that the delegation of Spain has just expressed on the advisability of the Convention being open to the largest possible number of countries and on the inclusion in the Convention itself of the protection of direct satellite broadcasts.

98. The CHAIRMAN [F]: I give the floor now to the delegation of the United States of America.

99.1 Mr. WINTER (United States of America) [E]: I hope that the delegates here will excuse the United States for taking the floor a second time during this general debate. However, in view of the fact that the United States spoke before the subject of controls over the content of programmes broadcast by direct broadcast satellites was raised, the delegation of the United States finds it necessary to make a very brief statement on the position of its Government on this matter:

99.2 The proposed Convention before this Conference, both by definition and in the history of its development, is without competence to deal with questions such as the power of a country to control the content of programmes beamed into its territory from abroad by direct broadcast satellite. The question of direct broadcast satellites and the attendant questions of State control of programme content are quite properly being considered in the competent bodies of the United Nations.

100. The CHAIRMAN [F]: I do not think there are any other States which have asked for the floor. I therefore give the floor to the representative of the Organization of Arab States for Education, Culture and Science.

101.1 Mr. SOROUR (Organization of Arab States for Education, Culture and Science) [F]: My intervention concerns the legal aspects only. In spite of the text established at Nairobi which had the effect of transferring the proposed Convention from the field of international private law to that of international public

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law, it does not sacrifice the private rights of contributors to programmes transmitted by satellite. Under Article 1 of the proposed draft Convention, the Contracting State must, through its national legislation, take adequate administrative measures to prevent the unauthorized distribution of programme-carrying signals on its territory. This clause doubtless protects certain interests which are not those of the State itself, but the private interests of all persons contributing to the programme. A national law that authorizes a State to take this type of measure in principle protects the private interests of programme contributors. Consequently, this law should implicitly admit the unlawfulness of the act of the distributor who distributes without authorization programme-carrying signals emitted to or through satellites.

101.2 Therefore, the act of the distributor is doubtless considered an offensive act involving his civil responsibility. Then the contributors to the programme distributed without their authorization have the civil right to demand reparation before the courts of the countries concerned for the prejudice caused them by this illegal act. The basis of this suit is the unlawful act, in accordance with the general principles of punishable liability recognized by all civilized legislations in the world. It can be said that the civil protection of the rights of the programme contributor and the administrative protection by the State of these rights are two faces of the same coin. The Rome Convention also admitted the link between these types of protection by providing, in Article 7, that the protection provided for in the present Convention in favour of performers should make possible the prevention of acts of broadcasting, fixation and reproduction without their consent. Finally, Article 6 of the proposed draft Convention has established the non-compatibility between the civil protection granted programme contributors and their administrative protection by the State.

101.3 In addition, I should like to comment on the amendment proposed by the delegations of the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic. I should like to state that this proposal, which demands the exclusion from all programmes transmitted by satellite of any material detrimental to the maintenance of international peace and security, or publicizing ideas of war and national and racial hatred, is in conformity with the declaration adopted by the Unesco General Conference at its seventeenth session, as well as with the resolution of this Conference which recommends education for international peace.

102. The CHAIRMAN \sphericalangle F \sphericalangle : The representative of the European Broadcasting Union has the floor.

103.1 Mr. SCHARF (European Broadcasting Union) \sphericalangle E \sphericalangle : On behalf of the European Broadcasting Union, I first of all have to give thanks for the kind invitation which has been extended to us to be present as an observer.

103.2 The interest the broadcasters and the European Broadcasting

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Union have taken in this Conference is quite natural. The continuously increasing use we make of distribution satellites demonstrates to us nearly every week the urgent necessity to secure the distribution of satellite signals carrying television programmes by an effective legal instrument. This effective legal instrument, which does not exist at present, can only be expected by a new international agreement which is simple enough, that is to say uncomplicated enough, to receive world-wide ratification within a short time.

103.3 In our view, the Nairobi draft has this useful simplicity. It deals with the programme-carrying signal only, not with the programme. It deals with the distribution of signals, not with their originating, in so far as it accepts, very rightly, the transmission of signals by satellite as merely a new technology of transporting signals, without any reference to terrestrial means of transport. It addresses itself so to speak, to the distributor, not to the originator. Therefore, in our view, there is no place in this legal framework for terms like authorization, copyrights, performing rights, consent of contributors and so on. Those terms necessarily are addressed to the originator not even of the signal, but to the originator of the programme, of which, however, this agreement should not even speak.

103.4 On the other hand, of course, the programmes carried by the broadcast signals have to be properly originated, respecting and acquiring all necessary rights beforehand, just as has to be done - and as the broadcasters are used to doing - before a terrestrial transport of signals is initiated. Problems possibly involved therein are not and cannot be the subject matter of the new agreement. They can be solved, if necessary, on a contractual basis between the parties concerned. Of course, reference to this could, if deemed necessary, appear in the report of the Conference.

103.5 I wish to repeat explicitly what I said in Nairobi: the broadcasters did not and do not claim a new right of their own. We claim protection for the signal, thus serving ipso facto all interests legitimately involved. The draft of Nairobi fortunately found the wording which fits all interests concerned by protecting the distribution of signals. We therefore suggest sticking to this fundamental idea of the Nairobi meeting and adopting an agreement following closely the Nairobi draft.

103.6 The European Broadcasting Union supplied the diplomatic Conference with a memorandum summarizing all comments the EBU has to make from its daily professional experience. The memorandum is reproduced in UNESCO/WIPO/CONFESAT/5 - I need not repeat all our observations now. The discussions in the Main Commission may provide us with the opportunity to comment on some items in particular.

103.7 In yesterday's general discussion, mention was made specifically of the attitude of the EBU towards the Rome Convention. We really would have preferred to change this attitude without any interdependence upon the new agreement discussed at this Conference. The new agreement, as commonly admitted, is necessary because,

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inter alia, not even the Rome Convention fits the particular problems dealt with here. We were, and still are, prepared to change this attitude without interdependence upon the new agreement. The President of the EBU, Sir Charles Curran, Director General of the BBC, announced in an official letter of 13 March 1974, addressed to the Honourable Delegate of the United Kingdom, Mr. Davis, that under certain circumstances, the EBU "will withdraw its opposition to ratification of the Rome Convention".

103.8 At least all the members of the Intergovernmental Committee are quite familiar with this letter. The future attitude of the EBU depended mainly on the decisions of this Intergovernmental Committee concerning a model law to implement the Rome Convention. These decisions the Intergovernmental Committee took the day before yesterday, and the observers of the EBU expressed their strong view there that the governing bodies of the EBU will follow the announcement of the EBU's President who said in his letter already mentioned, "Although such ratification is no mere formality, I do not personally think the above declaration will undergo any alteration." And so we think.

103.9 It should not be so amazing that in a democratically organized Union, the bodies representing the members have to ratify substantial decisions on the Union's policy. Nor should it be amazing that these bodies have a schedule fixed as usual about one year beforehand - of course without any reference to developments and conferences not even known at that time. I would have preferred not to be forced to mention such minor details here but I cannot suppress a certain disappointment still finding completely misunderstood all that we did very seriously during the last weeks. We tried to make things easier. I apologize for having been forced to give the impression of being afflicted. We are sure this will be of no further significance.

104. The CHAIRMAN [F]: The delegate of Yugoslavia has asked for the floor and I give it to him now.

105.1 Mr. TIPSAREVIC (Yugoslavia) [F]: I should like to thank you for allowing me to take the floor now during the general discussion and I shall first of all explain the opinion of my Government which is in favour of the concept of an international Convention for the protection of programme-carrying signals transmitted by satellite.

105.2 My Government has followed with considerable interest the preparation of this Convention which took place, as we all know, in three previous stages. I was myself the delegate of Yugoslavia at the Second Committee of Experts held at Paris. I remember very well the problems encountered in trying to draw up the text of the draft Convention. These problems are clearly set out in the General Report of the Paris Committee. For this reason, my delegation considers that the text of the draft Convention drawn up at Nairobi avoids almost all the problems that arose during the previous work and that its legal base can satisfy all the interests involved. The

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Nairobi draft offers, in the first place, provisions protecting the interests of the developing countries in the field of culture and social development. I take this opportunity to stress once again that the interests of the developing countries determine the policy of Yugoslavia in its international relations. Secondly, we are convinced that the Nairobi draft safeguards the necessary balance between the interests of the authors of works of the mind, performers and the broadcasting organizations, which was the main objective of the preparatory work for this Convention.

105.3 This is the general opinion of the delegation of Yugoslavia, which is in favour of the text of the draft Convention submitted to this Conference. Finally, my delegation considers that every possible effort should be made during the coming discussions to improve the text, if such improvement proves necessary.

106. The CHAIRMAN [F]: We shall now hear the intervention of the delegation of the International Federation of the Phonographic Industry.

107.1 Ms. DAVIES (International Federation of the Phonographic Industry) [E]: The IFPI is very grateful for the invitation to attend this important Conference and for this opportunity to make observations on the questions being considered by the Conference. As the representative of the producers of phonograms, one of the three beneficiaries of the Rome Convention, I should like to express the IFPI's appreciation of the very large measure of support for the Rome Convention expressed by so many delegates to this Conference. The anxiety of the defenders of the Rome Convention that nothing should be done to damage the prospects of wider accession to it or to impair the balance achieved by the Convention between the interests of its three beneficiaries is shared naturally by the IFPI. This anxiety has been our constant preoccupation throughout the period, now some five years, during which the need for a Convention to protect signals transmitted by satellite has been under discussion.

107.2 While the IFPI, as is well known, has always recognized that broadcasting organizations are entitled to be protected against piracy for signals transmitted by satellite, we have constantly maintained the view along with the majority of the States party to the Rome Convention that such protection is already afforded by the Rome Convention.

107.3 We recognize, however, that it has become accepted that a new separate international instrument is to be established. Throughout the discussion in the three Committees of Experts which had been convened to consider the matter we have had grave doubts as to what form any protection additional to that provided by the Rome Convention should take and particularly grave doubts as to the effect that the granting of an additional right to broadcasting organizations would have on the delicate balance afforded by the Rome Convention between the rights of its three beneficiaries.

107.4 These overriding considerations led us at Nairobi to welcome

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the Moroccan proposal which resulted in the Nairobi draft text. We take the view that the Nairobi text is the only acceptable solution. The reason for our attitude is that by confining the problem to one of public international law the Nairobi text does not touch upon the equilibrium established by the copyright conventions and the Rome Convention between the private specific rights of those whose intellectual property contributes to the programmes transmitted by satellites - the authors and composers, the performers and the producers of phonograms.

107.5 However, it must be recognized that the adoption of the new Convention, coupled with the continued opposition of the broadcasting organizations to the Rome Convention, would seriously upset the equilibrium to which I have referred. For that equilibrium to be maintained we must rely on the EBU to implement its undertaking to abandon its declared opposition to the Rome Convention. It is in anticipation of the Administrative Council of the EBU taking a positive decision to put into effect this new attitude of goodwill towards the Rome Convention that we feel able to support the Nairobi text in principle while recognizing that it could be improved in certain respects.

107.6 In the unlikely event that following the adoption by this Conference of a Convention based on the Nairobi text, the EBU were to fail to change its attitude to the Rome Convention, then the IFPI's attitude to the future of the Satellite Convention would be similar to that expressed by several delegates representing member states of the Rome Convention, and in particular the delegates of Austria, Brazil, Mexico and the United Kingdom.

108. The CHAIRMAN [F]: The representative of the International Federation of Actors has the floor.

109.1 Mr. CROASDELL (International Federation of Actors) [E]: I represent the trade unions of the Actors and the Variety Artistes of some forty countries. I am most grateful to the Committee to be present at this critical Conference and also for your kindness in allowing me to speak in the general discussion.

109.2 I think it would be an abuse of that privilege if I were now to dwell on the reason why, although opposed to piracy, we think that this proposed Convention is unnecessary and undesirable. The reports of all the preparatory meetings show the reasoning for that and show that it was a view widely held among governments hitherto. Rather I would like to say to-day with the representatives of the IFPI how enormously encouraged we have been by statements on behalf of so many governments on the necessity of a protection of contributors to programmes, the insistence that the proposed Convention shall not upset the equitable balance between the interested parties and the anxiety that there should be no adverse effect upon the development of the Rome Convention.

109.3 The question is, in real terms, how is this to be ensured? There is a real danger in our view that the Convention may well be

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limited in time in its effect, as it seems that it does not deal with direct broadcasting satellites and some further Convention for that will be essential; a real danger, therefore, that this Convention may have disadvantages in its effect upon Rome far outweighing its temporary value in relation to the protection of signals.

109.4 If the performers are devoted to the Rome Convention, this is due not just to the particular rights accorded to us under that Convention, which are by no means perfect, but because it establishes the principle of the equity of balance. It took more than three Committees of Experts before Rome came into being, it took thirty years of argument and hard work on the part of the ILO and many others to bring about that instrument in 1961. And if it was born with such prolonged labour, it is a Convention which is still young and vulnerable. It is not safe, it is not taken for granted, as are for example the copyright conventions, and it has powerful enemies. It needs protection and it needs nurturing; and thus our fears and those of so many government spokesmen at this meeting are well founded. If we ask why States have been relatively slow in accepting Rome, there have been three basic reasons: one has been the qualification requiring adherence to one or the other of the copyright conventions; that problem has been greatly eased by the changed situation of those conventions. The second reason was the alleged complexity of its provisions; and that problem has been greatly eased by the adoption this week of a model law.

109.5 But the more important reason in our view and in our experience in the past has been the unrelenting and ruthless campaign of the broadcasters against ratifications of the Rome Convention. I do not need to dwell upon that history; it is well known and it is freely admitted. And how far is this attitude changed? Dr. Scharf has referred to Sir Charles Curran's letter. I think it is very important that delegates to this Conference should not be misled by the agreement referred to on the subject of the model law. There has been agreement on the text. The European Broadcasting Union's declaration, of course, has not yet been made and we were very happy to hear Dr. Scharf predict this morning that on 24 May the provisions of Sir Charles Curran's letter will be adopted, he believes, by his Administrative Council. Even so, how far will that new position of the broadcasters extend? First of all the EBU will not become an advocate of the Rome Convention. The EBU will not undertake to support the Rome Convention. The EBU will undertake to refrain from opposition to the Rome Convention but even then that undertaking will relate only to countries which adopt the model law as the basis for their legislation. Therefore, in a country using other valid legislative provisions to comply with the Rome Convention, not only may the local broadcaster oppose ratification, but the European Broadcasting Union itself has retained its freedom to oppose ratification in such a case. And in any event the Broadcasting Union reserves its right to do what it undoubtedly will do, that is actively campaign against the principle of equitable remuneration in Article 12. And when we see the effectiveness of the campaign of the broadcasters in the past and the tenuous nature of

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the assurances which have not yet been given delegates, you will understand that those of us representing contributors seek their help in the protection and the extension of the Rome Convention.

109.6 It is perfectly true, as the spokesman of the Government of Sweden said, that the very existence of this proposed convention would lessen interest in Rome. It is said that broadcasters are given no new right under the Nairobi draft, yet already at the Nairobi Conference representatives of governments and others pointed out that in real terms the broadcasters are given the equivalent of a right; there is, therefore, a proposed convention which gives the equivalent of a right unilaterally to only one of the interested parties, and indeed to the most powerful of those parties. I am bound to say that in our view this itself is inequitable and lacks the balance which was first established in Rome. And, therefore, we say that we find the proposed Convention dangerous and believe it to be unnecessary. But if the Governments here represented believe in the necessity of such a Convention as is now proposed, then I think it is right for us to look to them to only bring that Convention into being in a form which will guarantee the protection of the Rome Convention and the equitable principles which it contains against its enemies. And whether this can be done or will be done in the manner implied by the governmental spokesman from Denmark, Austria, the United Kingdom or perhaps in the more explicit way suggested in the Resolution of the Intellectual Workers Symposium in Mexico to which the governmental spokesman of Mexico made reference, is perhaps not for me to say.

109.7 But what I think I must say is that we feel that we have a right to say to the governmental representatives here, in the light of all that has been said so far in the general debate, that we look to you to find the means, if you are going to create this Convention, of so creating it that the equitable balance of Rome is not only not directly attacked but its preservation is guaranteed.

110. The CHAIRMAN [F]: The representative of the International Federation of Musicians.

111.1 Mr. MORTON (International Federation of Musicians) [E]: I would also like to express the appreciation of my organization for the invitation to attend and contribute to the general discussion of this important Conference. I am speaking for the International Federation of Musicians which is the only international organization consisting solely of musicians' trade unions. I must express sympathy with the difficulties faced by the Conference. It seems to us that the problem is rather like an onion consisting of many layers. I think that it would not be appropriate to comment on that layer that concerns the question of control over direct broadcasting raised by the delegation of the USSR because although performers are as interested as anyone else in international understanding and peace and the protection of national cultures, they have no special and particular rights or interest in the matter.

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111.2 The next layer in the onion seems to us to be the question of the balance of rights to which reference has been made by many delegations and I should like to come back to that question in a moment. But first to comment on what seems to us to be the third layer which is the effect of those rights, the balanced rights, on the contractual relations between the parties involved in a broadcast.

111.3 I agree of course that this Conference would not consider itself competent to deal directly with problems of industrial relations but I feel sure that it would wish to take into account the effect on those relations of any Convention that it establishes. It will be seen that I am suggesting that the problem is not entirely an abstract one but is partly an economic one. We agree with the point made by the delegations of Hungary and Tunisia that the carrier and contents analogy is artificial and misleading. If one may produce another analogy, the broadcasters are manufacturers, they are not railway operators, they wish to protect the goods, they do not wish merely to protect the wagons. But this Conference is rather in opposition and we feel sure that a legislature would not wish to give protection to goods, the title of which is doubtful. I acknowledge and appreciate the point made by Dr. Scharf, on behalf of our fellow observers the European Broadcasting Union, that they would recognize, insofar as they are able to speak for all broadcasters, that the proper rights of the contributors to the programmes should be taken into account in authorizing a recipient for a broadcast. But of course the matter is not merely one of criminality it is also one of equity and the broadcasters quite correctly are seeking to improve their contractual position as they have stated in their memorandum to this Conference in their comments on Article 3. It must constantly be borne in mind that what is claimed to be an impediment to the use of satellite transmissions is an economic impediment. It is claimed that the consequence of a lack of protection is that higher fees have to be paid. And since there is this contractual element in the matter, the contributors and the performers specifically feel that their contractual position must be taken into account.

111.4 My colleague from the International Federation of Actors has mentioned the sum of the arguments against the use of Rome to achieve these objectives and there are, it seems to me, four arguments that are commonly advanced: the first, that the Rome Convention does not technically cover the situation; it seems to us that this argument has almost been abandoned, that the majority of the Rome countries have certainly claimed that the Rome Convention does cover the situation; and even those who had previously raised doubts about the matter seem now to have virtually abandoned their doubts. The second argument is that the Rome Convention is closed; and my colleague from the Federation of Actors has mentioned that argument. The third is that the Rome Convention does not adequately cover the cable situation but then that situation is in some doubt in the proposed draft and I think that that argument therefore could not be held to be a fundamental one.

111.5 What may be in the view of the Federation of Musicians a more

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realistic argument is that there is an emergency situation that needs the earliest possible action. If this is the main argument that the Conference is to accept and if the Conference accepts, as many delegations have expressed themselves, that there is a need to preserve and some equity in having the balance of interests, then in our view the emergency argument needs to be isolated from the other arguments. Such an argument was advanced for the so-called Piracy Convention that there was an emergency that needed immediate action. The difference of course, at that time and since, between the Piracy Convention and the Satellite Convention is that the producers who were to benefit from the Piracy Convention have consistently been fervent and active supporters of the Rome Convention and we would sincerely hope that that may shortly be the position of the European Broadcasting Union and therefrom of other broadcasters.

111.6 We should like to draw the attention of the Conference to the proposal originating with the Austrian delegation and to say that in our opinion it could very well offer a way forward, that is, that there might be a formal link between the proposed Convention and the ratification of the Rome Convention, such a link as might provide an obligation upon adherents to the Convention to subsequently ratify the Rome Convention. Such a link might be coupled with an expression of the desirability of the balance between the interests of all parties affected. I recognize that those who believe that the distinction between public and private law is a pre-eminent part of the matter would find such a link objectionable, but we would hope that that would not be the prevailing view.

111.7 The link between the Convention and the Rome Convention would have several effects. It would remove the present restrictive protection in the draft Article 6 which confines itself to preserving protections now in existence or in existence at the point of ratification. And it would make the broadcasters' authorization of the area or person for whom the broadcast is intended subject to other interests in the broadcast. I hope that this Conference will apply itself to this problem of balance and the performers' organizations will be happy to contribute views and comments on any possible solutions.

112. The CHAIRMAN [F]: The representative of the International Confederation of Societies of Authors and Composers has the floor.

113.1 Mr. ZIEGLER (International Confederation of Societies of Authors and Composers) [F]: Permit me at this stage of the work of the International Conference of States to briefly outline our reactions with respect to the draft instrument before this Conference, i.e. our reactions taking into consideration in particular the interventions of the various delegations which, both yesterday and this morning, expressed their concern with regard to the effects of this instrument on authors' rights. We are very aware of these preoccupations and I should like to thank especially those delegations which have expressed them. As you will readily understand, we share this concern to ensure the efficient and fair protection of the rights and interests of authors so that they share in the material and

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moral advantages of technological progress which, thanks to satellites, will make possible the diffusion of their works on a worldwide scale.

113.2 This constant concern has led us from the outset, after an attentive study of the whole problem, to define a position which has, since then, remained basically unchanged even though in the course of various approaches, it has been expressed in different terms. In fact, our reflexions are based on the report submitted by Mr. Fernay to the Committee of Experts which met in Lausanne in April 1971 and on Article IV, Alternative A, of the draft Convention adopted by the Lausanne Committee, i.e. for us - and we do not think that we are alone in this - there is no doubt that the international copyright conventions, and the Berne Convention with its Article 11bis in particular, apply as soon as the originating organization intervenes in the spatial circuit and that, from this point, the responsibility of this organization vis-à-vis authors is engaged.

113.3 But this approach and this analysis, as we know, did not meet with the agreement of all the Experts present at Lausanne, whence the introduction of Alternatives B and C in the said Article IV. Then, one year later, came the attempted compromise, drafted in May 1972 by the Committee of Experts which met in Paris, within the framework of Alternative A of Article IV of the draft Convention which came out of the work of this Committee; it was divided into five points and accompanied by an observation in paragraph 31 of the commentary prepared by the Secretariat of Unesco and the International Bureau of WIPO. The Alternative A of the Paris text was more detailed than that of Lausanne and constituted worldwide regulation of the statute of authors during the transmission by satellite of signals carrying programmes of protected works. It in fact dealt with the responsibility of the originating organization in the case of direct broadcast satellites. It dealt in two different ways, with the responsibility of the originating organization in the case of distribution satellites, responsibility accompanied by an obligation to give authors prior notification. Once paragraph 5 had been liberated from its square brackets, it left States free to consider the emission of programme-carrying signals towards a satellite as broadcasting.

113.4 Finally, the exercise of the right of reproduction remained entirely reserved in the case where this right would be put in question by satellite transmissions.

113.5 The CISAC adhered to this text insofar as it constituted worldwide regulation of the status of authors for satellite transmissions, regulation which assured authors an effective, fair protection as I have already explained. Insofar as, but only insofar as Alternative A of Article IV of the Paris draft as a whole - or any other formula with the same scope and results - should receive the attention of the Conference, the CISAC, as it did in Paris in May 1972, would consider as fulfilled the conditions capable of affording authors the protection they are seeking.

113.6 In any case, insofar as the Conference judges that it cannot

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adopt such a solution, we would prefer to rely on the Nairobi draft which, from the copyright point of view, is a neutral text in the sense that it does not deal with the status of authors with regard to satellite transmissions, except in its Article 6 which safeguards the protection afforded authors under domestic laws and international conventions, in particular the Berne and Universal Conventions; and we know that for the CISAC, as I have already said, there is no doubt that these Conventions, and in particular Article 11bis of the Berne Convention, cover the injection into the satellite circuit of programmes of protected works carried by signals.

113.7 In the new perspective that came out of the work of the Nairobi Committee, it is up to each Contracting State - as the head of the delegation of Brazil stressed yesterday - up to its domestic law or its courts to refer to the specific conventional texts and to apply them in order to preserve the balance between the various interests involved. We hope, therefore, that the neutrality of the Nairobi draft will be maintained, i.e. that this text will not be accompanied by any element which might for any reason whatsoever impede the application of the international Conventions to which I referred, preserving at the same time the contractual freedom of authors vis-à-vis the originating organizations.

114. The CHAIRMAN [F]: The representative of the International Copyright Society has the floor.

115.1 Mr. HALLA (International Copyright Society) [F]: The position of INTERGU is basically unchanged. It remains as it was stated in Nairobi during the discussions following the introduction of the proposal of the delegations of Morocco, Brazil, India and Mexico. The new philosophy, it appears, is characterized by its flexibility - in particular by the field it leaves open to domestic law. It is also wise enough to leave the field open to authors. Contributors to programmes transmitted by satellite should have the possibility of arranging contractually with the emitting organizations the extent of the exploitation of their works. Nevertheless, it seems to us necessary, in view of the rejection of Alternative A of Article IV of the Paris text, to stress and make express mention of the existence of these rights, to avoid all that might give the impression that the new Convention is intended to prejudice the interests of authors, and to reinforce even further what has until now been maintained in the preamble and in the text.

115.2 In the name of INTERGU, I affirm, therefore, that we are in principle satisfied with the new philosophy. I affirm it while still hoping that it will be possible to appeal to your indulgence in order to explain our point of view when the new text, the Brussels text, is being discussed.

116. The CHAIRMAN [F]: The last observer on the list is the representative of the Union of National Radio and Television Organizations of Africa and I invite him to take the floor now.

117.1 Mr. HAMIMI (Union of National Radio and Television

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Organizations of Africa) [F]: The aim of the International Conference of States in which we are participating is to discuss the draft Convention which was the outcome of the Third Committee of Experts which met at Nairobi. This draft, as we all know, deals with the distribution of programme-carrying signals transmitted by satellite.

117.2 The attitude of URTNA to the problem concerning us is familiar to you all. It can be briefly summarized as follows: at the outset and constantly since then, URTNA has considered that the protection of signals transmitted by satellite should be assured by the legal instruments administered by the International Telecommunication Union. In our opinion, this attitude is justified by the fact that the Radio Regulations provide for the protection of the signal as a physical phenomenon and, thus, that the goal sought would be achieved thanks to the worldwide application of the ITU Convention. In addition, this attitude expresses in the clearest possible way, respect for the multilateral copyright conventions which, we consider, leads to that balance of the interests involved that is the goal sought by all.

117.3 However, parallel to this way of envisaging the protection of the signal transmitted by satellite, URTNA declared, first at Paris and then at Nairobi, that it was prepared to discuss an international instrument capable of achieving this balance.

117.4 We now consider that this balance exists in the Nairobi draft which is before this Conference. We consider that it is advisable to stop at this point and examine the possibility of improving the drafting of the Nairobi text, while remaining opposed to any modifications which might undermine the substance of the said draft.

117.5 This being said, the Union of National Radio and Television Organizations of Africa would now like to discuss the draft itself.

117.6 The first observation that we will formulate concerns point (e) of the Preamble which refers to the Rome Convention in terms which appear to us rather specific. In fact, the emphasis given to the said Convention by the phrase "in particular" might seem to indicate the superiority of the Rome Convention over the other international conventions. This is doubtless a problem of interpretation but we at URTNA would like it clarified, if not in the body of the text, at least in the Report. URTNA has always been against the Rome Convention for strictly economic reasons.

117.7 At Nairobi, the problem arose of whether the draft under discussion also concerned direct broadcasting. URTNA's opinion on this subject is that only the signal transmitted by point-to-point satellite is covered by the Nairobi text, to the exclusion, we repeat once again, of direct broadcasting where the problems are eminently political. As proof of this, we have merely to point to the activities of the United Nations Outer Space Committee and the numerous drafts deposited by governments which are already being studied by this Committee. We consider that the solution to this problem of direct broadcasting may be found by improving the definitions.

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117.8 Another observation concerns the duration. The period of twenty years provided by Article 3 risks, in our opinion, creating a dangerous confusion with the periods provided for by the multi-lateral copyright conventions. This period appears to us to be incompatible with the new philosophy since the protection is applicable to the signal only as an electronic carrier.

117.9 These are the general observations that URTNA wishes to make now, while reserving the right to intervene subsequently when the draft is discussed.

118.1 The CHAIRMAN [F]: I do not think any other delegations have asked for the floor. We therefore close the general discussion of the problem before us.

118.2 I believe that I may conclude that the general discussion has revealed almost unanimous agreement on the Nairobi draft. Permit me to say that I am delighted because this state of affairs has been made possible by the excellent spirit of co-operation shown by all of you and by your moderation and realism. I thank you and I am glad that the detailed discussion that will follow will do so under such favourable auspices. This discussion will be the task of the Main Commission which will meet this afternoon and I remind you that, as provided for in the Rules of Procedure, it will elect its Chairman and two Vice-Chairmen. I would also remind you that the meeting of heads of delegations has made some proposals in this respect and proposes as Chairman the head of the delegation of Brazil, Mr. da Costa, and as Vice-Chairmen, the head of the delegation of Japan and the head of the delegation of Sweden.

118.3 Now, before closing the session, I should like to give the floor to Mr. Sommerlad, Chief, Division of Communication Research and Planning (including communication by satellite) of Unesco, who will make a statement which, I think, you will not find lacking in interest.

119.1 Mr. SOMMERLAD (Unesco) [E]: I want to address myself to the question of the relationship between the problem of the protection of satellite broadcasts from piracy and the problems associated with direct satellite broadcasts over frontiers which have been discussed during the general debate over the last two days and perhaps help to clarify the issues involved in these rather separate problems. It might be helpful, I think, if we look at them in a rather wider perspective. In 1969 Unesco convened a meeting of governmental experts on international arrangements in the space communication field, the report of which in detail is contained in the document no. 60 of the reports and papers series published by Unesco called "Broadcasting from Space", which is available at the reception desk if you would like to study it in more detail. This meeting of governmental experts identified three sets of problems in this area of satellites and satellite

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broadcasting, which required international action. The first one dealt with the question of radio frequencies for satellite broadcasting and associated technical matters. These fell within the competence of the International Telecommunication Union, and they were dealt with comprehensively in a Conference called by the ITU in 1971, the World Administrative Radio Conference, which allocated frequencies for the satellite broadcasting service and which drew up radio regulations on technical aspects of the problem. The second question that was raised or identified by the group of experts in 1969, was what they called the legal protection of satellite television transmissions against uses not authorized by the originating body. This, of course, fell within the competence of Unesco and WIPO, and it is this Conference here today which is the sequel to action which has been taking place over the last four or five years to deal with this particular aspect of the problem. The third question which the governmental experts identified is, I think, by far the most difficult one, that is the question of direct broadcasts over frontiers, broadcasts directed to the general public and so dealing with the people on the receiving end of the broadcast as opposed to those on the transmitting end: the problem of the principles which should apply to broadcasts which may not be wanted by the receiving country for either cultural or political reasons. Some aspects of this problem have fallen within Unesco's sphere of competence, those relating to education, culture and the free-flow of information, but there are some other aspects of the same problem which are essentially political and have fallen within the competence of the United Nations itself.

119.2 Unesco, since 1969, proceeded with the preparation of a declaration of guiding principles on the use of satellite broadcasting for the free-flow of information, the spread of education and greater cultural exchange. After examination by a number of committees and advice and consultations with interested parties, a text was prepared and was debated and adopted by the Unesco General Conference in 1972, and I might mention that this declaration incorporated the principle of prior consent of the receiving country, which was raised in the submissions made by the delegate from the USSR in his intervention yesterday.

119.3 Now while Unesco was taking this action within its field of competence, concurrent action was being taken by the United Nations in what has been a much wider area, but dealing with the same problem. This stemmed from the submission, by the Soviet Union, of a draft International Convention with the United Nations in August 1972, and a request that the General Assembly of the United Nations should place on its agenda the question of the preparation of an international convention on principles governing the use by States of artificial earth satellites for direct television broadcasting. As the Conference has already been told by some of the delegates who spoke on this matter yesterday, the General Assembly, after a lengthy debate, resolved in these terms: the Assembly considers it necessary to elaborate principles governing the use by states of artificial earth satellites for direct television broadcasting with a view to concluding an international agreement or agreements, and it requests the Committee on the

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Peaceful Uses of Outer Space to undertake the elaboration of such principles as soon as possible. Since the 1972 General Assembly of the United Nations, the Outer Space Committee or its essentially subsidiary bodies, have been wrestling with this problem, without having achieved any final agreed solution as yet. The matter has been debated by the Working Group on Direct Broadcast Satellites, which is one of the subsidiary organs of the Outer Space Committee. They have considered alternative texts, the text submitted by the Soviet Union to the General Assembly, a text prepared by Canada and Sweden, a text prepared by the United States of America and the most recent meeting of the Working Group analyzed the common features and the differences that applied to the various principles which had been proposed in these various texts. The report of the Working Group goes to the next session of the Outer Space Committee, and currently to a meeting of the Legal Sub-Committee of the United Nations Outer Space Committee which was convened in Geneva on the very day that this meeting met here in Brussels. The Legal Sub-Committee will be in session for the next four weeks, and it intends, in two weeks' time, to devote part of its attention to that item on its agenda which relates to the implications of space communication and the question of the principles which might apply to direct satellite broadcasting. They will have before them the opinions of the Working Group on direct broadcast satellites and they will have the various alternative texts and will begin what may be a long process of trying to reach a consensus on a declaration of principles.

119.4 This explanation, I hope, will indicate that there are a number of parallel activities which have taken place, and which are continuing to take place within different organs of the United Nations on the different, and various aspects relating to satellite broadcasting.

119.5 Now, if I may take a few more minutes, I would like to perhaps try and clarify the difference between the issues concerned and underline the essential distinction between the matters which, I believe, are covered by the draft Convention we are discussing here, and the broader issues of direct satellite broadcasting over frontiers. It seems to me that the key word in the draft declaration which we are discussing is this word "distribution". We are talking about the distribution of programme-carrying signals. We are talking about programmes which are first received via a satellite, and then distributed, or re-transmitted by the State or the broadcasting organization concerned, over their national terrestrial broadcasting network, or perhaps through a cable television system or in some other way. But it is essentially a re-transmission that we are talking about.

119.6 In practice, at the present time, such programme-carrying signals are received only through the Intelsat or the Inter-Sputnik systems. These are point-to-point transmissions, sent by an originating station, via a satellite and then picked up by powerful earth stations, linked to the system in other parts of the world. Whether or not the Convention should also apply to another type of transmission involving direct broadcasting, is something which this

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Conference will have to determine, but technologically, it will be possible within a comparatively few number of years, to broadcast directly from a satellite programmes which could be picked up in various States, by community or individual receivers. It may be possible for a broadcasting organization to pick up such a broadcast off the air, and then re-distribute it over its national network, or through a rediffusion system. But the essential point, I believe, in either case, is that a distribution of a programme is involved and such a distribution requires a re-transmission and that means there has to be a deliberate decision by the competent national authorities as to whether they distribute a particular programme, a particular broadcast, over their national system or not. So consequently, in this Convention as it has been drafted, I believe we are dealing with the question of the control of this act of re-transmission, and the essentially different point dealt with in the Unesco declaration and the United Nations Outer Space Committee discussions which are now taking place on direct satellite broadcasting is that such broadcasts are transmitted across frontiers directly to the general public and they are not subject to a national re-transmission, and are therefore outside the control of national authorities in the receiving State. Now the problems raised by broadcasts of this type are quite different from those associated with satellite signals for re-transmission which are fully within national control.

120. The meeting rose.

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Main Commission - First Meeting¹

Wednesday, 8 May 1974 at 3.10 p.m.

Chairman: Dr. BOGSCH, Director
General of WIPO

Later: Mr. da COSTA (Brazil)

121.1 Dr. BOGSCH (Director General of WIPO) [F]: I have the honour of opening the first meeting of the Main Commission of your diplomatic Conference. I would remind you that the proposals announced by the Chairman of the plenary session for the Bureau of this Commission are: Chairman - Brazil; two Vice-Chairmen - Japan and Sweden, respectively; and the Rapporteur will be the General Rapporteur, i.e. the delegation of the United States of America.

121.2 Are there any other proposals? The delegate of Tunisia has the floor.

122. Mr. SAID (Tunisia) [F]: We have a great deal of work in front of us. I should like to save time and would suggest, if you so permit, that we accept this proposal by acclamation.

123. Dr. BOGSCH (Director General of WIPO) [F]: You have heard the suggestion of the delegate of Tunisia: that this proposal be accepted by acclamation. I invite you to vote by acclamation. The proposal is adopted and I ask the head of the delegation of Brazil to take the chair.

124.1 The CHAIRMAN [F]: I should like to thank the Commission for their indulgence in electing me and I can guarantee that I shall make every attempt to conduct our work objectively. I thank the Director General of WIPO for opening this session of our Main Commission.

124.2 The delegate of Ecuador.

125. Mr. PENA MATHEUS (Ecuador) [S]: Before the discussion continues, the delegation of Ecuador would like to state that we consider that the Rome Convention covers transmissions by satellite. However, we will not oppose the signing of a new Convention in principle, provided that it neither prejudices nor diminishes the rights accorded by the Rome Convention.

126.1 The CHAIRMAN [F]: Before giving the floor to other delegates, I should like, if there is no objection, to give a short personal introduction to our work. I shall not do this as head of the delegation of Brazil but as the person you yourselves have entrusted with directing our work. And so, frankly, I should like to make a few comments.

1. cf. document UNESCO/OMPI/CONF/SAT/VR.7 (prov.).

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126.2 Our work appears to us to be particularly arduous and this is not just a figure of speech - it seems to me that it is arduous because there does not appear to be any common will to arrive at a solution. On the whole, the general attitude seems to be unenthusiastic for a new treaty but no one wants to impede the general wish. Consequently, the attitude is a rather negative one which we will have to abandon if we are to achieve any results. Why is there this, shall we say, generally sceptical attitude? It is due to various factors depending on which delegation is concerned: some believe that a new treaty is useless because the protection of programme-carrying signals is already afforded by the domestic law of their State and other States, or because it is already covered by existing instruments such as the Rome Convention or even the Berne Convention, or because they consider that there is no poaching of signals and that consequently it is not at all urgent to protect them. Others have doubts as to the competence of the Nairobi Committee of Experts, constitutional doubts: this Committee was charged with studying copyright problems. In view of the new philosophy of the Nairobi draft, there is no longer any talk of copyright problems - and so they are wondering whether the Nairobi Committee was competent. In fact, I do not consider that this is of any importance because, even if the Nairobi Committee was not competent, we are competent and amply so; we are an International Conference of States and we can solve this problem of the protection of signals in any way we see fit.

126.3 Some delegations also remind us that the International Telecommunication Union could have protected these signals and that therefore a special diplomatic Conference was not necessary; however, I repeat, the International Telecommunication Union has never dealt with this problem and, on the contrary, has refused at least twice to deal with it. Consequently, there is no reason to concern ourselves unnecessarily.

126.4 Other delegations find that the international public law approach adopted at Nairobi is an erroneous one and that we should return to the Paris formulae, or even those of Lausanne. Other delegations are concerned about the fate of contributors to programmes who, it appears, have been forgotten in the Nairobi text, and this not only from the point of view of the legality of broadcasts but also that of the fairness of remuneration. Other delegations are more concerned about the protection of the cultural, ideological and political integrity of receiving States than with the States where the emitting stations are located.

126.5 Other delegations are concerned about relations between the future Brussels Convention and the Rome Convention; for some, the former Convention would weaken the Rome Convention; for others, on the contrary, the symbiosis of the Rome Convention and the new instrument would provide an opportunity for a "thaw" in the relations between the broadcasting organizations and the Rome Convention and, consequently, for establishing harmonious relations between the three parties directly concerned.

126.6 These are the main comments that may be culled from the

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general discussion. Consequently, our points of view are far from being unanimous. But as the Chairman of the Conference has clearly pointed out, there is a constant, a sort of common denominator in the statements we have heard: that the best way of obtaining a solution - if we want a solution - is the Nairobi text. This is my personal opinion but I think it is indispensable to inform this Main Commission of it. The Conference is, of course, sovereign, it can choose other, completely different systems, but any solution not in line with the Nairobi text, in the first place, would not be accepted by this Conference and secondly - if it were accepted - would not obtain a sufficient number of ratifications and, consequently, we would have a still-born Convention like so many others in the annals of treaties. Therefore, if we really want a Convention, we should not stray too far from the Nairobi text.

126.7 If we are seeking a balance between various categories of States, a balance between the various categories of parties directly concerned, of contributors to programmes etc., do not seek it, I beg you, in the text that we shall adopt. We must seek this balance elsewhere, outside the Convention, either by legislative or judiciary measures taken by States to implement the Brussels Convention, or by measures of an international character that they will take to guarantee the balance between the three parties most directly involved.

126.8 Consequently, these are the reflexions that I wanted to put before the Main Commission, not from any desire to influence it - which I have neither the right nor the power to do - but as the person you have entrusted with bringing your work to a successful conclusion.

126.9 I shall now give the floor to delegates but I should like first to take a decision on how we shall proceed with our work: we have a basis for discussion, the Nairobi text. I think it would be both wise and useful to follow this text, but perhaps not article by article and I should be grateful for any suggestions.

126.10 I give the floor to the delegate of Algeria.

127.1 Mr. ABADA (Algeria) $\left[\begin{array}{c} F \\ \hline \end{array} \right]$: I wanted to speak on that precise point. During the whole of the general discussion which took place during the Plenary Meeting this morning, one major problem became apparent, that of deciding whether or not this Convention should apply to direct broadcasting. After a certain amount of checking, I think that I am in a position to state that a certain number of delegations - a large number of delegations - has declared in favour of excluding the direct transmission of signals to the public from the scope of this Convention.

127.2 In order that the work of the Main Commission may proceed rapidly, I think that before embarking on an article-by-article study of the Nairobi text, we should make a definitive decision on this choice and state that this Convention does not apply to direct broadcasting. I have already developed in my intervention the

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arguments why in our opinion direct broadcasting should be excluded from the scope of this Conference and I think that perhaps, if this suggestion is adopted, the delegates should take a decision on this problem. With regard to the method of application of this principle of excluding direct broadcasting, we shall of course have the opportunity of including it in the text of the Convention when we study the amendments which will be deposited between now and the time when we study this point.

128. The CHAIRMAN [F]: I give the floor to the delegate of Israel.

129.1. Mr. GABAY (Israel) [E]: I entirely agree with your position that we should facilitate the work of this Conference and for this reason it is our feeling that it may not be useful to start now with the general discussion of the Convention because we have already dedicated two days to that purpose and if we start the discussion in the Main Commission we may dedicate two additional days to the same purpose.

129.2 So I would suggest that we start discussing the Nairobi text provision by provision. We may, however, discuss the general question of direct broadcasting as a separate issue but in principle we would propose discussing the Nairobi text as it is.

130. The CHAIRMAN [F]: The delegate of France.

131.1 Mr. KEREVER (France) [F]: The proposal of the delegation of Algeria in fact seems a judicious one if the continuation of our work is to be fruitful. It seems to us that the intervention of the representative of Unesco has clarified the question before us. This intervention clearly showed that transmission by satellite raises extremely varied problems. We are meeting here following three Committees of Experts to solve the problem of the legal protection of persons involved in transmissions by satellite, i.e. the legal protection of the interests of the broadcasting organizations which take part in this transmission by satellite and the interests of the contributors, in particular those protected by the international conventions.

131.2 But it is evident that there is another set of problems, very close in nature to the first - at least logically speaking - which are of an entirely different nature and these are the political problems raised by communication, the transmission of communications by satellite from one country to another or several other countries which immediately gives rise to a conflict between the principle of the free-flow of information and the principles of national sovereignty and non-interference in the internal affairs of a country. These political problems, as has already been stated, are being studied by other bodies, in particular the United Nations.

131.3 Now, it so happens that these political problems exist only insofar as there is radio communication by direct broadcast

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satellite. Apart from this case, there is in fact no juxtaposition of political problems and problems of legal protection - the latter exist alone. And since in addition it so happens that the work of the three Committees of Experts has proven that the legal problems, the problems of protecting the interests which concern us are present only in the case of indirect broadcasting, when there is point-to-point communication through an originating body and a receiving body, if we are to safeguard the field of application of the future Convention and restrict it to legal problems only, it seems to me indispensable to state very explicitly from the outset that this Convention does not apply to direct broadcasting.

131.4 Under the circumstances, I think that the fears or the desiderata of the delegation of the Union of Soviet Socialist Republics and the delegations which supported it, will to some extent be, I will not say satisfied, but will be themselves rid of any cause for anxiety since, by definition, we will be dealing with a problem which is, so to speak, outside their concerns and thus we shall be able to bring about a more coherent and perhaps more logical order in the scope of the various conventions.

131.5 Under the circumstances, I think that although we are in effect in agreement in principle that we should now proceed directly to a study of the articles of the Nairobi text, I think we should first clarify this discussion of the articles by taking a decision on the field of application of the future Convention so as to exclude from it all that has to do with direct broadcasting. But how can this be achieved? I think that we really need two types of provisions: one would be an article stating expressly that our Convention does not concern programme-carrying signals distributed to the general public by direct broadcast satellites. Perhaps this could be the first article or at least one of the preliminary articles. And it will probably also be necessary to harmonize the definitions, for example "distributors", "distribution", perhaps even "satellite", with the new field of application of the Convention once it has been defined and restricted as I have just described.

131.6 I do not think that this poses any great difficulty from the drafting point of view; we could perhaps refer a large number of these drafting questions to the Drafting Committee for, in fact, the question posed by the delegation of Algeria is solved - in front of you at least - in fairly straightforward terms. There is a decision of principle to be taken indicating very clearly that this Convention will have no repercussions, will have no incidence in the field of direct distribution with, of course, all the consequences that this imposes on the amendments which have been proposed by the Soviet delegation, because I think that the Soviet delegation would be prepared to accept that, should the field of application of the Convention be redefined in more precise terms, then the very noble political concerns they have voiced would no longer pose any problem in the drafting of the Convention thus defined.

132. The CHAIRMAN [F]: The delegate of Kenya has the floor.

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133.1 Mr. STRASCHNOV (Kenya) [E]: I would like to discuss the question of direct satellite broadcasting from a purely legal point of view rather than from the political point of view. The question was not really clearly defined in the Nairobi draft, and when you look at point 89 of the Nairobi Report, you realise that there is no absolute clarity about this question.

133.2 First of all, perhaps, it is necessary to know exactly what we are talking about when we speak of direct satellite broadcasting. I have here the new text of the Radio Regulations as adopted by the World Administrative Radio Conference for space telecommunications in Geneva in 1971. There you find a definition of the so-called broadcasting satellite service which is a radio communication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public. The words direct reception are defined as meaning either reception by a simple domestic installation, and in particular those possessing small antennae, or community reception, which means the reception from a space station in the broadcasting satellite service by receiving equipment which is in some cases complex and has antennae larger than those used for individual reception and is intended for use by a sector of the general public at one location, or through a distribution system covering a limited area.

133.3 We all know that experiments with this latter type of direct broadcasting satellite, i.e., for community reception, will be undertaken in the United States for Alaska and other regions, and afterwards the satellite will be shifted over India and will be used over India for teaching purposes for something like 35,000 villages. We also know that a direct broadcasting satellite is being developed between Canada and the United States. Now what really is a direct broadcasting satellite service? It is a service where the originating organization instead of using a terrestrial aerial uses an aerial which is placed on board a satellite 36,000 kilometres over the equator with a relatively powerful repeater or transportor, which means a transmitter sufficiently powerful for reception by a very small disc which may be only two metres in diameter or even less and provides the televiewer with an adequate picture corresponding to the International Radio Consultative Committee standards.

133.4 It means that the first distribution within the meaning of our definition is not done by a third person but by the original organization itself. There is, therefore, in the first operation, no third party involved. It is the originator who actually through the satellite operates a first distribution. If you look at Article 1, paragraph (2) of the Nairobi draft you see that the obligation of Contracting States to prevent distribution shall not apply to distribution of signals derived from signals which have already been distributed by a distributor for whom the emitted signals were intended. In the case of direct broadcast satellites, as I said, there is not, in the first stage at least, a distributor distinct from the originating organization; but the original distribution made by the originating organization itself is a lawful one. It is a licit one and therefore the further distribution of the signals

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by another distributor is in most cases a terrestrial operation which logically comes under the Rome Convention. Of course, the distributor, the second distributor, could also use a direct broadcasting satellite but the signals he would thus distribute would be derived from lawful signals. Therefore, I think it is logical, considering paragraph (2) of Article 1, to follow the suggestion of Algeria and France and exclude direct broadcast satellites, within the meaning of the ITU Radio Regulations, from the purview of this Convention; however, with, in my opinion, at least one reservation, and that is that if the original signal is a signal transmitted by a point-to-point satellite and picked up by another distributor and distributed by him through a direct broadcasting satellite this kind of distribution, which is not derived from lawful signals, should remain within the purview of this Convention.

133.5 This is a question of drafting; as the delegate of France said, we can, if you agree to the principle, safely leave it to the Drafting Committee. The principles to be put into proper text would simply be that the original transmission by a direct broadcast satellite which is done by the originating organization itself does not come within this Convention whether we are talking about the up-log or the down-leg, that further distribution by whatever means in such a case does not come under this Convention either, and that direct broadcasting satellite operations do come under the Convention only if they use signals which have been first transmitted by a point-to-point satellite and were not intended for the distributor who, in order to distribute them, uses a direct broadcast satellite.

133.6 If you accept this principle the consequences may affect the drafting of Article 1, as the delegate of France said, and may also affect, perhaps, the definition of the satellite itself, but probably not the definition of "distribution" which is wide enough to cover distribution by a direct broadcast satellite. I would also second the proposal made by the delegation of France that this matter should be left to the Drafting Committee.

134. The CHAIRMAN [∟F∟]: The delegate of Hungary has the floor.

135. Mr. TIMAR (Hungary) [∟F∟]: The delegation of Hungary, in accordance with its intervention this morning, has read the proposal made by the delegation of Algeria and believes that the proposals made by the delegation of the Soviet Union should be discussed once a decision has been taken on the subject proposed by the delegation of Algeria.

136. The CHAIRMAN [∟F∟]: The delegate of Senegal has the floor.

137.1 Mr. N'DIAYE (Senegal) [∟F∟]: We listened to you with great attention, Mr Chairman, when you indicated that for our work to be carried out normally and with clarity we should not stray too far

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from the Nairobi text and I believe that the Algerian proposal - which I fully approve - will lead us in this direction and constitutes what one might call an interlocutory question. The question is to decide whether, in the framework of this Convention, we should study the problem of direct broadcasting for, in fact, I am surprised that the delegate of Kenya should come back to this since this morning he led us to believe that it was for political considerations that the delegation of the Soviet Union had raised the point. And it so happens that if we do not state from the outset that we should not deal with direct broadcasting, we shall be obliged to study the amendment of the Soviet Union which, in those circumstances, would be perfectly within the scope of the Conference.

137.2 I therefore believe that this is an interlocutory question that must necessarily be settled from the outset.

138. The CHAIRMAN [F]: The delegate of Mexico.

139. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico wishes to support the statement of the delegation of Israel and is in agreement with the ideas expressed by you, Mr. Chairman. We consider that your proposal was aimed at simplifying our work and we should like, insofar as it is possible, to ask for a point of order as to whether we should first agree if we are going to follow the Nairobi text and whether it is possible to incorporate in this text one, two, three or more articles relative to direct broadcasting or to any other point that we believe necessary; but I believe that, before discussing all these questions, we should discuss your proposal as to whether we are going to take the Nairobi text article by article, and any other questions related to it that may arise during the course of discussion.

140. The CHAIRMAN [F]: I give the floor to the delegate of the Union of Soviet Socialist Republics.

141.1 Mr ZHAROV (Union of Soviet Socialist Republics) [R]: The Soviet delegation followed the general discussion of the Conference with great attention. I believe that all those present here are aware of the concern expressed by a number of delegations, including my own, over the fact that the scope or the sphere of the Convention under discussion, its philosophy and legal framework do not cover the questions of legal regulations to control direct television broadcasting. I certainly understand the motives and desires that induce many of my distinguished colleagues to strive for the final resolution of the issue under discussion and the Convention which is the subject of this Conference with regard to its private law, copyright and commercial aspects, but I would like to invite all my colleagues to take a realistic view of the situation we are facing. I presume that many of those present realize that the Convention under discussion is narrow and does not provide effective copyright protection and also lacks adequate legal regulations for questions related to the observance of the sovereignty of States, national

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customs, traditions, laws; it does not make sufficient provision for the use of television in the interests of social progress, non-interference in the internal affairs or the prevention of any complications by way of transmitting information through satellites whether through a distribution system or a system of direct television broadcasting. It has been just mentioned here by some delegates that experimental satellites will be launched within the next two years, notably over India and Canada and according to some indications over certain other regions as well, in order to test direct television broadcasting technology. So from a technical point of view these questions are questions for the near future. Therefore, let us think whether to-day we shall deal only with the problems of to-day or whether we should endeavour to find forms and methods of effective protection for tomorrow. I think that the world community and authors of all countries expect us to think not only of to-day but also of tomorrow. In this connexion I would like to call your attention to the speech of our Chairman, Mr. da Costa, in which he pointed out the problems that evolved in the process of discussion. And he also said that if we strayed from the text of the proposed Convention the baby could be stillborn. I agree in principle that our efforts should be directed to avoid this but may I ask if you think that a sickly, weak baby requiring a great deal of effort, care and probably exceptionally serious discussions over the next two or three years and which will probably be the cause of discord, would be a satisfactory result; because the question of direct television broadcasting is an issue belonging to the very near future. That is why it seems to me not quite correct to draw a dividing line between these two very important problems. Besides, many of the articles of the present draft Convention may be interpreted - and this became evident at the previous meetings of Committees of governmental experts, as applying both to a distribution system and direct television broadcasting. Now to rule at the very beginning that we will not consider any further matters relating to direct television broadcasting would constitute: first, I repeat it once more, a departure from reality; second, ignoring the opinions of a number of delegations; third, and here I repeat again, dooming our discussion to a course which would give this Convention such a narrow scope as to require reconsideration of this problem in some two or three years. Therefore, I would think it expedient to proceed to the examination and discussion of the draft Convention; it being understood that each delegation has the right in accordance with the approved Rules of Procedure to submit its proposals and the discussion will show to what extent they are acceptable or unacceptable to delegations.

141.2 May I hope that my colleagues have properly understood my views.

142. The CHAIRMAN [F]: I give the floor to the delegate of the United States of America.

143.1 Mr. WINTER (United States of America) [E]: The United

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States delegation agrees with the very worthwhile comments made by the Chairman, Mr. da Costa, in opening this first meeting of the Main Commission who indicated that it was desirable to proceed with this discussion on the basis of the Nairobi text. It is clear that a number of other delegations have indicated the same desire to base our discussion primarily on the Nairobi text.

143.2 Admittedly, it is a limited Convention, but it is a very worthwhile and important Convention. More specifically, as to the Algerian proposal to exclude direct broadcasting satellites from this Convention, the United States finds this most interesting. We have noted that France and Kenya, among others, indicated their support for the Algerian proposal. The United States delegation wishes to say that it agrees in principle with the Algerian proposal. We believe, however, that there will be some consequential changes in different articles in the Convention as indicated by the delegates of France and Kenya. The United States is prepared to cooperate fully with other delegations in working out these changes.

144. The CHAIRMAN [F]: I give the floor to the delegate of Brazil.

145.1 Mr. de ATHAYDE (Brazil) [F]: The delegation of Brazil, like the delegate of Algeria and other delegates who have taken the floor, is convinced that direct distribution by satellite should be excluded from this Convention for the following reasons: 1) the urgency to which reference has been made with regard to preventing the piracy of signals does not yet exist in this case since this method of transmission is not yet operational. 2) We are dealing with a technology with which we are not familiar; and Brazil considers that it would be imprudent for the law to precede the fact - we know of very few cases in which the law has preceded the fact, and I think that in this particular case it would be very imprudent. 3) The protection techniques for direct distribution are completely different because, obviously, the receiving State does not, in principle, have any means of controlling it. Control should, therefore, be exercised by the emitting State. Consequently, the system is completely different and it would be difficult to apply the Nairobi formula in this case. 4) With regard to direct broadcasting satellites the essential problem is the protection of the receiving State and not of the emitting State, mainly for the motives which were clearly explained yesterday afternoon and to-day by the Soviet delegation. As for the protection of the programme contributors, it also seems to me that in the case of direct broadcasting, we should seek new formulae through individual and collective contracts, etc.

145.2 For these reasons, the delegation of Brazil very strongly supports the proposal made by the delegate of Algeria, which is the express exclusion from our Convention of direct satellite broadcasting, either by changing Article 1 or by incorporating a new definition in Article 2, or by introducing a new article as proposed by the delegate of France.

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146. The CHAIRMAN [F]: I give the floor to the delegate of Canada.

147.1 Mr. CORBEIL (Canada) [E]: Delegates will all recall that in our general statement we indicated that we would strongly object, for the reasons that we have given earlier and which I will not repeat, to the inclusion of direct broadcasting satellites in this treaty.

147.2 Therefore, it is with great pleasure that we would support this proposal by the delegate of Algeria to make an early decision to this effect before we proceed to an article-by-article discussion of the Nairobi draft. Canada, in view of its interest and its earlier statement of views, its strong views in this regard, would be prepared to collaborate with other interested delegations in finding a convenient solution to this problem.

148. The CHAIRMAN [F]: The delegate of Morocco has the floor.

149.1 Mr. CHAKROUN (Morocco) [F]: It is evident that direct broadcast transmissions by satellite constitute the most important and serious question in the field of telecommunications. But legislating in this field as of now seems to my delegation to be a wager.

149.2 Thus, Morocco remains in favour of excluding from this Convention direct broadcast transmissions by satellite and consequently is of the same opinion as the delegate of Algeria.

150. The CHAIRMAN [F]: I give the floor to the delegate of the Republic of Argentina.

151.1 Mr. IGLESIAS ECHEGARAY (Argentina) [S]: The delegation of Argentina wishes to state that it is in agreement with the Algerian proposal that direct broadcasting should not be discussed in this Convention.

151.2 It would also like to state that, as has been said by the delegation of Mexico, it is necessary to decide whether or not we shall follow the Nairobi text before continuing the discussion.

151.3 Finally, the delegation of Argentina proposes that in order to avoid any confusion in terminology, all the technical definitions adopted should be from the same source, for example, the World Administrative Radio Conference for Space Telecommunications held at Geneva in 1971, using the terminology adopted by the International Telecommunication Union.

152. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

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153. Ms. STEUP (Germany, Federal Republic of) [E]: As my delegation has said very often during the preparatory meetings, we as a member of the Rome Convention, want to have a separate Convention beside the Rome Convention only as far as it is necessary, as far as there is an urgent danger which we have to encounter. And we think that this urgent danger exists now only with regard to transmissions via point-to-point satellites. As we see it the situation with respect to future direct broadcasting satellites is quite different from the situation in regard to existing satellites. What we want to do is to prohibit poaching of signals which are in space - signals which have not been distributed to the public, but which are still in space, in secrecy between two broadcasters or several broadcasters. And we think that transmissions via future direct broadcasting satellites in this respect differ greatly from transmissions via other satellites. It is nearer to normal terrestrial broadcasting when one picks up a signal which is coming from a direct broadcasting satellite. Such signal is made public on the earth having already been distributed on the earth whereas other signals which are going through normal satellites, are not made public yet since they have not been distributed to the public. Therefore, we think there is quite a difference between transmissions via those two kinds of satellites and we are very interested in the proposal of Algeria. We think that the Conference should study the proposal very profoundly.

154. The CHAIRMAN [F]: I give the floor to the delegate of the United Kingdom.

155. Mr. DAVIS (United Kingdom) [E]: It is merely to say that the delegation of the United Kingdom supports the views of those speakers who consider that direct broadcasting satellites should be excluded from the purview of our drafts.

156. The CHAIRMAN [F]: The delegate of Algeria.

157.1 Mr. ABADA (Algeria) [F]: I apologize for taking the floor again, but it is evident that the participants are unanimously in favour of excluding direct broadcasting from the field of application of our Convention.

157.2 I have listened with great interest to the intervention of the delegate of Kenya who has explained to us that he agreed to the exclusion of direct distribution on one condition, that direct distribution would come within the field of application of the Convention if the organization receiving the signal retransmitted it by direct broadcast satellite. I have a question for the delegate of Kenya on this point. Will the acceptance of this new direct distribution by the receiving organization be intended for other geographical areas which are in the territory of other countries or will this distribution be exclusively limited to the territory of the State of the organization which was the second emitter? That is the clarification I should like to have.

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158. The CHAIRMAN [F]: I ask the delegate of Kenya to reply to the specific question of the delegate of Algeria.

159.1 Mr. STRASCHNOV (Kenya) [E]: Let us take a practical example in order to understand the problem. Let us suppose that there is a signal transmitted by a distribution satellite, a point-to-point satellite, from France to one of the networks in the United States. This is, as the delegate of the Federal Republic of Germany said, a telecommunication operation. It is not broadcasting; and the further distribution of such a signal, which is not receivable by normal receivers, should certainly be covered by this Convention. There is no doubt about it. Now the question is only how the distribution actually takes place. The distribution of such a telecommunication signal can take place by broadcasting, can take place by cable or by satellite, and in particular by a direct broadcasting satellite. All these operations are covered for the time being by the text.

159.2 Now we are coming to another situation, and this is the one I think the delegate of Algeria had in mind: the original transmission is not done via a point-to-point satellite, or a distribution satellite, but by a direct broadcast satellite, let us say from France to the United States, and the territory of the United States is entirely covered by this operation. The signal is directly available to domestic receivers or to community antennae, there is no distinction made under the Radio Regulations of the ITU. That signal is then picked up by other operators, by other distributors, and in our view this new distribution should not be covered by the Convention because it is an almost classical operation which comes under the Rome Convention.

159.3 There is, however, the third case, the case where the transmission is done by point-to-point satellite from France to the United States, and is, therefore, not available to the public in the United States, and is picked up without any permission by a distributor who distributes this signal by a direct broadcast satellite. This is, in our opinion, the only case where direct broadcasting by satellite should be covered by the Convention because the distributor who uses a direct broadcasting satellite picks up a signal which is not available to the public at large because it is a telecommunications signal, and it is, therefore, I think, entirely compatible with what the delegation of the Federal Republic of Germany just said, to say that this operation - I repeat a satellite-distributed signal which is picked up by a distributor for whom it is not intended and distributed by a direct broadcast satellite - should be covered by this Convention.

159.4 I think we should exclude the direct broadcasting satellites when used by the originating organization to cover a certain territory and we should exclude any further distribution of such a signal because it becomes a terrestrial operation which comes rather under the purview of the Rome Convention, but we should have in this Convention a provision under which a telecommunication signal distributed by a point-to-point satellite which is then used by a distributor for

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whom the signal was not intended, for distribution by a direct broadcast satellite.

160. The CHAIRMAN [F]: The delegate of Japan.

161. Mr. HIRAOKA (Japan) [F]: I should simply like to say that my delegation associates itself with the other delegations supporting the proposal to exclude direct distribution by satellite.

162. The CHAIRMAN [F]: I give the floor to the delegate of the Byelorussian Soviet Socialist Republic.

163.1 Mr. KASHEL (Byelorussian Soviet Socialist Republic) [R]: The delegation of the Byelorussian Soviet Socialist Republic is one of the co-sponsors of the proposals that were explained in detail in the speech of the head of the Soviet delegation at the Plenary Meeting yesterday. Since I did not speak during the general discussion I would like to say a few words concerning the proposals of the Soviet Union and the objections voiced by some delegations. First, the speech of the delegate from Kenya indicated that it would be very difficult to make a clear distinction between telecommunications satellites used for the distribution of broadcasts and those used for direct television broadcasting. Thus, we shall have to deal with matters relating to direct television broadcasting anyway.

163.2 The delegate of Brazil expressed in his last speech certain misgivings that if questions of direct television broadcasting were included in our Convention we should somehow control the activities of distributors. It appears that the proposal of the Soviet Union, the Ukraine and Byelorussia is to some degree a solution since it defines the basic obligations of a distributor in the case in point. It also seems that it would not be quite correct to compare direct broadcast satellites with ground television broadcasting facilities as was done by the delegate of the Federal Republic of Germany. The difference is that direct broadcast satellites cover, or at least are expected to cover large areas comprising several or many States, which is not the case with the existing ground television transmitters which on the whole cover no greater area than the territory of their own State, just one State. Considering these peculiarities I reiterate my support for the proposal of the delegation of the Soviet Union that we consider matters related to direct television broadcasting in our deliberations on this Convention.

164. The CHAIRMAN [F]: The delegate of Israel has the floor.

165. Mr. GABAY (Israel) [E]: Since we are in the midst of this substantive discussion, we should like to express our view on the substance of the question. We also support the position of many previous speakers to exclude direct satellite broadcasting from the Convention, with the possible exception that has been

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indicated by the delegation of Kenya, which should be studied.

166. The CHAIRMAN [F]: The delegate of Australia.

167.1 Mr. CURTIS (Australia) [E]: We have listened with a great deal of interest to the discussion on what appears at first sight to be a most complicated subject, but I wonder if it has not been made unduly complicated by the delegate from Kenya who, when explaining the problem with his usual lucidity, brought in a reference in his third situation to the direct broadcasting satellite. Is not the real essence of the problem the question of whether we are going to concern ourselves with the protection of a signal after there has been a first distribution to the public?

167.2 Direct broadcasting by satellite means that there is a distribution to the public from the satellite directly. If we confine our attention in the preparation of this Convention to the protection of the signal before there has been a distribution to the public, and seek means by which that signal can be protected against an unauthorized distribution to the public, then it does not matter by what means that unauthorized distribution takes place, whether it be by means of an earth transmitting station, by means of cable television, by means of a direct broadcasting satellite, or perhaps some other technical means that has not yet been invented.

167.3 I set aside, of course, for the time being, the fact that we may come later on in our discussions to the question of a reservation in respect of cable television. The latter is a specific problem that does not need, I think, to concern us at this point. Therefore, I suggest that the essential point is not whether the convention is going to cover direct broadcast satellites, but whether we are concerned with the protection of the signal once there has been an authorized distribution of that signal to the public. In keeping with the consistent position of Australia throughout the various meetings of the committees of experts, we would prefer as much as possible that it be done under existing conventions; we would suggest that this conference should concern itself with the protection of the signal before there has been an authorized distribution to the public.

167.4 It seems that once there has been an authorized distribution to the public, then a copy of the signal so distributed falls squarely within the Rome Convention on any rating of the Rome text. There is, as I have said, one qualification, and perhaps I should explain what I mean by protecting the signal before there has been an authorized distribution to the public.

167.5 What I am concerned with, of course, is the copying of the signal that has been distributed to the public, and this was the case dealt with by the delegate from Kenya in his third situation. Where there is, simultaneously or perhaps at a later stage, an unauthorized distribution derived directly from a point-to-point satellite transmission, then that is a situation that ought to be

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within our discussions. But if one accepts this analysis then in a real sense the question of the kind of satellite we are dealing with becomes irrelevant and we look at the point in time at which the distribution to the public occurred, and whether or not we are protecting a signal that has been distributed to the public.

168. The CHAIRMAN [F]: The delegate of the German Democratic Republic.

169. Mr. WAGNER (German Democratic Republic) [E]: As we said today in the morning session, direct broadcasting by satellite is, to our minds, one of the most effective means for transmitting signals. We think that we should elaborate the Convention for today and for the future, and, therefore, we support the proposal of the Soviet Union to include regulations about direct broadcasting in the Convention.

170. The CHAIRMAN [F]: I give the floor to the delegate of Czechoslovakia.

171. Mr. KUNZ (Czechoslovakia) [F]: Very briefly, I should like to support the proposal of the delegation of the Soviet Union.

172.1 The CHAIRMAN [F]: I should like to summarize our situation. We have a proposal from Algeria that we should first decide, before any other consideration, whether or not our Convention shall apply to direct broadcast satellites. We have had a large number of comments on this proposal, and I recall particularly that of the delegate of France who made what appeared to me to be an excellent suggestion which is that we should take a decision in principle now and leave until later the question of how to introduce this provision into the Convention, either by changing the first Article, by changing the definitions, or by introducing a new article. Consequently, I think we can adopt this suggestion to take a decision in principle. Should the Convention be applicable to direct broadcast satellites or not?

172.2 Next, we have had a certain amount of discussion on the definition of a direct broadcast satellite. I think we should keep something, and that this something is the fact that the Nairobi text lays obligations only on the receiving State. In the case of direct broadcasting, in principle the receiving State has no means of control unless it polices each receiver to ensure that the button is switched off each time there is an illegal broadcast. This is obviously difficult!

172.3 Naturally, there are all sorts of acrobatics possible for capturing a satellite broadcast; it can be sent out by direct transmission or by cable, etc. Obviously, all these situations can be provided for, but the principle is that in the case of direct broadcasting, the receiving State has no means of action and, consequently, the Convention cannot be applied. That seems quite evident to me.

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172.4 The details given by the delegate of Kenya are extremely pertinent. However, in my opinion, the special cases can be introduced not in the text of the treaty - which would make the drafting of this article extraordinarily complicated - but in the commentary or in the definitions. In fact, these are mere details.

172.5 Since delegations are almost unanimous in supporting the Algerian proposal, I would now propose without further delay taking a decision on the question of whether or not our Convention should apply to direct broadcast satellites. This would not automatically have any influence on the amendments and suggestions which have been proposed by delegations. We shall examine them when the time comes. In view of the new purview of the Convention, we shall see if they should be introduced or not. Consequently, there is no question of prejudging these suggestions, in particular those of the Soviet delegation. It is simply a matter of taking this decision. So, if you are agreeable, we can take it, I think, without a vote and in view of the almost total unanimity which has been demonstrated here we can decide that our Convention does not apply to direct broadcast satellites. And if we take this decision, I can guarantee that our work will be greatly simplified and reduced. And if there is no indication to the contrary within this Commission, I shall declare that this Commission has taken this decision.

173. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I just wanted to make sure that I understood you correctly. Regardless of the fact that there will essentially be no voting you suggest that we do not discuss or examine the proposals put forward by our delegation, in particular those on the three articles that have been distributed to all delegations.

174.1 The CHAIRMAN [F]: Doubtless I expressed myself badly, but I did state that the fact of taking this decision has no repercussion on the texts already put forward. Consequently, the Soviet proposal will continue to exist and will be discussed at the appropriate time.

174.2 The delegate of Senegal.

175. Mr. N'DIAYE (Senegal) [F]: I do not wish to lengthen our discussion but it seems to me that, in spite of everything, there is some connexion between the decision that we shall take shortly and the proposal of the Soviet Union because, once there is no direct broadcasting, I do not see how the proposal of the Soviet Union could be inserted in the text.

176.1 The CHAIRMAN [F]: I have made a proposal. This proposal is that we take a decision without a vote by which our Convention shall have a provision that it does not apply to direct broadcast satellites; but this does not have any automatic influence or administrative influence on the Soviet proposal or any other proposal. These proposals will be discussed at the appropriate

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time. In addition, when the Soviet proposal is discussed, delegations will be able to say: your proposal no longer appears to be applicable to the new text. Finally, I do not think that these things should be bound together, and we should not bring any pressure on any delegation to withdraw its amendment. We shall discuss it in the light of the new approach that has been adopted and other considerations.

176.2 The delegate of the Soviet Union.

177. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I agree with the proposal of the Chairman of our Main Commission, Mr. da Costa.

178.1 The CHAIRMAN [F]: I thank the delegation of the Soviet Union. Consequently, we can decide to introduce a provision, either in a new article, or by changing an existing article, that the Convention shall not apply to direct broadcast satellites and that, either in the commentary, or in the definitions, we shall define exactly what direct broadcasting is. Are we in agreement?

178.2 It is so decided.

178.3 Now that the preliminary question posed by the delegate of Algeria has been resolved, we should determine how we are going to proceed with our work. I have suggested, and many delegations have supported me, that we take as a basis the Nairobi text and that we study the amendments as we go along since they apply to the articles of this text. But when I suggest following the Nairobi text, I do not mean that we should follow the order of the articles exactly and I shall explain why. I propose that we proceed to Article 1 and then to Article 3 and that we leave the title, the Preamble and the definitions for the end. This method may seem a little strange, but my experience, and certainly that of all members of the Commission, shows that when we get into the Preamble, which tends to be rather philosophical, and consequently rather imprecise, we generally waste a great deal of time splitting hairs. Consequently, if we leave this until last, when we are pressed for time, we shall certainly come to a more rapid conclusion. We would therefore begin with the substantive articles.

178.4 The delegate of Kenya.

179. Mr. STRASCHNOV (Kenya) [E]: Our delegation fully supports this proposal.

180. The CHAIRMAN [F]: The delegate of Mexico.

181. Mr. Larrea Richerand (Mexico) [S]: The delegation of Mexico also supports this proposal.

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182. The CHAIRMAN [F]: The delegate of Morocco.
183. Mr. CHAKROUN (Morocco) [F]: My delegation is of the same opinion.
184. The CHAIRMAN [F]: The delegate of Ecuador.
185. Mr. PENA MATHEUS (Ecuador) [S]: Simply that our delegation supports entirely the Chairman's proposal.
186. The CHAIRMAN [F]: I give the floor to the delegate of Algeria.
187. Mr. ABADA (Algeria) [F]: I should also like to say that our delegation supports the Chair's proposal.
- 188.1 The CHAIRMAN [F]: May I consider that my proposal is generally accepted? Yes? Then it is so decided, and we shall proceed to study first Article 1, secondly Article 3, etc; and when we have finished that we shall proceed to the definitions and perhaps finally to the Preamble and the title.
- 188.2 We shall begin, if you agree, by discussing Article 1 and we have one amendment which is contained in document UNESCO/WIPO/CONFESAT/7 presented by the delegation of Japan.
- 188.3 Would the delegate of Japan introduce his amendments?
- 189.1 Mr. HIRAKA (Japan) [F]: The proposal of the delegation of Japan has been distributed. With regard to the document referred to, I shall now give a short commentary.
- 189.2 This proposal may appear to be a step backwards towards the Paris draft. I shall attempt to explain to you that this is not in fact the case.
- 189.3 First, I should explain that my government is not opposed to what is called the "new philosophy" formulated at the Nairobi Conference. The spirit in which our delegation proposes this amendment is not based on any fundamental change in our thinking. It is rather an attempt to improve the original version as it appeared in the Nairobi draft, a technical improvement. It should be stated that this amendment was made principally in the light of the English text of the Nairobi draft.
- 189.4 At the end of my intervention I shall come back to this linguistic question, but first of all permit me to take a glance, in French, at the English version of Article 1 as it was drafted at Nairobi.
- 189.5 Our proposal does not concern only Article 1, as you will

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see in document 7. In the English text the phrase "which were not intended for those distributors" is used in the Preamble and in Article 1, paragraphs (1) and (2) and also in Article 4, and it is this English expression that explains why we are making this proposal.

189.6 We are aware that this word "intended" is used in certain other international instruments in particular Regulation 17 annexed to the Convention of the International Telecommunication Union. But there this word is used in conjunction with the English expression "unauthorized". In our opinion, the word "intended" used with the expression "unauthorized" is fairly clear, whereas in the Nairobi text "intended" is an expression which seems to us too vague and equivocal. "Intended" means something which takes place in the mind but is not completely expressed. It is especially for this reason that we wish to replace the word "intended" by another expression contained in our proposal viz. "without the consent of the persons interested". It should be noted that this word "consent" is not the same thing as "authorization" and I will come back to this later with regard to the French text.

189.7 When we speak of "consent" we should automatically state who can give such "consent". I will now translate in order to rectify a little the French translation made by the Secretariat. I should like to translate this word "consent" by "consentement" in French. In this case we must automatically state who gives such "consentement". In our proposal we have specified that this concerns the originating organization or, as the case may be, both the originating organization and the other contributors to the programme.

189.8 We should first provide some further information: the reason for which we accept the words "le cas échéant" - in the English text "as the case may be" - is that our intention is not to determine who has the private right to authorize or not to authorize. But in our opinion, this still preserves the flexibility that we find in the Nairobi text, which consists in leaving to each State the responsibility of determining, in its domestic law, the holder of the private right, i.e. the copyright.

189.9 It is for this reason that we think that our version preserves the "neutrality" of the Nairobi text as it has been defined by other delegates. We believe that this neutrality, as we see it in the Nairobi text, is preserved in our version.

189.10 Let us now come back to the French text: the word "destiné" is used as the expression corresponding to "intended to". In our opinion, the word "destiné" is relatively clear in comparison with "intended to" in the English text. Our proposal is an attempt at linguistic improvement and does not entail many changes in substance, as it might appear. As I mentioned in my general intervention, our delegation would obviously like to co-operate in the adoption - unanimous if possible - of a Convention. We are rather flexible, we do not insist, but I should be glad to hear the comments of

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other delegations, if possible.

190. The CHAIRMAN [F]: The delegate of Kenya.

191.1 Mr. STRASCHNOV (Kenya) [E]: We believe that the Japanese amendment is far from being a mere linguistic qualification. We believe that it is a deep change for the whole Nairobi draft. First of all, the concept of consent. We are stepping back from the public law concept of the Convention to the private law approach. Consent and authorization are, in my opinion, synonymous. The text now means that the originating organization has again received the right to authorize or prohibit, in other words, an individual assignable right probably similar to copyright or to a neighbouring right, in other words, a right which we wished precisely to eliminate. In that sense, the change made by the Japanese amendment is, as I said, a very deep change in the whole concept of the Nairobi draft. We are returning to Paris and Lausanne.

191.2 Now let me for a minute, dwell on the words "other contributors". Obviously, first of all, the contributors to the programme are the authors. If we consider the authors as the persons whose consent is necessary, we are going far beyond the Berne Convention. As you know, under the Berne Convention, in many instances, the consent of the author can be replaced by a system of compulsory licensing, precisely in the broadcasting field. On the other hand, there are many exceptions, juris conventionis, where the consent is not necessary. If, therefore, we kept the Japanese amendment, we would have to spell out all the exceptions which already exist in the Berne Convention, as far as authors are concerned.

191.3 Another category of contributors are performers. Under the Rome Convention, performers are authorized, of course, to give their consent in certain places but not in others. For instance, under Article 7, there is no consent required if the performance is already a broadcast performance or has been recorded. Now, in a satellite operation you can transmit to the satellite a broadcast performance or a pre-recorded performance. We would have - in order not to go beyond the Rome Convention - to add the same exception as we have in Article 7 of the Rome Convention. The use of gramophone records may be an exceptional case for the time being in satellite operations of that kind. Nonetheless, it is possible as background music, for instance, and we know that in this case the performer, if his performance has been recorded on a record which is publicly available for sale, does not have the right of consent in the case of the use of the record, but only a right to equitable remuneration which can be excluded because the provision of Article 12 is an optional one. We would have to introduce this Article 12 here.

191.4 Then the Rome Convention, under Article 15, provides for all the exceptions which may be introduced by national law if they correspond to the exceptions which exist in the law of that country dealing with copyright. Again, we would have, in order not to exceed the protection granted under the Rome Convention, a clause

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similar to Article 15.

191.5 Finally, under Article 19 of the Rome Convention, once the performer has given his consent to his performance being recorded officially, he loses the right of control over the uses of his performance. We would have to introduce here the exception in Article 19 because in many instances the satellite operation is based on an audio-visual recording of the performance. Then under the concept of contributors, we would certainly have to consider performers who do not perform works, like acrobats and so on, who are explicitly excluded from the Rome Convention. We would have to bring in that exception, too.

191.6 "Contributors" covers also, in the case of very frequent transmissions by satellite, sports people, clubs, organizers of sporting events, organizers of artistic events, to all of whom I am sure nobody in this room wishes to give an exclusive right of authorization or prohibition when it comes to satellite operations, while they have no such right in ordinary terrestrial transmissions.

191.7 Finally, contributors to the programme are also the permanent employees of a broadcasting organization, the clerks, the technicians, practically the whole staff. Therefore, the proposal made by Japan means not only a tremendous departure from the Nairobi draft, but brings in the need of such a series of exceptions that the Convention would become an enormously complicated instrument. We tried to produce a simple instrument which all developing countries, and all countries of the world, could easily ratify. If we adopt the amendment presented by the delegate of Japan, we would have to produce a text, including an enormous amount of exceptions taken from both the Rome and the Berne Conventions, we would have to define contributors in order to exclude a great number of people to whom we certainly do not want to give a right of authorization; we would complicate the text to such an extent that it would become unratifiable.

192. The CHAIRMAN [F]: The delegate of Morocco.

193. Mr. CHAKROUN (Morocco) [F]: I should like to thank the delegate of Japan for having tried to improve the text before us. But if the intention is worthy of the action, my delegation considers that the improvement described is equivalent to a complete deformation of the spirit which we tried to institute at Nairobi. In fact, it puts everything in doubt. I shall not elaborate on this. Mr. Strashnov has just stated this magnificently, much better than I myself could have done. Unfortunately, my delegation feels obliged to reject this amendment.

194. The CHAIRMAN [F]: I give the floor to the delegate of Mexico.

195. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of

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Mexico, without proceeding to consider our work, which could mean a step forward or a step back, believes that the proposal of Japan constitutes a step which would bring us a little closer to copyright protection. In place of the change proposed by the delegation of Japan, which affected both drafting and substance, instead of the words "other contributors", we would prefer "authors and performers contributing to the programme". In so doing, we do not wish to detract in any way from the position of Mexico to arrive at an agreement with the majority of delegations, so that our work may advance, but we believe that the proposal of Japan brings us closer to the copyright field and we are here precisely as specialists in this field and are trying to protect copyrights.

196. The CHAIRMAN [F]: I give the floor to the delegate of Algeria.

197.1 Mr. ABADA (Algeria) [F]: The Japanese proposal seemed an important one to the delegation of Algeria. It does not simply constitute a drafting change of the first article. It seems to me that it brings the Convention into the field of private law since it introduces the concept of authorization of the original programme.

197.2 At the same time this proposed amendment places the Convention back in the copyright field since it refers to the programme and to the persons contributing to this programme, when we have already excluded the latter. That is why it seems to me that the Japanese draft amendment is not a simple technical change but puts in question what may be called the Nairobi "package deal" and it is for this reason that our delegation cannot support it.

198. The CHAIRMAN [F]: I give the floor to the delegate of Brazil.

199. Mr. de ATHAYDE (Brazil) [F]: Simply to support what has already been said by the delegates of Kenya, Morocco and Algeria. My delegation is also completely opposed to this draft amendment of the delegation of Japan because the amendment is in principle contrary to the spirit of Nairobi by the very fact that we are leaving the field of public law to enter once again that of private law. Thus, should this amendment be put to the vote, my delegation would be obliged to vote against it.

200. The CHAIRMAN [F]: Are there any other delegations who wish to speak on the Japanese draft? The delegate of Senegal.

201. Mr. N'DIAYE (Senegal) [F]: I asked for the floor simply to support the declaration of the delegate of Kenya. In fact, we were sympathetic to the proposal submitted to us by the delegation of Japan but the delegation of Senegal cannot accept this proposal which continues to grant a private right. That field has been completely left behind. Therefore, in order to preserve the spirit

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of Nairobi as you have advised, Mr. Chairman, the delegation of Senegal cannot give its support to the proposal of Japan.

202.1 The CHAIRMAN [F]: The delegate of Japan has proposed a modification which is contained in document UNESCO/WIPO/CONFISAT/7; although the intention of this proposal has been praised by all delegations, there is considerable opposition to it. In view of the fact that the delegate of Japan himself has said that he would not insist on this proposal, I ask whether he wishes us to vote on it.

202.2 The delegate of Japan.

203. Mr. HIRAOKA (Japan) [F]: In a spirit of compromise, I willingly withdraw this proposal.

204.1 The CHAIRMAN [F]: I thank the delegate of Japan for his constructive attitude. Are there any other observations on Article 1?

204.2 The delegate of the United Kingdom.

205.1 Mr. DAVIS (UNITED KINGDOM) [E]: It is merely to give notice that Articles 1 and 11 are of course interrelated in this sense: that Article 1 refers to the obligation which applies where the originating organization is a national of another Contracting State, while Article 11 allows for a variation, in that, in 11 (2), the Contracting State may substitute "where the emitted signal is emitted from the territory of another Contracting State."

205.2 Now it is merely that in due time the delegation of the United Kingdom will seek to suggest some amendment of Article 11 as to the type of reservation that might be made.

206. The CHAIRMAN [F]: I give the floor to the delegate of Australia.

207.1 Mr. CURTIS (Australia) [E]: Australia does not have a substantive amendment to propose to Article 1, but we would really like to draw what is a drafting point to the attention of the Conference. In its present form, paragraph (1) of Article 1 would oblige a Contracting State to take all appropriate measures. We suggest that it is not necessary for those Contracting States to take all appropriate measures; all that ought to be required is that sufficient measures be taken to give the protection required.

207.2 I merely make the point in the hope that it will be considered in due course by the Drafting Committee.

208.1 The CHAIRMAN [F]: I thank the delegate of Australia whose observation will be examined by the Drafting Committee. Are

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there any other remarks?

208.2 I give the floor to the delegate of the Federal Republic of Germany.

209. Ms. STEUP (Germany, Federal Republic of) [E]: Only to draw the attention of the Drafting Committee to one other point: in the legal literature in Germany, Article 1 was misunderstood and I think perhaps it is only because of a question of drafting; it relates to Article 1 (1)(ii). It was understood in the legal literature in Germany that where you have two fixations of the signal, an illicit distribution from the second fixation would not fall under this Convention. I think the difficulties stem from the word "therefrom". It is not quite clear whether a signal derived from any fixation is meant or only a signal derived from the first fixation of the emitted or derived signal. I think the Drafting Committee could look into this matter and perhaps find some clearer wording.

210.1 The CHAIRMAN [F]: The observation of the delegate of the Federal Republic of Germany will be communicated to the chairman of the Drafting Committee. Are there any other observations on Article 1?

210.2 If there are no other observations, may I declare that Article 1 is adopted by the Main Commission, subject, of course, to any changes made by the Drafting Committee?

210.3 Article 1 is adopted.

210.4 We shall now proceed with our work and if there is no objection we shall consider a rather complicated article which will take us some time. This is Article 3. We have two proposed amendments: document CONFESAT/9 presented by the delegation of Switzerland which proposes that we delete this article which, I would remind you, appears in square brackets. (The articles which appear in square brackets in the Nairobi draft are articles which provoked some doubts and which did not obtain a consensus in the Committee.) We have also another amendment proposed by the delegation of Italy, CONFESAT/12, which proposes substituting for the words "the obligation provided" the words "the measures provided". In fact, as stated in the commentary, this article refers to the reservations mentioned in Article 1 and not to the obligation of Contracting States, an obligation which, if not denounced, remains in force sine die.

210.5 Therefore, the discussion of Article 3 is open. Would the delegate of Switzerland like to present his amendment?

211.1 Mr. MARRO (Switzerland) [F]: As stated, this amendment has two parts: in one part we propose deleting Article 3 and the other part consists of extending the concept of "distribution".

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211.2 We suggest deleting Article 3. This article was widely discussed during the Committees of Experts. However, the delegation of Switzerland considers that this rule of minimum protection cannot be logically incorporated in the system inaugurated at Nairobi.

211.3 This proposal is not in contradiction with the provisions of the Rome Convention, in particular with its Article 22 which bans Member States of the Rome Convention from entering into special agreements which would confer on the beneficiaries of this Convention less extensive rights than those granted by the Convention. If we delete this minimum term of protection we are well aware - in view of the definition of the term "distribution" - that we are to some extent perpetuating the protection of the emitted signals; but we believe that it is the only system which truly falls within our new draft.

211.4 I shall now take the text of the definition of "distribution". The English translation should be slightly changed; we speak of "simultaneously with their emission" and not "with their transmission". It is, therefore, the distribution that is the subject of the prohibition, i.e. distribution which is simultaneous with the emission by the originating organization, and the distribution which takes place subsequently, i.e. by means of recording, which we qualified as "ephemeral recording" during the Brussels revision of the Berne Convention.

211.5 These are our two proposals: we would delete purely and simply the term of protection and make this protection unlimited in time and, in addition, we would broaden the concept of distribution to include also subsequent retransmissions, at any time, of the emitted signals.

212.1 The CHAIRMAN [F]: Would the delegate of Italy present his proposed amendment?

212.2 The delegate of Morocco.

213. Mr. CHAKROUN (Morocco). [F]: My delegation thought that we had decided to discuss Article 3 and jump Article 2.

214. The CHAIRMAN [F]: The delegation of Italy has presented in document CONF/SAT/12 an amendment to Article 3.

215. Mr. CHAKROUN (Morocco) [F]: I was speaking of the intervention of the delegate of Switzerland who has just spoken on the concept of distribution, distributor, etc... which appears in Article 2.

216.1 The CHAIRMAN [F]: I did not interrupt the delegate of Switzerland because although he was talking about Article 2 - which will, of course, be considered in due time - this was in order to indicate that his amendment was connected with this definition, i.e.

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that he proposed deleting Article 3 and adding something to Article 2. Consequently, Article 2 will certainly not be considered now. But your question is pertinent.

216.2 May we now hear the delegate of Algeria?

217.1 Mr. ABADA (Algeria) [F]: I wanted to ask if it would not be better for our Assembly to vote first on the Swiss proposal which is a radical one and which proposes the deletion of Article 3.

217.2 If our Assembly decides to delete Article 3, the amendment proposed by the delegation of Italy would be eliminated. That is why I propose that perhaps we could open the discussion on the deletion or retention of Article 3 before discussing the proposal of the delegation of Italy.

218.1 The CHAIRMAN [F]: I do not think we have yet reached the voting stage. When we come to a vote, to making decisions, then we shall choose in what order we shall discuss these points in accordance with the Rules of Procedure, but for the moment we shall listen to the various proposals which have been made and I believe that it is very useful to listen to the Italian proposal before taking any decision on the Swiss proposal.

218.2 The delegate of Italy.

219.1 Mr. de SANCTIS (Italy) [F]: In fact, the proposal of the delegation of Italy is located somewhere between the proposal to simply delete the article and that proposing to approve it. For this reason, I thank the Chairman for giving me the floor.

219.2 The delegation of Italy considers that in effect the obligation under this type of Convention cannot be given a limited term. The obligation will come to an end only for those States who denounce the Convention. We have a provision which permits denunciation and indeed if a State can be bound by this Convention, it can also denounce it. In this case it could be said that the delegation of Italy is in agreement with deleting this Article 3 since it would be useless. But, on the contrary, the delegation of Italy - the Italian Government - studied this article and began to wonder whether, while rejecting a limited term for the obligation, it would not be possible to think of a limited term for the measures to be taken by States in this connexion. A term is necessary with regard to the measures that States will take to prevent the piracy which is developing around programme-carrying signals. This is the reason for which the delegation of Italy considers that the word "obligation" in Article 3 should be deleted and believes, although it does not insist, that we could change, or replace the word "obligation" by "measures" which are taken by the Contracting State.

220. The CHAIRMAN [F]: The delegate of Israel.

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221. Mr. GABAY (Israel) [E]: I entirely agree with the Italian delegation; however, I have the feeling that what is proposed is not going to achieve the purpose because if we refer to the measures again we refer to those basic measures that will not have any limited time but will exist as long as the State concerned is obligated by the Convention. So if we take the rationale of the Italian delegation, the latest proposal, one may have to say that the prohibition provided for in Article 1, in respect to any emitted signal, continues, in other words the duration of the prohibition but neither the obligation nor the measures.

222. The CHAIRMAN [F]: The delegate of Kenya has the floor.

223.1 Mr. STRASCHNOV (Kenya) [E]: May I address myself to the basic principle, to the basic question whether or not there should be a time limit, a minimum term as laid down in Article 3.

223.2 Supposing Article 3 is deleted and not replaced by something on the lines of the proposal made by the delegation of Switzerland for the definition of distribution in Article 2. The consequence would be in practice that States would be allowed to consider that the distribution by unintended distributors could be limited to simultaneous distribution and that any subsequent distribution would be allowed. That would mean that a distributor for whom the signals were not intended could record these signals and perhaps with a delay of one second which is technically perfectly possible, distribute the signals without infringing the conventional obligation.

223.3 Other countries would consider that some other term should be granted and there would be as a result no reciprocity, no real reciprocity between the various Contracting States. On the other hand, it would not help the originating organizations in their negotiations for the transmission of foreign sporting events, where it is necessary more and more to guarantee that unintended distributors, i.e., those for whom no payment was made, will not distribute the event, at least for a certain period of time, if the countries are allowed to prevent distribution only simultaneously with the emission to the satellite, and immediately afterwards relinquish all the preventive measures - then of course no guarantee can be given to the organizer, to the contracting party with whom the originating organization makes a contract.

223.4 Finally, I would like to repeat again that many countries belonging to the Rome Convention consider that the Rome Convention covers the subject matter and we know for what reasons; nonetheless, a specific Convention could and should be concluded. Now under the Rome Convention Article 22, Contracting States are not allowed to enter into any agreement which grants lower protection than the Rome Convention. The minimum under the Rome Convention for all three interests is 20 years from a certain event, and therefore I believe that Article 3 should and must contain at least that minimum.

223.5 Of course it would be most advantageous for broadcasting

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organizations or any other originating organizations to have their signals protected in perpetuity as suggested by the delegate from Switzerland but I believe that this is not a realistic wish. I believe that no country will agree that signals should be protected longer than copyright, the rights of authors. I personally believe and I think our delegation believes, that there should simply be a minimum and that minimum cannot be less than 20 years. As far as the Italian proposal is concerned, we would see no objection to replacing the words "the obligation provided" but we certainly consider that Article 3 should now be accepted without the brackets.

224. The CHAIRMAN [F]: The delegate of Japan has the floor.

225.1 Mr. HIRAOXA (Japan) [F]: The opinion of my delegation also is that it is necessary to retain Article 3 in the Convention.

225.2 As has been explained by the delegate of Kenya, we believe that if there is no such provision in our Convention, many inconveniences will result. The Convention would risk being interpreted as imposing an obligation in perpetuity with regard to the signals that have been recorded on the one hand, and on the other, in the light of this interpretation, one may think that such an obligation to take the appropriate measures would be neglected. With regard to the drafting of this article, we could envisage some changes and we have no objection to the Italian proposal.

225.3 In addition, I should like to point out that in the Convention adopted in 1971, called the Convention for the protection of producers of phonograms against unauthorized duplication of their phonograms, there is an Article 4 which is drafted in the same spirit but with a slightly different text. We are very much in favour of retaining this article, at least in the form of Article 4 of the said Phonograms Convention.

226. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany has the floor.

227.1 Ms. STEUP (Germany, Federal Republic of) [E]: We fully agree with the delegations of Italy, Japan and Kenya that Article 3 should be retained, and we are sorry to say that we disagree with the delegation of Switzerland. We think that Article 3 is in line with the new philosophy. What is really at stake here, what we have to ask ourselves, as the delegate of Kenya has said, is how long is a State obliged to prohibit illicit distributions of any given signal; I think that the delegate of Kenya has made it quite clear that in view of reciprocity the answer cannot be given by States differently. We have to have, I think, a minimum requirement here. Otherwise one State could fix only one day, another State one year, another five years.

227.2 As to the drafting, we have the feeling, as the Italian delegation, that the wording of Article 3 is not quite good.

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However, we have some doubts whether the new draft of the Italian delegation will make quite clear what is meant. But I think that these are questions for the Drafting Committee which can be solved there. Here we should only decide to have a minimum delay during which each State has to prohibit illicit distributions of any given signal.

228. The CHAIRMAN [F]: The delegate of Austria has the floor.

229. Mr. DITTRICH (Austria) [E]: I agree fully with the speakers before me who have said that a term of protection should be inserted in the draft Convention on the lines of Article 3 as it now stands in brackets. I agree fully with the speakers before me who have said that the Italian delegation proposal seems to be a question of drafting. We think that it is not the obligation of the State under the Convention itself that should be limited but the obligation to protect indirectly a given emitted signal.

230. The CHAIRMAN [F]: The delegate of Algeria has the floor.

231. Mr. ABADA (Algeria) [F]: I regret that I am not in agreement with the intervention of the delegate of the Federal Republic of Germany when she states that Article 3 corresponds to the Nairobi philosophy. At Nairobi we decided that the Convention should protect the signal and only the signal. We excluded copyright protection. But Article 3 is intended to transpose the procedures of copyright protection to the signal, a physical phenomenon, which is very different. I understand the concern of those delegations that wished to retain this article. Perhaps they are saying that the protection of the signal is the protection of the contents of the signal, i.e. the protection of the programme. But we can allay this anxiety, for once the content of the signal is used, it comes under copyright. It comes under the national copyright law which ensures longer protection (50 years after the death of the author in some countries, 20 years in others) and it also comes under all the international Conventions. This is why, in our opinion, from a logical point of view and taking into account the choice that has been made, i.e. limiting the scope of this Convention exclusively to the protection of the signal, Article 3 is pointless.

232. The CHAIRMAN [F]: The delegate of Mexico has the floor.

233.1 Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico agrees that Article 3 should be retained without its famous brackets and also incorporating the Italian proposal; but for it to harmonize with the terminology established in the Convention, we would like to propose that two phrases be added. Probably because this article was in brackets and therefore was studied in less detail, there is no link here between the signal and the programme whereas elsewhere in the drafting of the Convention we speak of programme-carrying signals. Therefore, we propose the the article

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read as follows: "The measures established under paragraph (1) of the first Article of this Convention, concerning the transmission of programme-carrying signals, shall last for at least twenty years computed from the end of the year in which the said signal containing the programme was emitted." In this way the signal is protected and in this way also, as Mr. Straschnov has explained, the countries signatories of the Rome Convention will not violate the Rome Convention by signing this Convention. We are in effect protecting the signals but these are programme-carrying signals. In Article 4 of the Phonograms Convention that was approved in 1971, there is also a similar provision, on account of its relationship with the Rome Convention and in order to avoid any attack on or conflict with the Rome Convention. I do not believe that this provision grants a greater or a lesser right to those concerned with television programmes, with programmes emitted by satellite, and in addition it is quite clear, as Mr. Straschnov has stated, that it is not possible to wait five or ten minutes or an hour or half-an-hour to retransmit the programme, but the programme-carrying signal will be protected for a definite time.

233.2 Consequently the delegation of Mexico is in agreement that Article 3 should be retained without square brackets in its final form, with the safeguard suggested by the delegation of Italy and also with the clarification referring to programme-carrying signals.

234.1 The CHAIRMAN [F]: I should like to ask the delegate of Mexico to hand to the Secretariat in writing the text which he is proposing so that we may have it in all languages tomorrow and discuss it more easily.

234.2 The delegate of the United Kingdom.

235.1 Mr. DAVIS (United Kingdom) [E]: I think my fears on this matter are rather the reverse of those expressed by the delegate of Kenya and in case I really have this wrong I would very much welcome his views if you allowed him to put them.

235.2 As I see Article 1 it requires us to protect both the emitted signals or a signal derived from a fixed fixation. Now as far as I can see a signal could be derived from a fixation at any period many, many years later than the original signal, the fixation could be used many years after the original signal.

235.3 Now it seems to me that if Article 3 disappears we are in fact left not with a possible short duration of the protection but with an obligation to protect forever. We say that we will protect a signal derived from a fixation no matter when. Now as far as the United Kingdom is concerned I know the points that have been made about this not bearing on copyright but nevertheless we would expect to implement this Convention by way of our copyright law, and our copyright law ties us (although of course I would be the first to admit that it can change, as my colleague reminds me) to fifty years from the first making of the broadcast. We could not, it would be

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quite impossible for us I think, and it would be a radical change, to be bound to protect a signal no matter when it appeared.

235.4 I have another point in relation to the detail of Article 3 and that is the reference to twenty years from the end of the year in which such signal was emitted. I think this has been called in Nairobi, where I was not, restarting the clock. Again, because you can restart the clock every time you use the fixation, you have an indefinite commitment to protection. Both of these are impossible for the United Kingdom at least under our present law.

236. The CHAIRMAN [F]: The delegate of Belgium.

237. Mr. de SAN (Belgium) [F]: I understand the concern that induced the delegation of Italy to present its amendment of Article 3. However, I think that the adoption of this amendment and its insertion in the text would lessen the scope and effectiveness of Article 1, i.e. of the obligation on States to prevent unlawful distribution. In fact, I think that it is generally admitted that States decide for themselves on the most adequate measures to adopt to implement this conventional obligation. And so, if they are sovereign in deciding the nature of the measures to be taken, they should also decide the duration of these measures: they may discover at any given moment - depending on circumstances - that it is more effective to take such measures, or to change such measures as they have already adopted in order to prevent unlawful distribution.

238. The CHAIRMAN [F]: The delegate of Morocco has the floor.

239. Mr. CHAKROUN (Morocco) [F]: It seems to my delegation that in spite of the convincing commentaries that we have read and heard, Article 3 is superfluous. In our opinion its deletion could only simplify and lighten even further the recommended text, all the more so since the retention of this article would introduce the concept of a private right. This private right would be contrary to the spirit of our draft. It would, therefore, be logical to delete the present Article 3 and thus avoid retaining any effects of the previous drafts we abandoned at Nairobi.

240. The CHAIRMAN [F]: The delegate of Canada has the floor.

241.1 Mr. SIMONS (Canada) [E]: On behalf of Canada, I would like to make five points:

241.2 First of all, with regard to the term: in our view there should be a term.

241.3 Secondly, with regard to the length of the term: we favour the twenty-year period for the reasons given by the delegate of Kenya. In connexion with its relationship with the Rome Convention, we believe that there should be no chance of any conflict between

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this Convention and the Rome Convention.

241.4 My third point is that we support the Italian amendment because we think it clarifies the text.

241.5 The fourth point deals with the intervention of the United Kingdom delegate in connexion with the question of when the term expires and we have some of the same fears he does; we would suggest that possibly Article 3 should state that the term starts with the end of the year in which the signal was emitted, or recorded, whichever is the earliest. We think this should be given some consideration in connexion with the drafting of this article.

241.6 And the final point deals with a clarification with regard to denouncing the Convention; we suggest that Article 3 explicitly state what the situation is in regard to obligations after a State has denounced the Convention.

241.7 One situation that may arise is where a State receives and records signals while it is a member of the Convention and redistributes these signals after denouncing the Convention. I do not think it is clear just what the situation is with regard to the terms of the present Article 3. Another situation is the reverse of this, and would be where a State emits signals while it is a member of the Convention, but later denounces the Convention. In this case the question arises as to whether other States that are members of the Convention would be obliged to continue to protect the signals for the remainder of the term of Article 3. I would like to see consideration given to some of these questions.

242.1 The CHAIRMAN [F]: With regard to the first suggestion of the delegate of Canada, I would ask him to communicate it in writing to the Secretariat to-day so that we may have it in all languages to-morrow. As for his second suggestion, it seems to me that this should rather be included with Article 10, i.e. when we study denunciation. In any case, it is the Commission which will decide. Thus, the delegate of Canada will give us his comments in writing and we shall be able to discuss them in due time.

242.2 I give the floor to the delegate of the United States.

243.1 Ms. RINGER (United States of America) [E]: My delegation recognizes that there are theoretical arguments in favour of omitting Article 3. It is true that under Article 1 a State is obligated to take all appropriate measures, and I would assume that in a good faith effort to implement that obligation, a State would not give protection for five minutes or for a ridiculously short period of time. I also think it is probably consistent with the philosophy of Nairobi that a State should be left to some extent free in how it implements this provision.

243.2 Having said that, however, we feel that the arguments advanced in the Nairobi report in favour of retaining Article 3

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without the brackets are persuasive. It would be impossible for my government to accept an interpretation that would require perpetual protection. We are also persuaded by the confusion that would result unless some reference to term is made in the Convention itself. We are therefore, in principle, in favour of Article 3. We also recognize the arguments that have been put forward concerning the necessity to conform this to the Rome Convention, and the fact that there may be actual treaty obligations on Rome countries with respect to this.

243.3 As to the proposal of the Italian delegation, we recognize the ambiguities that exist in the present text. We are not completely convinced that they are cleared up by the proposal that has been advanced, and we share the view that has been expressed that this should be dealt with by the Drafting Committee in an effort to clarify an issue on which I do not think there is any difference of opinion.

243.4 As to when the term should start, I fully recognize, and have recognized at previous discussions of this in the preparatory meetings, that this is a troublesome problem. There is the basic difficulty of distinguishing between the signal and the programme, and I think it is particularly acute in the context of Article 3. However, I do feel that we should remember that the Rome Convention protects signals, not content, in its retransmission provisions (re-broadcasting provisions and so forth) and that it does base the term on the year in which the signal is emitted without reference to the programme. I think we should try to wrestle with this problem, but at this stage it seems to me that the text before us is about the best that we can do.

244. The CHAIRMAN [F]: The delegate of the Netherlands has the floor.

245. Ms. KLAVER (Netherlands) [F]: The delegate of the United States has just said what I had intended to say: our delegation shares entirely the point of view of the delegation of the Federal Republic of Germany. We are also in favour of a minimum term of protection of twenty years for the reasons explained by the delegates of Kenya and the United States who have referred to paragraph 102 of the Nairobi report. With regard to drafting, we support the proposal made by the delegation of Italy which seems to us to be a definite improvement - it is in fact a question of the measures to be taken at the national level - but perhaps an even better wording can be found by the Drafting Committee.

246. The CHAIRMAN [F]: The delegate of France.

247.1 Mr. KEREVER (France) [F]: At Nairobi the French delegation was part of that group of delegations which, according to the report, were hostile to the inclusion of an article on the term of protection. It is true that a term of protection - and

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especially a term of twenty years - would create a relationship with the copyright and neighbouring rights system of protection and that at first we thought that we should reject this relationship. On reflexion, we have realized that since this Convention, which is based on a different philosophy, obligates States to take certain measures to oppose illegal capture, it is not at all inconceivable that a term be applied to these measures and that in so doing no relationship is created with the copyright and neighbouring rights terms. Consequently, as far as the principle is concerned, the French delegation no longer maintains the opposition it voiced at Nairobi. Supposing that this principle be admitted - we are obliged to consider the problem posed by the question of the date from which this term is computed - our impression is that the present drafting is, shall we say, the least undesirable possible: the emission of the signal takes place on a precise date and, in our opinion, this date should be maintained; the fact of whether or not this signal has been fixed subsequent to the emission should not in any way alter the starting point of the term. As for the problem of whether in reality we wish to apply the term of protection to the programme and not to the signal (two signals which are materially distinct within the meaning of the Convention can still carry the same programme) this is indeed a problem. But the Convention has its own logic - it is the signals which are protected - and each signal, which is physically original, creates its own term of protection.

247.2 Finally, there remains a problem which in our opinion is purely one of drafting. In effect, the length of the obligation is not exactly what we meant. The obligation remains in perpetuity as long as the State has not denounced the Convention. What we mean (and here we must refer to Article 1) is that the obstacle thus created must last at least a certain length of time, twenty years in the case in point. It is obviously necessary, therefore, to express this better in the text, but that is purely a question of drafting and is less important than the first two I have mentioned.

248. The CHAIRMAN [F]: I give the floor to the delegate of Brazil.

249.1 Mr. de ATHAYDE (Brazil) [F]: I do not wish to keep Article 3 for all the reasons that have been clearly explained, among others by the delegates of Algeria, Morocco and Switzerland, whose amendment I strongly support.

249.2 However, should this not prove possible, I should like to make one remark which has in fact just been mentioned by the delegate of France. It is that the minimum term of obligation which is mentioned in Article 3 concerns the signal and not the programme. In the case in point it is not a question of economic protection but of general obligations under the Convention. Consequently, should this article be retained, I request that the Drafting Committee be instructed to include this point in the Final Report.

250. The CHAIRMAN [F]: I give the floor to the delegate of

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Senegal who will be the last speaker today.

251. Mr. N'DIAYE (Senegal) [F]: I will be brief. I think that our Convention has the merit of being neutral. Since it is neutral - vis-à-vis the international copyright conventions and the Rome Convention - the problem of the term which arises at the level of the programmes diffused by these signals is no longer a problem. And if we keep Article 3 this would mean, among other things, that piracy is lawful after twenty years. And from what point should the term be computed? This problem has just been posed and I think that there is much controversy - you can see the difficulty already. Therefore, to summarize, I think that it would be appropriate to purely and simply delete Article 3 which refers to the term.

252. The CHAIRMAN [F]: Our session tomorrow will take place at 10 a.m. I still have on my list the delegates of Luxembourg, Argentina, Australia and Algeria.

253. The meeting rose.

Main Commission - Second Meeting¹

Thursday, 9 May 1974 at 11.17 a.m. Chairman: Mr. da COSTA (Brazil)

254.1 The CHAIRMAN [F]: We shall continue with the work of the Main Commission and proceed with our discussion of Article 3.

254.2 We have some new documents concerning this article; document CONFESAT/14 which is the proposed amendment of the delegation of Mexico. The delegate of Mexico explained the scope of his amendment yesterday. We also have an amendment from the delegation of the United Kingdom (document CONFESAT/15). The delegate of the United Kingdom also explained the scope of his amendment yesterday and I think that that is about all with regard to Article 3.

254.3 We also have document CONFESAT/16 which concerns another problem and which we shall study subsequently.

254.4 I still have some delegates who wish to speak on Article 3: Luxembourg, Argentina, Australia, Kenya and Switzerland.

254.5 I give the floor to the delegate of Luxembourg.

255. Mr. FELTEN (Luxembourg) [F]: Luxembourg is taking the floor to state that it favours retaining in the final text of the Convention, Article 3 of the Nairobi draft with a minimum term of protection of twenty years.

1. Cf. document UNESCO/OMPI/CONFESAT/VR.8 (prov.).

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256. The CHAIRMAN [F]: The delegate of the Republic of Argentina.

257. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: The delegation of Argentina would like to state that it is in agreement with the change in Article 3 proposed by the delegation of Mexico. It believes that it is indeed difficult to speak of the container without mentioning the contents as a means of identification, especially since the poaching of signals concerns the programme carried by the signals and not the signal itself.

258. The CHAIRMAN [F]: The delegate of Australia has the floor.

259.1 Mr. CURTIS (Australia) [E]: With respect to Article 3 the Australian delegation would make the following points:

259.2 Firstly, we think that for reasons which were well discussed yesterday there should be a minimum period of protection required by the Convention. Secondly, we think that there must be an article like Article 3 otherwise it may be that the protection required would have no time limit. We think it would be entirely anomalous that a signal which is no more than the product of engineering should be protected in perpetuity whereas other copyright interests, the works of authors, artists and other contributors to programmes, are only protected for finite periods.

259.3 The next point we would make is that Australia would be opposed to the concept, in the words used today by the delegate from the United Kingdom, that any fresh emission of a signal carrying the same programme could start the time clock running again. This would be contrary to the provisions of our own domestic law regarding the protection currently given to broadcasts under which a broadcast is not protected more than fifty years after its first emission. Consequently, it would be necessary from the Australian point of view for Article 3 to be so amended as to prevent the possibility that by a successive emission of signals containing the same programme one could achieve protection of indefinite duration. We notice that the amendment circulated by the United Kingdom is aimed at preventing this; we have not yet had an opportunity to examine it in detail. We have submitted to the Secretariat another amendment designed to achieve the same result. If the United Kingdom amendment does in fact achieve this result and is adopted, then we would be prepared to withdraw the amendment we have handed in to the Secretariat.

260. The CHAIRMAN [F]: The delegate of Kenya has the floor.

261. Mr. STRASCHNOV (Kenya) [E]: Very briefly I only wanted to explain that Article 3 is in no way contradictory with what we called the new philosophy or the new approach to the problem. Under Article 1, Contracting States undertake to take appropriate measures to prevent distribution by unintended distributors; but Article 1

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does not in any way prevent the recording of signals by unintended distributors. In other words, anybody can lawfully record signals coming from space and store the recording. This is the essence of Article 1. Now there is one question which immediately arises: for how long is the unintended distributor who recorded obliged not to use the recorded signal for cable distribution, broadcasting, maybe distribution in the form of video cassettes, gramophone records and so on? This is the basic question which we must answer and which follows from the text of Article 1. If we delete Article 3 we create a situation under which probably the recorded signal will never be usable by the unintended distributor. In other words the measures will have to be perpetual. Now I am afraid that if this is the consequence, and many delegations with whom I have spoken have the impression that this is the consequence, we are afraid that the Convention will hardly be ratified. There will not be many States willing to accept that the recording of these signals by an unintended distributor should never be usable for any purpose even after 20 or 50 or 100 years. Therefore, it seems to us that it is entirely in keeping with Article 1, and also in the interest of ratification, that some sort of minimum term should be included in the treaty so that it is clear after what period of time the recording of a signal - which, I repeat, Article 1 does not prevent at all - can be used for any purpose the person who recorded the signal wishes. Therefore, we think that Article 3 in some form, and we are not talking about a drafting point, must be included in the Treaty.

262. The CHAIRMAN [F]: I give the floor to the delegate of Switzerland.

263.1 Mr. MARRO (Switzerland) [F]: Our delegation would like to summarize briefly the reactions which its proposed amendment contained in document CONF/SAT/9 has provoked. It is evident that our delegation is in favour of a protection that covers not only the simultaneous distribution but also distribution by means of a recording. What we desire, what we propose, is the deletion of a limit to the minimum term of this protection. I find it difficult to imagine that an act - for example, an act of piracy - constitutes an act of unfair competition during a fixed period and that after this period, this same act becomes lawful, i.e. an act of "fair" competition.

263.2 I should like to stress the following point: up to now I have discussed only one of the two parts of our proposal. This proposal, as I said when I introduced it yesterday, consists of two inseparable parts: on the one hand the deletion of Article 3 and, on the other (and this is inseparable from the first part), an extension of the concept of distribution so that it is understood that the protection given by Article 1 covers also distribution at a different time. But if the Main Commission should be called upon to vote separately, on Article 3 only in the first place, then the delegation of Switzerland would withdraw its proposal.

264.1 The CHAIRMAN [F]: It seems to me that yesterday the Commission took the decision to vote on the articles in a certain

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order and that, consequently, it is not possible to bind or to make a vote on one article conditional upon another article or part of another article. Therefore, if I have understood correctly, the delegate of Switzerland withdraws his proposal.

264.2 The delegate of Switzerland.

265. Mr. MARRO (Switzerland) [F]: I confirm that should the vote be only on that part of our proposal concerning Article 3, then we withdraw it.

266.1 The CHAIRMAN [F]: I think that this procedure is inevitable. The delegate of Switzerland withdraws his proposal. Consequently, there is no longer any proposal to delete Article 3, unless another delegation presents this proposal.

266.2 The delegate of Tunisia has the floor.

267.1 Mr. SAID (Tunisia) [F]: Article 3 which institutes a minimum term of protection was perhaps conceivable in the Paris text but is no longer acceptable in the Nairobi text. In the first place, I still believe that it introduces a principle of international private law, whatever else has been said. Next, it is in contradiction with Article 1 which is supposed to leave States free with regard to the choice of appropriate measures and thus their nature and scope. Finally, by fixing a term of protection, we are no longer protecting the signals but the programmes they carry. Or, as the Director of Legal Affairs of the European Broadcasting Union wrote on the subject of another article (I quote): "As already stated on several occasions, its real scope lies in the undertaking by States to prevent distribution of signals, regardless of the programme they carry, by distributors who are not the intended recipients of those signals. In other words, the draft Convention relates to the 'container' and not to the 'content'. On the other hand, the avowed object of Article 7 (as the Director of Legal Affairs said - but I say it with reference to Article 3) relates to the 'content' and accordingly seems incompatible with the new approach of the treaty."

267.2 For all these reasons and for many others which have been developed both at Nairobi and here, my delegation cannot accept the retention of Article 3 and I therefore take up the Swiss proposal in my name. I propose that Article 3 be deleted.

268.1 The CHAIRMAN [F]: Consequently, the amendment of Switzerland to Article 3 is taken up by the delegation of Tunisia, excluding the part of this amendment referring to Article 2, paragraph (vii).

268.2 I give the floor to the delegate of France.

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269.1 Mr. KEREVER (France) [F]: The intervention of the delegation of France is based on the assumption that the principle contained in Article 3 will be accepted. In fact, the French delegation explained yesterday the reasons for which it considered that this article should be accepted and since the discussion on this precise point has just been reopened, I should like to come back to it very briefly.

269.2 If the inclusion of an article on the term had the consequence of conferring on the system of protection, resulting from the public law obligations instituted by the Nairobi text, a copyright imprint, the French delegation would certainly be hostile to it. But I do not think that is the case, as I stated yesterday. It is a matter of an extremely practical consideration: we ask States party to the Convention to take all measures of their choice to prevent the unlawful use of a signal; it is a question of knowing how long these States will be under such an obligation. Since it is difficult to conceive that this obligation will be borne by them in perpetuity, I think that the only solution would be to institute a term of protection. If we take the example of a State which affords protection uniquely by penal sanctions, this would mean that the use of a signal it was not destined to receive constitutes an offence if this use occurs within a certain lapse of time but not if it occurs after the expiration of a certain term. This is ascribable to its designation as an offence but has nothing to do with the creation of an incorporeal right analogous to a copyright. I should in addition like to draw attention, without insisting on it any further, to the fact that, although it is true that the Nairobi system is entirely separate from that of Paris, we find all the same, and necessarily so, certain analogies which are evident when we examine the exceptions dealt with in another article.

269.3 That said, and assuming that Article 3 is accepted in principle, I come now to the proposals of the United Kingdom and Mexico which are both inspired by the same concern and which deal with the starting point of the term of protection. In the system adopted at Nairobi, the starting point of the term of protection is the emission of the signal. The two amendments, in a slightly different form, propose using for the determination of the starting point, not the signal but the programme, in order to take account of the fact that the protection of a determined programme does not start again when the same programme is emitted several times, successively, by signals which themselves are physically different. The problem thus raised is an extremely serious one.

269.4 The French delegation on reflexion believes that, even in principle, it is not a good idea to bring in the concept of the programme when determining the starting point of the term of protection. We are caught in the logic of a certain system and it has been repeated (and I think that the Convention states it clearly) that it is the signals that are protected, the container and not the contents. We must accept the consequences. I think, therefore, that the starting point can only be considered in relation to the emission of the signal. That said, I hope that a proposal that is not properly drafted but which, I think, would reconcile the positions would

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consist of the addition in Article 3 of a text which would permit States which intend satisfying the obligations under Article 1 by protecting the signal by means of a copyright, to arrange the term of protection in such a way that it does not result in a term of protection of the signal superior to that provided for the programme under their system of copyright. In other words, the spirit of the amendments of the United Kingdom and Mexico could be incorporated in Article 3 but only in the case where the system of protection chosen was a copyright system. On this assumption, the principle would remain that the starting point of the term of protection is determined by the emission of the signal and not that of the programme.

269.5 I regret that I cannot read you a properly drafted counter-proposal but I think that other delegations have understood: the delegation of France is in favour of maintaining Article 3 as it appears in the Nairobi text, on condition that a second paragraph be added including essentially the amendments of the United Kingdom and Mexico on the assumption that States choose to meet their obligations under the Convention by instituting a copyright with regard to the signals.

270. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany.

271.1 Ms. STEUP (Germany, Federal Republic of) [E]: I apologize for taking the floor again but this question of a minimum term is of paramount importance for my country, and we fear that we are not able to sign this Convention if there is not a minimum term. Perhaps I may explain why. We think that this minimum term is not contradictory to the new approach of Nairobi. It really concerns the container and not the programme itself. I may, perhaps, give you an example for that. If you have a programme emitted to a satellite and the German broadcaster who makes this emission makes at the same time a terrestrial broadcast, and then some other broadcaster comes and picks it up, he may pick it up under this Convention from the terrestrial broadcast. He is only forbidden to pick it up from the satellite. If he gets the programme by other means, not taking the container, then this does not fall under the agreement. Therefore we think that the term only concerns the container, and not the programme itself.

271.2 We think that the term is compatible also with the public law approach, at least in my country. We have quite a number of public laws where you have minimum terms, maximum terms and other terms. A term does not mean that you are in the field of private law. So we think that the term is in line with the philosophy of Nairobi.

271.3 I would now like to draw your attention to the proposals before us. I think the proposals differ insofar as the starting point of the term is concerned. As far as I can see, the starting point in the British proposal is the moment when the programme was

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first emitted, that is, when the programme was first distributed to the public. When you have a programme first broadcast by terrestrial means and one year later this programme is transmitted via satellite, then, under the British proposal, the 20 year term starts from the moment the terrestrial broadcast was made, so that after the emission to the satellite, there are only 19 and no longer 20 years left. We feel that this proposal - and here we share the feeling of the French delegation - does not harmonize with the new philosophy of Nairobi because one considers as starting point the first distribution of the programme, but not the emission of the carrier to the satellite.

271.4 The Mexican proposal, as far as we understand it, takes as a starting point of the term, the emission to the satellite. However, as far as we can see, it is the first emission to the satellite, in a case where you have subsequent emissions, which is possible. For instance, you may have a broadcast for the first time via satellite say, of the Olympic Games, at the moment they took place. One year later, the broadcaster transmits the same programme via satellite once again. As far as we understand the Mexican proposal, in this case the starting point is the first emission to the satellite.

271.5 The draft of Nairobi as far as we understand it, gives a term starting every time the signal is emitted to the satellite. So in the example I just mentioned, under the draft of Nairobi, the term for the signal which passes the satellite during the second transmission starts at the second emission.

271.6 These are the three starting points we have to consider. It is our feeling that the British proposal does not fit into the whole scope of this agreement very well. As to the other two starting points, I think we have to consider the reasons behind the protection of the signals. It was always said that emissions to the satellite are very expensive and that it is therefore necessary that the originating organization can ask those people who distribute the signals for a share of the costs. If we take this approach I think it does not matter whether an emission is a first or second emission because the costs are the same. And therefore we have a slight preference for the starting point as drafted in Nairobi.

271.7 As to the proposal just made by the French delegation, we would prefer to see it in writing so that we can study it. Perhaps it shows some way out of the differences between the British proposal and the other proposals; however, I think it would be better if we would discuss it when we have it before us.

272.1 The CHAIRMAN [F]: I ask the delegate of France to be kind enough to hand in his suggestions in writing - I ask this of all delegations. It is obviously much easier to discuss a written text than a dictated one.

272.2 I give the floor to the delegate of the United States of America.

273.1 Mr. WINTER (United States of America) [E]: Yesterday

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Ms. Ringer gave a very full explanation of the arguments for and against the retention of Article 3. So I will try to be very brief.

273.2 I recall that there was an extended debate on this point of the need, or lack of need, for a term at Nairobi and, as we all know, there has been a rather extended debate right here in Brussels about the same question. It appears to the United States that the great uncertainty as to whether or not there should be a term, really leads us to the conclusion that there is a necessity for some sort of term in this Convention.

273.3 We have seen in this debate, as well as in Nairobi that there have been varying points of view. Some said that if there was no article relating to a term in the Convention, the obligation to protect a signal could range from a few seconds to perpetuity. I think if this Convention were generally interpreted to require, because of the lack of a specific term, protection in perpetuity this would be most unfortunate. We believe that the delegates of Kenya, Australia, France and the Federal Republic of Germany have covered in rather great detail the reasons for having an article on term in this Convention. We agree in principle with the statements made by these speakers.

273.4 For those delegations that are opposed to having an article on term may we say that perhaps this problem is related to the present text of Article 3. Our delegation would suggest that this problem may be one more of drafting than of substance and we certainly would be prepared to work with other delegations in trying to draft an acceptable Article 3.

274. The CHAIRMAN [F]: The delegate of Senegal has the floor.

275.1 Mr. N'DIAYE (Senegal) [F]: As it did yesterday, the delegation of Senegal strongly supports the proposal of Switzerland which has been taken up by the delegation of Tunisia.

275.2 Indeed, if we consider that the draft Convention before us does not in any way concern either the programme or the various contributors to the programme, that it refers only to the signal and that it therefore belongs to the field of public law, I wonder to what extent we can speak of terms. Indeed, taking the example of the delegate of France, it would be difficult for a State which took penal measures or a State which opted for administrative measures to say that after a period of so many years or so many months, the act could be considered a lawful one.

275.3 I think that here - and this should be clearly stated - it is a question of piracy. And it is piracy, because such an act is unlawful, to-day and twenty years hence. I think that to say that after a certain time there is no piracy is a contradiction. In view of the numerous divergent opinions that have become evident since the beginning of this Conference with regard to the starting point of the term of protection, if by any chance our Assembly were

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not in favour of the pure and simple deletion of Article 3, I think that, as has been stated by the delegate of the United States, we could perhaps find a formula - perhaps it is only the drafting that is bad - but we wish to keep to the letter of the text of the Nairobi draft Convention which is before us. But as the text is drafted at present, the delegation of Senegal cannot but be opposed to Article 3.

276. The CHAIRMAN [F]: I give the floor to the delegate of Mexico.

277.1 Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico wishes to insist on its proposal and would like to make some brief comments on the very interesting opinions that have been heard from the various delegations. In the first place, the delegation of Mexico has proposed this drafting of Article 3 in order to link it with Article 1 which has already been approved by the Main Commission. The Main Commission has approved Article 1 and Article 1 speaks of a programme-carrying signal. Thus we should remain clear that it is not only the famous container that it is protecting, but the container in relation to specific contents, for if I remember well at Nairobi a series of opinions were expressed and which I can quote, that on many occasions a distinction is made from the technical point of view between the signal that is emitted to a satellite and the signal that comes down from a satellite. Thus, if there is no point of reference for protecting this signal, which is what this Convention is about, for protecting this programme-carrying signal, we should be aware that in all cases what we are protecting is the programme-carrying signal, if we are to avoid technical difficulties arising from the fact that one signal is different from another.

277.2 On the other hand, with regard to the term, the delegation of Mexico also considers that it is necessary to establish a term of protection for if this possibility is left open and no term is established, there will be problems both with regard to maximum and minimum protection. In the specific case of Mexico, there is an article in its legislation which permits the State, the broadcasting organization, which is also private, when, for technical reasons, it is not possible to broadcast a programme at a fixed hour because of time differences, to record and retransmit it subsequently. If there were no term such as twenty years, it seems to me that merely to protect the signal would be meaningless and no protection, and, in any case, it is for this reason that the delegation of Mexico has proposed this drafting and insists that it is a question of protecting the programme-carrying signal and not just any signal with no contents. In this way, we would be in agreement with the proposal of the delegation of the United States of America, that we should seek a more appropriate drafting, taking into account the ideas we have expressed.

278. The CHAIRMAN [F]: I give the floor to the delegate of Yugoslavia.

279. Mr. TIPSAREVIC (Yugoslavia) [F]: I simply wish to say that after this discussion I am against the deletion of Article 3,

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i.e. that I am against deleting the term. My reason is completely logical and natural. If we are in agreement with the text of the article which speaks of the obligation of each Contracting State to take measures, etc., it seems logical to me that we should keep a term during which the State must meet this obligation. Therefore, I am against the deletion of Article 3 and in favour of retaining the term of protection.

280. The CHAIRMAN [F]: I give the floor to the delegate of Israel.

281.1 Mr. GABAY (Israel) [E]: We also agree with those delegations that have expressed their views and explained their position with respect to maintaining Article 3. We feel that there is no contradiction here because we know that in many laws, including criminal laws of many countries, there is a limitation of time. So that the ideological contradiction does not exist here; we think that it is essential to include this in the Convention. For this reason, we would support the views in favour of maintaining the provision here.

281.2 At the same time, we think that as far as the two proposals submitted to us by the delegations of Mexico and the United Kingdom are concerned, we would prefer the position put forward by Mexico. We think that it conforms to the basic ideas of the Convention in terms of referring to the emission of the programme and not to its first transmission in the form of broadcasting. For this reason, we would support the Mexican proposal, but would suggest - as in fact has been suggested previously by other delegations including, I believe the delegation of the United Kingdom in Nairobi - to add the words "first emitted" to indicate that we are speaking about a limitation of time as from the first emission. In any event, if that position is accepted, as we see that many delegations are in favour of those two principles - that is to say, maintaining the provision and having a period of time computed from the first emission - and since there are certain variations, we would suggest that a small working group should be established in order to draft that provision along the lines of these two principles.

281.3 It might also be useful that the same working group would also take into consideration the proposal put forward by Italy, which we discussed yesterday afternoon, and try to finalize that drafting.

282. The CHAIRMAN [F]: The delegate of Brazil has the floor.

283.1 Mr. de ATHAYDE (Brazil) [F]: I would simply like to support the delegate of Tunisia who has proposed the deletion of Article 3.

283.2 In fact, this article introduces into the Convention a principle of private law which is completely contrary to the spirit of the Nairobi text, in which international public law has been made

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the basis for this instrument.

283.3 Next, as has been clearly explained by the delegate of Tunisia, if we fix a term it is not the signals - the container - but the programme - the contents - that are protected. But according to the philosophy of the Nairobi text, we should not ensure economic protection under the terms of the Convention. We should not, therefore, speak of protection whether in perpetuity or not: the protection, if there is any, should be under domestic law. The main objective is to draft a Convention to prevent an offence: acts of piracy with regard to emitted programme-carrying signals. And, as clearly stated by the delegates of Switzerland and Senegal, I find it difficult to understand how an offence cannot continue to be an unlawful act and can become after twenty years a lawful or desirable act.

283.4 In these circumstances, I am in favour of the deletion of Article 3 and I support the proposal of the delegation of Tunisia.

283.5 However, as I stated yesterday, should this not be possible, I request that the General Rapporteur be asked to state in the Report that it is a question of protecting the container and not the contents of the programme.

284. The CHAIRMAN [F]: I give the floor to the delegate of the United Kingdom.

285.1 Mr. DAVIS (United Kingdom) [E]: It is merely that I would like to confirm that the thinking behind the United Kingdom proposal was exactly as was so clearly described by the delegates from France and the Federal Republic of Germany. We had in fact intended to time the start of the "clock" as I have called it, from the first terrestrial broadcast. I do recognize of course that this is in a sense contrary to the spirit of protecting a signal. But I think it must be faced that there is an artificiality here. We really are not selling boxes: we are selling what comes in them and that is what we wish to protect.

285.2 In our view it would be wrong if the term of protection for what is contained in the signal - which is after all what we are here for, as no one is interested in protecting electronic vibrations - were extended merely by the process of sending it again to a satellite. However, our main point in putting it into the proposal was to bring the point into the open and to get discussion on it; and my feeling certainly is that a number of delegates are against it; but at least as an issue it is clear.

285.3 The United Kingdom could very well accept the suggestion made by the delegate of France regarding a special provision on behalf of certain copyright countries, to make a special provision with respect to the period for which they choose to protect. But it does strike me that really before we go any further with the details of the discussions, it would be nice to know, in a sense

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whether the meeting as a whole is going to have a term or not. This is the very basic point I think, and I would suggest in this respect that we might be at a point where we could decide that before going further on the details.

286.1 The CHAIRMAN [F]: I think that the suggestion of the delegate of the United Kingdom is excellent. Rather than going into too much detail on Article 3, I should like first to know whether we are going to retain this article.

286.2 I shall read the list of speakers. We have Italy, the Union of Soviet Socialist Republics, the Ivory Coast and Canada.

286.3 I give the floor to the delegate of Italy.

287.1 Mr. de SANCTIS (Italy) [F]: The Italian delegation is above all delighted to note that its intervention yesterday has provoked a discussion, a debate which it considers very useful.

287.2 On this occasion, the delegation of Italy would like to state the following:

(1) it is in favour of retaining an article which, like Article 3, deals with the term;

(2) it is in agreement with other delegations that the subject of this protection, in respect of the term is the signal, not the programme, the container and not the contents;

(3) the question of the starting point of this term has given rise to several very interesting debates. The starting point, for the Italian delegation, was obviously the measures taken to protect the signals. But in this respect the Italian delegation is at the disposal of the Drafting Committee to seek an adequate solution to this problem.

288. The CHAIRMAN [F]: The delegate of the Union of Soviet Socialist Republics has the floor.

289.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: First of all I would like to support the first part of the statement by my Mexican colleague who, in my opinion, made it quite clear that in practical terms it is virtually impossible to separate the container from the contents and vice versa. May I point out that it is evident that any discussion to the effect that we are dealing with signals and not programmes, ignoring the interrelation between these two elements, is purely academic. In fact, signals without programmes have no value. And in this draft Convention a number of articles contain the idea of the unity of these two elements. In our opinion Article 1 of the Convention, which has already been discussed and - as I understand it - adopted, provides for the protection of programme-carrying signals, and apparently no one has any doubts in

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this respect.

289.2 As to Article 3 which has more of a private-law character, it is not in our opinion in complete agreement with either the philosophy of the debate or the results obtained in Nairobi in respect of the draft Convention under discussion. Adoption of this article would in fact mean direct regulation of the term of protection of the signal whereas such issues should, in our opinion, remain within the sphere controlled by domestic law. And this is pointed out in particular in Article 6 of this very draft Convention.

289.3 May I ask a question as to how it is intended to effect international control of the term of protection afforded programmer-carrying signals; what body would or could assume this function? In our opinion these matters are well within the sphere of national jurisdiction and on the basis of these considerations we would tend to support those delegations that moved for the deletion of Article 3.

290. The CHAIRMAN [F]: I give the floor to the delegate of the Ivory Coast.

291.1 Mrs. LIGUER-LAUBHOUE (Ivory Coast) [F]: I am delighted that you have not adopted this proposal for a vote. Indeed, I believe that we should avoid deciding this question by a vote. There is a misunderstanding, but I think there is even more than that. We are not in agreement on the principles which are the subject of Article 3. However, it seems to me that if there is piracy - i.e. capturing of the signal by a country not authorized to do this - the term provided for in Article 3 means that there is prescription at the end of twenty years. As one speaker has stated, the prescription does in fact exist under criminal law. Therefore, those delegates who are in favour of maintaining Article 3 think that if there is piracy of an emitted signal, this piracy is no longer unlawful at the end of twenty years. Others think that if there is piracy, there cannot be prescription at any time, whether it be after twenty or fifty years. That seems to me to be the problem.

291.2 However that may be, at Nairobi, we were afraid that this discussion would go on for ever and we left the final decision to this diplomatic Conference. We cannot continue with this point for ever. Like Senegal, Brazil and probably other delegations in favour of deleting this article, the delegation of the Ivory Coast does not reject the possibility of having an article but it should be drafted differently. One delegation has proposed the constitution of a small group, a limited drafting committee which would be entrusted with studying the problem of Article 3. I think we should decide in favour of this solution which would permit us to proceed with our work and subsequently come back to this problem once each of us has fully understood the principles on which he is willing to agree.

292.1 The CHAIRMAN [F]: I suggest the following: that for the time being we close the list of speakers. Next, I shall make a

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proposal; the Commission will come to a decision on this proposal and then we shall continue to discuss the question of Article 3. Does the Commission accept this procedure in order to avoid an interminable discussion? I still have Canada, Algeria and Hungary. We shall listen to these three delegations, then I shall make a proposal and naturally we shall continue to discuss the question.

292.2 Consequently, I give the floor to the delegate of Canada.

293.1 Mr. CORBEIL (Canada) [E]: I think this debate has taken such a turn that it is necessary for us to address ourselves to this question again.

293.2 We would like to reiterate, as my colleague told you yesterday, that we are definitely in favour of a term. I think if we left this Conference with a treaty that indicated such an imprecision as no definite duration for the protection, we would have failed in our task of establishing an appropriate international instrument.

293.3 With regard to the inclusion of a clause, an article in this treaty that would deal with term: if there is consensus, then there is a problem of determining when shall the term that is established begin to run. We have tried to seek a solution to this problem, and my colleague indicated yesterday that there was some concern in our delegation as to when this period should begin and whether it should be related to the signal or to the contents of the signal. You have invited us, Mr. Chairman, to give this Commission a wording which might solve this problem. We attempted to follow your invitation, in consultation with others. We reflected upon this and decided against confusing the Commission further by placing another amendment on this article before you today.

293.4 But nevertheless, we have listened very carefully to the discussion today with regard to this question of when the term should begin to run and we are not yet convinced by the arguments put forward and the amendments drafted by the delegates of Mexico and the United Kingdom. Therefore, I think it is important for my delegation to indicate to you that we would like to support a number of proposals that have been made here this morning.

293.5 First of all, the delegate from Israel has indicated that we have come to the point where working groups should be struck in order to settle this problem. We would support that proposal.

293.6 Also the delegate of the United Kingdom has indicated that before doing so, this group should come to a decision as to whether or not in principle there should be an article dealing with a term in the treaty. I think there again we must agree. It would, perhaps, not meet with much success if we asked this working group to go forward without a clear indication as to whether there should be such a protection or such an indication of protection in the treaty. Therefore, we would like to support that proposal.

293.7 Just to reply for a moment to the concern raised by the

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delegate of Senegal where he stated that what is a crime to-day should continue to be a crime tomorrow, I think there are many national laws which even remove all criminal responsibility from such a capital crime as murder, and I think piracy of signals, of satellite signals, although it may still be a very dastardly crime, is not as bad as the capital crime of murder, and perhaps we could see a term for this crime being established as well.

293.8 Therefore, I will just summarize my comments - I think we have come to the point and I would like to support your proposal, Mr. Chairman, that you have made on two occasions: 1) that you supported the United Kingdom proposal that we should come to a consensus, and 2) that this debate be closed in the very near future and a working group established so that we could get on with our work.

294.1 The CHAIRMAN [F]: I ask delegates who take the floor not to get lost in details of the starting point, the arrival point, etc. but to speak to the essential question: should there or should there not be a term?

294.2 I give the floor to the delegate of Algeria.

295.1 Mr. ABADA (Algeria) [F]: The Algerian delegation had the opportunity yesterday to make known its viewpoint on the deletion or non-deletion of Article 3 and we extensively developed an argument in favour of the deletion of Article 3 since we consider that it is contrary to the spirit of the Nairobi text. At Nairobi we made a distinction between the protection of the signal and the protection of the contents of the signal. At Nairobi we decided that the Convention we are now drafting should apply only to the signal. If we fix a term for the protection of the signal, what does that mean? It means that those who to-morrow use this signal which was not intended for them, will be able to do so. Eminent speakers have intervened on this subject and have shown that, from a legal point of view, it would be embarrassing to consider something as unlawful to-day and to consider it as lawful in twenty years. But I should like to stress the consequences of the ban on using the signal without having been authorized to do so. If someone other than the intended recipient of the signal uses it, in fact he uses the programme and in using the programme, comes within the scope of domestic law which protects works contained in the programme that are within the scope of the international conventions. In any case, he will not be able to escape from the protection of the programme and will be obliged to respect the rights of the authors whose programme he uses.

295.2 It is for this reason that, from both the legal point of view and from the practical point of view, we consider that the protection of the signal is useless.

296. The CHAIRMAN [F]: I give the floor to the delegate of Hungary.

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297.1 Mr. TIMAR (Hungary) [F]: I shall be very brief. All lawyers know the rules of Roman law: "Quod ab initio vitiosum est non potest tractu temporis convalescere".

297.2 In our case, that means that all transmissions that are unlawful under Article 1 remain unlawful after twenty years, forty years, a hundred years. Consequently, the Hungarian delegation warmly supports the proposal made by the Tunisian delegation and is in favour of the deletion of Article 3 of the draft.

298.1 The CHAIRMAN [F]: I should like to make a few personal remarks followed by a practical suggestion.

298.2 The Commission would seem to be extremely divided, exactly in half I would say, on this question of the term of protection. This is obviously not very encouraging since a Convention of this type cannot be adopted by forcing one side to accept the point of view of the other. A Convention of this type makes sense only if there is a consensus and unanimity. Now, this question of the term is a question that seems to me personally to be eminently false. What, in fact, are, from a purely practical point of view, the consequences of this famous protection in perpetuity? They seem to me to be very slight. Perhaps I am optimistic but I imagine that copyright and neighbouring rights will be afforded more and more protection. After the revisions of the Berne and Universal Conventions there are no longer any serious obstacles to generalized protection and the Rome Convention will cease to be the bugbear that is continually being brandished. It has already had a new lease in life: Italy has just given strong support to this Convention. Other countries have stated that they intended to ratify it shortly and many countries, which have not ratified it for purely financial reasons, have stated that they accept its principles. Consequently, all this leads me to believe that in twenty years these three conventions will be very widely accepted either in their present form or in revision and that, consequently, the protection of the programme will be assured. The protection of the signal will then be secondary; it will essentially cover sporting events and news. Now, I wonder what practical interest the broadcast of the 1974 World Cup will have in twenty years time. It will perhaps be of historical interest but certainly not of commercial interest.

298.3 Consequently, I think that from a practical point of view this perpetual protection is not a serious matter, that it is scarcely necessary for us to worry about it. From a legal point of view, on the contrary, some say that parliaments will be frightened by the idea of perpetual protection since it is broader than copyright protection. This is obviously an extremely valid and important point of view. But we must also know how this differs from a sanction. I think that we can perfectly well admit the perpetual nature of the unlawfulness of the emissions but on condition that the sanction be a reasonable one. It is in fact, generally speaking, a prescription.

298.4 I ask therefore whether we could not adopt the following formula - it is a personal suggestion that I am making to the

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Commission - it is that we completely delete Article 3 of the text, i.e. that the protection would in theory be in perpetuity and, in the Report, we would state that States undertake to apply this protection in good faith. This would avoid stating that the protection is in perpetuity, i.e. no protection. Secondly, we would state that it was up to domestic law to take practical measures to combat against the unlawful distribution of an emission. We could also say that the Main Commission generally considered that a term of twenty years from such and such a starting point would provide a reasonable basis for the application of the domestic law. It would not be an obligation because an obligation would prevent ratifications; but it would be a suggestion that States could follow or not depending on their legislation.

298.5 I think that with this formula we could obtain a flexible system, which would permit a maximum number of ratifications. At the same time, the principle of protection would be safeguarded. I shall let you meditate on this suggestion.

298.6 The delegate of France.

299.1 Mr. KEREVER (France) [F]: I would have liked to make a proposal to try and get the Commission out of the impasse in which it has become embroiled since the counting which I undertook indicated that eighteen delegations were in favour of retaining Article 3 and fourteen against, which corresponds to what you said, i.e. an almost equal division.

299.2 I have a proposal to make which is in the same spirit as your suggestion but is drafted a little differently.

299.3 This proposal is the following: to state in Article 1 that the duration of the application of the adequate measures will be decided by domestic law and that the various States will notify the Secretariat in charge of administering the Convention of the term they have chosen to adopt.

300. The CHAIRMAN [F]: I give the floor to the delegate of the United States of America.

301. Mr. WINTER (United States of America) [E]: Mr. Chairman, we have discussed your proposal and the proposal of the French delegation with a number of delegations, and we seem to be just as far from any sort of general agreement or consensus, which you have indicated would be desirable. Therefore, the United States proposes that we follow the time-honoured device of a working group. It is our suggestion that you appoint four governments on a working group that favour some sort of a term, that you appoint four governments that do not favour a term, and that you, Mr. Chairman, as Chairman of the Main Commission, be an ex officio member of the working group and that the General Rapporteur, Ms. Ringer, be an ex officio member to bring back a report to the Main Commission.

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302. The CHAIRMAN [F]: The delegate of Senegal has the floor.

303. Mr. N'DIAYE (Senegal) [F]: You have made a suggestion, Mr. Chairman, and I think it would be appropriate to study this proposal and see who accepts it. In any case, I personally support it.

304. The CHAIRMAN [F]: The delegate of Morocco has the floor.

305.1 Mr. CHAKROUN (Morocco) [F]: The delegation of Morocco had yesterday the opportunity to explain its position with regard to the uselessness of retaining Article 3. It was in a constructive spirit that we tried to demonstrate that retaining it would be contrary to the new philosophy adopted at Nairobi.

305.2 To-day, having heard the various positions explained and in order not to continue with the same point, my delegation is in favour of the proposal that you have put forward, Mr. Chairman, i.e. that the Report will explain that it is up to the diligence of domestic law to fix any term for the term of protection of a programme-carrying signal transmitted by satellite.

306. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

307. Ms. STEUP (Germany, Federal Republic of) [E]: We fully support the proposal made by the delegate of the United States. We think that we are now at a point where we have to find a compromise solution. We have two attempts to find a compromise: your proposal and the proposal of France. But we think the question needs further study; therefore we should have a working group to study compromise proposals and in my opinion the mandate of this working group should not be limited to the two proposals before us. The group should have the freedom perhaps to find another compromise proposal, a third one, hopefully one that everyone can agree to. So the mandate should be wide, the working group should try to find a compromise acceptable to all.

308. The CHAIRMAN [F]: The delegate of Algeria has the floor.

309.1 Mr. HAMIMI (Algeria) [F]: You have made a proposal, Mr. Chairman, which we approve. The delegate of France has made another which is close to it and the delegate of the United States of America desires that, in view of the fact that there are certain divergences of opinion, we should constitute a working group to try and find a way out.

309.2 We would be in agreement with this proposal insofar as it would be limited to co-ordinating your proposal and the French proposal but not, as has been suggested by the delegate of the Federal Republic of Germany, to giving a wide mandate to this working group.

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310. The CHAIRMAN [F]: The delegate of Tunisia has the floor.

311.1 Mr. SAID (Tunisia) [F]: For all the reasons that we have already explained, my delegation remains in favour of the deletion of Article 3 which risks losing many votes in favour of this Convention.

311.2 However, in a spirit of compromise, we would be willing to consider the proposal that you, Mr. Chairman, have made, a proposal which seems to us a sensible one and which constitutes a compromise. This, like all compromises, can give but partial satisfaction to each of the two sides, but in our opinion it is reasonable. In any case my delegation considers that it cannot go further.

311.3 We support the suggestion put forward by the delegation of the United States of America that the study of this question should be entrusted to a working group, but we support it on condition that it is given a mandate. This group should not replace the Main Commission. We should give it as a mandate to discuss your proposal and ask it to submit a text to us.

312. The CHAIRMAN [F]: The delegate of the Ivory Coast has the floor.

313.1 Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: The delegation of the Ivory Coast supports your proposal, Mr. Chairman, as being the most sensible and the most likely to rally the various positions.

313.2 If it is still necessary to constitute a working group, it should have as its mandate to study your proposal and possibly that of France. Its mandate must be limited to this for the sake of efficiency.

314. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

315.1 Mr. DAVIS (United Kingdom): [E]: Mr. Chairman, I very much appreciate the spirit in which you made your compromise proposal but I think it must be realized that it is in fact just one of a number of compromise proposals in front of us. I take it that the reason why the United States has proposed a working group is because in fact all the points of view have some merit, and I cannot see that it would be reasonable for us to settle on a particular one.

315.2 I would therefore support a working group with very open terms of reference, to consider compromise proposals put before it by the various members of this Commission.

316. The CHAIRMAN [F]: The delegate of Mexico has the floor.

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317. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico agrees that a working group should be formed to study this problem but would warn the countries signatories of the Rome Convention that they should take account of the provision in its Article 14, sub-paragraph (c) and in Article 22 that not fixing a term or fixing a longer term or leaving this problem unsettled could mean contravening the Rome Convention.

318. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

319.1 Mr. STRASCHNOV (Kenya) [E]: We listened of course with the greatest interest to your proposal, as well as to the proposal made by France. We believe that these two proposals have very much in common and that a working group such as suggested by the United States could probably find a compromise between these two proposals.

319.2 We also believe that the working group should not be specifically limited to these proposals and that it should be allowed to consider compromise solutions which would not strictly embody only these two proposals. We would also think that a working group composed only of 8 members would not be sufficiently representative of this Main Commission, and we would believe that the composition of the working group should be slightly widened in order to be more representative.

320. The CHAIRMAN [F]: The delegate of Brazil has the floor.

321.1 Mr. de ATHAYDE (Brazil) [F]: This is simply to support very strongly your proposal, Mr. Chairman, which seems to the delegation of Brazil to be the most balanced and very reasonable. It seems to us the best solution to ensure that our work will end in a consensus that will bring about a universal Convention which would have no sense without a large number of ratifications.

321.2 As for the constitution of a working group as proposed by the delegate of the United States of America, my delegation is not in principle opposed to this but its mandate should be limited as proposed by the delegate of Algeria and seconded by the delegate of the Ivory Coast.

322. The CHAIRMAN [F]: I give the floor to the delegate of Austria.

323.1 Mr. DITTRICH (Austria) [E]: As far as the procedure is concerned, we support very warmly the idea proposed by the United States that a small working group be set up. We think that this procedure is the only way out of the difficulties that we have now before us.

323.2 As far as the mandate of this small group is concerned, I

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would like to add that for my delegation, both extreme solutions which may be envisioned are unacceptable. This means, on the one hand, we can in no way accept an eternal obligation to protect a given signal, and on the other, we do not think that a period of say a few seconds' protection is acceptable.

324. The CHAIRMAN [F]: I give the floor to the delegate of Japan.

325.1 Mr. HIRAOKA (Japan) [F]: I simply wish to state that our delegation put forward a proposal during yesterday afternoon's meeting when I referred to the 1971 Phonograms Convention. Our delegation stated that, if the present text of Article 3 of the Nairobi text was not adopted, we would like to have a similar article to the one appearing in the Phonograms Convention.

325.2 This proposal was made orally but I have submitted this proposal in writing and the document will be distributed shortly. The proposal of our delegation is to leave the choice between fixing the term of protection and not fixing it open to the domestic law of the contracting countries. To our mind, our proposal comes close to that of the French delegation.

326. The CHAIRMAN [F]: The delegate of Canada has the floor.

327.1 Mr. CORBEIL (Canada) [F]: I should merely like to support the proposal made by the delegate of the United States whereby we should have a working group to discuss this important problem.

327.2 Like other delegates, I think that the mandate of this working group should not be limited to the proposals that you, Mr. Chairman, and the delegate of France were kind enough to submit to us. Since there has been no official decision of the Commission in this respect, I think that the whole question of the term of protection should be studied by this working group. I also wonder if a working group limited to ten members would allow adequate representation.

328. The CHAIRMAN [F]: I give the floor to the delegate of Italy.

329.1 Mr. de SANCTIS (Italy) [F]: The Italian delegation associates itself with the proposal to constitute a working group to study this question, which is a very important one.

329.2 With regard to the mandate to be given to this group, it associates itself with those delegations who have expressed the opinion that this mandate should be as wide as possible, taking account of all the proposals and in particular those presented in writing by various delegations.

330. The CHAIRMAN [F]: I give the floor to the delegate of Israel.

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331. Mr. GABAY (Israel) [E]: We are of the same opinion as the delegation of Italy and other delegations, especially Mexico, the United Kingdom, the Federal Republic of Germany and the United States, that the working group that should be established, as we have suggested before, should have as wide a mandate as possible and should take into account the various proposals put forward in this Commission. We should like to indicate that since this particular provision appears to be of major importance to many delegations - in fact, going to the root of the whole Convention for some delegations - we do not think that it would be wise to limit it in any particular respect.

332. The CHAIRMAN [F]: I give the floor to the delegate of Spain.

333. Mr. de la VEGA (Spain) [S]: We consider that the solution put forward by the delegation of the United States that a working group be constituted to decide on the future of Article 3 is interesting; however, we believe that the substance of this discussion should be limited basically to the proposals put forward by you, Mr. Chairman, and by the French delegation: which is to say that the discussions of this working group would be based on your proposal, Mr. Chairman, and on that of the French delegation.

334. The CHAIRMAN [F]: I give the floor to the delegate of Sweden.

335. Mr. DANELIUS (Sweden) [F]: In the name of my delegation I should like to support the proposal that we charge a working group with the study of this problem. But I should like especially to stress what has already been said by the delegate of Mexico, i.e. that the working group should take into account the necessity for finding a solution in accordance with Article 22 of the Rome Convention because, of course, compatibility with this article is a very important condition for the countries which are already party to that Convention.

336. The CHAIRMAN [F]: I give the floor to the delegate of the Lebanon.

337. Mr. GABY (Lebanon) [F]: I support your proposal, Mr. Chairman, that a working group study the provisions of an article based on your suggestion.

338. The Chairman [F]: I give the floor to the delegate of Australia.

339.1 Mr. CURTIS (Australia) [E]: I only want to say that

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Australia supports the proposal of the United States of America for the formation of a working group. The delegation of Australia does not believe that the working group should be limited by a narrow mandate, but that it should have freedom to canvas all of the proposals that have been discussed this morning.

339.2 If we limit the working group to a narrow mandate, then I think it is unlikely that it will be able to reach a solution which will find a wide degree of acceptance.

340. The CHAIRMAN [F]: I give the floor to the delegate of Ecuador.

341. Mr. PEÑA MATHEUS (Ecuador) [S]: The delegation of Ecuador supports the motion presented by the United States but wishes to state that we consider it very important to take into account all the motions that have been put forward during the Commission, and not to restrict it to studying only one or two of them. I should like to point out, in addition, that it is very important when drafting any eventual Article 3 to take into account that the duration of the protection will be effective from the moment of the emission until the term of twenty years expires; because, according to the present text, the protection exists only from the end of the year in which the signal was emitted, so that if the signal is emitted in the month of October it will not be protected in October, November and December and the protection will begin only at the end of the year. On this assumption, therefore, we propose replacing the words "at least" by the words "from the time of the emission until the expiration of the term of twenty years from the end of the year."

342. The CHAIRMAN [F]: I give the floor to the delegate of Switzerland.

343.1 Mr. MARRO (Switzerland) [F]: I associate myself with those delegations who are in favour of a working group with an unrestricted mandate.

343.2 I do not yet know the substance of the Japanese proposal but I think that I shall probably support it. During the course of the discussion, I glanced at Article 4 of the Geneva Convention on the protection of producers of phonograms. We have here in practice two schools of thought, two groups of States, one of which is thinking of assuring the protection provided by the Convention on the basis of private rights and the other of a protection based on the telecommunications regulations. For this second group of countries it is obviously very difficult to adopt any term of protection. If we read Article 4 of the Geneva Convention, which also took account of Article 22 of the Rome Convention which the Swedish delegate has just mentioned, I think that we could find a solution. I should like to add to the file a proposal to be studied by the working group. It would be the following: on the one hand, as in the first phrase of this Article 4 of the Geneva Convention, it would be for the domestic

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law of each Contracting State to determine the term of the protection to be granted. This first rule was introduced at Geneva for countries which thought of assuring this protection by means of unfair competition. The second rule would indicate that in any case, if domestic law provided for a specific term - and here it is for those States wishing to base this protection on copyright or neighbouring rights - the term should not be less than twenty years from the emission of the signal.

343.3 If the working group has a broad mandate, I ask that they study this text together with the French proposal and the proposal of the Chairman.

344. The CHAIRMAN [F]: I give the floor to the delegate of Luxembourg.

345. Mr. FELTEN (Luxembourg) [F]: The delegation of Luxembourg accepts the proposal of the delegate of the United States of America that a working group be constituted. We consider, however, that the mandate of this group should not be too narrow.

346. The CHAIRMAN [F]: I give the floor to the delegate of Hungary.

347. Mr. TIMAR (Hungary) [F]: The delegation of Hungary supports the creation of a working group, but, in our opinion, a decision should first be taken on the basic question of whether Article 3 should be deleted or not. Once we have a decision on this question, a mandate can be established but we cannot substitute a working group for the Main Commission. The mandate of the group cannot be very wide.

348. The CHAIRMAN [F]: I give the floor to the delegate of Czechoslovakia.

349.1 Mr. KUNZ (Czechoslovakia) [F]: I should like to join in what the delegate of Hungary has just said for I also share the view that it is impossible for a working group to be charged with taking a decision on questions which are the responsibility of the Main Commission itself.

349.2 That is why I am in favour of the creation of a working group but one with a clearly defined mandate.

350. The CHAIRMAN [F]: I give the floor to the delegate of the Netherlands.

351. Mr. VERHOEVE (Netherlands) [E]: As we do not seem to be reaching an agreement at this stage of the discussions on the substance of Article 3, the only possible solution to me seems to be

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setting up a working group; but having heard all the proposals and all the difficulties of the several delegations expressed here, we should prefer it without any restrictions as regards its terms of reference.

352.1 The CHAIRMAN [F]: Well, we are still at the same point after many detours for now the question has changed; it is no longer whether or not it is necessary to have an Article 3, but whether the working group should have a wide or a restricted mandate.

352.2 Here again, I have the impression that this is not a very serious problem because if we say that the working group will base its discussions on my proposal and that of France, it is evident that this does not in any way exclude all the other suggestions that have been made.

352.3 In fact, the proposal of Brazil and that of France in no way settle, for example, questions as to the starting point of the protection and all the other suggestions that have been made by Mexico, Canada, the United States, the United Kingdom and others.

352.4 Consequently, it is obvious that the fact of constituting a working group and giving it a mandate situated around the idea put forward by the Chairman and by the French delegation in no way means that we are going to discard the other resolutions. It in no way means that an intermediate solution cannot come out of the working group.

352.5 I would therefore suggest that we constitute this working group and that it be charged with drafting a text based on the idea put forward by the delegation of France and by the Chairman, i.e. a draft which takes account of both the term and the means of reconciling protection with domestic law, the essential point being, in my opinion, that we leave the term to the judgment of States without imposing it. This, I believe, is the only solution which can be envisaged politically. It is perhaps not an ideal one but a compromise solution.

352.6 Consequently, if the Commission so wishes, we shall constitute a working group consisting of twelve countries. This working group will be open, i.e. if any delegation has a particular interest in the question, it may come and sit with the members of the group, but it will not have the right to vote.

352.7 This working group will be charged with presenting one or several proposals although it would be preferable to avoid alternatives for all that is not resolved in the working group will give more work to the Main Commission.

352.8 Are we in agreement on this procedure? Then, we adopt the idea of a working group whose discussions will be centred on the idea of the delegation of France and of the Chair.

352.9 In view of the considerable number of suggestions that we

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have already, it seems to me that the working group should be given a mandate. This orientation is the one we have accepted. It is not excluded that if a suggestion - not of course one diametrically opposed to the idea of France and the Chair - were proposed, it could be taken into consideration and could even be the subject of a recommendation to the Commission.

352.10 What is important is that the working group work towards a compromise solution.

352.11 The delegate of Mexico.

353. Mr. LARREA RICHERAND (Mexico) [S]: If I have understood correctly, this working group will be for the purpose of studying your proposal and that of the delegate of France, and I do not know whether other proposals will be looked on favourably or not, but I should like to insist all the more in that the proposal of Mexico is bound up with the results of the work at Nairobi and in fact, as the delegate of the Ivory Coast so pertinently stated, this matter was left to the diplomatic Conference to solve, and so I should like to insist that the proposal of Mexico also be taken into consideration in the working group.

354.1 The CHAIRMAN [F]: I think that I said that to move in the general direction indicated by the delegation of France and the Chair in no way meant that we were going to reject all other suggestions, including those of the delegations of Mexico and Italy. They remain entirely valid since they are questions concerning the starting point which are in no way solved by the French proposal or the proposal of the Chair.

354.2 The delegate of Mexico has the floor.

355. Mr. LARREA RICHERAND (Mexico) [S]: In that case we are in complete agreement with what you said, Mr. Chairman.

356.1 The CHAIRMAN [F]: Therefore we are in agreement.

356.2 I give the floor to the delegate of the United States of America.

357. Mr. WINTER (United States of America) [E]: With your last remark, Mr. Chairman, I think we have reached an agreement on the mandate of this working group. I think it is perfectly acceptable that the working group start its examination on the basis of your proposal and the French proposal. However, as I understand it now, after further discussion and your answer to the Mexican delegation, this does not preclude the possibility of looking at other proposals which may not exactly fit into the pattern of your proposal and the French proposal. If that is your understanding, and the understanding of this meeting, then the working group and its mandate are acceptable to the United States.

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358.1 The CHAIRMAN [F]: The unique goal of the working group is to find a compromise solution and not to impose anything. Since the working group will be very representative of the various tendencies that have been revealed here, we hope that this microcosm of the Commission will give us a compromise solution. This is what we would like and we have no wish to impose any solution whatsoever.

358.2 And so if you agree I would suggest six delegations from each side. The delegations which are not on my list are in no way prevented, indeed, on the contrary, they are encouraged to come and sit with the group and give it direction with their advice.

358.3 On the side of those in favour of Article 3 we have: the delegations of Mexico, the United States of America, Italy, France, Japan, Canada. That is a suggestion. Naturally, we can substitute one delegation for another if need be.

358.4 On the other side we have: the delegations of the Ivory Coast, Tunisia, Senegal, the Union of Soviet Socialist Republics, Hungary and Morocco.

358.5 The delegate of Mexico.

359. Mr. LARREA RICHERAND (Mexico) [S]: I am not against any of the delegations that you have designated, Mr. Chairman, but I would very much like to add the delegation of Kenya to the group of those who agree to maintaining the article.

360. The CHAIRMAN [F]: I now give the floor to the delegate of the United Kingdom.

361. Mr. DAVIS (United Kingdom) [E]: We consider that the expertise of the delegation of Kenya in this matter is indispensable.

362.1 The CHAIRMAN [F]: And so we add the delegate of Kenya.

362.2 The delegate of the Netherlands.

363. Mr. VERHOEVE (Netherlands) [F]: It seems to me that the delegation of Switzerland made a very valuable proposal. Would there not also be a place for Switzerland in the working group?

364.1 The CHAIRMAN [F]: The question is the following: many delegations have made proposals, but if we want a truly effective working group, it must necessarily be restricted.

364.2 The delegate of Switzerland and the delegate of Kenya are invited to attend, as are the others.

364.3 The delegate of Austria.

365. Mr. DITTRICH (Austria) [E]: I think it would be fair to

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include the head of the drafting committee in the small group.

366.1 The CHAIRMAN [F]: We shall come back to this suggestion.

366.2 I give the floor to the delegate of Tunisia.

367.1 Mr. SAID (Tunisia) [F]: I share your opinion. We would be very happy to have other delegates in this working group, such as the delegates of Kenya, Switzerland, etc. but, as you have so clearly stated, if we enlarge even more this working group - which already seems to me very large - it would be better to remain with the Main Commission.

367.2 My suggestion, is that we should stay with the first list you indicated, accepting perhaps the initial proposal of the United States which was that the Chairman of the Main Commission and the General Rapporteur should take part in the work of the working group.

368. The CHAIRMAN [F]: I give the floor to the delegate of the Ivory Coast.

369. Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: I support what has just been said by the delegate of Tunisia. It would be desirable to adhere to your first proposal but adding the proposal of the United States of America and the one admitting to the working group the chairman of the Drafting Committee.

370. The CHAIRMAN [F]: The delegate of France has the floor.

371.1 Mr. KEREVER (France) [F]: Before you take a decision and insofar as the proposal I am about to make will make this easier, I should like to speak now.

371.2 The French delegation, which has been chosen to be in the working group, doubtless because we are the originators of one of the compromise proposals, is prepared to withdraw to the benefit of the delegation of the Federal Republic of Germany. In this way, if there is a problem with regard to the proposal of the Austrian delegation, it would be solved ipso facto.

372.1 The CHAIRMAN [F]: Thank you for your decision which has made our task easier.

372.2 So we now have a group consisting of Mexico, the United States, Italy, the Federal Republic of Germany, Japan and Canada on one side, and on the other: the Ivory Coast, Tunisia, Senegal, the Union of Soviet Socialist Republics, Hungary and Morocco.

372.3 The Chairman and the Rapporteur will attend as ex officio members but any delegations with special views are also invited to take part, without the right to vote but with the right to speak, at

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the discussions of this working group.

372.4 The delegate of Austria has the floor.

373. Mr. DITTRICH (Austria) [E]: I apologize for asking for the floor again but I think we now are going to decide on your proposal. You proposed, with respect to the amendment of the United States delegation, that six states representing each of the two opinions and ex officio the Chairman of the Main Commission and the General Rapporteur, and now you have five states of one opinion and six of the other and two members ex officio. I propose therefore to add France to the working group.

374.1 The CHAIRMAN [F]: Perhaps I explained myself badly. I have on one side the delegates of Mexico, the United States, Italy, Japan, Canada and the Federal Republic of Germany, i.e. six; on the other side the Ivory Coast, Tunisia, Senegal, the Union of Soviet Socialist Republics, Hungary and Morocco, i.e. six. The others cannot vote but may attend. The Chairman of the Main Commission and the General Rapporteur may attend, as may you and the delegate of Kenya, who I hope will come to enlighten us with his technical competence, and the delegate of Switzerland in order to explain his proposal.

374.2 Is the delegate of Austria satisfied with my explanation?

374.3 We therefore constitute this working group. It cannot meet at the same time as the Commission because of interpreting problems. In addition, it would not be desirable to proceed with the work of the Main Commission without the presence of the delegates of the countries I have just mentioned. Consequently, we have to organize a meeting of the working group and suspend the Main Commission.

375. The meeting rose.

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Main Commission - Third Meeting¹

Friday, 10 May 1974 at 10 a.m.

Chairman: Mr. da COSTA (Brazil)

376.1 The CHAIRMAN [F]: We come back to Article 3.

376.2 I give the floor to the delegate of France.

377.1 Mr. KEREVER (France) [F]: In order to clarify the discussion, I should like to make a very brief comment on Alternative B which appears in document UNESCO/WIPO/CONFSA/21.

377.2 When in this Alternative it states: "the General Report would not contain any commentary on the interpretation of the word 'reasonable'", this phrase translates perfectly the proposal made by France, with the exception, however, that it would obviously be unthinkable that the Report say absolutely nothing on the discussions that have held the attention of the Conference for two days. Which means that, if indeed the Report did not contain any interpretation of the word "reasonable", it would nonetheless constitute shall I say a photograph of the discussions if it mentioned in an extremely neutral manner the different conceptions which were encountered. That is the only remark that I wanted to make.

378.1 The CHAIRMAN [F]: Naturally, when we say that the Report will contain no commentary on the word "reasonable" we mean the interpretative part of the Report. The Report has two aspects: that of a commentary, an interpretative clause having a certain force and a narrative aspect reflecting what really happened. Naturally, there is no question of deleting this second part.

378.2 Since the delegate of Mexico, the chairman of the working group is absent I shall explain to you what happened yesterday during the working group; the working group nominated a drafting sub-group consisting of the delegates of Italy, France, and Hungary, who drafted a text. Subsequently, this text gave rise to several comments and we had several other suggestions: a suggestion from the Union of Soviet Socialist Republics, a suggestion from Brazil, a suggestion from France. Finally, all this has been condensed into two alternatives which appear in document UNESCO/WIPO/CONFSA/21. Consequently, the working group suggests an Alternative A in which the term "reasonable", which was the stumbling block of all the discussions, is deleted, it being understood that the Report would contain an indication of what should be understood by a reasonable term. Here two sub-alternatives are proposed: "the Conference considered" and "it was generally considered", a more moderate version. The working group also proposes an Alternative B in which the word "reasonable" is maintained but in which, on the contrary, there is no commentary in the Report.

1. Cf. document UNESCO/OMPI/CONFSA/VR.9 (prov.).

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378.3 I give the floor to the delegate of Mexico, who, as Chairman of the group, will be able to give us some clarification.

379.1 Mr. LARREA RICHERAND (Mexico) [S]: The working group which met yesterday included the 16 countries designated by the Main Commission. There was a long discussion on the points that you have already explained and the delegation of Mexico would like to express its appreciation for the collaboration of each one of the delegates who took part in this work, and also the undeniable collaboration of the interpreters without whom it would not have been possible to conclude our work. We would have liked to present to the Main Commission a single text but for the various reasons that you have explained, Mr. Chairman, in the final instance it was preferable to present two texts which truly reflect the discussions that took place during the deliberations of the working group.

379.2 In the opinion of the delegation of Mexico the proposal that Article 1(3) should not contain the word "reasonable" but that there should be in the text of the Report an explanation of the term prudent or reasonable, is more coherent, more logical.

380.1 The CHAIRMAN [F]: Like many of you, I attended the discussions of the working group yesterday and I can guarantee that they were heated. I believe that this discussion has exhausted the subject as well as the participants and that consequently there is really nothing more to say on this point.

380.2 In view of our extremely limited time and that we have already spent a great deal of time on this Article 3 which, in my opinion at least, is of extremely doubtful practical importance, we should make a choice between the two formulae proposed by the working group and not propose any new ideas, new formulae, new solutions which, as you know, would lead to a new discussion. Consequently, I would ask you to limit yourselves to the study of these two alternatives and not try and square the circle which in fact we shall never succeed in doing.

380.3 I give the floor to the delegate of Austria.

381. Mr. DITTRICH (Austria) [E]: I accept very willingly your proposal not to table new ideas, but I think it is appropriate to comment from the point of view of our delegation very shortly and frankly on the proposals of the working group which was convened yesterday afternoon. If we are looking at the starting points of the two groups of delegations I would say on behalf of my delegation that the proposal of the working group is far from being an equitable compromise. I would say it is a complete surrender.

382. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

383. Mr. STRASCHNOV (Kenya) [E]: May I put a question to you

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which is a very simple one? As far as Alternative A is concerned may we consider and may we be assured here that it is a kind of package deal. In other words, if we accept Alternative A the Report will actually carry the words which are indicated here and there will be no further reduction of the meaning of the wording in the General Report? Because for us at least, for our delegation, the two things, the wording of paragraph (3) of Article 1 and the wording to be inserted in the General Report are very closely linked; and therefore my question, I repeat, is, Mr. Chairman, can you give us the assurance that these two texts will be preserved in their present form?

384.1 The CHAIRMAN [F]: It is understood that the commentary which will be included in the Report, should we choose Alternative A, is indissolubly linked with the choice of this alternative. Obviously, from a strictly constitutional point of view the Main Commission cannot decide what the text of the Report will be. But since:

- (i) we are an Assembly of States and it is normal for States to act in good faith in their international relations, and
- (ii) the Main Commission is exactly identical to the Plenary Meeting, I really do not see that there is any danger whatsoever that the text recommended by the Main Commission will not be accepted by the Rapporteur and then approved by the Plenary Meeting.

384.2 It is therefore understood that the article and its commentary constitute an indissoluble whole.

384.3 The delegate of Mexico has the floor.

385. Mr. LARREA RICHERAND (Mexico) [S]: We are indeed the Main Commission and we are also part of the Plenary Meeting, and as the delegate of Kenya asked, the working group which concluded its work yesterday was of the opinion that, should we adopt Alternative A, then we should propose to the Main Commission that the whole of Alternative A be a package deal, i.e. what would be included in Article 1(3) and in addition the phrase referring to the Report, both things together.

386.1 The CHAIRMAN [F]: There is another factor: the Rapporteur of the Main Commission is also the Rapporteur of the Conference and so I do not think that there is really any danger that the commentary will not be included.

386.2 I give the floor to the delegate of Senegal.

387. Mr. N'DIAYE (Senegal) [F]: I merely wanted to draw attention to one fact. It seems to me that yesterday, during the discussion, it was decided with regard to the text to be inserted in

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the Report that a period of twenty years "would be", i.e. the conditional - and not "was" a reasonable period.

388.1 The CHAIRMAN [F]: Would the chairman of the working group like to clarify this point, please. In the Report should we have "was" or "would be"?

388.2 The delegate of Mexico has the floor.

389. Mr. LARREA RICHERAND (Mexico) [S]: In the text which I have after our work yesterday is the phrase "was a reasonable period"; I think that from a grammatical point of view, at least in Spanish, there is no change in meaning above all with regard to the scope of the interpretation, in addition to the fact that this question will be drafted in the General Report.

390.1 The CHAIRMAN [F]: We must first choose between Alternative A and Alternative B and if we adopt Alternative A then we have to make a choice between the two sub-alternatives: "the Conference considered" and "it was generally considered".

390.2 The delegate of France has the floor.

391. Mr. KEREVER (France) [F]: I think that it is evident that the choice between Alternative A and Alternative B itself depends on the choice between the two sub-alternatives, and if I have now understood correctly, the three sub-alternatives of Alternative A. In fact, I believe that the scope of Alternative A is not quite the same depending on whether we say "the Conference considered that a period of twenty years was a reasonable period" or whether we say, "it was generally considered that a period of twenty years was a reasonable period" without mentioning the distinction between "was" and "would be" for in French at least the use of "was" has a certain nuance: it means that the opinion is expressed in a positive and general way. If, on the contrary, we use the conditional, this means that the period of twenty years may be regarded as a reasonable period, but that in certain circumstances - that it is up to each one to decide - it cannot be regarded as a reasonable period and that a different period can be substituted. Which means that in our opinion Alternative A is far from being clear, and it seems logical that we should clarify first the scope of Alternative A before making a choice between this and Alternative B. I will go even further: my delegation was at the origin of Alternative B and in a spirit of compromise and in order to shorten our discussions to the maximum, I now inform you that if in Alternative A the phrase "the Conference considered that a period of twenty years was a reasonable period", is adopted, my delegation could accept this alternative.

392. The Chairman [F]: The delegate of Senegal has the floor.

393. Mr. N'DIAYE (Senegal) [F]: I would merely like to clarify

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something. I think that these two alternatives should include other sub-alternatives. Should we retain the drafting "the Conference considered"? I think that we should leave the verb in the imperfect. But if we retain the sub-alternative "it was generally considered", I think the verb should be in the conditional.

394.1 The CHAIRMAN [F]: I think that in order not to multiply brackets, alternatives and variations, which we shall never resolve, in the "Conference" version we could keep the verb "would be" and in the version "is generally considered" we could keep the verb "was". That I think would re-establish the balance and allow a nuance. The Chair therefore proposes formally that we have only two sub-alternatives in Alternative A "the Conference considered that a period of twenty years would be a reasonable period" and "it was generally considered that a period of twenty years was a reasonable period". Thus, we have a single sub-choice. Does the Commission agree? It seems to me that this proposal would facilitate things.

394.2 The delegate of Canada has the floor.

395.1 Mr. CORBEIL (Canada) [F]: Our delegation yesterday gave its support to the French delegation in favour of Alternative B but wishing to find an acceptable compromise could join the majority in accepting Alternative A.

395.2 But with regard to the sub-alternatives our delegation would prefer to make a choice between them after hearing other speakers.

396. The CHAIRMAN [F]: The delegate of the Ivory Coast has the floor.

397. Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: The Ivory Coast supports the proposal just made by France and is in favour of Alternative A with the sub-alternative "it was generally considered that a period of twenty years 'was' a reasonable period".

398. The CHAIRMAN [F]: The delegate of Algeria has the floor.

399. Mr. ABADA (Algeria) [F]: The delegation of Algeria is also in favour of Alternative A with regard to the third paragraph of Article 1. As for the Report, we are in favour of the sub-alternative which would state: "it was generally considered that a period of twenty years was a reasonable period."

400. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

401.1 Mr. DAVIS (United Kingdom) [E]: This is just to say that I would support the view of the French delegation that in fact we should decide upon the sub-alternatives within Alternative A before we

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decide between Alternative A and Alternative B. The reason for this is a simple, logical one, I think. There is obviously a negotiating position with regard to the two sub-alternatives in Alternative A.

401.2 If a State announces that it will take Alternative A, it has also given up the negotiating position with regard to those two sub-alternatives because it says it commits itself to taking Alternative A and it has, then, to accept whichever of the sub-alternatives within it which is decided upon by the meeting.

401.3 So I think we must decide on Alternative A first in order to avoid prejudicing the argument of the States.

402. The CHAIRMAN [F]: I give the floor to the delegate of Mexico.

403. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico has already stated that it prefers Alternative A and with regard to the two sub-alternatives it is in agreement with the French delegation. It seems to me that what the French delegation proposes is a sort of compromise between the two sub-alternatives, so that, if I have understood correctly, the French delegation proposes that with regard to the duration of the measures provided for under Article 1, paragraph (1), "the Conference considered that a period of twenty years would be a reasonable period". If we put "would be a reasonable period" in the second part, this would be a combination of the two, somewhere in between the two, and we consider it a fairly reasonable compromise measure and we agree to it.

404. The CHAIRMAN [F]: I give the floor to the delegate of the United States of America.

405. Mr. WINTER (United States of America) [E]: As you will recall, yesterday we exhausted both the discussion of this topic and the delegations, as we continued on until 7.00 last night. I think the French delegation is to be commended for its spirit of co-operation and compromise by giving up its Alternative B in return for inclusion of the phrase "the Conference considered" in the paragraph in the General Report dealing with this matter. As the Main Commission knows, the United States originally had supported the retention of Article 3 with the minimum term. There was a long discussion, and last evening we agreed finally to the deletion of the word "reasonable" in an effort to reach a compromise. I would certainly hope that the Main Commission, in a spirit of compromise by all countries, could now agree on Alternative A with the phrase, "the Conference considered that a period of 20 years would be a reasonable period."

406.1 The CHAIRMAN [F]: The delegate of the United States is appealing to the French delegation to abandon its proposal. We shall see later whether or not the French delegation accepts this solution.

406.2 The delegate of Morocco has the floor.

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407. Mr. CHAKROUN (Morocco) [F]: My delegation is not of the opinion that the compromise reached yesterday is a surrender. In our opinion, this is a logical, practical agreement. Therefore, my delegation is in favour of Alternative A with the phrase that "it was generally considered that..."

408. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany has the floor.

409.1 Mr. GAERTE (Germany, Federal Republic of) [E]: I would like first of all to draw your attention to the fact that not all countries represented here have as their national language one of the official conference languages. And so we get into additional problems when we translate one of the versions we have here, and these versions seem to be very complicated as they now stand. I would like to say right away that I definitely prefer the French version because the suggestion you have made, Mr. Chairman, could hardly be translated into my own language in keeping with the sense of the words. This is one important point I would like to make. In other words, the wording should be as simple and as straightforward as possible and leave out all possibilities of being misconstrued after translation. This is the first point I would like to make.

409.2 The second point, of course, would be to endorse the opinion of our United States colleague who has appealed to our French colleagues to adopt the position of the Alternative A. I think as our Austrian colleague quite rightly said, the concessions which have been made in Alternative A are very far-reaching concessions. They are far-reaching for my own delegation as well. But I think that this could be a compromise formula which could be adopted by a large majority of delegations.

410.1 The CHAIRMAN [F]: With regard to Alternative A, it is, of course, the result of numerous discussions and numerous compromises and we have to admit that its style is not very meticulous.

410.2 As for the text of the Report, here we have some nuances, some subtleties and that is doubtless why it is rather difficult to translate them. For my part, they are not of great importance from a practical point of view.

410.3 I give the floor to the delegate of Spain.

411.1 Mr. ARIAS (Spain) [S]: The Spanish delegation is in favour of Alternative A and with regard to the sub-alternatives, believes that the consideration to be introduced in the General Report, should be attributed to the Conference.

411.2 As for the use of the verb "constituir" in the indicative or conditional mood, we consider that in Spanish too there is a considerable nuance and therefore esteem that it should read "constituiria" instead of "constituia".

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412. The CHAIRMAN [F]: I give the floor to the delegate of Tunisia.

413.1 Mr. SAID (Tunisia) [F]: The delegation of Tunisia would be prepared to accept Alternative A with the formula "it was generally considered" in the Report.

413.2 It does not reject, however, Alternative B if the delegation of France retains it and the majority of the Assembly supports it.

413.3 But the delegation of Tunisia cannot under any circumstances accept Alternative A, with the formula "the Conference considered" in the Report, for we consider that the formula "it was generally considered" is a great concession and already constitutes an, I could almost say, excessive generalization.

414. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

415.1 Mr. STRASCHNOV (Kenya) [E]: May I add a word to the proposal made earlier by the United Kingdom delegation? I think it would be easier for us to make a choice between the two alternatives if we first cleared up the question whether in the Report concerning Alternative A the words "the Conference considered" or the words "it was generally considered" would appear.

415.2 I think, of course, it is up to you to conduct the meeting and to judge what is the best way of proceeding, but as far as our delegation is concerned, we would think that if we cleared up this question first and if we know the majority is for Alternative A with either "the Conference considered" or "it was generally considered", you will make the choice for the delegations much easier.

416.1 The CHAIRMAN [F]: If you agree, what we will do for the moment is to close the list of speakers, then we will take a decision as to the procedure.

416.2 I give the floor to the delegate of Senegal.

417.1 Mr. N'DIAYE (Senegal) [F]: My delegation would opt for Alternative B, as this alternative is clearer, more concise, and better adapted to the position that the Senegalese delegation has defended from the outset.

417.2 I think that all those who have accepted Alternative A with the formula "it was generally considered that" would find satisfaction in Alternative B and that would avoid making a second choice. For this reason, the delegation of Senegal considers that Alternative B is more appropriate.

418. The CHAIRMAN [F]: I give the floor to the delegate of Brazil.

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419.1 Mr. de ATHAYDE (Brazil) [F]: The Brazilian delegation would like to state that it is in favour of Alternative A, it being understood that we would in no way reject Alternative B should the majority of delegations be in favour of it.

419.2 As for the sub-alternatives contained in Alternative A, I do not think that changing the verb "to be" from the imperfect to the conditional would be a sufficiently satisfying compromise since the word "Conference" seems to me to be too strong. I think that the formula "it was generally considered" is the better one.

420. The CHAIRMAN [F]: I give the floor to the delegate of Italy who will be the last speaker before we take a decision on procedure.

421.1 Mr. de SANCTIS (Italy) [F]: The delegation of Italy is still of the opinion that the word "reasonable" should be inserted in the text of the conventional provision. We are consequently in favour of Alternative B. On this point we are in agreement with the delegate of Senegal since from a legal point of view it is only by such an insertion in the text of the Convention that it is possible to draw the consequences relative to it. In this case, it is evident that it is not necessary to have any special mention in the General Report and that we can limit ourselves to stating that there was a very interesting discussion, that differing opinions were expressed without there being any obligation which would result from the General Report.

421.2 As the delegate of Senegal has already stated, in this way we would avoid taking a decision on the sub-alternatives in Alternative A because it is too difficult to come to an agreement on that point. To state "the Conference considered" or "it was considered" are two completely different things and I do not know whether we could come to any almost unanimous agreement in the Main Commission.

421.3 I therefore conclude as follows: for all the reasons that the Italian delegation has already voiced yesterday, we are in favour of Alternative B; if the Main Commission considers that it should put the question of the sub-alternatives of Alternative A to the vote, the Italian delegation reserves the right to intervene at that time.

422.1 The CHAIRMAN [F]: We prefer to take decisions by common accord but obviously this is not always possible. The vote has obviously been invented so that we can make use of it. Since the Commission is divided on the choice of Alternative A or Alternative B - not to mention the sub-alternatives - and since there is obviously no question of prejudging the sub-alternatives before we know which alternative we are going to adopt, I suggest the following procedure: first we shall proceed not to a vote but to a show of

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hands on the sub-alternatives of Alternative A, and thus we shall have a consolidated Alternative A - which in no way means that we approve Alternative A. Then we shall choose between Alternative A thus consolidated and Alternative B. I think that is about the only logical solution. Are we in agreement? Perfect.

422.2 And so we have: 1) the decision on the sub-alternatives: sub-alternative (a) relative to Alternative A reads as follows: "With respect to the duration of the measures referred to in Article 1 (1) the Conference considered that a period of twenty years would be a reasonable period"; sub-alternative (b) reads as follows, "With respect to the duration of the measures referred to in Article 1 (1) it was generally considered that a period of twenty years was a reasonable period".

422.3 Would the delegations in favour of sub-alternative (a), i.e. "the Conference", please so indicate by raising their plaques. Thank you.

422.4 The delegations in favour of sub-alternative (b). Thank you.

422.5 Consequently, sub-alternative (a) is carried by 20 votes in favour, 17 for sub-alternative (b) and three abstentions.

422.6 Therefore, Alternative A is finalized as follows: "With respect to the duration of the measures referred to in Article 1 (1), the Conference considered that a period of twenty years would be a reasonable period".

422.7 Now that we have finalized Alternative A, we shall choose between it and Alternative B. Would those in favour of Alternative A please raise their plaques.

422.8 Alternative B.

422.9 Abstentions.

422.10 Alternative B is carried by 22 votes, with 18 against and 2 abstentions. Consequently Alternative B is adopted.

422.11 The delegate of France has the floor.

423. Mr. KEREVER (France) [F]: A short intervention in order to explain our vote. I had indicated that the French delegation was prepared to vote for Alternative A in the drafting which received a majority in the informal procedure that you have just instituted but we were prepared to decide in favour of Alternative A should that alternative have been the object of a general accord. Since Alternative A was not the subject of a clear choice, it was quite logical that the French delegation should adhere to its initial position, i.e. Alternative B.

424. The CHAIRMAN [F]: I give the floor to the delegate of the

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United Kingdom.

425.1 Mr. DAVIS (United Kingdom) [E]: Since we have settled on Alternative B with no explanation in the Report, I presume it is open to individual States to give their views on this Article.

425.2 I would like my view on this to appear in the Report, and it is quite simply that whereas the word "reasonable" in fact leaves the matter open to States, the United Kingdom view is that if a period were chosen such that it was calculated to give a State the benefit of the legality of this Convention while not implementing in any realistic way the protection which the Convention demands, in our view that would not be reasonable.

426. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany.

427. Ms. STEUP (Germany, Federal Republic of) [E]: We also want to make known our interpretation of the word "reasonable". We fully share the view of the delegate from the United Kingdom, and we think that a treaty where the periods differ too much from one country to another is not a good treaty. It does not give equality between States, and therefore we support the statement of the delegate of the United Kingdom.

428. The CHAIRMAN [F]: I give the floor to the delegate of Tunisia.

429.1 Mr. SAID (Tunisia) [F]: Mr. Chairman, we have to be serious. We have just adopted by a vote Alternative B. In Alternative B it is stated, "According to this alternative, the General Report would not contain any commentary on the interpretation".

429.2 Thus, if we now start to make comments and to request that these figure in the Report, we are in contradiction with what we have just done. In that case, all States will make comments, all States will request that they figure in the Report and Alternative B will no longer make sense.

430. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

431. Mr. COWARD (Kenya) [E]: I would strongly like to support the statement by the delegate of the United Kingdom. I think this is something that can and should appear, notwithstanding what the delegate of Tunisia has just said.

432. The CHAIRMAN [F]: The delegate of Austria has the floor.

433.1 Mr. DITTRICH (Austria) [E]: My delegation associates

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itself very warmly with the statements of the United Kingdom and the Federal Republic of Germany. Furthermore, I would like to make a very short remark which concerns the drafting.

433.2 I would like to call the attention of the Drafting Committee to the fact that it might be advisable to transfer the second sentence of the new paragraph (3) of Article 1, which we have adopted, into a new paragraph at the end of the Convention.

434. The CHAIRMAN [F]: I give the floor to the delegate of Algeria.

435. Mr. ABADA (Algeria) [F]: It seems that certain delegations want to come back on a decision which has been taken by our Commission. We have made a choice between the various alternatives and it was clear to each delegation that the alternatives are rather precise options. Because one alternative has been carried following a vote, we should not, through dilatory measures, seek to come back on this vote and on a decision already taken. If we adopt such an attitude, I think that it is truly a way of preventing our Conference from progressing. The fact of coming back on a decision that has been taken seems to us totally inappropriate and even constitutes a sort of step backwards with regard to what we want to accomplish. Thus I am in complete agreement with what the delegate of Tunisia has said and I consider that Alternative B has been definitively adopted by our Commission in its first drafting.

436. The CHAIRMAN [F]: The delegate of Tunisia wishes to present a point of order.

437.1 Mr. SAID (Tunisia) [F]: I come back to my initial statement and insist that it be taken into consideration for if we continue in this direction, what will happen? Each delegation will make comments, will request that these appear in the Report, which is, I repeat, in contradiction with what we have just voted, with the extremely clear text of Alternative B, and the result is that we shall undo the work that we have done. In fact, if each delegation makes comments, it will be quite clear that the Conference is not in agreement. I should like to avoid that. For the sake of future generations and for the good of the Convention, I should like to avoid having in the Report a record of a total disagreement among consumer and producer countries.

437.2 It is for this reason that I come back to my point of order so that the text of the Alternative B that we have just voted is respected.

438.1 The CHAIRMAN [F]: Before giving the floor to the other speakers on my list, I should like to reply to the delegate of Tunisia and other delegations who have commented on his statement. Alternative B has been adopted. There is absolutely no question of coming back on it in our Commission. We can come back on it in the

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Plenary Meeting. The Rules of Procedure provide for all kinds of procedures for coming back on a decision taken in the Commission. That point is therefore settled.

438.2 As for the question of what will appear in the Report, I think there is some confusion between the Report and the Records of the Conference. We have verbatim records in extenso (which are published provisionally in mimeograph) and which will be published in book form. Consequently, each delegation can be absolutely sure that its point of view will be recorded ad perpetuam rei memoriam. Consequently, the question of the Report is quite different. The Report is not designed for recording individual opinions, especially the Report of a Conference of this type.

438.3 I give the floor to the delegate of France.

439. Mr. KEREVER (France) [F]: Perhaps I misunderstood the manner in which the procedure was suggested, but it seemed to me, Mr. Chairman, that you stated that we would not proceed to a vote in the legal sense of the term, but to a sort of consultation as to how the various delegations considered the various alternatives proposed. And in fact, in the explanation of my vote, I stated that it was an explanation of my vote in inverted commas, for I was persuaded that it was a show of hands and not a vote in the legal sense of the word. This does not change anything with regard to the opinion of the French delegation. But even so I should prefer that we remain within the framework of the procedure that had been suggested which is that of a show of hands and not a vote in the legal sense of the word, unless I misunderstood the beginning of the procedure that you suggested. Perhaps other delegations will be able to rectify my interpretation.

440.1 The CHAIRMAN [F]: It was indeed a show of hands and in order to avoid any discussion of what we have done and to make the position quite clear, I shall interrupt this debate to submit for the approval of the Commission the adoption of this Alternative B. Consequently, I submit for the approval of the Commission Alternative B of document CONF/SAT/21.

440.2 Do you think it necessary to proceed to a vote?

440.3 The delegate of Algeria.

441.1 Mr. ABADA (Algeria) [F]: In the mind of the Algerian delegation, we thought that, as a first step you took a show of hands to decide the position of the various delegations with regard to the two sub-alternatives of Alternative A, to determine the final position of the majority with regard to the text that would be included in the Report.

441.2 Once this problem had been solved, in the mind of the Algerian delegation you put to the vote of the Commission the choice between Alternative A and Alternative B. And when we took a position, we thought we were voting for or against Alternative A or

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Alternative B.

442.1 The CHAIRMAN [F]: To my mind the show of hands was indeed relative only to the sub-alternatives. But since there is a doubt and no doubt must subsist on a question which, once more, has no practical importance since it is very improbable that delegations have changed their minds in the past five minutes - I put this question to the consideration of the Commission.

442.2 The delegate of France.

443. Mr. KEREVER (France) [F]: The French delegation requests a few minutes' break in the meeting.

444. The CHAIRMAN [F]: Granted.

445.1 The CHAIRMAN [F]: I trust that the interruption will have permitted delegations to make some progress so that no kind of doubt subsists as to the procedure which I adopted. We shall assume that no vote has taken place, that we have only had a show of hands. Consequently, a show of hands which binds no delegation. We have some indicators, we know the general trend among the delegations and we shall now take a final decision. Consequently, we can perfectly well come back to Alternative A or Alternative B.

445.2 I give the floor to the Federal Republic of Germany.

446. Ms. STEUP (Germany, Federal Republic of) [E]: We had some talks during the interruption and perhaps there is still a possibility to find a greater majority. What we did not have up to now is a vote on Alternative A (b). There are, as far as we have seen, several delegations who would prefer Alternative A combined with sub-alternative (b) to Alternative B itself, and so perhaps one could consider in this Commission whether we could find a greater majority on the lines of Alternative A combined with sub-alternative (b).

447. The CHAIRMAN [F]: I give the floor to the delegate of Mexico.

448. Mr. LARREA RICHERAND (Mexico) [S]: In the hope of arriving at an agreement on this point, the delegation of Mexico is in complete agreement with and supports what the delegate of the Federal Republic of Germany has just said and agrees with and supports sub-alternative (b) of Alternative A.

449. The CHAIRMAN [F]: I give the floor to the delegate of Israel.

450. Mr. GABAY (Israel) [E]: We also support the proposals

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made by the delegations from the Federal Republic of Germany and Mexico, and suggest that we vote on Alternative A, sub-alternative (b).

451. The CHAIRMAN [F]: I give the floor to the delegate of Morocco.

452.1 Mr. CHAKROUN (Morocco) [F]: My delegation would like to congratulate the Chairman for the method he adopted and his procedure to avoid taking a vote, to which we are not accustomed and which we would like to avoid as far as possible. However that may be, it seems to my delegation that some of those present desire a vote; but we have established that neither on one side nor on the other is there a two-thirds majority and we are afraid of total failure in any attempted vote, which would inevitably have very serious consequences for we would be truly and untowardly sabotaging all that we have achieved up to now.

452.2 My delegation is addressing itself clearly to the assembly so that it reflects seriously on this situation and declares itself clearly in favour of the result we have achieved, i.e. that it accepts the result of the show of hands. That said, my delegation would abstain in the contrary case and would vote for neither one nor the other of the two alternatives.

453. The CHAIRMAN [F]: I give the floor to the delegate of the United States of America.

454.1 Mr. WINTER (United States of America) [E]: Mr. Chairman, the United States commends you for calling a break at a very strategic moment of discussion. I think that as some of the speakers have indicated before me - and especially the delegate of the Federal Republic of Germany and the delegate of Morocco - that it is very desirable to reach a consensus here. If we can do this without a vote, that is highly desirable.

454.2 We are prepared to accept the further compromise proposed by the delegate of the Federal Republic of Germany.

455. The CHAIRMAN [F]: I now give the floor to the delegate of the Ivory Coast.

456.1 Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: I believe that the results of this attempt at a pseudo-vote or show of hands prove that it was necessary to avoid a vote, which is what we have done up to now in our work.

456.2 The delegation of the Ivory Coast has indeed understood that it was a show of hands to indicate positions and note a vote, that it was a choice between Alternative A and B or a choice between sub-alternatives (a) and (b) of Alternative A. And I think that we can

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reconsider the problem and arrive at a consensus without a vote. It is certain that the results of the show of hands prove that certain delegations do not trust governments. I think this is a serious attitude. In fact, when we speak of a reasonable term, any reasonable government should be able to reach an agreement. I think that some delegations are prepared to admit now that this attitude was not in conformity with the spirit that should reign here. Your diplomacy, Mr. Chairman, is saving us from the tragic situation in which we found ourselves and the delegation of the Ivory Coast considers that we can indeed arrive at a consensus in favour of Alternative A (b).

457. The CHAIRMAN [F]: I give the floor to the delegate of Tunisia.

458. Mr. SAID (Tunisia) [F]: My delegation stated at the beginning of this meeting that we were prepared to accept Alternative A. We also stated that we were prepared to accept the Alternative B proposed by France if the majority of the assembly so decided. There was a show of hands or a vote, the majority was clearly in favour of Alternative B by 22 votes to 19 votes. My delegation, true to its statement, was satisfied and happy to follow the majority and thus accept Alternative B. We thought that the procedure that we wanted to follow was to democratically accept the results of a vote or a show of hands and not to vote any more but to arrive at a consensus in the interests of the Convention. That is how I saw the procedure and it would have been a felicitous procedure, because by basing ourselves democratically on a majority we would have arrived at a consensus and reached an agreement. Unfortunately, we seem to be taking a different turn and this is not at all the path that we should follow. In this case, in order to be true to its statements, to be serious, the Tunisian delegation will not take part in a vote.

459. The CHAIRMAN [F]: The delegate of Guatemala.

460.1 Mr. PALACIOS GARCIA (Guatemala) [S]: I regret asking for the floor at this late hour but we have to seek a solution enabling us to arrive at an agreement.

460.2 Between the opinion of certain countries who see difficulties in fixing a term and those who do not wish to do so, I think that there could be a way out if the drafting that has been proposed could attempt to find agreement between those who desire the term and those who are not yet sure, because they are afraid that a strictly fixed term could subsequently constitute such great inflexibility that no agreement would be possible.

460.3 I believe that a solution could be found, especially for the developing countries, if we could make a small modification in sub-alternative (b): in place of the word "was" which later became "would be", we could specifically use a term stating "could be".

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460.4 I should like to repeat therefore what could be a compromise agreement with regard to sub-alternative (b) and which would read as follows: "With respect to the duration of the measures referred to in Article 1 (1) it was generally considered that a period of twenty years could be", this is the change in the alternative, "could be a reasonable period".

460.5 If this proposal could be accepted, then my delegation would accept this text and I believe that thus we would have escaped from the impasse in which we now find ourselves.

461.1 The CHAIRMAN [F]: The delegate of Guatemala suggests replacing "was" by "could be" in sub-alternative (b).

461.2 The delegate of Canada has the floor.

462. Mr. CORBELL (Canada) [F]: After listening with great interest to the speakers who have preceded me since the interruption in the meeting and in order to get out of the impasse in which we now find ourselves, I wonder if there would not be some way of arriving at a consensus in favour of Alternative A with sub-alternative (b) without having recourse to a vote.

463.1 The CHAIRMAN [F]: I now have a personal comment to make with regard to the addition suggested by the delegate of Guatemala against which I personally have nothing. But it seems to me that at this stage in our work it would be dangerous to begin changing the text. After a somewhat acrobatic procedure, we again alight on Alternative A (b). This Alternative A (b) is from a practical point of view equivalent, both legally and politically speaking - or so it seems to me - to Alternative B. Consequently, the countries which earlier declared in favour of Alternative B do not, I believe, have much to lose by resigning themselves to coming back to Alternative A.

463.2 In addition, the show of hands indicated that there was no large majority for either solution A (a) or (B). We should not forget that in the Plenary Meeting we need a two-thirds majority for the article to pass. Therefore, it seems to me that it would be wise to renounce our personal preferences and to adopt without a vote sub-alternative (b) of Alternative A, and so finish with this question which, I think, has taken up much too much of our time.

463.3 Consequently, if there are no opinions to the contrary, I shall say that the Main Commission has adopted sub-alternative (b) of Alternative A.

463.4 The delegate of Tunisia has the floor.

464. Mr. SAID (Tunisia) [F]: I regret that I am not in complete agreement with what you have just said, Mr. Chairman. I will not obstruct it, I will follow what you have proposed, but I should like to make one remark: Tunisia has a reservation with regard to the procedure which was adopted, because my delegation cannot agree to coming back on what we have just voted.

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465.1 The CHAIRMAN [F]: We have exchanged our points of view. Whatever procedure was adopted there were doubts in the minds of several delegations as to whether we had or had not voted. Therefore, under such circumstances, it was quite impossible for me to give an impression of forcing things and I myself consider that there was no vote, that there was a show of hands. But I respect your point of view and thank you for your statement.

465.2 The delegate of Algeria has the floor.

466. Mr. ABADA (Algeria) [F]: I did not intend taking the floor because I expected you to put the proposal of the delegation of the Federal Republic of Germany to a vote and the Algerian delegation had the intention of abstaining. Since you have decided not to submit this proposal to a vote but only to a consensus, we should like to have it reported that the Algerian delegation has reservations on this proposal because the Algerian delegation took a stand during the debate. When we had the choice between Alternative A and Alternative B, we said that we were in favour of Alternative A (b), but that we would willingly accept Alternative B. A vote was taken on Alternative B and, in our opinion, the Commission declared itself in favour of Alternative B. The Algerian delegation thought it had voted for Alternative B and it seems difficult for us to come back on that. This is why we would like to have in the minutes that we had reservations with regard to the proposal of the delegation of the Federal Republic of Germany.

467. The CHAIRMAN [F]: I give the floor to the delegate of the United Kingdom.

468. Mr. DAVIS (United Kingdom) [E]: I am very sorry that I asked for the floor because the matter has resolved itself in my mind. I was going to ask you for some clarification but it is not necessary now.

469. The CHAIRMAN [F]: I give the floor to the delegate of Senegal.

470. Mr. N'DIAYE (Senegal) [F]: Naturally, the Senegalese delegation would also like to arrive at a consensus but even so we have to explain ourselves a little. I think that the show of hands earlier should have some meaning; even if it was not a vote, it should serve to orient us in a certain direction. This direction was that of knowing where the majority lay and, on the basis of this majority, to try and find a consensus. It so happened that the majority - even if it was not a vote - declared itself in favour of Alternative B and you said earlier that there was practically no difference between Alternative B and Alternative A (b). Under these circumstances, I ask you if we have to proceed to an agreement, in which direction shall it occur?

471.1 The CHAIRMAN [F]: If there is no opinion to the contrary,

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I would propose adopting this article.

471.2 The article is adopted.

471.3 Are there any other statements? The delegate of Guatemala.

472. Mr. PALACIOS GARCIA (Guatemala) [S]: As my delegation declared itself earlier in favour of Alternative B, and now we have adopted Alternative A (b) by a general consensus, I should like it to be noted that my delegation was in agreement with Alternative B and that we could agree to the text you have proposed, Mr. Chairman, only if it was changed as I suggested earlier. That is, we reserve the right to bring up our suggestion at the Plenary Meeting that the words "would be" be changed to "could be".

473.1 The CHAIRMAN [F]: The delegate of Guatemala will indeed have the opportunity to introduce his amendment in the Plenary Meeting.

473.2 The delegate of the Soviet Union has the floor.

474.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: May I remind my colleagues that a procedure or rather Rules of Procedure were adopted at the Plenary Meeting. Please look at Rule 22 of this document which we ourselves have approved. This states that decisions of the Conference shall be taken by a two-thirds majority in plenary meetings. At the meetings of all other bodies of the Conference - and it is the Main Commission in the present instance - decisions shall be taken by a simple majority of the delegations present and voting.

474.2 We have just put to the vote two alternatives. Alternative B was voted for by the majority of the delegations present and voting. Let us show some respect towards our own opinion and confirm the opinion of the majority that voted for Alternative B. What sort of work is this if we put an issue to the vote and three minutes after the voting adopt an alternative that received a minority of votes? I would expect that every country would stick to its opinion since it has indicated its approval of one and not the other of the two alternatives.

475.1 The CHAIRMAN [F]: I repeat that the first consultation was not a formal vote but merely a show of hands.

475.2 Are there any other delegations who wish to speak? No.

475.3 In that case we declare closed the discussion on Article 3. This afternoon we shall proceed to the rest of the Nairobi draft.

476. The meeting rose.

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Main Commission - Fourth Meeting¹

Friday, 10 May 1974 at 3.05 p.m.

Chairman: Mr. da COSTA (Brazil)

477. The CHAIRMAN [F]: We shall continue with the work of the Main Commission. We have finished with Article 3 and we should, in principle, proceed to the study of Article 4 but the delegate of the Union of Soviet Socialist Republics has asked for the floor.

478.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I would like to suggest the text of a new article to replace the Article 3 which, in accordance with the general opinion, has been deleted from the text of the Convention and I would like to explain the reason for such a proposal. As we know, Article 1 of the draft Convention under discussion defines the main subject of this Convention. Article 2 which has not yet been discussed but will be soon, provides definitions of terms and concepts. It is only logical that the next article, i.e. Article 3 should deal with the contents of the programmes carried by these signals. I would like to refer in this connexion to the opinion of those delegations that spoke against separating signals from programmes, against dealing with the container rather than the contents. Everybody is fully aware that any signal has value only when it carries a programme. Not a signal for the sake of a signal but a programme-carrying signal - that is the point. That is why we propose incorporating our article as it appears in document CONFSAT/8 of 7 May 1974 submitted jointly by the delegations of the USSR, the Ukrainian SSR and Byelorussian SSR as a new Article 3 reading as follows: "Each Contracting State shall undertake to exclude from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred or otherwise aimed at interfering in the domestic affairs of other states or undermining their national laws, customs and traditions". An article of such a character is, in our opinion, relevant or rather essential for all transmissions irrespective of the system by which the programme-carrying signal is emitted or transmitted. Allow me to briefly elaborate on this idea. It is obvious that the human genius which is capable of developing sophisticated television broadcasting facilities by satellite cannot be permitted to violate state sovereignty, national laws and customs, to undermine trust between peoples and traditional cultures rather than serve the cause of human well-being, social progress, exchange of cultural values, improvement in education and promotion of mutual understanding.

478.2 Our colleagues are familiar with the relevant international law documents. How can we know whether the mass media and television in particular have actually been used for these very purposes, namely: outrageous war propaganda, ideological sabotage, publicizing cruelty, violence, sex, supermen, drug-addicts and hippies. Is this really what is meant when they speak of the free flow of information? I hope not, and I am deeply convinced that all my colleagues at this Conference are equally far from such ideas. That is why I invite you

1. Cf. document UNESCO/OMPI/CONFSAT/VR.10 (prov.).

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to give serious consideration as to where we should direct our efforts in finalizing the draft Convention under discussion. We must not fail the trust and expectations of the governments and peoples that have sent us here. I would like to ask you to regard this proposal as a formal motion and discuss it accordingly.

479. The CHAIRMAN [F]: I give the floor to the delegate of Czechoslovakia.

480. Mr. KUNZ (Czechoslovakia) [F]: The delegation of Czechoslovakia supports the inclusion in the Convention of the new Article 3 proposed by the delegate of the Union of Soviet Socialist Republics for the reasons that he himself explained in his intervention before the Main Commission. I do not think it necessary to go into detail again on the reasons for my delegation's position but I should like nevertheless to stress, or rather bring out some points that seem to me important:

1) My delegation shares completely the opinion of those of the eminent speakers who have preceded me who were of the opinion that it is not possible to separate the signal from its content, the signal from the programme. We have here before us a draft Convention whose purpose is the protection of programme-carrying signals, although it is not possible to separate the signal from the programme it carries.

2) By obligating States to adopt measures to prevent the unlawful distribution of the signals, the Convention places this whole question in the field of international public law. What is more, even a transmission by point-to-point satellite is an activity in outer space, an activity governed by the tenets of international public law. The fact that the points contained in the proposal of the delegate of the Soviet Union also appear in other international Conventions, for example, the Convention of 27 January 1967 on the activities of States in outer space, does not, on the contrary, in the opinion of our delegation, present any obstacle to the adoption of this proposal in our Convention. We should also ensure here that the activities of States in outer space, about which we are speaking at present, also contribute to international peace and security, that they are based on the principles of the sovereignty of States and non-interference in the internal affairs of the latter and that they do not contain any propaganda for national or racial hatred.

3) The delegation of Czechoslovakia is persuaded that the inclusion of this article would contribute to improving the Convention as an instrument that not only protects legitimate rights but also contributes to peaceful and friendly co-operation among States.

481. The CHAIRMAN [F]: I give the floor to the delegation of the German Democratic Republic.

482.1 Mr. WAGNER (German Democratic Republic) [E]: The German

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Democratic Republic is in favour of the proposal made by the delegation of the Soviet Union for a new Article 3. Our delegation considers it merely a juridical fiction for the purpose of this draft Convention to make a distinction between the signal and the programme. One has to bear in mind that in reality no such distinction exists.

482.2 We also believe that the debate which was raised about the term in Article 3 was not a debate to protect the electronic signal only. To our delegation it seems only possible to take such a fiction into consideration if in the Convention a direct reference is made to the contents of signals. As we have already said, we do not believe that the aim of this Conference is to protect only electronic vibrations. Thus it seems to us only logical, in our opinion, to make a reference to state sovereignty and non-interference.

482.3 On the other hand, as it is our aim to elaborate a Convention under international law, it seems only natural that States which are emitting any signals which can be received in another State, whether such signals can be received by broadcasting stations or by the general public, has to guarantee that the programmes carried by signals are not contrary to the principles proposed by the delegation of the Soviet Union.

482.4 Finally, we believe that with regard to the efforts undertaken by a great number of States to ameliorate the international situation and to maintain peace and lessen tension, and in face of the work of the Geneva Conference for European Security and of the efforts undertaken in the United Nations Committee on the Peaceful Uses of Outer Space, our Conference has a moral obligation to demonstrate the same spirit by including in the Convention the principles mentioned.

482.5 We are sure that this would also greatly help to encourage States to accede to the Convention, who might hesitate or abstain from doing so if no such principles were included in the text. As far as we know, practically all States have declared themselves in favour of inserting the principles of sovereignty and non-interference, and excluding anything which is detrimental to the maintenance of peace and security and abstaining from publicizing ideas of war, national and racial hatred or which otherwise interfere in the domestic affairs of other States or undermine their national laws, customs and traditions.

482.6 So we see no reason not to include this article in the Convention. For this reason, our delegation fully supports the proposal submitted by the delegation of the Soviet Union.

483. The CHAIRMAN [F]: I give the floor to the delegate of Hungary.

484. Mr. TIMAR (Hungary) [F]: I do not wish to repeat the

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statements or the arguments expressed by the Hungarian delegation during the general discussion in favour of inserting in the new Convention the basic principles of international law enumerated in the Soviet proposal. I should simply like to state briefly that the Hungarian delegation supports the proposal of the Soviet delegation with regard to the new Article 3.

485. The CHAIRMAN [F]: I give the floor to the delegate of Tunisia.

486. Mr. SAID (Tunisia) [F]: The addition proposed by the Union of Soviet Socialist Republics underlines principles which, in our opinion, cannot be rejected except by those who are "not very reasonable" as our friend Dr. de Sanctis would say. Therefore my delegation supports in substance the proposal of the delegation of the Soviet Union.

487. The CHAIRMAN [F]: The delegate of Senegal.

488. Mr. N'DIAYE (Senegal) [F]: The Senegalese delegation also thinks that the Soviet proposal is not in contradiction with the text before us.

489. The CHAIRMAN [F]: I give the floor to the delegate of the United States of America.

490.1 Mr. WINTER (United States of America) [E]: I will be brief and make only a few relevant points concerning the proposal which has been put forward by the delegate of the Soviet Union.

490.2 In the first place I would point out that in the Nairobi compromise which was developed in July 1973, it was quite clear that we were talking about the signal and not the content of the programme. This was the basis of the Nairobi compromise. It was the reason that the Nairobi text received such broad support from all groups - broadcasters, authors and other contributors to the programme. In other words, no exclusive rights were conferred upon the broadcasters by the Nairobi text.

490.3 Another important point that should be made is the fact that this Conference took a decision early in its discussions this week to exclude direct broadcast satellites from this Convention. We believe that this has rendered largely irrelevant any discussion on direct broadcast satellites in the context of this Convention.

490.4 Finally, I would like to repeat the position of the United States government on this matter, as stated earlier this week. At that time we said that this Convention, both by its definition and the history of its development during the course of the three preparatory meetings, is without competence to deal with questions such as the power of a country to control the content of programmes beamed into its territory from abroad by direct broadcast satellites.

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We pointed out that the question of direct broadcast satellites and the attendant question of state control of programme content are most properly being dealt with in the competent bodies of the United Nations. As a matter of fact, earlier this week, the representative of Unesco in a very clear, explicit statement tried to draw the distinction between what was being done in the United Nations in this field and in this particular Conference. At this moment in Geneva, a Legal Sub-Committee of the UN Outer Space Committee is dealing with this subject.

491. The CHAIRMAN [F]: The delegate of Ghana has the floor.

492. Mr. SAI (Ghana) [E]: The Ghanaian delegation also sees considerable merit in the proposal of the USSR delegation. We see the amendment as aimed at covering the content of the programme which the signals would carry and we do not think that this would do any harm to the Convention at all. We consider it a desirable qualification; however, it appears to me that the first part of the amendment is implied in the second, that is to say that Contracting States shall undertake to broadcast from satellites to foreign States only with the express consent of the latter. I should like to believe that the basis of any such consent would be that the receiving State has satisfied itself that a given signal satisfies the safeguards proposed in the first part of the amendment.

493. The CHAIRMAN [F]: I give the floor to the delegate of Byelorussian Soviet Socialist Republic.

494. Mr. KASHEL (Byelorussian Soviet Socialist Republic) [R]: The delegation of the Byelorussian SSR fully supports the proposal presented by the delegate of the Soviet Union. The motivation for such a proposal has been covered in detail by his statement and I will not take up any more time by repeating these motives. However, I would like to point out that some delegates argue in their statements that our Convention is relevant to signals only and does not concern programmes. We have spent two full days discussing the problem of the term of protection as provided under the terms of Article 1. But if we speak of the term of protection as provided under Article 1 we mean nothing else but a programme. A signal as it is defined in Article 2 - although we have not discussed this yet - cannot be preserved or fixed. We can preserve in time, we can fix only the information about the programme, the programme material in other words; as to the programme-carrying signal, so far we have no means of preserving it in time and if we have been discussing it for two days and eventually worked out a certain decision as to the duration of the protection accorded under this Convention, we actually had in mind programmes since the signals dealt with in this Convention and as defined in it, exist only at the moment of their transmission. They cannot be either stored or preserved. Thus for two whole days we have properly speaking been discussing a programme, and not a signal.

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495. The CHAIRMAN [F]: I give the floor to the delegate of Algeria.

496.1 Mr. ABADA (Algeria) [F]: The proposal that has just been made by the delegate of the Soviet Union contains provisions which strengthen the essential principles, i.e. principles for international detente, understanding and co-operation and I think that all peoples aspire to the realization of these principles. That is why my delegation understands and supports the proposal of the Soviet Union.

496.2 However, we have one fear. We should prefer it if the Soviet proposal did not mean that we have to renounce the first option taken by the Main Commission as proposed by Algeria, i.e. the exclusion of direct television from the scope of this Convention.

496.3 If it is stated that the proposal of the Soviet Union excludes direct television, then we cannot but support it.

497. The CHAIRMAN [F]: The delegation of the Federal Republic of Germany has the floor.

498.1 Mr. GAERTE (Germany, Federal Republic of) [E]: I would first of all like to stress that I recognize fully the merits of the proposal just made by the Soviet Union, which contains a number of important principles. I have, however, grave doubts if we shall be able to discuss these questions here. They have already occupied the UN Committee on Outer Space for a long time and I doubt very much if we shall be able to come to conclusions here in the comparatively short time which has been allotted to us. All the more so, in view of the fact that when we travelled to Brussels only five or six days ago we had with us the Report and the draft from Nairobi which separated the two questions of the signals and of the programme. This was the point of departure. I would recognize, it is true, that you cannot fully separate these things. But actually that was the basis of the Nairobi draft from which we started here.

498.2 Now if the question of the programme were brought up, it would have a number of consequences on, for instance, copyright, which we had agreed to leave out here. My delegation has left that out quite reluctantly, but we have understood the necessity for that. Now I would like to refer to Mr. Sommerlad's explanations which we received a few days ago here in this room regarding the different bodies that are just now dealing with the questions which have been raised here. Therefore, I would like to suggest that the settlement of these very important questions be left to the other bodies of the United Nations and of the European Conference in Geneva and not be dealt with in this Conference.

498.3 If, however, there is a decision to the contrary, then I would like to move that this Conference adjourn at least for a few hours to give us time to prepare for this question, because we did

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not expect that it would come up here.

499. The CHAIRMAN [F]: The delegate of Israel has the floor.

500. Mr. GABAY (Israel) [E]: This is in fact a point of order. As you may recall, a decision was taken at your suggestion, Mr. Chairman, that we should discuss first Article 1, then Article 3 and then consider the other provisions. The written proposal before us does not mention at all that it is proposed to replace Article 3. I believe that many delegations here were not at all prepared to discuss this proposal as a replacement of Article 3. So, as a point of order, I believe that we should conform to your decision and continue with Article 4 and the other articles and come back to that proposal when we have finished with the other articles.

501.1 The CHAIRMAN [F]: The delegate of the Federal Republic of Germany and Israel have raised a question which is whether now is the time to study the Soviet proposal or whether this Soviet proposal should be examined later.

501.2 Before continuing with any other discussion, we have to concentrate on this point. Consequently, there are two possible solutions: either we adopt the suggestion of the delegate of the Soviet Union who, orally, has indicated that the proposal contained in document CONFSAT/8, in paragraph II, is a substitute for Article 3 and that, consequently, we should discuss it now; or we should continue with the Nairobi text since the delegation of the Federal Republic of Germany informs us that they thought they were discussing Article 4 as it now stands and request several hours for reflexion, while the delegate of Israel informs us that we have already taken the decision to follow the Nairobi text first and, consequently, the study of other proposals would come later.

501.3 We must, therefore, first solve this problem and I ask speakers to confine themselves to this specific problem so that we can take a decision - a procedural decision.

501.4 The delegate of the Federal Republic of Germany has the floor.

502. Mr. GAERTE (Germany, Federal Republic of) [E]: I would, of course, like to facilitate things and I think that the delegate from Israel has made an excellent suggestion which would suit us very well because it would give us the necessary time to think over this new proposal.

503. The CHAIRMAN [F]: The delegate of Israel, what exactly is your suggestion? Would you like to give us your proposal.

504. Mr. GABAY (Israel) [E]: As you know under Rule 19 of the Rules of Procedure all resolutions and amendments should be submitted in writing. The proposal which was submitted to us in document

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CONF/SAT/8, does not refer to Article 3 at all. As the Main Commission decided that the order of discussion would follow the Nairobi text, at your suggestion, Mr. Chairman, it was decided that we should take Article 1 first, then Article 3 and consider the other articles and at the end, come back to the Preamble and Article 2. For this reason, since there is no mention in the document of Article 3, we should follow the decision that has been already taken, and proceed to Article 4. Only at the end would we come to a discussion of any proposals which referred to the Preamble or any new articles.

505.1 The CHAIRMAN [F]: Consequently, the delegate of Israel suggests that all new proposals not contained in the Nairobi text should be considered after the Nairobi text.

505.2 The delegate of Byelorussia has the floor. Please keep to the procedure only.

506. Mr. KASHEL (Byelorussian Soviet Socialist Republic) [R]: I also intend to speak on the procedure. It is true that at the first session of the Main Commission you said that we should take first Article 1, then Article 3 and the following, leaving the Preamble and Article 2 for the final stage of our discussion. However, nothing was actually said to the effect that if a new relevant article was suggested that logically fits in a certain place in relation to other articles we should not discuss them then and there. It was simply said that Article 2 and the Preamble would be discussed later and it goes without saying that when a certain new proposal is submitted and the nature of this proposal is such that it logically fits into specific place between other articles, it is only proper that it should be discussed in a logical sequence.

507. The CHAIRMAN [F]: The delegate from Brazil has the floor.

508. Mr. de ATHAYDE (Brazil) [F]: I would simply like to support what my colleague from Byelorussia has just said: I think that this is the most appropriate time for the study of the Soviet proposal.

509.1 The CHAIRMAN [F]: Are there any other points of view?

509.2 Our points of view are singularly contradictory. Personally, I note that Rule 19 of the Rules of Procedure is not really applicable in this case because the Soviet proposal has already been in circulation for some time. We are familiar with it, we are familiar with its text, it has been commented on in the Plenary Meeting. The only new idea is that the delegate of the Soviet Union now desires that the proposed article be considered as the new Article 3, whereas in document CONF/SAT/8 it came immediately after the Preamble. However, I do not think that Rule 19 of the Rules of Procedure will permit us to solve this question and consequently the Rules are at fault by lack of foresight, which is fatal. We therefore have to

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solve this question for ourselves.

509.3 The delegate of Tunisia has the floor.

510. Mr. SAIL (Tunisia) [F]: It is a fact that Rule 19 of the Rules of Procedure is not applicable. Rule 19 was included in order to ensure that delegations were aware of the contents of amendments. We have been aware of the contents of these amendments for some time already. But I think it is legitimate to ask for a certain time for reflexion and the request of the delegate of the Federal Republic of Germany is quite normal. I suggest, therefore, that we put off the study of the proposal of the delegate of Byelorussia for a while, i.e. until tomorrow morning, or tomorrow afternoon, for otherwise the delegate of the Federal Republic of Germany, who has no instructions or who cannot take a decision, will be forced to abstain - which would be a pity - or to ask for a suspension of the meeting or an adjournment of the question and present a point of order. It would be preferable to avoid that.

511. The CHAIRMAN [F]: The delegate of Mexico has the floor.

512. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico wishes to support what the delegation of Israel has said. In the first place, because one article has been deleted, we do not consider that there is any necessity to immediately include the text proposed by the Soviet Union. We should also like to clarify that we are not opposed to what the Soviet Union proposes; what is more, we shall support it in due time, because it derives from a proposal of Mexico and India that was also made during the Nairobi meetings but unfortunately on that occasion was not included, even in brackets. The delegation of Mexico considers that the interest of States, the public domestic interest of States should be protected too and should be safeguarded in this Convention as we said in our initial statement during the general discussion. However, we think that the basis of the problem should not be discussed immediately or be included in place of the text of the deleted Article 3 for, in our opinion, it is a little outside its place within the order already established in the Convention itself.

513.1 The CHAIRMAN [F]: We shall now try and come to a decision. If I have understood correctly, there is in principle no opposition to the Soviet proposal; everybody finds it excellent, except that some find that this is not the appropriate forum and others find that it is not the appropriate time to study it. Let us confine ourselves to the second aspect. The delegations of the Federal Republic of Germany and Tunisia have requested a certain time for reflexion, not to familiarize themselves with the text, because we have been familiar with it for some time, but to study this text as Article 3.

513.2 I therefore propose to the Commission the following procedure: without prejudging in any way the order of the articles, we shall pass immediately to the study of Article 4 and, when we have finished with Article 4, we shall come back to the Soviet proposal. At that

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time, we shall see if we should include it in our text. I think that this is a reasonable proposal and if there are no demonstrations to the contrary, I shall consider that the Commission approves my suggestion.

513.3 It is so decided.

513.4 We shall therefore proceed to the study of Article 4 which deals with the famous exceptions.

513.5 The delegate of Italy has the floor.

514.1 Mr. de SANCTIS (Italy) [F]: With regard to the proposed amendment to Article 4 contained in document CONFESAT/12 - which you have before you - the Italian delegation would like to indicate that this is a comment rather than a proposal.

514.2 The Italian delegation, basing itself on the Nairobi text, has noted that Article 4 relates to the programme rather than the signal. Consequently, it lies outside the Convention. But in view of the discussion that we have had following the proposals of the delegation of the Soviet Union, the Italian delegation withdraws the contents of the document you have in front of you.

515.1 The CHAIRMAN [F]: Consequently, the Italian amendment contained in document CONFESAT/12 which concerns Article 4 is withdrawn for the reasons just explained by the delegate of Italy.

515.2 We have only one more draft amendment, which is that of Japan and which is contained in document CONFESAT/7 and I would be grateful if the delegate of Japan would be kind enough to introduce his amendment.

516. Mr. HIRAOKA (Japan) [F]: This Japanese proposal was made at the same time as those made in connexion with other articles. For the reason I gave when we were discussing Article 1, our delegation withdraws this amendment concerning Article 4.

517.1 The CHAIRMAN [F]: Consequently we no longer have any amendments at all.

517.2 I give the floor to the delegate of Morocco.

518. Mr. CHAKROUN (Morocco) [F]: As we already explained during the general discussion, the delegation of Morocco of course remains favourable to the retention of Article 4. In fact, the provisions contained in this article constitute a guarantee for the most rapid ratification of the new instrument. It is indeed in the interests of all States to benefit from such provisions. But it is also true that the developing countries, such as Morocco, can only be satisfied with Article 4 (iii). This is not, of course, an innovation for other

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international conventions which are just as important - such as the Berne Convention and the Universal Copyright Convention - contain such exceptions. When the various international bodies and eminent international experts express their faith in the future of understanding among men thanks to modern technology and the development of satellite communications, when the representative of Unesco expressed similar opinions the other day, it is in just such facilities and exceptions that such understanding among men is reflected and can really be proved. After what the delegates of Italy and Japan have just said, my delegation understands that there is no other proposed amendment. Consequently, my delegation would propose that we accept this article as it stands.

519. The CHAIRMAN [F]: The delegate of Mexico has the floor.

520. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico, in accordance with what has been said by the delegate of Morocco, and with the intervention of its own delegation during the three Committees of Experts, especially the one which took place at Nairobi at which, together with the delegation of Brazil, we were the co-authors of the insertion of this article; in accordance too with our statements made during the general discussion, we request that Article 4 be maintained as it appears in document CONF/SAT/3 with no modifications, because we consider that that is the least we can ask and that this should be conceded to the developing countries.

521. The CHAIRMAN [F]: I now give the floor to the delegate of Kenya.

522. Mr. STRASCHNOV (Kenya) [E]: Our delegation considers that the exceptions provided for under Article 4 are extremely well-balanced and therefore we would fully support the proposal made by our colleague from Morocco that the Main Commission should accept Article 4 as drafted in Nairobi.

523. The CHAIRMAN [F]: I give the floor to the delegate of Israel.

524. Mr. GABAY (Israel) [E]: As we have indicated in our opening statement, in any text that will be accepted by this Conference, we would support special provisions in favour of developing countries. For this reason, we would support the retention of Article 4.

525. The CHAIRMAN [F]: I give the floor to the delegate of Ghana.

526. Mr. SAI (Ghana) [E]: The Ghanaian delegation merely wants to say that it supports the terms of Article 4 in its entirety.

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527. The CHAIRMAN [F]: I give the floor to the delegate of Algeria.
528. Mr. ABADA (Algeria) [F]: We wish to support the retention of Article 4 in the drafting of the Nairobi draft, in view of the fact that we have no amendment before us.
529. The CHAIRMAN [F]: The delegate of Cyprus has the floor.
530. Mr. AGATHOCLEOUS (Cyprus) [E]: My delegation would also like to express its support for Article 4 which we believe is a fair and well-balanced one, and we would think that it satisfies the requirements of the developing countries.
531. The CHAIRMAN [F]: The delegate of Brazil has the floor.
532. Mr. de ATHAYDE (Brazil) [F]: I should also like to support the retention of Article 4 as it stands. Therefore I strongly support the proposal which has just been made by the delegate of Morocco.
- 533.1 The CHAIRMAN [F]: If there are no other points of view, I think we are unanimous.
- 533.2 The delegate of the Union of Soviet Socialist Republics.
534. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: Mr. Chairman, I would like to say that I share the opinion of my colleagues who have just spoken and express my delegation's support of Article 4 which defines with great precision the programmes we have just been discussing.
- 535.1 The CHAIRMAN [F]: If the Commission agrees we could adopt Article 4 without a vote since it seems that there is unanimity.
- 535.2 The delegate of the United States of America has the floor.
- 536.1 Ms. RINGER (United States of America) [E]: We should like to ensure that the commentary on the text is sufficiently clear with respect to certain points; I refer specifically to the interpretation included in paragraph 105 of the Nairobi text which was inserted at the request of the United States delegation at Nairobi, and we would hope that this same interpretation could be included in the commentary of this meeting.
- 536.2 In addition, we have had a number of discussions on this article in the United States, and we feel that on balance, as a compromise, it is something that is acceptable. However, we do feel that there are differences, or possible differences of opinion as to what the term "teaching" means in paragraph (iii). We would hope

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that there could be some interpretation of the term "teaching" in the interpretative part of the Report. Our feeling is that this means systematic instructional activities in general. We would hope that the Conference could accept this as the meaning of "teaching".

537.1 The CHAIRMAN [F]: The delegate of the United States of America has problems with regard to possible differences of interpretation of Article 4, and, in particular, she refers to paragraph 105 of the Nairobi Report. I shall read for the benefit of our Commission paragraph 105: "At the request of the delegation of the United States of America, the following remarks from paragraph 49 of the Secretariat's commentary on the Paris text are reprinted in this report: under paragraph (i), short excerpts of a contest or spectacle could be distributed if the genuine purpose was the reporting of a newsworthy event, but only to the extremely brief extent 'justified by the informatory purpose'. To warrant the use of a short excerpt under this provision, the programming must be done as part of a report of general news of the day and would therefore, as a rule, have to be transmitted on the basis of a fixation. The possibilities of distributing all or any part of a sporting event under paragraph (ii) seem even more limited, since the sole purpose of the distribution must be teaching". In addition, the delegate of the United States of America suggests that by "teaching" we mean systematic instructional activities.

537.2 I should like to know whether the Commission agrees to the inclusion of these clarifications in the Report?

537.3 The delegate of Kenya has the floor.

538.1 Mr. STRASCHNOV (Kenya) [E]: Our delegation agrees with the interpretation given in paragraph 105 of the Nairobi report. There is a small mistake in the last sentence: there should be reference to paragraph (iii) and not to paragraph (ii), I think.

538.2 As to the question of "systematic instructional activities" I would like to ask our colleagues from the United States whether they include adult education. There is in the Nairobi report a paragraph 104 which says that in this context "teaching" includes "teaching in the framework of adult education". Now this is important, of course, for us as a developing country, and therefore we would very much like to understand the term "systematic instructional activities" which appears in the revised Universal Copyright Convention as also covering teaching in the framework of adult education as mentioned in the Nairobi report under paragraph 104. If it is so, we fully agree with the interpretation given to Article 4 by the United States delegation.

539.1 The CHAIRMAN [F]: I think that adult education is provided for in the text itself and that consequently there is no doubt. "Systematic activities" seems to me to be a good definition, whether it concerns adult education or not since it consists of an organized activity. Without that, we could of course always say that something is destined for the education of someone.

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539.2 The delegate of Algeria has the floor.

540.1 Mr. ABADA (Algeria) [F]: I would like to ask a question on the subject of systematic activities. Teaching in general is systematic. Does this mean that it concerns only teaching given in school in a systematic fashion; to the exclusion of teaching received, for example, by apprentices for a fixed period, or is it a question of excluding what is called "education"?

540.2 We should like to have some clarifications with regard to this concept of "systematic activities" so that we know whether it excludes teaching given in training sessions.

541.1 The CHAIRMAN [F]: Before giving the floor to the delegate of the United States of America, I should like to say that I think that it is evident that training is in no way excluded. I think that the word "systematic" is simply intended to avoid anyone being able to say, in the case of capturing, for example, "I was educating myself". I think that that is roughly the idea guiding the United States and I hope that the delegate of the United States of America will confirm my point of view.

541.2 The delegate of the United States of America has the floor.

542.1 Ms. RINGER (United States of America) [R]: I am very grateful to you for that interpretation. It is quite correct. If anything, the interpretation that we are putting forward is intended to broaden the concept of teaching, not to limit it. I think that your characterization is quite correct. It is, of course, possible for someone to argue that in ordinary forensics they are teaching - the sort of thing that we are doing here today. This is what the reference to the term "systematic" was intended to exclude. However, it certainly would include adult education. As the Chairman pointed out, this phrase, which appears in the text, would include any kind of training in the context of systematic education. It would not necessarily be limited to classroom situations. It could include tutorial situations where there was a system involved.

542.2 This was a point that I wanted to make in perhaps a little broader context. We have already heard several delegations say in Brussels, some in the meeting of the Intergovernmental Committee of the Rome Convention and some in this Conference, that their government found difficulty in ratifying the Rome Convention for purely domestic reasons, and this is certainly true in the case of the United States. We sincerely do not want to encounter that difficulty in ratifying this Convention. For this reason, we would very much want to make clear that the concepts that we are now evolving under Article 4 in particular are of international application only and do not bind a country with respect to its own domestic situations.

542.3 I think this is something we can agree on, and, in terms of our own situation in the United States (and I suspect in other countries given the Rome experience), we would be more comfortable

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with an interpretation that limited the impact of this Convention to international situations.

542.4 In other words, the binding effect of the Convention and the exceptions in Article 4, which we accept, would cover international situations and would not have a binding effect on interpretations in the United States or in any other country which might have domestic problems in this area. We might want to interpret some of the concepts more broadly and some more narrowly in the domestic context. We would accept the international obligation, but we would not want it to apply to the domestic context.

543. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

544. Mr. STRASCHNOV (Kenya) [E]: I think that what the delegate of the United States said is absolutely reasonable. It seems to me that it is clear from Article 1, that we are dealing, exactly as we are in the Berne Convention or in the Universal Convention, with international situations only. In Article 1 we say that the obligation of each Contracting State shall apply where the originating organization is a national of another Contracting State. This shows that we are dealing with international situations and not national ones. In addition, we have no clause on national treatment in this treaty. We have no such thing as Article II of UCC or Article 3, whatever it may be, in the Berne Convention, and therefore it is quite clear - to me at least - that (a) we are dealing only with international situations and (b) that national solutions may not necessarily coincide with the solutions provided in a given country for an international situation under Article 1 of the treaty.

545.1 The CHAIRMAN [F]: Naturally, the fears of the delegate of Algeria and the replies that have been given will be recorded in the Report so that the interpretation of the term "systematic activities" is quite clear.

545.2 I think that if I am not mistaken we have reached a consensus, both with regard to the text and with regard to the commentary and I now ask whether we can approve Article 4 as it stands in the Nairobi text without a vote.

545.3 Article 4 is approved.

545.4 We shall now have a break in the meeting. Then, with the permission of the delegate of the Soviet Union - for we decided earlier that we would study his proposal after Article 4 - but in view of the fact that we thought that this would not be before tomorrow, I ask if you accept that your request either be examined tomorrow at the beginning of the meeting and that today, after the break, we deal with Article 5, for the arguments which were put forward - notably that the delegations were not ready - continue naturally to be valid.

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545.5 The delegate of the Soviet Union.

546.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: On behalf of our delegation I would like to mention the wise approach which is characteristic of your manner of directing our work in your capacity as Chairman and therefore I consider most welcome your suggestion that we proceed to the examination of Article 3 in the interpretation and phrasing proposed by our delegation as soon as Article 4 is finalized. As to the rather surprising statements made by some delegations to the effect that they have had no time to familiarize themselves with our article, I would like to say the following:

546.2 First, our proposals were submitted on the first working day of the Conference, i.e. 6 May, and were distributed among all delegations on the following day.

546.3 Second, when it was suggested that we should not discuss direct television broadcasting, in response to the wishes of other delegations and in order to reach an acceptable compromise, the Soviet delegation agreed to this and in this connexion the Chairman, on behalf of the Commission, has on two occasions confirmed the right of the Soviet delegation to introduce for discussion the previously submitted joint USSR, Ukrainian SSR and Byelorussian SSR proposals when and where they logically fit. And it is on the basis of this provision that the Soviet delegation suggested that we discuss Article 3 today. I would like to take this opportunity to express my appreciation to all the delegations that have supported our proposals. This, in my opinion, is an expression of a highly responsible attitude, a profound and wise understanding of the urgency of these issues. And I would also like to add that this would be the right place for this article which fits in very well with both the structure and the philosophy of this Convention. Placed before Article 4 it would be in full harmony with this Article 4 which deals with programmes, specifically with the contents of programmes. And I believe that it would be quite logical to start discussing the proposed article right after the break that you are going to announce because the issues dealt with in this article are so clear, so self-evident, so well-known and of such political urgency and importance that I do not think much time would be necessary to decide whether they should be incorporated or not.

547.1 The CHAIRMAN [F]: I thank the delegate of the Soviet Union who suggests that we keep to our decision and that, consequently, we study his proposal after the break.

547.2 Does the Commission agree to this procedure?

547.3 The delegate of Kenya has the floor.

548.1 Mr. STRASCHNOV (Kenya) [E]: It is simply a qualification we are seeking. You said, I think, that the Soviet proposal is now limited to what appears in CONF/SAT/8 under Roman II. Under Roman II

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there is, however, a draft for two articles. Our question is the following:

548.2 First of all, are we asked to insert in Article 3 of the draft treaty only what appears under Roman II of document CONFSA^T/8 and, if so, are we asked to include both articles or only one of them, and which one?

549.1 The CHAIRMAN [F]: Before giving the floor to the delegate of the Soviet Union, I hasten to say the following: the delegate of the Soviet Union presented orally today only the first part of Roman II of his proposal. Is that not so? And he has not indicated to us the fate of the second part. Which he will certainly do now.

549.2 The delegate of the Soviet Union has the floor.

550. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: On behalf of the delegations of the Soviet Union, the Ukrainian and Byelorussian Soviet Socialist Republics, the Hungarian People's Republic, the Czechoslovak Socialist Republic and the German Democratic Republic we have put forward a proposal to incorporate a new Article 3; the relevant document has been submitted to the Secretariat, and in fact this concerns only the first article of document CONFSA^T/8. This means that the Soviet delegation reserves the right to take up its other proposals in the course of the debate on the text of the Convention when and where they would fit the philosophy and structure of this Convention or at the end if the situation so requires.

551.1 The CHAIRMAN [F]: Consequently, the situation is quite clear. We are discussing only the first part of the first amendment of the delegation of the Soviet Union under Roman II.

551.2 I give the floor to the delegate of the Federal Republic of Germany.

552. Mr. GAERTE (Germany, Federal Republic of) [E]: I apologize for delaying our procedure. I hate to do that, but I have no way out because I think the proposal of our colleague from the Soviet Union is a very important one which deserves our close attention. And therefore I would certainly require some more time - and I think this applies as far as I know to a number of other delegations. Therefore, in view of the fact that I have no way out, I have to move formally under Rule 18 that the meeting be adjourned for a few hours.

553.1 The CHAIRMAN [F]: Invoking Rule 18 of the Rules of Procedure, the delegate of the Federal Republic of Germany requests that the meeting be adjourned. Under paragraph 2 of Rule 18, we have to take an immediate decision on this subject.

553.2 In our Rules of Procedure the usual clause requiring two

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speakers and two against is not included. The procedure is much more simple. Consequently, I put to the vote the proposal of the Federal Republic of Germany.

553.3 Is it on a point of order? I cannot give a point of order. We have to take a decision immediately. Those in favour of adjourning the discussion? Those against? Abstentions?

553.4 The proposal of the Federal Republic of Germany is accepted by 22 votes in favour, 12 against and 5 abstentions.

553.5 Consequently, the meeting is suspended for several hours at the request of the delegate of the Federal Republic of Germany, which amounts to an adjournment. The next meeting will begin on Monday morning at 10 a.m.

554. The meeting rose.

Main Commission - Fifth meeting¹

Monday, 13 May 1974 at 10 a.m.

Chairman: Mr. da COSTA (Brazil)

555.1 The CHAIRMAN [F]: We continue the work of the Main Commission. I hope that your weekend was a fruitful one, above all from the point of view of meditation on our draft Convention. As far as I am concerned, I also reflected on the point we have reached and I will now share my reflexions with you.

555.2 Firstly, I think that we had a useful week. We have adopted two articles of the greatest importance: Article 1 which contains the very nature of the obligations and Article 4 concerning exceptions; and also a very important principle which excludes direct broadcasting from our draft. We have also spent a great deal of time - much too much in my opinion - on the original Article 3 concerning duration. It seems to me that the time we spend on each question is in inverse proportion to its importance. We are like automobile engineers who are in agreement on the chassis and the engine but cannot agree on whether the radiator cap should be the Victory of Samothrace or the Colossus of Rhodes. And so at this time the Commission is getting heated over discussions that Byzantine Sophists dream about.

555.3 All this would be perfect if we had not wasted an enormous amount of time when we still have many tasks to complete. We have adopted three articles only, or four if you prefer - i.e. a quarter of the Convention. If we continue at this pace, we would need four weeks to conclude our work, which is obviously unthinkable. Therefore, I regret to inform you that unless we find some means of

1. Cf. document UNESCO/OMPI/CONFSAT/VR.11 (prov.).

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expediting our work we shall be forced to take the consequences in the shape of night sessions, weekend sessions and other pleasures with which you are familiar.

555.4 I think that the fact that we have wasted time is due to the following approach: we start always off from extreme positions and gradually come to a reasonable compromise by approximation. It is a method that is very stimulating for the mind but extremely slow and here, I appeal to the moderate delegations not to wait for the clash of extreme solutions to find the mean; but to suggest them in advance, to try and find them and thus we would have something on which the consensus could be based, because what is important is to obtain a victory without forcing a vote. Do not forget that in the first place, a two-thirds majority is necessary for approval and, secondly, the crucial problem of ratifications. It is quite obvious that a State which leaves this Conference dissatisfied will not ratify the agreement and, consequently, everything would fall to pieces. Therefore, it is vital to find middle-of-the-road solutions, solutions by a consensus on all the points we are dealing with. Obviously, to find solutions by consensus, we are a little like the pianist who arrives on stage and sits on a stool to play the piano. Then there are two systems: you can draw the stool up to the piano or you can draw the piano towards the stool. It is up to us to find the best solution.

555.5 To-day we shall discuss the Soviet proposal on Article 3. A new text has been distributed in document CONFSAT/23.

555.6 I give the floor to the delegate of the Union of Soviet Socialist Republics and ask him to be kind enough to introduce his text.

556. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: As the delegations present here know we adjourned our session last Friday to provide an opportunity to study in depth the proposal which was put forward by the Soviet delegation and supported by a number of other delegations, namely to incorporate the text previously submitted by the Soviet delegation, as Article 3. It was emphasized that after a week of work it had become evident that it would be both illogical and inconsistent to try and separate signals from programmes and programmes from signals; that the Convention under discussion required certain imperatives for the harmonization of specific articles, Article 4 in particular, in respect to the contents of programmes which are the subject of these articles. We also noted that the principles set forth in our text of Article 3 governing interstate relations had already been fixed as norms of international law in a number of documents, and it would be quite natural, important and advisable to extend the application of these principles and norms so as to cover the subject under discussion, i.e. a Convention on legal regulations relating to programme-carrying signals. We proposed that a provision be fixed in this article to the effect that all governments should assume an obligation to exclude from programmes to be transmitted by satellite - and there it was said that such principles could and should apply to direct television broadcasting

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but they are just as applicable to point-to-point transmission, i.e. transmissions involving a distribution network - any material that might be detrimental to the maintenance of peace and security, publicizing ideas of war, national and racial hatred or otherwise aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions. In this connexion, I would like to refer to the 1967 Outer Space Treaty, the elaboration of which proceeded from the imperative need that outer space - and satellites - be used for the benefit of social progress, for the benefit of promoting mutual understanding between peoples, to ensure the maintenance of peace and avoid any acts likely to harm this or that State. I would like to remind you of some basic principles which are to be found in other international documents or practised in interstate relations such as the UN Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples, etc., but which have not so far been legally fixed in conventions governing the legal aspects of programme-carrying signals transmitted by satellite. For these very reasons we consider it very important to incorporate this article and thus perform the moral duty that has been entrusted to us by our peoples and governments whose expectations in respect to this Conference are - as we see it - greater than some delegations tend to believe. Therefore, I would like to hope that all these considerations will be fully taken into account during the debate over our proposal so that we can fulfil the task entrusted to us. Thus I invite you to start discussing our proposal and I would like to emphasize that in our opinion it is a matter of great political importance and urgency.

557. The CHAIRMAN [F]: I give the floor to the delegate of the United States of America.

558.1 Mr. WINTER (United States of America) [E]: Last week the Soviet Union introduced in document CONF/SAT/8 an entirely new concept and philosophy into the debates concerning this important Convention. It has now been proposed that this Convention, which was intended from its very inception to deal primarily with the problem of the poaching of programme-carrying signals transmitted point-to-point over satellites, also cover the new problem of direct satellite broadcasts over frontiers. For a number of important reasons the United States believes that it is inappropriate and unnecessary to deal with the latter problem, direct satellite broadcasts, in this Convention.

558.2 On 8 May, the delegations of Algeria and France proposed that the Brussels Convention should not, I emphasize not, deal with broadcasts made directly to homes from satellites. The United States supported this proposal, as did virtually every other delegation in this Conference. Therefore, the scope of the problem before us is clearly limited to the protection of programme-carrying signals transmitted over satellites to ground stations in the receiving State. Any further distribution, and this is a key word, distribution, is under the effective control of the government of the receiving State. In such a context it appears to us that the Soviet proposal would be

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academic. Furthermore, the Soviet proposal is quite inconsistent with the Nairobi philosophy, which was, as you know, brilliantly conceived by the delegate of Morocco, Mr. Chakroun, and first supported by the delegates of Mexico, Mr. Larrea Richerand, and of Brazil, Mr. da Costa. The Nairobi philosophy received widespread support at Nairobi by developing, as well as developed countries, because it deals with the protection of the signal rather than the content of the signal, and this has generally been recognized in the debates here in Brussels.

558.3 A number of points were emphasized by the delegate of Morocco at Nairobi, the most important of which were that no new exclusive private right with its serious implications would be created, and, that the nature of the protection afforded the broadcasting organizations would be left entirely to domestic law.

558.4 In view of the explanation that the signal was protected and not the programme, another delegate from a developing country at Nairobi, Senegal, was one of the first to support the new philosophy. As familiar as the vast majority of delegations here present in Brussels are with the history of the development of the Nairobi text, I do not believe that I am overstating the case when I say that, if we reintroduce the very complex question of programme content, we will significantly hinder our chances of arriving at a Convention acceptable on a worldwide basis.

558.5 We should also like to draw your attention to the exposition on 8 May by the Unesco representative, Mr. Sommerlad, on this matter. Mr. Sommerlad explained clearly that this international Conference is only one of a number of international bodies considering communications over satellites. Moreover, some of these other bodies are considering in detail the political problems presented by direct to home satellite broadcasts. He noted that since the 1972 session of the General Assembly of the United Nations, various subsidiary bodies of the Outer Space Committee have been struggling with this complex problem without any conclusive results.

558.6 At this point, I might make a parenthetical observation: notwithstanding the very high level of competence and expertise at the present Conference, it is a bit too much to ask this Brussels Conference, composed mainly of technical experts, to attempt to solve in one week a very complex problem that other international bodies have not resolved over a period of several years.

558.7 Mr. Sommerlad concluded his statement by pointing out that in the proposed Brussels Convention we are dealing with the question of retransmission of signals carried out through ground stations under the control of national authorities. I would like to give the greatest emphasis to this point for the consideration of the various delegations here.

558.8 As has been previously noted in this Conference, not only by

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Mr. Sommerlad but also by a number of delegations, the Legal Sub-Committee of the U.N. Outer Space Committee is now in session in Geneva and will continue to meet until 31 May. This Sub-Committee is now studying, among other things, the report of the Working Group on Direct Broadcast Satellites. Many of the States represented at this Conference are also represented in Geneva. It is not difficult to foresee the possibility of serious problems being created if this Conference should attempt to take decisions regarding direct broadcast satellites which are in conflict with any decisions taken in Geneva. This would especially be undesirable since, as we all know, this Conference has already taken the decision to exclude direct broadcast satellites from this Convention.

558.9 We believe that the proposals under discussion pertain essentially to the difficult and thorny problem of direct broadcast satellites. For practical, as well as procedural reasons, it is our belief that these proposals are clearly beyond the scope of this Convention in which direct broadcast satellites are now clearly excluded. More explicitly, as we have stated before, we believe that this matter should be deferred to the appropriate and competent bodies of the United Nations considering it. Therefore, Mr. Chairman, we would urge this Conference to return its attention to the Nairobi text which relates directly to the subject of this Convention, that is, the distribution of programme-carrying signals transmitted by satellite.

558.10 In conclusion, I would refer back to my opening statement in which I said that communications satellites present the peoples of the world unique opportunities for cultural enrichment and greater understanding. The proposed Brussels Convention will certainly contribute to this objective, and I would hope that we would not miss this opportunity.

559. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

560.1 Mr. GAERTE (Germany, Federal Republic of) [E]: With regard to the Soviet proposal contained in documents CONF/SAT/8 and 23 of this Conference which were tabled on Friday last week, and following my own statement on Friday, I would now like to state the following:

560.2 The delegation of the Federal Republic of Germany to this Brussels Conference has no mandate to deal with the subject in question. My delegation, therefore, will have to oppose its inclusion in the Convention we are dealing with here.

561. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

562.1 Mr. STRASCHNOV (Kenya) [E]: As our delegation has already said in the general debate in the Plenary, we understand and

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appreciate the ideas behind the proposals put forward by the Soviet Union. We stated that Kenya is represented on the Outer Space Committee of the United Nations and has expressed its sympathy with the proposals put forward there by the Soviet Union. We do not think that it is wrong to consider that the proposal made by the Soviet Union would be out of place in this Convention because this Convention does not deal with the programme but only with the carrier, with the signal. I think the Soviet delegation is not wrong when they say that there are some provisions here, for instance Article 4, which also deal with the contents. Therefore, it is to some extent artificial to divide the container from the contents as some delegations perhaps consider right to do.

562.2 On the other hand, it is our view that this Convention is a purely technical Convention. It is a Convention to prevent poaching of satellite signals. Now we do not believe that political provisions can be inserted in a purely technical treaty. We also believe, as said on Friday in a discussion with the American delegation, that this Convention only envisages international situations not national situations. When you look at the Soviet proposal in document CONF/SAT/23, you of course realize that this is a provision which is a national provision. In other words, Contracting States undertake to influence their own programmes transmitted by satellite whether these programmes are beamed at other countries or not, and we believe that a clause, a provision, which deals in fact with national situations has no place in this Convention. I will not dwell on the question of the exclusion of direct broadcast satellites, that has been dealt with by the American delegation. What I would like, however, to say is that, as we have now excluded direct broadcast satellites from this Convention, the Soviet proposal before us, really goes beyond the Soviet proposals laid before the United Nations. The draft Convention filed with the General Assembly of the United Nations by Mr. Gromyko, the Minister of Foreign Affairs of the Soviet Union on 8 August 1972, deals explicitly and exclusively with direct broadcasting by satellite. Now we did exclude direct broadcasting by satellite from this Convention, and if we included the Soviet proposals into this Convention we would even go further than the Soviet Union itself wished to go when the Soviet proposal was deposited with the United Nations General Assembly.

562.3 The United Nations, as you know, referred this problem, which is a highly political one, to its Outer Space Committee. The Outer Space Committee discussed the Soviet proposals as well as counter proposals, especially those tabled by Canada and Sweden in two meetings, June 1973, March 1974, and defined the zones of consensus and zones of disagreement to make the work of the Legal Sub-Committee of the Outer Space Committee of the United Nations possible. This Legal Sub-Committee of the Outer Space Committee is meeting right now in Geneva. It has four weeks to discuss three questions: 1) the legal status of the moon; 2) the registration of spacecraft; 3) the Soviet proposals for a draft Convention and the Canadian/Swedish proposals for principles governing direct broadcast by satellite. We cannot, it seems to me, prejudge the discussions in the Legal Sub-Committee, and the discussions which will follow in the United

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Nations General Assembly, by including here any texts of a purely political nature which coincide with the proposals discussed in Geneva and later in New York. We would prejudge the discussions also as far as the form is concerned. There has so far been no decision in the United Nations whether these principles concerning the contents of direct broadcasting by satellites should have treaty form or only the form of principles, perhaps not legally binding principles like the Unesco principles referred to by Mr. Sommerlad during his statement. If we now put at least a part of the Soviet proposals into this treaty, we will have, of course, pre-empted if I may say so, the form; we will have given the form of a treaty to something which so far has, under the United Nations decision no such form, because the question of form is one of the main problems before the United Nations' various bodies.

562.4 Now, may I add, that in our view if we included this political provision into the treaty, we would considerably reduce the chances of ratification, and I am afraid we would even considerably reduce the number of signatures. I am afraid that our Convention, which is so necessary to prevent the ever increasing cases of poaching, would not even have a significant number of signatures here.

562.5 Therefore, I think that it would be reasonable without taking a vote on these proposals, to reflect the discussion in the Report; and certainly we can be assured that our excellent General Rapporteur will give full coverage in her Report to this debate.

563. The CHAIRMAN [F]: I give the floor to the delegate of Senegal.

564.1 Mr. N'DIAYE (Senegal) [F]: When it referred to document COMPSAT/8, the delegation of Senegal declared that it considered that the spirit of the provision contained in this document was not incompatible with the Convention. The document which was before us did not mention where this provision should be inserted. To-day, it is put before us in a much more explicit form, i.e. it should be inserted in place of the original Article 3 and would therefore become a new Article 3.

564.2 As the delegate of the United States has stated, it is exact that the delegation of Senegal has always supported the proposal and continues to support it. This is for the reasons that we have just indicated that we considered that the Soviet proposal could be inserted in the text because we thought that this could be done in the Preamble but not in a separate article in the text.

564.3 The opinion according to which this diplomatic Conference can deal only with technical questions does not stand up to analysis either. It is not for these reasons that we have changed our position for a diplomatic conference deals with politics, whether it wishes to or not. But as the delegate of the United States has stated, it is

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evident that, once the Convention no longer treats programmes but the signals themselves on the one hand, and on the other direct broadcasting is excluded from the Convention, the insertion of this article obviously risks upsetting the balance. It is therefore for this obvious reason that the Senegalese delegation associates itself with the statement of the delegate of Kenya and requests that this provision at least appear in the Report.

565. The CHAIRMAN [F]: The delegate of Morocco has the floor.

566.1 Mr. CHAKROUN (Morocco) [F]: True to its preliminary statement during the general discussion, the delegation of Morocco confirms its determination to remain within the framework of the instrument outlined at Nairobi and desires that this instrument remain free of anything that might delay its application in the shortest possible time.

566.2 It is true that our Convention is very limited in scope, perhaps it is even incomplete, but my delegation is persuaded that the General Report will serve as a useful and indispensable complement, as will also, in the same way, other international instruments such as the declaration of Unesco and the very important draft of the Union of Soviet Socialist Republics submitted to the competent bodies of the United Nations.

566.3 In addition, the proposal that was presented to us in its revised version by the delegates of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic comes within the same context and obviously cannot but receive the accord of those who are inspired by the spirit of peace, brotherhood among men and peaceful co-existence. My delegation warmly congratulates the authors of this noble proposal inspired by its feelings on the use of space transmissions. But should the Commission not be unanimously in favour of the addition of a new article containing this proposal, without of course any allusion to direct broadcasting, my delegation would insist that this text be consigned to the General Report of the Conference. My delegation was even going to suggest that this position be drafted in the form of a declaration which would be annexed to the Convention and submitted for separate ratification. But, in view of the experience acquired in other circumstances of the same type, we fear that such a procedure would constitute either an impediment to the signature of the instrument which we desire, or a motive for burying it alive from the ratification point of view. Whatever position is in the end taken by the majority of delegates, my delegation desires that the General Report take account of this brilliant proposal.

567.1 The CHAIRMAN [F]: As some delegations are growing impatient, I shall read the list of speakers: the United Kingdom, Denmark, France, the Ivory Coast, the Ukrainian Soviet Socialist Republic, Sweden, Japan, Brazil and Norway, the Netherlands, Italy,

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Canada, Mexico and Australia.

567.2 The delegate of the United Kingdom has the floor.

568.1 Mr. DAVIS (United Kingdom) [E]: Personally, I have no doubt that this Conference has no competence to consider the Soviet proposal simply by virtue of the purpose for which the Conference was convened. But this is a somewhat legalistic approach. It strikes me that on a more practical level, the fact that we have already made the decision to exclude from our consideration direct broadcasting satellites makes the Soviet Union proposal inappropriate. It would in fact amount to a declaration on a subject with which the Convention as a whole is not concerned.

568.2 But the point made by the delegate from Kenya, that the decision here would pre-empt the decision of the other United Nations bodies considering the matter, seems to settle it. It makes it perfectly clear that the discussion on this matter is not for us here, and personally I am rather relieved.

569.1 The CHAIRMAN [F]: You have seen that our list is long and is not yet closed. Consequently, I shall ask delegates to be very brief. As La Bruyere said, "All is said if one arrives too late", and I think that our statements should serve to determine positions rather than trying to convince others.

569.2 The delegate of Denmark has the floor.

570. Mr. WEINCKE (Denmark) [E]: Our delegation is not in a position to consider any such clauses as proposed by the delegation of the Soviet Union and other delegations. In our opinion these proposals would be out of place in this Convention because they concern questions which are dealt with by other international organs. We therefore regret to say that it would not be possible for the Danish delegation to support them. Of course, we would have no objection and we would welcome it if the discussion we have here to-day would be reflected in the Report.

571. The CHAIRMAN [F]: I give the floor to the delegate of France.

572. Mr. DESBOIS (France) [F]: You have asked delegates to be brief. This pressing invitation, to which I bow, was not necessary for me to be brief. In fact, the French delegation has already had the opportunity to express its motives, from which I shall now draw the conclusions. I shall therefore limit myself to informing you that the French delegation considers that the proposal of the delegation of the Union of Soviet Socialist Republics contained in document COMFISAT/23 is not compatible with the purview of this Conference. The French delegation therefore declares that it will oppose the insertion of this proposal in the draft Convention

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presently being studied.

573. The CHAIRMAN [F]: I give the floor to the delegate of the Ivory Coast.

574.1 Mr. ZOGBO (Ivory Coast) [F]: The delegation of the Ivory Coast takes the floor to support what has been said by the delegates of the United States of America and Kenya. We wish to affirm here that the Soviet proposal, although very attractive to certain countries, does not correspond to either the spirit or the philosophy of Nairobi.

574.2 For this reason, the delegation of the Ivory Coast will not support this proposal.

575. The CHAIRMAN [F]: The delegate of the Ukrainian Soviet Socialist Republic has the floor.

576. Mr. ALEXSEV (Ukrainian Soviet Socialist Republic) [R]: As the debate has shown, many delegations assume that only a programme-carrying signal can be protected under a convention, and it would be irrelevant to deliberate on the protection of a signal proper. All delegations or almost all delegations recognize the urgency and necessity of providing that programme-carrying signals - whether transmitted directly by satellite or through a distribution network, and I emphasize, through a distribution network - should not carry ideas of war, national and racial hatred nor be aimed at interfering in the domestic affairs of other States, undermining national laws, customs and traditions. Incorporating the article as proposed by the delegations of the USSR and some other delegations would correspond to the generally recognized norms of international law. These principles would also correspond to the terms of the 1967 Outer Space Treaty which provides that activities involving the use of outer space shall be carried out in the interests of maintaining international peace and security and the promotion of peaceful co-operation. The inclusion of this article would both summarize and specify obligations of States with regard to the protection of programme-carrying signals. Some of the delegations introduced supplementary interpretations to the article proposed by the USSR which do not correspond to the spirit of this article, in particular direct television broadcasting. That is why the Ukrainian SSR delegation strongly supports the proposal to incorporate this article in the text of the Convention.

577. The CHAIRMAN [F]: I give the floor to the delegate of Sweden.

578. Mr. DANIELIUS (Sweden) [E]: The Soviet proposal relates to a number of important questions which have for some time been given considerable attention in the Outer Space Committee of the United Nations. I do not intend here to comment on the substance

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of the proposal, I believe that the views of my country are well known from the work of the United Nations. I wish to recall that in the Working Group of the Outer Space Committee, Sweden together with Canada has tabled a concrete proposal for some principles that in our view could serve as useful guidelines for States in this field. We know that the discussion on this subject has already been going on for some time in the United Nations and the work there has not yet been completed. I believe that it would be difficult for us to resolve here in a few days problems which have been discussed for years in the Outer Space Committee. In our view these problems are better dealt with in the United Nations and we fear that it might even complicate the work which is going on in the United Nations if we decided to include regulations on this subject in our Convention. For these reasons, I regret that my delegation is unable to support the idea of including this new article in the Convention.

579. The CHAIRMAN [F]: I give the floor to the delegate of Japan.

580. Mr. HIRAOKA (Japan) [F]: In accordance with the instructions that our delegation has just received from Tokyo I must make the following statement: my delegation is opposed to the proposal made by the delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic as it appears in document CONF/SAT/23, for two reasons, both of which have already been given by several other delegations: (1) the question of general guidelines for controlling direct distribution by satellite is being discussed in the Outer Space Committee on the basis of resolution No. 2816 of the United Nations Organization and no consensus has yet been reached in these discussions. And so to deal with this problem during our Conference might not be compatible with the consensus which may be reached by other organs of the United Nations; (2) the proposal of the Union of Soviet Socialist Republics is not compatible with the purview of the Convention which we are discussing at this Conference.

581. The CHAIRMAN [F]: I give the floor to the delegate of Brazil.

582.1 Mr. de ATHAYDE (Brazil) [F]: The delegation of Brazil finds that the principles expressed by the delegation of the Union of Soviet Socialist Republics in the proposed amendment are excellent. However, we have serious doubts as to the appropriateness of inserting the new article under consideration in the Convention itself. In the first place, direct broadcasting has been specifically excluded from the Convention by the express decision of our Main Commission; whereas the use of the material mentioned in the new article proposed by the delegation of the Union of Soviet Socialist Republics could not present any real danger except in the case of direct transmission.

582.2 Moreover, those aspects concerning the competence of Unesco, taking into account the Soviet proposal, have already been the subject

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of a resolution of the General Conference of that Organization at its seventeenth session, which even approved a declaration on this subject.

582.3 The Brazilian delegation also ventures to stress that, as other delegations have already recalled, these aspects are presently covered by the work now taking place within the United Nations and their Committee on the Peaceful Uses of Outer Space, which has in fact been presented with a draft Convention by the Union of Soviet Socialist Republics and with guidelines submitted jointly by Canada and Sweden. It is for this reason that Brazil, although it is in complete agreement with the principles set out in the amendment of the Union of Soviet Socialist Republics, finds that our Conference is not the most appropriate forum for approving recommendations in this field. That said, the Brazilian delegation cannot but support the suggestion made by the delegate of Kenya, which is that the contents of our discussions on the Soviet proposal be recorded in the Final Report of our Conference.

583. The CHAIRMAN [F]: I now give the floor to the delegate of Norway.

584.1 Ms. SAEBO (Norway) [E]: The Norwegian delegation cannot support the inclusion of the proposed Article 3 in this Convention as we hold the opinion that this Conference is not the right forum to discuss and decide on such a provision.

584.2 This is a political question which should be dealt with and is being dealt with by the competent bodies of the United Nations and the Norwegian delegation to this Conference has no mandate to decide on this question. Therefore, the Norwegian delegation is against the proposed Article 3 without thereby expressing any opinion concerning the substance of the proposal.

585. The CHAIRMAN [F]: I give the floor to the delegate of the Netherlands.

586.1 Mr. VERHOEVE (Netherlands) [E]: With regard to the proposal and document CONF/SAT/23, former CONF/SAT/8, my statement will be very brief.

586.2 The Netherlands delegation was sent here to take part in the discussions of the technical problems of the Nairobi draft Convention for the protection of signals, and not to discuss the political problems of the protection of the public against signals. Therefore we have no mandate to discuss the merits of the proposed amendment by the USSR and my delegation is unable to support the inclusion of this amendment in this draft Convention.

587. The CHAIRMAN [F]: The delegate of Italy now has the floor.

588. Mr. MESCHINELLI (Italy) [F]: The delegation of Italy

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wishes to state that it has no mandate to deal with the proposals presented by the delegation of the Union of Soviet Socialist Republics in view of the fact that the competence of the Conference is limited to the draft agreement for the distribution of signals, which does not include direct transmission. The subject and the form of the principles mentioned in the Soviet proposals would be better considered by other organs of the United Nations, in which the majority of the countries present here are represented. That said, the delegation of Italy is not in a position to support the proposal of the Union of Soviet Socialist Republics, in particular document CONF/SAT/23.

589. The CHAIRMAN [F]: The delegate of Canada has the floor.

590.1 Mr. CORBEIL (Canada) [E]: It is our belief that international organizations such as WIPO and Unesco were created to solve problems of mutual interest which happily unite States on a technical plan and that, on the other hand, the United Nations was established to deal with matters of a political nature which unfortunately too often divide us. Although we sympathize with the aims of the Soviet proposal, we feel that it falls within this second category. Moreover, the United Nations has already been seized with the issues raised by the Soviet proposal and they have been relegated to the UN Committee on Outer Space to discuss these problems in a complete and systematic fashion.

590.2 Therefore, for these reasons and those raised by other States such as Sweden, we support the view that the Conference revert back to the Nairobi approach so that the experts assembled here in Brussels can make the contribution which is expected of them.

591. The CHAIRMAN [F]: I give the floor to the delegate of Mexico.

592. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico is in agreement with the basis of the proposal of the Soviet Union, but we consider that the material dealt with in the proposed Article 3 has already been studied by the Outer Space Committee of the United Nations and, on the other hand, we consider also that the problem does not come within the purview of our Convention, especially since we have already excluded direct television broadcasting, although we wish to insist that what this Convention is intended to protect is the transmission of programme-carrying signals. The Nairobi philosophy was indeed aimed at protecting the signal, but a programme-carrying signal. This delegation would agree to the request of the Soviet Union being included in the Report in which would also be included the whole discussion that has taken place to-day.

593. The CHAIRMAN [F]: I give the floor to the delegate of Australia.

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594.1 Mr. CURTIS (Australia) [E]: To put it very simply, the position of the Australian delegation is that it is not appropriate to deal with the proposals of the USSR in the present Conference. They raise important matters of principle, and more than that, they also raise questions of the juridical formulation of those principles. We do not think that this is the forum in which to debate either the principles or the way in which they might be given legal effect as obligations binding on States. There are three reasons why we are of this opinion:

594.2 First, we think the issues are not within the general competence of this Conference. In the first place, we have come as delegations concerned with matters of broadcasting rights, copyrights and neighbouring rights; we are dealing here with how to protect point-to-point satellite transmissions of programmes. The responsibility of States for the content of programmes is a political matter not relevant to our present task.

594.3 The second reason is that these matters are too important to be dealt with on the run in this Conference. This Conference was prepared for by three meetings of Committees of experts, which have extensively gone over the ground covered by the Nairobi text. However, there has been no prior examination within the context of that draft of the question of responsibility of governments for the content of programmes.

594.4 The third reason is perhaps the most important one. The delegation of Australia supports those who have said that it would not be proper for this Conference to embark on a discussion of this subject because it is being considered by other bodies established by the United Nations to consider these very issues. The Working Group on Direct Broadcast Satellites has dealt in depth with these matters, including the basic issue of national sovereignty. There has been in our view a more appropriate forum already convened to consider issues bearing on national sovereignty. It would not be proper for those issues to be dealt with in a technical convention.

594.5 We believe, however, that the Report of this Conference should reflect this discussion and the significance of the issues involved. We would hope that this could be accepted as a satisfactory conclusion to the matter without proceeding to a vote.

595. The CHAIRMAN [F]: I give the floor to the delegate of Algeria.

596.1 Mr. DERRADJI (Algeria) [F]: During the first debate on this question the Algerian delegation gave its support to the proposal of the Union of Soviet Socialist Republics on one condition: we gave our support because we considered that this proposal contained praiseworthy principles, principles that could be to the benefit of all humanity and peace. But we made one condition, because the Algerian delegation was the author of a proposal which excluded direct television by satellite and we thought that the

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Soviet proposal implied coming back on this first decision.

596.2 The Algerian delegation understands perfectly the considerations and motives which induced the Union of Soviet Socialist Republics to present this proposal and we share them; for these same considerations the Algerian delegation defended the idea that signals transmitted by satellite should go via the intermediary of earth stations. Indeed, it seems to the Algerian delegation that it would be much more effective to entrust the responsibility for controlling the contents of the signal to the recipient organization which, alone, would be capable of better adapting the diffusion of the contents of the signal to the ideology, to the cultural needs and to the traditions of the country concerned, than in trusting - or rather leaving the responsibility in this field - to a State who could disregard it.

596.3 To the extent that the Soviet proposal expressly excludes direct broadcasting from the field of application of this Convention, we shall support it. In fact the principles that it contains could not inconvenience those countries animated by considerations of international co-operation and peace. But with regard to the most appropriate place for inserting these provisions, I think that this is a technical question and the Algerian delegation has confidence in the spirit of compromise that will reign here to find the place that should be reserved for the Soviet proposal.

597. The CHAIRMAN [F]: I give the floor to the delegate of the Union of Soviet Socialist Republics. Is it to reply to the delegate of Algeria? Would you please reply?

598. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I would like to state briefly that the Soviet delegation as well as other delegations (I have in mind the Ukrainian SSR, the Byelorussian SSR, the German Democratic Republic, the Czechoslovakian Socialist Republic and the Hungarian People's Republic who co-sponsored Article 3 in its present variant) believed that as we have agreed that this Convention should not concern direct television broadcasting and since my colleague from France proposed to include an additional article to this effect specifying that this Convention was not intended to provide legal regulations for direct television broadcasting, I would like to emphasize that in this particular situation the reason for introducing this article was that the article should govern questions of the contents of the programmes circulated through distribution systems, i.e. point-to-point broadcast transmissions which are the subject of our Convention; as to the terms of reference of those delegations that wish to say that technical matters only are to be considered here, I would like to remind you of the title of this Conference, in particular that it is a conference of States and as such has - in our opinion - every right and a full mandate to discuss political matters as well. I assure you that if we perform our moral duty and incorporate this article we would in no way interfere with the work of other organs, including those of the United Nations which deal

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with matters related to the legal aspects of space and satellites.

599.1 The CHAIRMAN [F]: I thank the delegate of the Union of Soviet Socialist Republics for this clarification.

599.2 I give the floor to the delegate of Luxembourg.

600.1 Ms. LENNERS (Luxembourg) [F]: The delegation of the Grand Duchy of Luxembourg is of the opinion that the proposal of the Union of Soviet Socialist Republics, which has been seconded by other socialist delegations, is not compatible with the aims of the present Conference.

600.2 In addition, the questions broached by the Soviet proposal are already being discussed in places other than this Conference. These two reasons lead the Luxembourg delegation to oppose the incorporation of this proposal in the Convention.

601. The CHAIRMAN [F]: I give the floor to the delegate of the German Democratic Republic.

602. Mr. ZSCHIEDRICH (German Democratic Republic) [E]: As the emission of programme-carrying signals by satellite is a use of outer space, and as this use comes directly under international law, it is only logical for our delegation that the new Article 3 proposed by the Soviet Union and other socialist states, among them the GDR, should be included in a new international document. As nearly all States here present have already recognized the principles contained in the proposal, we see no reason not to include it in the Convention. We want to underline once more that we cannot agree with the idea of protecting only the signals because in reality a signal does not exist without its content; and we think that States have an international responsibility for the contents of such programmes emitted from their territory. We think that the Brussels Conference is competent and entitled to include the joint proposal of the socialist states in this Convention.

603.1 The CHAIRMAN [F]: The following speakers are still on my list: Egypt, Belgium, Switzerland, Czechoslovakia, Central African Republic and Spain. I propose closing this list of speakers for the moment. Then, I shall resume the discussion and we shall have a break, during which I hope that some constructive solutions will be found. Are we in agreement? Perfect.

603.2 I close the list of speakers for the time being and give the floor to the delegate of Egypt.

604.1 Mr. ANTAR (Arab Republic of Egypt) [F]: The Egyptian delegation feels sympathetic towards the Soviet proposal because it safeguards the sovereignty of each country against any undesired direct broadcasting beamed towards its territory.

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604.2 Nevertheless, we believe that this proposal does not fall within the competence of this Conference. It falls completely within the competence of the United Nations. In addition, the Convention we are discussing at present does not concern direct broadcasting by satellite. Once direct broadcasting is possible, another Convention may be necessary.

604.3 Nevertheless, the delegation of the Arab Republic of Egypt has no objection to including the Soviet proposal in the Final Report of our Conference.

605. The CHAIRMAN [F]: I give the floor to the delegate of Belgium, the Chairman of the Conference.

606. Mr. de SAN (Belgium) [F]: The arguments developed by the majority of speakers who have opposed the Soviet amendment appear to the Belgian delegation well founded. The Belgian delegation therefore associates itself with them. I will not repeat all the arguments which have been developed, but will content myself with emphasizing merely that, in the first place, the Nairobi text before us, which constitutes the framework of our work and of our competence, limits itself to the protection of the signal and does not deal with the programme carried by the signal. In the second place, this problem, which is extremely complex and important, is presently being dealt with by a group constituted by the United Nations which has been studying it for at least two years. It has not yet concluded and we would not wish to take the risk of reaching conclusions which were different from those of the bodies dealing with the problem. In addition, I believe that at the last session of this working group, the Union of Soviet Socialist Republics itself recognized that the matter was not yet ripe for establishing a text to be included in a Convention.

607. The CHAIRMAN [F]: I give the floor to the delegate of Switzerland.

608.1 Mr. STAMM (Switzerland) [F]: The delegation of Switzerland cannot but subscribe, in substance, to the ideas set out in the proposal under discussion. However, the agreement in preparation does not constitute the appropriate forum for inserting such a provision. As other delegations have already stressed, this instrument is aimed only at the protection of signals to the exclusion of programmes and their content.

608.2 The questions dealt with in the Soviet proposal without any doubt fall within the competence of other organizations. For these reasons, and others already explained by other speakers, our delegation cannot accept this proposal.

609. The CHAIRMAN [F]: The delegate of Czechoslovakia has the floor.

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610.1 Mr. KUNZ (Czechoslovakia) [F]: I shall be very brief. The delegation of Czechoslovakia, which is one of the co-authors of the proposal concerning the new Article 3, has already explained the reasons for its position during the discussion at the Plenary and at the Main Commission.

610.2 I should simply like to add one thing since it seems to me that it is not quite clear: it is that the new Article 3 is not aimed at direct broadcasts but at point-to-point broadcasts.

610.3 That is why I support this proposal and the position of the Czechoslovak delegation remains unchanged.

611. The CHAIRMAN [F]: I give the floor to the delegate of the Central African Republic.

612.1 Mr. TOKPAN (Central African Republic) [F]: The delegate of the Central African Republic is attending this Conference which is of a technical nature and is aimed at ensuring the protection of programme-carrying signals with regard to their retransmission from point to point and not with regard to their contents.

612.2 Consequently, he regrets that he is not able to support the proposal of the Union of Soviet Socialist Republics in spite of the diplomatic character of the Conference, for the spirit of this proposal is too political.

613. The CHAIRMAN [F]: The delegate of Spain has the floor.

614.1 Mr. ARIAS (Spain) [S]: Although in the Plenary Session this delegation alluded to the need for protecting direct broadcasts by satellite and although this delegation also recognizes the interest that the proposal of the Union of Soviet Socialist Republics doubtless presents, nevertheless we consider that the technical nature of this Conference makes the exclusion of the said proposal from the text of the Convention advisable.

614.2 In addition, the fact of giving a clearly political content to an article of this Convention could cause difficulties for its subsequent signature and ratification, something which I think that none of the delegations present here would wish.

615. The CHAIRMAN [F]: I give the floor to the delegate of Cyprus who will be the last speaker before we have a break.

616.1 Mr. PHANOS (Cyprus) [E]: We appreciate and share the concern expressed by the Soviet Union and the other States which have supported their proposal, with respect to the need for the protection of States against programmes detrimental to the maintenance of international peace or aimed at interfering in the domestic affairs of other States. However, we have not been convinced that the juridical

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and technical scope of the draft Convention is wide enough to allow inclusion of the proposal.

616.2 Therefore, we support the admirable compromise solution put forward by the delegate of Kenya and supported by other delegations, that this matter should be included in the Final Report of the Conference.

617.1 The CHAIRMAN [F]: Before adjourning the meeting, I should like to summarize the present situation. We have the proposal of the Union of Soviet Socialist Republics, supported by a certain number of delegations, which would introduce a new Article 3 on the content of programmes.

617.2 Although this proposal has received considerable support as to its principle, it is not generally accepted in its present form, i.e. the majority of delegations who have taken the floor do not want to include this Article 3 in the text of the treaty itself, for various reasons: some refer to the mandate of our Conference which is charged with studying the protection of signals and not programme content; others are anxious as to the competence of the Conference and do not wish to trespass on the grounds of the United Nations Outer Space Committee above all because the latter has as yet taken no final decision on the subject; others maintain that since direct broadcasting is excluded, the Soviet proposal is restricted to point-to-point satellites and that, consequently, its importance is limited; finally, others note that the philosophy of the Nairobi text is to obligate receiving States and not the State emitting the signal.

617.3 For these various reasons, the Soviet proposal has not received a great deal of support. But, in view of the fact that the principles defended by the Union of Soviet Socialist Republics have received considerable support, we should seek a middle-of-the-road solution, a solution which will give satisfaction to both sides.

617.4 We have had one practical proposal from the delegation of Kenya, supported in particular by the delegations of Senegal, Brazil, Mexico, Egypt and Cyprus, by which this subject would be dealt with in the Report, and of course it could be thoroughly dealt with in the Report.

617.5 I therefore ask you to consider this proposal during the break in the meeting and that we no longer discuss the principles - about which everything has been said - but only the practical means of getting out of the impasse which now exists.

617.6 We shall have a break of a quarter of an hour.

618.1 The CHAIRMAN [F]: We shall now continue our meeting. I remind you that we have taken a decision, before the break, to limit our discussions, as of now, to the solutions proposed to reconcile

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the two main points of view that have been explained in this Main Commission.

618.2 The delegate of Algeria has asked for the floor.

619.1 Mr. DERRADJI (Algeria) [F]: I regret asking for the floor when the Algerian delegation has already explained, on Friday and this morning, that its position is favourable to the proposal presented by the delegation of the USSR.

619.2 We made a proposal for the purpose of arriving at a solution but I should like to explain to you the meaning of this proposal. In the first place, if we analyze the proposal of the USSR we note that it contains a certain number of general principles concerning peace, security and also colonialism, imperialism, neo-colonialism and that these principles have no place in the text we are going to adopt for the following reason: in the first place, we are dealing with a framework, a Convention, a draft Convention which was drafted within the framework of the activities of Unesco - an essential point that we should not neglect - and we should not forget either the general principles governing Unesco's activities in this field, in particular in the field of education and in the field of communications and information.

619.3 I refer to the Constitution of Unesco drafted in 1946, which contains a particular provision, an essential provision which states that wars begin in the minds of men and it is in the minds of men that the defences of peace must be constructed. I remind you also of the various resolutions that have been adopted by the General Conference of Unesco and in particular, a resolution which was adopted in November 1972 at the seventeenth session of the General Conference. This resolution constitutes a very important document, a document relating to all the problems of peace and even security, to the struggle against colonialism, neo-colonialism, war, racism, foreign occupation, etc. We cannot ignore the general principles contained in these international documents approved by the Member States of Unesco that we are to-day and which should, in our opinion, govern our action in this field.

619.4 Finally, I should also like to remind you that in addition to the Charter of the United Nations which contains the same principles, it has been decided that 1975 will be declared "international year against racism".

619.5 All these legal provisions, all these international actions mark the framework of our action and cannot constitute an obstacle to our Conference adopting this article in the text of the draft Convention.

619.6 Of course, certain delegations have stated that this was a political problem and that we were charged only with the study of a draft Convention of a technical nature, dealing with technical problems. We do not share this point of view because in the communications field in particular it is very difficult to make any

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delineation between the political and the technical and, even supposing that we are dealing with purely political questions which, according to certain delegations, have no place in our document, I would say that the problem of peace, the problem of security are extremely important problems and they cannot but find their place in all Conventions in order to achieve the implementation of an ideal that we are all seeking: peace and security.

619.7 But, since an unfavourable current became evident this morning against the inclusion of this provision in the draft text, we would like to make a proposal:

1) that we insert in the Preamble the general idea to be extracted from this proposal, and

2) that we include the text of the proposal in a document that could be called a "recommendation", a recommendation to be addressed to the United Nations Committee charged with the study of these problems, and in this recommendation, we would ask the Committee to take into account the preoccupations that have been revealed in this respect and to take them into consideration during the work presently under way at the United Nations.

620.1 The CHAIRMAN [F]: Consequently, the delegate of Algeria has made a concrete proposal that:

1) the general idea of the Soviet preoccupations should be introduced in the Preamble, and

2) there should be a recommendation to the United Nations Outer Space Committee in which we would ask it to take into account these preoccupations and we would send to the United Nations the text of the discussions of our Commission.

620.2 The delegate of Egypt.

621. Mr. ANTAR (Egypt) [F]: The delegation of the Arab Republic of Egypt supports the Algerian proposal.

622. The CHAIRMAN [F]: The delegate of Morocco has the floor.

623. Mr. CHAKROUN (Morocco) [F]: Before giving an opinion on this concrete proposal, my delegation would like to have a text or a draft text as a basis for discussion. But my delegation sees no drawback to this proposal.

624. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

625.1 Mr. WINTER (United States of America) [E]: During the break we had the opportunity to talk with a number of delegations

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and the consensus of our discussions was - and in a sense this is a follow-up on the suggestion made by the delegate of Kenya - that some of these delegations supported the view that a full and complete summary of this discussion on the Soviet proposal be put into the Rapporteur General's Report. I think that if we get into inserting it in the Convention, or if we try to agree on some sort of resolution and so on, there is going to be a continuing and rather futile discussion on what should go into the body of the Convention. I think that there is general agreement among the twenty-five delegations that spoke against the Soviet proposal that this seemed to go beyond the scope of the present Convention.

625.2 Now the proposal that has been made by some delegations is along the following lines: that the Rapporteur General's Report, which will be a summary of the discussion and the verbatim record of this Conference be transmitted officially by the Chairman of the Conference, Mr. de San, to the appropriate bodies of the United Nations. We have not worked out the language, but we would be glad to draft some sort of letter which would certainly be drafted in coordination with Mr. de San, if he would agree, and submitted to this Conference for approval. The letter would transmit these documents officially to the appropriate bodies of the United Nations. It could be said in the letter that this relates specifically to the discussion of the Soviet proposal in document CONF/SAT/23, and that it be given to them for their information in connexion with their further consideration of this complex problem.

626.1 The CHAIRMAN [F]: Consequently, we have a second proposal which has some points in common and some differences with the Algerian proposal. According to the proposal of the United States, there would be no mention either in the Preamble or in the text of the Convention and the documents would be transmitted to the United Nations not as a recommendation, but in a letter from the Chairman of the Conference.

626.2 I give the floor to the delegate of Tunisia.

627. Mr. SAID (Tunisia) [F]: My delegation thinks that the proposal put forward by the Algerian delegation constitutes an honest compromise which takes account of the different currents of thought and gives partial but important satisfaction to both sides. In fact, on the one hand it excludes the insertion of the proposal of the Union of Soviet Socialist Republics in an article in the body of the text and, on the other hand, it does not ignore the ideas contained in this proposal which, I remind you, have been supported as far as the substance is concerned by a considerable number of delegations. These ideas will be brought to the attention of the specialized organs of the United Nations, which will satisfy the delegations who think that the appropriate organs of the United Nations are those who should study this problem. My delegation therefore supports this proposal and I consider that the Algerian proposal is not very far from the one which has just been submitted by the delegate of the United States of America.

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628.1 The CHAIRMAN [F]: I too think that the two proposals are easily reconcilable.

628.2 The delegate of the United Kingdom has the floor.

629.1 Mr. DAVIS (United Kingdom) [E]: I cannot speak for other delegations, but the United Kingdom objection to the Soviet proposal rested largely on the question of competence. I think the question of competence goes also to the expression of a general idea or the expression of a recommendation to the United Nations special committee. I think the difficulty in framing it will be just as great; I think our ability to frame it will be just as great, and I think our understanding of the issues involved will be just as small.

629.2 For that reason, therefore, I must oppose the proposal put forward by the delegate of Algeria. Nevertheless, I would defend always the right of any delegation to express its views on any matter and I see no reason at all why the proposal of the United States, which as I understand it, is that precisely what was said here should be brought to the notice of the competent bodies, should not be followed.

630. The CHAIRMAN [F]: The delegate of the Netherlands.

631. Mr. VERHOEVE (Netherlands) [F]: Our delegation is in favour of the proposal made by the delegate of the United States.

632. The CHAIRMAN [F]: Simply in order to clear the ground a little, may I ask the delegate of the Federal Republic of Germany to take the floor.

633.1 Mr. GAERTE (Germany, Federal Republic of) [E]: I think everyone is very eager to find a way out of this impasse, particularly in view of the fact that time is running very short indeed. Unfortunately, I have to repeat what I said this morning: my delegation has no mandate to discuss the subject raised by the Soviet Union, and that of course includes the Preamble and all other parts of the Convention as well.

633.2 However, in order to find a way out, I do not see any difficulty why we should not send a letter to the United Nations, drawing their attention to a certain course of our discussions here. I have no doubt that that would certainly not be beyond my mandate because the discussion has taken place irrespective of what we decide here. So I would, of course, agree with what our American colleague has just suggested.

634. The CHAIRMAN [F]: The delegate of France has the floor.

635. Mr. DESBOIS (France) [F]: I will just add a few words to the effect that the French delegation associates itself with the

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proposal put forward by the delegate of the United States and supported by the delegate of the Federal Republic of Germany. Inasmuch as we consider that the introduction of the provision proposed by the delegation of the Soviet Union in the text of the Convention is inappropriate and inasmuch as the principle of a recommendation would seem to come up against the same objections, it seems to us admissible that the competent Committee of the United Nations should receive a report which would be absolutely faithful and which would recount the discussion exactly as it has just taken place.

636.1 The CHAIRMAN [F]: Are there any other opinions?

636.2 The delegate of Japan has the floor.

637. Mr. HIRAOKA (Japan) [F]: My delegation is very favourable to the proposal that has just been made by the delegate of the United States of America.

638. The CHAIRMAN [F]: The delegate of Brazil has the floor.

639.1 Mr. de ATHAYDE (Brazil) [F]: The Brazilian delegation finds that the two suggestions made by the delegates of Algeria and the United States of America are perfectly reconcilable. We could perhaps on the one hand take the first part of the proposal of Algeria, i.e. include some mention in the Preamble, and, on the other hand, the proposal of the United States, i.e. transmit a Report to the United Nations by letter or some other means. But in any case I find the two proposals reconcilable.

639.2 Nevertheless, I should like to hear the opinion of the delegations most concerned, i.e. the Soviet Union, Byelorussia and the Ukraine, on the two proposals that have been put forward.

640. The CHAIRMAN [F]: The delegate of Italy has the floor.

641. Mr. de SANCTIS (Italy) [F]: The question of competence raised by the delegation of Italy is also raised by the possible approval of the Algerian proposal. Following what has already been said, the Italian delegation cannot but agree with the proposal of the United States of America.

642. The CHAIRMAN [F]: The delegate of Canada has the floor.

643. Mr. CORBEIL (Canada) [E]: Canada, as a country which, together with Sweden, has put forward a proposal in the UN Committee on Outer Space, which includes discussions on problems such as the one proposed by the delegate of the Soviet Union, would find it difficult, extremely difficult, to rally to any sort of compromise proposal which goes as far as that made by the delegate

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of Algeria. For our part, we think it would be even a great concession to support the United States in its proposal that a summary of our debates on this subject be submitted to the appropriate bodies in the United Nations under cover of a letter from the Chairman of our Conference. It is our view that even this is going beyond the competence of this body; however, we would be prepared to go along with this proposal in order to reach a compromise which would permit us to continue our work. We trust that this compromise will be able to reach a consensus in this body.

644. The CHAIRMAN [F]: The delegate of the Union of Soviet Socialist Republics has the floor.

645.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: Our delegation also had an opportunity to exchange views with the representatives of other delegations including the sponsors of Article 3. I would like to repeat that we are still convinced that the principles set forth in this article are of an exceptional importance and that they already determine to a great extent the pattern of relations between States and peoples. I would not try to hide my disenchantment with the fact that so far these principles have not been extended to cover space, satellites and programmes transmitted by satellite. It was indicated here that other bodies including UN bodies are dealing at present with these matters. We believe that our Conference is competent and has the right to discuss such matters and that this would in fact be a great step forward towards resolving this issue and of considerable help in the work of other bodies concerned with space, and that is why we are taking such a strong stand in favour of this proposal. However, like other delegations, we are of the opinion that in the interests of achieving progress at the Conference, it should be possible to find some way of presenting a position shared by many delegations on this issue that would be acceptable to all our colleagues. In my opinion the Algerian proposal is the most rational in this situation. At the same time, the proposal of our American colleague is essentially not very far from the Algerian proposal, I mean in form in the first place. Be it a resolution, a recommendation, a letter from the Chairman of our Conference to the United Nations or a suitable reference as part of the main Report of the General Rapporteur - all this together could help solve the problem.

645.2 The main thing, now, as I see it, is what exactly should be included in this recommendation or letter to be sent by the Chairman of the Conference? I would appreciate it if delegations would support our proposal that the resolution or the letter (the form can be discussed) specify that the Soviet as well as the Ukrainian, Byelorussian, Czechoslovak, Hungarian and GDR delegations put forward a proposal in the shape of a new Article 3. Many delegations supported the provisions of this proposal in principle but as no consensus was reached and many delegations considered that these questions belonged with the appropriate UN bodies that have a mandate and are competent, they proposed to refer this article, these proposals to the United Nations. It might be advisable to name those

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States that supported in principle the principles set forth in this Article 3. As to the proposal to incorporate a relevant provision in the Preamble, I think it certainly deserves consideration, but in order to facilitate our work I would like to suggest that we do not discuss it now but that we take it up again later when we discuss the Preamble.

646.1 The CHAIRMAN [F]: Consequently, the delegate of the Union of Soviet Socialist Republics has a point of view which is extremely close to that of the delegate of the United States of America and I think we should thank him for his constructive attitude. It is the form of this document, a recommendation of the Conference or a letter from the Chairman, which delegations are concerned with.

646.2 I think that the way to avoid this document being the subject of interminable discussions would be to just report the present discussion, to state exactly what happened. We should not have any doubts as to our competence on certain subjects; in any case I personally have none. As for the competence of the Conference to refer a subject to an organ of the United Nations whose competence no one can deny, there is no doubt about that.

646.3 Consequently, the document should simply have three sentences. It should state that the Conference has been seized by the delegations of the Union of Soviet Socialist Republics and a certain number of other delegations with a proposal, and we would copy the proposal. The second sentence would say "although no one denied the importance of this subject - I do not think that anyone denies the importance of this subject, everyone is very conscious of its importance, it is a question of forum that is bothering delegations - the Conference has not taken any decision in view of its limited mandate. Thirdly, under these circumstances, the Conference sends not only the Report but also the records, the verbatim records to the competent organs of the United Nations. That way, it will not be necessary to state who was in favour and who was against. The competent organs of the United Nations will only have to read the minutes, that is all. I do not think that the document should contain anything else. And I think that to draft this document we could nominate a small informal working group which would consist of the delegate of the Union of Soviet Socialist Republics, the delegate of the United States of America and the delegate of Algeria.

646.4 As for the question of the Preamble, I think it would be better to take a decision as of now - not to leave a time bomb - a decision not on how this reference should be drafted in the Preamble but on the question of whether or not it should figure in the Preamble. This is, of course, part of a package deal. However, we cannot take a decision now in this respect and then, when we come to the Preamble not consider it any longer.

646.5 The delegate of the United States of America.

647. Mr. WINTER (United States of America) [E]: Your proposal

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that a small working party, composed of the delegates of the Soviet Union, Algeria and the United States, be established to try to reach agreement on a letter from this Conference is acceptable, but we would also propose that another delegation, Canada, which has participated in some rather extended discussions of compromise, be added to this small working group.

648. The CHAIRMAN [F]: The delegate of Algeria has the floor.

649. Mr. DERRADJI (Algeria) [F]: The Algerian delegation associates itself with your proposal, Mr. Chairman, as to the constitution of a working group which, on the basis of what you have just said, will be charged with deciding both the nature of the document to be submitted to the Main Commission and the contents of this document.

650. The CHAIRMAN [F]: The delegate of the Ukraine has the floor.

651. Mr. ALEXSEV (Ukrainian Soviet Socialist Republic) [R]: The delegation of the Ukrainian SSR proposes that the delegate of Hungary be included in this working group. Second, as regards the question whether incorporation in the Preamble should be effected or not, we support the proposal made by the Soviet Union, i.e. that this question should be discussed when we come to deal with the Preamble.

652.1 The CHAIRMAN [F]: Does the delegate of the United States of America agree that the question of the Preamble be dealt with when we examine the Preamble itself or would he prefer that it be discussed in the working group?

652.2 Then I think that we can decide that the Soviet proposal is accepted and that the working group will deal only with the content of the document.

652.3 The delegate of the United States of America has the floor.

653. Mr. WINTER (United States of America) [E]: It seems to the delegation of the United States to be more appropriate to consider anything further about the Preamble when the Preamble is taken up later in this Conference - as you have already proposed, Mr. Chairman.

654.1 The CHAIRMAN [F]: Consequently, the working group will be charged exclusively with drafting the document and putting forward suggestions on the nature of this document: if it should be a letter from the Chairman or if it should be a document emanating from the Conference itself.

654.2 In order to take account of the observations that have been formulated here, this group would be composed on the one hand of

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Canada and the United States of America; on the other the Union of Soviet Socialist Republics and Hungary; and thirdly Algeria and Mexico? Is this composition agreeable?

654.3 Perfect. Consequently, this group will meet informally and will present us with a text as soon as it can and, in order that we do not waste any time, we shall continue with the study of the rest of the Nairobi text which is still, unfortunately, considerable. Are we in agreement? It is so decided.

654.4 Consequently, since we still have a quarter of an hour left, I suggest that we discuss Article 5. This article really presents no problem and I should have liked to adopt it without any discussion and above all without any vote.

654.5 If there are no objections, I shall declare that Article 5 which, I would remind you, concerns the non-retroactivity of the Convention, is adopted.

654.6 The delegate of Algeria has asked for the floor.

655.1 Mr. ABADA (Algeria) [F]: We have no objection to Article 5 as it stands in the Nairobi text but we have proposed the draft text of a new Article 5, which would not exclude the present article and which would expressly provide for the exclusion of direct broadcasting by satellite. I do not know whether it has already been distributed or not. I do not think so as we only presented it this morning.

655.2 Therefore, it is only a question of procedure and I do not think that this article should raise any objections since it is the consequence of a decision of the Main Commission to exclude direct broadcasting by satellite.

656.1 The CHAIRMAN [F]: When I say "Article 5", I mean, of course, Article 5 of the Nairobi text. The question of the final numbering of articles will be decided by the Drafting Committee.

656.2 As to your proposal, which has been accepted in principle, it only needs drafting now and I wonder whether that is not within the competence of the Drafting Committee. I think it would be better if we left it to the Drafting Committee since it really presents no practical difficulty.

656.3 The delegate of the Byelorussian Soviet Socialist Republic has the floor.

657. Mr. KASHEL (Byelorussian Soviet Socialist Republic) [R]: I would like to raise one point. The Russian translation of the text does not seem to be quite satisfactory and in particular it does not exactly correspond to the English variant so I would like to make sure that the Drafting Committee would be able to make such

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adjustments in Article 5 as might be necessary to reconcile the Russian text with the texts in other languages, or vice versa.

658.1 The CHAIRMAN [F]: Can we consider that Article 5 is adopted without a vote? Yes.

658.2 Then this afternoon we shall continue our study of the Nairobi text unless the Working Group has reached an agreement on the formula concerning the Soviet proposal.

659. The meeting rose.

Main Commission - Sixth Meeting¹

Monday, 13 May 1974 at 15.10 p.m.

Chairman: Mr. da COSTA (Brazil)

660.1 The CHAIRMAN [F]: The meeting of the Working Group that was constituted this morning will take place tomorrow morning at 9 o'clock. Consequently, the members of the Group, who are, I repeat, the United States, Canada, Union of the Soviet Socialist Republics, Hungary, Algeria and Mexico, are requested to attend. And since the Group is to meet tomorrow, I assume that we can now continue the study of the Nairobi text and I suggest we proceed to Article 6.

660.2 If I am not mistaken we have three amendments: an amendment from the delegation of the United States of America with the intention of controlling the relationship between the new Convention and the International Telecommunication Convention (document CONFESAT/6); an amendment submitted by the Federal Republic of Germany and Austria, to add a new paragraph (2) to Article 6 with regard to programme contributors (document CONFESAT/10); and, finally, an amendment submitted by Denmark and Mexico which also aims at respecting the rights of certain contributors (document CONFESAT/20).

660.3 I suggest that we first listen to the delegations who have proposed these amendments.

660.4 I give the floor to the delegate of the United States of America.

661.1 Ms. RINGER (United States of America) [E]: The proposal of the United States delegation contained in document CONFESAT/6 has as its background the fact that at earlier preparatory meetings one of the alternatives discussed for solving the problem to which we are addressing ourselves was whether the International Telecommu-

1. Cf. document UNESCO/OMPI/CONFESAT/VR.12 (prov.).

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ication Convention and the Radio Regulations annexed to it are capable of controlling the problem. As has been said earlier in this meeting, this alternative was rejected partly on the grounds that the ITU Convention and the Regulations, to the extent that they actually cover the problem as a technical matter, have no enforcement machinery, and it was doubtful whether they could be made an effective means to combat satellite piracy. I think that most of the delegates know the background of this problem.

661.2 However, it has never been suggested that the present Convention should supersede or impair the obligations of a country under the ITU Convention; and questions have been raised on this issue under the Nairobi text, especially under Article 4, which we have already adopted. In our opinion the ITU Convention and the Radio Regulations annexed to it on the one hand and this Convention on the other, are complementary rather than competing in their intention and effect. I do not believe that there is any intention in this Conference to weaken the standards of conduct in the field of international communications as expressed in the ITU Convention and Regulations.

661.3 Because of the concerns that have been expressed on this point we believe that the principle should be expressed explicitly in the Convention and we have put forward proposals to refer to this in the Preamble and to actually state it in the text itself in Article 6. It is possible, that one of these two references would be sufficient, but we felt that the point was important enough to include it in both places.

662.1 The CHAIRMAN [F]: Since the amendments to Article 6 belong to two quite different categories (one, that of the United States of America, in fact concerns the ITU, whereas the others are much more complicated and concern programme contributors), I think that it would be more logical to deal with them separately. Therefore, if you are agreeable, we shall try and solve first the problems posed by the amendment of the United States of America, and then we shall come to the other two amendments which are of a completely different nature.

662.2 Does the Commission agree?

662.3 The delegate of Kenya has the floor.

663.1 Mr. STRASCHNOV (Kenya) [E]: May I speak about the American amendment? Thank you. In this Conference as well as in the various meetings of governmental experts we have often said over and over again that we are dealing with signals. Now it cannot be denied that the concept of signal is a technical concept and that the ITU Convention as well as the ITU Regulations which are appended to that Convention also deal with signals and with their use, their frequencies, their power, their direction and so on. Most specifically as far as the satellite signals are concerned, we have first of all the results of the World Administrative Radio Conference for

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Space Telecommunications at Geneva in 1971; we then have the decision taken last year in October by the Plenipotentiary Conference of the ITU to hold not later than April 1977 a world conference on the allocation of frequencies in the field of satellite telecommunications.

663.2 Therefore, it seems to me undeniable that we are somehow at the border between the ITU Convention and this new Convention and it seems to me that it would be right and proper to say in Article 6 what the delegation of the United States proposes to say.

663.3 I would have only two small suggestions as to the text, one is the words "or administration". "This Convention shall not be interpreted to supersede or in any way limit..." I do not think we need the word "administration". I cannot see how we could affect the administration of the ITU but certainly the application.

663.4 I would also suggest in view of the forthcoming 1977 World Planning Conference, that we somewhere add the words "as currently in force" so that it should not be thought that we wanted only to preserve the ITU provisions which were in force when we signed this new treaty but also those which may come later in this field, in the satellite field and especially in 1977.

664.1 The CHAIRMAN [F]: I should like to know whether the Commission agrees to discussing the two series of amendments separately, i.e. on the one hand the amendment of the United States of America and on the other the amendments contained in documents CONF/SAT/10 and 20. The Commission agrees.

664.2 The delegate of the Federal Republic of Germany.

665. Ms. STEUP (Germany, Federal Republic of) [E]: It certainly is true that there might be some overlapping between the ITU Convention and this treaty, but I think the same applies to the Rome Convention where you have an overlap too. And therefore we are of the opinion that both these Conventions should be treated in the same manner. Since we have the Rome Convention mentioned only in the Preamble, we would prefer to have only the Preamble mention the ITU but not a special paragraph on the ITU without there being some similar provision for the Rome Convention.

666. The CHAIRMAN [F]: I give the floor to the delegate of Italy.

667.1 Mr. de SANCTIS (Italy) [F]: The Italian delegation is favourable to maintaining Article 6 of the draft as it now stands. Moreover, as we all know, this is a fundamental provision of the new philosophy of the Nairobi text. If we wish to add something on the subject of other conventions, that is different. We have so many conventions that it would be necessary to list them; to state that such and such a Convention shall not be interpreted as replacing or

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limiting in any way the application of other conventions.

667.2 Therefore, in conclusion, the delegation of Italy does not consider that it is necessary to include this provision in Article 6. In the opinion of the Italian delegation, Article 6 should remain as it is, because it deals with the primordial question of the defence of the rights of authors, etc. If we wish to mention other conventions, however, the best place would perhaps be the Preamble but not Article 6.

668. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

669. Mr. DAVIS (United Kingdom) [E]: It is just to support the point made by the delegation of the Federal Republic of Germany. We have no objection to a reference in the Preamble, but there is no doubt that it looks extremely pointed if, after referring to both the Rome Convention and the International Telecommunication Convention in the Preamble, we then go on in Article 6 to refer specifically to only one of the two.

670. The CHAIRMAN [F]: The delegate of Canada.

671.1 Mr. CORBEIL (Canada) [F]: The delegation of Canada indicated in its first intervention the importance of having some mention of the ITU Convention in our treaty. It is for this reason that the delegation of Canada has welcomed the proposal of the United States of America. However, as several speakers have indicated, the delegation of Canada now believes that it would be sufficient to mention it in the Preamble.

671.2 The delegation of Canada believes that a mention at least in the Preamble is most necessary in view of the decision taken at Nairobi to protect the signal rather than private rights. To summarize, Canada can support the inclusion in an article or some other reference to safeguard the competence of the ITU, but we do not believe that it is necessary to have a paragraph in Article 6 to this effect.

672. The CHAIRMAN [F]: I give the floor to the delegate of Brazil.

673. Mr. de ATHAYDE (Brazil) [F]: I shall speak to the same effect as the delegation of the Federal Republic of Germany and other delegations. The Brazilian delegation can see no drawback in the amendment of the United States of America but does not believe that it is absolutely indispensable to include this text in Article 6. That is why the Brazilian delegation supports the proposal made by the delegate of the Federal Republic of Germany to the effect that it should be mentioned in the Preamble, which would, among other things, mean that a balance would be struck with regard to the Rome Convention.

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674. The CHAIRMAN [F]: The delegate of Argentina.

675. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: The delegation of Argentina is in agreement with what has been said by the Italian delegation to the effect that it is not necessary to change Article 6. In any case, it would be necessary to refer to other conventions because it is not only the ITU Convention that is involved. As for the Preamble, Argentina has already submitted a draft amendment to the effect that paragraph (e) should be deleted so that it refers only and exclusively to one convention and not to any other conventions that may have some connexion with it.

676. The CHAIRMAN [F]: I give the floor to the delegate of Mexico.

677.1 Mr. LARREA RICHERAND (Mexico) [S]: Independently of the fact that we reserve the right to support the amendment that we have submitted jointly with the delegation of Denmark for the addition of a paragraph, with regard to the proposal of the United States of America, it seems to us that although it is appropriate that this should be included in the Preamble, we should not add a second paragraph within the text of this article of the Convention.

677.2 This is a logical consequence of all the work that has been carried out in this field and above all of the work of the General Conference of Unesco which, at its fifteenth session, specifically recommended that Unesco itself initiate studies to examine the necessity of holding a conference such as the one we are holding at present. Consequently, I believe that although it is absolutely necessary that there should be some such mention in the Preamble, this should not be the case in the text of the Convention, and that we reserve the right to subsequently support the proposal that will be introduced by the delegation of Denmark.

678. The CHAIRMAN [F]: I give the floor to the delegate of Morocco.

679. Mr. CHAKROUN (Morocco) [F]: It seems to my delegation that the suggestion made by the delegation of the United States of America with regard to mentioning the Convention of the International Telecommunication Union is entirely within the philosophy that we are advocating and for this reason we are happy to support it, on condition, of course, that an appropriate drafting is found. However, it would be preferable to place this addition in the Preamble of the Convention.

680. The CHAIRMAN [F]: I give the floor to the delegate of Senegal.

681.1 Mr. N'DIAYE (Senegal) [F]: If you recall, the drafting of this article at Nairobi presented some difficulties. Some did not

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wish that any reference to the Rome Convention be made in the Preamble since it was agreed that Article 6 was sufficiently clear in this respect. The Senegalese delegation considers that, if it is necessary to add a reference to the Convention of the International Telecommunication Union in the Preamble, there is no reason not to include the American proposal in the body of the text as well. If, on the contrary, we keep to the present drafting which already constitutes a compromise, then we should leave Article 6 as it stands.

681.2 To summarize, either we leave the drafting of Article 6 as it stands in the text, with the reference to the Rome Convention in the Preamble, or we add the Convention of the International Telecommunication Union in the Preamble and also in Article 6.

682.1 The CHAIRMAN [F]: I think we can close this short discussion and draw our conclusions.

682.2 It seems that there is complete acceptance of the idea of the United States of America but there is no agreement as to where this addition should be incorporated. I would even say that there was a very clear majority in favour of keeping this reference for the Preamble and I think that the delegation of the United States of America would be pleased to withdraw the second part of its amendment in view of the fact that it is understood that there will be a reference in the Preamble.

682.3 The delegate of the United States has the floor.

683. Ms. RINGER (United States of America) [E]: My delegation would like to thank those delegates who supported our proposal in principle. We are perfectly happy to retire our recommendation with respect to Article 6. We would like to suggest in addition that the Drafting Committee consider at some appropriate point the proposal made by the delegation of Kenya with respect to making clear - if there is a reference to the ITU in the Preamble - that the text referred to is the text in effect at the time the Article or Preamble would have application.

684.1 The CHAIRMAN [F]: Consequently, the delegation of the United States of America withdraws this amendment to Article 6 and we now pass to the second series of amendments, i.e. to those which relate to the rights of contributors.

684.2 I give the floor to the delegation of the Federal Republic of Germany to introduce document CONF/SAT/10.

684.3 Next, I shall give the floor to the delegation of Denmark to present document CONF/SAT/20 which has a similar goal and similar drafting.

684.4 I give the floor to the delegate of the Federal Republic of Germany.

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685. Ms. STEUP (Germany, Federal Republic of) [E]: We have raised this point you see in our proposal, because we think it is a point of utmost importance for authors, performers, and other contributors to the programme. We think that it would be of great value if the responsibility of the originating organization vis-à-vis these main contributors to the programme would be expressly stated in our treaty. However, since this Commission has decided not to apply the treaty to signals emitted via direct broadcasting satellites, we for our part withdraw the proposal. But we would like to have a mention in the Report that the proposal was based on the fact that in the preparatory meetings the experts were of the unanimous opinion that in this case the originating organization is responsible via-à-vis the authors and other contributors to the programme and that not dealing with the proposal in this Conference does not mean that there is a deviation from this opinion.

686. The CHAIRMAN [F]: I give the floor to the delegate of Austria.

687. Mr. DITTRICH (Austria) [E]: The proposal which is contained in document CONF/SAT/10 is withdrawn by us under the same conditions as by the delegate of the Federal Republic of Germany.

688.1 The CHAIRMAN [F]: Consequently, the delegations of the Federal Republic of Germany and Austria, taking into account the facts indicated by the delegate of the Federal Republic of Germany, withdraw their amendment; the idea it contains, will of course figure in the Report.

688.2 Consequently, only one proposal remains, which is the proposal in document CONF/SAT/20 and I give the floor to the delegate of Denmark so that he can introduce it.

689.1 Mr. WEINCKE (Denmark) [E]: In the statement I made on behalf of my delegation during the general debate I already explained why it would be desirable in our opinion to insert a provision making it an obligation for the originating organization which uses contributions by authors, performers and other rights holders for its transmissions of signals to a satellite, to notify these persons or bodies or their representatives of the names of the distributing organizations for which the signals are intended. I have only a very few observations to add to my earlier statement.

689.2 My first point is that the proposed provision could, in our view, in no way be considered to be inconsistent with the Nairobi approach. We are not talking of individual or private rights: our intention is merely to ask the Contracting States to secure that a just and reasonable procedure is followed by the originating organizations in the case of satellite transmissions to other Contracting States and in which protected works or performances are used.

689.3 Secondly, I want to emphasize that the proposal in the same way as the proposed Article 6, paragraph 1, leaves completely intact

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all the rights which these contributors may have according to international conventions, according to international law, or according to contracts with the broadcasting organizations. It could not be interpreted to limit or to reduce in any way such rights. The aim and purpose of the provision is to place the authors and performers in a better position to defend their legitimate interests based on individual rights or on contracts whenever a broadcasting of their works or their performances takes place.

689.4 I would also like to remind the Conference of the fact that the idea that the originating organizations should be obliged to indicate the distributors for which the programme-carrying signals were intended has been commonly accepted at the previous meetings which were doing the preparatory work leading up to the Conference. It is an idea which has been advocated not only by the countries supporting Alternative A of Article IV of the Paris draft, but also by those countries in favour of Alternative B. Allow me to refer to Article IV, paragraph 2, Alternative B, of the Paris text, and to paragraph 72 of the Report.

689.5 Let me say in conclusion that we have tabled this proposal in order to draw the attention of the Conference to the problem of notification or information of certain contributors. As to the drafting, we are prepared to be very flexible. We are well aware that it might probably be considerably improved or clarified and what I think might perhaps be important to say - we admit in advance that it might be right to modify the obligation imposed on the broadcasters so that it should apply only when not otherwise agreed between the parties.

690. The CHAIRMAN [F]: The delegate of Mexico has the floor.

691.1 Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico wishes to state that it has given its support to the proposal submitted by the delegation of Denmark, because, apart from other questions and in addition to the reasons given by the delegate of Denmark, in Mexico copyright comes under the field of public law. It is for this reason that this change, this new approach to the problems connected with copyright and the protection of programme-carrying signals achieved at Nairobi, was supported by Mexico from the outset because we consider that it is not only a problem of payment or nonpayment of individual interests, but the problem of this payment or nonpayment of individual interests has a direct incidence on the cultural progress of peoples, on the incentive or incentives to creativity and on the respect of copyright and the diffusion of works. It is for this reason that we are pleased that this Conference has entered the field of public law in speaking of copyright, a right that our country considers as coming within the field of public law, placing it on an even higher level than the right of the work, on account of its direct and necessary incidence on culture.

691.2 In addition, we believe that this Article 6 is the minimum

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that can be requested for the other parties interested in the problem, in keeping with the recommendation of the General Conference of Unesco at its fifteenth session, to request that the then BIRPI - now WIPO - and Unesco consider the necessity or possibility of holding a new Conference to analyze the problems that could affect authors, performers, producers of phonograms and broadcasting organizations. For this reason, we think that the least that could be done in this case is that they be given prior notification so that they have the possibility of defending adequately their rights under domestic laws. On the other hand, we repeat that in this treaty we are in the process of drafting, the signal cannot be separated from the programme and we are dealing with programme-carrying signals. For this reason, we warmly support the proposal of the delegation of Denmark and like this delegation we are open to any change in drafting that may be proposed and in which we do not leave undefended the other parties that the General Conference of Unesco, at its fifteenth session, recommended be protected and an attempt made not to prejudice them.

692.1 The CHAIRMAN [F]: Consequently, we have the proposal submitted jointly by Denmark and Mexico. I shall give the floor to delegations but I must ask you - and this applies permanently in view of the fact that we are now very much behind with our work - to be extremely brief and not to forget that often silence is the most constructive attitude.

692.2 I give the floor to the delegate of Morocco.

693.1 Mr. CHAKROUN (Morocco) [F]: It is on the subject of the proposal submitted by the delegations of Denmark and Mexico on Article 6 and as someone involved in television and not as a jurist, that I should like to speak. At first sight, it seems to me that this amendment would have one serious drawback if it were accepted.

693.2 Television workers are fully aware of the difficulties encountered by every organization which is at the origin of a programme in finding out exactly and sufficiently in advance the final list of recipients of its broadcast. Indeed, it often happens that, less than twenty-four hours before the programme, this list undergoes changes in both directions. There are almost always last minute requests and withdrawals; this is an accepted thing - this field is full of the unexpected. In addition it is in practice difficult to contact regularly associations of authors, composers, publishers, performers, producers of phonograms, etc. and keep all of them, respectively, informed of the recipients of the programmes to be broadcast without committing any errors. It is an almost impossible operation.

693.3 Article 6 as it stands clearly alludes to the respect of the protection due and granted to authors and the contributors named, and we all know that relations between the broadcasting organizations and societies of authors are generally governed by contracts which stipulate all the guarantees, both economic and moral, with regard to the protected work.

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693.4 That said, the delegation of Morocco pays homage to the positive spirit which led the delegations of Denmark and Mexico to make their proposal. However, for the practical and professional reasons I have indicated, the delegation of Morocco regrets that it cannot support this amendment and asks that the authors of this amendment withdraw it in order to facilitate our task.

694.1 The CHAIRMAN [F]: I shall read the list of speakers: Brazil, Kenya, Hungary, Algeria, the Federal Republic of Germany, Sweden, Austria, Australia, France and Norway for the moment.

694.2 The delegate of Brazil has the floor.

695.1 Mr. de ATHAYDE (Brazil) [F]: The Brazilian delegation is above all of the opinion that we should not stray from the Nairobi text which, in our opinion, constitutes perhaps the only compromise capable of bringing about the desirable consensus in our assembly.

695.2 As you know, Mr. Chairman, no country is more concerned than Brazil with authors' rights, the rights of contributors, but we consider, as the Brazilian delegation has already said both in the Plenary and at the beginning of the Main Commission, that the balance between the three parties directly concerned must be sought outside the instrument that we are in the process of drafting. I shall not, therefore, return to this point.

695.3 As for the amendment contained in document CONFESAT/20, the Brazilian delegation is of the opinion that it constitutes a departure from the spirit of Nairobi for two reasons: (i) because it creates obligations other than those of the receiving State; and (ii) because it returns to the concepts of private law creating rights or duties for the originating organization and the contributors to the programme, which constitutes a return to the philosophy of Paris and Lausanne that we thought had been definitively set aside.

695.4 The delegation of Brazil, therefore, hopes that the delegations of Denmark and Mexico will not insist on their proposal which, although based on praiseworthy motives, would not allow us to arrive at a rapid consensus on Article 6.

696. The CHAIRMAN [F]: The delegate of Kenya has the floor.

697.1 Mr. STRASCHNOV (Kenya) [E]: I will not repeat what was said by the delegates of Morocco, and just now of Brazil. I was going to say very much what our Brazilian colleague has just said. I would, however, like to add one or two more arguments:

697.2 It is stated in the amendment that there should be the right to information when contributions are included in satellite transmissions and when they are protected in the originating country against broadcasts. Speaking first about the authors, because under contributions I understand mostly works and performances: in many

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instances where the contribution of an author is included, or might be included, in a satellite transmission, the authorship might belong to the originating organization itself. It may be because the author was employed and under the law, as in Holland for instance, the copyright of an employee is ex leg transferred to the employer. Now in such a case it is obvious that the author does not have to be informed, because he does not own the broadcasting right any longer. It has been transferred by law or by contract to his employer, the originating organization. Nonetheless, under this text, it is a contribution which is protected against broadcasting and therefore the author, who has nothing to do any longer with broadcasting of his work, should nonetheless be informed of it. This argument applies a fortiori in the case of performance. We are back in this very difficult problem of permanent performers, permanent employees in orchestras of broadcasting organizations. Under the usual permanent employment contracts, their performances belong to the broadcasting organization who employs them, at least, for the normal activity of the broadcasting organization employing them. Now satellite transmissions, exactly like any other programme transmission to a foreign country by the land lines or even by the despatch of a recording, belong to the normal activities of a broadcasting organization and the performances given by a performer who is employed can be so used obviously without informing the performer permanently employed.

697.3 Under the text, however, again, as in the case of the authors, the permanently-employed performer would have to be informed because basically his contribution might be protected against broadcasting although the concrete contribution which is being used is no longer his property.

697.4 Having said that, I fully understand the meaning and the aims of the amendment and I, for my part, would not mind having something on these lines included in the Report, and if the delegations of Denmark and Mexico agree to the transfer of their amendment into the Report, I would be very happy, if our General Rapporteur agreed, to assist in drafting something which would be profitable to the contributors and yet in line with the interests of the originating organizations.

698. The CHAIRMAN [F]: I give the floor to the delegate of Hungary.

699.1 Mr. TIMAR (Hungary) [F]: The Hungarian delegation has already stressed, in its intervention during the general discussion, that the absolute condition for the achievement of effective protection of copyright is prior information of authors and the Convention should contain appropriate provisions on this subject.

699.2 We do not think that, in practice, we shall have any difficulties since the associations for the protection of copyright are prepared and capable of helping the television organizations.

699.3 Consequently, the Hungarian delegation warmly supports the

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proposed amendment submitted by the delegations of Denmark and Mexico.

700. The CHAIRMAN [F]: The delegate of Algeria has the floor.

701.1 Mr. ABADA (Algeria) [F]: We are not in principle against the proposed amendment of Denmark and Mexico but I think that our Conference has already made a first choice and it is almost like a scratched record when we keep on saying each time that it is a question of protecting the signal and not the protection of the contents of the signal.

701.2 Now, the proposal of Denmark and Mexico takes us back to the protection of the contents of the signal and we cannot have two systems at the same time: agreeing to exclude the protection of the contents of the signal when it is a question of certain amendments and coming back on this acceptance for other proposals.

701.3 The contents of the proposal of Denmark and Mexico are, in the opinion of the Algerian delegation, governed by copyright; there are conventions, there are domestic laws governing copyright and we decided at Nairobi and here to trust the whole copyright legal apparatus to ensure the protection of authors and the protection of neighbouring rights. With regard to relations between the broadcasters and the copyright organizations, there again, there are traditions and there are also copyright conventions which govern these relations.

701.4 Therefore, I consider that we shall gain a lot of time if we ask the authors of this proposal to withdraw their amendment and to have confidence in the copyright legislation on this subject.

702. The CHAIRMAN [F]: The delegation of the Federal Republic of Germany has the floor.

703.1 Ms. STEUP (Germany, Federal Republic of) [E]: Since my delegation in the preparatory meeting very strongly supported Article IV, Alternative A, of the Paris draft, and since this new proposal of Denmark and Mexico is to some extent a part of this Alternative A, I think nobody will be astonished that we wish to support the proposal made by the delegations of Denmark and Mexico.

703.2 As to the practical difficulties mentioned here, I do not think that they cannot be overcome. National legislation can take care of a lot of these problems. Even the contracts between the societies of authors and performers on the one side and the broadcasters on the other side, very often found solutions to difficult problems and I am sure they will find solutions to the practical problems mentioned here, too. We, therefore, would be only too happy if the Conference could agree to the Danish and Mexican proposal.

704. The CHAIRMAN [F]: The delegate of Sweden has the floor.

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705.1 Mr. DANELIUS (Sweden) [F]: My delegation considers that the clear distinction made between the signal and the programme is somewhat artificial. For this reason we consider that the problem of the protection of authors and performers is not entirely eliminated, even in the Nairobi draft. The proposal of Denmark and Mexico constitutes an attempt to solve this problem and to ensure respect for the legitimate interests of authors and performers. This general goal of the proposal of Denmark and Mexico coincides totally with the way that the Swedish delegation sees things and consequently I should like to state that I am in favour of this proposal.

705.2 The delegate of Kenya has made certain comments concerning the case where an author or performer is employed by the broadcasting organization: this is a particular problem which the delegate of Denmark took into account in his introductory remarks. In fact, I think that he said that when there is an agreement between the broadcasting organization and the author or the performer, we could well envisage an exception to the general rule which provides for the obligation to inform the author or the performer of intended broadcasts.

706. The CHAIRMAN [F]: I give the floor to the delegate of Austria.

707.1 Mr. DITTRICH (Austria) [E]: As you all know, my delegation worked very hard during the preparatory work of this Conference to establish provisions in favour of the authors and the performers. In principle, we are, therefore, very much in favour of the proposed amendment which is submitted now by the delegations of Denmark and Mexico and is contained in document CONF/SAT/20. Otherwise, I concedes to the delegate of Kenya that with respect to some groups of authors and especially performers difficulties could arise in applying the proposal in daily life, for instance, with respect to permanent employees of broadcasting organizations. These difficulties could be overcome by allowing the national legislations to exclude permanent employees. By this solution it would be possible that a given national legislation defines this term, because I learned by the discussions in the Intergovernmental Committee of the Rome Convention that some national legislations have different approaches to this term.

707.2 Furthermore, I would like to raise a question: I regret very much that I had no opportunity to discuss this unofficially outside the deliberations in the Conference with the delegations of Denmark and Mexico. I would like to ask whether or not the phrase "protected against broadcasting" covers only the case where there exists exclusive rights or even the case where only equitable remuneration must be paid?

708. The CHAIRMAN [F]: The delegate of France has the floor.

709.1 Mr. DESBOIS (France) [F]: The observations of France will

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be brief and will begin by pointing out the obvious interest that the proposal of the delegations of Denmark and Mexico has for authors. It is certain that it is in their interest to learn from the originating organization, the names of the recipient organizations which will have to deal with them to obtain the necessary copyright authorizations. This observation has already been made on several occasions before this assembly.

709.2 From the point of view of authors' interests, the French delegation cannot but be impressed by this proposal. We wonder, however, whether it corresponds to the proposals issuing from the Committee of Experts that met at Nairobi. This proposal in fact reflects the draft that was the result of the Paris Committee of Experts. Consequently, it is not very clear why this obligation to inform is laid on the originating organization. In addition, as the French delegation heard it said earlier, it would seem that this prior information could be stressed in the Report without being the subject of special provisions which might appear rather anachronistic in paragraph (2) of Article 6. I should add that here I am giving the views of the technicians; there are, at present at least, numerous cases where this prior information can be given only with difficulty and, consequently, the recommendation which would appear in the Report, while insisting on the interest of this prior information, could point out that in certain circumstances, it would be impossible to give it.

709.3 To summarize, the French delegation considers that it is not advisable, that it is not logical, that it is too late if you prefer, to include such a provision in the text of the Convention but that the concern that has been revealed in this assembly could be expressly stated in the Report.

710. The CHAIRMAN [F]: The delegate of Norway has the floor.

711.1 Ms. SÆBØ (Norway) [E]: The Norwegian delegation would like to support the proposal made by Denmark and Mexico. We think it is fair that the contributors to the programmes shall be informed of the distributors for whom the programme-carrying signals are intended so that they may defend their interests.

711.2 However, recognizing that in some cases it may be difficult to give this information, we think that the Danish/Mexican proposal may perhaps need some modification. If it turns out that there is no majority for the proposal in this Conference, we should be very happy if at least something could be mentioned in the Report along the lines suggested by the delegate of Kenya.

712. The CHAIRMAN [F]: The delegate of Israel has the floor.

713.1 Mr. GABAY (Israel) [E]: As you may recall, in our opening statement we supported Article IV, Alternative A, of the Paris draft. In the same spirit we could have supported the proposal made by

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Mexico and Denmark. However, we feel that while Article IV, Alternative A, had all the checks and balances covering the various interests involved, the same cannot be said about the proposal included in the suggestion made by Denmark and Mexico. We feel that we cannot take one aspect of the Paris draft and ignore the spirit of the Nairobi draft.

713.2 For this reason, we feel that - and we share the views expressed by the delegation of Brazil - it would not be advisable to accept that proposal. We suggest, however, that the proposal made by the delegation of Kenya to have in the Report a detailed reference to that proposal, should be accepted.

714. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

715.1 Ms. RINGER (United States of America) [E]: My delegation salutes the spirit of goodwill and justice that is reflected in the proposal of Denmark and Mexico, but we must associate ourselves with the remarks, among others, of the delegations of France and Israel on this subject. The proposal - both as it is worded and in its substance - would create the most tremendous, formidably difficult practical problems in the United States, and I suspect, in other countries too. Many of the problems have already been mentioned by one delegation or another, but it is a fact that in many cases there is no contractual relationship between the originating organization and the persons who are mentioned in what would be paragraph 2 of Article 6.

715.2 In addition, we agree that this proposal does seem to run counter to the fundamental philosophy that emerged in Nairobi. The basic formula in Article 1 of the Nairobi draft, which we have already accepted, is that States will take all appropriate measures to carry out the Convention obligation. Part of this philosophy was that, within this framework, which calls upon the goodwill and good faith of the States to implement the basic purposes of the Convention, they would have the utmost freedom to implement this in any way that they see fit. This proposal would be a most specific obligation. It would require action in a very specific framework, and I am afraid that we could not accept it in terms of putting this before our legislature. I am afraid that as far as the United States is concerned this would just not do.

715.3 We would not argue against the basic principle, and we would agree that, in terms of what is reported in the General Report of the Conference, the philosophy expressed here should be favourably mentioned. I think that no one could really argue against the basic justice of this proposal. Our problem is that as a practical matter it just will not work for us.

716. The CHAIRMAN [F]: I give the floor to the delegate of Australia.

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717.1 Mr. CURTIS (Australia) [E]: Australia has throughout the preparatory meetings been a proponent of what emerged as Alternative A of Article IV of the Paris draft, and it is true that this amendment proposed by the delegations of Denmark and Mexico is in line with that philosophy. But we, like the United States of America, would find the most formidable difficulties in giving practical effect to this proposal under our national legislation. Whatever might be the mirror to the idea that lies behind it, the notion that a broadcasting organization should be obliged, as a matter of law, to inform the contributors to a programme of the destination of that programme is not one that could be carried into practical effect in Australia.

717.2 For that reason, despite our sympathy, continually expressed throughout the preparatory meetings, with the need to protect the contributors to programmes, we do not see this as a practical way of doing so.

717.3 With regard to the question of reporting this in the General Report, we would be concerned if the General Report reflected a view that the Conference regarded it as desirable that this particular machinery should be followed. Again, we put that on the basis of extreme practical difficulty for broadcasting organizations in carrying out the procedure contemplated.

718. The CHAIRMAN [F]: The delegate of Luxembourg has the floor.

719. Ms. LENNERS (Luxembourg) [F]: The delegation of Luxembourg is of the opinion that the amendments proposed by the delegations of Denmark and Mexico are not appropriate within the framework of this Conference, from the point of view of the philosophy of the proposals that issued from the Nairobi Committee of Experts, and from a practical point of view. The delegation of Luxembourg is therefore opposed to these amendments being included in the text of the Convention. However, in a spirit of compromise, we would agree that these amendments be mentioned in the General Report.

720. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

721. Mr. DAVIS (United Kingdom) [E]: With considerable reluctance, because we recognize the spirit that led to this proposal, and on purely practical grounds, the United Kingdom has to express itself opposed to this proposal. We agree with those delegations that have said that something might be said in the Report.

722. The CHAIRMAN [F]: I give the floor to the delegate of Cyprus.

723. Mr. AGATHOCLEOUS (Cyprus) [E]: The Cyprus delegation, in

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line with the arguments advanced by the distinguished delegates from Morocco, Brazil, Kenya, France and others, would like to suggest and appeal to the drafters of this proposal not to insist on it, since we believe that it is perhaps a departure from the Nairobi meeting and also it would be difficult to implement.

724. The CHAIRMAN [F]: The observer of the International Federation of Actors (FIA) has the floor.

725.1 Mr. CROASDELL (International Federation of Actors) [E]: The great difficulty of course for an observer is that we have no proposals that we may make; all that we are restricted to necessarily is observation, comment or indeed an appeal to those who constitute the Commission. May I say that I am speaking for all three of the performers federations of trade unions and I would like to express appreciation of the motion tabled by the delegations of Denmark and Mexico.

725.2 It is inevitable, because of my role as an observer, that I must ask your indulgence and be allowed to speak in slightly more general terms than if I were a voting governmental delegate with power to propose and vote upon amendments. In the general debate there are many references indeed, I think almost the majority of speakers spoke of the necessity of maintaining a proper and equitable balance between the positions of the interested parties in this matter and of the specific dangers to the Rome Convention to which this proposed Convention gives rise.

725.3 Now, it is in relation to the article which we are now discussing together with the Preamble that that problem arises and it is now that the Commission must clearly deal with it. In the background to the problem of the dangers to Rome from this Convention, may I quote simply the statement made by the observer of the International Labour Office which appears in paragraph 74 of the Nairobi Report. He said on that occasion "It was true that, in law, the broadcasters would no longer be granted an exclusive property right. However, in practice, the result might well be just the same as if such a right had been given. In countries where other contributors to programmes were not well organized they would not be able to effectively enter into contractual arrangements with broadcasters, and thus the ultimate destination of the programme-carrying signals would be determined in fact by the broadcaster alone."

725.4 Now I will not dwell on the fact that an ever-widening use of a single performance constitutes a danger to the employment of actors and musicians and could constitute a catastrophe for a variety artist. But as the representative of the Mexican government said during this discussion, the protection of the creative and the performing contributors to broadcasting is critical to the maintenance and promotion of national cultures and, therefore, I beg that the Commission consider, in relation to this article and to the Preamble, whether there is not a means within the philosophy of Nairobi, as clearly Alternative A is no longer valid, to find an effective protection for the equitable principles of Rome.

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725.5 In this connexion the secretariat was good enough to reproduce a brief note of the opinions of the performers organizations which has been given to members of the Commission. I refer to the paper headed "Opinions of the Performers Organizations", FIM, FIA and FIAV, distributed by the International Secretariat of Entertainment Trade Unions.

725.6 In that document, paragraph 2 is perhaps the most easy to dispose of, as I hope that it is not contentious. The present six as drafted, refers to not prejudicing the protection secured to authors etc. Now in the Report of Nairobi, an observer of the European Broadcasting Union interpreted that as meaning, if I read the text correctly, that the rights not to be prejudiced were those as they now exist, and a similar phrase appears in paragraph 108 of the Report.

725.7 I hope that there is a misunderstanding here and that what, in fact, is meant is rights, rather protection, secured or to be secured in the future through domestic law or international legislation. But more than that, as was said in the general debate, the performers would like to see a direct link between this convention and the Rome Convention, requiring ratification of Rome within a specified period of years, and, if possible, we would suggest and ask the members of the Commission to consider this.

725.8 Paragraph (e) of the Preamble should be extended to express the view that balanced protection, as afforded by the Rome Convention, is the desirable objective. Secondly, to indicate clearly that the purpose of this Convention is to avoid doubt concerning the application of Rome to satellite transmissions and is an interim measure pending wider ratification of the Rome Convention.

725.9 If that is not proposed then I would beg that perhaps the idea behind it could at the very least be included in the commentary to the proposed Convention if it is arrived at. I am sure that delegates appreciate that an observer can only look to and appeal to government representatives here and they have in great majority shown deep appreciation of the very real problems of performers and others, of the dangers to Rome and the equitable principles of Rome if the text remains as now.

725.10 We can only appeal to them to take the necessary initiatives by way of amendments of the kind which I have described. I would beg the delegates not to give us only, as we sometimes say in English, "all aid short of actual help". We would ask delegates to ensure that this Convention shall not do more harm than good by weakening the maintenance and the extension of the principles of balance to which so many have adhered in these debates but which are insufficiently protected in the present text.

726.1 The CHAIRMAN [F]: One of the observations made by the observer of the International Federation of Actors seems to me important, and I think that it should be clarified immediately. In

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the French text in any case, and in the spirit of those who drafted this text at Nairobi, when we speak of the protection granted we cannot say the protection which has already been granted. It is the ongoing protection, the future protection. In that, I do not think that there is any divergence. In any case it would be better to put it in the Report so that it is quite clear.

726.2 I still have several organizations who wish to take the floor: the International Writers Guild (IWG), the International Confederation of Societies of Authors and Composers (CISAC), the International Federation of the Phonographic Industry (IFPI).

726.3 The delegate of the Netherlands.

727. Ms. KLAVER (Netherlands) [F]: I should like to summarize our position with regard to this problem if you will allow me. It is evident from the attitude adopted by our experts at the last meeting of the Committee of Experts in Nairobi, that our delegation remains favourable to the proposal put forward by Denmark and Mexico. However, in view of the practical difficulties and the various interpretations possible of this provision, we regret that we cannot support this proposal. But a summary of the discussion in the Report of the Conference seems to us an adequate solution to the problem.

728. The CHAIRMAN [F]: We shall now have a break and then hear the observers from the other organizations.

729.1 The CHAIRMAN [F]: I have three observer delegations on my list: the International Writers Guild (IWG), the International Confederation of Societies of Authors and Composers (CISAC), the International Federation of the Phonographic Industry (IFPI). Before I give them the floor are there any governmental delegations who wish to speak?

729.2 I give the floor to the delegate of Denmark.

730.1 Mr. WEINCKE (Denmark) [E]: First of all, I wish to express my gratitude to the delegations which have supported the Mexican and Danish proposal. There has been a good deal of support and a good deal of opposition and I think we have had a very useful discussion. It is evident, however, that it would not be possible for the Conference to reach an agreement on a new position.

730.2 Therefore, and in order to shorten the procedure, the Mexican and Danish delegations have decided to withdraw their proposal on the understanding that it be mentioned in the Report, together with a commentary reflecting the discussion and the degree of consensus which I think exists with regard to the idea behind the proposal. We would be glad to endorse the proposal of the delegate of Kenya that such a text should be worked out by the General Rapporteur in co-operation with Mr. Straschnov and the authors of the proposal.

730.3 I hope very much that this will be acceptable to our General

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Rapporteur and to the Conference.

731. The CHAIRMAN [F]: Before taking a decision with regard to the situation in which we find ourselves, I give the floor to the observer of the International Writers Guild (IWG).

732.1 Mr. FERNAY (International Writers Guild) [F]: You alluded earlier, Mr. Chairman, to the necessity of being brief. I shall be all the more brief now that the withdrawal of the Danish and Mexican proposal will limit the observations I was going to make.

732.2 Nevertheless, I should like to say that the authors, in whose name I speak, have naturally been deeply moved by the intention which was behind the very numerous delegations who wished to support them and defend their interests.

732.3 At the risk of repeating myself, and apologizing to you, Mr. Chairman, and to the numerous delegates, I should, nevertheless, like to repeat some things that I have already said on a certain number of occasions during the past four years, and I should like to submit to the Commission the following observations:

732.4 As the Secretary-General of the International Confederation of Societies of Authors and Composers - who was speaking not only in the name of the CISAC but in the name of all authors - appropriately recalled during the general discussion, there is one point on which authors have not varied since Lausanne: authors believe, and are not alone in believing, since a large number of eminent international jurists believe it as well, that there is no doubt that the right of authorization given to authors under Article 11 bis of the Berne Convention covers the making of programmes as well as their emission in any form whatsoever, by signal or otherwise, and by satellite as well as by classical methods.

732.5 We believe, therefore, that the originating organization which chooses the works, puts them in a programme and emits this programme by any process whatsoever, brings into play a right of authorization which belongs to authors. Although we understand the motives of the delegations of Denmark and Mexico, I had the intention, if they had not withdrawn their proposal, of observing, in the name of the authors, that the latter would have difficulty in associating themselves with it because it was a question of transforming a right of authorization into a simple right of information, i.e. of affirming a contrario that the right of authorization that some contest does not exist or instituting a sort of obligatory licence. In any case this would be a step backwards in relation to the rights afforded by the Berne Convention.

732.6 As has often been remarked during the course of these discussions, the Nairobi text is neutral; and it is for this reason that the authors associated themselves with it and approved it. It is a text which is aimed only at the protection of a signal, a technical process, and it in no way takes sides on the differences

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of interpretation which can arise with regard to the application of the Berne Convention.

732.7 It is because this neutrality exists that we have associated ourselves with this text. And we believe that it is indispensable that this neutrality subsist. I am not speaking of the differences that may exist between the Paris approach and the Nairobi approach; we shall not come back to that, it is of no importance. The Nairobi text is a text that is acceptable to authors, that we approve because of its neutrality. And we strongly believe that the balance that we may wish to achieve among the various parties - which was certainly the idea which inspired the delegations of Denmark, Mexico and the Federal Republic of Germany - must be sought elsewhere in existing conventions and not in this Convention. That is why the authors are satisfied that the delegations of Denmark and Mexico have withdrawn their amendment and that we are left with Article 6 of the Nairobi text.

732.8 With regard to the mention that could be put in the Report, I should like to say that of course we have no objection to a mention of this sort being included, for we are very conscious of the fact that for other categories of contributors to programmes who do not have the same protection that we have - I am thinking of the performers - such a mention would be useful. Nevertheless, the authors believe that if a mention is to be made in the Report it should expressly state that this obligation to inform should apply only to those contributors to programmes to whom the conventions mentioned in Article 6 do not grant a right of authorization.

733.1 The CHAIRMAN [F]: The General Rapporteur will take note of your observations.

733.2 The observer from the International Confederation of Societies of Authors and Composers (CISAC) has the floor.

734.1 Mr. FREEGARD (International Confederation of Societies of Authors and Composers (CISAC)) [E]: It is a great honour to be able to express, on behalf of the quarter of a million or so authors who belong to the societies which go to make up our Confederation, the sincere appreciation and gratitude which we feel to those delegations which have put forward and which have supported proposals motivated by their desire to assure the continued protection of the interests which I represent here, i.e. those of authors.

734.2 In particular we express our appreciation to the delegations of Denmark, Mexico, the Federal Republic of Germany and Austria, who have formulated these very carefully thought-out proposals. I hope that I will not be misunderstood if I say that the warmth of our appreciation for their having put forward these proposals is more than matched by the warmth of our appreciation that they have, in the light of the discussion, withdrawn them. Perhaps to clarify our position I could make use of a medical analogy; we find ourselves, I think, perhaps, in the position of a patient among a group of patients to whom a particular course of drugs has been prescribed;

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since we have our own doctors, who happen to be rather good doctors, we happen to know that these particular drugs might have some unforeseen side effects. Therefore, we are glad to have been spared the course of treatment which has been prescribed, even with so much good will, on our behalf.

734.3 I think that the reasons for our reluctance to undergo that course of treatment have probably been made clear by the remarks which my distinguished colleague from the International Writers Guild has just made, so I will not repeat them here now. I would just like to say that, as regards the proposed mention in the Report of these questions, I support entirely what my colleague has said and in particular, I would hope that it would be possible in the Report, as regards the substance of the proposal which was put forward by the delegations of the Federal Republic of Germany and Austria, to make it clear that mention of this in the Report is without prejudice to the view upheld, as my colleague has said, by many eminent jurists throughout the world, that the injection into space of a signal containing works protected under the provisions of Article 11 bis of the Berne Convention against broadcasting constitutes an exercise of the broadcasting right even if the injection is in respect of an emission to a point-to-point satellite, and not just for purposes of direct broadcasting through satellites.

735. The CHAIRMAN [F]: The observer of the International Federation of the Phonographic Industry (IFPI).

736. Mr. STEWART (International Federation of the Phonographic Industry (IFPI)) [E]: You will not be surprised to hear that I, too, was very sympathetic to the proposal which was put forward by the delegations of Denmark, Mexico, the Federal Republic of Germany and Austria. Nonetheless, since these proposals have now been withdrawn, let me just make one point which has already been touched upon and which refers to the wording of Article 6 and that is the phrase "protection secured to authors, performers, producers, etc." Now I think that, as you pointed out already Mr. Chairman, there is a slight difference in the French and the English, perhaps in the Spanish as well, and there is also a slight difference in the way in which it is formulated in the Rome Convention and in the Phonograms Convention, because each of those conventions contains the same text. It is Article 21 of the Rome Convention and Article 7 of the Phonograms Convention. It would appear, therefore, that it would not be a good idea to alter the text because, a contrario, conclusions might otherwise be drawn vis-à-vis the Rome and the Phonograms Convention. However, my request to you is that in the Report of this Conference, it should be made quite clear that the word "secured" being in the past tense does not mean "secured in the past" but means "the right existing at the time when the broadcast is made". That, in my opinion, would be the normal interpretation a jurist would give to a provision of this kind in any event; however, since doubts have been raised as to the time at which the protection is secured, perhaps an authoritative statement of what is meant by this, to wit, the time of the broadcast, could go into

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the Report, as I think you indicated when the point was first made.

737.1 The CHAIRMAN [F]: As I said with respect to the intervention of the observer of the International Federation of Actors (FIA), there is absolutely no doubt but that it is not a question of rights existing at the moment of signing the treaty, but of rights existing at the moment of emission. The Commission was in agreement on this and the General Rapporteur will clarify this point.

737.2 In any case, the Drafting Committee will be able to look for a less ambiguous English text.

737.3 Consequently, we are in the following situation: now that the amendment of Denmark and Mexico has been withdrawn, Article 6 stands as it was in the Nairobi text. It is understood that we will have in the Report a commentary on the points of view justifying the two amendments: that of the Federal Republic of Germany and Austria on the one hand, and that of Denmark and Mexico on the other. With regard to the latter amendment, which is rather more complex, it would be useful if, as has been suggested, the delegations of Mexico, Denmark and Kenya got in touch with the Rapporteur in order to make a proposal for the text to be included in the Report.

737.4 If you wish, now that the point concerning the Report has been agreed, we could approve Article 6 without any further delay and without a vote. Are we in agreement?

737.5 Article 6 is adopted.

737.6 We shall now proceed to Article 7, which is in square brackets in the Nairobi text, which means that it is an article on which there was no consensus.

737.7 I give the floor to the delegate of Tunisia.

738.1 Mr. SAID (Tunisia) [F]: As the Tunisian delegation had the opportunity to state during the general discussion in the Plenary, we are convinced that it would be in the interests of the Convention to retain the idea contained in this article, which is to preserve the rights of any Contracting State to prevent under its domestic law any abuses of monopoly - which is quite normal and quite legitimate.

738.2 That said, my delegation is not particularly attached to the adjective "international" which does not appear necessary to us and which besides does not seem at ease in this text where it does not seem to fit.

739. The CHAIRMAN [F]: The delegate of Italy has the floor.

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740. Mr. de SANCTIS (Italy) [F]: In the opinion of the Italian delegation it would seem advisable to delete Article 7 as it refers to the contents, i.e. the programme. The fact that it is in square brackets is a sign of the differences among the governmental experts at Nairobi. What is more, the right of any Contracting State to prevent any abuse of monopolies, even by expropriation of the content or parts of the content of the programme in order to insert it without authorization into its own network, appears outside the philosophy of the new Convention. Indeed, a system of compulsory licences for programmes in this field would seem to interfere with other multilateral conventions, above all with the copyright and neighbouring rights conventions. The Italian delegation would prefer that this whole subject remain outside the new Convention. In addition, the legal procedure of the compulsory licence, which is permitted under other conventions and could eventually be introduced in the domestic law of the contracting countries, could also indirectly carry out its role on the basis of copyright legislation and not directly by application of the new Convention.

741.1 The CHAIRMAN [F]: I forgot to say that we also have a proposal from the Argentine Republic, document CONFESAT/24, which proposes that this article be deleted.

741.2 I give the floor to the delegate of Morocco.

742.1 Mr. CHAKROUN (Morocco) [F]: My delegation does not seek to extend the article concerning monopolies, whether it be an international monopoly or an unqualified monopoly. But my delegation would like to refer to paragraph 112 of the Report on the Nairobi meeting which comments on the proposal made by the delegation of India in July 1973. In any event, my delegation would be happy if this article were maintained in its present drafting, subject to maintaining or deleting the adjective "international".

742.2 It is understood that when we speak of a monopoly, we remain in the field of the protection of televised signals.

743. The CHAIRMAN [F]: The delegate of Australia has the floor.

744.1 Mr. CURTIS (Australia) [E]: Without being committed to the particular wording of Article 7 as it appears in the draft Convention, the delegation of Australia gives its general support to the idea which lies behind this. Although, in the strict terms of what has here been called the Nairobi philosophy, one does not appear to be giving rights to broadcasters or protecting programmes, if we look at the factual situation, this is in truth what will be the result of this Convention. We will be giving in practical terms, certain rights to broadcasters by denying the freedom of others to poach their programmes. Under the guise of protecting a signal, we will in fact be protecting a programme because it is only for the programme that it carries that the signal is of practical interest.

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744.2 And so we would, I think, be shutting our eyes to the practical situation if we did not concede that, at least to some extent, this Convention is in fact concerned with the protection of broadcasters and of programmes. Australia has had a long history in its attitude to international conventions on intellectual property of taking what may seem to be contradictory positions. On the one hand, we have been insistent that there should be strong and adequate protection of rights and on the other, we have taken the view that where the rights are used in such a way as to establish a monopoly position contrary to the public interest, the Australian government reserves its right to take such domestic measures as it considers necessary to ensure protection of the public interest.

744.3 This appears to us to be the philosophy that lies behind Article 7 of the Nairobi draft as put forward by the delegation of India at the Nairobi meeting. While we do not insist on the precise wording of Article 7 - and indeed it may well be that we would be content with a reflexion in the Report of our views on this - we do think that there is a principle here that is important to us and indeed important to many countries. We would not like this principle lost sight of simply because for other purposes we have adopted what amounts to a fiction, that is, that there is a distinction between a signal and the programme that it carries, or that in denying the freedom of some to poach broadcasts, we are not in truth protecting the rights of broadcasters.

745. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

746.1 Ms. STEUP (Germany, Federal Republic of) [E]: We, too, as some other delegations who have just spoken before us, have hesitations concerning the inclusion of an article on monopolies in our treaty. These hesitations stem from two reasons: the question of monopoly is not a question which arises only under this treaty, it has arisen under copyright treaties as well; and if we include a provision in this treaty, there might be an argumentum a contrario that the same does not apply to other treaties in the field of copyright. It might even be, if we put in this new article, that our Convention could be misinterpreted. There are several matters of public interest which can be pertinent in this field, not only the question of monopoly. I should like to recall to this Commission that the same question arose at the Stockholm Conference when the Berne Convention was revised; there was a proposal from Australia and I think a proposal of Great Britain on the subject, and at that time, Main Commission I of the Stockholm Conference decided not to include an article but to mention this question in the Report. With your permission, Mr. Chairman, I should like to read from this Report and perhaps we could settle the question on the same lines. The Report of Main Commission I of the Stockholm Conference in paragraph 263 says:

746.2 "The committee accepted, without opposition, the proposal of its Chairman that mention should be made in this report of the fact

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that questions of public policy should always be a matter for domestic legislation and that the countries of the union would therefore be able to take all necessary measures to restrict possible abuse of monopolies. Whereupon, the proposals of Australia and the United Kingdom relating to the abuse of monopoly, were withdrawn."

746.3 We think that such a mention in the Report would avoid the danger of misinterpretation of our own Convention and of other conventions and we hope that it will be possible, and without opposition, as it was in 1967, to agree on a formula like that adopted in Stockholm.

747. The CHAIRMAN [F]: The delegate of Mexico has the floor.

748. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico supports what has been said by the delegation of Tunisia to the effect that Article 7 should be maintained without brackets and that the word "international" which is causing a series of confusions should be deleted. In addition, by way of clarification, I should like to state that our delegation, together with the delegation of India, presented this text at Nairobi and that it did not succeed in obtaining wide approval because it was something new, and for this reason it appears in brackets; but I believe that the article is now fully identified with the famous Nairobi philosophy, and I do not understand why anyone should oppose this article, especially as it does not refer either to the signal or to the programme and it can be the monopoly of signals or the monopoly of programmes, depending on the interpretation. This article is in no way contrary to the Nairobi text and, in addition, Mexico believes that it should in any case, since we are in the field of public law, be left to the sovereign law of each State to apply in its domestic law the measures it considers necessary to prevent the abuse of monopolies.

749. The CHAIRMAN [F]: The delegate of Japan has the floor.

750. Mr. HIRAOKA (Japan) [F]: Our delegation is rather in favour of deleting Article 7 for the simple reason that the necessity of preventing a monopoly is not strictly speaking a problem which concerns the signal. It is a problem with a rather wide application. Although the authorities of our country do not support the policy of monopolies, we would prefer to see this article deleted.

751. The CHAIRMAN [F]: The delegate of Austria has the floor.

752.1 Mr. DITTRICH (Austria) [E]: My delegation shares the view of those delegations that have said that they would like to delete Article 7 as it stands now in square brackets in the Nairobi draft.

752.2 I share fully the view expressed by the delegation of the Federal Republic of Germany that there could be an argumentum a contrario to other treaties in the copyright and neighbouring rights

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field. But I would like to add another argument for the deletion of this Article. Many States which have sent delegations to this Conference have in their national legislation antitrust laws containing partly provisions concerning market-dominating positions. The term market-dominating position is wider than the term monopoly. So you may argue that Article 7 covers only measures against abuse of monopolies but not against other market-dominating positions.

753. The CHAIRMAN [F]: The delegate of Kenya has the floor.

754.1 Mr. STRASCHNOV (Kenya) [E]: I think nobody will suspect Kenya of being in favour of monopolies, but the article placed in this Convention seems to us ineffective and unnecessary. When we refer to the origin of this article, which is paragraph 112 of the Report of the Nairobi meeting, we see that the Indian delegation explained that it considered such a qualification desirable in the text of the Convention, especially when dealing with problems arising from the licensing of world-wide rights in certain satellite transmissions, and the setting of prices for these rights at a level developing countries could not pay.

754.2 Now it is clear that the thought of the Indian delegation was, not so much to fight the monopoly of the originating organization in the signal, which is something which I think has never occurred, but the monopoly of those who have television rights and sell them to the originating organization. I should like to give an example.

754.3 Let us suppose that in the coming Olympics in Montreal the Canadian Broadcasting Corporation, or any other corporation, has bought rights for Japan and is transmitting the programme to Japan, because it was unable to buy the rights also for India because the organizer of the Montreal Olympics asked for too much money for India. Now, does that mean that under Article 7, the Indian authorities can decide that a monopoly has been exercised and therefore the Indian Broadcasting Corporation can take down the signal from the satellite which links Canada and Japan and is placed over the Indian Ocean, and inject it in the broadcasting network? In other words, is it not clear that Article 7 is meant to operate against those who own television rights in a certain event, a sporting event or an artistic event - an opera for instance, - but not against those who transmit the signals? Now it is possible to say that we are making an artificial distinction between the signal and the content, that is, the programme, but it is not possible to say that we are making an artificial distinction between the originating organization and the body or the person who owns the television right, the right to authorize the transmissions - these are two different persons or bodies; and the body which actually owns the television rights, like the Olympic organizing committee or the body which organizes the football world cup, these people will not come under this convention. They are not touched by it. The only persons or body touched by it are the originating organizations which do not possess, unfortunately, the world rights in the signal

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and in the event. Therefore, Article 7 is based - it seems to me at least - on a philosophy which is entirely wrong because it mixes up the signal and the programme, the container and the content, which are two bodies completely separate: the one which transmits and the other which actually has world rights in a given event. Therefore, I am afraid Article 7 simply does not achieve the purpose for which it has been devised.

754.4 Another aspect of this Article 7 is the danger that, in a given country, where you have two or more broadcasting organizations only one of which has bought the rights and therefore is the only intended distributor, the authority could say that the other distributors, the other broadcasting organizations can also distribute the same signal. Now this would be a situation extremely harmful in many countries to the broadcaster and also to competition, and we wish precisely to encourage competition and to fight monopoly; however, the result of the application of this Article 7 could be exactly the contrary. Therefore I think it would be extremely wise to follow the suggestion made by the Federal Republic of Germany, that is, to place Article 7 in the Report, and indicate that the countries were all in agreement that monopolies should be fought, while at the same time noting that a distinction should be made between the originating organization and the body actually holding the world rights in a transmitted event.

755. The CHAIRMAN [F]: The delegate of Algeria has the floor.

756.1 Mr. ABADA (Algeria) [F]: The Algerian delegation wishes to point out that Article 7, which is in brackets, has particular importance for the countries who find themselves in the position of users of signals, because the exclusion of such an article would be equivalent to creating an imbalance between the various broadcasting organizations that the draft Convention is intended to protect.

756.2 Indeed, if we deleted Article 7, this would mean that certain broadcasting organizations which at present benefit from what amounts to a monopoly with regard to the utilization of transmissions of signals by satellite, could use this monopoly as they see fit and prevent user organizations from benefitting from the signal and the contents of the programme transmitted by satellite.

756.3 This situation is not acceptable and it seems logical to us in the face of the monopolies constituted to prevent certain countries from benefitting from the signal transmitted by satellite, to entrust the domestic law with controlling the question of the transmission of the signals which are the subject of an international monopoly.

756.4 In various provisions, we have entrusted the national legislator with taking adequate measures to protect the signal in accordance with these requirements of sovereignty. We should be logical with ourselves and grant this national legislator the same confidence in this case and entrust him with permitting certain organizations,

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which are the object of discrimination, with overcoming this discrimination, while, of course, respecting copyright and neighbouring rights as far as the content of the programme is concerned.

757. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

758.1 Mr. WINTER (United States of America) [E]: I think the discussion in Nairobi and the discussion here in Brussels has indicated a lack of general agreement on Article 7, which has come forward from Nairobi in square brackets. The United States feels that this article is really unnecessary. We believe that there is no question about the right of a sovereign State to enforce its national law or laws against monopolies. Therefore, we just do not see the necessity of putting it into this international agreement.

758.2 As many countries know, the United States has a long history of antitrust enforcement. Our laws against monopoly and restrictive business practices date back to 1890. There are many other sovereign States that also have laws in this field. It is our belief that if, in fact, there was no article in this Convention about monopolies, certainly that lack of a specific article would not prevent the United States from enforcing its laws against monopoly.

758.3 We believe that the arguments advanced by the delegate from the Federal Republic of Germany, that the inclusion of such an article in this Convention might raise some questions about other international agreements in the intellectual property field, are very persuasive. As the delegate of the Federal Republic of Germany indicated, the subject was discussed at Stockholm, and it was decided to put an explanatory note, or paragraphs, in the Stockholm Report.

758.4 We believe that this would be very desirable. I also believe that the delegate of Kenya has explained some of the difficulties and technicalities of how relations are developed as to particular broadcasts. For all of the various reasons advanced, we would suggest that the article be deleted.

759. The CHAIRMAN [F]: The delegate of the Republic of Argentina.

760. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: Naturally, the Argentine delegation is not defending monopolies. No one could interpret it that way; but taking into account the principles spelled out in this Conference up to the present, the Argentine delegation does not consider appropriate the inclusion of this article which lies outside the purview of this Convention which refers to the protection of the signal and not to the possible character of the programme or the programme and the signal. In fact, its application would be of a politico-economic nature which would not be coherent with the rest of the text of the Convention. The Argentine delegation believes that a solution would be that proposed

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by the delegate of the Federal Republic of Germany.

761. The CHAIRMAN [F]: The delegate of France has the floor.

762. Mr. DESBOIS (France) [F]: The French delegation has noted the observations that have just been made, in particular those of the delegation of the Federal Republic of Germany and of the delegate of the United States of America. It does not appear that Article 7, as it stands in brackets, corresponds to the aims of the Convention. It was said earlier that in certain countries anti-trust legislation could intrude and if we introduced here a provision such as that in Article 7, there would arise the question of how to interpret it. I think that because of such difficulties, during the earlier conferences on the revision of the copyright Conventions at Stockholm and then at Paris, a similar provision was discarded. You will doubtless say that here it is not a question of protecting a private right, but simply of an obligation laid on States, but this concept of monopoly introduced in a place where it does not fit is such as to raise very serious difficulties.

763. The CHAIRMAN [F]: I give the floor to the delegate of the Ivory Coast.

764.1 Mr. ZOGBO (Ivory Coast) [F]: To the mind of the delegation of the Ivory Coast it is a question here of the signal. With your permission, Mr. Chairman, I should like to take up here the example which you gave at Nairobi, an example which concerned a football match which took place in the Federal Republic of Germany, with Brazil against another nation. It could happen that the organization owning the signals - that is how Mr. Straschnov defined it earlier but perhaps we should not confuse the owner of the signals and the country emitting the signals - asks Brazil such a high price that this football match would not be retransmitted by the Brazilian broadcasting organizations. You stressed at that time the political importance of this problem.

764.2 In such a situation Brazil would not be able to retransmit directly on its territory a match in which the Brazilian team took part. It is in the light of these elements, that you pointed out then, that the delegation of the Ivory Coast - aware of the monopoly that could be effectively exercised on both the political and economic level and even on the cultural level with regard to certain broadcasts, with regard to certain signals - considers that this provision does have a place in our Convention.

765. The CHAIRMAN [F]: The delegate of Belgium has the floor.

766. Mr. de SAN (Belgium) [F]: The Belgian delegation is of the opinion that this problem should be left to the sovereign decision of domestic law. This seems to us in complete agreement with the spirit of the Nairobi draft. This is why the Belgian delegation

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joins previous speakers who have spoken against this drafting of Article 7 and in favour of its deletion.

767. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

768.1 Mr. DAVIS (United Kingdom) [E]: I am quite happy to adopt the position that the United Kingdom adopted in Stockholm as set forth very clearly by the delegate of the Federal Republic of Germany. I would say, however, that I think that what was discussed in Stockholm, although I was not there, dealt largely with the situation of domestic monopolies and what we have in mind here of course is a situation where you have a sole owner of rights in one country and because of this someone else cannot get the right, cannot receive the broadcast at a price they are willing to pay; and such a thing is characterized in this text as a monopoly.

768.2 But for me the explanation given by the delegate of Kenya, that the provision in fact does not hit the actual monopoly, the actual owner of the monopoly, is convincing. It is no use taking the signal from the unfortunate broadcaster simply because you are unwilling to pay the person who owns the rights initially. Quite apart from this, however, I feel that this article, far from strengthening the domestic position in regard to monopolies, casts doubt on those powers which in antitrust legislation were, in my view, never otherwise in doubt.

769.1 The CHAIRMAN [F]: I still have on my list the delegates of the Union of Soviet Socialist Republics and Luxembourg. Since we have to make progress, I suggest that we close the list of speakers and after hearing these two speakers we take a decision on procedure.

769.2 I give the floor to the delegate of the Union of Soviet Socialist Republics.

770. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I would like to start by emphasizing once again the idea that has already been expressed here, namely about the integrity or unity of signal and programme, the signal and the programme carried by this signal. In the present instance, as you certainly realize, we are in fact referring to programmes. What is at issue is not that certain radiowaves are travelling through the air above the territory of another State but of the nature or character of the information they carry. Each country has the right to apply its own laws to protect its interests; this is equally true in respect of such questions as the influence of monopolistic television organizations. It is for the State alone to decide what sort of foreign mass media products should reach its population, and hence its right to control matters protecting State interests. As was emphasized in some speeches, no one has any doubts as to the exclusive right of governments to use their domestic law in such cases. Therefore, why not retain this provision, the more so since it would largely help solve those questions which have just been mentioned by my colleagues from

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young States. And in this connexion the references to the interpretation of this issue at other conferences may not always be helpful in presenting a true reflection of the essential matter under discussion. That is why we see no reason for deleting this and indicate our support of the proposal made by the delegate of Tunisia.

771. The CHAIRMAN [F]: I give the floor to the delegate of Luxembourg.

772.1 Ms. LENNERS (Luxembourg) [F]: Our intervention will be brief and we will also refer to what has been said by certain delegations, in particular the delegations of the United States and France.

772.2 We are of the opinion that both in view of the difficulties of a technical nature and the difficulties of interpretation which could not fail to ensue, such an article appears to be superfluous.

773.1 The CHAIRMAN [F]: We have had a discussion. No one is trying harder than I am to find middle-of-the-road solutions, compromise solutions, solutions which can be accepted unanimously by our Commission. But in this case, I think that it is absolutely impossible because for certain countries this is a question of principle. You may say to these countries that Article 7 is dangerous, that Article 7 is useless, that Article 7 is redundant, that in any event, in a case of abuse of monopoly, States have the right and even the duty to take adequate measures to avoid abuses of monopoly and that, consequently, the article is redundant, but these States will tell you that they do not care at all, they want to assert these principles. And so there is no middle of the road and I do not have the impression that the solution suggested by the Federal Republic of Germany received much support.

773.2 Consequently, I think that a vote is absolutely indispensable and I suggest we proceed to it immediately.

773.3 The delegate of Tunisia has the floor.

774.1 Mr. SAID (Tunisia) [F]: At the beginning of the discussion on the subject of this article we stated that we were in favour of retaining this Article 7, and against any abuse of monopolies. But we would like to make it clear that in asking for this protection against any abuse, we are basing ourselves on other reasons than those put forward by the delegation of India at Nairobi. This is in reply to the observation of the delegate of Kenya.

774.2 In addition, it is evident, it has been said, that domestic law has the right to take anti-monopolistic measures. That goes without saying, perhaps, but as Talleyrand, who knew his way round diplomatic treaties, would say, it would be better to state it. We are, therefore, in favour of keeping Article 7 but deleting, if the assembly so wishes, the word "international" which is in square brackets.

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774.3 If Article 7 had been drafted in any other way, as for example, "this Convention grants any Contracting State the right to apply its legislation to prevent any abuse of monopolies", a right that does not need to be granted, then we would have considered it inappropriate, then we would have considered it unnecessary and even dangerous. But the text which is submitted to us, states: "This Convention shall in no way be interpreted as limiting the right of any Contracting State to apply its domestic law in order to prevent abuse of monopolies". In this drafting we think that it is perfectly acceptable and that it is not at all useless.

774.4 We would have strongly liked not to be forced into a vote. But if this is absolutely necessary, my delegation asks formally that we proceed to a vote by roll call.

775.1 The CHAIRMAN [F]: Before giving the floor to the delegate of the Ivory Coast, I should like to make an observation. We have to agree also on what we are going to vote on. There is the word "international" which has been criticized by the delegate of Tunisia and others. It is indeed not very clear whether it is the abuse that is international or whether it is the monopoly that is international. It is a word that leads to confusion, a word that was justified in that it recognized the situation whereby a national monopoly is the usual situation, a normal situation in the field of broadcasting.

775.2 Finally, it was a bad idea to include the word "international" but it is all the worse since the idea was mine. Consequently, I think we can delete "international" and in this way at least we shall be speaking about something clearer. Therefore, if you agree, we shall delete "international" and we shall vote on Article 7 without the word "international". Does the Commission agree?

775.3 The delegate of the Ivory Coast.

776. Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: As usual, the delegation of the Ivory Coast would very much like to avoid a vote and that the delegations against including Article 7 prove, as they have already done, their spirit of compromise. In fact, none of the delegations opposed to including Article 7 has said that this article was harmful or contrary to any national legislation whatsoever. The two main arguments put forward were that this article was redundant, as you have said, or useless. But, to come back to the words of the delegation of Tunisia, "what goes without saying is even better said." There are other cases in this Convention. There are other articles which state that domestic law should take measures... etc. I could quote them but to save time I will not. I therefore see no reason for not doing the same again. Therefore, I appeal to the delegations which are opposed to Article 7 to associate themselves with my proposal, which is the following: since it appears that there are misunderstandings on the interpretation of Article 7, then we retain it, without of course the word "international", and that we explain it in the Report. The delegation of

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the Ivory Coast is prepared to draft the explanatory paragraph on this article.

777.1 The CHAIRMAN [F]: Consequently, we have two proposals: we have first a proposal for a vote by roll call from the delegation of Tunisia. This proposal must be seconded by another delegation. It is done. Consequently, we have two delegations who propose a roll call and, in addition, we have a proposal from the delegation of the Ivory Coast to avoid a vote which will divide us and to adopt this article by a consensus, it being understood that the concept of "monopoly" will be explained in the Report.

777.2 The delegate of Algeria has the floor.

778. Mr. ABADA (Algeria) [F]: We are in complete agreement with the opinion of the Ivory Coast and we would like this appeal to be heard. But in the case of a vote, then we second the proposal of the delegate of Tunisia.

779. The CHAIRMAN [F]: The delegate of Italy has the floor.

780. Mr. de SANCTIS (Italy) [F]: I have a question: have we or have we not decided to delete "international"? I have not yet understood the opinion of the Assembly. Because if the word "international" is deleted, I think that the Italian delegation could even accept the proposal of the delegate of the Ivory Coast to explain the matter in the Report.

781.1 The CHAIRMAN [F]: In my opinion, I myself as the father of this delicate child, proposed taking out the word "international" and since I heard no statement to the contrary, I understood that the Commission had decided to vote on the text without the word "international".

781.2 I give the floor to the delegate of Kenya.

782. Mr. STRASCHNOV (Kenya) [E]: We are of course very sensitive to the appeal of the delegate of the Ivory Coast and we would also like to avoid a vote on this point which perhaps is not of paramount importance. Could it be understood, if we accept Article 7 by a consensus, that the authorities of a country would not exercise any right under Article 7 if the originating organization has not secured the right for the territory? In other words, to make it clear, I take up again the example mentioned by our colleague from the Ivory Coast. Let us suppose, as he did, that there is a football match between a Brazilian team and another team in the Federal Republic of Germany, and the German broadcasters have managed to secure rights for Europe, but failed to secure the rights for Brazil, and the Brazilian broadcasters have not been able to get these rights either, because the organizer asked for too much money. So the signal is in the air in the satellite but is not intended for Brazil because the originating organization could not designate any Brazilian broad-

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caster as an intended distributor simply because it has not obtained the rights for Brazil; and no Brazilian broadcaster has obtained them either. Now if it is clear that in such a situation the monopoly clause under Article 7 will not be exercised, then I would have no objections to leaving Article 7 in this Convention. If, however, it is believed that under this clause it is possible to take the signal when it is not intended and could not be intended for a given country, because the necessary rights have not been secured, then of course I am afraid I must vote against Article 7.

783. The CHAIRMAN [F]: The delegate of the Ivory Coast has the floor.

784. Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: I am not sure that I have completely understood the example given by the delegate of Kenya but it is evident that there is no question of authorizing a country for whom the signal is not intended to capture it when it is emitted by an organization which has acquired the rights, but not for that country. It is indeed a question of "monopolies". If I have understood what the delegate of Kenya said, I am in complete agreement with the restriction that he indicated and I think that the explanation of this article in the Report will be submitted for the approval of the assembly.

785. The CHAIRMAN [F]: I give the floor to the delegate of Argentina.

786. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: The delegation of Argentina considers that the proposal of the delegate of the Ivory Coast is interesting and should be taken into account, but would like to see the drafting of the explanation of the text beforehand. In this case, it would withdraw its proposal on Article 7.

787. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

788. Mr. DAVIS (United Kingdom) [E]: I just want to say that given a clear statement along the lines proposed by the delegate of Kenya, we could accept Article 7, assuming, of course, that we have completely deleted the word "international".

789. The CHAIRMAN [F]: The delegate of Australia has the floor.

790.1 Mr. CURTIS (Australia) [E]: Having listened carefully to what has been said, and in particular to the exposition by the delegate of the Federal Republic of Germany, on the likely effect of including Article 7 on other conventions, we see the force of their argument. As I said in my original intervention on Article 7, what is important in our view is not so much the form of Article 7, indeed we see grave difficulties with its present form, but the

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recognition of the principle that in matters of public policy, domestic law must remain pre-eminent. It certainly would have satisfied us had we had in the Report something of the same expression of that view as we were successful in achieving at the Stockholm Conference in 1967.

790.2 Indeed, we would still hope to avoid a vote on Article 7. We were inclined to think, in view of the arguments that have been put today, that it would be preferable not to include Article 7, but to reflect in the Report the views that have been expressed by a number of delegations that questions of public policy in the application of the Convention are matters for domestic law.

790.3 I want to make it clear, before we vote, if indeed we do have the misfortune to go to a vote on Article 7, that what is said before is not to be taken as support for Article 7 in its present form, and indeed we have grave doubts whether it is wise to put something in the Convention. It is much better that it should be in the Report.

791. The CHAIRMAN [F]: The delegate of the Central African Republic has the floor.

792.1 Mr. TOKPAN (Central African Republic) [F]: The observations of the Central African Republic have been voiced by the delegation of the Ivory Coast. We would simply like to make it clear here that the spirit of the Convention requires that an equitable situation be achieved among the Contracting States whatever the technical and economic means they have at their disposal.

792.2 Article 7 speaks of monopolies and it is aimed at programmer-carrying signals. Consequently, the delegation of the Central African Republic cannot but support the retention of this Article 7.

793. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

794. Mr. WINTER (United States of America) [E]: If there can be an understanding of this Commission along the lines suggested by the delegate of Kenya for an inclusion in the Report of the explanation that he made about some of the difficulties connected with this particular article, and in response to the appeal made by the delegate of the Ivory Coast, the United States would not continue to oppose this article.

795. The CHAIRMAN [F]: The delegate of Ghana has the floor.

796. Mr. SAI (Ghana) [E]: The Ghanaian delegation has been deliberately sitting on the fence with respect to this issue, because a short while ago we were frightened by the difficulties pointed out by the Kenyan delegate regarding the implementation of this article.

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But our candid opinion is that we do not appreciate the importance of this article in terms of whether it is retained or whether it is taken out of the Convention. First, because we think that in the final analysis it is the domestic law which is going to decide what a particular Contracting State is going to do concerning monopolies. Secondly, it appears in principle that where it really boils down to public policy, then probably the text of the Convention is not a proper place for this. In view of this situation, we fail to attach very great importance to this particular article. In other words, we shall not mind very much whether it is retained or not. This is our candid position on this article.

797. The CHAIRMAN [F]: The delegate of the Byelorussian Soviet Socialist Republic has the floor.

798. Mr. KASHEL (Byelorussian Soviet Socialist Republic) [R]: Two delegations, Argentina and Italy, moved to delete this article. As I understand it both delegations now agree that it be kept in a drafting to be approved and in my opinion that settles the matter.

799.1 The CHAIRMAN [F]: I thought that I had understood that the delegations of Italy and Argentina were prepared to withdraw their amendment if there was a general consensus. That is what I understood - with an explanation in the Report which would give satisfaction to these delegations.

799.2 The delegate of Italy has the floor.

800. Mr. de SANCTIS (Italy) [F]: These explanations in the Report must be rather far-reaching so that all can understand what is at stake. In our intervention, I stated clearly that when a country has, in its own domestic law, a compulsory licensing system, it can obviously count on its domestic law to prevent monopolies. But I said that these provisions are generally to be found in other domestic laws, for example in the law on copyright, the law on neighbouring rights, in the legislation on the right of information in general. For example, under Italian law it is said that information in general is free, with the exception of certain questions. It is obvious that under Italian law we can control monopolies in space. This is the reason for which I am quite prepared to withdraw our opposition to Article 7 on condition: 1) that the word "international" disappears; 2) that in the Report there is a clear explanation of the question; if not, no one will understand everything.

801.1 The CHAIRMAN [F]: Before giving the floor to the delegates of Mexico and the United States who have asked for it, I should like to clarify once and for all that the word "international" is no longer in the text.

801.2 In the second place, I should like to state my personal opinion on what should or could be included in the commentary, at

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the risk of causing complications. Naturally, this concept of international abuse of monopolies is impossible to define. Consequently, it is a question of cases which will obviously be exceptional, extremely rare and perhaps never verifiable - which often happens in this type of matter. However, there can occur manifest abuses of monopolies for financial or political reasons. We can easily imagine, to take the eternal example of the World Cup and the Brazilian match, that a country, in order to annoy Brazil, prevents the broadcast of the match in order to provoke a revolution in Brazil. It would be a very effective method. In that case, there is an obvious abuse. Who defines this abuse? It is the country itself. And who will guarantee that the country is not going to abuse this concept of abuse of monopoly? In fact, it is in the first place the principle of good faith and, in the second place, international responsibility that must come into play. Consequently, before it takes domestic measures saying "I am obliged to proclaim that there is an abuse of monopoly" the State should take a second look because it is bringing into play its international responsibility which can be appreciated judicially. That is what I understand by an international abuse of monopoly.

801.3 The delegate of Mexico has the floor.

802. Mr. LARREA RICHERAND (Mexico) [S]: In the first place, I should like to thank you for enabling me to avoid asking a question connected with an example that the delegate of Kenya has given, a question that we have already had in the Committee of Experts at Nairobi, in connexion with the payment or non-payment of rights for a Brazilian game. I think that this Article 7 poses a much wider question of interpretation and does not refer solely and exclusively to monetary questions as in the example given by the delegate of Kenya, but refers also to other questions of a public nature, including, if we study it thoroughly, that it is no longer a problem of sending the signal but also that of preventing the sending of the signal in order to avoid an abuse of monopolies with the aim of avoiding the indoctrination or cultural undermining of nations. It is for this reason that the Mexican delegation maintains that Article 7 should be retained, without the word "international" as you have said, in line with what has been said by the delegate of Tunisia and, in addition, we are in agreement with the proposal of the delegate of the Ivory Coast that there should be a very clear commentary on this in the Report.

803. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

804. Mr. WINTER (United States of America) [E]: I think I must agree with what the delegate from Italy, Mr. de Sanctis, has just said about not understanding exactly what Article 7 is directed at. However, I think he made a very important point along the lines that the Report should make clear that this provision, if it is included, is directed at those practices which have been recognized in the enforcement of national laws as being restrictive. This seems to be

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the thrust of his statement because he talks about the application of domestic law. I think that some sort of a statement along the lines that Mr. de Sanctis suggested would be very helpful.

805. The CHAIRMAN [F]: The delegate of Senegal has the floor.

806. Mr. N'DIAYE (Senegal) [F]: The discussion on this article has, I think, taken us nearly an hour. In order to be practical, and since the majority of delegations, according to the statements that we have heard up to now, do not seem to be in favour of a vote - and we do not know whether the appeal of the delegate of the Ivory Coast has been heard - would it not be better to draft a text that would explain what must be included in the Report and discuss this text? If this text is acceptable we shall not take a vote, and should it not meet with the agreement of the delegates, then we could take a vote.

807.1 The CHAIRMAN [F]: Very good. I accept the proposal of the delegate of Senegal.

807.2 The delegate of Tunisia has the floor.

808.1 Mr. SAID (Tunisia) [F]: I was going in the same direction as the delegate of Senegal because I note that each time that we second a provision that does not please some among us, it is suggested that we delete the article and refer to it in the Report. This is becoming a habit and I am beginning to ask myself with some anxiety whether anything is going to be left in the text of the Convention.

808.2 In addition, it is very clear, as the delegate of Senegal has said, that although we would prefer to avoid a vote, it is necessary to decide at the same time, and in parallel, on the text of Article 7 and on the explanation which would appear in the Report. For, as in a proverb from my country, "it is unwise to buy the fish before it is out of the water".

809.1 The CHAIRMAN [F]: Perfect. But it is also important not to drown it. If you agree, we shall adopt the following procedure: we shall adjourn the meeting. The delegations most concerned by this subject can draw up a draft report which will explain what we understand etc. etc., and we shall take a look at it tomorrow if possible and, at that time, we shall have no more discussions because it will no longer be the time for discussion. Either this draft will be accepted, and in that case we shall have a consensus and we shall not take a vote, or the draft will be rejected and in that case we shall proceed to a vote by roll call as the delegation of Tunisia has suggested. But no more comments, no more discussions, because otherwise we can close our doors and say that the Conference will meet next year to continue its work. This is not possible.

809.2 Are we in agreement on this procedure? Perfect.

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809.3 Then I close the meeting.

810. The meeting rose.

Main Commission - Seventh Meeting¹

Tuesday, 14 May 1974 at 10.45 a.m.

Chairman: Mr. da COSTA (Brazil)

811.1 The CHAIRMAN [F]: We shall proceed with the work of the Main Commission. We apologize for the delay which is due to the work of the working group constituted to seek a compromise on the proposal of the Soviet Union, the Ukraine and Byelorussia. I chaired this working group and I can now tell you that we have made some progress; but the final decision will be taken tomorrow morning only, at another session of the working group. Consequently, we cannot consider today the settlement at which we shall, I believe, arrive.

811.2 The Chairman of the Conference wishes to make a statement in the name of the Bureau of the Conference. He has the floor.

812.1 The CHAIRMAN OF THE CONFERENCE [F]: The situation with regard to the work schedule of the Conference is very worrying. The Bureau has discussed this subject, for there is a lot of ground to be made up. And so, if you agree, and in order to avoid prolonging the end of our meeting after the date fixed, may we ask you, with some insistence, to agree to hold a night session. Thus, the meeting would be interrupted at the usual time and would begin again at 9 o'clock this evening. If this were not sufficient to make up the backlog, then we would be obliged to follow the same system tomorrow.

812.2 The Bureau has decided to follow this procedure, if you do not have too many objections. Thank you.

813. The CHAIRMAN [F]: I give the floor to the delegate of Canada.

814. Mr. CORBEIL (Canada) [F]: A point of information: did I understand from the Chairman of the Conference that the night session will begin at 9 p.m.? Thank you.

815.1 The CHAIRMAN [F]: If the Commission agrees, we shall therefore change our schedule. And so we shall have a night session this evening to try and get through the maximum of work and tomorrow we shall end when we can. But the work of the Main Commission must

1. Cf. document UNESCO/OMPI/CONFESAT/VR.13 (prov.).

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be completed tomorrow, without which everything would be in jeopardy.

815.2 Consequently, we shall have a meeting tomorrow morning. If we do not finish in the morning, we shall have a meeting in the afternoon and then a night session, and we shall stop the clock as certain parliaments do to finish tomorrow whatever happens.

815.3 If I remember correctly, we had two problems pending, the problem of the Soviet proposal which, as I have already said will be the subject of another meeting tomorrow morning and which, consequently, cannot be studied today, and the second question was the result of the working group formed to prepare a draft report on Article 7.

815.4 I give the floor to the delegate of the Ivory Coast.

816. Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: The working group consisted of the delegate of Kenya and the delegate of the Ivory Coast. It has completed its work. A draft text has been submitted to the Secretariat; I think that it is being typed. If you wish we can provide a few details on the text that has been prepared while waiting for it to be distributed.

817.1 The CHAIRMAN [F]: While waiting for this text, I suggest that we proceed to Article 8. And here I have a proposal to make. We have three versions of Article 8: Alternative A, Alternative B, and a text circulated by the Soviet Union as an amendment. As we are very behind with our work, I have carried out a survey among the delegations and I have found that there was only one alternative that was acceptable, i.e. with a two-thirds majority, that is Alternative A.

817.2 The delegation of Brazil would prefer Alternative B. But these are small sacrifices that one must know how to make. In this case, I wonder whether, instead of wasting the whole morning repeating views we know so well on the protection of authors' rights, on universality, etc. etc., it would not be better to come to an agreement, the delegations which have submitted Alternative B and the Soviet delegation voluntarily withdrawing their amendments. We would then immediately adopt Alternative A, which is absolutely certain to be accepted in the end in any case.

817.3 I apologize for this proposal which is rather precipitate but which is due to the fact that we are so far behind with our work.

817.4 The delegate of the Soviet Union.

818.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: Before we start the debate on Article 8 I would like to draw your attention to the fact that CONFESAT/8 submitted on behalf of the delegations of the Soviet Union and the Ukrainian and Byelorussian Soviet Socialist Republics contains a proposal to include after

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Article 7, a new article which we submitted today to the Secretariat on behalf of the delegations of the Soviet Union, the Ukrainian and Byelorussian Soviet Socialist Republics, the German Democratic Republic, the Hungarian People's Republic and the Czechoslovakian Socialist Republic (document CONF/SAT/28) and which is the same article as that proposed under CONF/SAT/8, for incorporation in the Convention under discussion. I should like to point out in this connexion that for the sake of further progress in the work of our Conference and taking account of the general opinion that our Conference should not deal with direct television broadcasting, we are not insisting on the discussion of this article which provided, in particular, for the obligation to broadcast to other States only with the explicit consent of the States concerned, nor the first article (para. III of CONF/SAT/8) dealing with the unlawfulness of including in programmes carried by signals that are transmitted by satellite any material of the kind that we discussed yesterday, but we believe that both articles could be adequately covered in the General Report of the Conference. However, we propose to include as Article 7bis a text which is the same as that of para. III of CONF/SAT/8 and is as follows:

"Contracting States shall bear international responsibility for all national activities connected with the use of satellites for broadcasting irrespective of whether such broadcasting is carried out by governmental agencies or by non-governmental organizations and juridical persons."

818.2 Allow me to explain briefly the reasons for our proposal. Under the terms of the 1967 Outer Space Treaty, the responsibility for the nature and contents of satellite television broadcasts, for all national activities in outer space, lies with the States irrespective of whether broadcasting is carried out by governmental organizations or non-governmental public entities. Allow me to quote a relevant article of this treaty:

"States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the Moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty. The activities of non-governmental entities in outer space, including the Moon and other celestial bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty..."

818.3 That is, those principles which were generally fixed in the 1962 UN General Assembly Declaration of Legal Principles Governing the Activities of States in the (Exploration and) Use of Outer Space.

818.4 I would also like to point out that Article 22 of the International Telecommunication Union Convention also envisages the responsibility of States for the activity of private organizations in the field of telecommunications. This principle was also formu-

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lated by the Institute of International Law in 1963. In a resolution adopted by it it is said that satellites should be launched under State authorization only and therefore each State is to provide that the use of any object in outer space launched under its authorization shall conform to the established norms of international law.

818.5 As the above-mentioned documents establish that it is the prerogative of States to ensure that any activity in space is in compliance with the law, including point-to-point distribution systems, it is in order to raise the issue of responsibility in terms of public law, i.e. the responsibility of States.

818.6 We believe that this article logically fits into the context of the Convention immediately after Article 7 which we are going to discuss today. The inclusion of this article (Article 7**bis**) would serve to emphasize the responsibility of States for the activities of any television broadcaster operating on their territories who undertakes satellite transmission of programme-carrying signals. As to the thesis of the inseparability of programmes and programme-carrying signals, it no longer raises any doubts as we understand it. It would be opportune to note that had we been dealing with technical signals alone it would have been more proper to consider this Convention under the aegis of the International Telecommunication Union rather than that of Unesco and WIPO. On the basis of these considerations, our delegation is proposing on behalf of the above-mentioned countries, that we now discuss the possibility of incorporating Article 7**bis** in the text of the Convention.

819. The CHAIRMAN [F]: The delegate of Kenya has asked for the floor.

820. Mr. STRASCHNOV (Kenya) [E]: We have listened, of course, with great interest to the explanations given to us by our colleagues from the USSR, but it is our belief that it would be better to go now through the articles of the Nairobi draft as they stand and leave to the end the new proposals from the USSR, especially as we do not know exactly what will come out of the negotiations which you mentioned and we do not know whether these negotiations will also embrace articles other than Article 3 proposed by the USSR. Therefore, we would like to move that, in order to speed up the work, as has been suggested by you and the Chairman of the Conference, we discuss first of all the articles of the Nairobi draft and then revert to any other proposals, if there are any after the discussions of the working group which have not yet been concluded.

821.1 The CHAIRMAN [F]: Consequently, we have a Soviet proposal to the effect that we should study immediately before Article 8 the proposal which appears in document CONFESAT/8 on page 2 before paragraph IV, and we have a motion from Kenya to the effect that we should adjourn the discussion of this Soviet proposal and proceed immediately to Article 8.

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821.2 The delegate of the German Democratic Republic has the floor.

822.1 Mr. WAGNER (German Democratic Republic) [E]: The delegation of the German Democratic Republic does not want to repeat what we have already stated about the rather artificial separation of the programmes from the signals. We have not changed our views in this respect. On the contrary, our opinion has been fortified during the discussion when many examples were cited that clearly demonstrated that it is not the signal which is of concern but the programme carried by it, be it football, artistic performance, or cultural events.

822.2 We know that, in the majority of the States present at this Conference, there are national laws governing the activities of broadcasting organizations. To avoid any misunderstanding, we do not propose to establish new obligations for the States in this respect. We are interested in a regulation securing the sovereign rights of the States and non-interference in the internal affairs of a State. We believe that the emission of programme-carrying signals touches on sovereign rights, and so it seems to us justified and necessary to include the relevant activities of broadcasting organizations in the national responsibility of the State. In other words, Contracting States should, under this treaty, be obliged to take care of all activities of their national broadcasting organizations in connexion with the use of space satellites with respect to sovereignty of States and the generally recognized principles of international law.

823.1 The CHAIRMAN [F]: We must first solve the procedural problem which is whether we should discuss immediately the Soviet proposal or whether we should discuss Article 8. That is the first thing to do. I ask delegations to limit themselves to this specific point: should we proceed to the discussion of Article 8 or should we first discuss the Article 7bis proposed by the Soviet Union.

823.2 The delegation of the Federal Republic of Germany has the floor.

824. Mr. GAERTE (Germany, Federal Republic of) [E]: It was exactly this point I wanted to deal with, that is, the procedural suggestion that has been made by the delegation of Kenya. I think all the proposals of the delegation of the USSR are interrelated and can only be discussed together. I understand that there is a working group now meeting and discussing these proposals. I think, therefore, it would be premature to discuss it here in this Commission, and that it would be wiser to postpone it until the working group has reached an agreement, and in order not to lose time to continue with the Nairobi draft.

825. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

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826. Mr. WINTER (United States of America) [E]: I will not take up the time of this Main Commission to repeat the substance of the arguments made by the United States during the course of the various debates on the Soviet proposal, but rather will address myself to the procedural point that we believe it would be desirable, because of the lack of time and the fact that we are falling behind schedule, to proceed with our discussion on the basis of the Nairobi text and to defer the Soviet proposals until we have covered the Nairobi text in its entirety.

827. The CHAIRMAN [F]: The delegate of Mexico has the floor.

828. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico also considers that in order to save time it would be more appropriate to accept the suggestion of the delegate of Kenya. In this respect, I should like to ask for a point of order, because in accordance with Rules 17 and 18, paragraph 2(c), I would prefer that a vote not be taken on this question. But in order to avoid that everyone asks for the floor and losing more time, it should be put to the vote now whether we are going to postpone this matter or whether we are going to discuss it immediately.

829.1 The CHAIRMAN [F]: I shall read Rule 17 of the Rules of Procedure: "During a discussion, any delegation may rise to a point of order and such point of order shall be immediately decided by the Chairman. An appeal may be made against the ruling of the Chairman. Such appeal shall be put to the vote immediately, and the Chairman's ruling shall stand unless it is overruled by a majority of the delegations present and voting."

829.2 Consequently, I have to take a decision. If you do not agree to it, then we take a vote.

829.3 My decision is the following: we consider the Soviet draft after studying the Nairobi text. If any delegation objects to this decision, we shall take a vote. Do we agree? It is so decided.

829.4 Consequently, we shall proceed with Article 8. I have made a concrete proposal, an unusual one but one which is justified, I think, by the very little time that we have left. I will repeat this proposal: since my survey indicates that there is only one alternative that can achieve the two-thirds majority - it is Alternative A - I appeal to the countries who support Alternative B and to the delegations who submitted CONF/SAT/8 to withdraw their proposals. In this way we could approve by a consensus Alternative A, which is midway between the various proposals. Then, in the Plenary, delegations will, of course, be able to make all the statements they wish on principles.

829.5 The delegate of Italy has the floor.

830. Mr. de SANCTIS (Italy) [F]: The delegation of Italy

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associates itself completely with your proposal, Mr. Chairman, all the more so in that we are in favour of the adoption of Alternative A. In our opinion it is not normal to exclude from the new instrument countries not party to the Berne Convention or the Universal Convention. In addition, the whole philosophy of the Nairobi draft of the Convention leans towards Alternative A.

831. The CHAIRMAN [F]: The delegate of Byelorussia has the floor.

832.1 Mr. KASHEL (Byelorussian Soviet Socialist Republic) [R]: Naturally I understand your desire to advance as fast as possible but it seems to me unusual to examine the proposal submitted by our delegations under CONFESAT/8 without first listening to the motivation behind these proposals. It refers in particular not only to the first paragraph of this article. I would not like to take up too much time but I must, nevertheless, say a few words on our proposals.

832.2 Our first proposal concerns paragraph (1) of the article. I suppose you all know and are familiar with this proposal. We believe that this paragraph should end with the words "any State" deleting Alternatives A and B which would then, as you defined it, become Alternative C. In sponsoring this proposal our delegations were guided by the principle of universality which is becoming a more and more generally accepted norm in drafting international documents. Distribution of signals by satellite is of a global character; that is why it is impossible to exclude reception of a distributed signal in any country. It would be wrong to establish limitations to participation in the Convention; we therefore believe that the Convention should be open for signature to all States.

832.3 The second proposal concerns paragraph (2) and it is a follow-up of the first proposal.

832.4 And the last, the third proposal concerning this article reflects the position of our delegation that it is up to individual States to decide how they are going to ensure that the terms of this Convention are observed within these States. That is why we consider this paragraph superfluous. The deletion of this paragraph does not seem to present any difficulties since the text of the Convention, as it is being shaped now, does not specifically provide for the norms of legal regulation because of the deletion of Article 3 of the original draft.

833.1 The CHAIRMAN [F]: The proposal I made did not concern paragraph (4). The proposal that I made deals with the choice between the three solutions.

833.2 I give the floor to the delegate of France.

834.1 Mr. DESBOIS (France) [F]: Mr. Chairman, the French dele-

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gation has heard your proposal with a certain surprise and with some regret that the occasional delegate of France that I am would like to stress. I was not personally present at Nairobi but I know that there the French proposal (Alternative B) received the sympathy of several delegations. I do not wish to repeat arguments which would nevertheless merit being studied, for if Alternative B were to be taken into consideration, we would not be in contradiction with the decision taken at Nairobi, and confirmed here, under which authors' rights should not be taken into consideration within the framework of this draft. In fact, it seems to me possible to say without any contradiction in terms that adherence to the Berne Convention or to the Universal Copyright Convention constitutes a preliminary, and a preliminary which to some minds can be justified. It does indeed seem strange that, in certain countries, we can protect the signals which are merely vehicles whereas we cannot protect the works carried by them.

834.2 In addition, it is in the interests of security that authors' rights be protected at the same time as the signals. These are the reasons which were much better developed at Nairobi, but I think nevertheless that we should ask that mention be made in the Report of Alternative B which has not been adopted and that the considerations set out in this respect be summarized there.

835.1 The CHAIRMAN [F]: As I said, there is no question of quelling those in favour of other alternatives. It is simply a question of saving time. I thought that in the Plenary in particular the delegations would be able to state their extremely valid arguments since, I repeat, the delegation of Brazil itself is in agreement with the delegation of France that Alternative B would have been preferable. But we have to be realistic and in view of the short time before us, I have suggested this solution which is, I confess, rather unusual.

835.2 The delegate of Mexico has the floor.

836. Mr. LARREA RICHERAND (Mexico) [S]: Both at the Nairobi meeting and here, the delegation of Mexico supported Alternative B and would also like to keep it in the text of the Convention, but in the interests of arriving at an agreement as quickly as possible and to avoid the Convention being delayed, we now accept Alternative A, while stressing that the reason for which Mexico supported Alternative B is, in the first place, because it referred to a series of still earlier studies and we did not wish to isolate copyright protection from the programme-carrying signal. In addition, we thought that not adopting Alternative B had the danger of giving wider rights to the broadcasters and to the programme-carrying signals than to the programme itself, because it held the possibility that many States would not belong to the Berne Convention or to the Universal Convention. However, the result of the work of the Main Commission of this diplomatic Conference has made us see that a series of articles that we also proposed already protect copyright adequately and preserve the balance established both by the Universal Convention as well as the Berne Union and the Rome Convention, and

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for this reason, we see no objection to associating ourselves with Alternative A.

837.1 The CHAIRMAN [F]: I thank the delegate of Mexico for his constructive idea.

837.2 The delegate of Kenya has the floor.

838.1 Mr. STRASCHNOV (Kenya) [E]: Briefly, we consider that Alternative B would create the same difficulties as those we know in respect to the Rome Convention. One of the reasons why the Rome Convention cannot cover the subject matter we are dealing with here is precisely because Article 24 of the Rome Convention limits accession to States party to either of the two copyright conventions. We know by now that there are many ground stations in countries which do not belong to one of the two multilateral copyright conventions and that, nevertheless, it certainly is the desire of this Conference that even the emissions from these ground stations should be regulated by this treaty. On the other hand, we feel a very great sympathy with the Soviet proposal that the Convention should be open to accession by any State. Of course, we realize the difficulty in defining a State, if we do not somehow link this concept to some organization or organizations already existing as it is in Alternative A.

838.2 In the spirit of compromise, between our desire to open the Convention as widely as possible to any State and the equal desire to avoid the limitation which would flow from the adoption of Alternative B, we support your proposal, Mr. Chairman, and declare ourselves in favour of Alternative A.

839. The CHAIRMAN [F]: The delegate of the Union of Soviet Socialist Republics.

840. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: It is difficult to understand why some delegations are against the universality of this Convention. In the course of the general discussion as well as during the work of the Main Commission it was emphasized that nowadays television broadcasting is so widespread and of such great influence that legal control is necessary for all States within the range of such television emissions. Why should we exclude those countries which are not yet members of the United Nations or its specialized agencies but which would like to adhere to this Convention. I think that the proposal put forward by the Byelorussian SSR, the Ukrainian SSR and the Soviet Union which was supported by the delegation of the German Democratic Republic enables us to solve this problem, and our proposal in fact covers both Alternative A and Alternative B which is proof of our desire to find a compromise on this point, and as we see it this would allow us to proceed rapidly with our work. That is why I would like once again to suggest and request that we proceed with the discussion of the proposal which was officially submitted on

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6 May in the same form and phrasing as recorded in document CONF/SAT/8.

841. The CHAIRMAN [F]: I give the floor to the delegate of the German Democratic Republic.

842.1 Mr. ZSCHIEDRICH (German Democratic Republic) [E]: We think that the delegation of the GDR is authorized to say something concerning this problem. We support the proposal, whereby the Convention shall be open to all States without any reference to the membership of the United Nations or any other convention in the field of copyright.

842.2 We think that respect for the principles of the sovereignty of all States, as stipulated in Articles 1 and 2 of the Charter of the United Nations, demands every peace-loving State be given the possibility of becoming a member of the Brussels Convention. Any other view could lead to discrimination of other States, and on the other hand, it could mean an act of interference in the internal affairs of the States concerned.

842.3 With regard to worldwide accession to this Convention, a limitation of this new treaty, as the proposed application clause foreseen in the draft Convention, would prevent the desired worldwide acceptance which, as was said in the debate, is essential in view of the nature of satellite communications.

843. The CHAIRMAN [F]: I give the floor to the delegate of Morocco.

844.1 Mr. CHAKROUN (Morocco) [F]: With regard to Article 8, we should take into account the proposals made by the delegation of the Union of Soviet Socialist Republics aimed at eliminating any limitations in this article. The delegation of Morocco had the opportunity, during the general discussion, to state that we were of the opinion that this Convention should be universal and should consequently remain open to all States.

844.2 In addition, my country is party to two international copyright conventions. Alternative B does not embarrass us in any way, but since several States, such as the Arab States, for example, although possessing a national copyright statute, are not members of either of the two conventions, our opinion is that this article should be divested of the two alternatives. Nevertheless, in a spirit of compromise, the proposal to retain Alternative A would receive the support of my country, on condition, of course, that the position of the Union of Soviet Socialist Republics is explained in the Report.

845.1 The CHAIRMAN [F]: It is obvious that if we abandon the proposal contained in document CONF/SAT/8 and Alternative B, all the necessary explanations will be included in the Report.

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845.2 The delegate of the United Kingdom.

846. Mr. DAVIS (United Kingdom) [E]: It is merely to say that the United Kingdom can accept your suggestion, Mr. Chairman.

847. The CHAIRMAN [F]: The delegate of Ghana has the floor.

848. Mr. SAI (Ghana) [E]: I was going to suggest that in deference to the time-saving suggestion which you made, Mr. Chairman, the proposal should be put to the vote by roll call because, honestly, I believe the extreme position taken by the joint proposal of the USSR and the Ukrainian and Byelorussian Soviet Socialist Republics, has its merits and demerits, as has Alternative A. So that if the idea is to save time by not going into the details of the merits and demerits of these two positions, then I would suggest that we put your suggestion to confine ourselves to Alternative A of Article 8 (1) to the vote by roll call. That is my suggestion.

849.1 The CHAIRMAN [F]: I confess that I have not quite understood the proposal of the delegate of Ghana. I had suggested that we choose by consensus Alternative A and that the delegations who have submitted either the wider solution - i.e. the delegation of the Eastern bloc - or the more restricted solution, withdraw from their position which will be duly explained in the Report. This is in order to avoid a vote. But if we are to vote on my proposal, then we might as well vote on the three possibilities.

849.2 The delegate of the Union of Soviet Socialist Republics.

850. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I did not quite understand your last statement. We do not withdraw our proposal and insist that it be discussed and if it comes to voting we are putting forward the proposal we have submitted as an alternative to Alternative A.

851.1 The CHAIRMAN [F]: Consequently, the proposal I made has not been accepted by the delegate of the Union of Soviet Socialist Republics. There is therefore no consensus. Consequently my proposal no longer has any sense. Would a delegation ask for the close of the discussion so that we take a vote immediately.

851.2 I give the floor to the delegate of the Federal Republic of Germany.

852. Mr. GAERTE (Germany, Federal Republic of) [E]: I herewith gladly oblige and move accordingly. I think we have had this discussion about the all-States clause dozens, if not hundreds of times in our career and we all know the arguments for and against it. Therefore, I do not think it is really necessary to go into this in greater detail, and I move that we proceed immediately to a vote.

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853.1 The CHAIRMAN [F]: Consequently we have a motion to suspend the discussion and to take a vote. I put this motion to the vote. Would those delegations in favour of the suspension of the discussion and who wish to pass immediately to the vote please raise their plaques. The delegations who support the motion to close the discussion: 32. The delegations who are against the motion to close the discussion: 6. Abstentions: 4.

853.2 Consequently, we have 32 votes in favour, 6 against and 4 abstentions. The motion of the Federal Republic of Germany has been carried and the discussion is closed.

853.3 We shall now pass to the vote. I think that we should vote first on the proposed amendment appearing in document CONFSTAT/8 since that is obviously the one that is furthest from the text. And so we are voting on the proposal contained in document CONFSTAT/8, Section IV, which is in Article 8, paragraph (1) to place a full stop after the words "by any State", and to delete Alternatives A and B, and to delete in paragraph (2) the words "referred to in paragraph (1)". This is a corollary. This does not, of course, concern paragraph (4). Paragraph (4) is the subject of other considerations. Would those delegations who support this amendment submitted by the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic please raise their plaques.

853.4 I give the floor to the delegate of the German Democratic Republic.

854. Mr. ZSCHIEDRICH (German Democratic Republic) [E]: I support the proposal of the delegate of Ghana that we vote by roll call.

855.1 The CHAIRMAN [F]: We shall therefore proceed to a vote by roll call. We shall draw lots to see which delegation will be the first to vote. We shall begin with Norway.

855.2 The delegate of Morocco is asking for the floor.

856. Mr. CHAKROUN (Morocco) [F]: May I ask the Chairman to clarify what we are voting on first.

857.1 The CHAIRMAN [F]: We are going to vote on the Soviet proposal concerning paragraph (1) and paragraph (2) of Article 8, i.e. we are going to vote for or against or abstain on the Soviet proposal. We shall then proceed to the other Alternatives.

857.2 Following a decision of the Chairman, a vote by roll call was taken on this proposal. The results of the vote were the following: in favour 11, against 24, abstentions 7, absent 4.

857.3 Consequently, the amendment contained in document CONFSTAT/8 is rejected.

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857.4 We shall now vote on Alternative A or we shall not vote but shall adopt it by consensus since one alternative has been eliminated and those in favour of Alternative B have generously consented not to insist on it without in any way renouncing the principle on which it is based.

857.5 Can we consider that Alternative A is adopted? Yes. Consequently, Alternative A is adopted.

857.6 We shall now proceed to the second paragraph of Article 8: "This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1)." I do not think that this article requires any long commentary. Can we adopt it? It is adopted.

857.7 Paragraph (3): "Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nations". Are there any problems? I do not think so for this paragraph. It is adopted.

857.8 Finally, we have paragraph (4). "It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its domestic law to give effect to the provisions of the Convention".

857.9 Here, we have an amendment, that of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic contained in document CONF/SAT/8, Section IV, that paragraph (4) of Article 8 be deleted. The delegates of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic and other delegates have indicated their motives for considering that this paragraph is undesirable.

857.10 The delegate of Morocco has the floor.

858. Mr. CHAKROUN (Morocco) [F]: With regard to paragraph (4) of Article 8, it seems to the delegation of Morocco to be superfluous. It would create problems for the national jurists who will subsequently have to study this Convention to advise their governments with regard to ratification. This is the sort of complication and woolly provision that should in our opinion be avoided in order to make this instrument as simple as possible. It is evident that our Convention should permit the promotion of other international treaties and domestic laws in the field of the protection of authors and contributors to programmes and not the contrary. The Preamble, which is to allude to the Rome Convention and to the ITU instruments and the present Article 6 concerning this same protection under domestic law and the international conventions, constitute a more than sufficient guarantee and justify the request to delete paragraph (4) of Article 8.

859. The CHAIRMAN [F]: The delegate of Kenya has the floor.

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860.1 Mr. STRASCHNOV (Kenya) [E]: It seems to us that Article 8, paragraph (4) is absolutely necessary. Indeed, a similar provision exists in the Rome Convention, Article 26, paragraph (2), and in the much more recent Phonograms Convention, Article 9, paragraph (4). It seems to us necessary, that a State when becoming a party to this Convention, should be in a position to give effect to the provisions of this Convention.

860.2 It is the normal consequence of Article 1, which obliges States to take certain measures, and it would seem to us absurd, that the State should bind itself by this Convention without having taken the necessary steps to be in a position, at the time its accession becomes effective, to implement that Convention. We consider, therefore, that paragraph (4) of Article 8 should be maintained.

861. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany.

862.1 Ms. STEUP (Germany, Federal Republic of) [E]: We also are in favour of maintaining paragraph (4) of Article 8, and I should like to add one more reason to what has already been said by the delegate of Kenya.

862.2 As you all know, in international treaties, there are two different kinds of clauses on this subject: one clause saying that the State has to be in the position to apply the Convention when it deposits its instrument of ratification or accession, and another kind of provision, saying that the State has to be in this position only at the moment when it becomes bound. I think, since there are two possibilities in international law, we have to say which one we want to have. Therefore, I think it is necessary to have this clarification and we agree with paragraph (4).

863. The CHAIRMAN [F]: The delegate of Mexico has the floor.

864. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico also supports the statements of the delegations of Kenya and the Federal Republic of Germany, especially since the drafting of paragraph (4) is very clear and it seems to us that its deletion would hinder the rapid application of the Convention. We believe, therefore, that we should retain paragraph (4) in its present drafting.

865. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

866. Ms. RINGER (United States of America) [E]: I should like to associate the views of my delegation with those of the preceding three speakers, the delegations of Kenya, the Federal Republic of Germany and Mexico, and simply say, without repeating the arguments,

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that we consider this provision one of the cornerstones of the Convention.

867. The CHAIRMAN [F]: The delegate of Austria has the floor.

868. Mr. DITTRICH (Austria) [E]: I think that nearly all of you know that the version which is now found in Article 8, paragraph (4), of the Nairobi draft, is based on an Austrian proposal tabled during a former conference. I think that you will not be astonished that we support the Nairobi draft.

869. The CHAIRMAN [F]: The delegate of Senegal has the floor.

870. Mr. N'DIAYE (Senegal) [F]: I think that the deletion of paragraph (4) of Article 8 would perhaps have made sense if we had adhered to the Soviet proposal. We could perhaps find there justifications for this deletion, but from a purely legal point of view, given that we have adopted Alternative A, I wonder to what extent we could delete paragraph (4). It is of course a clause that, it is said, exists in all the Conventions, i.e. that the State will be in a position to, etc... But of course we have a Convention that is not like the others. It is, I think, a Convention that each State is in a position to apply and it is for this reason that I think that we could without danger keep paragraph (4).

871.1 The CHAIRMAN [F]: I must confess to the same perplexity as the delegate from Senegal with regard to the practical application of this paragraph.

871.2 The delegate of Brazil has the floor.

872. Mr. de ATHAYDE (Brazil) [F]: I should simply like to state the position of Brazil. The delegation of Brazil is in favour of the deletion of paragraph (4) of Article 8 and therefore supports what has been said by the delegation of Morocco, for we consider that this paragraph no longer makes much sense in the new approach.

873. The CHAIRMAN [F]: I give the floor to the delegate of the Union of Soviet Socialist Republics.

874.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: First, I would like to point out that paragraph (4) (this is in connexion with the statement of my colleague from Senegal) is being discussed separately as it is not directly associated with paragraphs (1), (2) and (3) of the article in question. Therefore it is quite logical and proper to consider it separately regardless of the voting that has just taken place.

874.2 We think that this provision (paragraph (4)) should not cover national legislation. Each State has to provide itself with the means of putting into effect any convention it accedes to. It goes

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without saying that when a State signs a Convention and assumes inherent responsibilities and obligations it must be in a position to fulfil such obligations. But as to the specific forms and ways of giving effect to the provisions of this Convention on its territory and controlling its implementation, this is a prerogative of the sovereignty of each State.

874.3 It appears to me that the adoption of this paragraph would actually hinder accession. Therefore I confirm once again our proposal and would like to point out that the statements of the Moroccan and Brazilian delegations deserve consideration and support.

875.1 The CHAIRMAN [F]: We are once again faced with a question that cannot be the subject of a bargain or half-measure. Consequently we have to vote. Opinions are divided, some are in favour, others against, and yet others do not entirely grasp the difference but we shall vote on the amendment which is farthest from the text, i.e. the Soviet amendment contained in document CONFESAT/8, IV (c). I shall put to the vote the Soviet amendment to delete paragraph (4) of Article 8. I ask those delegations in favour of the Soviet amendment, i.e., in favour of the deletion of this paragraph, to kindly raise their plaques.

875.2 I shall take advantage of this moment to welcome Mr. Eric Suy, the Legal Counsel of the United Nations Organization, who is among us to-day.

875.3 The results of the vote are the following: in favour 12, against 21, abstentions 10.

875.4 The amendment contained in document CONFESAT/8 is rejected and consequently paragraph (4) survives.

875.5 Can I consider that Article 8 in its entirety is approved? I remind you that this is with Alternative A and with paragraph (4). Yes? Perfect.

875.6 Now we shall proceed to Article 9. Are there any amendments concerning Article 9? We also have an amendment contained in document CONFESAT/8 submitted by the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic, in favour of the deletion of paragraph (3).

875.7 The delegation of the Ukrainian Soviet Socialist Republic has the floor.

876.1 Mr. ALEXEEV (Ukrainian Soviet Socialist Republic) [R]: The delegations of the USSR, the Ukrainian SSR and the Byelorussian SSR submitted a proposal to delete from Article 9 (3), sub-paragraphs (a) and (b) providing the possibility for a Contracting State to give effect to this Convention in the territories for whose international affairs it is responsible. Such provisions are obsolete

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and contradict the United Nations General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514/XV of 14 December 1960).

876.2 This is our motivation.

877. The CHAIRMAN [F]: I give the floor to the delegate of Tunisia.

878.1 Mr. SAID (Tunisia) [F]: As we have already said in the Plenary, the delegation of Tunisia is in favour of the deletion of paragraph (3) of Article 9. In so doing we are not making any innovation, since the General Conference of Unesco, i.e. the international community, has already had the opportunity to delete this so-called colonial clause, which is in fact quite anachronistic, when it adopted at its seventeenth session in 1972 the International Convention concerning the protection of the world cultural and natural heritage. I believe that it would be inappropriate to go back on this.

878.2 I would like to add that this is not simply a question of principle, although that is important, but also a question of a practical nature. For you will understand that it is difficult for us, the Third World countries to submit to our parliaments and to have ratified a Convention containing this clause which dates from another age and which is in contradiction with the texts of the United Nations.

879. The CHAIRMAN [F]: I give the floor to the delegate of the United Kingdom.

880.1 Mr. DAVIS (United Kingdom) [E]: This would seem to be a confrontation on a basically political matter but I would like, with your permission, to explain to the meeting that for the United Kingdom this is not a political but a practical matter.

880.2 First, I would draw the attention of the meeting to the provisions of the article. Sub-paragraph (a) provides that any State may declare that this Convention shall apply to certain of its dependent territories. The implication of this is obviously that if the declaration is not made the Convention does not apply to them. Given such an article, the dependent territories of the United Kingdom are always, and I repeat this, always consulted as to whether or not they wish the Convention to apply to them.

880.3 Now what is the position if we leave the article out? The opinion of our Ministry of Foreign Affairs is that without such a provision the treaty is binding on Contracting States in respect of its entire territory. The implications of this are that the United Kingdom before acceding to the treaty would have first to ensure that all the dependent territories, which, as I have said, are always consulted, wish to adhere to the treaty and second, that their

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legislation is such that they can do so. This means that if any one territory does not wish to accede, neither the United Kingdom nor any of its dependent territories can.

880.4 Next, even if they all wish to accede, we must work with them to ensure that their legislation is in proper form to enable them to do so. This is necessarily a very lengthy process and only when it is complete can the United Kingdom accede to the treaty in respect of itself and all the territories.

880.5 Now we are led to believe that time is of the essence here. Even if all the dependent territories are in agreement, and they all wish to accede, it would necessarily be several years before legislation could be such that they could do so.

880.6 Summarizing, this provision has the effect not of restricting the freedom of those territories, but of conferring on them the absolute right to decide if they wish to accede. We have heard from another delegation that it is a vital matter for them; well, I have to tell the meeting that for the United Kingdom it is a vital matter too. It is highly unlikely that we could accede to this agreement in the foreseeable future without it.

880.7 I may say that the provision has already appeared several times in conventions on intellectual property. I would refer to Article 31(4) of the Paris text of Berne, Article 11(4) of the Phonograms Convention and Articles 62(3) and 62(4) of the Patent Co-operation Treaty. As lately as last year it was used in the Trade Mark Registration Treaty concluded in Vienna. But, I do recognize that for some States there are difficulties in it; to them it is a political matter and I would draw their attention to the second provision of the article. Article 9, paragraph 3(b), provides that sub-paragraph (a) may in no case be interpreted as implying recognition or tacit acceptance by any one of the Contracting States of the actual situation in any territory to which the present Convention is made applicable. In my view it would not be unreasonable for the meeting to recognize the practical difficulty, secure in the knowledge that their political position is entirely preserved by paragraph 3(b).

881. The CHAIRMAN [F]: I give the floor to the delegate of Algeria.

882.1 Mr. ABADA (Algeria) [F]: Algeria has already stated its point of view with regard to the proposal of the Union of Soviet Socialist Republics during the general discussion. We expressed the point of view that we are in favour of the deletion of paragraph 3 (a) and (b). Everyone is aware of the position of Algeria. For us it is a question of principle.

882.2 The occupied territories should no longer be occupied. We live at a time when the previously colonized peoples are becoming more and more emancipated and recovering their freedom.

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882.3 We are told that if such a clause were not included in Article 9, it would be impossible to make the Convention applicable to the occupied territories. But in fact the occupation of the occupied territories is in itself illegal and that has not prevented their being occupied, and in fact I believe that the countries which still have occupied territories will not fail to apply to these territories all that they wish, both the provisions of this Convention and still other, more serious matters.

882.4 What we wish to avoid is recognizing again, morally, occupation. We do not wish to morally recognize colonialism. I think that history has arrived at the point where, universally, man is rejecting this phenomenon of colonialism and is advancing towards the liberty and emancipation of peoples.

882.5 These are the basic reasons which motivate our position.

883. The CHAIRMAN [F]: The delegate of Morocco has the floor.

884.1 Mr. CHAKROUN (Morocco) [F]: My delegation understands perfectly the noble motive which induced the delegation of the USSR and the other delegations to request the deletion of paragraph (3) of Article 9. We are all waiting to see all territories under foreign occupation free, emancipated, sovereign and in full control of their international relations. The drafting in international law of a legal provision such as that stipulated in paragraph (3) of Article 9 could be interpreted in the international political context as being a recognition of a situation that the modern world rejects. This is a vexatious provision. It is true that some international Conventions have retained such a provision, but as the delegate of Tunisia has just explained, there is one international Convention which has not retained it. Therefore, Morocco is in favour of the deletion of this paragraph. This deletion would in no way obstruct the countries who are still responsible for others from doing what their domestic law permits.

884.2 I would prefer it if we could take a decision with regard to this paragraph without a vote.

885. The CHAIRMAN [F]: The delegate of Mexico has the floor.

886. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico is also in favour of the deletion of the whole of paragraph (3) of Article 9, in the first place for political reasons, for Mexico no longer recognizes any type of colonialism, and, in addition, for reasons of logic: we have already approved Alternative A of Article 8 and we refer to the United Nations; since the United Nations has adopted a series of resolutions to this effect, we believe that we should be consistent with these and, therefore, adopt a logical attitude in the context of our Convention.

887. The CHAIRMAN [F]: The delegate of the Netherlands has the floor.

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888.1 Mr. VERHOEVE (Netherlands) [F]: For reasons more or less analogous with those indicated by the delegation of the United Kingdom, our delegation is in favour of the retention of the present text of Article 9.

888.2 In fact, the international relations of some parts of the Kingdom of the Netherlands - viz. Surinam and the Netherlands Antilles - have been assured up to the present, and this will continue as long as these countries so wish, by the government of the Netherlands under an official agreement between the three parts of the Kingdom. Until such time as this situation changes, it is necessary to retain the principle expressed in the third paragraph of Article 9. If this paragraph disappeared, Surinam and the Netherlands Antilles would have no possibility, under international law, of acceding to this Convention. They would, so to speak, risk falling between two chairs. Such was also the situation in other fields: at the adoption or revision of recent international Conventions on copyright, neighbouring rights, phonograms, patents and trademarks, our government adopted this same attitude. This is why the delegation of the Netherlands insists on the retention of this paragraph (3) for practical reasons and in the interest of the countries mentioned.

889. The CHAIRMAN [F]: The delegate of Brazil has the floor.

890. Mr. de ATHAYDE (Brazil) [F]: I would merely like to make it clear that although the Brazilian government understands the motives that inspired the concern to retain this paragraph - motives which have been clearly explained by the delegates of the United Kingdom and the Netherlands - it supports the deletion of this paragraph.

891. The CHAIRMAN [F]: The delegate of the Ivory Coast has the floor.

892. Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: As the delegate of Tunisia has said, it is difficult to prevent the evolution of the course of history and men have never taken a step backwards within the framework of progress. Now this progress is extremely important since it is the progress of humanity, progress in the field of the recognition of the imprescriptible rights of men to liberty. Therefore, the Ivory Coast appeals to all those countries who insist on the retention of these paragraphs that they accept that these paragraphs be deleted by a general consensus. As the delegate of Tunisia said also, there is already a precedent. If some States assure the international relations of other countries, it is certain that they will find the necessary means to solve the problem when it presents itself, without the presence of these paragraphs in the Convention.

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893. The CHAIRMAN [F]: The delegate of the Central African Republic has the floor.
894. Mr. TOKPAN (Central African Republic) [F]: The arguments against the provision contained in paragraph (3) of Article 9 have been clearly expounded by the delegates of Algeria and Morocco and by the delegate of the Ivory Coast. The delegation of the Central African Republic hopes that the other delegations will understand the justice of these interventions and that we will not take any vote which, for political reasons, could be vexatious.
- 895.1 The CHAIRMAN [F]: I still have on my list the Federal Republic of Germany, Ghana, the USSR, Senegal and the Byelorussian Soviet Socialist Republic. I think that we have heard plenty of viewpoints. When we have heard these speakers I will submit a proposal.
- 895.2 The delegate of the Federal Republic of Germany has the floor.
- 896.1 Mr. GAERTE (Germany, Federal Republic of) [E]: The positive attitude of the Federal Republic of Germany with regard to the principle of self-determination is well known and therefore does not require further explanations or a new affirmation. This principle is, however, not at stake in this Convention, which is of a purely technical nature. The delegation of the Federal Republic of Germany would like to prevent a situation in which a number of countries which are very active in the field of satellite transmissions would not be able to adhere to this Convention.
- 896.2 Under these circumstances, my delegation supports the inclusion of paragraph (3) of Article 9 in the Convention.
897. The CHAIRMAN [F]: The delegate of Ghana has the floor.
898. Mr. SAI (Ghana) [E]: Our delegation supports the arguments advanced for deleting paragraph 3 (a) and (b) of Article 9. This is derived not only from the obviously unedifying colonialist connotations, but from one particular point, namely it appears that from its very nature, the provision in paragraph 3 (a) and (b) of Article 9 will become obsolescent as those territories, I believe, begin to attain self-determination during the validity period of the Convention itself. If I am right, from this point of view, I think that it is most undesirable to retain this paragraph in view of the fact that it would soon become obsolescent as these territories change status.
899. The CHAIRMAN [F]: The delegate of the Union of Soviet Socialist Republics has the floor.
900. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: The

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Union of Soviet Socialist Republics deems it necessary to declare that the provisions of Article 9, paragraph (3) of the draft envisaging the possibility for Contracting States of applying this Convention to territories for whose international affairs they are responsible are obsolete and contradict the UN General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960. This is a firm principle of the Soviet Union policy, and as this is not a narrow technical meeting but an international Conference of States; if the Conference does not find it possible to support the proposal concerning the deletion of paragraph (3) of Article 9, this would make it practically impossible for us to consider the question of acceding to the Convention.

901. The CHAIRMAN [F]: The delegate of Senegal has the floor.

902.1 Mr. N'DIAYE (Senegal) [F]: I think that the political arguments have been sufficiently developed by the speakers who have preceded me. But if we stick to legal arguments, I do not think that those tenets in favour of the retention of this provision will stand up to analysis. Up to the present we have not been told to what extent the deletion of this paragraph would prevent a State which assures the international representation of territories to make the Convention applicable to these territories. The day that it is proved to us that this is impossible, at that time we can perhaps discuss this.

902.2 I think that on the pretext that we must not be political we are being political, for I believe that the only arguments that might lead us not to admit the deletion of this provision are political ones and I defy all those upholding the thesis of retaining this provision to prove to us that the deletion would prevent applying or making the Convention applicable to territories.

903.1 The CHAIRMAN [F]: I give the floor to the delegate of the Byelorussian SSR who is the last speaker on the list since we have closed the list of speakers.

903.2 The delegate of the Byelorussian SSR.

904. Mr. KASHEL (Byelorussian Soviet Socialist Republic) [R]: As co-sponsors of this proposal we naturally support it, i.e. the proposal to delete paragraph (3) of Article 9. Several delegations referred to other international documents where such provisions still exist, but I would like to say that the disintegration of the colonial system brings into many international documents changes in the same spirit as the one proposed by us. As an example I would name the Plenipotentiary ITU Conference held last year in Spain which excluded from the Convention the notion of so-called "associate members". Previously many territories under colonial dependence were "associate members" of the International Telecommunication Union. The last Plenipotentiary Conference deleted the

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term "associate member" and now there is only one notion "member of the International Telecommunication Union" which is open to any independent State.

905. The CHAIRMAN [F]: I should at this stage like to make a few observations. The delegate of the United States of America. I have closed the list of speakers but I give you the floor so that you will not think that I am preventing the expression of your opinion. But please be brief.

906. Ms. NILSEN (United States of America) [E]: Simply to say that for the practical reasons which have been indicated by the delegation of the Federal Republic of Germany and others, we would support the retention of the provision as it is in paragraph (3). We feel that paragraph 3 (b), which has been included in other agreements which have been mentioned, represents a compromise and does avoid political implications which might otherwise be considered to arise.

907.1 The CHAIRMAN [F]: I should like to summarize the point we have reached. My first observation, of course, is that we have here a discussion on two levels:

- 1) a discussion on the technical and administrative level, and
- 2) a discussion on political principles.

Communication between these two levels is naturally rather difficult.

907.2 In the second place, the other observation is that it is evident that paragraph (3) will not be accepted. That is a practical observation - it will not be accepted in any case in the Plenary - it will never have a two-thirds majority - and I do not think it will even be accepted here.

907.3 Consequently, we have a choice: either we vote and the confusion of the administrative and practical level with the political level will be fatal and delegations will be obliged to appear to be voting for colonialism, which is obviously not at all the case and which will lead to confusion.

907.4 Therefore, I wonder if, under these circumstances, it would not be better to follow the advice of the Ivory Coast and several other delegations and delete paragraph (3) and accept paragraphs (1) and (2) by a consensus. I know that there will be administrative difficulties, I know that there will be practical difficulties, but these are not at all insurmountable. Under domestic law, States will be able to get round the practical difficulties that the deletion of Article 3 will pose.

907.5 That is the proposal that I submit to the Commission.

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907.6 The delegate of the United Kingdom has the floor.

908. Mr. DAVIS (United Kingdom) [E]: I have never in fact understood what the word consensus means. If in fact we wish simply to record that clearly there was a situation of one sort or another, I can accept this without forcing it to a vote, but I do not wish it in any sense to seem that the United Kingdom thinks that this is a desirable outcome. We still maintain that we ought to have this clause.

909.1 The CHAIRMAN [F]: When I said "consensus" it was doubtless a slip of the tongue. When I say "consensus" I mean adoption without a vote since that does not mean that we approve or disapprove. We adopt and then we explain what we would have liked but which, for practical and political reasons, was not possible. That is how I see the adoption of an article without a vote. That does not mean at all that we are happy about adopting it nor that we consider that it is the best solution. That was the position of my delegation with regard to Article 8. We were in favour of Alternative B, we supported Alternative A, against our will, because it was the only solution possible. In my opinion that is the meaning of the adoption of a text without a vote.

909.2 If there are no remarks to the contrary on the part of the Commission, I shall say that we adopt the first paragraph and the second paragraph of Article 9 without paragraph (3) - and without a vote. Are we in agreement?

909.3 Article 9 is adopted.

909.4 We shall now proceed to Article 10. We have one amendment from the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic. It is evident that the exclusion of paragraph (3) of Article 9 entails the automatic adoption of the Soviet amendment, the substitution of the present text of Article 10 by the Soviet amendment.

909.5 The delegate of the Union of Soviet Socialist Republics has the floor.

910. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: Before we begin discussing Article 10 I would like to make sure that what you said is that Article 9 is adopted, meaning that Article 9 is adopted excluding paragraph (3). Did I understand you correctly?

911.1 The CHAIRMAN [F]: Yes, we have excluded paragraph (3) and precisely because we excluded paragraph (3) we have to replace the present drafting of Article 10 by the drafting contained in document CONF/SAT/8. I think that is obvious and does not require any discussion.

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911.2 If you agree, we shall adopt, without a vote, Article 10 as amended in document CONFESAT/8, which now reads as follows: "(1) Any Contracting State may denounce this Convention by written notification addressed to the Secretary-General of the United Nations. (2) Denunciation shall take effect twelve months after the date on which the notification referred to in paragraph (1) is received." We are in agreement, I think.

911.3 Article 10 is adopted.

911.4 We shall now proceed to Article 11 which concerns reservations. Do we have any amendments? We have an enormous number of amendments. For Article 11 we have an amendment from the United Kingdom contained in document CONFESAT/15; an amendment from Argentina contained in document CONFESAT/27; an amendment from Australia contained in document CONFESAT/29; and an amendment from the Federal Republic of Germany contained in document CONFESAT/25.

911.5 If you agree, we shall take Article 11 paragraph by paragraph and we shall consider first of all paragraph (1) for which there is no amendment. Can we provisionally adopt paragraph (1), contingent on the adoption of the whole article when we have studied the amendments?

911.6 We adopt paragraph (1) provisionally and we now proceed to paragraph (2) for which we have two amendments: document CONFESAT/15 submitted by the United Kingdom and document CONFESAT/27 submitted by Argentina.

911.7 I give the floor to the delegate of the United Kingdom.

912. Mr. CADMAN (United Kingdom) [E]: As the author of what I am told is a cryptic piece of drafting, may I attempt to explain the intention of our proposal in document CONFESAT/15: under existing United Kingdom copyright law, by which we may eventually wish to meet the obligations of this Convention, protection is given to broadcasts originating in other countries - that is, Rome Convention countries provided that the broadcasting organization is a national of a Convention country and the broadcast is made from the territory of the country in question. In other words, in order to qualify for protection in the United Kingdom, a broadcast from a convention country must cross two hurdles. The latter is permitted by Article 6 (2) of the Rome Convention, under which the United Kingdom has made an appropriate declaration. The object of our proposal in CONFESAT/15 is to include in the Satellite Convention the same facility as is available to States under Article 6 (2) of the Rome Convention, and for this reason we trust that our proposal is non-controversial. Without this facility, United Kingdom accession to the Satellite Convention would necessitate legislation, with the possibility for delay which that implies.

913. The CHAIRMAN [F]: I now give the floor to the delegate of Argentina to introduce his amendment to Article 11.

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914. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: The Argentine delegation submitted this amendment with the sole aim of clarifying the paragraph. It is basically the same phrase as that used in the Lausanne text, Article II, paragraph (2).

915.1 The CHAIRMAN [F]: I should like to have first any comments on the United Kingdom amendment.

915.2 The delegate of the Federal Republic of Germany.

916.1 Ms. STEUP (Germany, Federal Republic of) [E]: We know that the possibility which shall be added according to the proposal of the United Kingdom exists in the Rome Convention, but we have doubts, and perhaps we could have some clarification from the delegation of the United Kingdom, whether in the satellite field there is the same situation. In normal terrestrial broadcasting, every country will have its broadcasting organization and the facilities to emit from its territory but in the satellite field there might be countries which do not have their own ground station. The British proposal would mean that these countries would not be protected in those States which apply the reservation.

916.2 On the other hand, I think specially in the case of satellite transmissions, it is often necessary to use a foreign ground station. Let us say a German broadcaster does not get the necessary facilities at the ground station in Raisting because this ground station is booked and so he tries to go via some other country. Does the British proposal mean that he will then have no protection, that he has to consider whether he should wait in order to get protection in every country under this treaty or that he has to undergo the risk of not having protection in some countries when using a foreign ground station?

916.3 We think, therefore, that the facts of life in connexion with satellite transmissions make it more difficult than those of normal terrestrial broadcasting to accept the reservation.

917. The CHAIRMAN [F]: The delegate of Kenya has the floor.

918.1 Mr. STRASCHNOV (Kenya) [E]: The arguments just used by the delegation of the Federal Republic of Germany are absolutely correct. I will not repeat them. I would simply like to add that if you have a continent like Europe with five, six, seven or eight ground stations which are all organized in one international organization, the satellite traffic is divided up more or less equally among these stations and the broadcaster may not be in a position to choose. He books the satellite circuit but he is sometimes not in a position to book the ground station at the same time. He must accept the rotation which the ground stations have established among themselves.

918.2 Let us take the example of a German broadcast which goes

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via satellite to the United States but, because of the rotation established between the European ground stations, must use the Italian ground station in Fucino or the Spanish ground station in Burgos and cannot go via the German ground station in Raisting. This means that while the originating organization is in Germany, the transmitter, i.e. the emitting ground station, is in Spain or Italy and in such a case this transmission would not be protected in a country which would make the reservation proposed by the United Kingdom. Therefore, our delegation fully shares the opinion expressed by the delegation of the Federal Republic of Germany that in the satellite field, this supplementary proposal of the United Kingdom cannot be entertained and cannot be accepted because it would considerably reduce the number of protected satellite transmissions in countries which would avail themselves of the reservation allowed under paragraph (2) of Article 11. Therefore, we are against this amendment.

919. The CHAIRMAN [F]: The delegate of Austria has the floor.

920. Mr. DITTRICH (Austria) [E]: My delegation supports warmly the view expressed by the delegations of the Federal Republic of Germany and Kenya. The proposal of the delegation of the United Kingdom would mean in the final result that all middle European countries have to build their own ground stations.

921. The CHAIRMAN [F]: I give the floor to the delegate of the Union of Soviet Socialist Republics.

922.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I am not ready to say anything regarding the amendment under discussion now. I just wanted to make an observation.

922.2 In the course of our Conference the delegate from Kenya has mentioned four times a certain State named Germany. I would like to point out in this connexion that in this hall there are two members of the United Nations - the German Democratic Republic and the Federal Republic of Germany. I would like to ask you, Mr. Chairman, to invite all participants at the Conference to exercise tact and respect towards the States taking part in the Conference.

923.1 The CHAIRMAN [F]: Are there any other speakers on the proposal of the delegation of the United Kingdom? It does not seem to inspire the Commission.

923.2 The delegate of the United Kingdom.

924. Mr. DAVIS (United Kingdom) [E]: We well understand the problems outlined by the delegations of the Federal Republic of Germany and Kenya, and I am not saying that at no time in the future will United Kingdom law not be changed on this subject. The object of our proposal was solely a practical one, which was to make the Convention more readily acceptable to the United Kingdom; however,

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since it appears that our proposal has not achieved any substantial measure of support, we are willing to withdraw it.

925.1 The CHAIRMAN [F]: Consequently, the delegate of the United Kingdom withdraws his amendment. We therefore have only the amendment of Argentina and I should like to have the comments of the Commission on this amendment - document CONFESAT/27.

925.2 The delegate of Kenya has the floor.

926. Mr. STRASCHNOV (Kenya) [E]: I think that this proposal could be safely left to the Drafting Committee.

927. The CHAIRMAN [F]: The delegate of Mexico has the floor.

928. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico seconds the proposal of the delegation of Kenya that the problem raised by the delegation of Argentina should be left to the Drafting Committee, especially since, as the delegate of Argentina has himself explained, it deals simply with a better drafting of the problem.

929.1 The CHAIRMAN [F]: Consequently, we have a proposal from the delegate of Kenya seconded by the delegate of Mexico that we send this question to the Drafting Committee.

929.2 Is the delegate of Argentina in agreement with this procedure?

929.3 The delegate of Argentina has the floor.

930. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: The delegation of Argentina is in agreement with the proposal of the delegates of Kenya and Mexico.

931.1 The CHAIRMAN [F]: Consequently, we have no amendments to paragraph (2). Can we adopt paragraph (2) as it stands in the Nairobi text?

931.2 The delegate of Canada.

932. Mr. CORBEIL (Canada) [F]: This is not to go backwards, but the Canadian delegation has not seen the Argentine proposal. It is therefore difficult for the Canadian delegation to be in agreement with this idea. We do not have document CONFESAT/27.

933.1 The CHAIRMAN [F]: Do all delegations have document CONFESAT/27? Delegations should, of course, make an effort to try and obtain the documents. Document CONFESAT/27 was distributed at the end of yesterday's meeting. It has been in circulation since yesterday.

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933.2 The delegate of Mexico has the floor.

934. Mr. LARREA RICHERAND (Mexico) [S]: A point of order. Since the delegate of Argentina has already accepted that this be passed to the Drafting Committee the discussion is therefore terminated on this proposal.

935.1 The CHAIRMAN [F]: There was indeed a proposal that was withdrawn by the delegation and therefore the amendment no longer exists. I regret, therefore, that all we have left is the Nairobi text and we can therefore adopt it without a vote.

935.2 The delegate of Canada.

936. Mr. CORBEIL (Canada) [F]: We are very happy to learn that this proposal has been withdrawn and we appreciate also your comments on the practical side of our work.

937.1 The CHAIRMAN [F]: We shall therefore proceed, now that paragraph (2) has been adopted, to paragraph (3) and we have an amendment from the Federal Republic of Germany (document CONF/SAT/25).

937.2 May I ask the delegate of the Federal Republic of Germany to introduce it with the rapidity imposed on us by our schedule.

938. Ms. STEUP (Germany, Federal Republic of) [E]: As many of the delegations know, the Federal Republic of Germany was one of the States who supported in the Nairobi draft the proviso which is in brackets. We are still of the opinion that this proviso would be the best solution to the problem. But in a sense of compromise and seeing the difficulties other delegations have, we tried to find a new formula for compromise. The problem we are trying to solve is the following: under Article 11 (3)(a) a Contracting State may exclude cable distribution from the application of the Convention. This could give rise to difficulties for transmissions via satellite. It would be possible that a cable enterprise sets up a ground station and exploits the satellite taking down all the transmissions in which it is interested and distributes them to the public by cables and wires. We think that it should not be possible for a cable distributor to, let me say, steal signals from a satellite and distribute them. The signal in the satellite is still a secret signal and it is not open to the public. Therefore, we think that the same regime should apply to the broadcaster and the cable distributor as far as the first distribution of the signal is concerned. On these lines we have tried to find a new compromise. This compromise means that every cable distributor can distribute transmissions via satellite when there was already a wireless transmission to the public after the passing of the signal through the satellite. Thus, cable distributors are not prevented from distributing signals which are open after they have passed through the satellite. But it should not be possible that a cable distributor poaches the signal himself and makes the first distribution to the public. We think that a compromise could be found along these lines and we hope this will be possible.

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939. The CHAIRMAN [F]: I give the floor to the delegate of Austria.

940.1 Mr. DITTRICH (Austria) [E]: My delegation fully understands, on the one hand, the special situation of some delegations present - I mean the delegations of the United States, the United Kingdom and Canada - and the difficulties arising for them with respect to the national situation. On the other, we would be very happy to see the exceptions for cable transmissions as narrow as possible.

940.2 We favour, therefore, the compromise solution supported by the delegation of the Federal Republic of Germany.

941. The CHAIRMAN [F]: I give the floor to the delegate of Israel.

942. Mr. GABAY (Israel) [E]: We were also quite unhappy with that reservation, although we understand the situation in a number of countries. We feel that the proposal of the delegation of the Federal Republic of Germany would at least limit that exception as much as possible.

943. The CHAIRMAN [F]: I give the floor to the delegate of the United States of America.

944.1 Ms. RINGER (United States of America) [E]: First of all, I should like to thank very much the delegation of the Federal Republic of Germany, supported by the delegation of Austria, for their efforts in trying to work out this very thorny and complex technical question. When my delegation spoke on this issue in Nairobi, we were not as certain then as we are now, on the question of what our law is in this field. As I think many people here know, we have since the Nairobi Conference had a decision in the Teleprompter case which, as far as copyright is concerned, makes cable redistribution of any signal uncontrolled legally.

944.2 This reinforces very substantially our need for a reservation in this area. The proposal of the delegation of the Federal Republic of Germany raises the question as to whether or not the reservation we need can be narrowed in this way. Our present feeling is - with great regret - that it cannot. We are not certain that the law in the United States would allow us to ratify this Convention with the reservation, as narrowed by the proposal and, for this reason and with considerable regret, we feel that we cannot accept it.

945. The CHAIRMAN [F]: The delegate of Canada has the floor.

946.1 Mr. CORBEIL (Canada) [E]: We have read and studied with interest the proposal submitted by the delegation of the Federal

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Republic of Germany. As we indicated in our opening remarks, the need for a cable exemption is very important for Canadian ratification of this important treaty. We also indicated in our opening remarks the importance of limiting this treaty to situations other than direct broadcasting satellites. It is on the basis of that decision to exclude direct broadcasting satellites that we feel that we can go along with this compromise proposal which will not interfere with our current practice and would therefore permit us to adhere to this treaty.

946.2 In summary, I would like to say that we could support this proposed amendment.

947. The CHAIRMAN [F]: The delegate of France has the floor.

948. Mr. DESBOIS (France) [F]: Having seen document CONFESAT/25 and heard the observations of the Federal Republic of Germany, the French delegation wholeheartedly approves the text of the amendment it contains.

949. The CHAIRMAN [F]: The delegate of Australia has the floor.

950. Mr. CURPIS (Australia) [E]: While we appreciate the interest in ensuring as much protection as possible for signals transmitted by satellite, we are in the position where, in order to give speedy effect to the Convention, we would want to apply as far as possible, our existing domestic law with respect to the protection of broadcasts. We are in the position, as is the United Kingdom, and it also appears to be the factual position of the United States, that our domestic law does not at the present time protect a broadcast against cable transmission. We would therefore wish to support the text of Article 11 (3) as it appears in the Nairobi draft.

951. The CHAIRMAN [F]: I give the floor to the delegate of the United Kingdom.

952. Mr. DAVIS (United Kingdom) [E]: Merely to confirm that the position in the United Kingdom is the same as that in the United States, and indeed as that described by the delegate of Australia. I cannot pretend that this is as significant for us as it was because in view of the decisions made in the Conference, I think it must be some long time before the United Kingdom comes to consider ratification. Nevertheless, that is the factual position.

953. The CHAIRMAN [F]: The delegate of Algeria has the floor.

954.1 Mr. ABADA (Algeria) [F]: Article 11 deals with cable television and we have adopted the principle to exclude cable television from the field of application of the Convention.

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954.2 What the proposal of the Federal Republic of Germany has just made clear is that we maintain the exclusion of the protection of cable television from the field of application of this Convention even if the signals transmitted by cable come by satellite, provided that they have already been distributed by wireless means.

954.3 We think that this proposal is a valid one and we support it.

955.1 The CHAIRMAN [F]: I think that it is time to interrupt our work. We have this proposal of the Federal Republic of Germany which is supported by a certain number of delegations; a proposal intended to limit the reservation. Other delegations, on the contrary, tell us that this proposal cannot satisfy them because, for reasons of domestic law and practice, they need the possibility of a wider reservation.

955.2 And so I leave you to ponder on this text and we shall begin the next session at 3 p.m.

956. The meeting rose.

Main Commission - Eighth Meeting¹

Tuesday, 14 May 1974, at 3.15 p.m. Chairman: Mr. da Costa (Brazil)

957.1 The CHAIRMAN [F]: We apologize for the slight delay which, I believe, will be beneficial to the continuation of our work. In fact, conversations have begun on Article 11 among the States who are mainly involved in cable television. Consequently, I propose to the members of the Commission that we abandon for the moment Article 11 and that we proceed to Article 12 and then to the Preamble. Tomorrow we shall have some new compromise solutions on Article 11. If we succeed in dealing with Article 12 and the Preamble and in giving some indications to the Drafting Committee on definitions to-day, we could avoid a night session. Tomorrow morning we shall return to Article 11 and Article 7bis proposed by the Union of Soviet Socialist Republics and then we shall have finished the Convention.

957.2 If the Commission accepts my suggestion we shall abandon Article 11 for the time being and we shall proceed with Article 12.

957.3 Does the Commission agree to this procedure? Yes. It is so decided.

957.4 Are there any amendments to Article 12? We do not have any amendments to Article 12. These are the so-called final clauses

1. Cf. document UNESCO/OMPI/CONFESAT/VR.14 (prov.).

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which do not seem to call for many comments or changes except perhaps insofar as paragraph (2) is concerned and here I should like to give the floor to Mr. Lussier who will give us some explanations.

958. Mr. LUSSIER (Director, Office of International Standards and Legal Affairs, Unesco) [F]: With regard to the first blank, it is up to the Commission to make proposals; with regard to the second one, after consultation with the Director General of WIPO, we should like to suggest that the texts be established in agreement with the governments concerned by the Directors-General of the two organizations, leaving the two Secretariats to make the necessary arrangements between them.

959.1 The CHAIRMAN [F]: I do indeed think that the most reasonable solution is that the two Secretariats establish the texts. Now, we have to solve the question of the first blank, i.e. the languages.

959.2 The delegate of Morocco has the floor.

960. Mr. CHAKROUN (Morocco) [F]: I take this opportunity to point out that it gave us great pleasure to receive the copyright conventions in Arabic and my delegation suggests that with regard to paragraph (2), consideration should be given to the establishment of an official text in this language.

961. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany has the floor.

962. Mr. GAERTE (Germany, Federal Republic of) [E]: We have a clause in the Phonograms Convention (Article 13 (2)) which says, "Official texts shall be established by the Director General of the World Intellectual Property Organization after consultation with the interested Governments, in the Arabic, Dutch, German, Italian and Portuguese languages," and in this case of course, we would put in the Directors-General of Unesco and WIPO. However, as far as the German language is concerned, I would be very happy to apply this formula to the Convention we are dealing with here as well.

963.1 The CHAIRMAN [F]: The delegate of the Federal Republic of Germany proposes that we follow the example of what is to be found in the 1971 Phonograms Convention: Arabic, Dutch, German, Italian and Portuguese. If this proposal, which we consider quite reasonable, meets with the approval of the Commission we could adopt it. It is of course understood that authentic texts will be established in English, French, Spanish and Russian. Are we in agreement? It is so decided. Consequently, in paragraph (2) of Article 12, we shall refer to the Arabic, Dutch, German, Italian, and Portuguese languages. It is understood that the Secretariat will establish these translations in consultation with the governments concerned.

963.2 We now proceed to paragraph (3). We have to add - and I

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think we can leave this to the Drafting Committee - the communications concerning the duration of the protection since we have adopted an addition to Article 1 which gives each State the right to determine for itself the term of protection. Are we in agreement on paragraph (3) with this addition? Yes. Paragraph (3) is adopted.

963.3 Paragraph (4) of course constitutes the usual clause. No comments? Paragraph (4) is adopted.

963.4 We have consequently adopted Article 12 and we have just received document CONFESAT/30 which deals with Article 7. You will remember that yesterday we entrusted to a working group the preparation of a section of the Report defining the purview of Article 7 on the abuses of monopoly. You have this document before you and I ask whether the Commission is in agreement.

963.5 The delegate of Kenya has the floor.

964.1 Mr. STRASCHNOV (Kenya) [F then E]: May I point out - I am speaking in French deliberately - first of all a mistake in the last line of the first paragraph. This should not read "transfert du signal" but "transport du signal".

964.2 Now as far as the English text is concerned in the second and third line the French words "positions dominantes" should be translated by "other dominant position", or "market dominating position", if you like, and then of course the word transfer is again wrong. What was meant by the transport of the signal, perhaps I should explain it, it means simply the cost for the circuits which are required to transport the signal from one place to the other.

965. The CHAIRMAN [F]: The delegate of the Ivory Coast has the floor.

966. Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: I think that the delegates need a few minutes to read the text and I shall intervene afterwards.

967. The CHAIRMAN [F]: The delegate of Mexico has the floor.

968. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico would like amicably to ask for some information as to the conditions under which this text was drafted, because it seems to us that there are some things that we did not deal with during the discussions we had and that are explained here, and there has probably been some confusion. I should like to have the working group present the text.

969. The CHAIRMAN [F]: The delegate of the Ivory Coast has the floor.

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970.1 Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: Delegates will recall that it was necessary to draft this paragraph which will be inserted in the report to explain the meaning of Article 7 which speaks of monopolies and in which we have deleted the word "international". Everyone has this article before him and I do not think that it is necessary for me to reread it.

970.2 We wanted to make it quite clear that it was not a question of getting round in one way or another the obligation that States have under this Convention to respect the rights of the originating organizations.

970.3 I think that it was also necessary to maintain this article, although several delegations thought that domestic laws on monopolies or anti-trust laws were sufficient, for I do not believe that any domestic law permits a State to use the products of the work of an organization who abuses of a monopoly against the will of this organization if the latter is not in its country. But this is the situation with regard to the signal. The originating organization which emits the signal will not in most cases be in the State which wishes to use the signal and in that case there will be no recourse under domestic law to circumvent the abusive monopoly which the originating organization might use with regard to this signal. We remind you that it is only a question of the signal.

970.4 This is the reason for which we have stated clearly in the text before you that in the case where the Contracting State does not have the rights for the programme, it could not use the right given it under Article 7.

970.5 I am at the disposal of delegates who may perhaps desire other explanations.

971. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany has the floor.

972.1 Ms. STEUP (Germany, Federal Republic of) [E]: We would like to ask those delegations who have prepared the text, for a clarification of the very important sentence beginning with: "However, such a measure may not be applied when the originating organization does not possess the rights for a given country in the programme carried by the signals and no distributor in the said country has obtained these rights from their owner".

972.2. We do not quite understand why there are two conditions. Normally, only the originating organization has a monopoly if it possesses the rights.

973. The CHAIRMAN [F]: The delegate of the Ivory Coast has the floor.

974.1 Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: As I have just

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said, we are not dealing in this paragraph with rights to the programme. Let us take as an example the case of the EBU; the EBU arranges with the Olympic Games Committee to transmit the Olympic Games by satellite. The Ivory Coast wishes to receive this signal. With regard to the contents of the signal, i.e. the programme, there are two ways of proceeding: either dealing directly with the Olympic Games Committee, or dealing through the intermediary of the EBU which emits the signal at the same time as the programme. If the EBU has not made arrangements with the Olympic Games Committee for the contents of the programme on behalf of the Ivory Coast and if the Ivorian Broadcasting Organization has not negotiated with the Olympic Games Committee either for the right to broadcast the programme, in that case it cannot take advantage of a monopoly. This paragraph is intended to demonstrate that the monopoly concerns the signal and not the programme.

974.2 I should like to call the attention of the delegations who were not in favour of Article 7 to the fact that, in order to give them satisfaction, this text was drafted by the delegate of Kenya who was not in favour of Article 7 and simply amended by the delegation of the Ivory Coast which supported Article 7.

975. The CHAIRMAN [F]: The delegate of Mexico has the floor.

976.1 Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico had understood that that part of the Report referring to Article 7 would be very simple but unfortunately, in our opinion, it appears to us to complicate the problem somewhat. We would simply propose that part of this text be deleted, after the section read by the delegate of the Federal Republic of Germany. I will read the whole paragraph that I should like to have deleted: "However, such a measure may not be applied when the originating organization does not possess the rights for a given country in the programme carried by the signals and no distributor in the said country has obtained these rights from their owner (organizer of an artistic sporting event, author of a protected intellectual work, etc.)".

976.2 We would like to have this whole paragraph deleted, and also the following text: "A measure under Article 7 would also not be justified by the simple fact that the originating organization...". We make this proposal in the light of the last paragraph of what the working group proposes for the Report, which states: "In short, the Conference adopted Article 7 with the clear understanding that Contracting States shall apply it in good faith and only where its application appears to them entirely legitimate". We do not see why these two or three questions, which we have asked to be deleted, are mentioned. Therefore, we ask that they be deleted from the Report because this would be simpler and would make matters less complicated.

977.1 The CHAIRMAN [F]: The delegate of Mexico is puzzled and I think that he is not alone in this. He asks that we delete the phrase beginning "However" and ending "etc.".

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977.2 The delegate of Algeria has the floor.

978.1 Mr. ABADA (Algeria) [F]: As you have said, Mr. Chairman, we too are puzzled. We have not understood at all the meaning of this phrase which begins with "However" and ends with "etc."

978.2 We find it all the more incomprehensible in that we can see no possible case where an originating organization can have only the possibility of using the signal without having the rights to the contents of the programme. In other words, in the example that has been given us - the case of the Olympic Games, when the EBU negotiates, it negotiates with the organizers of the Olympic Games to transmit the contents of the signal. Therefore this paragraph does not seem at all clear to us. In any case, we find it difficult to imagine that an originating organization should have only the rights to the signal without it being concerned by the contents of the signal. That is why we subscribe to the Mexican proposal in favour of the deletion of this phrase, which would considerably lighten the text which has been proposed to us and which would make it much more intelligible for everyone.

979. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

980. Mr. WINTER (United States of America) [E]: I must admit that the United States did not understand this second sentence upon first reading, and I think that it can be clarified. I also think the third sentence beginning, "However, such a measure may not be applied..." has to be retained if we are going to continue the agreement about the retention of this article that we had yesterday afternoon. I think if the second sentence were redrafted to read as we will suggest, then the third sentence, beginning with "However", makes sense. We would suggest that the second sentence read as follows: "For purposes of this Convention, the application of these laws means that, if the conditions required" - and then we would suggest some new language - "if the conditions required for the enforcement of the law exist, a distributor not designated by the originating organization may be authorized by the competent national authorities to distribute programme-carrying signals..." Then the rest of that paragraph would read as it exists.

981. The CHAIRMAN [F]: The delegate of Morocco has the floor.

982.1 Mr. CHAKROUN (Morocco) [F]: It is not that we have not understood the text but that we have understood it too well and it seems, at first sight, that the commentary goes beyond the apprehensions expressed in this Commission yesterday.

982.2 That is why we associate ourselves with the proposal of Mexico to delete the phrase which begins "However, such a measure..."

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It is desirable that this phrase be deleted, especially since the last paragraph states: "In short, the Conference adopted Article 7 with the clear understanding that Contracting States shall apply it in good faith...".

983. The CHAIRMAN [F]: The delegate of Kenya has the floor.

984.1 Mr. STRASCHNOV (Kenya) [E]: You will remember that yesterday when we discussed Article 7, our delegation was opposed to its insertion, but when the Ivory Coast appealed to us all that we should agree to Article 7, I made a certain commentary and it was agreed that if this commentary appeared in the Report, then perhaps the opposition against Article 7 would be withdrawn; and the commentary I improvised was precisely what now appears in the third sentence which starts with the word, "However". This is, I think, absolutely essential in this text. There must be a clear distinction between various situations. Take for instance, the 1976 Olympic Games which will take place in Montreal, as everybody knows the Summer Olympics. The official broadcasting organization of Canada, the Canadian Broadcasting Corporation, the CBC, has the monopoly of producing the signal for the whole world, but only has the rights for Canada. This is one situation. Another situation is where the originating organization obtains the rights for a certain territory, not its own but a wider territory, for instance for a whole continent, and produces the signal for that continent. There are then the following situations:

984.2 In the first case, the broadcasting organization, the originating organization, has the monopoly of the signal but not the necessary rights and therefore cannot let any other country have the signal because it would be a breach of contract. If, then, another country uses Article 7 and takes the signal, it will in fact be acting, not against the monopoly of the originating organization, not against the monopoly of the signal, but against the holder of the television rights. As the delegate of the Ivory Coast said very correctly, there are then various situations. The organization which produces the signal may, as I said, be at the same time the owner by assignment of the television rights, the organizer of the sporting event or the organizer of an artistic event or the author of the work which is transmitted, but not for the whole world, only for a given territory. But it is perfectly possible that the broadcasters in that territory acquire themselves, directly from the holder of the television rights, the right to broadcast and then wish to receive the signal from the originating organization which may have the monopoly of signal production. In this case again there is no reason for applying Article 7 because the rights have been acquired and if there is an agreement between the originating organization about the cost of the signal and the local organization which obtained the rights in the programme directly by negotiations with the holder of these rights, the transmission may be carried out in that country without having recourse to Article 7. In this case, there is perhaps one danger, and that is that the price which the originating organization is asking for the signal is considered to

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be too high and again the question arises whether Article 7 can be applied because the price is considered in the country interested in the transmission as too high. This case is dealt with in the last sentence of the first paragraph of the submitted text and it says that if the price for the signal is considered too high, Article 7 should not come into play if this price for the signal is justified by the production costs which may be very considerable - think of the Olympics, think of the great number of venues where the Olympics take place, the number of cameras, the number of outside broadcast vans and so on which are necessary - and in addition the price may be increased by the fact that the signal must first be transported to another continent and then from there to the country which is interested in it. In such cases, Article 7 should not be applicable.

984.3 All this we tried to explain in a perhaps too-condensed text, because it should be somehow balanced and our General Rapporteur should be able really to accept this text and it should fit into the Report. But it was in our view absolutely necessary to make clear that in certain cases, which may on the face of them be considered as a kind of abuse of monopoly, in fact are not, either because nobody has acquired the rights from the original owner of the television rights for the territory in question, neither the originating organization nor the organization which in that country wishes to transmit, or although the rights have been acquired, the organization in the country interested in the transmission needs the signal and finds that the price that is asked is too high. I think we must include all these possible cases in the commentary, otherwise Article 7 could give rise to arbitrary decisions and to a kind of compulsory licensing, and we have already heard yesterday from the Italian delegation, and I think nobody objected, that Article 7 should not be a sort of substitution for compulsory licensing because we do not wish to have compulsory licensing in this field.

984.4 I consider, with the delegation of the United States of America, that we cannot radically change this text even if it appears complicated because we are dealing with a very complicated situation.

985. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany has the floor.

986.1 Ms. STEUP (Germany, Federal Republic of) [E]: We heard with great interest the remarks made by the delegate of Kenya, but we still have some doubts and perhaps I could explain them with an example:

986.2 Let me take the example of the Olympic Games: the Union of National Radio and Television Organizations of Africa has bought the rights for Africa and they make a film of the Games, and a transmission via satellite. A European broadcaster then asks the Olympic Games Committee "May I use these signals? I will acquire the rights for, let us say, France." May he then use them? Is it possible under this provision that the Committee of the Olympic Games can

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say, "You may use the signals produced by URTNA"? They do not have the possibility to permit that. From the sentence saying that the article may not be applied when the originating organization does not possess the rights for a given country and no distributor in the same country has obtained these rights, I think it follows on the other hand that one can apply the article if a distributor in one country has got the rights from the Olympic Committee and that one can thus permit him to use signals produced for quite another area. And that is what is vexing us with this text, you see, the conclusions you could draw from it. In our opinion the Olympic Committee cannot permit the distribution; but only the organization which has produced the signals. If this organization has the rights for the country in question, if in the example the URTNA bought not only the rights for Africa but also for Europe, only then the question of monopoly arises. That is why we are perplexed by the conclusions you could draw out of this sentence.

987. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

988.1 Mr. DAVIS (United Kingdom) [E]: I had in fact asked to speak before I heard the delegation of the Federal Republic of Germany's point and it is merely to say that the delegation of the United Kingdom would have preferred in fact for Article 7 to be deleted; but after hearing the explanation by the delegate of Kenya, we accept that if that explanation could be incorporated in the Report, Article 7 would be satisfactory to us.

988.2 It seems to me that in this sentence commencing, "However" the Commission has in fact incorporated accurately the thought which the delegation of Kenya expressed in the debate, and we are quite satisfied with it.

989. The CHAIRMAN [F]: The delegate of Senegal has the floor.

990.1 Mr. N'DIAYE (Senegal) [F]: It is true that the text submitted to us is a compromise, but in reality it is a compromise which risks being interpreted as the minute of an agreement on a disagreement. I think we should have expected this during the discussions which took place yesterday. The points of view expressed were very divergent and it needed the appeal of the delegation of the Ivory Coast to avoid a vote. On listening earlier to the explanations of the various delegations, in particular that of the Federal Republic of Germany, one realizes just how difficult it is to think of every case, of all the possibilities in a brief commentary. However, in spite of everything, I think we can arrive at a consensus.

990.2 I did not follow very well the drafting of the delegate of the United States of America, but at first glance it seems to me that if we replace the part of the sentence which begins with "However" by the concept that he has just indicated, we could reach an agreement - and we should not forget that if we cannot reach an agreement on the

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drafting of the text, we shall be obliged to vote. I think that if the delegate of the United States reformulated his proposal this could give us an idea.

991.1 The CHAIRMAN [F]: Would the delegate of the United States of America like to repeat the suggested text? In my understanding, this text applies to the second sentence and not the third.

991.2 The delegate of the United States of America has the floor.

992. Mr. WINTER (United States of America) [E]: You are quite correct, Mr. Chairman. I did not suggest that the third sentence be replaced, but merely that the language of the second sentence be clarified. It was an attempt to clarify that language, and I will read it slowly:

"For purposes of this Convention, the application of these laws means that if the conditions required..." - then this would be the new insert - "... for the enforcement of the law exist..."

and then the words "by the law are met" would be deleted, and the rest of the sentence would remain as it is. The third sentence would also remain as it is.

993. The CHAIRMAN [F]: The delegate of the Ivory Coast has the floor.

994.1 Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: I must intervene to give some clarification to delegates. My colleague from Kenya will recall that I commented that the part of the sentence beginning with "However" up to "etc." dealing with the programme could indeed lead to some confusion and provoke some objections. And so I think that, following the interventions of certain delegates who could accept the text without this sentence, my colleague from Kenya could accept that it be deleted.

994.2 The confusion does indeed arise from the fact that this sentence deals with the programme and not the signal, of which it is alone question in this Convention.

995. The CHAIRMAN [F]: The delegate of France has the floor.

996.1 Mr. DESBOIS (France) [F]: The French delegation has listened with very great attention to the discussion which has taken place on the third sentence which begins with "However", and after having heard, in particular, the explanations given by the delegate of Kenya, we consider that it is indispensable that this third sentence remain. It seems to us indispensable because the deletion of this sentence would result in an extension of the possibility of abuses of monopoly. Doubtless this third sentence is a little complicated but I think that I can explain it by taking two examples.

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996.2 Let us assume first that the originating organization has acquired the rights to the protected work which is going to be emitted to the satellite (I do mean the protected work; I am speaking from a copyright point of view). In this case, the originating organization has a double role: it is first invested with what I dare not call a right, but with the regulations, with the system which is instituted by this Convention, as the emitter of the signal; it is in addition the assignee of the copyright of the programme. And so I think that in view of the basic distinction which is made between the control of the signal, which is alone protected under this Convention, and authors' rights, which are not involved, any action that may be instituted on the basis of abuses of monopoly involves only the signal and does not involve the programme. In this case we would indeed be going in a direction which would extend outside the purview of the Convention, beyond its field of application which is that of the signal. That seems to me evident from the sentence which begins with "However". This sentence is aimed a contrario at another assumption, that in which the originating organization has not acquired the copyright to the programmes, but then we are once again outside the limits of our design since the originating organization has not acquired the rights. Consequently, the distributor who intends exploiting them has to deal with the authors. I think, therefore, that it is necessary to keep the third sentence on account of the explanation that it gives. I should say, however, that for my part at least, I was in difficulty until I understood what is being said on the subject of the second condition when no distributor in the said country has obtained the rights from their holders. Perhaps there is a slight alteration to be made in the construction of this sentence and perhaps it would suffice if the Drafting Committee try to improve drafting.

997.1 The CHAIRMAN [F]: It seems to me that if we keep this third sentence, it will require quite a lot of work for it is rather hermetic. Hermeticism has its virtues, even its charms, but even so we should not abuse of it.

997.2 The delegate of the Ivory Coast has the floor.

998. Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: Perhaps the broadcasting specialists could help us. Can it be admissible that an originating organization acquire the rights to emit the signal without at the same time acquiring the rights to the programme? I should like to have a reply to that question.

999.1 The CHAIRMAN [F]: At first sight our Conference is discussing programme-carrying signals. Consequently, this means that we do not have to deal with signals that do not carry programmes, nor with programmes independently of the signals.

999.2 The delegate of the Ivory Coast has the floor.

1000. Mrs. LIGUER-LAUBHOUET [F]: If that is the reply to my

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question, the eventuality dealt with in this sentence cannot occur and consequently this sentence is pointless.

1001. The CHAIRMAN [F]: The delegate of Kenya has the floor.

1002.1 Mr. STRASCHNOV (Kenya) [E]: The only simplification I can see is the possible deletion in the third sentence of the words "and no distributor" and so on. This might simplify the text and clarify it. But the first part of the third sentence is certainly absolutely necessary.

1002.2 As to the question of the delegate of the Ivory Coast, you must realize that these situations vary from event to event. If you take, as I said before, the Montreal Olympic Games, you have the situation where the Canadian Broadcasting Corporation has the monopoly over producing the signal but the rights only for Canada. In addition, the agreement between the CBC, the Canadian Broadcasting Corporation, and the Canadian organizing committee makes it possible for the organizing committee to sell to countries other than Canada at the same time the rights and the signal of the CBC. The same situation obtains for the Winter Olympics in Innsbruck, where the Austrian Broadcasting Corporation has the production monopoly of the signal, but the rights only for Austria, and the Olympic organizing committee is entitled when selling the rights, to sell at the same time the signal - except, however, for Europe. You have a variety of cases and that is what we tried to cover in this complicated sentence.

1002.3 I repeat, however, that it could be simplified by taking out the words "and no distributor", etc. The first part is absolutely necessary in order to maintain Article 7 in the Convention.

1003.1 The CHAIRMAN [F]: If I understand correctly, the delegate of Kenya would accept in the third sentence that the last part, from "and no distributor" be deleted.

1003.2 The delegate of the Federal Republic of Germany.

1004.1 Ms. STEUP (Germany, Federal Republic of) [E]: This last proposal of the delegate of Kenya would satisfy our doubts. We think it is correct to take out the second part because if the Olympic Committee is entitled to sell the signals with the rights, then I think the transmission is intended for that country, too, and therefore the distribution does not fall under our Convention. In our opinion the difficulties only arise where the originating organization possesses the rights for a given country but does not give them to the broadcaster. All other cases covered by this phrase, in our opinion, do not fall under our Convention because there the signals are sold in accordance with the agreement with the originating organization.

1004.2 And therefore we would very much favour the last proposal of

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the delegate of Kenya.

1005.1 The CHAIRMAN [F]: It seems to me that at least we are gradually arriving at a clearer text. In the first place, we have the suggestion of the United States of America to replace the second sentence by the following sentence, "For purposes of this Convention, the application of these laws means that if the conditions required for the enforcement of the law exist". Naturally, all this has to be gone over by the Drafting Committee. In the second place, we shall delete in the third sentence, the phrase beginning "and no distributor", etc. Is the Commission prepared to accept these ideas - subject to improved drafting? Yes?

1005.2 The delegate of Mexico has the floor.

1006. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico is in agreement with your proposal, Mr. Chairman, but on the one hand we would ask the Drafting Committee to be very careful not to complicate further the situation, and on the other hand, it seems to us most difficult to have appear in the text of the Convention the first part of what we were going to delete, since, as the delegate of the Federal Republic of Germany has said, whoever has the signal must have the programme; the signal cannot be sold alone. I do not think that the point that is dealt with here could ever occur, but we would be in agreement that only the second part be deleted, as the delegate of Kenya has said, and that it too be drafted in the light of what has been said by the delegation of the United States of America.

1007.1 The CHAIRMAN [F]: Consequently, the delegate of Mexico accepts these two suggestions.

1007.2 The delegate of Algeria has the floor.

1008.1 Mr. ABADA (Algeria) [F]: In spite of the delegate of Kenya's attempt at simplification of his text by taking out the last phrase, the idea which is contained in the beginning of the third sentence still appears rather complicated to us. What are we saying? That the Convention protects the signal but we make an exception with regard to those for whom the signal is not intended when a monopoly exists. But, on this assumption, they cannot take the signal unless the transmitter of the signal, the originating organization, has the rights to the programme.

1008.2 And so we have the following case: an originating organization takes a signal and distributes it. Another country takes the distributed signal although it knows that the originating organization did not have the rights to the programme. This country can take the signal without any possibility of using the programme. What interest does it have in taking the signal when it cannot use the programme? This is why this sentence seems to us to take away any meaning from the idea that we wanted to put in the first sentence which consisted in reserving to domestic laws the power to divert

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monopolies. This is why this proposal seems to us to give something with one hand and take it away with the other.

1009. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

1010.1 Mr. STRASCHNOV (Kenya) [E]: I apologize for taking the floor again, but I think that there is a complete misunderstanding between us. It is agreed, and we certainly would not dispute what the delegate from Algeria said, that we are dealing with the signal.

1010.2 Now, as I explained, there are situations where a broadcasting organization has the world monopoly of the signal but not the necessary rights in the programme itself. Now, as we are dealing with the signal, and Article 7, therefore, applies to the signal, it could be considered that Article 7 could be applicable because the originating organization has the world monopoly for the signal. But if in such a situation Article 7 were applied, a great harm would be done to the owner of the television rights in the event itself. It is one of the cases - as we have it in Article 4 with regard to exceptions - where it is hardly possible to distinguish between the signal as container and the programme as the content. I repeat: there are situations, and frequent situations, where a broadcaster has the world monopoly for the signal but not the necessary world rights, but only limited rights either for his own country or for a continent, but not for all continents. And it must be made clear that in such a case a country which is not included in the purview of the rights which the originating organization has acquired, cannot take the signal, although the originating organization has the monopoly, because the necessary rights have not in any way been acquired for the territory which wishes to transmit the programme. This is why this third sentence is absolutely necessary because otherwise a good deal of harm could be done to the owner of the television rights, for instance the authors or organizers of sporting events, and I believe that the inclusion of Article 7 depends very closely on whether the third sentence, as simplified, is maintained or not. If it is not, I am personally convinced that many delegations will again raise objections against the inclusion of Article 7.

1011. The CHAIRMAN [F]: The delegate of the Republic of Argentina has the floor.

1012. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: I do not yet want to intervene in the discussion on the text before the delegations, but on what was said yesterday. When Article 7 was discussed, in the text we spoke of "monopolies and other oppressive situations"; does this mean that the text is much wider than Article 7? The delegation of Argentina asks that the phrase "and other oppressive situations" which has nothing to do with monopolies be deleted.

1013.1 The CHAIRMAN [F]: The delegate of Argentina observes that

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yesterday we spoke only of "monopolies" and that now we are also speaking of "other oppressive situations". He proposes that this phrase be deleted.

1013.2 I should like to consider the Argentine proposal so that we can clear the field a little. Does this phrase add something? No. I think we can simply cross it out. Without that we shall have monopolies, oligopolies, countermonopolies, another concept that is dear to economists, etc. Consequently I think that if we follow the suggestion of the delegate of Argentina the context will be clearer. Is that the feeling of the Commission? Yes. Then we shall delete it.

1013.3 With regard to the beginning of the third sentence we also have to take a decision.

1013.4 The delegate of the Ivory Coast has the floor.

1014.1 Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: I must apologize in advance. It is perhaps the result of fatigue but I cannot help laughing and please excuse the confusion of my words.

1014.2 In view of the total silence of delegations, it would appear that this sentence adds confusion and in any case does not give satisfaction to those who were against the retention of Article 7. And these delegations desire an explanation. I truly think that the delegate of Kenya has once more given us proof of his very sharp mind but perhaps he has gone into too much detail and too much explanation which far from satisfying the delegations has perplexed them. The discussion has gone on for more than half an hour between the two drafters of this text. And so I again appeal to my colleague from Kenya to accept that this sentence be deleted in the draft text.

1015. The CHAIRMAN [F]: The delegate of Israel has the floor.

1016.1 Mr. GABAY (Israel) [E]: We have to remember, as has been indicated just now by the delegation of Argentina, that we are speaking here about monopolies. In other words, the article refers to the prevention of monopolies. If I may refer to a different area, linked with copyrights, both of which are under intellectual property, that is, the patents field, we know that there are provisions both in the Convention as well as in internal legislation with respect to the concept of abuse of monopolies. For this reason, we have felt from the beginning that this article should be retained.

1016.2 However, it should refer only to the case where a monopoly exists and for this reason I think that the delegation of Kenya is right. In other words, only when there is such a monopoly; and for this reason, the beginning of the third sentence is essential. Only when a monopoly exists, do you need the provision against the abuse of monopolies. Again I should like to emphasize that we believe that for this reason the first part of the sentence is essential,

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and then we have the normal and usual procedures and measures against the abuse of monopoly when it exists. If there is no monopoly with respect to the signal in connexion with a particular country, there is no need to apply Article 7 and then it would not apply. So, whenever there is a monopoly, Article 7 would apply and only in those cases, and for this reason we need the first part.

1016.3 I may also refer in this connexion to Article 4. Article 4 provides for exceptions where there is no monopoly, in other words, where you need to utilize the programme for education, for scientific research or for other purposes in developing countries. Then there is no question of monopoly; there is a question that you can pick up the signal, whether or not there is a monopoly, and utilize it for your own needs. But Article 7 applies only where there is a monopoly.

1016.4 So, we should like to say that we agree with the position of the delegation of Kenya and we propose to accept it.

1017. The CHAIRMAN [F]: I give the floor to the Director General of WIPO.

1018. Dr. BOGSCH (Director General of WIPO) [F]: I will break my silence because this is a copyright question. It deals with the following: imagine for a moment not the Olympic Games but the performance of a musical work which is copyrighted. This performance takes place in a theatre, in a concert hall. Only one broadcasting organization is admitted into the theatre to transmit this performance. This means that this broadcaster has the monopoly; the others cannot enter the theatre. Now, this monopoly permits transmission in certain countries. But in other countries they cannot transmit it unless they also acquire the copyright involved and we do not wish, I think, that no one in this assembly wishes to say that if the broadcasting organization has the monopoly of the signal, on the pretext that it has the monopoly of the signal, it can also expropriate the copyright. That is why I believe that either Article 7 is very defective and should state clearly that this concerns a monopoly of the signal only, to the exclusion of copyright, etc..., but I think that this would be too dangerous because that would cause even more confusion with respect to the programme, etc.; or we should explain in the commentary that what we want is to speak of the monopoly of the signal without at the same time expropriating the copyright.

1019.1 The CHAIRMAN [F]: I venture to add the following to these extremely pertinent observations. We have two situations: we have the signal, we have the programme. Our Convention concerns only the signal, that is evident. With regard to the programme we have two possibilities: either the programme is protected by copyright, or the programme is not protected. That in general is what happens in the case of sporting events or news. If the programme is not protected, then of course the protection applies only to the signal. Therefore, there is no question of protecting the programme separately. If the programme is protected, it is protected by copyright and does not come within the purview of our Convention. Consequently, I think

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that this is a dispute about language rather than anything else.

1019.2 I give the floor to the delegate of Algeria.

1020.1 Mr. ABADA (Algeria) [F]: After hearing the Director General of WIPO and the explanations of the delegate of Kenya we are still rather perplexed as to the purview of the text to be included in the Report to explain Article 7.

1020.2 Our Convention is aimed at protecting only the signal. The projected Article 7 seeks to prevent a monopoly on the signal. To explain this Article 7, in the first place we are told that an organization that is not designated to receive the signal can pick it up, and we remain within the purview of the Convention which protects only the signal. And then we are given an exception: you can take the signal only if you have the rights to the contents of the programme. And here we are outside the Convention and in the field of copyright. We are saying that he who uses the signal, he who can use the signal when there is a monopoly, if he uses the signal, he also uses the programme. And in that case it is his domestic law that will be applied. And what does this domestic law provide with regard to the contents of the programme? It provides for copyright protection and the user, in application of his domestic law, will be called on to protect the copyright. That is why the signal can be in a monopolistic situation. If the user picks up the signal, he pays an equitable remuneration to the originating organization. With regard to the contents of the signal, he uses the programmes and comes within the scope of copyright and will be obliged to apply his domestic law and the international Conventions and he will pay the programme contributors.

1020.3 That is why we continue to believe that this link between the programme and the signal which is contained in the idea of the third sentence has no justification.

1021. The CHAIRMAN [F]: The delegate of the United States of America.

1022. Mr. WINTER (United States of America) [E]: I will try to be brief and hopefully clarify this discussion rather than confuse it. I would add a footnote to what the Director General of WIPO has said. I think maybe part of our confusion is that really in Article 7 what we are talking about is abuses of monopoly; we are not talking about monopolies directly. In the intellectual property field, copyrights are considered in a sense legal monopolies, patents are considered legal monopolies. In many countries there are state broadcasting organizations that are considered legal monopolies. All we are talking about in Article 7 is abuses of monopolies. I think the situation covered by the third sentence and the explanatory paragraph is really not an abuse of monopoly; it is an explanation of a perfectly legal situation. I think if we try to focus on the fact that this article is aimed at abuses of monopolies in certain specific situations under national laws in a particular country, perhaps this

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would clarify the discussion.

1023.1 The CHAIRMAN [F]: As usual, we find ourselves in an apparently impossible situation.

1023.2 Could we perhaps have a break and ask those who are opposed to the third sentence, in particular the delegate of Algeria, and other delegates who consider it indispensable, to try and find a compromise formula, covering simply this first part of the third sentence which stresses the fact that it is a question of some sort of safeguard for the case where the originating organization is not responsible for the abuse of monopoly and it is in fact a question of an abuse of the programme monopoly. Yes? We shall have a break.

1024.1 The CHAIRMAN [F]: I have several delegations on my list: the Federal Republic of Germany, Argentina, Hungary.

1024.2 I give the floor to the delegate of the Federal Republic of Germany.

1025.1 Ms. STEUP (Germany, Federal Republic of) [E]: During the coffee break we got in touch with some delegations and tried to find a compromise formula which perhaps could be accepted here in this Commission. We would like to propose for the third sentence starting with "however" the following wording: "However, such a measure may not be applied when the originating organization does not possess the rights to distribute the signals on the territory of the State in question" full stop. That is the third sentence.

1025.2 I think that makes it clear that the originating organization has only a monopoly if it has the right to distribute the signals on the territory, and only in that case monopoly legislations can apply.

1026.1 The CHAIRMAN [F]: Before giving the floor to the other speakers, I should give my personal opinion. It seems to me that great progress has been made because the confusion between "signal" and "programme" no longer subsists.

1026.2 I should first like to discuss the proposal of the Federal Republic of Germany, if you agree, before passing to other eventual proposals.

1026.3 I give the floor on this point to the delegate of Algeria.

1027. Mr. ABADA (Algeria) [F]: During the break in the meeting we have had discussions with a certain number of delegations and in particular with the delegation of the Federal Republic of Germany which has just made a proposal. I apologize because I came in rather late and I did not hear the exact drafting of the proposal, but I should like to repeat it to be sure that it is really the proposal that I discussed earlier in the conversations I had. The proposal was that we draft the third sentence as follows: "However, such a

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measure may not be applied when the originating organization does not possess the rights to distribute the signals carried by satellite for the region of the country in question". In a spirit of compromise, we have accepted that this proposal be discussed to get us out of the impasse in which we presently find ourselves.

1028.1 The CHAIRMAN [F]: The text of the delegate of the Federal Republic of Germany is almost the same: "However, such a measure may not be applied when the originating organization does not possess the rights to distribute the signals on the territory of the State in question". Territory instead of region.

1028.2 The delegate of Algeria has the floor.

1029.1 Mr. ABADA (Algeria) [F]: We would prefer that it be clearly stated that it is the region and in the second case perhaps the country: the originating broadcasting organization has, for example, the rights to diffuse the signal for Tunisia, Algeria and Morocco. And then, for some reason which I ignore, decides to exclude Algeria from taking advantage of its signals. We consider that there is here an abuse of monopoly if the organization discriminates by asking a different price from that asked in other countries.

1029.2 In such a case, we should like Algeria for example to have the right to use the signal in order to check the abuse of monopoly; we will in any case pay any sums due to the originating organization under international standards and our own domestic law.

1029.3 That is the meaning of the addition with regard to the region of the country in question.

1030.1 The CHAIRMAN [F]: Before we consider this compromise text, if there is a compromise, we should know whether it is "territory", if it is "region" or if it is "region of the country", because now we have all three terminologies.

1030.2 The delegate of the Federal Republic of Germany.

1031. Ms. STEUP (Germany, Federal Republic of) [E]: I think both proposals are very close to each other. As far as I have understood the delegate of Algeria, he said, in his example, that the originating organization has the right for three countries, including the country which wants to apply its monopoly laws. I think his case is covered by our formation too. But perhaps this question of wording could be settled in the Drafting Committee, if we are clear that also in the case the delegate of Algeria raised the originating organization has the right to distribute the signal in the country.

1032.1 The CHAIRMAN [F]: This text will, of course, be gone over by the Rapporteur and not the Drafting Committee. But these are mere details, of which we have seen plenty.

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1032.2 The delegate of Senegal has the floor.

1033. Mr. N'DIAYE (Senegal) [F]: I wished to support the proposal of the delegate of the Federal Republic of Germany. The concept of region or territory, I think that that is a question of words, even in the example given by the delegate of Algeria; the monopoly applies to the region but the abuse of the monopoly to the territory in question. Therefore I think that we can keep the word "territory" without any prejudice. And then, at the beginning of the article, I think that we should, even so, add "against the abuses of monopolies" and not "against monopolies".

1034.1 The CHAIRMAN [F]: I am in complete agreement with the last observation of the delegate of Senegal. It is indeed the abuses of monopoly and not the monopoly that we are dealing with. A monopoly is a normal situation in numerous countries as far as broadcasting organizations are concerned.

1034.2 The delegate of Kenya has the floor.

1035. Mr. STRASCHNOV (Kenya) [E]: Our delegation accepts willingly the proposal made by the delegate of the Federal Republic of Germany. We fully understand the position of Algeria, and indeed the example he quoted would be an abuse of monopoly but I think that the text proposed by the Federal Republic of Germany would entirely cover his case. Therefore we accept it.

1036. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

1037. Mr. WINTER (United States of America) [E]: I think the compromise language worked out by the delegates of the Federal Republic of Germany and Senegal is very constructive, and it is acceptable to my delegation.

1038.1 The CHAIRMAN [F]: I have on my list the delegates of Australia, Argentina, Hungary and Italy. Is it to support the proposal which seems to be taking shape for the situation has developed rather fast?

1038.2 The delegate of Hungary has the floor.

1039.1 Mr. TIMAR (Hungary) [F]: The Hungarian delegation has followed with great interest the discussion concerning Article 7 and the interpretation of the provisions of this article, in spite of the fact that in our country there is no private monopoly and there are no abuses of monopoly. This discussion has made absolutely clear what our delegation stated during the general discussion, i.e. that the separation between programme-carrying signals transmitted by satellite and the programmes themselves is artificial. But this discussion is also a proof that this separation has very grave and

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dangerous consequences. We think it fair to accept a regulation against the abuses of monopoly but we also think it indispensable to enforce the rights of the contributors to the programmes carried by the signals.

1039.2 Consequently, it seems to us necessary to explain clearly in the Report that the application of Article 7 cannot be in contradiction with Article 6. In these cases too the rights of authors and other contributors to the programmes must always be respected.

1039.3 We believe that the ideas put forward here up to now are expressed more simply in this drafting and, consequently, we believe that the first paragraph of the text proposed by the working group can cause confusion. That is why we propose deleting this paragraph while of course keeping the second paragraph concerning the application of Article 7 "in good faith and only where its application appears entirely legitimate to the Contracting States".

1040. The CHAIRMAN [F]: I give the floor to the delegate of Italy.

1041.1 Mr. MESCHINELLI (Italy) [F]: In the discussion on Article 7, the Italian delegation agreed to accept the amended text of this article on condition that, in the Report, the said article should make reference to the domestic laws relative to the repression of abuses of monopoly while retaining the international responsibility of the States concerned, in all fields.

1041.2 This Convention concerns the distribution of signals. Therefore the abuse of monopoly is aimed in the first place against the abuse of the monopoly of the signal. It can happen, however, that a broadcasting organization may legally hold the monopoly of the signal, but not that of the programme injected in the signal. In this hypothesis, it seems to us unjustified that a country may be authorized to appropriate the signal and at the same time the programme carried by this signal, a programme which the originating organization does not have the right to transmit in the said countries, which would mean that the originating organization would have to bear the expenses and the dangers of such distribution.

1041.3 Consequently, we could accept the proposal put forward by the delegation of the Federal Republic of Germany, leaving it to those concerned to formulate the most appropriate text.

1042.1 The CHAIRMAN [F]: If I have understood correctly, we have a very large consensus in favour of accepting the compromise formula drafted during the break and in that case - it being understood that the scruples of the delegations of Hungary and Italy will be reflected in the Report - we could accept Article 7, if you agree, without a vote, it being understood that the Report will contain a text based on document CONF/SAT/30 with the following changes:

1) say "the abuses of monopoly" instead of "monopolies";

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- 2) delete "and other oppressive situations";
- 3) say "if the conditions required for the enforcement of the law exist";
- 4) then the solution suggested by the Federal Republic of Germany seconded by Algeria: "However, such a measure may not be applied when the originating organization does not possess the rights to distribute the signals on the territory of the State in question."
- 5) Finally, we delete the phrase: "and no distributor in the said country has obtained these rights from their owners..." up to "etc."

Are we in agreement? Can we adopt Article 7? And the text on it for the Report?

1042.2 Article 7 is adopted.

1042.3 We now have to return to the beginning of our text and proceed to the Preamble and the title of the Convention. If you agree, we shall begin with the title, but, please, not too many subtleties. Let us not stray too far from the Nairobi text; I have always given you this advice and will continue to give it to you. If we manage to conclude, then we shall avoid a tiring night session and we could solve tomorrow the few difficulties that remain.

1042.4 And so: "Convention relating to the distribution of programme-carrying signals transmitted by satellite". Are we in agreement? The text is neutral.

1042.5 The title is adopted.

1042.6 With regard to the Preamble: "The Contracting States", Then we have a certain number of preliminary clauses and amendments. With regard to paragraph (a), there is no amendment. Can we adopt paragraph (a)?

1042.7 In the second place, we have a new paragraph proposed in document CONF/SAT/8 by the Union of the Soviet Socialist Republics: "Admitting the necessity for an international agreement on principles governing the use by States of artificial earth satellites for direct television broadcasting in accordance with Resolution 2916 (XXVII) of the United Nations General Assembly." Since this provision is concerned with direct television, I ask the Soviet delegation if it wishes to maintain it.

1042.8 The delegation of the Union of Soviet Socialist Republics has the floor.

1043.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: Our delegation as well as the delegations of the Ukrainian and Byelorussian Soviet Socialist Republics proposed including this paragraph in the Preamble on the assumption that our Conference should indicate

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its attitude on the legal principles governing direct television broadcasting. But in view of the fact that the majority of delegations did not find it possible to discuss these aspects in the framework of this Conference and it was agreed that a specific article would be added to the Convention to state that the Convention does not cover direct television broadcasting, in this situation our delegation could agree not to insist on the inclusion of this paragraph in the Preamble.

1043.2 However, the Chairman made a very quick decision concerning the title of the Convention. In this connexion it might still be advisable to modify the title of this Convention accordingly and name it: "Convention relating to the distribution of programme-carrying signals transmitted point-to-point by satellite". Then it would be absolutely clear that our Convention does not treat questions of direct television broadcasting. I mean the so-called "satellite-link".

1044.1 The CHAIRMAN [F]: I thank the delegate of the Union of Soviet Socialist Republics for withdrawing his amendment, which facilitates our work. With regard to the title, I am rather embarrassed since we have already adopted this title but I think that in the Plenary, the delegate of the Union of Soviet Socialist Republics will easily be able to obtain that this title be modified as he has indicated. Without that, it would be necessary for us to vote with a two-thirds majority the reconsideration of a decision we have already taken. I admit that the adoption of the title was rather fast but without that we shall never finish.

1044.2 Does the delegate of the Union of Soviet Socialist Republics agree?

1045.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I believe that since the issue of naming the Convention has been decided, at least so far as this session is concerned, we could come back to it at the Plenary Session so as to reconcile all the paragraphs of this article with the well-known ITU Convention. But as you will remember, yesterday during the debate on Article 3 submitted by a number of delegations the Algerian delegate proposed to reflect the basic principles of this article in the Preamble, and, as I understand it, the Commission agreed to that, i.e. to find a place in the Preamble for the basic principles stated in Article 3, together with the drafting of a document entrusted to the working group of six delegations. I would like to take this opportunity to suggest the following paragraph embracing these principles for inclusion in the Preamble:

"Recognizing the obligation of States to exclude from programmes transmitted via satellites any material detrimental to the maintenance of international peace and security, publicizing ideas of national and racial hatred and aimed at interfering in the domestic affairs of other States".

1045.2 This is the new paragraph we propose including in the Preamble.

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1046.1 The CHAIRMAN [F]: Since we have tomorrow a working group which is going to try and solve, I hope, the main questions that you have raised in Article 8, I suggest that the point you are raising be kept for tomorrow, so that we keep for tomorrow that part of the Preamble concerning the questions that you have raised. That means that we approve to-day the Preamble, subject to a supplementary article, a paragraph concerning your proposal that we shall adopt when we have the conclusions of the working group. The delegate of the Union of Soviet Socialist Republics is in agreement.

1046.2 Consequently, we shall proceed to paragraph (b). For this paragraph, we have an amendment, document CONF/SAT/7 which is an amendment from Japan.

1046.3 The delegate of Japan has the floor.

1047. Mr. HIRAOKA (Japan) [F]: I simply wish to say that our delegation withdraws this proposed amendment in continuance of our conciliatory position.

1048.1 The CHAIRMAN [F]: Consequently, we no longer have an amendment to paragraph (b) and so I ask you whether we can adopt it?

1048.2 Paragraph (b) is adopted.

1048.3 We have no amendment to paragraph (c). Can we adopt paragraph (c)?

1048.4 Paragraph (c) is adopted.

1048.5 Then we come to paragraph (d). Here we have an amendment from Japan. If I am not mistaken, since it is closely linked with the first amendment, it is also withdrawn. Consequently, we have no amendment to paragraph (d). Can we adopt paragraph (d)?

1048.6 Paragraph (d) is adopted.

1048.7 For paragraph (e), the situation is rather more complicated in that we have three amendments. We have first CONF/SAT/6 from the United States of America to the effect that we mention the International Telecommunication Convention and the Regulations annexed to it. We have an amendment from the Union of Soviet Socialist Republics contained in CONF/SAT/8 which suggests the following draftings: "Conscious of the need not to impair in any way international agreements already in force". Finally we have an amendment from Argentina, CONF/SAT/24, which proposes that we delete this paragraph.

1048.8 With regard to the amendment from the United States of America, I think this was amply explained when we discussed Article 6, and that consequently it does not need any additional explanations. We have one amendment which takes us further from the text, which is

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the amendment from the delegation of Argentina proposing the deletion of this paragraph and I give the floor to the delegation of Argentina.

1049. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: the delegation of Argentina has proposed the deletion of this paragraph because we do not think it necessary to stress that no Convention can bring prejudice to any other international Convention in force. In the first place, this paragraph is redundant; in the second place, in this same paragraph there is an appeal to sign the Rome Convention, which might appear to be publicity for the Rome Convention, something which does not correspond in any way to our Convention. On the contrary, in the interests of fairness, either we mention the Rome Convention and all the other related Conventions or we do not name any of them. In addition, we had said that this Convention should be neutral; there is no better neutrality than the deletion of this paragraph. If there is no general wish to delete it, the delegation of Argentina would be prepared to accept the proposal presented by the delegate of the Soviet Union.

1050. The CHAIRMAN [F]: I now give the floor to the delegate of the Union of Soviet Socialist Republics to introduce his amendment, which is contained in document CONFESAT/8.

1051. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: In order to explain our proposal, I would like to point out the following: the present draft gives priority to specific international instruments, in particular the Rome Convention and as suggested by the United States delegation the International Telecommunication Convention. It is known that many of the countries represented here including the USSR are not parties to the Rome Convention but are parties to the International Telecommunication Convention. This already presents certain difficulties in determining one's attitude towards this paragraph. Besides there are other international instruments of relevance to the use of satellites, the 1967 Outer Space Treaty in particular. That is why we suggest adopting the more generally worded, neutral formula which has just been given, namely as follows: "Conscious of the need not to impair in any way international agreements already in force." I believe that such a phrasing takes care of the interests of all States concerned.

1052. The CHAIRMAN [F]: I give the floor to the delegate of Mexico.

1053.1 Mr. LARREA RICHERAND (Mexico) [S]: In spite of the great merit of the opinion of Argentina and of the Soviet Union, the delegation of Mexico nevertheless insists that the paragraph (e) under discussion be retained. Should this paragraph be adopted, we would like to propose to the Drafting Committee two or three changes which would make its drafting clearer.

1053.2 All of us in this meeting have received the document containing the comments made by governments and international

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non-governmental organizations. In one of these, reference is made to a resolution drawn up by the First National Symposium for Intellectual Workers which met at Mexico City under the auspices of both WIPO and Unesco and the International Labour Office, during which a series of studies connected with the field of copyright were made. This Symposium concluded that the Rome Convention should in no way be prejudiced. I understand very well that a general principle not to have any effect on other treaties could be acceptable; but in this case, previous meetings have tried to avoid any prejudice to the Rome Convention. The Nairobi solution, found by the delegate of Morocco and seconded by Brazil, Mexico and India, sought precisely not to prejudice the said Rome Convention. In the Rome Convention rights are granted to performers, producers of phonograms and broadcasting organizations. In this same Convention, the protection given to each of the parties concerned is balanced, and for this reason we do not wish that this Convention prejudice in any way that particular Convention. Otherwise, all the compromises, all the bargaining for this Convention to come into being, would have no effect. In our opinion, if there is no specific and convincing mention of the Rome Convention, the rights of performers, producers of phonograms and, more concretely, the Rome Convention itself would be prejudiced.

1054. The CHAIRMAN [F]: I give the floor to the delegate of the United Kingdom.

1055. Mr. DAVIS (United Kingdom) [E]: On this question of a reference to the Rome Convention, everyone in this room I think knows that the Rome Convention covers the interests of broadcasters, performers, and the producers of phonograms alike. They also know, I think that the vast majority of Rome States have declared that satellite transmissions are, in their view, covered by the Rome Convention. That being so, it is immediately apparent that there is a vast area of overlap, in the eyes of the Rome countries, between the Convention that we are now concluding and the Rome Convention. In view of this, and in view of the obvious fears that this will engender in the hearts of performers and producers of phonograms, it seems to me that we at least owe it to them to give them the reassurance of a positive statement in this Preamble that the Rome Convention is not prejudiced. Naturally, they are suspicious. A number of delegations have arrived here and have been empowered to come here because they made undertakings to their performers and to their phonogram producers that in fact the Rome Convention would not go down the drain. It seems to me that it is asking very little of this Conference to give them the reassurance that they asked for and to leave it in this Preamble.

1056. The CHAIRMAN [F]: I give the floor to the delegate of Brazil.

1057.1 Mr. de ATHAYDE (Brazil) [F]: I wished to state that Brazil is not in a position to accept the amendment proposed by the Union of Soviet Socialist Republics and that presented by Argentina. This

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is because the reference to the Rome Convention is for Brazil and for many other States here present, I think, very important.

1057.2 I would remind the delegates of the Union of Soviet Socialist Republics and Argentina that this Convention is already in itself a concession that we are making to the States who do not believe that the Rome Convention covers programme-carrying signals transmitted by satellite. However, if these States, i.e. the States who have not acceded to the Rome Convention and do not wish to do so, at least in the nearfuture - we should always hope that they will do so one day - if these States are afraid that the express reference to the Rome Convention in the Preamble may in some way oblige them to accede to the Rome Convention, perhaps I could propose that we say in the Report quite simply that this is not the case.

1057.3 But the express reference to the Rome Convention in the Preamble is, however, fundamental, all the more so in that our assembly must consider it most desirable, I think, that there be a true symbiosis between the Rome Convention and the Brussels Convention. If there is not an express reference to the Rome Convention, I must state that Brazil and probably many other States members of the Rome Convention and others who, although not members of the Rome Convention, are in agreement with its principles, will not sign and will not ratify this Convention.

1057.4 As for the American proposal, the Brazilian delegation sees no objection to there being an express reference, in the Preamble, to the International Telecommunication Convention and its annexed Regulations.

1058.1 The CHAIRMAN [F]: The delegate of Brazil has raised the question of whether, if there is a reference to the Rome Convention in the Preamble, there is any obligation on States to adhere to it. Obviously, it does not. There is no kind of obligation of this kind and if we ever adopt this text, the General Rapporteur will state that it was said during the Conference that the reference that is made to the Rome Convention does not imply any obligation whatsoever to adhere to it.

1058.2 I give the floor to the delegate of Italy.

1059.1 Mr. TROTTA (Italy) [F]: The intervention of Italy has not only a legal value, but also a moral one. As we stated in our initial statement, we attach great importance to the Rome Convention and we are convinced that the Rome Convention covers the subject we are dealing with here, as has been very well expressed by the delegate of the United Kingdom.

1059.2 I will add that it is only a question of a Preamble and that therefore, there is no question of a strictly legal obligation in this matter. But the spirit of the Rome Convention remains in this new Convention and we consider this Convention as a Convention

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which complements the Rome Convention.

1059.3 The delegate of Brazil has clearly stated that it might be thought that these two Conventions are in contradiction with one another. We should avoid any possibility of this interpretation. The Rome Convention is the only instrument which gathers together the interests and the rights of those most interested, with the authors, in distribution by satellite. And we also hope that this reference will appear expressly in the Preamble. I will now take up a phrase of my friend Valerio de Sanctis, someone whom you all know well; this is that the retention of this reference is such as to facilitate a clearly favourable attitude on the part of the broadcasting organizations to the principles of balance inspired by the Rome Convention. Therefore, we have many reasons for keeping this sentence. It does not give rise to any problems or any confusion. It does not prevent us from ratifying both Conventions, and we hope that if this Convention is accepted - and we hope that it will be accepted in all countries of the world, the retention of this sentence in the Preamble will facilitate even further the ratification of the Rome Convention.

1060. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

1061. Ms. STEUP (Germany, Federal Republic of) [E]: We fully share the views of the delegations of Mexico, the United Kingdom, Brazil and Italy. May I remind the Commission that we had this discussion in every preparatory meeting and that at last in Nairobi we reached the compromise to have this phrase in the Preamble of our new treaty. We think that this whole treaty is already a concession of the Member States of the Rome Convention because there is no doubt that there is an overlap between this Convention and the Rome Convention. May I also remind the Commission of the fact that we already have one convention where there is also an overlap and which has therefore the same statement in the Preamble, that is the Phonograms Convention of Geneva. And we think that it is only fair that we have here in this Convention the same mention of the Rome Convention to alleviate the fears of those people who fear the Rome Convention will be impaired by this new Convention.

1062. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

1063.1 Ms. RINGER (United States of America) [E]: Some of the remarks that I had planned to make have already been made by other delegates and I will not repeat them. Our delegation shares the view that paragraph (e) of the Preamble should include the reference to the Rome Convention. We are not members of Rome, and we would not feel bound to become members of Rome by adhering to this Convention which includes a safeguard reference to the Rome Convention in the Preamble.

1063.2 We also feel that the same considerations apply to the ITU

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Convention for the reasons that I mentioned the other day. When we withdrew our proposal to amend Article 6, it was more or less on the understanding which was shared, I think, by other delegations, that a reference to the ITU Convention would be included in the Preamble.

1063.3 As the delegate of the Federal Republic of Germany just said, we have had, throughout the preparatory work for this meeting, consistent debates referring to the Rome Convention and the ITU Convention as alternatives for this approach; and, as we all know, the decision has been taken to draft a new Convention. However, I think that the preparatory work makes it very clear that both the Rome Convention and the ITU Convention not only overlap with this Convention to some extent but have a very special relationship with it which I think needs this kind of clarifying safeguard.

1064. The CHAIRMAN [F]: The delegate of Morocco has the floor.

1065. Mr. CHAKROUN (Morocco) [F]: The delegation of Morocco accepted against its better judgment at Nairobi the allusion to the Rome Convention in the Preamble of this Convention, for our position in this respect is that of a developing country. But since we accepted yesterday to mention also the instruments of the ITU, my delegation has revised its position in favour of the retention of the allusion to the two Conventions, Rome and the ITU.

1066.1 The CHAIRMAN [F]: In order to simplify the discussion, let us say that it is understood that if we mention Rome we shall also mention the ITU. Are we in agreement? Perfect.

1066.2 The delegate of Australia has the floor.

1067. Mr. CURTIS (Australia) [E]: To say once again what I have said before in this Conference, that Australia has in the preparatory meetings consistently supported the view that we should not protect the interests of broadcasters in satellite transmissions at the expense of the interests of contributors to the programmes carried by those transmissions. But, in the spirit of compromise, we have been prepared to accept the Nairobi philosophy as a means of achieving agreement. We would not, however, like to see the balance achieved at Nairobi and in the draft before us, between the Rome Convention and the interests of broadcasters, further upset by the elimination of the specific reference to the Rome Convention in the Preamble. We think that that is the least this Conference owes to the interests of the contributors to the programmes.

1068.1 The CHAIRMAN [F]: I still have on my list: Algeria, Kenya, Canada, Spain, the Union of Soviet Socialist Republics. I think we can close the list of speakers. I should have liked to conclude with this article before adjourning, either with a compromise solution or with a vote. Consequently, if you agree, we shall close the list of speakers.

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1068.2 I give the floor to the delegate of Algeria and ask delegates to be very brief; this subject has been completely exhausted. We know it by heart and I do not think that there is very much new to say.

1069.1 Mr. ABADA (Algeria) [F]: The subject has indeed been exhausted. We asked for the floor solely to take note of the proposal put forward by Brazil to the effect that the express reference to the Rome Convention does not create an obligation or a moral presumption for countries which are not members of the Rome Convention to ratify this Convention should they wish to ratify the Convention on signals transmitted by satellite.

1069.2 We are not hostile to the Rome Convention as a matter of principle, but financial considerations which affect only the developing countries do not permit us at present to accede to this Convention. Recognizing the protection of authors' rights in relation to other priorities is already a step forward. We sympathize with the argument of the delegates who intervened in favour of the retention of the reference to the Rome Convention in that it is linked by its attributions to the contents of this Convention; but we think that the telecommunications Regulations are also relative to the subject of our Convention. We think, therefore, that it would be desirable to refer to both these international Conventions.

1070. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

1071. Mr. STRASCHNOV (Kenya) [E]: Very briefly, we are in favour of maintaining the reference to the Rome Convention and we are also in favour of the American proposal to include a reference to the ITU Convention and to the Radio Regulations annexed to it.

1072. The CHAIRMAN [F]: The delegate of Canada has the floor.

1073.1 Mr. CORBEIL (Canada) [E]: We would like to indicate our approval of references to both the Rome and ITU Conventions. With regard to the latter you will recall that we, in our opening statement, made remarks to justify this.

1073.2 I would just like to recall now that if this Conference is to remain faithful to the philosophy adopted at Nairobi, namely the elimination of all references to content, we must recognize that there is now a considerable area of overlap between the ITU Convention and the Radio Regulations and the present Convention. Both are concerned with the point-to-point radio communication signal not directly intended for the general public. Although the present Convention goes somewhat further in its protection than the ITU Regulations, we believe that because of this area of overlap, the ITU Convention should be specifically mentioned in the Preamble.

1073.3 In the event of unauthorized distribution by a country or

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State not party to this Convention, Canada might well wish to rely upon the ITU Convention to seek a recourse in such a situation. Therefore, we would like to support these two inclusions in the Preamble.

1074. The CHAIRMAN [F]: The delegate of Spain has the floor.

1075. Mr. de la VEGA (Spain) [S]: Although Spain has not up to the present ratified the Rome Convention, we consider that the express reference to this Convention should be retained. To this effect we would follow the line proposed by the delegation of Mexico and also Brazil, in that it refers to the inclusion of the proposal made by the delegation of the United States.

1076. The CHAIRMAN [F]: The delegate of the Union of Soviet Socialist Republics, the last speaker, has the floor.

1077. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: Our delegation understands the arguments of some delegations in favour of retaining paragraph (e); but in view of our considerations stated above we still think it preferable to retain only the first part of this paragraph. At the same time we think it advisable to make a suitable reference in the General Report to the effect that in discussing paragraph (e) of the Preamble many delegations emphasized that this Convention should not impair in any way the 1961 Rome Convention and the ITU Convention.

1078.1 The CHAIRMAN [F]: I am going to summarize the situation. It is evident that we have a large majority of delegations which have declared themselves in favour of the retention of the Nairobi text. I would remind you that the Nairobi text is already in itself a compromise. It is not in square brackets. The members of the Rome Convention and those who support the principles of the Rome Convention have accepted that the reference to it in Article 6 be deleted and be transferred to the Preamble. Consequently, it is already a compromise.

1078.2 Secondly, the consequences of the insertion of this reference to the Rome Convention are quite different depending on whether we consider the members of the Rome Convention or those who are not. If we retain this reference, it will not do any harm since it is understood, and it will be stated in the Report, that there is no kind of obligation, legal or moral, to adhere to the principles of Rome. But if we withdraw this reference to the Rome Convention, then the Satellite Convention will be deprived of at least fourteen signatures and ratifications of countries which are not among the least important. Consequently, I think that there is no possible doubt. There is no doubt; and I appeal to the delegations of Argentina and the Union of Soviet Socialist Republics that they withdraw their amendments so that we can take a decision without a vote, adopting the text as it stands, i.e. the Nairobi text with the addition suggested by the United States of America which has been widely supported.

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1078.3 The delegate of Argentina has the floor.

1079. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: Given the reasons put forward by the delegates who have spoken previously, and in spite of the fact that we consider that paragraph (e) in its present drafting is not fair to other Conventions not mentioned and does not maintain the neutrality of the rest of the text, the delegation of Argentina withdraws its proposals.

1080.1 The CHAIRMAN [F]: I thank the delegate of the Republic of Argentina for his constructive attitude.

1080.2 The delegate of the Union of Soviet Socialist Republics has the floor.

1081. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I would like to remark that since the majority of the delegations prefer to keep paragraph (e) with the addition proposed by the U.S. delegation, we accept the opinion of the majority. But I would like to know whether it will be stated in the General Report as suggested by the delegation of Brazil, that retaining paragraph (e) in its present form does not imply that the States who sign the Convention or accede to it should also accede to the 1961 Rome Convention.

1082.1 The CHAIRMAN [F]: I thank the delegate of the Union of Soviet Socialist Republics for his equally constructive attitude. Express reference will be made in the Report that accession to the Convention in no way implies either a legal or moral obligation to adhere to the Rome Convention or to the principles it contains.

1082.2 Consequently, if you agree, we shall adopt this paragraph (e), with the addition to be found in document CONFSAT/6, without a vote. Are we in agreement?

1082.3 If you agree, we can adopt the Preamble as a whole, with the exception of the point concerning the Soviet proposal which will be considered tomorrow.

1082.4 The Preamble is adopted.

1082.5 Before we break up, I should have liked to take a decision on Article 2. Article 2 contains the definitions. I wonder if it would not be preferable to entrust this work to the Drafting Committee. In fact, if we consider Article 2 this evening, I have the impression that our work is going to be very difficult and that it will be necessary to repeat all that has been said during our discussions. I have the impression that this is rather the work of the Drafting Committee. This in no way prevents us, if we are not satisfied with the work of the Drafting Committee, from raising any question in the Plenary or even in the Main Commission.

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1082.6 The delegation of Israel has the floor.

1083. Mr. GABAY (Israel) [E]: I would like to support your idea, which is not yet a proposal, but your idea, that this article should be transmitted to the Drafting Committee and would be submitted directly from there to the Plenary.

1084.1 The CHAIRMAN [F]: I apologize to the delegate of Israel but there is a small error. The work of the Drafting Committee comes back to us first. Consequently, we still have two competent bodies to study this work: a session of the Main Commission and the Plenary.

1084.2 The delegate of Kenya has the floor.

1085.1 Mr. STRASCHNOV (Kenya) [E]: I would entirely agree with your suggestion. I studied all the proposed changes in Article 2 and I believe that the Drafting Committee could effectively deal with all these proposals. There is only one proposal which needs perhaps a decision, and this is the proposal from Algeria that we should add a definition of what we understand to be a derived signal.

1085.2 I personally think that the Algerian delegation is right that this concept should be defined, and if the Commission agrees, I think that the Drafting Committee could also propose a definition of the term 'derived signal' which is used in Article 1.

1086. The CHAIRMAN [F]: The delegate of the Netherlands has the floor.

1087. Mr. VERHOEVE (Netherlands) [E]: Just one question: whether the choice between Alternative A and Alternative B will still come to the Main Commission. Or do you think that the Drafting Committee is also entitled to decide that for us?

1088.1 The CHAIRMAN [F]: I think that this is an important question which must be considered by the Commission itself. There is no objection to the Drafting Committee retaining the two versions and we shall have the choice when we examine the Report of the Drafting Committee which can also submit to us other alternatives if there are any problems.

1088.2 The delegate of Australia has the floor.

1089.1 Mr. CURTIS (Australia) [E]: I think this is a matter for the Drafting Committee because I do not think there is any disagreement in principle; however, we would want to be sure that the definition of 'distribution' is such that we are dealing in this Convention only with distribution by means of broadcasting or by cable transmission, and that in the definition of 'distribution' the words "by which a distributor transmits signals to the general public" is not

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intended to include the sale or other distribution to the general public of fixations of the signal.

1089.2 As I said, I think we are all agreed on that in principle, but I suggest that the Drafting Committee might look at it to make sure. Perhaps the matter could be dealt with by a suitable reference in the Report.

1090.1 The CHAIRMAN [F]: I should add that if delegations have clearcut viewpoints on some definitions, they should submit to the Chairman of the Drafting Committee, any suggestions as to drafting, especially if they are not members of the Drafting Committee.

1090.2 The delegate of Algeria has the floor.

1091.1 Mr. ABADA (Algeria) [F]: With regard to the definitions, the Algerian delegation had submitted two amendments, one concerning the definition of 'derived signal', the other concerning the definition of 'distribution'.

1091.2 With regard to 'distribution', the definition proposed by Algeria corresponds to the main idea that has been adopted, i.e. the exclusion of direct broadcasting from the purview of the Convention, because the definition of distribution as it stands in the Nairobi draft could lead to confusion.

1091.3 With regard to the definition of the 'derived signal', the Algerian delegation is making this proposal, not because we are sure that the definition we are suggesting is a good one, but simply to induce our assembly to discuss this question which is not clear, and is in any case debatable.

1091.4 We have discussed this problem with several delegates present here. We have noted that they were either perplexed with regard to this problem, or that they had a definition to propose. We have also noted that there was no definition that was unanimously accepted. For some, the derived signal is the one which is captured by a third party, either before it reaches the satellite, or after its transmission by satellite towards the earth station. But the technicians say that it is impossible to capture the signal before it reaches the satellite. Others say that the derived signal is the one stored by the satellite or transmitted in a different form towards the earth station. Finally, for others, the derived signal is the one which has come from the satellite to an earth station which distributes it, but which is captured in a different form by another organization at the time of distribution. But in this case we are in the field of distribution, i.e. which, under paragraph (2) of Article 1, is not within the purview of our Convention.

1091.5 All these differing definitions have convinced us of the interest of presenting this problem to the Commission so that it can be clarified.

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1092.1 The CHAIRMAN [F]: I think that the Main Commission can take the decision to transmit all the proposals on the definitions to the Drafting Committee. I remind you that we have documents CONFESAT/27 from Argentina, CONFESAT/11 from Algeria, CONFESAT/12 from Italy, CONFESAT/13 from the United Kingdom and CONFESAT/9 from Switzerland.

1092.2 Does the Main Commission wish to take the decision to transmit all these proposals to the Drafting Committee, on condition naturally that it examines them later? Yes? It is so decided.

1092.3 The delegate of the United Kingdom has the floor.

1093. Mr. DAVIS (United Kingdom) [E]: I would like to know what is happening with regard to Article 11 (3), the one on reservations. I have heard that there is in fact a working party discussing this matter. If so, the United Kingdom would like to be represented on it. This is a matter which touches our interests.

1094.1 The CHAIRMAN [F]: I am coming to that. I shall first state what we have done, and then I shall clarify what remains to be done.

1094.2 I congratulate the Main Commission because we have accomplished a fair amount of work to-day. The following points remain to be solved: (1) the Soviet proposal, which is the subject of a working group, concerning a certain compromise. This working group will meet tomorrow at 9 a.m. (2) A question which is linked with the work of the working group and which is the Soviet proposal concerning the Preamble. (3) Article 7bis proposed by the Union of Soviet Socialist Republics. (4) The question of cable transmission which is the subject of informal conversations: there is no working group on this subject. Consequently, I advise the delegate of the United Kingdom to get in touch with those concerned in order to be able to take part in these informal conversations. And I think that that is about all. Is there anything else?

1094.3 The delegate of the Union of Soviet Socialist Republics.

1095. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I appreciate your information, Mr. Chairman, on the questions still to be decided, but I would like to remind you that in accordance with general opinion an article was proposed by the Algerian delegation. This article, No. 5 if I remember well, is to state that this Convention does not concern direct television broadcasting. It would seem that we should also discuss this article so as to include it in the Convention.

1096.1 The CHAIRMAN [F]: We have already taken the decision that the article will be included in the Convention. The only thing lacking is the drafting.

1096.2 The delegate of Algeria has the floor.

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1097. Mr. ABADA (Algeria) [F]: The Algerian delegation had proposed a new Article 5 which would provide that our Convention not apply to direct broadcasting by satellite. You spoke of a committee to study this problem.

1098.1 The CHAIRMAN [F]: I was speaking of Article 11 which concerns cable transmission. As for the article which the delegate of Algeria referred to, the Commission took the decision to include this article at its first session. And so here we have two possible procedures, either we refer document CONF/SAT/26 to the Drafting Committee and we approve it when we approve the report of the Drafting Committee, or we consider it immediately or tomorrow. This is really a purely formal question.

1098.2 The delegate of Algeria has the floor.

1099. Mr. ABADA (Algeria) [F]: We should like you to make a reference, so that it is clear in the minds of the delegations present here, to the fact that not only are we excluding direct broadcasting by satellite from the Preamble, but that we are including a separate article on it and that the draft submitted by Algeria will be considered.

1100.1 The CHAIRMAN [F]: I repeat, the Main Commission has taken the decision that there will be a new article. You have submitted the drafting of this article. It only remains to approve it. But the principle of the article itself is already accepted; we cannot come back on it.

1100.2 If you agree, we could do that tomorrow; that would pose no problem.

1100.3 I give the floor to the delegate of Canada.

1101. Mr. CORBEIL (Canada) [F]: I should like to draw the attention of the Commission to the proposed amendment submitted by our delegation and seconded by the delegation of the United States of America. This proposal appears in document CONF/SAT/16 and is also intended to resolve the problem of direct broadcast satellites.

1102.1 The CHAIRMAN [F]: This is another solution which consists in having an addition to Article 1. We shall discuss that tomorrow.

1102.2 The delegate of the Federal Republic of Germany has the floor.

1103. Ms. STEUP (Germany, Federal Republic of) [E]: I only wanted to say what the Canadian delegation has said: that we have two different proposals on this question, and in my opinion, it is more a question of drafting, since the decision has been taken.

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1104. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

1105.1 Ms. RINGER (United States of America) [E]: I merely wanted to call attention to document CONFESAT/16. Our feeling was that this is something that the Drafting Committee could profitably take up first; then the product of this could come back to the Main Commission before the solution goes to the Plenary. I think that it would be more profitable to do it that way.

1105.2 Actually, if we discussed document CONFESAT/16 and the Algerian proposal, we would be discussing drafting, and I think it would be more profitable to do it in the Drafting Committee.

1106. The CHAIRMAN [F]: The delegate of Kenya.

1107. Mr. STRASCHNOV (Kenya) [E]: I wanted to make the same suggestion as the delegation of the United States.

1108. The CHAIRMAN [F]: The delegate of Australia has the floor.

1109. Mr. CURTIS (Australia) [E]: I just wanted to clarify one point: that you said earlier to-day that you proposed that Article 11 should be deferred until tomorrow. We had a proposal to add a new sub-paragraph to Article 11. We do not think that it will detain the Commission long tomorrow, but we did not press it earlier. We are relying on the fact that you had said that the whole of Article 11 would be further considered after the working party on Article 11 (3) had finished its work.

1110.1 The CHAIRMAN [F]: We have begun to consider Article 11; we have not considered all the proposals, including yours, so that Article 11 is open. Tomorrow we shall have a complete discussion on Article 11.

1110.2 And so we have to decide whether this question of the exclusion of direct broadcasting, which is the subject of two proposals, one from Algeria to the effect that we have a new article, the other from Canada and the United States of America, to the effect that we have a new paragraph in Article 1, should be resolved directly by our Main Commission this evening or tomorrow, or whether we should send it to the Drafting Committee and study it afterwards in the Main Commission.

1110.3 The delegate of Algeria has the floor.

1111. Mr. ABADA (Algeria) [F]: We are of the opinion that this question can be settled by the Drafting Committee.

1112.1 The CHAIRMAN [F]: In that case I think it would be better that this question be settled by the Drafting Committee.

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In fact it is closely linked with the question of definitions; and then we shall examine all that in the Main Commission.

1112.2 We also take the decision to send documents CONFESAT/16 and CONFESAT/26 to the Drafting Committee.

1112.3 That being so, we shall meet tomorrow; the working group on the proposal of the Union of Soviet Socialist Republics at 9 a.m. and the Main Commission at 10 a.m.

1113. The meeting rose.

Main Commission - Ninth Meeting¹

Wednesday, 15 May 1974 at 11.20 a.m. Chairman: Mr. da COSTA (Brazil)

1114.1 The CHAIRMAN [F]: We are beginning our work with a delay which is justified because the working group on the Soviet proposal has had a positive result and consequently that relieves us of many discussions and many problems.

1114.2 To complete the work of the Main Commission, we still have on our agenda the following points:

- 1) The results of the working group on document CONFESAT/23, i.e. the Soviet proposal;
- 2) the results of the working group on Article 11; and
- 3) the proposal of the Eastern bloc concerning a new article, which is contained in document CONFESAT/28.

1114.3 I shall first present the results of the working group on the proposal of the Union of Soviet Socialist Republics and other countries of the Eastern bloc. These discussions, which took up the first hours of yesterday morning and this morning, have concluded with a satisfactory result. In a spirit of compromise, it has been decided, and is now submitted to the Main Commission:

1) that there should be a letter from the Chairman of the Conference. This letter would be addressed to the Secretary-General of the United Nations Organization, transmitting to him the verbatim records and the Report concerning the discussion on the proposal of the Union of Soviet Socialist Republics and other countries of the Eastern bloc, which is contained in document CONFESAT/23. The contents of the letter would be as follows:

"Sir,

The International Conference of States on the distribution

1. Cf. document UNESCO/OMPI/CONFESAT/VR.15 (prov.).

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of programme-carrying signals transmitted by satellite has been seized with a proposal of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic, the Byelorussian Soviet Socialist Republic, The German Democratic Republic (I am sorry, this is not the exact order), Hungary and Czechoslovakia to insert in the Convention a new article the text of which is as follows: 'Each Contracting State shall undertake to exclude in all cases from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred and aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions.'

This first paragraph, which is purely factual, did not arouse any kind of controversy. Paragraph (2), on the contrary, was the subject of many discussions and negotiations, and we arrived at the following drafting that the working group submits to the Commission: "Although the problem mentioned in paragraph 1 was thought to be an important one by an appreciable number of delegations, the Conference considered that it was not within the scope of the Conference." Then paragraph (3): "I am transmitting to you the attached report and the verbatim records of the Conference relating to this subject, in order that these documents may be sent to Member States as official documents of the United Nations Organization, and submitted to the Committee on the Peaceful Uses of Outer Space so that it may take them into account in its work. Please accept, Sir, the assurances of my highest consideration." This letter would be signed by the Chairman of the Conference, Mr. de San.

1114.4 Then the Soviet Union and the other countries of the Eastern bloc would not submit their amendment to the Preamble, which is contained in document CONF/SAT/32.

1114.5 Is the Main Commission in agreement with the contents of this letter? Naturally, this letter will be distributed as soon as possible for final submission to the Plenary.

1114.6 The delegate of the Federal Republic of Germany has the floor.

1115.1 Mr. GAERTE (Germany, Federal Republic of) [F]: I do not think that we can be expected to take a decision now when we have not yet seen the letter. We must read it, we must reflect on it and then we will, of course, be pleased to give our opinion. But, in principle, I should like to say this: as I have already explained twice, last Friday and Monday with respect to the Soviet proposal, we have no mandate to deal with political questions relating to the contents of the programmes transmitted by satellite.

1115.2 My delegation has no mandate in this respect and we believe that this Conference also lacks a mandate in this matter. We do not think it appropriate that this Conference get involved in the competence and the duties of the two other Conferences meeting in Geneva which are presently dealing with this matter.

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1115.3 I believe that the Soviet government is represented at these two Conferences meeting in Geneva. I have the impression that the majority of the delegations at our Conference here in Brussels have already noted their opposition to the examination of the Soviet proposal on our agenda. I have counted twenty-five delegations who have clearly supported this negative point of view. Consequently, the necessary two-thirds majority is not likely. The formula should not, in our opinion, appear in this Convention at all.

1116.1 The CHAIRMAN [F]: I suggest the following procedure. It is obviously quite out of the question that the Commission approve a text without having been able to read it. We shall have this text at 3 o'clock. Consequently, we shall consider this question this afternoon and it is understood that document CONFESAT/32, the Soviet document, is still before us and that if this draft letter is rejected, then we shall consider the proposal of the Soviet Union, the Ukraine and Byelorussia contained in document CONFESAT/32 and also document CONFESAT/23.

1116.2 The delegate of the United States of America has the floor.

1117.1 Mr. WINTER (United States of America) [E]: I will not repeat any of the remarks that my delegation made the other day during the debate on the Soviet proposal on Article 3.

1117.2 As you have indicated we have attempted to reach a compromise on this matter in a letter you have presented to the Main Commission. However, I believe for the record it would be useful for the United States, and in order not to take up the time of the Main Commission to restate its position, to state simply that we agree with the substance of the remarks made by the delegate of the Federal Republic of Germany.

1118.1 The CHAIRMAN [F]: Can we then proceed to the second question which is on our agenda since we shall come back to this question this afternoon. Can we consider Article 11?

1118.2 The delegate of the Union of Soviet Socialist Republics has the floor.

1119.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: Frankly the statement of the delegate of the Federal Republic of Germany was a surprise for us. As you will remember, the Main Commission, in discussing the proposal on Article 3 submitted jointly by the Soviet Union, the Ukrainian Soviet Socialist Republic, the Byelorussian Soviet Socialist Republic, the Hungarian People's Republic, the German Democratic Republic, and the Czechoslovak Socialist Republic decided that, since many of the delegations in principle considered the provisions of this article important and as it was difficult to arrive at a compromise, it would be advisable to establish a working party to prepare, in accordance with the Algerian proposal, a draft resolution or a draft letter to be sent by our Chairman to the United Nations as well as to consider whether this

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important principle should be included in the Preamble of this Convention. For two days the working party held its sessions and worked hard, all the delegations being aware of realities and desirous of arriving at a compromise. And here we are, now that our group has prepared this draft which is neutral, as a basis for a compromise, raising doubts as to its competence. I do not fully agree or rather fully disagree with the attitude of the delegate of the Federal Republic of Germany, and it is rather strange or should I say deplorable that my colleague from the United States with whom we spent three hours finalizing the document should find it possible to share this point of view. If it comes to that, the Soviet delegation reserves the right to raise this issue once again but on a different basis.

1119.2 As you may know, guided by a desire to arrive at a compromise during the sessions of the working party, we made many concessions; in particular we agreed to withdraw our proposal to include this most important principle in the Preamble of the Convention. I should think that since such an attitude prevails there is every reason to resume the discussion of this issue, including the proposal to incorporate this principle in the Preamble of this Convention.

1120.1 The CHAIRMAN [F]: I have decided that we shall proceed to Article 11; it is a decision of the Chairman. Under the Rules of Procedure you have the right to contest it and to come back to the article which interests you.

1120.2 Consequently, for the time being we will no longer speak of this question and proceed to Article 11. Or would you prefer on the last day to compromise the results of this Conference?

1120.3 I ask those who have taken part in the working group on Article 11 to give us the results of their work.

1120.4 The delegate of the United States of America has the floor.

1121.1 Ms. RINGER (United States of America) [E]: This problem of Article 11, paragraph 3, came up at the end of the morning yesterday, and, as the result of a decision by the Chairman, it was postponed until this morning with the hope that the delegations that were most concerned with this would be able to get together and see if a compromise could not be worked out. Speaking for the United States delegation, I should like to review the problem very briefly.

1121.2 Our problem is that we need a reservation on cable retransmissions because of our internal law; however, we are not entirely sure just how narrow or broad that reservation would have to be. Our copyright law offers very little, if any, control over cable retransmissions. Our law in the communications area is somewhat less clear.

1121.3 We are forced to oppose Article 11 (3) of the Nairobi text after the words "provided that" for this reason. We indicated yesterday that we had very great difficulty with the proposal of the delegation of the Federal Republic of Germany, but we are grateful

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for the effort to narrow the differences between us. Our problem is simply whether a cable distributor, or some enterprise acting on behalf of a cable distributor, should, under the reservation, be allowed actually to tap the satellite and to redistribute to cable subscribers in a particular area, before the signals have been broadcast in that area. I think there is no difference among us as to the principles involved. We agree, in principle, that this is something that is inconsistent with the philosophy of the Convention and should not be permitted. Our problem is just that we do not know what our courts would hold if they were presented with the question under our present law.

1121.4 This question involves the provisions of Article 22 of the ITU Convention and also Section 605 of the Federal Communications Act of the United States. It is a question of tapping as the issue has resolved itself, not merely of picking up and retransmitting broadcast signals. It is clearly a question of confidentiality of communication, since, as we are told, the frequencies would have to be different. In other words, a simple ground station without special equipment would not be able to take the signals off the satellite. We were anxious to work out a compromise on this problem, and, as the Chairman has indicated, we did have an informal group. I do not know whether we want to consider it a formal working group or not.

1121.5 The delegations that were represented were those of Australia, Canada, the Federal Republic of Germany, Kenya, the U.S.A. and the United Kingdom. There was a very productive exchange of views and, in trying to reach a compromise, we examined the Nairobi report and, in particular, focused on paragraph 122, which was prompted by a declaration of the Netherlands delegation at Nairobi, concerning the status of countries that were not sure what their law would be, at the time of coming into effect of the Convention in that country.

1121.6 The compromise that was reached at Nairobi, as is expressed in paragraph 122, was to change the date as of which the reservation would be effective. Under the Nairobi text, and I might add that this applies to both paragraphs (2) and (3) of Article 11, the date that was chosen was the date that the country became bound by the Convention. In analyzing this, we concluded that this may have been a mistake in the context of the problem we were considering. It was felt that if the date were made next Tuesday, 21 May, rather than the date when the country became bound, which could be any date in the future, the effect of this reservation would be much narrower. There is an interpretation in the Nairobi report, which I think the Conference would similarly adopt, that, in order to make a reservation under Article 11, a country would have to know what its law was, either legislation of a statutory nature or established case law that was reasonably clear, to form the basis of a reservation.

1121.7 Therefore, the informal working party came to the conclusion that it might be useful to consider changing the date in paragraph (3) to 21 May 1974, with the possibility that the bracketed material in the Nairobi text be deleted. We would hope that the recommend-

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ation of the Federal Republic of Germany in document CONFESAT/25 would be withdrawn subject to an explanation in the Report that would outline this rather complicated problem as clearly as possible, and that the Conference would adopt a statement to the effect that the reservations contemplated would not include the possibility of a cable distributor, or someone acting on his behalf, tapping from a satellite directly and distributing by cable in an area before the signals had been distributed by wireless means in that area.

1121.8 This is the essence of our proposal; and if this proposal is accepted I think that we would be over a rather thorny point.

1122. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

1123.1 Ms. STEUP (Germany, Federal Republic of) [E]: As the delegate of the United States just said, we could agree to this new compromise. In our opinion it would be a fair compromise between the different views. I think we all agree that, in principle, it should make no difference whether a broadcaster or a cable distributor distributes signals which were transmitted via satellite; however, we cannot help it that there are some laws at the moment in some States which do not allow these States to ratify the new Convention if we do not give them an exception. Therefore, we think that it would be helpful if we could limit the reservation to those States who have such laws at the moment, and that we make some explanation in the Report.

1123.2 There was one question which was discussed I think in Nairobi, that is the question of those States which at the moment have a silent statute and no court decision expressly permitting the unauthorized cable-distribution; but we think that under the formula, as it is drafted in the Nairobi text without the bracketed part, it is possible that such a State can make the reservation when a decision of its courts is issued. Thus, in our opinion, the difficulties which were seen by some countries with regard to the old text really do not exist and I think if this could be made clear in the Report it could be a basis for a general compromise.

1124. The CHAIRMAN [F]: The delegate of the Netherlands has the floor.

1125. Ms. KLAVER (Netherlands) [F]: I have a rather precise question to ask in connexion with this discussion. During the Committee of Experts at Nairobi, the Committee pronounced on the meaning of the provision in Article 11 (3) and on that occasion, as the delegate of the United States of America has just said, the Committee established that, in order to make this reservation, it was necessary for a State to exclude or limit the protection in the case of distribution by wire by a legal provision or an express judicial decision. On that occasion our delegation drew the attention of the Committee to the fact that the legal situation with

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regard to transmission by cable in the Netherlands was not clear, in spite of the fact that we have recently modified our copyright legislation. We have no legislative provisions or explicit jurisprudential decisions at the moment on transmission by cable and it is probable that we will not have any in the near future. Under these circumstances, it would, therefore, be difficult for us to ratify the Convention with its new text, i.e. with the proposals of the working group, for, supposing that a judicial decision on transmission by cable is taken in a few years, the question will arise as to whether this decision can have, in a certain sense, a retroactive effect, i.e. it could be argued that a jurisprudential decision which limits or excludes the protection of distribution by cable constitutes a limitation or an exclusion of the protection at the time when the Convention comes into force. If such is the case, in order not to complicate the discussion in this meeting, we would not oppose a new compromise but it would be very necessary for us to have an express mention in this respect in the Report of the meeting.

1126. The CHAIRMAN [F]: The delegate of Kenya has the floor.

1127. Mr. STRASCHNOV (Kenya) [E]: I think the answer to the very justified question asked by the delegate from the Netherlands is very simple. As she told us, there is a new copyright act in the Netherlands, and this copyright act exists and will exist on 21 May when we sign the new Convention. Now the notification which is provided for under paragraph (3) of Article 11 does not have to be deposited with the Secretary-General of the United Nations at the time of ratifying the Convention, but at any time. Now, if in two or three years' time the Netherlands Court decides that the copyright act which was in force on 21 May this year limited or denied protection, then of course it seems to me normal and flowing from the text, that the Netherlands can put in the notification retroactively, so to speak, to 21 May 1974 and, therefore, I think we can safely put into the Report, a positive answer to the question raised by the delegate of the Netherlands.

1128. The CHAIRMAN [F]: The delegate of Canada has the floor.

1129. Mr. CORBEIL (Canada) [E]: The Canadian delegation would like to express an observation on this compromise solution proposed by the working group. In Canada we do not have an express legislative provision exempting cable. We do have certain judicial decisions, but they are not those of the highest court and, therefore, we would like the Report to indicate that we consider ourselves capable of ratifying this treaty in accordance with the suggested provision for Article 11 (3) as we understand it, in spite of the fact that we do not have a legal provision or a decision at the highest level. We would like to be assured that there is complete understanding on this point.

1130.1 The CHAIRMAN [F]: Consequently, the working group

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proposes that in paragraph 3 (a) of Article 11 we replace "on which this Convention enters into force for that State", that we replace this phrase by the following phrase: "Any Contracting State which, on 21 May 1974, etc." and we delete the part in square brackets, i.e. from "provided that..." to "... public". Is that it? Yes. And in the Report we would specify the scope of the new drafting so that the problems raised, in particular by the delegate of the Netherlands, would be avoided. If the Commission is in agreement on this drafting, can we consider it as approved without a vote? Yes.

1130.2 Consequently, this article is approved. Should I assume that the amendments submitted by the United Kingdom, Argentina, the Federal Republic of Germany and Australia are withdrawn? The amendments proposed by the delegations of the United Kingdom and the Federal Republic of Germany are withdrawn.

1130.3 The delegate of Argentina has the floor.

1131. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: The amendment submitted by Argentina referred to paragraph (2).

1132.1 The CHAIRMAN [F]: We also have an amendment from Australia.

1132.2 The delegate of Australia has the floor.

1133. Mr. CURTIS (Australia) [E]: As I explained earlier in the work of the Main Commission, the present Australian law provides, in regard to the protection of broadcasts, that a repeat broadcast carrying the same programme is protected in the same way as the original broadcast; but if the repeat broadcast is made more than 50 years after the date of the original broadcast carrying the same programme, it does not revive the term of protection. We were in some doubt following the adoption of Article 1 by the Commission whether our position was sufficiently safeguarded by the new wording. After discussing this matter with a number of delegations, it now appears to us that the absence in Article 1 of any reference to a term of protection will allow us, without any other change in the draft text now before us, to apply our present law relating to broadcasts in the application of the measures required by Article 1 of this Convention. In those circumstances, therefore, it appears to us that the amendment to Article 11 we have circulated is not necessary and we would therefore withdraw it.

1134.1 The CHAIRMAN [F]: Consequently, since the amendment from Argentina has been entrusted to the Drafting Committee and Australia withdraws its amendment, we have no amendment to Article 11.

1134.2 I give the floor to the delegate of Italy.

1135.1 Mr. TROTTA (Italy) [F]: Please excuse this late intervention which is in no way intended to change things. We take the

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liberty of observing that the solution proposed and the explanation in the Report are not perhaps sufficient. But if Italy is not interested in this question at the moment, we may be in the future. Besides, you know that the Convention remains open for six months. I take the liberty of observing that perhaps it would be useful to fix this date on the final date for signature.

1135.2 We shall have time to reflect and we shall know better what is appropriate in this respect.

1136. The CHAIRMAN [F]: The delegate of Algeria has the floor.

1137.1 Mr. ABADA (Algeria) [F]: With much regret we should like to come back to Article 11 (3), because we were not given much time to reflect on the scope of the amendment and its consequences, and we had the intention of stressing the interpretation which has been given by the delegate of Italy and we associate ourselves completely with his concern.

1137.2 There has been an attempt to calm our anxiety by an insertion in the Report, but we think that it would be better to leave "on the date on which this Convention enters into force". This would give much more security to the States who will adhere to this Convention.

1138. The CHAIRMAN [F]: The delegate of Kenya has the floor.

1139. Mr. STRASCHNOV (Kenya) [E]: As far as the observation made by Italy is concerned, we understand, of course, that States may need some time to analyze their legislation, but this time is given to them because, as we said before, the notification does not have to coincide in time with the ratification. They can deposit a possible notification later when they are sure that their legislation or case law, as in force on 21 May this year, limited or denied protection in the case we are contemplating. On the other hand, to leave in the date as it is here, really leaves the question completely open and means that States may perhaps in X years' time, when they change the law, or when a new law comes into operation which did not exist on 21 May this year, put in a notification. This is what we wanted to avoid in the working party in order to narrow down at least the number of States able to avail themselves of this notification. I would consider for my part that the proposal to leave the text as it is means a tremendous weakening of the effects of the Convention. For the time being, we are able to identify the countries which need such a reservation. We can say that they are four or five. But if we leave this text as it stands, there may be 20 or 30. In other words, the most necessary protection against cable piracy of satellite signals could become absolutely ineffective. This is why it is so necessary to reinstate the date which we had both in the Lausanne text of 1971 and the Paris text of 1972.

1140.1 The CHAIRMAN [F]: Here we have a two-sided question.

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First, a question of procedure and secondly a question of substance. With regard to the procedure, it was of course rather fast. We approved Article 3 a bit too quickly but we approved it. And so why come back on this decision? We need a decision of the Commission with a two-thirds majority.

1140.2 In the second place, I think that the concerns of the delegations of Algeria and Italy could be clarified. I remind you that in the Phonograms Convention, for example, we have exactly the same system. "Any Contracting State which, on October 29, 1971, affords protection to producers of phonograms etc...". This is the standard, this is the general rule.

1140.3 In any case, we have two solutions. We can perhaps take up this question in the Plenary or reconsider it if the Commission wishes, but it seems to me that in any case there is a very large majority, even if it is a silent majority, in favour of the solution proposed by the working group.

1140.4 Do the delegates of Algeria and Italy agree? The delegate of Italy would be satisfied with a mention in the Report.

1141.1 Mr. ABADA (Algeria) [F]: We were obliged to intervene because in spite of our desire to conclude, we had to understand the purview of the text before making a decision. The question is such a complicated one that we were not able to react in due time - and I understand the concern to proceed quickly with our Conference - but even so we needed to decide on the texts that we judge important.

1141.2 In any case, we are happy for the moment that our point of view be mentioned in the Report.

1142.1 The CHAIRMAN [F]: We have covered the whole of Article 11. There are no more amendments. Can we approve Article 11 in its entirety? Yes, subject, of course, to the work of the Drafting Committee which will take into account the amendment submitted by Argentina.

1142.2 This question of the date leads us to observe that in Article 8 we have not filled in the blank, i.e. we have not decided until what date the Convention will remain open for signature. We have a certain number of precedents: the Universal Copyright Convention, 4 months; the Phonograms Convention, 6 months; the Rome Convention, 8 months. We have to choose a period which evidently must be in this range.

1142.3 The delegate of Canada has the floor.

1143. Mr. CORBELL (Canada) [F]: We should like to propose 31 December 1974.

1144.1 The CHAIRMAN [F]: This proposal seems to me to be extremely reasonable. It is a little longer than six months and

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obviously has the advantage of being mnemonic.

1144.2 I give the floor to the delegate of the Ivory Coast.

1145. Mr. ZOGBO (Ivory Coast) [F]: It seems that in the precedents that you have quoted there is a certain progression and we should therefore like to propose the date of 21 May 1975, i.e. one year.

1146.1 The CHAIRMAN [F]: Are there any other viewpoints on these two proposals?

1146.2 I give the floor to the delegate of Kenya.

1147. Mr. COWARD (Kenya) [E]: I would like to support the proposal of the delegate from Canada. I would think that that should give everyone adequate time to make up their minds and sign the Convention.

1148. The CHAIRMAN [F]: I give the floor to the delegate of Israel.

1149. Mr. GABAY (Israel) [E]: While we appreciate the proposal by the delegation of the Ivory Coast, it appears, as you have indicated, that 31 December would be the best compromise. Therefore, we support the Canadian proposal.

1150. The CHAIRMAN [F]: The delegate of Hungary has the floor.

1151. Mr. TIMAR (Hungary) [F]: I think that this new Convention will raise many problems for governments and consequently, the Hungarian delegation supports the proposal made by the delegation of the Ivory Coast.

1152.1 The CHAIRMAN [F]: We must, however, make a decision. If you agree, let us choose an intermediate solution: 31 March 1975, a date which has the immense advantage of not being 1 April.

1152.2 The delegate of the Ivory Coast has the floor.

1153. Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: It is indeed because we think that the ratification of this Convention will pose many problems that it would be better for us to have the most time possible. I do not think that mnemonic considerations can be an important argument. That said, we are not especially attached to our date and, indeed, even if we do not sign this Convention we can adhere to it subsequently. And so, if the delegations prefer the date of 31 December for mnemonic reasons, then we will associate ourselves with this proposal.

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1154.1 The CHAIRMAN [F]: I specify that it is not a question of ratification, but only of signature.

1154.2 The delegate of Morocco has the floor.

1155. Mr. CHAKROUN (Morocco) [F]: It was to support your compromise proposal of 31 March 1975.

1156.1 The CHAIRMAN [F]: Can we say that we adopt 31 March 1975? That would seem to be a reasonable period, not too short, not too long. This date is approved.

1156.2 If I am not mistaken, all that remains on our agenda is the question of the working group on document CONFESAT/23. I think that we shall examine it this afternoon since we do not have the text. We still have the proposal of the Union of Soviet Socialist Republics and other delegations relative to a new Article 7bis. I propose that we consider now this proposal for a new Article 7bis which is contained in document CONFESAT/28.

1156.3 The Federal Republic of Germany has asked for the floor.

1157. Mr. GAERTE (Germany, Federal Republic of) [E]: I have the impression that there is a bit of confusion about the various proposals which we have before us from the delegation of the Soviet Union. Therefore, I should be grateful for a clarification on the agreement reached this morning in the small group of which I was not a member - I must stress that here, and that might explain many things. What does this agreement mean between the members of the small group in relation to the various papers we have before us here? I have document CONFESAT/8. I do not know how far that still applies and how far it has been withdrawn. I have a document CONFESAT/23 that might have been withdrawn. I am not quite sure either. I have a document CONFESAT/31 which I received, and I must stress, after we were notified of the results of the small working group, and that seems to me a new proposal that takes up an old idea. Finally, I have document CONFESAT/28. Does that replace the others, or is that a proposal that has been made in addition to all the others? I should be very grateful if I could receive a clarification from an appropriate authority in this regard.

1158.1 The CHAIRMAN [F]: The situation, in spite of appearances, is crystal clear. In document CONFESAT/8 we have an amendment to the Preamble which is taken up in different form in document CONFESAT/31. This amendment to the Preamble is part of the agreement which has been found this morning in the working group, i.e. if the Commission supports the Chairman's letter that we will present in writing at 3 p.m., the delegations which are proposing document CONFESAT/31 will withdraw this document.

1158.2 In the second place, still in document CONFESAT/8, we have several articles under Roman II. One is taken up in CONFESAT/23; it

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is the new Article 3. This new Article 3 is in exactly the same situation as the Preamble, i.e. if the Commission supports the letter addressed by the Chairman of the Conference to the Secretary-General of the United Nations Organization, the delegations which proposed it will withdraw it. Consequently, it is these two documents which will be withdrawn.

1158.3 Next, still in document CONFESAT/8, we have a series of articles that the Soviet delegation has withdrawn. Finally, just before section IV, we have an article on responsibility, which is taken up in document CONFESAT/28. This article is not a part of this morning's transaction. This article remains in any case and we are going to discuss it this morning. I hope that that is clear, in spite of the deluge of paper that has descended on us.

1158.4 The delegate of Kenya has the floor.

1159. Mr. STRASCHNOV (Kenya) [E]: Just a further clarification, please. You told us that the proposal for a new paragraph in the Preamble in document CONFESAT/31 would be included in the package deal and would be withdrawn; but we have another proposal in document CONFESAT/32, again for a new paragraph in the Preamble, and you have not, I think, indicated what should happen to that proposal.

1160.1 The CHAIRMAN [F]: This document has not been considered by the Commission. That is all I can tell you. But at the working group my understanding was simply that document CONFESAT/28 subsisted and I should like to have confirmation of this.

1160.2 The delegate of Canada has the floor.

1161. Mr. CORBEIL (Canada) [E]: It was our understanding that the compromise proposal that was accepted by the working group would limit and complete all discussions of proposals or changes to the Preamble or Article 3; and the only article that was left in doubt was Article 7bis and the proposal contained in document CONFESAT/28.

1162. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

1163. Mr. WINTER (United States of America) [E]: It is also our understanding that in the so-called package deal, that the Soviet Union agreed to withdraw any proposal relating to the Preamble. It was quite clearly stated in the working group that the one remaining proposal related to Article 7bis. We agreed to discuss that.

1164. The CHAIRMAN [F]: The delegate of the Union of Soviet Socialist Republics has the floor.

1165.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I would like to try and clarify this matter. As you will remember, on

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the first day of our work we suggested certain basic proposals aimed at broadening the scope and - so we believe - improving the draft Convention. Our proposals were submitted under CONFESAT/8. When it was agreed that this Conference and the Convention in question were not to deal with matters of direct television broadcasting we agreed to withdraw two relevant articles. As to the article concerning programme contents, which should not constitute interference in domestic affairs, or contain any racial discrimination, etc., it was decided, as we have mentioned today, to refer it to a working party and as suggested by the Algerian delegation to draft a letter or a resolution to be addressed to the United Nations. In this connexion our delegation, on behalf of other delegations sponsoring this proposal, agreed not to insist on the inclusion of a relevant paragraph in the Preamble of the Convention in question (document CONFESAT/31). But as it was agreed at the last session, when I spoke in favour of including in the logical order and in a suitable place the proposed article as Article 7bis, it was decided we would resume discussion of this article submitted by six delegations to-day, once all the articles of the proposed draft Convention were finalized. Naturally, all delegations are familiar with our proposal and the considerations it is based on. The working party did not discuss the question of Article 7bis from this point of view, i.e. its content, and it was decided that Article 7bis and the relevant follow-up, I refer to document CONFESAT/32 as well, would be discussed to-day as a separate issue which was not covered by the array of problems that had been settled within the working party.

1165.2 Allow me to take this opportunity to remind delegates that the article proposed by our countries conforms fully with the requirements and obligations of States which are found in the much-referred-to 1967 Outer Space Treaty and the ITU Convention, where it is expressly indicated that all States bear international responsibility for all national activities in the use of satellites for broadcasting purposes, irrespective of whether such activities are carried out by governmental agencies or non-governmental organizations and public entities.

1165.3 In our opinion Articles 1, 4, 6 and particularly 7 logically require that we determine the norms for activities involving the use of satellites by any television broadcaster in a country, regardless of whether it is a governmental or a private organization; and in this case the article refers not to direct television broadcasting but to a most common distribution system, i.e. point-to-point. We believe that since States bear the responsibility for the observance of law, order and norms of space activities involving the use of satellites irrespective of whether they are carried out by private or governmental agencies it is proper to raise this issue. In our opinion this would greatly contribute to the resolution of such problems as the peaceful use of satellites and the development of friendly relations between peoples and States; it would help prevent abuses by certain television organizations and emphasize the ultimate responsibility of States for the activities of such organizations. Accordingly, it would be advisable, in our opinion, to incorporate this principle in a concise form in the Preamble of this Convention. This is the additional information I wanted to present.

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1165.4 Thank you for your attention. I hope that our proposal, which is supported by many delegations, will be discussed in a positive, business-like manner with full understanding of its political implications.

1166.1 The CHAIRMAN [F]: As Chairman of the working group, I should like to clarify the following: the working group, or at least I myself, were not aware of CONFESAT/32. Consequently, CONFESAT/32 did not enter into the consideration of the working group.

1166.2 Now let us be positive and realistic. We should not get lost in a discussion of principles, as to whether we should or should not consider document CONFESAT/32, since this provision in the Preamble has no meaning unless document CONFESAT/28 is adopted. Which means that if we adopt document CONFESAT/28, then the fact of having a reference to this question in the Preamble will not add much. If we do not adopt document CONFESAT/28, then document CONFESAT/32 no longer has any meaning because there will no longer be any reason to introduce this preliminary clause. And so if we start from this premise, we avoid an interminable discussion on the question of whether or not we should consider document CONFESAT/32. I think that this is a realistic solution and I propose it to the Commission.

1166.3 What I am proposing then is that instead of getting lost in considerations that could bring about the failure of this afternoon's discussions - which is what counts - on the question of whether or not we should consider document CONFESAT/32, since we did not discuss it in the working group for the excellent reason that this document had not been distributed, I propose that if document CONFESAT/28 is adopted then we consider document CONFESAT/32 since it adds nothing more, it is a corollary, it is an addition to the Preamble of a provision that has been adopted in the text. And if document CONFESAT/28 is not adopted, then in that case, we shall consider that document CONFESAT/32 should not be either since there would be no reason to introduce in the Preamble a clause that has no relation to the text. Are we in agreement?

1166.4 The delegate of the United States of America has the floor.

1167. Mr. WINTER (United States of America) [E]: I was merely nodding assent to your logical proposal, Mr. Chairman.

1168. The CHAIRMAN [F]: The delegate of Algeria has the floor.

1169. Mr. ABADA (Algeria) [F]: Yes, we are in agreement with your proposal, Mr. Chairman. It would considerably limit the supposed misunderstanding which could have existed in the working group of which Algeria was a member.

1170. The CHAIRMAN [F]: The delegate of Brazil has the floor.

1171. Mr. de ATHAYDE (Brazil) [F]: I should like to support the

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proposal you have just made that we proceed, immediately if possible, to the study of Article 7bis.

1172.1 The CHAIRMAN [F]: Are we in agreement? We are. Consequently, we shall proceed to the study of Article 7bis.

1172.2 The delegate of the Union of Soviet Socialist Republics has introduced this proposal in the name of a group of countries. No one wants the floor?

1172.3 The delegate of Czechoslovakia has the floor.

1173.1 Mr. KUNZ (Czechoslovakia) [F]: The proposal to include a new Article 7bis has already been introduced yesterday by the delegate of the Soviet Union and this proposal has also been seconded by the delegate of the German Democratic Republic. That is why, in speaking of the motivation for this article, for this proposal, I will merely add a few words.

1173.2 I should like to refer to these interventions. The insertion of the proposed article in the draft Convention is the logical consequence of the contents of Article 1 that we have already adopted, and of our previous proposals. Let us not forget that we cannot separate the signal from the programme it is carrying; and let us not forget either that we cannot consider the transmissions by satellite as transmissions which do not enter into outer space activities.

1173.3 It is natural that this activity in space should be controlled by international public law, in particular by the Convention of which we have already spoken here today, i.e. the Convention of 27 January 1967 on the activities of States in outer space. And it is above all in this Convention, based on other international instruments, for example on the Resolution of the General Assembly of the United Nations of 13 December 1963 concerning the legal principles relative to the exploitation of space by States, that we find Article VI in which the responsibility of Contracting States is fixed with regard to their activities in space, whether these activities are carried out by governmental organizations or, I underline this, non-governmental organizations. The activities of non-governmental organizations in space cannot be carried out under Article VI except with the express permission of the State which should also control these activities.

1173.4 Here, therefore, in the proposed Article, it is not a question of creating new rules of international public law or of anticipating the work of other international organizations, but of applying or associating already existing legal standards with the existing elements that constitute the contents of our Convention.

1173.5 Thus, the activities of States which are also the subject of our consideration should be in accordance with the rules and goals contained in the said Convention of 1967 and these activities, too,

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should serve the goals of peace, co-operation and the well-being of all countries.

1173.6 That is why we are submitting this proposal for your kind consideration.

1174. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany.

1175. Mr. GAERTE (Germany, Federal Republic of) [E]: I have listened with great attention to the explanation of the delegate of Czechoslovakia; I think he is quite right that Article 7bis is quite a logical consequence of the principles which have been established in the Soviet proposal with regard to the old Article 3. This is actually the corollary of the first principle and, therefore, I think once again we have to deal with the question of political principles regarding the contents of the programmes. I very much regret that my delegation has no mandate and we even think that this Conference would be overstepping its mandate if it dealt with this question. Therefore, I must refrain from going into the very complicated and complex substance of this matter with regard to international public law, and I must just say I cannot agree to the inclusion in the programme of this Conference let alone in this Convention, and to my very great regret, I shall have to vote against it.

1176. The CHAIRMAN [F]: The delegate of France has the floor.

1177.1 Mr. DESBOIS (France) [F]: I will be brief, I have listened with great attention to the statements just made by the delegate of the Federal Republic of Germany. I have in front of me the new Article 7bis, i.e. document CONFESAT/28. This document CONFESAT/28 is an exact transcription of the text which appears in document CONFESAT/8.

1177.2 I will not try your patience by comparing the two texts. Logically, the new Article 7bis in document CONFESAT/28 appears as the sanction, under the responsibility of governments, for any violation committed of the obligations that the governments would have assumed under the text which appears on the first page of CONFESAT/8: "Each Contracting State shall undertake to exclude...". In fact, it seems to me that logically Article 7bis should have been taken into consideration by the working group because it appears to be merely the sanction of a provision that the working group wanted to exclude from the draft Convention. Perhaps I am making a mistake, but if I am, I ask to be corrected. The position of France joins, therefore, that of the Federal Republic of Germany. If we adopt the new Article 7bis, we are in fact distorting the purview of this Conference, we are introducing a political discussion that we have always been careful to exclude.

1178. The CHAIRMAN [F]: The delegate of Kenya has the floor.

1179.1 Mr. STRASCHNOV (Kenya) [E]: We are again, of course, faced

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with a political proposal and I will not repeat what has been said by the delegate of the Federal Republic of Germany. Indeed we have no mandatè to discuss politics here. But I shall go a little bit deeper into the subject matter of this proposal.

1179.2 We all know that Article VI of the Outer Space Treaty of January 1967 establishes the ultimate international responsibility of States for activities in outer space. Now in 1967 when this Treaty was drafted, and later in 1968 when it was adopted by the General Assembly of the United Nations, of course nobody thought of satellites; and when, in the working party of the United Nations, which is a body of the Outer Space Committee, the question was raised whether this article of the Outer Space Treaty also applied to broadcasting in outer space, there was no unanimity, and so far no unanimity has been reached, at least not in the working party. It may well be that some unanimity has now been reached in the Legal Sub-Committee dealing with the question right now in Geneva; but in March no such consensus had been reached. The main reason was that many countries said that if their responsibility extends to broadcasting by satellite then they would be totally unable to adhere to any principles, let alone a Convention, as proposed by the Soviet Union on 8 August 1972, since under their internal regulations, they have no control over the programmes of the broadcasting organizations operating on their territory.

1179.3 This was an argument used by many countries whose legislation simply does not permit that the Government exercise control over the programmes. Now if we adopted this text now, we would be pre-empting the decision which has probably not been reached as yet on this question. We would be admitting that the Outer Space Treaty also applies to television activities by satellite, and that all Contracting States must exercise a control over the programmes which go via satellite. We would be simply dealing with the question which is right now before the United Nations. Therefore, our delegation cannot, unfortunately, give its support to this proposed article.

1180. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

1181.1 Mr. RUDDY (United States of America) [E]: As the Conference has decided not to include direct broadcasting satellites in the Brussels Convention, our Convention is accordingly limited to the protection of signals transmitted over satellites to ground stations and not to the general public.

1181.2 Since the distribution of the programme-carrying signals is the sole subject of this Convention, terrestrial activities are under the control of national governments and therefore the proposal in document CONF/SAT/28 is academic. Similarly, it would be inappropriate, in view of the Nairobi philosophy which has vitalized our meeting to-day, to expand the scope of our Convention to political matters and beyond the protection of satellite signals per se. To do so would open up a Pandora's box of political issues related to the

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proposal in CONFESAT/28 but not germane to our purpose here. Such an eventuality could in our judgment prove a most serious impediment to the successful conclusion of our Conference.

1181.3 For the foregoing reasons we respectfully suggest the inappropriateness of the proposal contained in CONFESAT/28 to the Convention before us.

1182. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

1183. Mr. DAVIS (United Kingdom) [E]: The question of the responsibility of States in relation to broadcasts is a matter of which I have, and so far as I am aware, the other members of my delegation have no knowledge, and of which this Conference has no competence. The proposal before us makes no contribution in my view to the purpose for which this Conference was convened, and I am totally opposed to it. I think that we should deal with it at the earliest possible moment, preferably by a vote. I am well aware that it may well be that compromises of one sort or another may be suggested. However, I think the principle here is that this is simply not for us and that it should be turned down.

1184. The CHAIRMAN [F]: The delegate of Morocco has the floor.

1185.1 Mr. CHAKROUN (Morocco) [F]: Let us be clear and precise. Would it be a question of the signals as container or of the programme as the contents? It seems to my delegation that such a clarification is necessary to know how to classify such international responsibility and to find out whether such a proposal has its place in the framework of the philosophy that we constructed at Nairobi.

1185.2 According to the explanation just given it would seem that this international responsibility has its place in another international instrument. Other more competent bodies are discussing it at Geneva and elsewhere in the framework of the United Nations. Consequently, this proposal seems to be outside the Convention we are recommending, the subject of which is clearly defined.

1186. The CHAIRMAN [F]: The delegate of Algeria has the floor.

1187.1 Mr. ABADA (Algeria) [F]: The proposal contained in document CONFESAT/28, is, in our opinion, in accordance with the principles of international law. It makes each State responsible for its activities in space.

1187.2 On condition that this proposal does not apply to direct broadcasting, we think that it could be adopted. The principles contained in document CONFESAT/28 prejudice no right. They harm no one.

1187.3 Indeed, by this means, this proposal would tend to normalize

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relations between States in this new field which is essential for peace and international security. Making States responsible on the international level could only contribute to the international co-operation and peace so beneficial to the progress of the international community.

1187.4 That is why we welcome this proposal so sympathetically.

1188. The CHAIRMAN [F]: The delegate of the Ivory Coast has the floor.

1189.1 Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: After hearing the numerous interventions, the delegation of the Ivory Coast would like to have a clarification. As the delegation of France has observed, this new Article 7bis is the exact repetition of the second unnumbered article proposed in paragraph III of CONFESAT/8. If the delegation of the Ivory Coast has understood correctly, the preceding article in the same paragraph has been withdrawn by the delegations who presented document CONFESAT/8. Has the delegation of the Ivory Coast understood correctly?

1189.2 Then logically, if this article has been withdrawn, then the other one which is completely bound up with it should also have been withdrawn. However that may be, this Article 7bis in effect commits the responsibility of States. The delegation of the Ivory Coast does not consider that it has a mandate from its government to deal with these questions. It has no knowledge of the position taken by its government when these questions were dealt with at the United Nations or at Geneva, if indeed its government is a member of these Committees. For decisions of this order to be taken, the question must be studied by the Political Bureau of the government of the Ivory Coast. Therefore, the delegation of the Ivory Coast proposes to submit these discussions in detail to its government when it returns to the Ivory Coast. It will be the same for what is decided this afternoon concerning the letter it is proposed to submit to the Secretary-General of the United Nations.

1189.3 I apologize for speaking of this immediately but, for me, these questions are linked. The delegation of the Ivory Coast does not think that it is able to decide in favour or against these proposals. It can merely report to its government on these debates and leave it free to decide whether it will submit a letter to the Secretary-General of the United Nations. It is the Minister of Foreign Affairs who deals with questions concerning the United Nations at New York. Our delegation has absolutely no mandate to decide on these questions.

1190.1 The CHAIRMAN [F]: I think that two observations are necessary: several delegations tell us that Article 7bis should not exist because in document CONFESAT/8, it is before or after I do not know what. Let us not concern ourselves with the pedigree and genealogy of Article 7bis. The fact is that it exists, it has been tabled and we have to discuss it. Indeed, it is a decision that the

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Commission has taken, the decision to discuss Article 7bis after having discussed the Nairobi text. We are doing so and thus fulfilling our mandate.

1190.2 In the second place, I beg you do not confuse the conclusions of the working group of this morning with Article 7bis since this Article 7bis did not enter into the group's discussions. Consequently, Article 7bis is proposed and we have to deal with it.

1190.3 The delegation of Tunisia has the floor.

1191.1 Mr. SAID (Tunisia) [F]: Certain delegates have stated that this was a political question and that we have no mandate to discuss such questions. Perhaps I am rather naive but I have the distinct impression that since the beginning of this Conference we have discussed nothing but questions which from both near and far have political aspects. I regret, therefore, that I do not quite agree with those who exclude anything of a political nature only when this becomes obvious.

1191.2 Nevertheless, the discussion is very interesting and in any case very instructive for certain countries which will not fail to draw the obvious conclusions.

1191.3 In any case, we are sympathetic to this proposal.

1192. The CHAIRMAN [F]: The delegate of Canada has the floor.

1193. Mr. CORBEIL (Canada) [F]: I simply wanted to associate myself with the proposals made by the delegate of the Federal Republic of Germany and seconded by the delegate of Morocco. For these reasons we wish to support the request for a vote made by the delegate of the United Kingdom, and this as quickly as possible.

1194. The CHAIRMAN [F]: I give the floor to the delegate of Japan.

1195. Mr. HIRAOKA (Japan) [F]: Our delegation is also radically opposed to the Soviet proposal. The political motivation concealed in this article is the main reason for our opposition to it. We have rejected any discussion of a political nature and this Soviet proposal has thus lost any meaning. In any case, the scope of this article seems to us too wide and therefore all the more dangerous. In a country like mine, where freedom of expression is guaranteed by law, it is impossible to accept proposals which seem contrary to the principle of freedom of expression. And the insertion of such a provision in the Treaty would make ratification of this Treaty by our government impossible.

1196. The CHAIRMAN [F]: The delegate of Brazil has the floor.

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1197. Mr. de ATHAYDE (Brazil) [F]: Although we understand the motives that induced the Soviet delegation to propose this new article, the Brazilian delegation wishes to state that we are not in favour of Article 7bis for the various reasons which have already been advanced by other delegates and especially because the introduction of political elements would put this article in contradiction with the context of a Convention considered a technical Convention aspiring to universality.

1198. The CHAIRMAN [F]: I give the floor to the delegate of Mexico.

1199. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico wishes to state that it does not agree with the proposal of the Soviet Union because we consider that it goes beyond what we have been studying at this Conference. On the one hand, it speaks of broadcasting in general, and on the other, of national activities without referring them in certain cases to international activities. It seems to us that ultimately it is up to each State to control this kind of problem concerning national or international activities. In addition, as has been stated by the delegation of Japan, with which Mexico is in complete agreement, it seems to us that this proposal could affect freedom of expression.

1200.1 The CHAIRMAN [F]: We can either vote immediately or vote this afternoon. If we vote immediately there is the advantage that this afternoon we shall have to consider only the question of the 'package deal' and we can give the floor to other organs which are in need of the limited time that is left them.

1200.2 On the other hand, we could consider this question this afternoon, as well as that of the package deal.

1200.3 I give the floor to the delegate of Ghana.

1201.1 Mr. SAI (Ghana) [E]: In my humble opinion I would say that the tenor of the arguments for and against the admission of the Russian proposal reaches other problems which first have to be decided by the Conference if we have to consider the Russian proposal at all. I am saying this because I think it has been argued that this Conference has no competency to discuss the proposal. Therefore, I believe that it is the duty of the Conference to decide to agree or not to agree whether or not we have the competency to discuss this. If we accept that this Conference has no competency to discuss the Russian proposal, then a discussion should not even arise at all. The thing is that it has also been stated, probably as a matter of fact, that if we proceed to discuss this it will amount to a duplication of effort because another UN body is discussing this.

1201.2 The Conference also has to establish this as a matter of fact and this would probably then make it unnecessary for us to go ahead and discuss the issue itself. This is the way I would like to

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look at the problem before us.

1202. The CHAIRMAN [F]: The delegate of Hungary has the floor.

1203.1 Mr. TIMAR (Hungary) [F]: Permit me to make first a comment and after this comment a concrete proposal.

1203.2 My comment is the following: I thought that we were delegates of governments with a mandate to draft a Convention under international law. All jurists know that international law has a political content and I am astonished that some delegations always consider, when a question of international law arises, that they are not competent to deal with it on account of its political angle. I do not understand this trend and I think that it is quite erroneous.

1203.3 My proposal is the following: I think that the inclination of the Chair is fair. In fact, Mr. Chairman, you wish to always conclude with a consensus, without taking a vote, and I think that the proposal made by the delegation of the Union of Soviet Socialist Republics and by other delegations does not have only political importance but also legal and practical importance. I think that if the working group which had the mandate to draft a proposal on the subject of the first amendment of the Union of Soviet Socialist Republics had completed its task, it would be useful and appropriate to give a mandate to this group on the proposal concerning Article 7bis.

1204. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

1205. Mr. GAERCE (Germany, Federal Republic of) [E]: I think we have now heard quite a number of opinions on this subject from a large number of delegations and I think we have quite a clear picture of what the position is in this Commission. Of course, we understand clearly the point of view of the delegate of the Soviet Union and of those who supported him. But there are quite a number of delegations here, including my own, who are unable to share his view. I think under these circumstances it would be expedient to proceed as soon as possible to a vote; and I would therefore, join the delegations of the United Kingdom and of Canada who have so proposed. I think it would be advisable to have a vote before the luncheon recess because we shall probably have another vote in the afternoon.

1206.1 The CHAIRMAN [F]: I would remind those who wish to proceed to a vote immediately of the procedures.

1206.2 The delegate of Morocco has the floor.

1207. Mr. CHAKROUN (Morocco) [F]: If in the proposal of the delegate of Hungary there is question of also including this new proposal in the projected letter, then my delegation would second the proposal of Hungary.

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1208. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

1209. Mr. DAVIS (United Kingdom) [E]: It was in fact merely to say that I had in fact asked for a vote, and I had been supported in that. It is my feeling that the large majority of delegates here have indicated that they do not want the proposal and I also think that they probably do not want to be involved in another - what I would loosely call - compromise. I would therefore suggest that we proceed to the vote.

1210.1 The CHAIRMAN [F]: For the moment I have received only suggestions. No delegation has formally asked for the closure of the discussion and an immediate vote as provided for in the Rules of Procedure.

1210.2 And so if a delegation proposes it, we shall take a decision on this procedural motion. But for the moment I have only suggestions and consequently, I do not have the right to close the discussion.

1210.3 The delegation of the United Kingdom has the floor.

1211. Mr. DAVIS (United Kingdom) [E]: I should like to move the closure of the debate on this item.

1212.1 The CHAIRMAN [F]: Thank you, we therefore have a formal motion. Under Rule 13 of the Rules of Procedure, this motion must be put to the vote immediately without any intervention. Consequently, will those who are asking for the closure of the debate please raise their plaques. Those in favour of the motion of the United Kingdom.

1212.2 Would those against the proposal of the United Kingdom please raise their plaques.

1212.3 The motion of the United Kingdom is carried by 28 votes for, 9 against, with 5 abstentions. Consequently, the debate is closed. I put the new Article 7bis contained in document CONF/SAT/28 to the vote.

1212.4 The delegate from the Ivory Coast has the floor.

1213.1 Mrs. LIGUER-LAUBHOUET (Ivory Coast) [F]: I had understood that there were two other proposals before the proposal to vote on Article 7bis. There is the proposal of Hungary seconded by Morocco and there was before that a proposal from Ghana that the Commission decide on whether it was competent or not.

1213.2 I should like to know what the situation is with regard to these proposals.

1214.1 The CHAIRMAN [F]: Under the Rules of Procedure that we

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have adopted, delegations can propose the closure of the debate and proceed to an immediate vote. As from that moment, we can no longer discuss, we can no longer speak of anything else. Consequently, I regret that the other proposals are eliminated.

1214.2 And so, the delegations in favour of the new Article 7bis (document CONFESAT/28) please raise your plaques.

1214.3 Would the delegations against the introduction of this article please raise their plaques.

1214.4 Abstentions?

1214.5 Article 7bis is rejected by 24 against, 9 in favour, and 9 abstentions. In accordance with the decision that we took at the beginning of the session, document CONFESAT/32 falls with document CONFESAT/28. Consequently, it only remains to consider the question that has been studied by the working group concerning the Soviet proposal.

1214.6 The delegate of Austria has the floor.

1215.1 Mr. DITTRICH (Austria) [E]: My delegation did not take part in the discussion concerning the proposals of the Soviet Union and other delegations, and I think it is, therefore, appropriate to say one sentence to explain our vote which was a negative one.

1215.2 We would like to see this vote interpreted as a wish to transfer this matter to the Outer Space Committee of the United Nations which seems to us the more appropriate forum to discuss and decide this important problem, and not as an attitude on the substance itself.

1216. The CHAIRMAN [F]: Naturally many delegations would like to explain their vote, but it is clearly understood that this vote does not mean that the delegations which have voted against the Soviet proposal are against the principles contained in this proposal. A negative vote means that the delegations are against the inclusion of this article in the text of our Convention and that is all. There is no value judgment as to the merits of the Soviet proposal. I think that that could be put in the Report.

1217. The meeting rose.

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Main Commission - Tenth Meeting¹

Wednesday, 15 May 1974 at 3.15 p.m. Chairman: Mr. da COSTA (Brazil)

1218.1 The CHAIRMAN [F]: Here is the draft letter proposed by the working group: document CONF/SAT/34. I should like to point out that in the English text, second paragraph, it was not "appreciable" but "substantial" that was decided. And so - although it is practically the same thing - it would be better to put "substantial" since that was the subject of the agreement between the delegations.

1218.2 We shall allow the delegations a few minutes to study this text.

1218.3 The delegate of the United States of America has the floor.

1219. Mr. WINTER (United States of America) [E]: It was my understanding from this morning's meeting that the word was "significant" in the English and not "appreciable".

1220. The CHAIRMAN [F]: The delegate of Canada has the floor.

1221. Mr. CORBEIL (Canada) [F]: I have a suggestion to make, a slight modification to propose in the English text. In our discussions at the working group we spoke of "issue" in the second paragraph: "although the issue mentioned"; and I think that the word "problem" has been translated from the French and it is not quite the same thing.

1222.1 The CHAIRMAN [F]: That is quite true. The English should be "issue". As for the French text?

1222.2 The delegate of the Central African Republic has the floor.

1223.1 Mr. TOKPAN (Central African Republic) [F]: I should like to ask for some clarification. I shall take paragraph 2 first: "Although the problem mentioned in paragraph (1) was thought to be an important one by an appreciable number of delegations, the Conference considered that it was not within the scope of the Conference."

1223.2 I think that during the debates, all the delegations were not in agreement with regard to this paragraph and thus a certain number of delegations expressed the wish that the interventions be mentioned in the General Report. Others suggested the idea that the Chairman should send a letter to the United Nations. What I do not understand at all is the meaning of paragraph (3): "I am transmitting to you the attached report and the verbatim records of the Conference relating to this subject, in order that these documents may be sent

1. Cf. document UNESCO/OMPI/CONF/SAT/VR.16 (prov.).

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to Member States as official documents of the United Nations Organization, and submitted to the Committee on the Peaceful Uses of Outer Space so that it may take them into account in its work."

1223.3 I think that this implies that there was some agreement during the debate since we speak of an official document to be transmitted to the States concerned. Whereas we were not at all in agreement on the article itself.

1224.1 The CHAIRMAN [F]: The explanation is the following: we are transmitting documents, i.e. the Report and the Verbatim Records relating to this problem, to the Secretary-General of the United Nations Organization so that he can circulate them as official documents of the United Nations. But these documents that we are transmitting are documents which reflect divergent opinions. There is no common opinion. If there was a common opinion, we should not be obliged to follow such a complicated procedure. We are sending to the Secretary-General of the United Nations Organization, via our Chairman, all the documents which reflect the various positions.

1224.2 The delegate of Argentina has the floor.

1225. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: In paragraph 2, I think that the more precise translation for the English version would be "subject" and not "problem".

1226. The CHAIRMAN [F]: I am not perhaps familiar enough with the language of Cervantes. Perhaps the delegate of Mexico who took part in the work of the group could reply to this question?

1227. Mr. LARREA RICHERAND (Mexico) [S]: I cannot permit myself to clarify it either since it concerns not the language of Cervantes but of Shakespeare, and I think that the United States should pronounce on it since in this case in Spanish "problema" and "tema" are the same, and the delegate of Argentina thinks that in English we should say "subject" and not "problem".

1228.1 The CHAIRMAN [F]: In that case I would strongly advise delegations not to make too many suggestions with regard to form because we arrived at this text after extremely exhausting negotiations. This text is extremely well balanced, and consequently let us please not change it.

1228.2 The Secretariat reminds me that in any case the letter is sent in only one language. Doubtless in French since that is the language of our Chairman.

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1228.3 Therefore, if we have any doubts as to the substance let us use the French text please, i.e. the one that will be used by the Chairman of the Conference who is obviously not going to include translations with his letter.

1228.4 The delegate of Ghana has the floor.

1229. Mr. SAI (Ghana) [E]: I also want to talk about paragraph (3) of document CONF/SAT/34, more from the point of view of style or presentation than from the point of view of substance. I believe that paragraph (3) is the position of the Conference, that is, the idea of transmitting the relevant Report and Verbatim Records to the Secretary-General of the United Nations Organization is part of the decision of the Conference; and my feeling is that the presentation in paragraph (3) does not project this position clearly. In other words, thinking of a presentation along this line: having stated in paragraph (2) that the Conference considered that it was not within the scope of the Conference, in paragraph (3) I expect that we should be saying that consequently the Conference decided that the relevant Report and Verbatim Records should be sent to you and so on. This is my comment on paragraph (3).

1230.1 The CHAIRMAN [F]: Everyone agrees that we can state that it is the Conference which has decided that the Report and the Verbatim Records would be communicated? That would not, of course, change the substance, but it is doubtless more logical.

1230.2 The delegate of the United States of America has the floor.

1231. Mr. WINTER (United States of America) [E]: I would refer back to the remarks that you made just a few moments ago that we ought to respect, if at all possible, the language which we very carefully negotiated this morning for 2½ long hours. I would make an appeal, the same as you have, to the delegates here, that rather than try to make minor language changes, we accept the language as proposed by the working group.

1232.1 The CHAIRMAN [F]: Yes, indeed. Even if a version such as that just presented by the delegate of Ghana may appear more satisfying to the mind, it is dangerous to try and change the text of this letter since, I repeat once more, it was the subject of microscopic weighing and consequently a grain of sand in one of the scales risks upsetting the balance.

1232.2 The delegate of the Soviet Union has the floor.

1233.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I support those delegations who think that the document as it was drafted by the working group should be addressed to the UN Secretary-

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General. This is for the essence of the issue.

1233.2 Now some words on the form of this letter. I hope there will be no objections if we ask the Drafting Committee to prepare a non-official translation at least into the working languages of this Conference as I presume all the delegations would like to have a fairly identical translation of our letter.

1233.3 Finally, several remarks on the Russian text, though as my American colleague observed this is not really essential. But I would ask the Russian translators to take notice of our remarks, namely: in paragraph (2), "хотя ошутительное число" (the word "ошутительное" is wrong in this context) should be "хотя значительное число делегаций" as we agreed at the working group. And the second point concerns how this document is to be transmitted, by post or personally. If it is by post then it is necessary to write "направляю Вам в приложении", and if it is to be handed personally - "передаю Вам". Finally, the words "дословные записи" should be replaced by "стенограмма". Also, the official name for the UN Space Committee in Russian is "Комитет по мирному исследованию и использованию космического пространства"

1233.4 I would like to see these phrases in the Russian text worded correctly.

1234.1 The CHAIRMAN [F]: It is understood that the letter will be sent to the Secretary-General of the United Nations Organization in French only but that, as this letter is part of the documentation of the Conference, the Report will obviously be annexed to it in the official languages. Consequently, we shall have one official text of the letter in the languages of the Conference, a text that will be finalized by the Drafting Committee taking into account, of course, the observations of the Soviet delegation.

1234.2 As to the system of communications between the Belgian Government and the United Nations Organization, I confess that I am not familiar with it. Perhaps it is by diplomatic pouch?

1234.3 The delegate of the Federal Republic of Germany.

1235.1 Mr. GAERTE (Germany, Federal Republic of) [E]: First of all I think we have here a problem of translation between French and English. I am in a rather difficult position because my native language is neither of these. I think we should try to keep the word "problème" in the French text that will be used for transmission to the Secretary-General. It is up to the Anglo-Saxon delegations to decide what the proper translation of this word "problème" is in English. I think it might be better to say here "question" instead of "issue" or whatever has been suggested in this connexion. I think it is very important that we decide that here, because I understand that the wording of this letter will not be scrutinized by the

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Drafting Committee. So we would have to do it here immediately.

1235.2 Secondly, there is another question I have. Would this letter replace all the Soviet proposals which have been tabled before it?

1236.1 The CHAIRMAN [F]: This question of translations is a little complicated. I am going to explain to you the background of this letter. I made a first draft in French yesterday, of which paragraphs (1) and (3) were accepted but paragraph (2) was changed considerably. What I can say is that the negotiations, at least on the part of the United States and Canada, concerned the word "issue". On the Russian side I do not know whether "problem", "question" and "issue" have the same translation or if there are nuances.

1236.2 I think that the solution has to be the following: we come to an agreement on the fact that the authentic text, since this is the one which will be transmitted by the Chairman, is the French text, and we refer the letter to the Drafting Committee so that when they finalize the definitive French text they take into account this question of the English text which was the original text of this revised paragraph and the delegates will check that, both in the definitive French text and in the official translations there is perfect compatibility with regard to terminology. Consequently, if the Commission is agreeable, the letter will go through the Drafting Committee, and naturally the delegations most directly concerned will check that there is perfect compatibility of terminology in the various texts. Are we in agreement?

1236.3 Consequently, the Commission decides first that the definitive official text will be the French text as far as the letter is concerned since this will in effect be sent by Mr. de San, our Chairman, and that the official translations of this letter, which will appear as an annex to the Report, will be settled by the Drafting Committee and approved by the Plenary taking into account not merely the beauty of the form but also the importance of the terminology which has been approved by the group and which should be respected. Are we in agreement?

1236.4 It is so decided.

1236.5 Now we have to adopt a definite position. I suggest the following procedure: as you know, this letter is very important in that it permits us to avoid the last reef that lies in the path of our vessel. Consequently, although I understand very well that delegations have problems in view of their instructions or for reasons of competence with regard to this question which was not in the Nairobi text, I appeal to delegations to approve this letter without a vote. It is understood that the delegations who have reservations either on the contents of the letter or the competence of their delegation, or on the goal of the Conference, etc. will be able to say so and their declarations will naturally be transcribed in the Records of the Conference. Are we in agreement on this procedure?

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1236.6 The delegate of the Federal Republic of Germany has the floor.

1237. Mr. GAERTE (Germany, Federal Republic of) [E]: I am fully in agreement with you, Mr. Chairman, and I would like to make a reservation with regard to the three counts you have mentioned.

1238. The CHAIRMAN [F]: I give the floor to the delegate of the United Kingdom.

1239. Mr. DAVIS (United Kingdom) [E]: I can accept the decision of the Conference on the letter but I have to say that I think that the issue with which it deals should never have been put before us.

1240.1 The CHAIRMAN [F]: If you agree, we will adopt the text of this letter without a vote.

1240.2 The text of the letter is adopted.

1240.3 Thus, we have finished the first part of our work which is the most difficult. The second part is much less substantial. It will be the study of the report submitted to us by the Drafting Committee.

1240.4 With respect to our schedule of work, we shall have immediately after this meeting, a meeting of the Drafting Committee, the main goal of which will be to proceed to the election of its Chairman and to come to an agreement on the procedure for its work.

1240.5 If the future Chairman of the Drafting Committee agrees, we shall have a meeting of the Drafting Committee tomorrow morning, a meeting in the afternoon and, if necessary, a meeting in the evening. On Friday, all the work of the Drafting Committee should be finished and we shall have the morning free for the reproduction of the documents resulting from the work of the Drafting Committee. And then, Friday afternoon, we shall have a meeting of the Main Commission in order to study the text proposed by the Drafting Committee and approve it. Then we shall have Saturday morning free again for the reproduction of the documents and in the afternoon, we shall have a Plenary Meeting to study the text of the Convention. Sunday and Monday will be free for the final reproduction of the texts, and on Tuesday morning we shall have a final Plenary Meeting to study the Report and for the signature of the Convention. But here there is an agonizing question mark: I do not know whether we shall be able to finish both the Report and the signing ceremony on Tuesday morning, since the Report that we will have to study is a rather complex one. And so it is possible - which is obviously rather tiresome for the delegates who have to postpone their departure - that the signature will take place only on Tuesday afternoon.

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1240.6 The Secretariat informs us that the General Rapporteur and the Secretariat will do everything possible to make the Report available to delegations on Monday evening at six. Consequently, delegates will be able to spend a pleasant evening on Monday studying the document so that they are absolutely ready on Tuesday morning.

1240.7 The delegate of the Federal Republic of Germany has the floor.

1241. Mr. GAERTE (Germany, Federal Republic of) [E]: I suppose the question of whether or not we shall have a Final Act which would have to be signed on Tuesday has probably been taken care of already. I suppose we shall sign the Final Act; if not, it is important for us to know now because in that case those delegations who do not wish to sign here following the Conference could leave Brussels a day or two earlier.

1242.1 The CHAIRMAN [F]: You are taking the words right out of my mouth. I was just about to breach this problem because certain delegations wanted to have a Final Act, following the example of various other Conferences. Consequently we would have two documents: the Act and the Convention. And those who do not wish to sign the Convention could sign the Act, whereas if we did not have an Act they would have nothing at all to sign. And so we have to decide whether we shall have a Final Act - a very simple Final Act - which would consist basically of saying "The Conference met from such and such to such and such, that it did this and it did that".

1242.2 The delegate of Morocco has the floor.

1243. Mr. CHAKROUN (Morocco) [F]: It is desirable to have a Final Act; and it is also desirable that we have this Act in the morning, since it is simpler than the Convention.

1244.1 The CHAIRMAN [F]: I do not think that the problem is the material signature of the Convention, which is very rapid, and we could proceed simultaneously to the signature of the Act and the signature of the Convention. What takes time is the Report. I am afraid that we shall not finish the Report in time. That is at the root of my reluctance to tell you that we shall be free on Tuesday at 1 p.m. I cannot promise you that but it depends on you.

1244.2 In any case we shall have a Final Act. I think that that should satisfy many delegations. We shall have a very simple Final Act. We shall proceed to the signature of the Final Act at the same time as that of the Convention, since that is not what is going to take time.

1244.3 There is also the question of the second meeting of the Credentials Committee. We could hold it on Monday morning at 11 o'clock if you agree.

1244.4 I think that all our problems are more or less solved. We

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have one decision to take with regard to the Final Act. Yes?
There will be a Final Act.

1244.5 I repeat the schedule: immediately after this meeting, the Drafting Committee will meet for initial formalities and the timetable of work. Tomorrow morning: Drafting Committee. Tomorrow afternoon: Drafting Committee. Perhaps tomorrow evening also, but we hope that that will not be necessary. Friday: morning free. In the afternoon: Main Commission. Saturday: the morning free. In the afternoon: Plenary Meeting - at the usual time. Nothing on Sunday. Monday at 11 a.m.: Credentials Committee. Tuesday morning: Plenary Meeting, adoption of the Report and if possible, signature of the Final Act and the Convention; but it is possible that if the study of the Report is not finished that we shall be obliged to continue our work on Tuesday afternoon.

1244.6 The delegate of the United Kingdom has the floor.

1245.1 Mr. CADMAN (United Kingdom) [E]: Just to remind the meeting, and in particular the members of the Drafting Committee, that the proposal of the delegation of the United Kingdom contained in document CONF/SAT/13, to amend Article 2 of the draft Convention, still stands.

1245.2 We have not had an opportunity of speaking to this proposal but the delegation of Kenya has kindly consented to do so in the Drafting Committee.

1246.1 The CHAIRMAN [F]: Naturally, none of the proposals concerning the definitions has been studied here. They will be studied directly by the Drafting Committee and then we will study them when they come back to us, i.e. on Friday afternoon.

1246.2 The delegate of Morocco has the floor.

1247. Mr. CHAKROUN (Morocco) [F]: On the subject of definitions, it would be desirable that a definition concerning direct broadcasting be inserted as well.

1248. The CHAIRMAN [F]: Thank you. The Chairman of the Drafting Committee has taken note.

1248.2 I ask the Chairman of the Conference to kindly convene, from his seat if he wishes, the Drafting Committee once I have declared to-day's session closed.

1249. The meeting rose.

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Main Commission - Eleventh Meeting¹

Friday, 17 May 1974, at 3.15 p.m. Chairman: Mr. da COSTA (Brazil)

1250.1 The CHAIRMAN [F]: The Main Commission will hold one more session which will, I hope, be its last since it is understood that if we do not reach an agreement, we have the whole night before us!

1250.2 To-day we are going to study the work done by the Drafting Committee and I take this opportunity to thank the Drafting Committee and in particular its Chairman, Ms. Steup for the rapid and what seems to me excellent work that it has done in record time. Consequently, we have three documents to study: document CONFESAT/34 Rev., document CONFESAT/35 and document CONFESAT/36. I think it would be most logical to begin with the latter, i.e. with the Convention itself, and we shall come to the other documents afterwards.

1250.3 I propose that we study article by article and paragraph by paragraph the draft Convention. I remind you that there is no question here of coming back on decisions already taken in the Main Commission. If there are any new points to be introduced we have the Plenary Meeting for that, unless the Main Commission decides to re-examine a point to-day by a two-thirds majority. Consequently, in principle, our work here consists of examining the form that the Drafting Committee has given to our previous decisions.

1250.4 And so let us take document CONFESAT/36 and first study the title. Are we in agreement on the title?

1250.5 The title is adopted.

1250.6 "The Contracting States", the first preambular paragraph. Are there any observations?

1250.7 The first preambular paragraph is adopted.

1250.8 The second preambular paragraph, "Concerned that there is..." Can we adopt the second paragraph?

1250.9 The second preambular paragraph is adopted.

1250.10 The third paragraph, "Recognizing...". Does everyone agree on the third paragraph?

1250.11 The third preambular paragraph is adopted.

1250.12 The fourth paragraph: "Convinced that an international system should be established...". Can we adopt the fourth paragraph? Yes.

1250.13 The fifth paragraph, "Conscious of the need not to impair...".

1. Cf. document UNESCO/OMPI/CONFESAT/VR.17 (prov.).

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1250.14 The delegate of the Byelorussian Soviet Socialist Republic has the floor.

1251.1 Mr. KASHEL (Byelorussian Soviet Socialist Republic) [R]: The Russian text of this part of the Preamble is: "... and the Regulations annexed to that Convention..." The word "Radio" is missing. It is necessary to add "Radio" because there are other regulations annexed: telephone, telegraph, etc. And I would suggest in this connexion that there are other remarks on the Russian text which should be examined by the Russian-speaking delegations and submitted directly to the Secretariat in order not to take the time of our Commission. These remarks are of a drafting nature.

1251.2 Furthermore, I would like to call your attention to the fact that there is no title of the Convention in the Russian text.

1252.1 The CHAIRMAN [F]: This is a remark which, I think, only applies to the Russian text and which will, of course, be taken into consideration.

1252.2 Can we adopt the fifth preambular paragraph?

1252.3 And so we come to the famous definitions, to Article 1. "For the purposes of this Convention". And so the first definition we have to approve, the definition of "signal". Yes? And so in the definition of "programme" we have an alternative since this text has not yet been presented to the Main Commission. Here we have to take a decision on which alternative will be adopted.

1252.4 The delegate of Morocco has the floor.

1253.1 Mr. CHAKROUN (Morocco) [F]: The delegation of Morocco takes the liberty of taking a step backwards, i.e. to the first Committee of Governmental Experts at Lausanne where the objective was an international legal instrument for the protection of the televised signal. As we all know, television consists of the transmission of pictures or a combination of picture and sound, especially since, in view of the rather high costs involved, it is unusual, except on rare occasions, to use a satellite for radio retransmissions only. In this respect, I should like to rectify an unfortunate misprint which slipped into the transcription of a phrase in my preliminary statement during the general discussion. What I said was that the delegation of Morocco would prefer that our instrument content itself only with television, the "only" has unfortunately been changed into "not" which has changed the meaning completely.

1253.2 However that may be, my delegation insists that sound radio be excluded from this Convention. It is easy to be contented with the excellent definition which says that the programme is a whole consisting of images or a combination of images and sounds. The ITU instruments are there to deal with other aspects of the protection of waves. It would be salutary to remain with the field of televised

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signals. Consequently, my delegation is in favour of Alternative A.

1254. The CHAIRMAN [F]: The delegate of Kenya has the floor.

1255. Mr. STRASCHNOV (Kenya) [E]: Our delegation unfortunately does not share the opinions of our Moroccan colleague. First of all we know that satellites are being used frequently for purely sound transmissions. The reason is that intercontinental satellite transmissions of sound as compared with the quality of submarine cable transmissions are considerably better. We have a certain experience in this field and know for instance that the famous annual concert of the United Nations which takes place in New York is now always transmitted to the other continents by satellite because of the quality of the sound. The second consideration is the following: it would seem to us paradoxical and absurd that only television should be protected - you forgive me for this word - by this Convention and not the sound. It would seem a contrario somehow that sound when transmitted by satellite can be pirated without any sanction which certainly is not the wish of our Moroccan colleague. He wants to rely on ITU regulations but we know that ITU regulations are identical, with the exception of the allocation of frequencies, for sound and for television; and if we thought that we could not rely on ITU regulations in the field of television, there is no reason to believe that we can rely on them when it is a question of transmitting sound alone. We see no difference between the two types of transmissions. The technicalities are identical, the frequency of satellite transmissions of sound is now greater and greater, the danger of pirating is exactly the same as in the field of television. Therefore, our delegation is definitely in favour of Alternative B.

1256. The CHAIRMAN [F]: The delegate of Israel has the floor.

1257. Mr. GABAY (Israel) [E]: We share the views which have just been expressed by the delegation of Kenya, that the Convention should cover both images, sounds or both. We have already expressed this view in Nairobi, and we explained that we do not see any reason why the protection provided under this Convention should be related to only one form of transmission by satellite; to the extent that we are satisfied with the Convention, it should cover all forms of transmission.

1258. The CHAIRMAN [F]: The delegate of the Netherlands has the floor.

1259. Mr. VERHOEVE (Netherlands) [F]: The delegation of the Netherlands would like to support the proposal that we adopt Alternative B in paragraph (ii). In fact the Dutch Broadcasting Organization, called "Radio Nederland" - which assures broadcasts to other countries and continents - broadcasts which are purely sound, has the intention in the near future of sending these broadcasts by satellite for the reasons already mentioned by the delegate of Kenya. This

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organization has an interest in protecting these broadcasts both for itself and for its co-contractors and this is why our delegation is in favour of Alternative B.

1260. The CHAIRMAN [F]: The delegate of Austria has the floor.

1261. Mr. DITTRICH (Austria) [E]: It is well known that my delegation favoured Alternative B during the preparatory work. We have not changed our view, and support the delegate of Kenya and the other speakers before me favouring Alternative B.

1262. The CHAIRMAN [F]: The delegate of Belgium has the floor.

1263. Mr. de SAN (Belgium) [F]: The arguments developed by the delegate of Kenya seem to us to be perfectly convincing. Therefore, we are also in favour of Alternative B.

1264. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

1265. Mr. WINTER (United States of America) [E]: For the reasons already stated by the preceding speakers, the United States would favour Alternative B.

1266. The CHAIRMAN [F]: The delegate of France has the floor.

1267. Mr. KEREVER (France) [F]: The piracy of sounds transmitted by satellite is as blameworthy as the piracy of a combination of images and sounds. In other words, the piracy of radio programmes is no more excusable than the piracy of televised programmes. The fact that future pirates would incur less expense in pirating sound programmes than in pirating television programmes has nothing to do with the legal understanding of an illegal capture of purely sound programmes. Consequently, the French delegation is in favour of Alternative B.

1268. The CHAIRMAN [F]: The delegate of Algeria has the floor.

1269.1 Mr. ABADA (Algeria) [F]: From our point of view, it is a question of distinguishing between television and radio.

1269.2 The delegate of Morocco has clearly explained that from the outset, from the time the question of drafting an international instrument in the field of transmission of programmes by satellite was first considered, it had been agreed that this Convention would be limited to the protection of television.

1269.3 This Convention should concern only television. With regard to radio, there exists an international instrument which we all know, the Regulations of the ITU, which is already in force. It is in

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order not to trespass in the field of application of this instrument that our delegation prefers that there be a distinction between the field which belongs to the Convention which is the subject of our work and that which belongs to other Conventions which are responsible for the protection of sound.

1269.4 And so our delegation is in favour of Alternative A.

1270. The CHAIRMAN [F]: I give the floor to the delegate of Spain.

1271. Mr. de la VEGA [S]: As we have already stated during the general discussion, the delegation of Spain believes that the scope of this Convention should not be limited voluntarily from the outset, but that, on the contrary, it should cover the field of sound and image. For that reason, and for the reasons stated by the delegate of Kenya, we support Alternative B in paragraph (ii) of Article 1.

1272. The CHAIRMAN [F]: I give the floor to the delegate of Mexico.

1273. Mr. LARREA RICHERAND (Mexico) [S]: In order to be coherent with its actions during the Committees of Governmental Experts that have taken place in previous years, the delegation of Mexico also supports Alternative B because it considers that it is wider, and because in this way both the signal and the programme itself have better protection.

1274. The CHAIRMAN [F]: I give the floor to the delegate of Italy.

1275. Mr. TROTTA (Italy) [F]: It is only to say that it can happen that there is a transmission consisting of images and sounds that is part radio and part television which follow one another. In this case there must be an instrument which covers the whole of this transmission. Therefore, Italy is in favour of Alternative B.

1276. The CHAIRMAN [F]: The delegate of Brazil has the floor.

1277. Mr. de ATHAYDE (Brazil) [F]: For all the reasons that have already been put forward, especially by the delegate of Kenya, the Brazilian delegation thinks that the Convention must cover all forms of transmissions of sounds and images and is therefore in favour of Alternative B.

1278. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

1279. Mr. DAVIS (United Kingdom) [E]: Just to say that we support Alternative B.

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1280.1 The CHAIRMAN [F]: It seems to me that there is a very large majority in favour of Alternative B and I think that there is really no need to vote on this subject, unless the delegations wish to do so, naturally.

1280.2 I therefore suggest that Alternative B be accepted without a vote and that the delegations who prefer Alternative A make statements to that effect, so that they appear both in the Report and in the Records. Are we in agreement on this procedure?

1280.3 Then we adopt the second definition with Alternative B and we ask the General Rapporteur to be kind enough to take account in the Report of the opinions and the explanations of the delegates who would have preferred Alternative A.

1280.4 We now proceed to the third definition: "satellite". Are we in agreement?

1280.5 The fourth definition: "emitted signal".

1280.6 The delegate of Algeria has the floor.

1281.1 Mr. ABADA (Algeria) [F]: We note that in the new definition of "emitted signal" there is a difference with regard to the Nairobi text. The "emitted signal" in the new draft is only the one going towards the satellite and we do not speak of the signal which goes through the satellite.

1281.2 I do not know the reasons that induced the Drafting Committee to prefer this new definition to the old one, the one which appears in the Nairobi text.

1282. The CHAIRMAN [F]: Would the Chairman of the Drafting Committee, the delegate of the Federal Republic of Germany, care to clarify this point?

1283.1 Ms. STEUP (Germany, Federal Republic of, Chairman of the Drafting Committee) [E]: This change in the definition of emitted signal is due to the new definition we have in the treaty on derived signals; and perhaps I may explain the history of these two definitions. According to the wish of the delegation of Algeria we inserted a definition on derived signals; in conformity with the proposal of Algeria, I think the Commission agreed that it was necessary to have a definition of derived signals. We had a long discussion concerning how to define derived signals, and we established a sub-group of the Drafting Committee composed of those delegations who had members with technical knowledge. This sub-group discussed the question of how to define derived signals on the basis of a proposal of the delegation of France. It emerged from the debate, that the main factor of a derived signal is that it is obtained by a modifying of the technical characteristics of the original signal, that means, for instance, a change in frequency or a modulation of the original signal.

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1283.2 This definition of the derived signal made it necessary to change the definition of the emitted signal. Under the Nairobi text as the delegate of Algeria stated, a signal coming directly from the satellite was still considered to be an emitted signal; and no attention was paid to the fact that already in the satellite the technical characteristics of the signal are changed. Since the drafting committee made a broad definition of derived signals the definition of emitted signals had to be restricted to the signal going up from the earth to the satellite or as it was called here, the "up-leg". Already in the satellite itself the technical characteristics are changed so that the signal coming down from the satellite is already a signal which is derived from the emitted signal. I think you have to see these two definitions together; the emitted signal goes from the earth up to the satellite, then there is a first change of the characteristics and therefore the beginning of the chain of those signals which we call derived signals.

1284.1 The CHAIRMAN [F]: I think that the concern of the delegate of Algeria refers to the case or the hypothesis where the technical characteristics would be the same, i.e. where there is no transformation of the technical characteristics. I think that at present this is not the case. But we can foresee that, following some technical evolution, the technical characteristics of the signal which is sent back by the satellite would be the same as those of the emitted signals.

1284.2 The delegate of Kenya has the floor.

1285. Mr. STRASCHNOV (Kenya) [E]: We discussed this very thoroughly and we had the great advantage of having in the Soviet delegation a specialist on technical matters and he also confirmed what we knew: that the "up-leg" cannot have exactly the same characteristics as the "down-leg" because otherwise there would be interference between them. It may be that the frequency remains the same but the polarization may be changed, but some technical changes are absolutely necessary to prevent interference between the two. Therefore, I think that within the foreseeable future, fifty years, or a hundred years, it is inconceivable that the "down-leg" should have exactly the same characteristics as the "up-leg". Therefore, it was considered in the group, including our colleague from the Soviet delegation, who is an expert in this matter, that our two definitions (iv) and (v) were correct.

1286.1 The CHAIRMAN [F]: Is the delegate of Algeria satisfied with this explanation?

1286.2 The delegate of Algeria has the floor.

1287. Mr. ABADA (Algeria) [F]: I am fully satisfied with this explanation, especially since it is the technicians in the field who have spoken, but our concern was to draw the attention of the Conference to the implications that that could have with regard to the

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definitions, because we heard several definitions in the corridors and now it is clear to everyone. We are completely satisfied.

1288.1 The CHAIRMAN [F]: Even so I think it would be a good idea to have in the Report, for the sake of jurists who are ignorant of technical matters, an explanation of the fact that the passage through a satellite necessarily implies a modification in the technical characteristics. Without that, it could be misunderstood.

1288.2 I remind you also that the comments that we made at Nairobi and which were supported, indicate that the signal which is emitted, even if it is transformed, legally speaking continues to be the same signal, but not technically speaking.

1288.3 We adopt "emitted signal" if you agree and we shall proceed to "derived signal".

1288.4 The delegate of the Federal Republic of Germany has the floor.

1289. Ms. STEUP (Germany, Federal Republic of, Chairman of the Drafting Committee) [E]: Speaking as Chairman of the Committee I have to apologize to this Commission. I think there is a little difference in the French and the English draft of the definition of derived signals. In the English draft you have the wording "whether or not there has been an intervening fixation". In the French draft it is "qu'il y ait eu ou non fixation intermédiaire". The English formulation could be interpreted as meaning that there can only be one intervening fixation. That was not meant. If the satellite signal is taken illicitly from the satellite and fixed, and if from this fixation a reproduction is made and from this reproduction the distribution, such a distribution should be covered. I think that it would be better to bring the English text a little bit nearer to the French text and say "Whether or not there has been one or more intervening fixations". I think that would make the wording fully clear. This new formula would necessitate certain changes in the text in the French, Spanish and Russian.

1290.1 The CHAIRMAN [F]: Consequently, in the English text, we would have "the derived signal is the signal obtained by modifying the technical characteristics of the emitted signal whether or not there have been one or more intervening fixations" and in the French text "signal dérivé: tout signal obtenu par la modification des caractéristiques techniques à l'égard des signaux émis qu'il y ait eu ou non une ou plusieurs fixations intermédiaires".

1290.2 Is that correct Madam Chairman of the Drafting Committee?

1291. Ms. STEUP (Germany, Federal Republic of, Chairman of the Drafting Committee) [E]: I think that is right. However, I do not know whether you have to have in the English text "whether or not there have been..." because there is one or more.

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1292.1 The CHAIRMAN [F]: Perfect. Are we in agreement on this new drafting?

1292.2 The delegate of Mexico has the floor.

1293. Mr. LARREA RICHERAND (Mexico) [S]: We are in agreement with this new interpretation but we would prefer, simply as a drafting matter, that in Spanish in place of "intermediaria" we said "intermedia"; " fijacion intermedia" not "intermediaria". This with regard to the drafting. That is all.

1294.1 The CHAIRMAN [F]: The Secretariat has noted your correction.

1294.2 The delegate of Kenya has the floor.

1295.1 Mr. STRASCHNOV (Kenya) [E]: I apologize very much to you and to the Main Commission for raising a small point on the definition of derived signal. Although Kenya was on the Drafting Committee, we have had the opportunity to study it again and perhaps there is a little lacuna which should be filled.

1295.2 The signal may be derived from the emitted signal in various ways. It may be derived directly, i.e. not only without an intervening fixation but simply by taking the down-leg and feeding the down-leg into a cable system or into a broadcasting system. But this use of the derived signal, of the down-leg, can be a chain operation, for instance, the down-leg is first fed into a broadcasting system and then from there into a cable system. In certain cases such a chain, and we will come later to the provision, it is in Article 2, would interrupt the application of the Convention; but in other cases it would not. In order to be absolutely sure that this chain operation is not an obstacle to the application of the Convention when the conditions of paragraph (3) of Article 2 do not exist, I would submit that we add after the word "obtained" the words "directly or indirectly."

1296.1 The CHAIRMAN [F]: Consequently, for the reasons he has just explained, the delegate of Kenya suggests an addition to the definition of "derived signal": "the signal obtained directly or indirectly, etc.". Is this addition acceptable to the Main Commission?

1296.2 The delegate of the Federal Republic of Germany has the floor.

1297. Ms. STEUP (Germany, Federal Republic of) [E]: In our opinion this amendment of the Kenyan delegation makes the text even clearer. It makes clear that where you have several fixations, as I said before, a derived signal can be obtained indirectly from a reproduction of the first fixation. Therefore, we would support the inclusion of these words in the definitive wording.

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1298. The CHAIRMAN [F]: Dr. BOGSCH.

1299. Dr. BOGSCH (Director General of WIPO) [E]: May I ask my question, namely of the Drafting Committee and Mr. Straschnov. Under these circumstances, are the words "by modifying the technical characteristic" of any practical or legal significance? If the definition would read, "a derived signal is a signal obtained directly or indirectly from the emitted signal whether or not there has been an intervening fixation", would the result be any different in view of the fact that you say that you cannot obtain it without changing the characteristics? I do not see the legal or technical significance of these words.

1300. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany.

1301. Ms. STEUP (Germany, Federal Republic of) [E]: We think that Dr. Bogsch is right. But since you can only obtain the signal by modifying the technical characteristics, to insert this into the definition does not do any harm, and perhaps it makes it even clearer to say by what measures you obtain directly or indirectly the derived signal from the original signal. So we think that even if the insertion is superfluous in the strict legal sense, it does no harm and makes the definition clearer for the reader.

1302. The CHAIRMAN [F]: The delegate from the United Kingdom has the floor.

1303. Mr. DAVIS (United Kingdom) [E]: I think that Dr. Bogsch must be right. I think it is clearer and simpler without it, and I think there is a flaw in the argument of the delegate from the Federal Republic of Germany. If you can only do it that way, by leaving out the words, necessarily you get protection against the day when someone does discover how to do it the other way.

1304.1 The CHAIRMAN [F]: Are there any other points of view on this definition which is beginning to become singularly confused?

1304.2 The delegate of Algeria, you are responsible for this idea of defining "derived signal".

1305.1 Mr. ABADA (Algeria) [F]: I am asking myself how a signal can be obtained indirectly. A signal, when it passes through the satellite and comes down towards an earth station, towards the distributor, is called the derived signal. The earth station which receives it, does so directly; this signal is obtained directly. How could it be obtained indirectly?

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1305.2 I put this question to Dr. Straschnov who is a specialist in the field.

1306.1 The CHAIRMAN [F]: It seems to me that what is essential is the legal fiction under which we consider that the signal is always protected whatever the physical transformations which may take place and whatever the relays used for its final capture. I have the impression that that is the basic idea: it is not the physical aspect of the problem, it is the fact that there be legal continuity in the signal emitted. That, I think, is the basic idea. I think that around this idea we could arrive at a text and I propose a constructive break so that we can arrive at it, for I truly believe, if I am not mistaken, that this is the last difficulty before us.

1306.2 I ask those delegations most interested in this definition to kindly meet during the break and to submit to us a text, this time one based on the continuity of the signal and not on any concern with the physical transformations to which it may be subject during its journey in outer space and in terrestrial space.

1307. The CHAIRMAN [F]: On the subject of the derived signal, i.e. of the fifth definition of Article 1, I give the floor to the delegate of the Federal Republic of Germany.

1308.1 Ms. STEUP (Germany, Federal Republic of) [E]: I think the coffee-break was very helpful to clear the minds of the delegations who are very interested in the definition of "derived signals".

1308.2 We now think, and that is the unanimous view of those delegations which had this little caucus, that it would be best to leave "directly or indirectly" out of the definition, but add at the end, "whether there has been one or more intervening fixations". In the Report there should be an explanation, that not only a first derivation can be obtained from the signal, but that there can be more than one derivation from a signal. I think it is very difficult to define that in a very short statement that could go into the Treaty, but in the Report one could explain very well what we mean.

1309.1 The CHAIRMAN [F]: I think that that is indeed the wisest solution because it is obviously not at this late hour that we should try and rethink all our definitions for if we change these, that will have repercussions on the whole Treaty. I think, therefore, that the wisest solution is to keep the definition that we have and to include the necessary clarifications in the Report.

1309.2 The delegate of Mexico has the floor.

1310. Mr. LARREA RICHERAND (Mexico) [S]: Excuse me, Mr. Chairman, but there is no Spanish interpretation. We have heard nothing.

1311. The CHAIRMAN [F]: Since there was no Spanish interpretation,

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I ask the delegate of the Federal Republic of Germany and Chairman of the Drafting Committee to kindly repeat her proposal for the Spanish-speaking delegates.

1312.1 Ms. STEUP (Germany, Federal Republic of) [E]: I am sorry that I cannot make this statement in Spanish, I would like to but I cannot. So I shall repeat what I have said in English. Those delegations who had this little caucus during the coffee-break think it best to leave out the words "directly or indirectly" in the definition, but add at the end "whether or not there has been one or more intervening fixations", in order to make it clear that there can be more than one intervening fixation.

1312.2 In the Report it should be explained that a signal derived from the emitted signal is not only the signal that is immediately obtained from the emitted signal but that there can be, let me say, a chain of derivations, e.g. where the signal is first picked up by a broadcaster in country A and then a broadcaster in country B takes over the signal from a terrestrial broadcast made in country A. We think that it is very difficult to say that in a few words in the text itself, but in the Report it could be explained in a very thorough way so that everybody knows what we mean.

1313. The CHAIRMAN [F]: The delegate of Mexico.

1314. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico would like to thank the delegate from the Federal Republic of Germany for having repeated her clarification and the interpreters for having conveyed to us in Spanish what the delegate from the Federal Republic of Germany said.

1315.1 The CHAIRMAN [F]: Since there was no interpretation I will also repeat my remark that at this time and at this stage in our work it would be rather unwise to try and completely change the definitions and that it would be better to clarify what we mean in the Report.

1315.2 I think that what we mean is that the programme-carrying signal, in spite of the physical alterations to which it may be subject, in spite of one or several fixations, in spite of retransmissions and capture by terrestrial means, legally remains always the same. That, I think, is the central idea of our discussion.

1315.3 The delegate of Senegal has asked for the floor.

1316. Mr. N'DIAYE (Senegal) [F]: I wonder to what extent my declaration will have any point in that the delegate of the Federal Republic of Germany has made a suggestion that you seem to be adopting. I had a proposal to make with regard to what you have just said, Mr. Chairman, on the legal meaning of the signal. It would seem that the signal - whether it be amplified or reconstituted - always

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has the same meaning. This has led me to wonder if it would not be advisable to stick to the first definition of the "emitted signal", the Nairobi one, and to purely and simply delete this concept of "derived signal" in the text because we use it only once. In fact, the derived signals are emitted signals that have changed frequency or are signals reconstituted on the basis of emitted signals. That is the proposal I was going to make but I think that if you adopt the proposal of the Federal Republic of Germany, it no longer has any point.

1317.1 The CHAIRMAN [F]: I think that what you are proposing is very sensible but I am afraid that at this stage to try to change too much what we have already done would lead us into unforeseen and perhaps catastrophic consequences.

1317.2 The delegate of Italy.

1318.1 Mr. LOI (Italy) [S]: Permit me to add a short explanation. I refer to what was said before the break by the delegate from the Federal Republic of Germany. It is advisable that it be very clear in the future text of the Report that the emitted signal is the signal going up to the satellite, and that the derived signal is the signal coming down from the satellite. With this literal drafting stricto sensu it could create a hidden, a subtle danger of interpretation. This is that there is no protection of the signal at the moment in which the signal itself remains in the satellite or when it is passing through the satellite. This moment will, in the majority of cases, be very short, a flash. However, this moment is a reality that can be evaluated and its effective duration determined, even though very short. Electronic experts can measure even the so-called "nanosecond", i.e. the billionth part of a second. Consequently, it would seem advisable to add after the words "the signal going towards the satellite" the following, "including the moment in which it remains in the satellite or passes through it". Without this explanation, there could arise many dangerous controversies.

1318.2 In addition, we cannot but support the last statement of the delegate of the Federal Republic of Germany.

1319. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany.

1320.1 Ms. STEUP (Germany, Federal Republic of) [E]: We think that the case just raised by the delegate of Italy is covered if we consider the definition of emitted signal and derived signal together. As I explained before, the Drafting Committee was of the opinion that derived signal includes the signal coming down from the satellite, this signal being always a signal which is obtained from the emitted signal. When you read Article 2 which says that you are not allowed to distribute derived signals, it covers the case where you pick up the signal which is stored in the satellite, since the signal coming down and distributed

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is a derived signal.

1320.2 However, I would recommend that this case be mentioned in the Report so that it will be clear that we think that all signals which are obtained from the signal which goes to the satellite are covered.

1321.1 The CHAIRMAN [F]: Consequently, we adopt the explanation given by the delegate of the Federal Republic of Germany, and the concern of the delegate of Italy will be registered in the Report, a Report which it seems to me is taking on the scope and the proportions of the Encyclopaedia Britannica.

1321.2 Are we in agreement that we adopt for "derived signal" the following: "a signal obtained by modifying the technical characteristics of the emitted signal, whether or not there have been one or more intervening fixations"?

1321.3 The part of the Report commenting on this definition will mention and clarify our preoccupations. These preoccupations are mine too. The question ought perhaps to have been considered from the point of view of the legal continuity of the signal.

1321.4 "Originating organization" - definition (vi).

1321.5 The delegate of the United Kingdom.

1322.1 Mr. DAVIS (United Kingdom) [E]: I do realize that there is an element of impatience creeping into the meeting and I really am sorry to bring this up, but in fact these definitions are the actual stuff of the Convention. They are what we are here to protect and I think they define what we are actually doing, so I think I must go into it.

1322.2 You will remember that the United Kingdom put forward a proposal in document CONF/SAT/13 - which we have had no opportunity before this of speaking to. It was, roughly speaking, to define an originating organization not only as the legal entity that decided what programme the emitted signal carried, but also the person with the right to allow someone else to do it. Now this proposal was made, bearing in mind the particular situation of the Independent Broadcasting Authority in the United Kingdom. Under our copyright law, that authority automatically gets the rights in programmes. On the other hand, it actually produces no programmes, it merely appoints contractors who themselves produce programmes which are put out. Now you have the rather bizarre situation under the proposal that we have before us that, although the Independent Broadcasting Authority would have protection in the United Kingdom, the programme contractor would be entitled to protection abroad because he would be the person who decided what programme the emitted signal carried. Now this in itself may not be disastrous, but it does seem to me to present a peculiar situation if you have regard to the fact that programme contractors

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may be of almost any nationality, or indeed may be situated in various other countries. To my mind, it would be totally wrong if a particular broadcasting authority chose a contractor of a different nationality, if that contractor himself was not protected under this Convention and as a result, the authority itself lost its protection.

1322.3 This goes also to the case where you use the other criterion, that is the location of the organization. In that case, it could be that the protection is lost to the broadcasting organization which is in fact responsible for the whole transmission in just the same way. For this reason, I think we have to clear up the situation of a broadcasting authority using a contractor, and I would suggest that the wording that the United Kingdom has put forward does this.

1323.1 The CHAIRMAN [F]: The delegate from the United Kingdom is introducing an amendment which is contained in document CONF/SAT/13 and aims at modifying the definition of "originating organization" as follows: "Originating organization is the person or entity entitled to decide, or delegate the right to decide, what programme the signals will carry".

1323.2 Naturally, the choice of the definition will be of great importance since in Article 2 we have the question of the obligation of the originating organization.

1323.3 The delegate of the Federal Republic of Germany.

1324.1 Ms. STEUP (Germany, Federal Republic of, Chairman of the Drafting Committee) [E]: As the Chairman of the Drafting Committee, I may perhaps explain what the Drafting Committee thought of this proposal of the delegation of the United Kingdom. We were sorry that the delegate from the United Kingdom was not with us in the Drafting Committee, but his point was raised and was discussed and examined by the Drafting Committee. The Committee felt that the new formulation introduced an uncertainty into the definition of the originating organization. One could falsely mean, for instance, that the person having the right to decide is the director of the broadcasting organization. In the case of the delegation of the right to decide, the Drafting Committee was of the opinion that one could interpret the formulation we have before us as meaning that the decision, whether a certain programme is transmitted via satellite, is already made when the second organization is asked to make the programme intended for satellite transmission.

1324.2 Therefore, the Committee thought it better to leave the old text but mention in the Report the case of the delegate of the United Kingdom, and the interpretation the Drafting Committee gave to this definition.

1325. The CHAIRMAN [F]: The delegate of Italy has the floor.

1326.1 Mr. TROTTA (Italy) [F]: The delegation of Italy had

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proposed, in document CONFESAT/12, another definition: "the person or entity which inserts the programme in the signal which carries it". I realize that we could interpret the definition which appears in the present drafting in the same way. We also wish to state that it would be a good idea that the concept that led us to propose this definition appear in the Report.

1326.2 Taking into account the fact that there have already been explanations that this is not the time to discuss definitions, we would be satisfied to have this interpretation in the Report.

1327.1 The CHAIRMAN [F]: The delegate of Italy explains the reason for the amendment proposed by Italy in document CONFESAT/12 which proposes the following definition: "Originating organization is the person or entity which inserts the programme in the signal which carries it". However, the Italian delegation would be satisfied by an eventual mention in the Report and does not insist that there be a vote on this amendment.

1327.2 The delegate of Mexico has the floor.

1328. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico wishes to support the proposal of the Drafting Committee because it seems to us that it is much clearer in the text now proposed. Thus, we eliminate such problems as whether the organization having the right decides or does not decide. Therefore, I think that it is much clearer to say "the person or legal entity that decides" which can be the same broadcasting organization, it can be a sponsor, or it can be another person, but it is he who decides what programme shall be carried by the signals.

1329. The CHAIRMAN [F]: The delegate of Canada has the floor.

1330. Mr. CORBEIL (Canada) [F]: On account of the nature of Canadian institutions, we have a problem similar to that posed by the delegation of the United Kingdom. That is why we followed the discussion in the Drafting Committee; however, after the discussion, we have reflected on a possible solution. We shall be very happy to have a mention in the Report on this subject.

1331. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

1332. Ms. STEUP (Germany, Federal Republic of, Chairman of the Drafting Committee) [E]: I wanted to speak to the Italian proposal concerning "the person or entity which inserts the programme in the signal which carries it". We thought that this definition could be misinterpreted as meaning the P.T.T., because the real act of insertion of the programme into a signal which goes to the satellite is made by those who send up the signal to the satellite. Therefore, we thought that it would be better to keep the text we made in

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Nairobi, which in our opinion is much clearer, and which refers to the decision of what programmes the signals will carry.

1333. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

1334. Mr. DAVIS (United Kingdom) [E]: I have heard the point made on simplicity; it seems to me to have no relevance at all. If we have a complicated situation, that is unfortunate, but we have to deal with it. However, I would be prepared to accept a statement in the Report, if I was at all clear what the statement said. Could I hear that please?

1335. The CHAIRMAN [F]: I do not clearly understand the suggestion of the delegate of the United Kingdom. What will the text in the Report be?

1336. Mr. DAVIS (United Kingdom) [E]: That is correct, Mr. Chairman.

1337. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

1338. Ms. STEUP (Germany, Federal Republic of, Chairman of the Drafting Committee) [E]: I think our General Rapporteur would be very happy if the Delegate of the United Kingdom would get in touch with her to make it quite clear what was meant. The Drafting Committee's intention was to mention the situation as it exists in the United Kingdom and to say that, where a contractor is engaged by the Independent Broadcasting Authority, the originating organization is the Authority because the Authority makes the decision, the real decision, which programme will be transmitted via satellite. That was the intention of the Drafting Committee, as far as I have understood it. But, I think our General Rapporteur will be very happy if the delegate of the United Kingdom will help her to get the text straight.

1339. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

1340. Mr. DAVIS (United Kingdom) [E]: If all the other delegates, whom I suspect are in the same position without knowing it, are happy, I am quite content with that.

1341.1 The CHAIRMAN [F]: Then we shall be content with an explanation in the Report, but not just any explanation, but an explanation which will be finalized by the delegation of the United Kingdom and the General Rapporteur. The same will be true with regard to the Italian concern.

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1341.2 Consequently, if you agree, we can adopt definition (vi) without a vote.

1341.3 Definition (vii) "distributor". No problem with the definition of "distributor"?

1341.4 We adopt "distributor".

1341.5 Finally "distribution". Do we agree on "distribution"? Can we adopt Article 1 in its entirety?

1341.6 Article 1 is adopted.

1341.7 We shall now proceed to Article 2, paragraph (1).

1341.8 The delegate of Sweden has the floor.

1342. Mr. DANELIUS (Sweden) [E]: There is a very small drafting point I should like to raise here in connexion with the English text of Article 2, paragraph (1). When we discussed the definition of the emitted signal, we decided to say that the emitted signal is only the signal emitted to the satellite and no longer the signal passing through the satellite, but in the English text of Article 2, paragraph (1), it reads "... the signal emitted to or through the satellite..." which I think may give rise to some confusion. I would propose that we change the text so as to read, "... the signal emitted to or passing through the satellite..." which indicates more clearly that when we talk about the emitted signal we only refer to the passage up to the satellite and not to the passage through the satellite. This would also bring the text more into conformity with the French version.

1343.1 The CHAIRMAN [F]: I think that indeed the text is not in complete agreement with the definitions that we have adopted. Since we are wearing ourselves out defining what is an "emitted signal", what is a "derived signal", etc., perhaps it would be better to use these definitions instead of repeating a term which has been abandoned since we abandoned the Nairobi term.

1343.2 The delegate of Belgium has the floor.

1344. Mr. de SAN (Belgium) [F]: I would suggest an improved drafting of the second sentence of this same paragraph (1): instead of saying "This obligation shall apply where...", I would propose "This obligation extends to the case where the originating organization is a national of another Contracting State and/or (instead of where) the signals... are derived signals".

1345.1 The CHAIRMAN [F]: I do think that this version is much more euphonic.

1345.2 The delegate of Senegal.

1346. Mr. N'DIAYE (Senegal) [F]: I propose that in Article 2

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we delete the words "to or passing through the satellite", since the "signal emitted" has already been defined as being "any programme-carrying signal that goes to a satellite" and since in addition we abandoned the first Nairobi definition. I think that we could therefore validly delete these words.

1347. The CHAIRMAN [F]: The delegate of Algeria.

1348. Mr. ABADA (Algeria) [F]: It is on the subject of the proposal of the delegate of Senegal that I would like to intervene. We have defined the distributor as he who transmits the derived signals. Therefore, we should take out in the first paragraph "emitted to or through the satellite" since it has been explained to us that there was no question of a distributor being able to capture a signal emitted towards the satellite on its up-leg but that it is only possible to capture it after it has passed through the satellite. I do not know whether I have explained myself clearly.

1349. The CHAIRMAN [F]: The delegate of Austria has the floor.

1350. Mr. DITTRICH (Austria) [E]: When asking for the floor, I had the intention of making the same proposal as the delegate of Senegal, and so I support him.

1351. The CHAIRMAN [F]: The delegate of Kenya.

1352. Mr. STRASCHNOV (Kenya) [E]: Our delegation entirely supports the proposal made by the delegation from Senegal, provided we understand it correctly. We understood that he suggested that the first sentence of Article 2, paragraph (1), should read, "Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted is not intended." In other words, deletion of the words "to or through the satellite". It is correct to say "emitted" here because the originating organization, when emitting to the satellite, intends this signal which it emits or has emitted through the proper earth station, it intends it for a distributor or for more than one distributor. I think that we can now, having defined "signal emitted", delete the words "to or through the satellite" because "through the satellite", this is already the derived signal, that is already the down-leg. So our suggestion I think is identical to that of Senegal: suppression of "to or through the satellite".

1353.1 The CHAIRMAN [F]: It does seem to me that the suggestion of Senegal, which has been taken up by several delegations, is quite logical. We have to keep "emitted" but we should take out "to or through the satellite".

1353.2 The delegate of France has the floor.

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1354.1 Mr. KEREVER (France) [F]: I regret that I do not quite agree with you. In fact, there have been two proposals which were perhaps rather close in their drafting but which do have differences, that of the delegation of Senegal and that of the delegation of Algeria. But the French delegation thinks that it is the Algerian delegation which is indicating the right road for, contrary to what the delegate of Kenya has just said, I think that there is a certain antinomy between the concept of the emitted signal and that of the destination since, given the limited definition we have just given it, the emitted signal is destined for no one, it is the up-leg only, whereas what we are really referring to is the signal which has become a derived signal due to its passage through the satellite. I think that the delegate of Algeria alluded to the fact that there existed an obligation which applied to a signal which must be qualified as derived in view of the terminology of the definitions used.

1354.2 The difficulty is that it would be necessary to say in the text that the derived signal in question is to some extent identified by the first derivation that it has undergone and which itself arises from its passage through the satellite. Unfortunately, I do not yet have a text available, but the conclusion to which I am unfortunately obliged to come, is that if we say "emitted signal" and delete the words "to or through the satellite" we introduce some confusion. It would be necessary to say something like "derived signal, the first derivation of which comes from its passage through the satellite". But all this is proposed subject to finalization.

1354.3 There is unfortunately a real problem, I think, which results from the incidence of the definitions in Article 1.

1355. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany.

1356. Ms. STEUP (Germany, Federal Republic of) [E]: We fully share the opinion of the delegation of Senegal and the delegation of Kenya. We think that it would be preferable to have the words "to or through the satellite" deleted, and I may draw the attention of the Commission to Article 4 where you have already the same wording "by the distributor for whom the emitted signal is not intended." As to the remarks of the delegation of France, we think that the emitted signal, even if we define it as the signal merely going to the satellite, is intended for somebody who gets it down, and therefore we think that there cannot be any misunderstanding. As to the proposal to change "emitted" into "derived", it may be that a pirate intends the derived signal for another pirate; therefore that term could give rise to misinterpretation of this Treaty. We think that the formulation proposed by the delegation of Senegal is quite correct. Nobody sends up an emitted signal to a satellite without the intention that somebody takes it down.

1357. The CHAIRMAN [F]: I give the floor to the delegate of Israel.

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1358. Mr. GABAY (Israel) [E]: This discussion reminds me of the arguments that we have constantly with the drafters of our laws: it is always the case that they would like to have the provisions as short as possible and to refer as much as possible to the definitions, and sometimes the result is not very clear. We would like to support the proposal of the delegation of Senegal, as explained by several other delegations; while it might be possible to delete the word "emitted" we still prefer that it be retained in order to make it very clear to what we refer. For this reason we would agree to the deletion of the words "to or through the satellite" but we would propose that the term "signal emitted" should be retained.

1359. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

1360. Mr. DAVIS (United Kingdom) [E]: I thought I agreed with the delegation of France, I am not actually sure. However, it does seem to me that the definition of a signal emitted that we have now adopted refers only to the "up-leg"; it says clearly, any programme-carrying signal that goes to a satellite. The "down-leg" is always a derived signal. I am speaking here from the depths of no engineering knowledge; I only know that they always change the frequency in the satellite. The signal that comes out is never the same as the one that went in. Therefore to say the distributor for whom the signal emitted is not intended is rather odd because the "up-leg", which is what is meant by the definition, is never intended for anyone. Now, the next point is that if the definition is that the signal is going up, you cannot by definition say that it goes to and through, because when it goes through it becomes a derived signal.

1361.1 The CHAIRMAN [F]: And if we adopt the initial proposal of Senegal which was to delete "emitted" also.

1361.2 I give the floor to the delegate of Algeria.

1362.1 Mr. ABADA (Algeria) [F]: I thank the delegate of France for having understood my proposal.

1362.2 The problem is the following: we have defined the "emitted signal" and we have said that it is the signal going towards the satellite and not the one which, passing through satellite, goes towards an earth station. Therefore, if we retain the word "emitted", we shall be in the situation of the up-leg of the signals. But this situation is not applicable to the distributors since we have defined in point (vii) of Article 1 what a distributor is; and we have said that a distributor can receive only derived signals. Consequently, in Article 2, if we wish to be consistent with the definitions in Article 1, we cannot but conform to the definition of the distributor, who can receive only derived signals. Therefore, we could say "by any distributor for whom the derived signal is not intended".

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If not, we would be in contradiction with the definition of "emitted signal" which, by its very definition, cannot be received by a distributor. It is for this reason that we insist that, if we want to be logical with ourselves, we pay attention to the Algerian proposal which is to say "by any distributor for whom the derived signal is not intended".

1363. The CHAIRMAN [F]: The delegate of the Central African Republic has the floor.

1364. Mr. TOKPAN (Central African Republic) [F]: I should like to support the proposal of the delegate of Senegal. In the draft convention drawn up at Nairobi, Article 1 was Article 2 and vice versa. This time we have put the definitions in Article 1 and consequently, in Article 2, I consider that it is superfluous to retain "to or through the satellite". And so I think that the proposal of the delegate of Senegal is worthwhile.

1365. The CHAIRMAN [F]: I give the floor to the delegate of Senegal.

1366. Mr. N'DIAYE (Senegal) [F]: I should like to ask the delegate of Algeria a question. If we stick to the definition that he has just given, how are we going to reconcile this definition with the second sentence of Article 2 which states: "This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal"?

1367. The CHAIRMAN [F]: Could the delegate of Algeria reply to this specific question?

1368. Mr. ABADA (Algeria) [F]: In reply, I would say that I see no bearing. In the first sentence it is a question of conforming to the definition of the distributor who can receive only derived signals. The second sentence says: "This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal". It is simply a complement to the proposal that I am making when it is said "by any distributor for whom the derived signal is not intended"; naturally we delete "emitted to or through the satellite".

1369.1 The CHAIRMAN [F]: Here I take the liberty of interrupting the discussion for a moment to make the following observation: this Article 2 is obviously the basic article since the whole of our treaty rests on Article 2. And now we are trying to change it because we have adopted certain definitions. It is the same thing as when in my country we changed the capital from Rio to Brasilia. There were a lot of meetings to find out why the capital was being changed. The capital was being changed to bring it nearer the interior, it was being changed to relieve congestion on the coast, it

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was being changed for this or for that, and someone said, "it is also necessary to change it because it is in the Constitution". To which someone else replied, "Perhaps it is easier to change the Constitution than the capital". We are in approximately the same situation; it is necessary to first come to an agreement on this Article 2, even if we have to come back on the definitions afterwards.

1369.2 The delegate of the Federal Republic of Germany.

1370. Ms. STEUP (Germany, Federal Republic of) [E]: I have the same feeling as you have. Seeing the difficulties I would prefer now to deviate from the opinion of our technicians. I think that the easiest way to get the text straight is to change the definition of the emitted signal again, disregarding that in a technical sense there is already a derivation in the satellite itself. I think we will be on the safe side if we define the emitted signal as the signal going up and going down, because this means what is distributed is always a derived signal of that signal. To sum up I think the text can stand as it is; if we amend the definition of the emitted signal as compromising the "up-leg" and the "down-leg" and disregard, as lawyers, the technical way in which the signal is transformed in the satellite.

1371.1 The CHAIRMAN [F]: I am entirely of that opinion because it will do absolutely no harm if we go back to the Nairobi definition for "emitted signal"; it is very true that "emitted signal" has no legal meaning in our Convention since technically it cannot be captured; it is not possible to capture, it is not possible to poach an emitted signal before it arrives at the satellite. Consequently, it has no legal interest.

1371.2 Therefore, if we come back to the Nairobi definition, "any programme-carrying signal that goes to a satellite and any such signal that goes through a satellite" then in that case we can keep "signal emitted" without any problem in Article 2 and the definition of the "derived signal" keeps its importance for other articles of the Convention but not for this one.

1371.3 I give the floor to the delegate of Kenya.

1372. Mr. STRASCHNOV (Kenya) [E]: I would not see any difficulty in changing the definition of the emitted signal, and reverting to the Nairobi concept of emitted signal as being both the "up-leg" and "down-leg". In this case, Article 2 would still, we believe, require a change the same as we suggested before, i.e. that we would speak only of the signal emitted deleting the words "to or through the satellite", because it would be even clearer that the emitted signal is both the signal which goes up and which comes down. Therefore, we still believe that Article 2, paragraph (1), should be simplified by the deletion of these words "to or through the satellite" because these words, with the change of the definition of emitted signal, would become even more superfluous.

1373. The CHAIRMAN [F]: The delegate of Canada.

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1374.1 Mr. CORBELL (Canada) [E]: We have no problem in going along with the proposal made by the delegation of the Federal Republic of Germany and supported by the delegation of Kenya, but we still wonder why it is necessary to take such a backward step. In our understanding of the proposal made by the delegation of Senegal as you interpreted it, and as it was supported by the delegation of the United Kingdom, we cannot see any difficulty with this new formulation. We do not see that it disenables our treaty. And I will repeat what I understand to be that proposal.

1374.2 Article 2, paragraph (1), would read: "Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal is not intended." In our minds there can be no ambiguity. We have, in our definitions under Article 1, a definition of "signal" and we feel that this would give us adequate protection. We do not have strong feelings on this, but we wonder why we should take a backwards step and make such a fundamental change when this very simple procedure is before us.

1375.1 The CHAIRMAN [F]: We have to advance even so. I still have Algeria, Israel, Australia and Italy. I must remind you that we have many things to do. In any case we have to delete "to or through the satellite" because now it no longer has any sense. Then we have two solutions: either we decide on "for whom the signal is not intended" quite simply, as suggested by the delegate from Canada, or, if we keep the words "the signal emitted" then we have to change the definition of "signal emitted" and go back to the Nairobi definition.

1375.2 That is the alternative. I beg you, do not seek any new definitions for that would change the drafting of our Convention and consequently all the other articles; and there would no longer be any Convention. If you agree, we shall concentrate our attention on these two possibilities.

1375.3 The delegate of Algeria.

1376.1 Mr. ABADA (Algeria) [F]: Without wishing to complicate matters, I think there is another possibility in view of the definition of "distributor". He can be defined as being able to receive only derived signals. Then, in Article 2 we can say "distributor for whom the signals" since he can receive only the derived signals. But that is another point.

1376.2 As for the suggestion of the delegate of the Federal Republic of Germany, we do not see any obstacle. We are all the more at ease in this respect in that it is the Algerian delegation which was the first to be surprised that the Nairobi definition had been abandoned and to associate itself with the definition only under pressure from particularly well informed technical advice. But we see no drawback to coming back to the Nairobi definition. In that case there is no problem.

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1377. The CHAIRMAN [F]: The delegate of Israel has the floor.

1378. Mr. GABAY (Israel) [E]: I would not like to complicate the matter, but it appears that there is a third solution, and that is that instead of changing definitions, we could refer to both the emitted signal and the derived signal. In other words, the text would read, "... for whom the emitted signal or the derived signal is not intended...". We thus clarify the misunderstanding and do not need to change the definition.

1379. The CHAIRMAN [F]: The delegate of Australia has the floor.

1380.1 Mr. CURTIS (Australia) [E]: I have refrained previously from coming in on this interesting discussion because I was not sure that I could make a useful contribution, but I would like to say a word for those not very logically-minded lawyers who might have occasion to read this Convention in the future.

1380.2 It is true that if we follow the definition through, it is not necessary to mention anything in Article 2 about transmission through a satellite because one imports those words from one or more of the definitions: however, if we omit from paragraph (1) of Article 2, the words "to or through the satellite", we will then have removed from Article 2, which is the operative provision of the Convention, all reference to transmission through a satellite, and someone who is not a clever lawyer will pick up Article 2 and read it and he will not see anything there about transmission through a satellite. In other words, the very thing that this Convention is all about.

1380.3 As I said, it is true that if one follows through ruthlessly the logic of what has been said so far, one achieves that result, but one has to go through logical convolutions to do it. May I put in a plea for the more simple-minded reader who would like to see something in Article 2 about transmission through a satellite?

1381.1 The CHAIRMAN [F]: Five solutions have been suggested. The first solution is to speak of derived signals. This is the solution of the delegate of Algeria. The other solution is to keep "signals emitted" deleting "to or through the satellite". This is the solution of Kenya. The third solution is that we keep "signal", but take out "emitted to or through the satellite"; this is the solution of Senegal. The fourth solution is to say "emitted or derived". This is the solution of the delegate of Israel. And the fifth solution, that of the delegate of Australia, is to keep the article as it stands now.

1381.2 The delegate of Italy.

1382.1 Mr. TROTTA (Italy) [F]: I shall, of course, be very brief. The Italian delegation thinks that the text of Article 2 corresponds exactly from a technical point of view to the phenomenon that we are dealing with here and refers to the definitions that we have

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adopted. Therefore, the Italian delegation would like to keep this text and does not think that there will be any contradiction between paragraph (1) and paragraph (3) which refers to the derived signal.

1382.2 If the proposal of the Canadian delegation is seconded, we will also be happy to support it.

1383. The CHAIRMAN [F]: I give the floor to the delegate of France.

1384.1 Mr. KEREVER (France) [F]: In order to economize on time, I shall consider that we should limit our choice to the two solutions that you have announced, that resulting from the proposal of Senegal and the solution which consists of reestablishing for the definition of "emitted signal" that of the Nairobi text, i.e. to include to some extent the first descent from the satellite.

1384.2 With respect to the solution of deleting the words "emitted to or through the satellite" I think, on reflexion, that it is rather dangerous. For at that moment the significant term is the word "signal" and the term "signal" is defined as "an electronically-generated carrier", which means that the obligation that the States will have to contract under paragraph (1) of Article 2, should have an effect on any distribution of any signal, regardless of whether it goes through the satellite or not. Clearly, this is not the result we want to obtain and so we must turn to other solutions. Contrary to what I have said, I would be rather in favour of the Algerian proposal, with the following slight drawback: the derived signals of which we speak are a very special derivation; it is a derivation from the fact of passing through the satellite. Perhaps we could say "signals derived from the fact of passing through the satellite" in order to demonstrate clearly that we are not speaking of just any derivation, but of the first one.

1384.3 Nevertheless, even in adding this complement, I have the impression that I am complicating matters a little and I think that we would arrive at the same result if we reestablished the definition of "emitted signal" in the Nairobi text. The present definition of "emitted signal" is perfect from the technical point of view, but as you have observed, Mr. Chairman, it has absolutely no legal utility in the present structure, for everything happens after its passage through the satellite. That is why I think that we could incorporate in the concept of "emitted signal", not only the original signal but also the signal which comes from the first derivation resulting from the passage through the satellite.

1384.4 In short, it is the latter solution that the French delegation would prefer.

1385. The CHAIRMAN [F]: I still have one speaker on my list and I should like to conclude this discussion and make a proposal. The

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delegate of Hungary is the last speaker.

1386. Mr. TIMAR (Hungary) [F]: We really do not want to complicate matters and consequently we propose that, taking into account the definitions already accepted, we support the Canadian proposal that you have not included, Mr. Chairman. Like the Canadian delegation, we propose that the first paragraph of Article 2 read, "Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal is not intended". We believe that in view of the definitions in Article 1, it is impossible for any misunderstanding to remain. It is the simplest solution and we propose that we conclude this discussion and accept the Canadian proposal.

1387.1 The CHAIRMAN [F]: I take the liberty of pointing out that I do not think that I forgot the Canadian solution because the solution of Canada was similar to the first solution proposed by the delegate of Senegal. But all that is of no importance.

1387.2 Let us summarize the discussion. I think that the major difficulty comes exclusively from the fact that what we have in Article 2 is not bad terminology but a terminology into which our definitions do not fit very well. That is the only difficulty. And so, if we take out "emitted to or through the satellite", or even if we take out "to or through the satellite", we have the obvious advantage of coming closer to the definitions, but we have a very serious drawback, and I think that it is the delegate of France who has observed it, it is that the word "satellite" disappears completely from the basic article of the Convention. Consequently, anyone who does not read the Preamble, who reads simply the basic article which is Article 2, does not see at all that we are speaking of transmission by satellite. I think that is a great drawback. And so if you agree - and I think that that would satisfy everyone since all the solutions are more or less equivalent and everyone wants the same thing - we would keep the Article 2 as it stands and if necessary we could come back to the Nairobi definition of "emitted signal", i.e. "emitted signal" is any programme-carrying signal that goes to a satellite and any such signal that goes through a satellite." I do not think that that would have any kind of legal drawback, since once more, the "emitted signal" in itself cannot be the subject of this Convention since, technically, the "emitted signal" cannot be captured and, consequently, is not liable to piracy. If this solution is acceptable to everyone, we could adopt it without a vote and then we could put in the Report some admirable pages on the solutions that would have been preferable.

1387.3 The delegate of the Federal Republic of Germany.

1388. Ms. STEUP (Germany, Federal Republic of) [E]: We can support your proposal. We think that it would be best to go back to the definition of Nairobi but still have in Article 2 the words "to or through the satellite".

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As the delegate of Australia said, it is clearer to have these words in the operative article, even if they are a repetition. So we fully support your proposal.

1389. The CHAIRMAN [F]: The delegate of Israel.

1390. Mr. GABAY (Israel) [E]: I should also like to support your proposal in the spirit of what I have said before, that the drafters sometimes go to extremes in making it too short and then not as clear as one expected it to be. So I think that the proposal made by the delegation of Australia, as defined by you, is the best one.

1391.1 The CHAIRMAN [F]: Do we agree? Can we adopt the article as it stands?

1391.2 The delegate of Canada.

1392. Mr. CORBEIL (Canada) [E]: I do not want to delay you, but I just hope that the proposal of the delegation of Sweden is not forgotten. I think it brings a precision to the English text that is found in the French text, and that is the addition of the words "or passing through"; if this was done, we would certainly rally to this consensus and we are glad to find a way through this difficulty.

1393.1 The CHAIRMAN [F]: I think that the suggestion of the delegate of Sweden is an excellent one and I thought I had understood that there was a certain consensus. The delegate of Belgium had suggested improving the drafting to read "cet engagement s'étend au cas où l'organisme d'origine instead of "lorsque"; but this applies only to the French text. Are we in agreement?

1393.2 We have now approved Article 2. Should we come back to the definitions and come back to the Nairobi definition? It is not fundamental, it is simply a question of logic. Shall we adopt for "emitted signal" "any programme-carrying signal that goes to a satellite and any such signal that goes through a satellite"? I think that for the internal coherence of the Convention, this would be better.

1393.3 The delegate of Kenya.

1394. Mr. STRASCHNOV (Kenya) [E]: We support this proposal.

1395. The CHAIRMAN [F]: The delegate of Senegal.

1396. Mr. N'DIAYE (Senegal) [F]: Obviously I can only agree since I have already suggested that.

1397. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany.

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1398. Ms. STEUP (Germany, Federal Republic of) [E]: We also agree. We only think that the words in Article 1 should be the same as in Article 2, that is, "a signal emitted is any programme-carrying signal that goes to or passes through a satellite".

1399.1 The CHAIRMAN [F]: It is understood that the drafting will be exactly the same as that in Article 2, if not there would be no sense in coming back to it.

1399.2 The delegate of Algeria.

1400. Mr. ABADA (Algeria) [F]: It is to say that going back to the definition of "emitted signal" in the Nairobi draft is indispensable and we support it.

1401.1 The CHAIRMAN [F]: Consequently, although we have already approved Article 1, I am going to assume that you adopted it with a two-thirds majority and that we consequently modify the definition in paragraph (iv) as we have just said.

1401.2 If you agree, we shall now proceed to the second paragraph of Article 2.

1401.3 The delegate of Algeria.

1402.1 Mr. ABADA (Algeria) [F]: This is to propose that we insert in the last line, after "into force of that law", "or of the modification of that law", since we provide for two hypotheses with regard to notification: 1) the hypothesis that there is a domestic law which comes into force, or 2) that it be subsequently modified.

1402.2 In order for the period of six months to run either from the entry into force or from a subsequent modification, it is necessary to add in the penultimate line, after "into force of that law", the words "or of the modification of that law". In this way, the last sentence would read: "The Secretary-General of the United Nations shall be notified of such duration at the time of ratification, acceptance or accession, or if the domestic law comes into force or is changed thereafter, within six months of the coming into force or modification of that law."

1403.1 The CHAIRMAN [F]: The present drafting comes from the fact that when we were speaking of "entry into force" we covered at the same time the new law and the modification of the old one. But in any case, it would perhaps be better to add, if the Commission considers it necessary, "within six months of the coming into force of that law or of its modification". Are we in agreement? Can we adopt paragraph (2) as completed by the delegation of Algeria?

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1403.2 Article 2, paragraph (2) is adopted. The third paragraph.

1403.3 The delegation of Belgium has the floor.

1404. Mr. de SAN (Belgium) [F]: I should simply like to stress that at the beginning of Article 2, the State undertakes to take measures. Therefore, in order to accord with what was said at the beginning of the article, in paragraph (3) in the French text we should speak not of an "obligation" but of an "engagement" in the sentence: "L'engagement prévu à l'alinéa premier ci-dessus". Then we could repeat the same modification in the text that we have made in paragraph (1), and say "ne s'étend pas à la distribution de signaux...".

1405.1 The CHAIRMAN [F]: Consequently, the French text would read: "L'engagement prévu à l'alinéa (1) ci-dessus ne s'étend pas à la distribution de signaux dérivés provenant de signaux déjà distribués par un distributeur auquel les signaux émis étaient destinés." Is it clear? We approve the third paragraph.

1405.2 Can we approve Article 2 in its entirety?

1405.3 Article 2 is approved.

1405.4 We shall now proceed to Article 3. The delegate of Australia.

1406. Mr. CURTIS (Australia) [E]: In our definition section, when we were concerned with distribution to the general public, we talked about distribution to the general public or any section thereof, and I wondered whether perhaps the same wording ought not to be used in Article 3 so that we define direct broadcasting as direct reception from the satellite by the general public or any section thereof.

1407.1 The CHAIRMAN [F]: Consequently, the delegate of Australia is wondering whether we ought not to adopt in Article 3 the same wording as in the definition in Article 1 "to the general public or any section thereof".

1407.2 The delegate of the Federal Republic of Germany has the floor.

1408. Ms. STEUP (Germany, Federal Republic of, Chairman of the Drafting Committee) [E]: This question was discussed in the Drafting Committee and we took this definition from the ITU Radio Regulations where it is said that a direct broadcasting satellite is a satellite where the signals going through the satellite are intended for the direct reception, by the general public, without any further addition. The Drafting Committee thought it best to have the same definition as in the Regulations of the ITU but add in the

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Report the remark which is annexed in a footnote to these Radio Regulations, saying that the term "direct reception" shall encompass both individual reception and community reception. So we thought it would be best to be in line with the definition of the Radio Regulations of the ITU when we defined the direct broadcasting satellite.

1409.1 The CHAIRMAN [F]: We could indeed reproduce this footnote in the Report, viz. that the term "direct reception" encompasses both individual reception and community reception.

1409.2 The delegate of Algeria has the floor.

1410. Mr. ABADA (Algeria) [F]: I wanted to take the floor to support the proposal of the delegate of Australia, but insofar as the definition that you have just read is reproduced in the Report, we shall be satisfied.

1411.1 The CHAIRMAN [F]: Does the delegate of Australia agree? Yes. Consequently, we could perhaps adopt this Article 3, it being understood that the clarifications we have just mentioned will appear in the Report.

1411.2 Article 3 is adopted.

1411.3 Article 4. In the first paragraph we still have the words "emitted signal". Since we have changed the definition of "emitted signal", there is no difficulty in retaining it unless we really want to split hairs. Can we adopt Article 4 in its entirety?

1411.4 Article 4 is adopted.

1411.5 Let us proceed to Article 5 - which I do not think presents any problem. Can we adopt it?

1411.6 Article 5 is adopted.

1411.7 Article 6 is adopted.

1411.8 Article 7 is adopted.

1411.9 Article 8, paragraph (1) - no problem.

1411.10 Paragraph (2): There are some square brackets. If I have understood correctly, these square brackets are solely due to the fact that, when we adopted Article 8, we were carried away by the fire of our arguments and we forgot to harmonize the beginning of paragraph (2) with paragraph (3). Therefore, it is necessary, and here there is no possible opposition, to take away the second square bracket. Naturally, the Drafting Committee could not take the responsibility of doing so since we had not decided on this

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point, but it is evident that "on the date on which this Convention enters into force for that State" must be taken out and that the new paragraph (2) of Article 8 should read as follows: "Any Contracting State whose domestic law on 21 May 1974 so provides...". Can we adopt the second paragraph of Article 8? Yes.

1411.11 Third paragraph.

1411.12 The delegate of Mexico has the floor.

1412. Mr. LARREA RICHERAND (Mexico) [S]: Excuse me for coming back to paragraph (2) but it is merely on a question of drafting: in the last line of page 4, in the Spanish text, it says "siempre que el organismo de origen posea la nacional"; it should say "la nacionalidad de otro Estado contratante".

1413.1 The CHAIRMAN [F]: The correction proposed by the delegate of Mexico will be made in the Spanish text.

1413.2 Paragraph 3(a), are we in agreement?

1413.3 Paragraph 3(b).

1413.4 Article 8 in its entirety?

1413.5 Article 8 is adopted.

1413.6 Article 9, first paragraph. We agree?

1413.7 Paragraph (2).

1413.8 Paragraph (3).

1413.9 Paragraph (4).

1413.10 The delegate of Israel has the floor.

1414. Mr. GABAY (Israel) [E]: As you may recall, there has been discussion about this paragraph and proposals were adopted in this respect. However, we feel after reading it that it might be useful to indicate in the Report that when this paragraph refers to a country being in a position in accordance with its domestic law to give effect to the provisions of the Convention, this does not necessarily imply new legislation. As you know, in many countries it would be rather difficult to put through new legislation in this field; and it might be that under existing administrative regulations or other local arrangements the country is in effect, under its law, able to adopt the Convention. So we would suggest that this interpretation be noted in the Report.

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1415.1 The CHAIRMAN [F]: Your interpretation will certainly be noted in the Report. I think it is the general interpretation. Many delegations hesitated to introduce this paragraph (4) for precisely that reason. It is understood that each State has the choice between administrative, legal and other means. When we say "in accordance with its domestic law", it is rather redundant in that it does not mean that a new law is necessary.

1415.2 Can we adopt Article 9?

1415.3 The delegate of the Soviet Union.

1416. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I would like to draw the attention of the Secretariat to the fact that the Russian text of Article 9 lacks paragraphs (3) and (4) and it is difficult to say anything on the matter.

1417.1 The CHAIRMAN [F]: Unfortunately, the two paragraphs have indeed been omitted in the Russian text. In any case, they are exactly the same as those in the Nairobi text. There is no change.

1417.2 Can we adopt Article 9?

1417.3 Article 10, paragraph (1), paragraph (2).

1417.4 The delegate of the United Kingdom has the floor.

1418. Mr. DAVIS (United Kingdom) [E]: I wanted to speak on what was paragraph (3) of Article 10. It is merely a statement to the effect that I am instructed by my Government to request that the United Kingdom's dissent from the decision of the Main Commission to reject Article 9 (3) of the Nairobi draft, should be recorded in the Report.

1419.1 The CHAIRMAN [F]: Perfect. Your declaration will be recorded.

1419.2 Let us proceed to Article 11.

1419.3 The delegate of the Netherlands has the floor.

1420. Mr. VERHOEVE (Netherlands) [E]: I regret to say that the position the Netherlands delegation has to take is more or less the same as that adopted by the delegation of the United Kingdom. The Netherlands Government is obliged to take its responsibilities for the external relations of Surinam and the Netherlands Antilles very seriously. As long as this responsibility exists, the Netherlands Government cannot, in absence of the so-called metropolitan clause, adhere to this Convention on behalf of Surinam and the Netherlands Antilles, and they cannot do so either for the same reason. Therefore, as long as this responsibility exists for the Netherlands Government, and everybody who reads Dutch newspapers may know this will not be for a long time, the absence of the so-called metro-

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politan clause, which, by the way, is a better title than colonial clause, because in the Netherlands it has nothing to do with any kind of colonialism whatever, either obsolete or modern. I repeat, the absence of this metropolitan clause, so normal in Conventions as this, will form for the Netherlands Government a very serious obstacle for adherence to this Convention. Therefore, I should also like to have this recorded in the Report.

1421. The CHAIRMAN [F]: The delegate of the Soviet Union has the floor.

1422. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I should like to draw your attention to the fact that in the Russian text Article 10 has been omitted.

1423.1 The CHAIRMAN [F]: Our apologies to the delegate from the Soviet Union. You must have a very short text! There is not much left in the Russian text. In any case, it is the same as the Nairobi text. Except that paragraphs 3(a) and 3(b) no longer exist, as you know. Consequently, it is the Nairobi text without any change. Paragraphs (1) and (2) of Article 9 of the Nairobi text.

1423.2 Can we adopt Article 10?

1423.3 I thank the delegate of the Union of Soviet Socialist Republics.

1423.4 Article 11. No problem?

1423.5 Article 12, first paragraph. Paragraph (2). Paragraph (3) (i), (ii), (iii), (iv), (v). Paragraph (4). Final clause.

1423.6 The delegate of France.

1424. Mr. KEREVER (France) [F]: I should like to make what is, in fact, a general observation. In the French text at least there are a few small flaws. I have not raised them in order not to prolong the discussion, but I have complete confidence in the ability of the French members of the Secretariat to introduce a drafting that will eliminate any small imperfections that remain. For example, I will quote the question of the notifications to the Secretary-General of the United Nations Organization. Sometimes it is accompanied by the verb "presenter" and sometimes by "adresser". Thus, there is a certain unification to be made with regard to terminology; but I think that this is a question for the Secretariat rather than a question which we should discuss here.

1425.1 The CHAIRMAN [F]: In any case, it would be desirable for not only the delegation of France but all the delegations who notice small imperfections to communicate them to the Secretariat in order to facilitate its task, which is obviously still a very heavy one.

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1425.2 Let us adopt Article 12. Yes.

1425.3 Let us adopt the text in its entirety. Yes. Perfect.

1425.4 We now have a second document which is document UNESCO/WIPO/CONFESAT/34 Rev. This is the famous letter to be addressed by the Chairman of the Conference to the Secretary-General of the United Nations Organization. And so let us examine it as if it were a text. First paragraph. Second paragraph. Third paragraph.

1425.5 Naturally, the delegations have checked that the translations are exact and there is perfect compatibility and conversibility as is said in informatics, between the various texts, above all of paragraph 2.

1425.6 Can we approve the draft letter? Yes.

1425.7 The delegate of the Central African Republic.

1426. Mr. TOKPAN (Central African Republic) [F]: I should simply like to revise the position of my country with regard to the new paragraph (3). According to instructions received, my delegation supports the proposal in new paragraph (3). And I should like this remark to appear in the General report.

1427.1 The CHAIRMAN [F]: Perfect, Mr. delegate of the Central African Republic.

1427.2 Now we come to the last document submitted to us, UNESCO/WIPO/CONFESAT/35, which is the draft Final Act. As you know, several delegations have requested a Final Act to summarize our work.

1427.3 The delegation of the United States of America has the floor.

1428. Mr. WINTER (United States of America) [E]: The United States delegation would recommend to this Commission that two additional officials who have contributed so much to the successful development of this Convention, be named in the Final Act, namely you, Dr. da Costa as Chairman of the Main Commission, and Ms. Elisabeth Steup as Chairman of the Drafting Committee.

1429.1 The CHAIRMAN [F]: The delegate of the United States has made a suggestion that affects our modesty.

1429.2 The delegate of Mexico.

1430. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico also supports the delegation of the United States of America to the effect that your name be added and that of Ms. Steup as the delegate of the Federal Republic of Germany for your participation in the work of this Conference. It should also praise you for the work accomplished.

1431. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

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1432. Mr. COWARD (Kenya) [E]: We too think this Final Act would be incomplete without reference to the two names proposed by the delegate of the United States of America.
1433. The CHAIRMAN [F]: The delegate of Belgium has the floor.
1434. Mr. de SAN (Belgium) [F]: It is simply to associate ourselves warmly with the proposal made by the delegation of the United States of America.
1435. The CHAIRMAN [F]: The delegate of Algeria.
1436. Mr. ABADA (Algeria) [F]: At Nairobi we were able to appreciate the qualities and the competence of Ms. Steup who chaired the work of the Committee of Experts. Here, at Brussels, we have been able to appreciate your competence and your talents, Mr. Chairman. Therefore, we willingly associate ourselves with the proposal of the United States of America; that would be only just.
- 1437.1 The CHAIRMAN [F]: Other observations on the text?
- 1437.2 The delegate of Hungary.
1438. Mr. TIMAR (Hungary) [F]: We warmly support the proposal made by the delegation of the United States of America. In addition, we have another proposal: this proposal is that in the Final Act mention be made of the letter addressed to the Secretary-General of the United Nations Organization.
- 1439.1 The CHAIRMAN [F]: Let us take the suggestion of the United States of America, then we shall come back to the second suggestion from Hungary.
- 1439.2 The delegate of France has the floor.
1440. Mr. KEREVER (France) [F]: The French delegation associates itself very warmly with the proposal formulated by the delegation of the United States of America with regard to the two persons who, with the Chairman of the Conference, have contributed so much to the success of the latter.
- 1441.1 The CHAIRMAN [F]: If you agree, Ms. Steup and I thank you for this proposal and we shall no longer give the floor to anyone on this subject. It is understood that the suggestion of the United States of America is accepted, I think.
- 1441.2 Now we come to the suggestion of the delegate from Hungary.

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He suggests that there be a sentence in the Final Act referring to the letter addressed to the Secretary-General of the United Nations.

1441.3 The delegate of the United States of America.

1442. Mr. WINTER (United States of America) [E]: With all due respect to the suggestion of the delegate of Hungary we debated this matter at great length in a working group and the Main Commission. I think the fact that we have agreed on this letter will be adequately reflected in the Report. We think that the Final Act relates primarily to facts concerning the convening of the Conference and the officials that have been responsible and contributed so much to it. We believe that it would be rather inappropriate to refer to one specific letter that has come out of this Conference.

1443.1 The CHAIRMAN [F]: Are there any other points of view on this suggestion?

1443.2 The delegate of the Federal Republic of Germany.

1444. Mr. GAERTE (Germany, Federal Republic of) [E]: I think we should make it possible for everybody present here to sign the Final Act. I think that is a general custom in all such Conferences. Therefore, we should keep it free from all controversial problems; and I suggest we do not include any new matter, except the addition which has been suggested by the delegate from the United States. With regard to the Hungarian suggestion, I would like to support the proposal that has been made by our colleague from the United States that all controversial facts be left out as in all previous draft Final Acts we have signed.

1445.1 The CHAIRMAN [F]: We must, however, make a decision. This is the sort of decision on which we really have to take a vote. And so we shall vote quite simply, with no more commentaries, and we shall see who, like the delegate from Hungary, wishes to include a sentence and those who are against it. Does the delegate of Hungary agree?

1445.2 Would those delegations in favour of the inclusion of a sentence concerning the letter from the Chairman please raise their name plaques. The delegations who wish to have a sentence included in the Final Act? A point of order.

1446. Mr. TIMAR (Hungary) [F]: Since no delegation has seconded my proposal, I do not wish to prolong this meeting. Consequently, a vote is pointless. Thank you.

1447.1 The CHAIRMAN [F]: The delegate of Hungary does not insist on his proposal. Consequently, can we consider that the text of the Final Act is approved as it stands in document CONF/SAT/35 with, of course, the reference to the two names that have been suggested.

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1447.2 Then we have finished the work of the Main Commission.

1447.3 The delegate of Morocco has the floor.

1448.1 Mr. CHAKROUN (Morocco) [F]: I did not attempt to take part in the discussions on the point raised earlier and this, Mr. Chairman, was to save my breath in order to say that we have reached the conclusion of the work of the Main Commission of this International Conference of States. Consequently, we cannot but be very satisfied. It was a vessel that had to be towed, that had to be steered with many precautions and much skill, a modern vessel, i.e. a sophisticated one, but thanks to the great pilot that you are, Mr. Chairman, and to the members of the crew that we are, this vessel has come to berth in peace and total security, subject, of course, to the discussions that will take place in the Plenary.

1448.2 Permit me, Mr. Chairman, to compliment you most sincerely for the competence, the comprehension and the wisdom with which you have led our meetings. During these memorable days you have been a great captain, you were perfect; I am the spokesman for my own delegation, but I am persuaded that all the delegates present here share these same sentiments.

1448.3 In congratulating you, Mr. da Costa, it is the Brazilian delegation that we are congratulating warmly and through it Brazil, a country where the development of radio and television and the protection of authors is well known.

1449.1 The CHAIRMAN [F]: Your words have touched me deeply.

1449.2 The delegate of Mexico has the floor.

1450. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico would like to associate itself with the words of the delegate of Morocco, not as a superfluous action in view of the support we gave to the addition of your name to the Final Act, but in this case, Mr. Chairman, we are congratulating our friend Mr. da Costa, who, in our opinion, has carried out his work to perfection. I do not believe that there are any other words to say at this time except to congratulate you heartily as a friend and as the distinguished delegate from Brazil.

1451. The CHAIRMAN [F]: The observer from the EBU has asked for the floor.

1452.1 Mr. REMES (European Broadcasting Union) [F]: To my great regret I have not been able to follow all the discussions of this Commission since I had to attend at the same time another meeting in Brussels for which I was the Rapporteur. But I was kept informed of the progress of the discussions. I am happy to see the Conference conclude with a definite result. It is natural that in a conference such as this, each delegation has to follow his instructions, each

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representative must defend the interests of those he is called upon to represent. But finally, we have to agree on a compromise. Consensus has to win over dissension. I think I can say that it is in this spirit that our work has succeeded.

1452.2 I congratulate you, Mr. Chairman, for accomplishing your delicate and very difficult task successfully and I want to thank all the delegates who have contributed to this success.

1453. The CHAIRMAN [F]: I give the floor to the observer from ISETU.

1454.1 Mr. RÖSSEL-MAJDAN (International Secretariat of the Entertainment Trade Unions) [E]: Thank you, Mr. Chairman, for giving me the high privilege to speak to this very important Conference. Unfortunately, I am not as satisfied as the previous speaker with the result of this Commission and may I draw the attention of the distinguished delegates to the two papers which were distributed during the meeting, one is the adoption of the so-called Vienna Memorandum by ISETU (the International Secretariat of the Entertainment Trade Unions).

1454.2 I want to underline that it shows the common point of view agreed by the leading experts of International Organizations of Authors and Trade Unions. To be brief, I do not want to read the whole text, it is two and a half pages, which is in the hands of the distinguished delegates and the Secretariat: I would just like to read the first phrase.

1454.3 "The IV International Congress of the ISETU, meeting in Cuernavaca, Mexico, from 21 - 25 April 1974, noted that an International Conference of States on the Distribution of Programme-Carrying Signals Transmitted by Satellite was to meet in Brussels from 6 - 21 May, and unanimously adopted the following Memorandum drawn up by the Conference of copyright experts of the organizations of authors and performing artists, which was convened by the Österreichische Künstlerunion for 21 and 22 March 1974."

1454.4 Furthermore I have to inform this esteemed diplomatic Conference respectfully that ISETU also gives world-wide support to a second statement of ISETU as follows:

1454.5 "The International Confederation of Free Trade Unions fully support the Vienna Memorandum on copyright. It also supports any co-operation between authors, artists and other professional groups in the fields of mass media, copyright and neighbouring rights which aims at securing the participation of the cultural professions and of free creative individuals in the benefits of technical progress and of the exploitation of the intellectual property. Every concentration of international power in the field of mass media which excludes the influence of free trade unions and which endangers the development of free opinion and culture as a whole is against the principles of ISETU. The ISETU, therefore, supports fully the resolution passed by

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its IV International Congress in Mexico and which reads as follows:

1454.6 That this IV International Congress of the ISETU condemns the current form of the draft Satellite Convention and calls on all affiliates to attract world-wide trade union support on an international basis to enforce the Rome Convention being fully ratified, and further that no transmission of entertainment programmes by satellite be permitted until satisfaction is obtained in respect to the Rome Convention and that this motion be given world-wide press."

1454.7 Therefore, distinguished delegates, I am urgently appealing to the EBU to think their policy over and the next steps, as we will do at our next meeting in Brussels in July.

1454.8 I hope the distinguished delegations can understand the fundamental interests involved in the resolution and I am regretting very much that no compromise was reached with EBU in spite of the good will of the trade unions and other organizations, and in spite of the wish of so many delegations.

1455. The CHAIRMAN [F]: The delegate of the United States of America has the floor.

1456. Mr. WINTER (United States of America) [E]: Mr. Chairman, in order to have the work of the Main Commission end on a little more positive note, we would just like to add our congratulations to the previous speakers for the tremendous job you have done as Chairman of the Main Commission.

1457.1 The CHAIRMAN [F]: I think that the time has come to close our meeting. I should like to make two or three observations which, be reassured, will be very brief.

1457.2 The first observation is a suggestion that will, I hope, be adopted by acclamation, and it is that we add to our Final Act the name of Mr. N'Déné N'Diaye of Senegal who was the Chairman of the Credentiale Committee and who, because of a quite normal oversight in view of the speed with which we work, is not mentioned in the Final Act. This way we will have all the Chairmen of the various Committees and Commissions.

1457.3 The second observation is relative to the intervention of the delegate of Morocco who has compared our adventurous enterprise to a ship's course full of reefs. This image is a true one. I would perhaps compare it to a fortress that has to be captured. This apparently inaccessible fortress is each time more inhabited by the myths that we have had to overcome. We have taken little by little the moats, the first fortifications, the towers, the main courtyard and, finally, the keep which we stormed today. It has taken time, it was not an easy enterprise. It has taken time, first because we are, I think, an assembly of excessively intelligent people who would make envious the great mediaeval philosopher Duns Scot who was called

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Dr. Subtle. And we have also taken time because of a tangle of all kinds of interests, a tangle of contradictions between broadcasters and contributors to programmes, between developed and developing countries, between countries anxious to protect the receivers of programmes and countries which, on the contrary, considered only the countries emitting the programme, countries already members of the Rome Convention and the countries who were not members of the Rome Convention. In the end, all this obviously created inextricable complications from which I think we have finally extricated ourselves. Obviously no one is completely satisfied. The contributors are not satisfied, the broadcasters are not satisfied, the countries of the Eastern bloc are not very satisfied, the countries of the Western bloc are not very satisfied, the developing countries are not very satisfied, the developed countries are not very satisfied, the countries members of Rome are not very satisfied, the countries which are not members of Rome are not very satisfied. That is an excellent sign. It is a sign that our Convention is neutral, that it is a well balanced Convention. It is for this reason that it will, I hope, have numerous signatures and numerous ratifications and, as I have already said, I hope that it is going to demonstrate the thaw, the thaw between the Rome Convention on the one hand and the broadcasters, the thaw between the parties most directly concerned. Consequently, I wish our Convention an excellent future.

1457.4 Thank you. I will now remind you of our various tasks. Tomorrow we have the Plenary Meeting at 3 p.m.; on Monday the Credentials Committee at 11 a.m. On Tuesday, we shall have another meeting of the Plenary to study the Report, for the signature of the Final Act and the signature of the Convention.

1457.5 I have learned that it is indispensable, even if we succeed in concluding the study of the Report in the morning, that the signature be postponed to 3 p.m. - the signature of the Final Act and of the Convention - because some ambassadors have received special powers and they are not taking part in the Conference, and ambassadors do not like to wait, and so they wish to come and sign the Convention immediately. That is quite legitimate. Consequently, we should calculate that our work will end at about 4 p.m. Thus, we shall probably be free as from 4 p.m., if the Report is not too long.

1457.6 The delegate of Mexico.

1458. Mr. LARREA RICHERAND (Mexico) [S]: One question. You have told us at what time we shall end but what time shall we start on Tuesday? We should very much like to know at what time we shall start in the morning.

1459.1 The CHAIRMAN [F]: The Chairman of the Conference told us the other day that we would begin at 9 a.m. on Tuesday. The Report will be a long one, which is inevitable, and if we wish to end at 1 p.m. we have to start at 9 a.m.

1459.2 The delegate of Kenya.

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1460. Mr. STRASCHNOV (Kenya) [E]: Forgive me for asking this question: is it still correct to say that we will have the Report on Monday at 6 p.m. in both languages?

1461.1 The CHAIRMAN [F]: Perhaps not all of it but in any case a large part of it.

1461.2 I wish you a successful continuation of your work and thank you for your co-operation which enabled us to reach a successful conclusion.

1462. The meeting rose.

Sixth Plenary Meeting¹

Saturday, 18 May 1974 at 3.20 p.m.

Chairman: Mr. G. de SAN (Belgium)

1463.1 The CHAIRMAN [F]: We are now holding this Plenary Meeting to adopt the text of the Convention which has been finalized by the Main Commission. However, before we begin, I should like to once again pay the homage which is so well deserved to His Excellency Mr. da Costa who directed the work of the Main Commission in so masterly a manner that our task is considerably simplified. I congratulate and thank him very warmly.

1463.2 And so, if you agree, let us take the text of the Convention which the Main Commission has submitted to us. We shall examine it article by article and then, when we have reviewed all the articles, we shall proceed to the adoption of the whole Convention. We shall begin with the title. Does any delegation wish to take the floor on the subject of the proposed title? Everyone agrees to the text of the title proposed by the Main Commission?

1463.3 The title is adopted.

1463.4 The first paragraph of the Preamble is adopted.

1463.5 The second paragraph is adopted.

1463.6 The third paragraph is adopted.

1463.7 The last paragraph is adopted.

1463.8 We shall now proceed to Article 1.

1. Cf. document UNESCO/OMPI/CONFESAT/VR.18 (prov.).

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1463.9 Number (i) is adopted.

1463.10 Number (ii) is adopted.

1463.11 Number (iii) is adopted.

1463.12 Number (iv) is adopted.

1463.13 Number (v) is adopted.

1463.14 The delegate of Mexico has the floor.

1464. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico would like to observe that yesterday we suggested that we should have "fijación intermedia" and not "intermediaria". It seems to us that in Spanish it is more exact to say "fijación intermedia" and the delegation of Mexico suggests therefore that we put "fijación intermedia" and not "intermediaria".

1465.1 The CHAIRMAN [F]: I am in complete agreement with the delegate of Mexico. The Secretariat will see to this correction.

1465.2 I give the floor to the Director General of WIPO.

1466. Dr. BOGSCH (Director General of WIPO) [E]: I think that in English one has to make up one's mind whether one wants to use the plural or the singular because the verb is in the singular and the noun is in the plural. Thus, the plural verb "have" would be all right. Does the British delegation agree? Leave it in the plural in the English.

1467.1 The CHAIRMAN [F]: I think that everyone agrees with this observation which has just been made and which is supported by the delegate of the United Kingdom, and so will the Secretariat be kind enough to take this correction also into account.

1467.2 I therefore consider that number (v) is adopted.

1467.3 Number (vi) is adopted.

1467.4 Number (vii) is adopted.

1467.5 Number (viii).

1467.6 The delegate of Mexico has the floor.

1468. Mr. LARREA RICHERAND (Mexico) [S]: I apologize for going back to number (vii) but the Spanish text does not say "derived signals"; the French text, as you have just read it, speaks in number (vii) of "derived signals to the general public or any section thereof"; but the Spanish text speaks of signals and nothing more,

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and it seems to us that "señales derivadas o emitadas" should be added.

1469.1 The CHAIRMAN [F]: Yes. That does seem to me to be a mistake, a purely material one I suppose. The Secretariat will also take this into account.

1469.2 Are there any other observations with regard to number (vii)?

1469.3 Number (vii) is adopted with the correction.

1469.4 Are there any observations on the subject of number (viii)?

1469.5 I consider number (viii) adopted.

1469.6 We shall proceed to Article 2, first paragraph. Are there any observations?

1469.7 The delegate of Kenya has the floor.

1470. Mr. STRASCHNOV (Kenya) [E]: It is just a question. I do not remember whether we changed yesterday, in paragraph (3) of Article 2, the word "obligation" to the word "undertaking". I do not remember, but if we have done so, then it should be also changed in paragraph (1). I apologize if I am mistaken.

1471.1 The CHAIRMAN [F]: This concerns only the English text therefore.

1471.2 The Director General of WIPO.

1472. Dr. BOGSCH (Director General of WIPO) [E]: You made the proposal yesterday, Mr. Chairman, as far as the French text is concerned because it was shocking that, in the French text, the first sentence and the second sentence did not use the same word having the same origin. But in English it does not shock me, and I would prefer in English to maintain "obligation", unless the delegations of English language are of a different opinion. I think in English we should maintain it whereas in French it would be changed to "engagement".

1473. The CHAIRMAN [F]: The delegate of Brazil has the floor.

1474. Mr. da COSTA (Brazil) [F]: As Chairman of the Main Commission, I remember distinctly that we modified the French text only. There was never any question of changing the English text. Consequently, I think it would be better to keep "obligation".

1475. The CHAIRMAN [F]: I give the floor to the delegate of Mexico.

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1476. Mr. LARREA RICHERAND (Mexico) [S]: Excuse me for all these interventions but it seems to us that, in Spanish, we should also keep the word "obligacion" and not "compromiso".

1477.1 The CHAIRMAN [F]: Are there any other observations?

1477.2 There are none; and so it seems to me that there are more English-speaking delegates in favour of keeping in the English text "obligation" rather than "undertaking". That, of course, is valid for the English text only. In the Spanish text we shall have "obligacion" and not "compromiso". Do we all agree? It is so decided.

1477.3 We shall now proceed to paragraph (2).

1477.4 I give the floor to the delegate of Algeria.

1478.1 Mr. ABADA (Algeria) [F]: The Conference has been presented with a proposal from fifteen delegations dealing with what the Report will contain on the subject of this paragraph (2) of Article 2.

1478.2 During the discussion of document CONFESAT/21 concerning Article 3 of the Nairobi draft which has become paragraph (2) of Article 2 of the Brussels text, the Algerian delegation, and many other delegations, had reservations with regard to the procedure which was followed for the choice between Alternatives A and B of document CONFESAT/21 prepared by the ad hoc working group. At that time the procedure followed seemed to us to be rather undemocratic. After our Main Commission had decided in favour of Alternative B, certain delegations came back to this point on the pretext that what had taken place was a show of hands and not a vote. But the verbatim records prove that it was indeed a question of a choice. In addition, it had already been stated - whether there had been a vote or a choice, the result is the same - that the Main Commission had indeed decided in favour of Alternative B.

1478.3 Our objection to Alternative A is also justified by considerations relative to the substance of the problem. What good would it be to protect the signal as a physical phenomenon? Its protection is perhaps not even possible. In any case, it seems pointless to us.

1478.4 Then, if we seek to protect the signal, this is because of the contents of the signal. In fact we are seeking to protect the content of the signal. But in this case there are two possible assumptions. Either the content of the signal is a work protected by copyright, and in this case it is the copyright legislation that applies, and this legislation has more legal weight than a text incorporated in the Report. Or the content of the signal consists of programmes that are not protected by copyright, for example, sporting events, and in this case, there is no need to assimilate these programmes to programmes protected by copyright by means of this instrument which is completely outside this field.

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1478.5 In any case, we are opposed to such a step. In addition, sporting events once the result is known, no longer have any interest, even one or two days later. We can compare them with the daily newspaper which is unsold on the day of issue and which afterwards has no value except as wrapping paper.

1478.6 What is more, the desire to protect programmes with such contents for twenty years seems to us to be of no interest. It is in view of this type of signal content and its nature that, in a desire for compromise, the delegations who are the authors of the document CONFESAT/33 have submitted this proposal. It is aimed at giving more freedom to the national legislator so that he can arrange the term of protection of the signal according to the nature of the programme that it contains. This term of protection must vary according to whether it is a question of works of the mind protected by copyright or programmes outside the copyright field. That is why we ask all delegations to accept our proposal.

1479. The CHAIRMAN [F]: The delegate of Brazil has the floor.

1480.1 Mr. da COSTA (Brazil) [F]: I should like to speak on two points. In the first place, on the point raised by the delegate from Algeria with regard to the vote or show of hands for these famous alternatives. I recall that there were doubts; we did not know whether it was a vote or a show of hands. And so it was impossible for me, as Chairman of the Main Commission, to take into account the result of this vote or show of hands, since a certain number of delegations had stated that they would have taken a different decision depending on whether it was a vote or a show of hands. Consequently, in a wide interpretation of Rule 23 of the Rules of Procedure which allows the Chairman to take another vote if there is any doubt, we considered that it was a show of hands and that, consequently, it was not binding on the Commission. And the Commission accepted this point of view. Consequently, I do not think we should have any more discussion on this question.

1480.2 With regard to the substance of the question which has been raised by the delegate of Algeria, we do indeed believe that it would be advisable to introduce this nuance into the Report. We think that this nuance is useful for it is certainly in the spirit of Nairobi: it leaves to each State the choice not only of the means, but also of the term of protection. We believe, consequently, that the amendment which has been submitted by a considerable number of countries - it is not in fact an amendment but a suggestion for the Report - should receive the support of the whole meeting.

1481. The CHAIRMAN [F]: The delegate of Guatemala has the floor.

1482.1 Mr. PALACIOS GARCIA (Guatemala) [S]: My delegation would like to associate itself with the words spoken by the delegate of Algeria, and at the same time indicate that our delegation also suggested a small modification in the Alternative indicated, to the

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effect that we modify the second paragraph of what was previously Article 1 and which has now become Article 2.

1482.2 My delegation would also like to point out that it is important to consider this subject at this time, because although it is to become part of the Report of the General Rapporteur, it is nevertheless closely linked with the approval of this article. In other words, when this article was approved, this was done on condition that there be an explanation in the Report of the Rapporteur.

1482.3 That being so, it being understood that the delegations that then were of the same opinion as that expressed by the delegate of Algeria, our desire is that this modification be accepted in the Report of the Rapporteur so that it may be considered as a valid explanation for any future interpretation. As the delegate of Brazil has already explained, my delegation would also like to add that for the Convention to be approved by our legislatures, it is necessary to introduce a nuance and in this respect the conditional mood that has been proposed in this document CONFESAT/33 satisfied this idea and would thus facilitate approval by their legislative congresses.

1482.4 With the request that this document be considered at this time, as has been suggested by the delegation of Algeria, and for the reasons given by previous delegations, my delegation also asks that the Conference approve document CONFESAT/33.

1483. The CHAIRMAN [F]: The delegate of Morocco has the floor.

1484. Mr. CHAKROUN (Morocco) [F]: Since Morocco is a co-signatory of this modest proposal, which presents no danger in respect of the substance of the question, we would like the Report to contain the text presented in document CONFESAT/33.

1485. The CHAIRMAN [F]: The delegate of Mexico has the floor.

1486. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico, which also associated itself with the co-sponsors of the Algerian proposal, also supports that this sentence as it appears in document CONFESAT/33 be included in the General Report.

1487. The CHAIRMAN [F]: The delegate of Kenya has the floor.

1488.1 Mr. STRASCHNOV (Kenya) [E]: The delegation of Kenya has not signed this document CONFESAT/33, since in my opinion the question is much more theoretical than practical. The Algerian delegation explained to us that if the signals carry copyrighted material, it will be the copyright legislation which will govern the duration. He also said that if the material is not copyrighted, and he mentioned sporting events, in such case, there should be a greater flexibility for the countries.

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1488.2 Leaving aside the countries which have no copyright legislation, and nonetheless become parties to this Convention, this is a very serious problem insofar as we have deliberately deleted any limitations as to the countries able to accede to this Convention. We decided that virtually all countries can accede whether or not they have copyright legislation and, therefore, this is in my opinion the first argument which perhaps does not really confirm the opinion expressed by the delegate of Algeria.

1488.3 However, talking about countries who do have copyright legislation, I would like to remind him that in a transmission of a sporting event, there are cameramen, there are persons who mix the pictures, there are those who edit even if it is a direct transmission, and under most legislations, or at least in the case law, these people are considered as authors. Therefore, even a live transmission of a sporting event carries with it questions of copyright. For countries with copyright legislation, as I said before, the question raised by the delegation of Algeria and others is rather theoretical; it is practical only for countries with no copyright legislation which accede to this Convention.

1489.1 The CHAIRMAN [F]: Is there anyone else who wishes to take the floor? I note that up to now a majority of delegations have declared themselves in favour of this proposal. Is there the two-thirds majority required to adopt a proposal in the Plenary Meeting?

1489.2 I give the floor to the delegation of the United States of America.

1490. Ms. RINGER (United States of America, General Rapporteur) [E]: I have asked for the floor as the General Rapporteur. I had not understood, and I have not proceeded on the assumption, that the little statement that was agreed to was all that would go into the Report on this subject. As you know we spent about three and a half sessions and we are now getting close to four sessions, on this subject. My own feeling is that the Report, as a summary of the discussion, should reflect what happened; we should not simply adopt a formula without some explanation as to how it has been arrived at. Of course, if we adopted this, and I was prompted to ask for the floor by the fact that this is in the Report, and not in the Convention itself I do not really think that the two-thirds question applies. However, whether or not it does, we have now arrived at a rather peculiar situation where we have lost the word "reasonable" which was supposed to be in the Convention and which was a rather big bone of contention. We are now adopting a considerably weakened formula for the Report, and I honestly do not think it would fairly reflect hours of debate simply to include this sentence in the Report.

1491. The CHAIRMAN [F]: I give the floor to the delegate of the United States of America.

1492. Mr. WINTER (United States of America) [E]: We will now be

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speaking as the delegation of the United States, not as the General Rapporteur. I wonder if it would be acceptable to this Plenary Meeting to follow up on the remarks of the General Rapporteur: it is apparent to us that we cannot ignore the lengthy debate on this subject and that the discussion and what conclusions, if any, were reached should be objectively reported in the General Rapporteur's Report. I wonder if it would be acceptable to the governments that have introduced this statement as a sense of their understanding of the discussion, if it could be reported in the Report that this was the view of these governments and certainly the delegation of the United States would have no objection to that; but I think that it would be unrealistic to put this in as the sole conclusion of a lengthy debate on the subject.

1493. The CHAIRMAN [F]: The delegate of Brazil has the floor.

1494. Mr. da COSTA (Brazil) [F]: I repeat once more that it seems to me that the Report has a double role. On the one hand, the Report has a narrative role: it recounts what has happened; and on the other hand, sometimes, and this is a case in point, the Report has an interpretative role, the role of a commentary and I think, I am speaking in the name of the delegation of Brazil, that the countries which have introduced the proposal contained in document CONF/SAT/33 do not want to obfuscate in the Report the narration of what really happened, but, in the interpretative part, they want this sentence to appear as the conclusion of this narration. We would like to have this phrase appear in the Report, but this in no way prevents the Report from stating that other countries find that a reasonable term is a term of twenty years.

1495. The CHAIRMAN [F]: The delegate of Senegal has the floor.

1496. Mr. N'DIAYE (Senegal) [F]: I think that the delegate of Brazil has overtaken me in what I wanted to say. The Report will obviously reflect the statements of all the delegations who spoke. But I want to say, as the delegate of Brazil has, that, since it is on the basis of the Report that we will interpret any terms which might seem ambiguous to us in the text, it would be better if the majority announce their decision on this proposal if it is not unanimous. The delegations who have signed this proposal considered that it was necessary to arrive at a generally acceptable conclusion for the interpretation of this word "reasonable". It is with this aim that we made this proposal and if the assembly agrees to follow us, it is this interpretation that will be given to the word "reasonable".

1497. The CHAIRMAN [F]: I give the floor to the delegate of Guatemala.

1498.1 Mr. PALACIOS GARCIA (Guatemala) [S]: I simply wish to point out that we have not yet approved paragraph (2) of Article 2, which is the one to which document CONF/SAT/33 refers. It was for

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this reason that the delegations that proposed it have requested that this document be dealt with prior to the approval of paragraph (2). This is our way of thinking so that we can afterwards have the conviction and the security that what we are going to approve is fully understood, with this explanation contained in document CONFESAT/33. In such a way that the delegations who are ready to vote in favour of this paragraph (2), are practically doing so almost on condition that document CONFESAT/33 be accepted, for this fully meets their interpretation of this paragraph (2); in addition, this would also facilitate the approval of the Convention by our legislatures.

1498.2 Finally, I should like to point out that this same document CONFESAT/33, that we are asking you to submit to the consideration of this meeting, be brought into line with the new order of the various articles. It no longer refers to Article 3 but to Article 2, and in the section of the text in inverted commas, the proposal itself, there is mention of Article 1, which is now Article 2; paragraph (2) should also be included. We ask that note be taken of what should appear in the first line: "Insert the following sentence in the section of the General Report concerning Article 2, paragraph (2)". Then, the end of this first line should read, "With respect to the duration of the measures referred to in Article 2(2)". With these modifications, we ask you, Mr. Chairman, to put this to the consideration of delegates, prior to the approval of Article 2(2).

1499.1 The CHAIRMAN [F]: No one else wishes to take the floor?

1499.2 I think that a definite majority of delegations is in favour of the proposal contained in document CONFESAT/33. Do you agree that I consider that the assembly associates itself with this proposal? If that is so, this proposal is adopted and we ask the General Rapporteur to kindly take it into account in her Report.

1499.3 We shall now proceed to the text of Article 2(2). No one wants the floor?

1499.4 Therefore, I consider that Article 2(2) is adopted.

1499.5 Paragraph (3) is approved.

1499.6 Article 2 in its entirety is approved.

1499.7 Article 3 is approved.

1499.8 Article 4 is approved.

1499.9 Article 5. Can I consider that everyone agrees? Approved.

1499.10 Article 6 is approved.

1499.11 Article 7. No observations? Article 7 is approved.

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1499.12 Article 8, first paragraph - approved.

1499.13 Paragraph 2 - the delegate of France has the floor.

1500. Mr. FRANCON (France) [F]: Just a small remark with respect to the French text of our Convention. In fact, in the text we have before us, the reference which is made to Article 2(1) refers to the content of this text before our meeting yesterday. What I mean is that the reference made in our text to Article 2(1) does not correspond to the present drafting of this text. In particular, the word "lorsque" no longer figures in the present Article 2(1). I think we have two possible solutions: either we delete the word "lorsque" here and that would imply also deleting it two lines lower down; or we can replace the word "lorsque" by the words "au cas ou" and leave the rest of the present drafting of the text.

1501.1 The CHAIRMAN [F]: Your remark is a judicious one and must be taken account of in the final drafting of the text. I think it would be necessary to repeat exactly what appears in the text which has been adopted for Article 2(1), i.e. instead of "lorsque" we put "au cas ou" etc. Does everyone agree?

1501.2 Paragraph 2 is therefore approved with this change, in the French text only, of course.

1501.3 Paragraph (3)(a). No observations?

1501.4 I give the floor to the delegate of Kenya.

1502. Mr. STRASCHNOV (Kenya) [E]: The English text says, "Any Contracting State which limits... or denies protection with respect to the distribution," the French text says "Tout Etat contractant qui limite ou exclut la protection de la distribution..."; it should be, I think, "... limite ou exclut la protection contre la distribution ou a l'égard de la distribution" but not "la protection de la distribution".

1503.1 The CHAIRMAN [F]: Are there any other remarks in this connexion? I think that we can, that we should take account of the observation that has just been made by the delegate of Kenya.

1503.2 The delegate of the United Kingdom.

1504. Mr. DAVIS (United Kingdom) [E]: Does the French text use the words corresponding to "limits or denies protection"?

1505.1 The CHAIRMAN [F]: Yes, that is right. In French "limite ou exclut".

1505.2 Would the delegate of Kenya care to give us his opinion?

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1506. Mr. STRASCHNOV (Kenya) [F]: We are not protecting the distribution. We are protecting against distribution. That is why it seems to me that in French - but, of course, the French delegation will correct me if I am mistaken - it seems to me that it is a mistake to speak of "la protection de la distribution". The English text does not say "protection of the distribution" but "with respect to the distribution". There is a difference. That is why I thought that we could say "limite ou exclut la protection à l'encontre de la distribution", "a l'égard", "contre", whatever proposal the French delegation considers as adequate, but the simple genitive seems to me to be wrong.

1507.1 The CHAIRMAN [F]: You are right. We shall put "a l'égard de". In the French text we shall say, "a l'égard de la distribution".

1507.2 I give the floor to the delegate of Guatemala.

1508. Mr. PALACIOS GARCIA (Guatemala) [S]: If I have understood correctly the proposal of the delegation of Kenya, it is desirable that all the texts are in the same form; we find the same terms in the Spanish text, because it too speaks of the protection of the distribution.

1509.1 The CHAIRMAN [F]: Do the other Spanish-speaking delegates share this opinion?

1509.2 I give the floor to the delegate of Mexico.

1510. Mr. LARREA RICHERAND (Mexico) [S]: With due respect to the delegate of Guatemala, it seems to us that the Spanish drafting is good; it is perfectly clear.

1511. The CHAIRMAN [F]: I give the floor to the delegate of Spain.

1512. Mr. de la VEGA (Spain) [S]: The Spanish delegation thinks that the interpretation given by the delegation of Mexico is adequate, since the protection "contra" the distribution, without adding any adjectives would interfere with the meaning and the understanding of this text. For this reason we consider that it should be maintained as it stands.

1513. The CHAIRMAN [F]: I give the floor to the delegate of Guatemala again.

1514. Mr. PALACIOS GARCIA (Guatemala) [S]: We did not offer any interpretation but simply pointed out the way in which it is written in Castilian; it corresponds exactly to the English and French as you read it. So that our request is that when revising the translations, the translating team and the Secretariat take due care that what is

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said in English and French corresponds exactly to the Spanish text.

1515.1 The CHAIRMAN [F]: Agreed. And so I consider that subparagraph (3) (a) is approved.

1515.2 We shall now proceed to subparagraph (3)(b). No observations? Approved.

1515.3 Article 8 is therefore approved subject to certain improvements.

1515.4 We therefore proceed to Article 9(1). Approved.

1515.5 Article 9(2). Approved.

1515.6 Article 9(3). Approved.

1515.7 Article 9(4). Approved.

1515.8 Article 9 in its entirety is approved.

1515.9 Article 10(1). Agreed? Approved.

1515.10 Paragraph (2). No observation. Approved.

1515.11 Article 10 in its entirety is approved.

1515.12 Article 11(1). Agreed? Approved.

1515.13 Paragraph (2). No observations?

1515.14 I give the floor to the Co-Secretary-General of the Conference.

1516. Mr. MASOUYE (Co-Secretary-General of the Conference) [F]: I should, however, like to draw your attention to a problem that was raised in the Secretariat when we were trying to arrange these texts. We discovered that we put everywhere "notification deposited with the Secretary-General of the United Nations", with the exception of Article 11 where we state "a written notification". This appears in the English and French texts, but not in the Spanish text since the Spanish reads simply "mediante comunicación dirigida al Secretario General", and we wondered whether the adjective "written" was really necessary and if a notification could be otherwise than written. But even so we left it in the text while drawing your attention to our perplexity.

1517.1 The CHAIRMAN [F]: Is there a Spanish-speaking delegate who would like to take the floor on this subject?

1517.2 I give the floor to the delegate of Mexico.

1518. Mr. LARREA RICHERAND (Mexico) [S]: I agree with the

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comments of Mr. Masouye. It seems to us that instead of saying "dirigida" we should say "comunicación escrita" to the Secretary-General of the United Nations. It would be much clearer, much more effective to say "comunicación escrita al Secretario General de las Naciones Unidas", or "comunicación por escrito".

1519. The CHAIRMAN [F]: I give the floor to the delegate of Brazil.

1520. Mr. da COSTA (Brazil) [F]: If we adopt the solution just given by the delegate of Mexico, we are going to have problems, especially with the other references to the notifications. I think it would be better to take out the adjective "written". Nowadays a notification is always written; no one is going to telephone the Secretary-General to say that the legislation has changed. Consequently I think it would be better to delete "written". If you wish, we could put in the Report that it is understood that the notification must be a written one. The Report is useful for lots of things.

1521. The CHAIRMAN [F]: I give the floor to the delegate of Senegal.

1522. Mr. N'DIAYE (Senegal) [F]: I think it would be advisable to add the word "written" everywhere rather than stating in the Report that the notification must be in writing. I think that it would serve some purpose to say "a written notification".

1523.1 The CHAIRMAN [F]: I think that we can indeed state that the notification must be written for, as our colleague from Tunisia has already said, quoting the words of Mr. de Talleyrand, "what goes without saying is even better said."

1523.2 I give the floor to the delegate of the Federal Republic of Germany.

1524. Mr. GAERTE (Germany, Federal Republic of) [E]: I was just going to say the same. I think the formula we have here, "written notification", is a standard formula in most of the treaties I know. I think it is not superfluous because it must be clear that the notification cannot be done orally; therefore, I suggest that we keep it not only in the English text but also in the French text, which I understand has to be modified slightly, and, of course, equally in the Spanish text.

1525. The CHAIRMAN [F]: The delegate of Australia has the floor.

1526. Mr. CURTIS (Australia) [E]: While I agree that written notification in Article 11 is certainly the more accurate expression, it still does not deal with what I understood to be Mr. Masouye's point, that in Article 8 we refer to "notification deposited", we do

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not talk about "written notification deposited". It is a matter of style, I think, rather than of substance, and I do not press the issue, but it would be tidier to have the same expression throughout the Convention.

1527.1 The CHAIRMAN [F]: I think you are quite right and I thank you for your intervention. It is evident that all the texts must be coherent when we speak of notifications. We must not at one point say "notification" and at another "written notification". I think that a majority of delegations has come out in favour of the precision that the notification must be written. Is that so?

1527.2 I give the floor to the delegate of France.

1528.1 Mr. FRANCON (France) [F]: Naturally I have nothing against the written notification. I simply wanted to point out that Article 2 (2) is one of the places where we have to have the same precision if we adopt the idea that the notification must be in writing.

1528.2 Article 2(2) also speaks of a notification and there should also be a modification there.

1529.1 The CHAIRMAN [F]: Should we conclude that you are also in favour of stating the notification must be in writing? Agreed.

1529.2 And so I think we can consider that it is necessary to modify the text. It will therefore be stated each time that there is a written notification.

1529.3 We shall now proceed to Article 11(2). No observations? Adopted.

1529.4 Article 11 in its entirety is adopted.

1529.5 Article 12(1). Approved.

1529.6 Article 12(2). Approved.

1529.7 Article 12(3).

1529.8 The delegate of Brazil has the floor.

1530. Mr. da COSTA (Brazil) [F]: There are many notifications in this paragraph. Naturally they are written ones, in particular in (v). Now that we have agreed to put "written notification", we have to revise our text carefully because there are at least half a dozen notifications.

1531.1 The CHAIRMAN [F]: Personally, I find it less necessary in this case to state that it must be written. However, if you consider this preferable I see no objection.

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1531.2 Do other delegations share the opinion of the delegate of Brazil? Or does everyone consider that we can leave "notification" without specifying here that it must be in writing? Agreed. We shall leave the text as it is.

1531.3 Therefore, paragraph (3) is approved.

1531.4 Paragraph (4). Does everyone agree?

1531.5 Article 12 in its entirety is approved.

1531.6 Then there is the final clause. No observations?

1531.7 Are we able to declare that the complete text of the draft Convention which has been submitted to us by the Main Commission in document CONF/SAT/38 is approved in its entirety, subject to certain improvements that have been specified during the discussion?

1531.8 I give the floor to the delegate of Mexico.

1532. Mr. LARREA RICHERAND (Mexico) [S]: Excuse me for intervening; we are in complete agreement with what you said about written communications and that everywhere that communication is mentioned, we should state that it is in writing, but not when we speak of a notification, because all notifications are by definition in writing as it implies a note that contains something in writing. Therefore, only when we speak of communications should the Drafting Committee specify that this is in writing; and when we speak of notifications, there is no need for the clarification that it is in writing because all notifications are in writing.

1533. The CHAIRMAN [F]: I give the floor to Ms. Dock, Co-Secretary-General of the Conference.

1534.1 Ms. DOCK (Co-Secretary-General of the Conference) [F]: Thank you for clarifying the situation so that the Secretariat will be able to establish the definitive text. I think it would be necessary to add the word "written" in Article 8(2), where it says "Any Contracting State whose domestic law, on May 21, 1974, so provides may, by a written notification...". I think that if the Secretariat has correctly interpreted the decision of the Conference, that it would also be appropriate to add it in Article 8(3)(a) and (b), and in Article 2(2). I think that these are the four cases where it would be necessary to add "written", if the Conference agrees. In Article 12 which provides for "the notification by the Secretary General of the United Nations" I do not think that the word "written" need be added since this refers to a subsequent action.

1534.2 I think that this is clear and if the Conference agrees, the Secretariat will add the word "written" to Article 2(2), Article 8(2) and Article 8(3)(a) and (b).

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1535.1 The CHAIRMAN [F]: That is indeed in complete agreement with the decision that we have taken.

1535.2 I give the floor to the delegate of the United Kingdom.

1536. Mr. DAVIS (United Kingdom) [E]: I am sorry but I was not clear whether Ms. Dock in fact referred to Article 2 (2). This is a notification relating to the duration of protection, and above all it seems to me the one that ought to be in writing.

1537.1 The CHAIRMAN [F]: That is exactly what Ms. Dock said. We shall specify that the notification must be written.

1537.2 Is there any other delegation that wishes to take the floor? I can therefore consider that the text of the Convention is unanimously approved.

1537.3 I suggest we take a short break, and then discuss the draft Final Act and then the draft letter to the Secretary-General of the United Nations.

1538.1 The CHAIRMAN [F]: We shall now deal with the draft Final Act. This is document CONF/SAT/39. Do any delegations have any observations on the subject of this draft? Is everyone in agreement on the text?

1538.2 The delegate of Algeria has the floor.

1539. Mr. ABADA (Algeria) [F]: I wonder whether it might not be useful to add a provision concerning the translations of the text into Arabic, German, Italian and Portuguese in the draft Final Act.

1540.1 The CHAIRMAN [F]: Are there other delegations who would like to make an observation on this same subject?

1540.2 The delegate of the Federal Republic of Germany.

1541. Mr. GAERTE (Germany, Federal Republic of) [E]: Understandably, I would like to support this proposal of our Algerian colleague.

1542.1 The CHAIRMAN [F]: No other speakers? I think that under these circumstances, the general opinion is in favour of what has just been said by the delegate of Algeria, seconded by the delegate of the Federal Republic of Germany.

1542.2 But I note that the delegate of Argentina is asking for the floor.

1543. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: I am referring

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only to the Spanish text. In the paragraph reading "el texto del Convenio ha sido establecido en español, frances, ingles y ruso, siendo igualmente autenticas las cuatro versiones". I think that there should not be full stop, but we should say: "y aparece anexo a la presente Acta", and not "aparece anexo a la presente Acta". It would be clearer.

1544.1 The CHAIRMAN [F]: That is right.

1544.2 I think that we can look favourably on the suggestion made by the delegate of Algeria seconded by the delegate of the Federal Republic of Germany; and we can also approve the correction that has just been proposed by the delegate of Argentina.

1544.3 I give the floor to the Director General of WIPO.

1545. Mr. BOGSCH (Director General of WIPO) [E]: I am just trying to imagine how the proposals of the delegations of Algeria and the Federal Republic of Germany would be drafted. Would it be a new paragraph after "The text of the Convention, established... equally authentic, is attached to the present Act", that "the Conference noted that texts in the following languages will be established". That is all we can say because those texts will not exist tomorrow. So maybe we could say, "The Conference noted that, etc.," reproducing Article 12, paragraph (2) more or less as in the Convention.

1546. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

1547. Mr. GAERTE (Germany, Federal Republic of) [E]: I suggest we just add in paragraph (6) the following wording: "Official texts in Arabic and so on will be established."

1548. The CHAIRMAN [F]: The delegate of Brazil has the floor.

1549. Mr. da COSTA (Brazil) [F]: This is on another question. Perhaps it would be better to settle this one first?

1550.1 The CHAIRMAN [F]: Yes. Therefore the text proposed by the delegate of the Federal Republic of Germany would read as follows: "Official texts of the Convention will be established in the Arabic, Dutch, German, Italian and Portuguese languages." Is that what the delegate of the Federal Republic of Germany wanted? If everyone shares this opinion, it shall be so. The Secretariat will take this modification into account.

1550.2 Subject to this modification, can I consider that the draft Final Act is approved?

1550.3 I give the floor to the delegate of Brazil.

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1551. Mr. da COSTA (Brazil) [F]: In the fifth paragraph, I take the liberty of pointing out that the name of Ms. Barbara Ringer has been mangled in the text.

1552.1 The CHAIRMAN [F]: Yes, thank you. I had already rectified it automatically myself. Obviously, when we establish the final version this correction will be made. Does anyone else wish to take the floor?

1552.2 Therefore, I consider that the draft Final Act is unanimously approved, subject to the small modification we have discussed.

1552.3 If you agree, we shall now proceed to the draft letter relative to document CONFESAT/23 submitted to the Plenary Meeting by the Main Commission. This is document CONFESAT/37. Does any delegation wish to take the floor on the subject of this draft? I therefore consider that there is agreement. The text is unanimously approved.

1552.4 I give the floor to the delegate of France.

1553.1 Mr. FRANCON (France) [F]: At the time that the work of this Plenary Meeting is coming to a close, the French delegation thinks that all delegations present here would like to demonstrate their gratitude to the Belgian Government which was kind enough to welcome our Conference. It is for this reason that the French delegation proposes to the Plenary Meeting the adoption of a resolution, the text of which will be distributed to you and which I now take the liberty of reading.

1553.2 The following is the proposed resolution submitted to the Plenary Meeting by the French delegation: "The International Conference of States which met at Brussels from May 6 to 21, 1974, for the purpose of drawing up an international Convention on the distribution of programme-carrying signals transmitted by satellite wishes, before concluding its work, to convey to the Belgian Government its immense gratitude and its most sincere thanks for the generous hospitality it has enjoyed as well as for the care taken both to provide for the organization and to ensure the success of the meeting." That is the text of the resolution that the French delegation would like to see adopted by our Plenary Meeting.

1554. The CHAIRMAN [F]: I give the floor to the delegate of the United States of America.

1555. Mr. WINPER (United States of America) [E]: The United States delegation is most pleased to second the resolution of the delegate of France.

1556. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

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1557. Mr. GAERTE (Germany, Federal Republic of) [E]: It is a great honour and pleasure for me to support wholeheartedly this French proposal.
1558. The CHAIRMAN [F]: I give the floor to the delegate of the Union of Soviet Socialist Republics.
1559. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: The delegation of the Union of Soviet Socialist Republics is extremely pleased to support the resolution proposed by the French delegation.
1560. The CHAIRMAN [F]: I give the floor to the delegate of Japan.
1561. Mr. HIRAOKA (Japan) [F]: My delegation is also among those which warmly support the proposal of the French delegation.
1562. The CHAIRMAN [F]: I give the floor to the delegate of Spain.
1563. Mr. de la VEGA (Spain) [S]: For the Spanish delegation it is both an honour and a great satisfaction to strongly support the proposal of the French delegation.
1564. The CHAIRMAN [F]: I give the floor to the delegate of Senegal.
1565. Mr. N'DIAYE (Senegal) [F]: The delegation of Senegal supports the proposal of the French delegation which, I think, expresses the unanimous opinion of the whole assembly. I propose that this resolution be adopted by acclamation.
1566. The CHAIRMAN [F]: I give the floor to the delegate of the Netherlands.
1567. Mr. VERHOEVE (Netherlands) [F]: I warmly associate myself with the proposal made by the delegate of France.
1568. The CHAIRMAN [F]: The delegate of Italy has the floor.
- 1569.1 Mr. MESCHINELLI (Italy) [F]: The Italian delegation adheres completely and cordially to the proposal of the French delegation. It is glad to have taken part in this Conference especially in view of the results that have been achieved. The Italian delegation hopes that this Convention will be signed by the greatest possible number of States.
- 1569.2 In addition to the gratitude we owe the Belgian authorities, we should like to express here our congratulations for the way in

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which the Conference was organized and led by the appropriate bodies of Unesco and WIPO.

1570. The CHAIRMAN [F]: I give the floor to the delegate of Brazil.

1571. Mr. da COSTA (Brazil) [F]: I wholeheartedly support the proposal made by the delegate of France.

1572. The CHAIRMAN [F]: I give the floor to the delegate of Czechoslovakia.

1573. Mr. KUNZ (Czechoslovakia) [F]: The Czechoslovak delegation is happy to be able to fully support the proposal of the French delegation which expresses its own feelings.

1574. The CHAIRMAN [F]: I now give the floor to the delegate of Guatemala.

1575. Mr. PALACIOS GARCIA (Guatemala) [S]: For the delegation of Guatemala it is also a great honour to warmly support the proposal of the delegation of France and at the same time to endorse the suggestion of the delegate of Senegal that this resolution be adopted by acclamation.

1576. The CHAIRMAN [F]: I give the floor to the delegate of Algeria.

1577. Mr. ABADA (Algeria) [F]: The Algerian delegation very warmly supports the French proposal and also thanks you, Mr. Chairman, for the excellent way in which you have chaired our work.

1578. The CHAIRMAN [F]: I now give the floor to the delegate of Morocco.

1579. Mr. CHAKROUN (Morocco) [F]: My delegation is also happy to warmly support this proposal.

1580. The CHAIRMAN [F]: The delegate of Argentina now has the floor.

1581. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: The Argentine delegation warmly supports the proposal of the French delegation.

1582. The CHAIRMAN [F]: I give the floor to the delegate of Canada.

1583. Mr. SIMONS (Canada) [E]: It is with great pleasure that

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the Canadian delegation also supports this proposal and resolution suggested by the delegate from France, and we would like to add our thanks to the government of Belgium and to the two Secretariats.

1584. The CHAIRMAN [F]: I give the floor to the delegate of the United Kingdom.

1585. Mr. DAVIS (United Kingdom) [E]: It is just that I, too, would like to support the proposal very warmly. The delegation of the United Kingdom sincerely would like to say that this was an extremely well-organized Conference.

1586. The CHAIRMAN [F]: I give the floor to the delegate of the Central African Republic.

1587. Mr. TOKPAN (Central African Republic) [F]: Excuse me, but I am wondering if it is really necessary to continue listening to all the delegations. The delegate of Senegal proposed earlier that we approve this proposal unanimously and I think that this proposal is even a usual one and I do not think it is necessary to continue listening to everyone.

1588. The CHAIRMAN [F]: The delegate of Austria has asked for the floor and I give it to him.

1589. Mr. DITTRICH (Austria) [E]: After the statement of the speaker before me, I should have to withdraw my request for the floor. I would like to associate myself very warmly with all the speakers before me.

1590. The CHAIRMAN [F]: The delegate of Egypt.

1591. Mr. ANTAR (Egypt) [F]: It is with great pleasure that the delegation of the Arab Republic of Egypt warmly supports the French proposal.

1592. The CHAIRMAN [F]: I give the floor to the delegate of Sweden.

1593. Mr. DANIELIUS (Sweden) [F]: I should like to associate myself with all the other delegations who have already supported the French proposal which excellently reflects the sentiments of gratitude that we have towards the Belgian Government.

1594. The CHAIRMAN [F]: The delegate of Australia has the floor.

1595. Mr. CURTIS (Australia) [E]: The Australian delegation also joins in supporting the French resolution and expresses its thanks to

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the government of Belgium.

1596. The CHAIRMAN [F]: Finally, the delegate of the German Democratic Republic has asked for the floor.

1597. Mr. WAGNER (German Democratic Republic) [E]: We fully support the proposal of the French delegation.

1598.1 The CHAIRMAN [F]: I address the whole assembly to tell you that the Belgian government will certainly greatly appreciate the initiative that you have just taken. In its name, I thank you sincerely for having thought of it. I hope that the organization of the Conference was satisfactory. Personally, I am satisfied with the way in which the work was carried out. In turn, I thank all those who have co-operated in this success and in particular the delegates.

1598.2 The delegate of Brazil.

1599. Mr. da COSTA (Brazil) [F]: I am not proposing a resolution, but it simply seems to me that it would be rather unjust to terminate our work without paying our respects to the three Committees of Experts which enabled this Conference to conclude satisfactorily. We have among us the Chairman of the first Committee of Experts, Mr. Simons; Ms. Steup who chaired the Paris and Nairobi Committees; and Mr. Chakroun. With reference to an image I used yesterday to describe this Conference, it is the Moroccan camelry who were first to penetrate the fortress and who came up with the idea that enabled our work to succeed. Consequently, I should like the Records of our Conference to record our gratitude to the work of the Committees of Experts.

1600.1 The CHAIRMAN [F]: I think that your idea is an excellent one and is certainly shared by all the delegations present. It shall, therefore, be so and I thank the delegate of Brazil for his intervention.

1600.2 We shall now adjourn our discussions until Tuesday with respect to the Plenary but before that, I remind you that the Credentials Committee is set to meet on Monday at 11 a.m. in the Blue Room. As for us, we shall, therefore, meet on Tuesday morning at 9 o'clock in Plenary Meeting. We have to begin our work at 9 o'clock so that we may conclude in the morning as provided for in the calendar.

1600.3 With regard to the Report of the General Rapporteur, the first part of this Report will be available during Monday afternoon, the second part will be available at the end of the afternoon and the third part will perhaps be available on Monday evening, and in any case on Tuesday morning before the meeting.

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1600.4 After the study and adoption of the Report of the General Rapporteur, we shall proceed, as provided for in the calendar, to the signature of the Final Act and of the Convention. All of which means that we have a lot to get through on Tuesday, and that we have to be careful to respect the calendar by being extremely brief.

1600.5 I give the floor to Ms. Dock, Co-Secretary-General of the Conference.

1601. Ms. DOCK (Co-Secretary-General of the Conference) [F]: Just to indicate to the Conference that after renewed consultations which took place among the members of the joint Secretariat of the Conference, and in order to satisfy the maximum number of delegations who made their wishes known to us, as well as for technical reasons, it seemed to the joint Secretariat of the Conference, in agreement with the Chairman of your Conference, that the meeting for the signatures could take place on Tuesday at 12 noon exactly. If there are no objections, the meeting for the signatures will, therefore, be fixed for Tuesday at 12 noon.

1602. The CHAIRMAN [F]: I hope we shall be able to respect this timetable. Is there anyone who still wishes to ask for the floor? That is not the case; and so I thank you and give you a rendez-vous for Tuesday morning at 9 o'clock sharp.

1603. The meeting rose.

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Seventh Plenary Meeting¹

Tuesday, 21 May 1974 at 9.35 a.m.

Chairman: Mr. G. de SAN (Belgium)

1604.1 The CHAIRMAN [F]: I wish you good day, hopefully the last day of our work. We must be extremely brief if we wish to respect the timetable. There are a certain number of participants who have to take the plane in the early afternoon and so we must all make an effort to respect the calendar, i.e. proceed to the signature, first of the Final Act, then of the Convention at exactly 12 noon.

1604.2 I invite Mr. N'Diaye, Chairman of the Credentials Committee, to inform us of the results of the last discussions of this Committee.

1604.3 I give the floor to Mr. N'Diaye.

1605.1 Mr. N'DIAYE (Senegal, Chairman of the Credentials Committee) [F]: The Credentials Committee held its second meeting yesterday at 11 a.m. In conformity with the provisions of Rules 3, 4 and 7 of the Rules of Procedure, the Committee proceeded to examine the credentials received by the Secretariat since its last meeting.

1605.2 The Committee noted that the delegations of the States listed below, invited to the Conference under Rule 1 of the Rules of Procedure, were, in accordance with Rule 3(1) and (2) of the said Rules, duly accredited to participate in the Conference and also had full powers to sign the Convention which was adopted: Belgium, Federal Republic of Germany, Italy, Luxembourg, Mexico, Monaco.

1605.3 The Committee recommended that the delegations of these States be definitively admitted and authorized to sign the Convention which has been adopted.

1605.4 On 20 May 1974 the complete list of States having delegates empowered to sign the Convention was as follows: Belgium, Brazil, Cyprus, Federal Republic of Germany, Israel, Italy, Ivory Coast, Kenya, Lebanon, Luxembourg, Mexico, Monaco, Morocco, Senegal, Spain, Switzerland, United Arab Emirates, United States of America.

1605.5 The Committee noted that the delegations of the States listed below, invited to the Conference under Rule 1 of the Rules of Procedure, were duly accredited, in accordance with Rule 3(1) of the said Rules, to participate in the Conference: Australia, Austria, Central African Republic, Czechoslovakia, Arab Republic of Egypt, German Democratic Republic, Guatemala.

1605.6 The Committee recommended that the delegations of these States be definitively admitted to participate in the work of the Conference.

1. Cf. document UNESCO/OMPI/CONFSAT/VR.19 (prov.).

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1605.7 The delegations of Argentina and Yugoslavia submitted provisional credentials which did not conform with the conditions provided for in Rule 3(1) of the Rules of Procedure.

1605.8 The delegations of Colombia, Turkey and the Republic of Viet-Nam (Republic of South Viet-Nam) presented documents accrediting them as observers to the work of the Conference.

1605.9 The Committee decided to authorize its Chairman to make a report, if necessary, directly to the Conference with respect to credentials which may be submitted before the end of its work.

1606.1 The CHAIRMAN [F]: I should like to congratulate the Chairman of the Credentials Committee for what has been accomplished under his direction. Are there any observations on this subject?

1606.2 If you agree, we shall now proceed to the consideration of the Report of the General Rapporteur.

1606.3 No observations concerning the "Introduction"? Good. "Convocation of the Conference"? "Background and preparatory work"?

1606.4 I give the floor to the delegate of the Federal Republic of Germany.

1607. Ms. STEUP (Germany, Federal Republic of) [E]: We have a very small point to make on paragraph 7. The first sentence states: "Before it became practical to launch satellites for public communications, the constraints of technology automatically protected", and so on. We would like to add after the words "the constraints of technology" the words "to a certain extent" because it was possible even before the launching of satellites to poach a terrestrial broadcast.

1608.1 The CHAIRMAN [F]: I do not think that there is any objection to accepting your proposal. Does everyone agree? The proposal is that we add in paragraph 7 after the word "protected", the words "to a certain extent".

1608.2 I give the floor to the delegate of Brazil.

1609.1 Mr. da COSTA (Brazil) [F]: With regard to paragraph 7, the whole second part of this paragraph "The originating broadcaster not only receives no remuneration..." up to the end seems to me to be a unilateral interpretation of the consequences of the piracy of the signals and this question was not discussed during the Conference. In addition, in document CONFESAT/VR.12 (prov.), paragraphs 73 to 77, we have the views of the programme contributors, which are not completely in agreement with this interpretation.

1. See paras. 732 to 736, supra.

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1609.2 Consequently, I think that it would be better to delete all this second part, i.e. from "The originating broadcaster not only receives no remuneration..." up to "satellite at all". If indeed we adopt this interpretation, we would also have to give the other one because the programme contributors are not at all in agreement with this interpretation.

1610.1 The CHAIRMAN [F]: I should like to know whether the General Rapporteur has something to say on this subject.

1610.2 I give the floor to the General Rapporteur.

1611. Ms. RINGER (General Rapporteur) [E]: I am perfectly willing to see the passage deleted.

1612.1 The CHAIRMAN [F]: Is everyone in agreement on the deletion of this passage?

1612.2 The delegate of Algeria has the floor.

1613. Mr. ABADA (Algeria) [F]: It is a purely formal question. The delegation of the Federal Republic of Germany had proposed that we add in paragraph 7 after the word "protected" the words "to a certain extent". But I wonder to what extent we can add this phrase, which is limitative, in conjunction with the word "automatically", because in the thinking of the General Rapporteur the constraints of technology automatically protected a broadcaster. And so when we say "to a certain extent" we are restricting the automatic nature. I think, therefore, that we have to choose between "to a certain extent" and "automatically".

1614.1 The CHAIRMAN [F]: Is this opinion shared by others? Should I conclude that we are in agreement to retain the words suggested by the delegate of the Federal Republic of Germany?

1614.2 It shall be so. We shall insert these words as indicated. In addition, we shall delete all that part of the text which begins "The originating broadcaster..." and ends "satellite at all".

1614.3 We shall proceed to the following paragraphs: 8, 9, 10, 11, 12, 13.

1614.4 I give the floor to the delegate of the Federal Republic of Germany.

1615. Ms. STEUP (Germany, Federal Republic of) [E]: We have a remark on the middle part of paragraph 12, which reads: "the Nairobi draft proposed to transport the Convention from the field of international private law to that of international public law, by eliminating any notion of private rights and leaving the States free to decide for themselves the most appropriate means for suppressing

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piracy on their territory". As far as I remember, this freedom was already in the former drafts; both the Lausanne and the Paris drafts said that the States were free to choose the means they thought to be appropriate. So we think it would be advisable to stop after the words "by eliminating any notion of private rights", and leave out the last part of the sentence. In the third line from the end there is a statement made that "there was no longer any corresponding need to create additional new rights in the Convention to safeguard the interests of programme-contributors". We would like to add there that this was the view of the majority of the delegations present at Nairobi, as well as of almost all observers from international non-governmental organizations. We think mentioning that there was a great majority in Nairobi makes the text clearer.

1616.1. The CHAIRMAN [F]: Are there any objections to following the suggestion of the delegate of the Federal Republic of Germany?

1616.2 Therefore, according to her, we should begin by deleting, in the middle of paragraph 12, that part of the sentence which begins "and leaving the States" up to the word "territory" and then, at the end of this paragraph, she would like to add, "this was the view of the majority of the delegations present at Nairobi, as well as of almost all observers from international non-governmental organizations".

1616.3 I give the floor to the delegate of Brazil, who had already asked for it and then to the delegate of Algeria.

1617. Mr. da COSTA (Brazil) [F]: I should like to intervene on paragraph 12 but for another problem.

1618.1 The CHAIRMAN [F]: I think it would be better to close the discussion on the point raised by the delegate of the Federal Republic of Germany.

1618.2 The delegate of Algeria.

1619.1 Mr. ABADA (Algeria) [F]: It is on the subject of the first observation of the delegation of the Federal Republic of Germany who proposes that we delete "and leaving the States free to decide for themselves the most appropriate means...". I wonder to what extent this deletion is not contrary to the text that we drafted and in which we give States complete freedom to decide for themselves the most appropriate legislation applicable against the piracy of programme-carrying signals transmitted by satellite.

1619.2 That is why, in order to be in conformity with our Article 2 which leaves this to domestic law, we think that it would be more judicious to leave this phrase in the Report since it corresponds to the spirit, to the reality of our work.

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1620. The CHAIRMAN [F]: I give the floor to the Co-Secretary-General, Mr. Masouye.

1621. Mr. MASOUYE (Co-Secretary-General of the Conference) [F]: I think that we could perhaps find a compromise formula which takes account of this observation, which is a correct one, of the delegate of the Federal Republic of Germany and also of that of the delegate of Algeria by keeping the phrase in question, i.e. "and leaving the States...", but adding the words "as in previous drafts"; because in fact it is true that already at Paris and at Lausanne this clause was envisaged. Therefore we would have, "The Nairobi draft proposed to transport the Convention, etc." and "as in previous drafts, etc.". I do not know whether the General Rapporteur would accept this compromise proposal which could satisfy the two observations that have just been made.

1622. The CHAIRMAN [F]: I give the floor to the General Rapporteur to reply to the question just asked by Mr. Masouye.

1623. Ms. RINGER (General Rapporteur) [E]: As far as the General Rapporteur is concerned, any of the suggestions are perfectly acceptable. I think there is a shade of difference in meaning, though. In transporting the Convention into the field of public law as against private rights the freedom of the States to implement the Convention was obviously broadened: they were no longer constrained to offer protection in the field of private rights under the Convention. I am not quite sure that the text that emerged at Nairobi is exactly the same on this point as the earlier drafts, and I should rather regret any implication that it is. I should prefer to leave the whole thing out, as the delegate of the Federal Republic of Germany suggested, or leave it in, as the delegate of Algeria suggested.

1624. The CHAIRMAN [F]: I give the floor to the delegate of Algeria.

1625.1 Mr. ABADA (Algeria) [F]: The draft Report that we are studying is relative to the Brussels Convention and to the work of the Brussels Conference. What came out of it was that States were given complete freedom to choose their own legislation with regard to programmes transmitted by satellite.

1625.2 For the work of Nairobi, there is the Nairobi draft Convention and there is the Report of the Nairobi Conference. If one wanted to have an idea of what had happened at Nairobi, one would refer to the Nairobi Report; and if one wants to have an idea of what happened at Brussels, one would refer to the Brussels Report. We think that these are two different things: the Brussels Report concerns the Brussels Convention and the Nairobi Report concerns the Nairobi draft.

1626. The CHAIRMAN [F]: The delegate of Senegal.

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1627. Mr. DIOUF (Senegal) [F]: My intervention no longer has any point since the delegate of Algeria has said what I wanted to say.

1628. The CHAIRMAN [F]: I give the floor to the delegate of the Central African Republic.

1629. Mr. TOKPAN (Central African Republic) [F]: It is simply to support the observations of the delegate of Algeria.

1630.1 The CHAIRMAN [F]: I can therefore conclude that we keep the text as it stands, i.e. we keep the words "and leaving the States free to decide for themselves, etc."

1630.2 In addition, at the end of paragraph 12, we would add the words, "this was the view of the majority of the delegations present at Nairobi, as well as of almost all observers from international non-governmental organizations". In any case, the General Rapporteur seems to agree that we can add this phrase.

1630.3 I think we all agree and we shall therefore finalize the text like that.

1630.4 I now give the floor to the delegate of Brazil who asked for it to speak on another point.

1631.1 Mr. da COSTA (Brazil) [F]: It is also on paragraph 12. As the delegate of Algeria observed, the Report obviously goes beyond much of what was said at Brussels. But finally I do not think that that is a bad thing since we shall thus have a comprehensible document which will permit an understanding of this question of satellites.

1631.2 But the General Rapporteur speaks of Columbus's egg. I should not like Christopher Columbus' egg to become scrambled, and I think it would not be superfluous to recall in this connexion that this egg was discovered by Morocco, Brazil, India and Mexico, since elsewhere we recognize the paternity of much less important provisions. Consequently, I think we should do the same here in connexion with this provision which is absolutely fundamental since that was what enabled us to reach the point we have now reached.

1632.1 The CHAIRMAN [F]: Are there any observations to be made on this subject? Then we accept this suggestion.

1632.2 Can we proceed to consider the headings "Documentation", "Participation" and "Organization of the Conference".

1632.3 I give the floor to the delegate of the United Kingdom.

1633. Mr. DAVIS (United Kingdom) [E]: I think just once in the

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whole Report the United Kingdom might appear with its full title.

1634.1 The CHAIRMAN [F]: It is therefore in paragraph 16 that we should include the complete title of the United Kingdom, viz. "the United Kingdom of Great Britain and Northern Ireland".

1634.2 I give the floor to the General Rapporteur.

1635. Ms. RINGER (General Rapporteur) [E]: A very minor point. I have forgotten what paragraph this occurs in, but I believe I indicated that there were ten meetings of the Main Commission. I counted them again and I now believe there were eleven. I would like to correct that.

1636.1 The CHAIRMAN [F]: This is in paragraph 22 which states: "After ten sittings". The General Rapporteur is correcting this to "eleven".

1636.2 We now proceed to paragraph 23. Then to the "Opening Session".

1636.3 The section concerning the "Credentials Committee", then the "Rules of Procedure", then "Officers, Committees and Adoption of Agenda".

1636.4 I give the floor to the delegate of France.

1637. Mr. BUFFIN (France) [F]: In the second sentence of paragraph 30, we have, "These individuals were elected unanimously". We think that the word "personnalités" would be more appropriate in the French text to the eminent dignity of the heads of delegations who are designated in the first sentence.

1638.1 The CHAIRMAN [F]: I do not think that anyone, especially the General Rapporteur, will have any objection to putting "personnalités" in the French text.

1638.2 Are there any observations on the rest of this heading?

1638.3 We now proceed to the following heading, "General Opening Discussion".

1638.4 I give the floor to the delegate of Hungary.

1639.1 Mr. TIMAR (Hungary) [F]: First of all, I should like to congratulate the General Rapporteur for her excellent work on this Report.

1639.2 With regard to paragraph 36, Hungary is listed among the countries which accepted the Nairobi text as a compromise. But, as can be read in document CONF/SAT/VR.6 (prov.)¹, the

1. See paras. 74.1 to 120, supra.

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Hungarian delegation did not during the general discussion, and indeed has never accepted the Nairobi text, and has never made any reference to Article IV, Alternative A, of the Paris text. We have always stated that in our opinion the Nairobi draft does not satisfy the requirements of copyright protection. Consequently, we consider that Hungary should appear in the second category of countries, those which considered that the Nairobi text was not sufficient with regard to copyright protection.

1640.1 The CHAIRMAN [F]: You wish, therefore, that we delete Hungary in the first part of this paragraph and that it appear among the countries which are mentioned in the second part of this paragraph. We shall make this correction in the text.

1640.2 I give the floor to the delegate of Czechoslovakia.

1641.1 Mr. KUNZ (Czechoslovakia) [F]: The last sentence of paragraph 43 reads: "The Soviet proposals were later put forward in the form of specific amendments to the Nairobi text (documents UNESCO/WIPO/CONFESAT/8,23, 28, 31 and 32) etc...".

1641.2 I should like to draw your attention to documents CONFESAT/23 and 28. The proposals contained therein come from several countries among which are Czechoslovakia, the German Democratic Republic, Hungary, etc. I would be grateful if this fact could be mentioned.

1642. The CHAIRMAN [F]: I give the floor to the General Rapporteur.

1643. Ms. RINGER (General Rapporteur) [E]: I apologize for what I think is an inaccuracy both here and at a later point in the introductory material. I did refer inaccurately to the Soviet proposals; I think there are two inaccuracies, actually, as it has been explained to me. The first document that was introduced, CONFESAT/8, was introduced by the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic and I lumped those together as "Soviet" proposals; but I think for the sake of accuracy that the entire formula should be used when referring to this matter. Then it is quite true that later proposals were co-sponsored by, I believe, Hungary, Czechoslovakia and the German Democratic Republic. At any rate this is accurately reflected in Part III of the Report, but I missed it when I wrote this first part. The corrections which should be made apply not only to paragraph 43, as the delegate of Czechoslovakia points out, but also I believe in paragraph 50 and in another place; and the corrections will be made.

1644. The CHAIRMAN [F]: I give the floor to the delegate of the Union of Soviet Socialist Republics.

1645.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: Before making a few additional proposals, I should like to join with

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my Hungarian colleague in thanking Ms. Barbara Ringer for the great amount of work she has done and to congratulate her on the success she has achieved in her task. At the same time, I should like to make a few clarifications in the text, particularly in this section.

1645.2 In paragraph 43, I would ask the Conference to take account of our wish to develop this paragraph somewhat by including a number of points which have already been stated by us and which will be submitted in writing to the General Rapporteur. The purpose of this is to avoid misconstruction of the proposals and amendments submitted by the Soviet delegation in the course of the Conference, which have been dealt with in detail and, in our view, in a quite balanced and objective manner in this Report. Accordingly, I would ask you also to take account of our observation in connexion with the numbering of the documents - 23, 28 etc. - to which Ms. Ringer has already referred.

1645.3 I should like the wording of paragraph 49 to be improved. It is stated that "These proposals were introduced following the Main Commission's consideration of Article 3 of the Nairobi text". But this is not entirely correct. These proposals were introduced on the very first day of the work of our Conference. Therefore the words "These proposals were introduced following the Main Commission's consideration" should be replaced by "These proposals were considered in the Main Commission after Article 3 of the Nairobi text".

1645.4 Paragraph 50. The first part of the sentence - "When the question of the Soviet proposals... came up again on Friday afternoon, May 10, 1974". Maybe this is a translation matter, but the wording "The question of the Soviet proposals... came up again" is not precise enough, in our view. We therefore propose the following wording: "When the Conference came to consider, or continued consideration of, the proposals of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic in document UNESCO/WIPO/CONFESAT/8, on Friday, May 10, 1974", and so on as in the original text.

1645.5 In this same paragraph 50, after the inverted commas at the end of the complete text of the article introduced by us, we should like to insert three statements giving the grounds for this proposal. We have drafted this addition in writing, and we should like to hand it to Ms. Ringer.

1645.6 As regards paragraph 52, I would also request the Conference to make the wording a little more precise, by stating that the Conference decided to send the Secretary-General of the United Nations a specifically-worded letter, accompanied by the Report and verbatim records for him to transmit as an official document to United Nations Member States and the Committee on the Peaceful Uses of Outer Space.

1645.7 These are the observations we wish to make. I rather think they have more to do with the wording than the actual substance of the Report.

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1646.1 The CHAIRMAN [F]: May I ask the General Rapporteur what she thinks of this intervention.

1646.2 I give the floor to the General Rapporteur.

1647. Ms. RINGER (General Rapporteur) [E]: I can see no objection to accepting any of these if the Conference wishes. I think that we might consider attaching to the Report not only the letter which, of course, figures prominently in the last part of the Report - and I think the Report would be incomplete without the letter - but I would also include the resolution that was agreed to at the Plenary before this one, congratulating the Conference on its work and expressing its appreciation to the government of Belgium. I think that these two documents could be annexed as an integral part of the Report.

1648.1 The CHAIRMAN [F]; I think that after the intervention of Ms. Ringer, the suggestions of Czechoslovakia and the Soviet delegation can be followed, but the delegate of the Soviet Union should contact Ms. Ringer to finalize the texts.

1648.2 I give the floor to the delegate of the United States of America.

1649. Mr. WINTER (United States of America) [E]: I regret that the delegation of the United States of America cannot accept the suggestion of the delegate of the Soviet Union that he will make suggestions as to substantive changes or additions in paragraph 43 and certain other paragraphs in this very politically sensitive discussion. We would have no objection to a reference, for example, being made to the letter to the United Nations and the fact that this is going to be forwarded, but unless the delegate of the Soviet Union is prepared to tell us the substance of his inclusions into these paragraphs, I would not think that this Conference could just accept the inclusions without knowing what he wishes to put in the paragraphs.

1650. The CHAIRMAN [F]: I give the floor to the delegate of France.

1651. Mr. BUFFIN (France) [F]: In the third sentence of paragraph 43 we have the following: "To that end, he [the delegate of the Union of Soviet Socialist Republics] proposed that the draft Convention could be enriched by provisions safeguarding the peaceful uses of satellites...". Instead of "enriched" the French delegation would like to express its preference for the adoption of a more neutral and less unusual term, such as "supplemented".

1652.1 The CHAIRMAN [F]: I do not think that there is any

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objection to replacing the word "enriched" by the word "supplemented".

1652.2 I should, therefore, like to come back to the intervention of the delegate of the Soviet Union and that of the delegate of the United States of America. I said earlier that the delegate of the Soviet Union was invited to contact the General Rapporteur to finalize the text he wants. Now, following the intervention of the delegate of the United States of America, I think that it would be necessary for the delegate of the Soviet Union to kindly state clearly to the assembly the text that he would like to have inserted in the Report.

1652.3 I give the floor to the delegate of the Soviet Union.

1653.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: Indeed, I thought that the Conference in the person of the Chairman had agreed to our proposals, and accordingly a member of our delegation has gone to the Secretariat to have our proposals typed and printed for transmission to Ms. Ringer; but I will tell you practically word for word what is in the proposal, and I should like to assure my United States colleague, Mr. Winter, that there is nothing more in it than what was said in my speech, namely, that we propose to include an additional sentence saying that the speech of the Soviet Union delegate contained a reference to the proposal made by the Soviet Government in August 1972, to the United Nations. This refers to paragraph 43.

1653.2 As to paragraph 50, the insertion reads something like this: "Justifying this article, the Soviet delegation observed that, in its view, it was difficult to distinguish signals from programmes, that those principles should not only apply to direct television broadcasting but could also be applied to the distribution system, namely, point-to-point transmission, and that they were in line with the standards adopted earlier, regulating those matters". So these are the three statements to be added to paragraph 50, and we have no other remarks or proposals to make.

1654. The CHAIRMAN [F]: I give the floor to the delegate of the United States of America.

1655. Mr. WINTER (United States of America) [E]: I would also thank the delegate of the Soviet Union for his explanatory remarks. As long as these sentences that he has suggested are along the lines of his original statement, we certainly would have no objection to them. The United States delegation simply wanted to have some indication of what the substance of these proposals were.

1656.1 The CHAIRMAN [F]: The question is therefore settled.

1656.2 I give the floor to the delegate of the Federal Republic of Germany.

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1657. Ms. STEUP (Germany, Federal Republic of) [E]: We have a remark to paragraph 38, where it is said that my delegation shares to some extent the view of the delegation of the United Kingdom. This could be interpreted as if we had said that we will make our signature dependent on a change of attitude by the broadcasters. We did not say that and, therefore, we would propose to substitute for the words "This view was reflected to some extent" the words "The urgency of a change of attitude toward the Rome Convention by the broadcasters was also stressed in the remarks..."

1658.1 The CHAIRMAN [F]: Do we agree to accept the suggestion of the delegate of the Federal Republic of Germany? I think that is so.

1658.2 I give the floor to the delegate of Brazil.

1659. Mr. da COSTA (Brazil) [F]: I am not very clear as to where we are because the delegate of the Soviet Union is up to paragraph 51. Can we speak now about paragraphs 46 onwards?

1660. The CHAIRMAN [F]: Certainly, yes.

1661. Mr. da COSTA (Brazil) [F]: I have several observations to make. In paragraph 48, the Report states, "the Main Commission became somewhat bogged down in differences of opinion...". That seems rather apocalyptic to me. I would prefer something a little more moderate, for example, "The Main Commission encountered difficulties arising from differences of opinion", if the General Rapporteur agrees.

1662.1 The CHAIRMAN [F]: I agree, but I should like to know whether the General Rapporteur is also in agreement in this connexion.

1662.2 Perfectly. It shall be so.

1663. Mr. da COSTA (Brazil) [F]: A second observation on paragraph 51. I should not like to be the one to cause a storm, but for the sake of truth, we should, in the penultimate line of paragraph 51, cross out "32" because in fact this document CONF/SAT/32 was distributed only after the meeting of the Working Group. Consequently, neither the Main Commission nor the Working Group could take a decision on document CONF/SAT/32. And then, you will recall, the Conference linked the fate of document CONF/SAT/32 to the Soviet proposal on Article 7bis. That is a detail but it is better that the Report be an absolutely faithful one. It would therefore be necessary to cross out "32" and then, when we take up the Soviet proposal again, we can say that it has become document CONF/SAT/32.

1664.1 The CHAIRMAN [F]: Agreed. Are there any other observations?

1664.2 We have, therefore, finished this heading and we can now

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proceed to the second part of the Report. There is first of all a synoptic table that is extremely interesting and which facilitates our research. We can congratulate the General Rapporteur for having had this idea. Then, there is a text referring to the Title. No comments?

1664.3 The text on the Preamble.

1664.4 I give the floor to the delegate of the Union of Soviet Socialist Republics.

1665.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: As to the Russian version of paragraph 59, my request is that the Convention named be given its proper title. It is officially translated and called in Russian "Mezdunarodnaja konvencija elektrosvjazi i radioreglamenty" and not "Mezdunarodnaja konvencija po telesvjazi". I repeat, in Russian the Convention is called "Mezdunarodnaja konvencija elektrosvjazi i radioreglamenty".

1665.2 As to paragraph 60, I would ask Ms. Ringer, and first of all the Conference, of course, to alter the wording slightly. Otherwise it will look as though our proposals were a bone of contention at all the preparatory meetings and that we objected to the Rome Convention. This was not quite the case. It would be better to say that the delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic proposed that no preference be given to any international agreement, so that the wording would simply be "that previously concluded international agreements should not be prejudiced". This would be more in accordance with the truth and with our reasons for making the proposal. And in paragraph 62 - if we have already gone on - I would also request that the correct Russian title be used for Vsemirnaja administrativnaja radiokonferencija po kosmičeskoj svjazi (CAMTE), as it is officially called in our documents.

1666.1 The CHAIRMAN [F]: I think that with regard to the Russian text of paragraphs 59 and 62 you can have satisfaction; the Russian text must be changed. Please let the Secretariat have the text which should be substituted for the existing text.

1666.2 Are there any observations in connexion with the intervention of the delegate of the Soviet Union with regard to paragraph 60?

1666.3 I give the floor to the delegate of Argentina.

1667. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: In paragraph 60 of the Spanish text we find "llegó a proponer". I think it would be more logical to say "propuso".

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1668.1 The CHAIRMAN [F]: Could you communicate to the Secretariat the text that you would like to substitute for the existing text, in the Spanish version.

1668.2 I give the floor to the delegate of Argentina.

1669. Mr. IGLESIAS ECHEGARAY (Argentina) [S]: I am merely proposing the substitution of "propuso" for "llegó a proponer".

1670.1 The CHAIRMAN [F]: I now come back to the intervention of the delegate of the Soviet Union with regard to paragraph 60. Here too, I think we can give him satisfaction. He is rectifying the meaning of an intervention that he made in the course of the discussions. The Rapporteur also agrees that we should give satisfaction to the delegate of the Soviet Union.

1670.2 No one else wishes to ask for the floor? I can therefore consider that this section is approved.

1670.3 I now proceed to Article 1: "Definitions". Are there no comments on this section?

1670.4 I give the floor to the delegate of Kenya.

1671.1 Mr. STRASCHNOV (Kenya) [E]: May I speak about paragraph 75 which is still within the definitions? Before saying anything on this point, our delegation would also like to congratulate Ms. Ringer on the Report. We consider that what she produced is more than a Report, it is a scientific work, a commentary which will be in the future a most valuable document in order to understand the rather complicated text of this Convention.

1671.2 As far as paragraph 75 is concerned, the second sentence, we have some difficulty in reconciling the definition of distribution with the concept of personal and private use, and we would like to suggest a very small change. I will, if I may, read the second sentence of paragraph 75 as our delegation would like to have it drafted, "It would not be a 'distribution', and would be outside the scope of this Convention, to receive signals from a satellite for personal or private use". We believe that the concept of distribution in fact rules out automatically distribution for personal and private use and, therefore, we think that we should focus this second sentence on the reception by the ground stations.

1672. The CHAIRMAN [F]: I give the floor to the General Rapporteur.

1673. Ms. RINGER (General Rapporteur) [E]: I do not disagree with this proposed change. However, the sentence was intended to cover telephone and telegraphic communications that might use satellites in ways that involve the transmission of programme-carrying

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signals; I am not sure that the sentence as revised, which refers only to receipt, says much of anything now. I would almost rather take it out altogether.

1674. The CHAIRMAN [F]: I give the floor to the delegate of Australia.

1675. Mr. CURTIS (Australia) [E]: In speaking for the first time on this Report, I would like to join with those who have complimented Ms. Ringer on a most comprehensive and valuable document. With regard to the proposal by the delegate of Kenya, I would make the comment that to include in the Report the sentence in the form he suggested is likely to disturb the balance of the project in this way: we have all agreed, I think, that the reception and fixation of signals transmitted through a satellite is outside the scope of the Convention. To say in the Report that the Convention is not concerned with reception for personal or private use, for testing, or for technical or experimental purposes, may therefore cast some doubt on the position with regard to the reception and fixation of signals. For my own part, I would prefer to see the sentence either stand as it is, or be deleted altogether.

1676. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

1677. Mr. STRASCHNOV (Kenya) [E]: We would also agree to the deletion of the sentence.

1678. The CHAIRMAN [F]: I am not sure that I have understood correctly, but the delegate of Australia is asking that the text be kept as it stands and the delegate of Kenya is now asking for the deletion of this sentence. I should like to have more information on this subject. I give the floor to the delegate of Kenya.

1679. Mr. STRASCHNOV (Kenya) [E]: The delegate of Australia, if I understood him rightly, was not happy with our proposal to change this second sentence of paragraph 75, and he said that he would not mind if this second sentence were deleted. The same thing was said by the General Rapporteur, and we agree with it; so you have, at least from the three persons or delegations concerned, the same opinion: that the second sentence should be deleted.

1680.1 The CHAIRMAN [F]: If that is so, then everyone is in agreement.

1680.2 I give the floor to the delegate of Algeria.

1681. Mr. ABADA (Algeria) [F]: The second sentence of paragraph 75 is an explanatory sentence due to the fact that we defined "distribution" in the Convention as: "the operation by which a

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distributor transmits derived signals to the general public or any section thereof." The transmission of signals received from a satellite for personal or private use, for testing, or for technical or experimental purposes does not constitute a "distribution" within the scope of this Convention. If we delete the last sentence of paragraph 75 we are depriving ourselves of an explanation of the word "distribution". Would this not give rise in any case to some confusion as to the meaning of the definition that we have already given for the word "distribution"?

1682. The CHAIRMAN [F]: Could I know the opinion of the delegate of Kenya on this subject?

1683. Mr. STRASCHNOV (Kenya) [E]: If we look at the definition of distribution, it says: "the operation by which a distributor transmits derived signals to the general public or any section thereof." It is absolutely true that the distribution for private or personal use does not come within the definition of distribution, but on the other hand there are certain problems which may arise if we leave this second sentence in, I am speaking of paragraph 75, because you could also consider that, for instance, broadcasting, which is a form of distribution, or cable distribution goes to individuals and therefore is also for personal and private use. Therefore, by saying that distribution does not cover the case where the signal is distributed for personal or private use, I feel we are introducing on the contrary not a clarification but rather an uncertainty in the way the term "distribution" should be interpreted. The delegate from Australia was entirely correct when he said that we are not dealing in this Convention with reception or fixation. It is clear that Article 2 only deals with distribution. The mere reception whatever the purpose may be, and the fixation, are outside the scope of this Convention. This perhaps is not necessary to say; however, if the Conference is of the opinion that it is worth saying, perhaps it could replace the second sentence in paragraph 75, we could say precisely what the delegate from Australia said - which is an important point - that the Convention does not aim at catching either the reception, which is an operation by ground stations belonging to administrations, or common carriers, nor the fixation of the signal. This could perhaps be a sentence worthwhile inserting in paragraph 75 instead of the second sentence as it is now. But if that is not the opinion of the Conference, we would be perfectly happy with deleting the second sentence because, as I said, we believe that it may introduce a certain confusion in the explanation of the concept of distribution.

1684. The CHAIRMAN [F]: I give the floor to the delegate of the Federal Republic of Germany.

1685. Ms. STEUP (Germany, Federal Republic of) [E]: We think that the proposal just made by the delegate of Kenya is an excellent one. It gives a clearer explanation of our Convention and leaves out the somewhat doubtful terms of personal and private use. Therefore, we support the last proposal made by the delegate of Kenya.

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1686. The CHAIRMAN [F]: I should like even so to ask you for one more detail: you are in favour of the proposal which is to substitute the sentence suggested by the delegate of Kenya for the existing sentence? You are not in favour of purely and simply deleting the last sentence of paragraph 75?

1687. Ms. STEUP (Germany, Federal Republic of) [E]: We could agree to the deletion too but we think that the last proposal made by the delegate of Kenya is an even better solution.

1688. The CHAIRMAN [F]: I should like to ask the General Rapporteur what she thinks of this suggestion.

1689. Ms. RINGER (General Rapporteur) [E]: I think that the last proposal is a good one. The sentence as it was has introduced an uncertainty; "personal and private use" is subject to different interpretations. As I understand it, the whole sentence would come out, and a different sentence would go in that would indicate that the Convention is not aimed at reception or fixation; and it would be worded in a way that would make clear what the intention was. I do ask a question as to whether or not there is any purpose in referring to testing or experimental purposes. It is true that this was not discussed in Brussels and I do not believe it was discussed in Nairobi; but it was discussed and at some length in Lausanne, and I think there were references to it at Paris. This is why I included it, but I certainly have no personal feelings on the matter.

1690. The CHAIRMAN [F]: I give the floor to the delegate of Algeria.

1691.1 Mr. ABADA (Algeria) [F]: I refer to the proposal of the delegate from Kenya. In the opinion of the Algerian delegation, the second sentence of paragraph 75 is an a contrario explanation of the concept of "distribution". It excludes from the concept of "distribution" a distribution which takes place for personal or private use, or for testing, or for technical or experimental purposes.

1691.2 We know that the subject of our Convention is the indirect distribution of programme-carrying signals to the public, i.e. via earth stations. But each time that this concerns a distribution for personal or private use or simply for technical reasons, that is outside the purview of our Convention and it is logical to state it clearly and it is even necessary to indicate this in the Report for the meaning of the word "distribution" to be clear.

1692. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

1693. Mr. STRASCHNOV (Kenya) [E]: There cannot be, technically speaking, a distribution within the meaning of the Convention for technical or experimental purposes. What happens is, and here we

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are talking only about point-to-point satellites, excluding direct broadcast satellites, that the technical and experimental testing is done at the ground station. If it is required, the signal may also be conveyed to a possible distributor, i.e., let us say to the broadcasting organization, but it must stop there. The distribution, if it were done by the broadcaster, could never be experimental or technical, and never for private or personal use, because it would be a distribution to the public, as of necessity, broadcasting or cable distribution cannot be for personal or private use only. What can be for private use only or what can be for technical or testing purposes is the reception by the ground station where the ground station itself is tested, the position of the satellite, the orbital position of the satellite is tested and perhaps the micro-wave link between the ground station and the possible distributor or distributors. But from there on, a distribution for private and personal purposes can no longer take place because, of necessity, a distribution would be to the public in general or to a section thereof. That is the reason, I believe, why our colleague from Australia, as well as our own delegation, suggested that this second sentence does not entirely fit the context and we would like to replace it by another one which would say that the reception, as well as the fixation of the signals, are outside the scope of the Convention; and we can add a reference to testing and so on by saying "especially as testing and technical and experimental reception or fixation may be necessary from time to time in order to check the reception equipment as well as the orbital position of the satellite."

1694.1 The CHAIRMAN [F]: I should like to know whether there is agreement to substitute the sentence just proposed by the delegate from Kenya for the existing sentence. Does the General Rapporteur agree?

1694.2 The delegate of Hungary has asked for the floor.

1695. Mr. TIMAR (Hungary) [F]: I should like to ask whether the proposal of the delegation of Kenya is accepted or not. If it has already been accepted, then I shall not take the floor.

1696.1 The CHAIRMAN [F]: I think that we can consider that everyone accepts the suggestion of the delegate of Kenya, including the General Rapporteur. Therefore, it shall be so.

1696.2 We shall now proceed to Article 2: "Scope of the Convention".

1696.3 I give the floor to the delegate of Japan.

1697.1 Mr. HIRAKA (Japan) [F]: Allow me first of all to express my admiration to Ms. Barbara Ringer for her work as General Rapporteur.

1697.2 The amendments that I should like to propose are more or less of a drafting nature. In paragraph 80, there is a reference to a proposal from our delegation. I should simply like to ask that the

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number of this document be added in paragraph 80, eighth line, after the words "a proposal", add "(document CONFESAT/7)".

1697.3 Then, right at the end of this same paragraph 80, our delegation would like to insert a few words. After the words "private rights" we should like to add the words "alone or in combination with other means". I will explain myself: our delegation understands the words "as the case may be" as meaning that a State can apply the Convention not only by means of private rights, but also by other means, including those of public law.

1697.4 As to paragraph 81, our delegation has noted a small difference between the French and English texts. In the first line of this paragraph the words "bien fondé" do not quite correspond to the English "the good intentions". Our delegation would prefer the words "bien fondé", but I think that the idea of the Rapporteur was what is expressed in the English version, i.e. "good intentions". Therefore, the term "bien fondé" should be replaced by the term "la bonne volonté" behind the proposal. It is, therefore, the French text that needs correcting.

1697.5 In addition, in paragraph 85, there is a reference to several documents and in particular to document CONFESAT/7. This reference is not a pertinent one since this document does not concern Article 2(2). This reference should therefore be deleted.

1698.1 The CHAIRMAN [F]: I do not think there is any objection to our following these suggestions. First of all, with regard to paragraph 80, it is quite normal that we add the reference to the document that you indicate, viz. document CONFESAT/7. Then, with regard to the end of paragraph 80, we could add the phrase "alone or in combination with other means", if the General Rapporteur has no objection, and thus give you satisfaction there also. Finally, we shall of course delete the reference to CONFESAT/7 in paragraph 85, as you request.

1698.2 I give the floor to the General Rapporteur.

1699.1 Ms. RINGER (General Rapporteur) [E]: I think these are good suggestions and I apologize that the reference to document CONFESAT/7, in paragraph 80, was omitted. The reference was included in paragraph 85 because a consequential amendment concerning the duration was included in that document, but I think it could logically be deleted. I think that the other suggestions, including the better French translation of "good intentions", are excellent.

1699.2 I do suggest that it might be wise to limit the discussion here to paragraphs 78 through 84, and take up paragraphs 85 through 98 separately as a group, and later paragraphs 99 through 101 as a group. They are three different things and are dealt with more or less integrally in the text. I am afraid we are going to have a confusing discussion unless we group them in this way.

1700.1 The CHAIRMAN [F]: We shall therefore confine ourselves to

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the study of paragraph (1) of Article 2, before passing to paragraph (2).

1700.2 I omitted one other suggestion made by the delegate of Japan on paragraph 81 and I think that there too we can agree and the Secretariat will correct the text as the delegate from Japan has indicated.

1700.3 I give the floor to the delegate of Canada.

1701.1 Mr. SIMONS (Canada) [E]: First of all the Canadian delegation would like to congratulate the General Rapporteur for the excellent Report which we have in front of us.

1701.2 I just have one very minor point: in paragraph 78, line 10, where it says "passing through the signal", I think this should read "passing through the satellite".

1702.1 The CHAIRMAN [F]: That concerns only the English text. We agree.

1702.2 I give the floor to the delegate of the Soviet Union.

1703. Mr. KURAKOV (Union of Soviet Socialist Republics) [R]: I would call your attention to the last sentence of paragraph 83, in which it is stated that during the Conference it was pointed out that interception of signals on the "up-leg" is technically possible by use of a second satellite. It seems to us that this technical problem is exceedingly complex. Besides, this would be most inadvisable economically speaking, because the launching of such a satellite would require tens of millions of roubles, and it would cost as much to develop it. So, for reasons of common sense, no one will ever go to that length. Therefore, we propose that the sentence should be either deleted or reworded to the effect that during the Conference the point was raised by individual delegations, so as not to give the impression that it represented a consensus of opinion of the participants in the Conference.

1704. The CHAIRMAN [F]: I should like to hear the opinion of the General Rapporteur on this subject.

1705. Ms. RINGER (General Rapporteur) [E]: The reason that the sentence was included is that we are covering the up-leg, and it was to explain that it is technically possible. However, I certainly do not insist on retaining the sentence; the other alternative would be to leave it and add that it was highly unlikely, because of practical considerations.

1706.1 The CHAIRMAN [F]: Does the delegate of the Soviet Union agree that we proceed in this manner, viz. that we give a complementary explanation in the direction he has indicated. The delegate

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of the Soviet Union agrees. It shall be so, if you agree.

1706.2 I give the floor to the delegate of Brazil.

1707. Mr. da COSTA (Brazil) [F]: Three observations on paragraph (2), two of which are not important, but a third one which seems to be an important one. I shall begin with the least important.

1708.1 The CHAIRMAN [F]: I had asked delegates to kindly confine themselves provisionally to the first paragraph. Do you have any observations on the first paragraph?

1708.2 There are no observations from other delegations concerning this first paragraph? Then we can proceed to paragraph (2).

1708.3 The delegate of Brazil has the floor on the subject of paragraph (2).

1709.1 Mr. da COSTA (Brazil) [F]: My first observation concerns paragraph 89. This paragraph comments on a suggestion that I made, a personal compromise proposal which, according to the Report, would have had the effect of deleting Article 3 and giving protection under the treaty in perpetuity, in theory at least. That does not mean much. In fact, my personal compromise proposal - and I think that we can find it very easily in the Verbatim Records - would essentially have had the effect of deleting Article 3 "on the basis of the distinction between the right and its sanction". I should therefore like to add to the Report these few words, and paragraph 89 would continue without any change. In fact, if we deleted Article 3 we would maintain the right intact but each State would be able to apply the sanction only during the term it judged necessary. That is my first observation.

1709.2 The second rather unimportant observation refers to paragraph 95 concerning the proposed amendment from Guatemala. Here I am supposed to have said, "The Chairman reminded the Commission that a two-thirds majority would be necessary for adoption of the article in the Plenary Meeting, and urged the Main Commission to adopt the proposal of the delegation of the Federal Republic of Germany by consensus". I think that exactly what happened is as follows: the delegate from Guatemala proposed modifying part of the text of the sentence with the words "a period of twenty years could constitute". And I said to the delegate from Guatemala that the Main Commission had decided to choose between the two alternatives and, consequently, I asked him not to present his amendment immediately but to keep it for the Plenary Meeting where a two-thirds majority would be necessary. I think that that should be corrected. Then, we could continue, "the Chairman urged the Main Commission to adopt the proposal of the delegation of the Federal Republic of Germany by consensus, etc.". But all this is not very important.

1709.3 What does, on the contrary, seem very important, at least to me, is the present text of paragraph 93 which deals with the famous

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story of the show of hands and the voting. A reading of the present text of this paragraph 93 gives the impression that either I did not know what I was doing or that I yielded under pressure and I think that the Conference knows me well enough to know that it was neither. Consequently, I should like to correct the text as follows, "After a debate in the Main Commission on this alternative proposal and a minor change in language, the Chairman called for two straw tallies or votes by show of hands (that is the first difference, two straw tallies or votes by show of hands), first on which of the sub-alternatives to retain in Alternative A, and then on the choice between the two alternatives." Then I would propose that we delete the following sentence, "As the Chairman later rules,..." up to "test vote". And we would continue as in the Report, "In the first tally..." up to "General Report". And then we would delete the last sentence and would insert in its place the following sentence which, I think, tells what really happened and what I clarified in particular in the Plenary Meeting (see document CONFSAT/VR.18 (prov.)¹): "The Chairman of the Main Commission declared that it was impossible for him to announce the final result of these votes or straw tallies, since a certain number of delegations were in doubt on the question and had indicated that they would have taken different positions depending upon whether the tally was considered a vote or a straw tally. Thus, under a broad interpretation of Rule 23 of the Rules of Procedure, under which the Chairman is authorized to call for a new vote in cases of any doubt, he ruled that the tallies would be considered as straw tallies, and that, therefore, the Main Commission would not be definitely bound by them." As for the short sentence that follows, "This ruling was not formally appealed", I propose that we replace it by the following, "This ruling was not formally appealed, although certain delegations did not regard it as appropriate".

1709.4 That is a suggestion that I make for the Report in a desire for truth, because if I considered that these votes were straw tallies and not definitive votes, it is because numerous delegations let it be known that they were in doubt and this situation of doubt could not subsist. Since Rule 23 of the Rules of Procedure provides that in case of doubt a new vote is taken, I suggested a new vote, a new vote which was subsequently avoided by the proposal of the Federal Republic of Germany.

1709.5 I shall give the text to the General Rapporteur if she agrees.

1710.1 The CHAIRMAN [F]: I understand very well your concern and it is as Chairman of the Main Commission that you attach a very justified importance to this question. I understand perfectly your desire to bring the text closer to the facts. Are there any observations on the subject of the text that has just been read by the Chairman of the Main Commission?

1710.2 I give the floor to the General Rapporteur.

1. See paras. 1480.1 - 1480.2, supra.

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1711. Ms. RINGER (General Rapporteur) [E]: I am very grateful to the Chairman of the Main Commission. This was an extremely difficult and complicated debate and the procedural situation I think is quite accurately reflected in what the Chairman read out. I hope that he has the complete text which he can give to us, and I welcome it very enthusiastically.

1712.1 The CHAIRMAN [F]: Then it shall be so. The Chairman of the Main Commission will hand this text to you so that you can proceed with the correction.

1712.2 Before I give the floor to another delegation I think I can follow up the other suggestions made by the delegate of Brazil. First, in paragraph 89, I do not think there is any objection to giving him satisfaction. Then in paragraph 95, there I think he is also right and we can improve the text. Does the General Rapporteur agree? Thank you.

1712.3 I now give the floor to the delegate of Mexico.

1713.1 Mr. LARREA RICHERAND (Mexico) [S]: I shall try and be as brief as possible; in the first place, as this is our first intervention, we should also like to join in the congratulations that have already been given to the General Rapporteur, the delegate of the United States, Ms. Barbara Ringer, for her excellent work. We also wish to support what has been said by the delegate of Brazil, Mr. da Costa, who was quite right with regard to paragraph 93, since, in the first place, he led the debate very firmly and it seems to us that the work he accomplished was excellent; and in principle the drafting of paragraph 93 does not reflect his performance, and for that reason it should be changed as he suggests.

1713.2 Finally, with regard to paragraph 91, the delegation of Mexico would like to suggest that, in the third sentence of paragraph 91 where it is stated, "It was agreed that the Working Group should be asked", that a reference to paragraph 48 of this Report be added, for later on there is no report of what happened in the Working Group, and in paragraph 48 of the Report it is stated very clearly and there is no reason to repeat it. Thus, we could have "It was agreed that the Working Group should be asked, as noted above in paragraph 48 of this report, to search for a widely-acceptable compromise solution".

1714. The CHAIRMAN [F]: I give the floor to the delegate of Guatemala.

1715.1 Mr. PALACIOS GARCIA (Guatemala) [S]: Before referring to the individual paragraphs, permit my delegation too to congratulate Ms. Barbara Ringer for the valuable Report with which she has presented us and which has enabled us to progress with ease this morning. Next, I should like to give my total support to the observations made by the delegate of Brazil, the Chairman of the Main Commission, and say that we accept the proposals he has put forward.

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1715.2 However, I have a doubt with regard to paragraph 93. When counting the votes given in the middle of that page, the result is 20 votes in favour, 17 against and 13 abstentions. I have some doubt as to whether the total of these votes does not exceed the number of delegations present and I wonder whether, instead of 13, there were only 3 abstentions, so that this small error of 1 that we have here could change many things. I ask your consent, Mr. Chairman, that this number be revised, because I think that this would coincide with the number of 40 or 42 delegations if there are only 3 abstentions.

1715.3 Then, in paragraph 95, in the last sentence, where there is a reference to Guatemala, it states, "After the Main Commission had acted, the delegate of Guatemala indicated that he would raise his proposal again, etc." In order that this too be in line with what really happened, I should like to ask that this sentence be slightly modified in the following form: instead of "After the Main Commission had acted", it begin with "The delegate of Guatemala also expressed his reservations, and indicated that he would raise his proposal again in the Plenary Meeting."

1716.1 The CHAIRMAN [F]: I do not think there is any objection to giving the delegate of Guatemala satisfaction on both the points he has just raised. Therefore, it shall be so.

1716.2 I give the floor to the delegate of Algeria.

1717. Mr. ABADA (Algeria) [F]: I am intervening with respect to paragraph 96 and it is for a minor question that perhaps concerns only the French text. It says in the second sentence "the delegation of Algeria". In the third sentence it is spoken of in the masculine. Perhaps it would be better to replace "his" by "its", "in its opinion".

1718.1 The CHAIRMAN [F]: Agreed. I omitted earlier to speak of the follow-up to be given to the intervention of the delegate of Mexico on the subject of paragraph 91. I have the impression that everyone agrees he be given satisfaction and that reference will be made to paragraph 48 in paragraph 91. Does the General Rapporteur agree? Then, it shall be so.

1718.2 I give the floor to the delegate of Kenya.

1719. Mr. STRASCHNOV (Kenya) [E]: It is stated at the end of paragraph 94 that the delegate of the Ivory Coast stressed that the attitude, i.e., lack of trust of certain governments, was wholly unjustified, and that any government can be depended upon to adopt a reasonable period. It is perfectly right that the delegate of the Ivory Coast made this appeal and that this appeal did not give rise to any objection from any delegation. Therefore, our delegation would be very pleased if a further sentence were added to paragraph 94, saying that this opinion of the delegate of the Ivory Coast was shared by the other delegations.

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1720.1 The CHAIRMAN [F]: I think that this is a good suggestion and that it corresponds to the truth. Does the General Rapporteur agree to add this sentence, which seems to me to effectively reflect what really happened during the debate? Agreed? It shall be so.

1720.2 No one else wants the floor? Then we shall proceed to the following paragraph, to paragraph (3) which deals with signals already distributed by a distributor for whom they were intended.

1720.3 Since there are no objections, it is adopted.

1720.4 I give the floor to the delegate of Switzerland.

1721. Mr. MARRO (Switzerland) [F]: First of all, my thanks to the General Rapporteur whose work is always a source of wonder to me and I should simply like to make one minor point on the subject of paragraph 100. Could not the reference to paragraph (2) in the first line be replaced by paragraph (3)? Therefore, the first line of paragraph 100 would read "Article 2(3)" instead of "Article 2(2)". A small fault in numbering. That is all.

1722.1 The CHAIRMAN [F]: Agreed. It is corrected: "Article 2(2)" is replaced by "Article 2(3)".

1722.2 Are there no other speakers on this text? Then we shall proceed to Article 3: "Distribution of Signals from Direct Broadcast Satellites", paragraphs 102 to 106.

1722.3 We shall proceed to Article 4 since there are no observations on Article 3. Article 4 concerns "Exceptions". No observations?

1722.4 Article 5: "Non-Retroactivity".

1722.5 The delegate of Austria has the floor.

1723. Mr. DITTRICH (Austria) [E]: My statement relates to paragraph 110. The proposal of the delegation of the United States of America is correctly reflected in this paragraph, but I would suggest a short phrase be added reflecting the attitude of the Conference on this proposal.

1724.1 The CHAIRMAN [F]: Can we give satisfaction to the delegate of Austria? Agreed.

1724.2 We now come back to Article 5. No remarks?

1724.3 Article 6: "Safeguard of Interests of Contributors to Programmes".

1724.4 I give the floor to the delegate of the Federal Republic of Germany.

1725.1 Ms. STEUP (Germany, Federal Republic of) [E]: We have a

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remark concerning paragraph 115. In the sentence beginning: "However, the delegation of the Federal Republic of Germany asked," and so on, I think the delegation of Austria should be added, because Austria made the same request.

1725.2 Then, I think the last sentence: "However, since the view is disputed," and so on, has no real meaning in this Report. It is taken from the note explaining our proposal which was later withdrawn. Therefore, we would like to have this last sentence deleted, but another sentence added which reflects what we and the delegation of Austria said in the Main Commission. This sentence would read: "The delegations of Austria and the Federal Republic of Germany stressed that withdrawal of their proposal meant no divergence from this unanimous view, but was merely due to the Conference's decision to exclude from the Convention signals emitted by the originating organization to DBS."

1726. The CHAIRMAN [F]: I give the floor to the delegate of Austria.

1727. Mr. DITTRICH (Austria) [E]: It is only to confirm the statement of the delegate of the Federal Republic of Germany on behalf of my delegation.

1728.1 The CHAIRMAN [F]: I see that the General Rapporteur is also in favour. And so I think that we can consider that this is a fait accompli and that the suggestion made by the delegate of the Federal Republic of Germany, seconded by Austria, is accepted.

1728.2 If you agree, we shall now proceed to the third and last part of the Report.

1728.3 Article 7: "Abuses of Monopoly".

1728.4 I give the floor to the delegate of Austria.

1729. Mr. DITTRICH (Austria) [E]: I have a very short remark concerning paragraph 117. Our statement is reflected in the middle of this paragraph. It reads: "There was, however, opposition to the specific proposal on various grounds: that it would create insuperable practical difficulties in certain countries because of their legal framework or business or labour practices;" and I think it would be a good idea to insert here: "especially with respect to permanent employees".

1730.1 The CHAIRMAN [F]: I do not think there is any objection to giving satisfaction to the delegate of Austria. Does the General Rapporteur agree?

1730.2 I give the floor to the General Rapporteur.

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1731. Ms. RINGER (General Rapporteur) [E]: No, it is perfectly true that this point was made during the debate. I wonder whether it would not be better to say, "permanently employed performers", if that is the intention of the Austrian delegation.

1732. The CHAIRMAN [F]: I give the floor to the delegate of Kenya.

1733. Mr. STRASCHNOV (Kenya) [E]: We would have preferred the sentence as suggested by the Austrian delegation. It was mainly the delegation of Kenya who spoke about the position of employees, and we underlined that there were difficulties with the Danish/Mexican proposal, not only because of performers permanently employed, but also authors permanently employed. Therefore, the broader wording suggested by the delegation of Austria would, I think, correctly reflect our own statement on this question.

1734. The CHAIRMAN [F]: What does the delegate of Austria think?

1735. Mr. DITTRICH (Austria) [E]: We prefer, of course, the insertion proposed by the delegation of Kenya.

1736.1 The CHAIRMAN [F]: The General Rapporteur also agrees. Therefore it shall be so. Thus, the suggestion of the delegate of Kenya will be followed.

1736.2 We now come back to the third part, beginning with Article 7: "Abuses of Monopoly". No one wants the floor?

1736.3 I therefore proceed to Article 8: "Reservations".

1736.4 I give the floor to the delegate of the Federal Republic of Germany.

1737.1 Ms. STEUP (Germany, Federal Republic of) [E]: We have three remarks on these paragraphs. The first one is, I think, a very simple one. In paragraph 124 there is an "except" missing in the last sentence. I think the sentence should read "the provision of paragraph (1), forbidding reservations except in situations specified in paragraphs (2) and (3)", because paragraphs (2) and (3) allow reservations. Then we have a remark to paragraph 127 where the proposal of the delegation of the Federal Republic of Germany is explained. We would like to have a slightly different draft reading as follows: "To this end, the delegation of the Federal Republic of Germany tabled a compromise proposal intended to be a substitute for the bracketed proviso in Article 11 (3) of the Nairobi Draft, under which a cable system would be prohibited from distributing signals picked up directly from a satellite, and not obtained from an intervening terrestrial distribution of the signals by wireless means". This was the content of our proposal and I think the meaning is a bit different.

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1737.2 Our last point relates to paragraph 129. We had some talks with those delegations who were members of the little informal working group, and we agreed to have the following text: "The Conference agreed that, bearing in mind the provisions of the ITU Convention and the aims of the present treaty, a cable system should not, relying on a reservation under Article 8 (3), pick up and distribute signals from a satellite before those signals have been terrestrially distributed in an area in which the cable system can receive the terrestrial broadcast".

1738.1 The CHAIRMAN [F]: With regard to the first remark referring to the text of paragraph 124, I think that you are quite right, we should insert the word "except" after "reservations".

1738.2 With regard to the remarks of the delegate of the Federal Republic of Germany on the subject of the text of paragraphs 127 and 129, I should like to ask the General Rapporteur if she agrees. She agrees.

1738.3 I give the floor to the delegate of the United Kingdom.

1739. Mr. DAVIS (United Kingdom) [E]: This is a matter of some importance to the United Kingdom and I am sorry but I must ask for the wording so that I can get it down.

1740. The CHAIRMAN [F]: May I ask the delegate of the Federal Republic of Germany to follow up this invitation?

1741. Ms. STEUP (Germany, Federal Republic of) [E]: I think the request relates only to paragraph 129 containing the interpretation. I will read out the text slowly again: "The Conference agreed that, bearing in mind the provisions of the ITU Convention and the aims of the present treaty, a cable system should not, relying on a reservation under Article 8(3), pick up and distribute signals from a satellite before those signals have been terrestrially distributed in an area in which the cable system can receive the terrestrial broadcast".

1742.1 The CHAIRMAN [F]: I think that the delegate from the United Kingdom is in agreement. We are all in agreement, including the General Rapporteur. It shall therefore be so.

1742.2 We shall now proceed to Article 9: "Application of the Convention".

1742.3 The delegate of the Soviet Union has the floor.

1743. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I would ask the Conference and Ms. Ringer to make the wording in the middle of paragraph 130 a little more precise. I refer to the proposal mentioned after the words "... (document UNESCO/WIPO/CONF/SAT/12) among many others". Maybe this is a translation matter, but the

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statement that our proposal would have deleted both alternatives, gives the impression that it undermined the entire basis of this Article. I therefore request that the sentence be reworded as follows: "The delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic (document UNESCO/WIPO/COMPSAT/8) proposed that only the first part of the Article be retained and that both alternatives be deleted, leaving the Convention completely open."

1744.1 The CHAIRMAN [F]: Does the General Rapporteur agree? It shall therefore be so.

1744.2 The delegate of Australia has the floor.

1745. Mr. CURTIS (Australia) [E]: I had in fact asked for the floor before you had said that we were passing on to Article 9, and what I have to say is a very small point on paragraph 126. I would be grateful if the General Rapporteur would agree to add to the end of paragraph 126 the words "on the basis of its present law". This was, in fact, what I had said in my explanation, when I had said that I was satisfied after discussion that we could apply our present law. I think this point is of some importance also to other delegations, and that is why I suggest the addition of those few words.

1746.1 The CHAIRMAN [F]: I think we are all in agreement to give you satisfaction.

1746.2 I give the floor to the delegate of Mexico.

1747. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico would like to have the name of Mexico added in the first part of paragraph 130, where it speaks of the delegation of France, since Mexico and France jointly supported this proposal at Nairobi. We should like it to read "by the delegations of France and Mexico".

1748.1 The CHAIRMAN [F]: Agreed. We shall therefore add that this first alternative was also supported by the delegation of Mexico. There are no other observations?

1748.2 Article 10: "Entry into force".

1748.3 The delegate of the United Kingdom has the floor.

1749. Mr. DAVIS (United Kingdom) [E]: As I remember the discussion on this point, a number of delegations expressed the hope that in some way or other the United Kingdom, and I think the Netherlands, might find it possible to get by, as it were, legally or by some other means, the difficulties which I had outlined, and which were raised in the absence of the dependent territories clause. I merely would like to make the point that since I expressed

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this view, I wonder whether we could say in the Report that the rejection of this clause did not mean that the Conference considered that a country having dependent territories should not be able to accede to the Convention in respect of its own territory; I feel that was the sense of the meeting.

1750. The CHAIRMAN [F]: I give the floor to the delegate of the Soviet Union.

1751. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I would also ask the Conference to make paragraph 132 more precise by mentioning the arguments put forward by the delegations of the Ukraine and of the Soviet Union, inasmuch as this was a proposal relating to document CONF/SAT/8. I would therefore request the insertion, after the words "the so-called 'territorial dependency' clause", of the following sentence: "In support of their proposal, the delegates of the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics stated that paragraph (3) of Article 9 and paragraph (1) of Article 10 were obsolete and in contradiction with the Declaration of the United Nations General Assembly on the granting of independence to colonial countries and peoples (resolution 1514 (XV) of 14 December 1960)".

1752. The CHAIRMAN [F]: The delegate of the Netherlands has the floor.

1753. Ms. KLAVER (Netherlands) [E]: I should like to say that I fully agree with the remarks made by the delegation of the United Kingdom. I also understood this to be the meaning of the Conference and the outcome of our debate. I have a very slight remark to make on another point in the text of paragraph 132. It reads: "The delegations of the United Kingdom and the Netherlands explained the practical difficulties that the deletion of the clause, which appears" and then I would add "in a great number of treaties, including treaties on intellectual property", because in fact this clause appears in many treaties which we adhere to. Then, a very slight error has slipped in on page 40, where it has been said that "the delegate of the Netherlands stressed that for his government there was no question of colonialism, obsolete or moral". This should, of course, be "modern".

1754.1 The CHAIRMAN [F]: I think that we can give you satisfaction as of now both with regard to the substitution of the word "modern" for "moral" and with regard to the addition that you propose. Moreover, we can give satisfaction to the delegate of the United Kingdom on the suggestion he made. I do not think there is any objection.

1754.2 I give the floor to the delegate of Kenya.

1755. Mr. STRASCHNOV (Kenya) [E]: We only wanted to underline

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the importance of the additional sentence which the delegate of the United Kingdom suggested be included in paragraph 132. There are as you know two broadcasting organizations in the United Kingdom; their programmes are very often relayed by satellite to other continents and it would be extremely desirable that the United Kingdom in spite of the disappearance of the old Article 9, paragraph (3) should be able to become bound by this new Convention. Therefore, we are very much in favour of this additional sentence.

1756. The CHAIRMAN [F]: The delegate from Israel has the floor.

1757. Mr. GABAY (Israel) [E]: With your permission I should like to refer back to paragraph 131 which we missed while we were discussing this; but before coming to paragraph 131, I should like to join the previous delegations in congratulating the General Rapporteur for this excellent Report. As you may recall, the last sentence in paragraph 131 was inserted in the Report at the suggestion of the delegation of Israel and we would appreciate that a reference to this effect should be included in the Report.

1758.1 The CHAIRMAN [F]: I think that we can give satisfaction to the delegate of Israel.

1758.2 I give the floor to the delegate of Algeria.

1759.1 Mr. ABADA (Algeria) [F]: You will remember that during the discussion of this Article 10, the Algerian delegation stated that it was in favour of the proposal of the Union of Soviet Socialist Republics and the other Republics which are the co-authors of this proposal.

1759.2 We would like to have the name of Algeria included here and we propose that the following remark be added: "This point of view (i.e. the point of view expressed by the delegations who were the authors of document CONFESAT/8) was fully supported by the delegation of Algeria". Then, if possible, we would like to have mentioned certain principles that we developed in our intervention and that appear in the Verbatim Records.

1760. The CHAIRMAN [F]: The delegate of the Federal Republic of Germany has the floor.

1761. Mr. GAERTE (Germany, Federal Republic of) [E]: I would only like to say that we have, in our intervention regarding Article 10, stressed that this provision should not prevent a number of countries from acceding to this treaty. We would regard their accession as very important and, therefore, I would like to support the proposal of the United Kingdom delegation to include a sentence in the Report to this effect.

1762.1 The CHAIRMAN [F]: To my mind we have already accepted the

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suggestion made by the delegate of the United Kingdom.

1762.2 I give the floor to the delegate of Brazil.

1763. Mr. da COSTA (Brazil) [F]: You have just said that the question raised by the United Kingdom is solved. Consequently, I am a little late. But perhaps it might be advisable to add in the Report that the Conference considered that the deletion of the colonial or metropolitan clause would not prevent ratification by countries still responsible for the administration of certain territories and that they would find the means of making these territories known. That is indispensable: internal means, communications under domestic law, etc.

1764.1 The CHAIRMAN [F]: That is indeed exact. I remember the discussions very well and that is what was said during these discussions. I do not think there is any objection to completing the suggestion of the delegate of the United Kingdom with what has just been said by the Chairman of the Main Commission.

1764.2 With regard to the suggestion made by the Soviet Union and Algeria, I think that here too there is no objection to satisfying these delegations. If the General Rapporteur agrees, it shall be so.

1764.3 We shall now proceed to the heading "Proposals relating to Programme-Content". No remarks?

1764.4 I give the floor to the delegate of the Soviet Union.

1765. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I would ask the Conference to make the second sentence of paragraph 136 more precise. At present, it reads: "Several of them took the view that the subject could not validly be discussed at all...". I do not think this is suitably worded. It would be better to put it more briefly and simply say, "Several of them took the view that the Conference lacked competence to deal with the matter", deleting the words "the subject could not validly be discussed at all, since...".

1766. The CHAIRMAN [F]: I give the floor to the delegate of the United States of America.

1767. Mr. WINTER (United States of America) [E]: We would appreciate it if the Chairman would read that sentence again.

1768. The CHAIRMAN [F]: I think that I would rather ask the delegate of the Soviet Union to read it. I give him the floor.

1769. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I am simply proposing to delete the words "the subject could not validly be discussed at all, since" from the second sentence, so that

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the paragraph would read as follows: "A number of delegations spoke against including the proposals in the Convention". Second sentence: "Several of them took the view - or upheld the view - that the Conference lacked competence to deal with the matter", and so on as in the original text. I repeat: "Several of them took the view that the Conference lacked competence to deal with the matter".

1770. The CHAIRMAN [F]: The delegate of the United Kingdom has the floor.

1771. Mr. DAVIS (United Kingdom) [E]: I was merely asking for the same clarification as was asked for by the delegation of the United States. I am quite clear now.

1772.1 The CHAIRMAN [F]: The delegate of the United States of America is in agreement. I do not think that the General Rapporteur has any objection to giving satisfaction to the delegate of the Soviet Union. It shall be so.

1772.2 Are there any observations on the continuation of the text?

1772.3 The delegation of the Soviet Union has the floor.

1773.1 Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I apologize for taking the floor so often, but insofar as we are dealing with proposals made specifically by our delegation I would also like to provide some clarification regarding paragraph 140. This is the second last amendment I wish to propose.

1773.2 The last sentence of paragraph 140 at present reads as follows: "In effect, the position appeared to be that, if the letter and procedure proposed by the working group were accepted, the sponsors would withdraw all of their proposals except...". I wish to make it clear - and the members of the working group know this - that what was agreed was slightly different and narrower. I suggest that the wording should be as follows: "...if the letter and procedure proposed by the working group were accepted, the sponsors would withdraw other corresponding amendments".

1774. The CHAIRMAN [F]: The delegate of Brazil has the floor.

1775. Mr. da COSTA (Brazil) [F]: It is to support the suggestion made by the delegate of the Soviet Union and to make a minor correction, always in the interest of truth. It is that the famous document CONFESAT/32 that we deleted from paragraph 51 should be reinstated here. The proposal appearing in document CONFESAT/32, item 9 on the table, was dependent on the approval of Article 7bis. We should therefore mention document CONFESAT/32. Document CONFESAT/32 is linked with Article 7bis.

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1776. The CHAIRMAN [F]: I give the floor to Ms. Barbara Ringer.

1777. Ms. RINGER (General Rapporteur) [E]: Thank you. I certainly agree but let me make sure that I understand. The text would say that the sponsors would withdraw other corresponding amendments, leaving a new Article 7bis (item 7 on the above table) and the proposal that was in document CONF/SAT/32, which would be item 9 on the table. Is this agreed?

1778. The CHAIRMAN [F]: I give the floor to the delegate of Brazil.

1779. Mr. da COSTA (Brazil) [F]: It should, however, be pointed out I think that the approval of document CONF/SAT/32 was dependent on the approval of Article 7bis, in order to understand that when Article 7bis was not voted, then document CONF/SAT/32 was automatically rejected.

1780.1 The CHAIRMAN [F]: Does the General Rapporteur agree? Will you also give the appropriate follow-up to the intervention of the delegate of the Soviet Union? I do not think there is any objection to giving him satisfaction.

1780.2 We shall now proceed to Article 11.

1780.3 The delegate of the United Kingdom has the floor.

1781. Mr. DAVIS (United Kingdom) [E]: The end of paragraph 141 reads: "The delegation of the United Kingdom moved formally to close the debate and called for a vote. The proposal was rejected 24 to 9 with 9 abstentions". I think it ought to be clarified that it is, in fact, the substantive proposal and not the request for the vote that was rejected.

1782.1 The CHAIRMAN [F]: The text shall so be corrected.

1782.2 The delegate of the Soviet Union has the floor.

1783. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I should just like to make sure about what Ms. Ringer said in reference to paragraph 142. Was I right in understanding her to say that the letter prepared and adopted jointly by us would be appended to this Report separately?

1784.1 The CHAIRMAN [F]: The General Rapporteur is in complete agreement.

1784.2 Article 12: "Notifications".

1784.3 The heading "Final Act".

1784.4 The delegate of the Union of Soviet Socialist Republics has the floor.

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1785. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: This is our last amendment, as I have already intimated. Perhaps the Russian translation of the first sentence - "It was decided that, in addition to the Convention itself, the Brussels Conference should produce a Final Act..." is not quite accurate. In our view, the words "in addition to the Convention" are not correct, since this is not an addition to the Convention, but an independent document recording the matters dealt with by our Conference. Therefore the words "in addition to the Convention itself" should be deleted and the sentence worded as follows: "It was decided to produce a Final Act, which all participating States signed...". If this version is unacceptable, a suitable alternative would be: "It was decided that a Final Act would be produced as well as the Convention". This would also correspond to the facts.

1786. The CHAIRMAN [F]: The delegate from the Federal Republic of Germany has the floor.

1787. Mr. GAERTE (Germany, Federal Republic of) [E]: I think the argument we just heard from our Soviet colleague is a very valid one and applies equally in my opinion to the English and French texts. I would prefer that the words "in addition to the Convention itself" should be omitted after "It was decided that"; the sentence would then continue "the Brussels Conference should produce a Final Act", because I do not think the Final Act is actually a part of the Convention itself.

1788.1 The CHAIRMAN [F]: I think that you are right. The General Rapporteur is also of this opinion and so you will be given satisfaction. Thank you for your suggestion.

1788.2 The suggestion of the delegate of the Soviet Union will also be followed. He wishes to speak again.

1789. Mr. ZHAROV (Union of Soviet Socialist Republics) [R]: I think we should express our gratitude to Ms. Ringer, by applause, for the tremendous amount of work and the objectivity she has put into compiling this Report.

1790.1 The CHAIRMAN [F]: Ms. Ringer, it is already past noon and I regret it very much because I would have liked to elaborate further on what has just been said. You deserve the praise of all for your work is truly remarkable and a tribute to your hard work and your proven competence. I thank you indeed.

1790.2 Excellencies, Ladies and Gentlemen, we thus come to the final stage of our work. I truly think that we can be satisfied with the manner in which it has progressed. I should like to express my appreciation for the work and devotion of all those who,

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in one way or another, from the lowest worker to the most brilliant orator in this assembly, have taken part in the work of this Conference, how all of you have obviously worked wholeheartedly and with good will to bring about the success of this enterprise. I should like to thank all of them, those responsible for the material organization and all the services, in particular the translation service, without forgetting the simultaneous interpreters, the whole Secretariat, which under the vigilant control of Ms. Dock and Mr. Masouye, worked almost non-stop to facilitate and accelerate our work.

1790.3 I should not be fulfilling my duties if I did not stress as well the excellent preparation that was assured by the three Committees of Governmental Experts at Lausanne, at Paris and at Nairobi, and by the various committees and working groups of our Conference, in particular the Drafting Committee under the enlightened chairmanship of Ms. Elisabeth Steup, the Working Group chaired by Mr. Larrea Richerand, the Credentials Committee led by Mr. N'Diaye and the Main Commission, chaired in masterly fashion by His Excellency Mr. da Costa.

1790.4 I should like to stress especially the remarkable work done by Ms. Barbara Ringer, who was kind enough to take charge of the General Report of the Conference, a Report that is a monument of exceptional value.

1790.5 Finally, in closing this panegyric, I should like to pay resounding homage to Unesco and WIPO, thanks to whom all this has come to pass and we thank them warmly.

1790.6 Ladies and Gentlemen, we shall now take leave of one another to return to our respective homes which, for many of you, are very far from here. I hope that your stay in my country has been a pleasant one and that you will go away remembering Belgium as a friendly land. However that may be, the Belgian delegation and I myself were delighted with our contacts with you on this occasion for they have often permitted us to come to an understanding that goes beyond differences of nationality and opinion.

1790.7 That is why meetings such as this permit and justify hope in the future, in the future of mankind and also, on a more modest scale, in that of our Satellite Convention. We have all noted the general desire to arrive at an acceptable compromise. Well, we have arrived at that compromise, and this result, doubtless more than any other, is likely to produce lasting fruit.

1790.8 Ladies and Gentlemen, we are all the authors of the text of the Convention. We have each given our share of concessions to others. It is always like that in a happy marriage. It is our Convention. We have adopted it almost unanimously. How could we be pessimistic about the future? As its authors, our powers of persuasion should be great with our governments. That is why I express the wish that this draft receive numerous signatures followed by ratifications. And since, inevitably, a relatively longer time will pass before we arrive at the ratification stage, may we not hope

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that, without waiting, governments will follow as of now the principles written into our Convention.

1790.9 The delegate of the United States of America has the floor.

1791.1 Mr. WINTER (United States of America) [E]: Mr. Chairman, a number of delegations have honoured the United States delegation by asking us to speak briefly on their behalf at the close of the Brussels International Conference. I may repeat a couple of the remarks that you made, Mr. Chairman, but I hope that you and the Conference will forgive me. I think that we could consider that these remarks would be regarded as the sense of this Conference.

1791.2 This has been a most successful Conference, and the success of any Conference is dependent upon many elements and individuals. To the Government of Belgium we owe our heartfelt thanks for hosting this important Conference. This was a large Conference, attended by 57 States, 5 intergovernmental organizations, and 17 international non-governmental organizations. It was one of the most efficiently organized diplomatic Conferences that I have ever had the privilege of attending, Mr. Chairman. As Chairman of the Plenary Meeting, we elected Mr. Gerard de San, honorary Director General of the National Ministry of Education of Belgium. It was a wise choice. He has guided us through the various plenary meetings with good judgment and great ability. It is a fitting honour that Mr. de San, who has had a long and distinguished career in the field of copyright, should be chosen Chairman of the Plenary Meeting of the Brussels Conference. On a more personal note, I would like to say that I am proud to have known Mr. de San, not only as a colleague in the field of copyright over the years, but also as a good friend.

1791.3 There are, of course, other key officials who have contributed so much to the success of this Conference. The erudite gentleman whom I will now mention presided over many long and tiring sessions of the Main Commission, and also agreed to chair two critical meetings of a working group. He was untiring in his efforts to reach reasonable and effective compromises that would have broad support by all countries, and he was most successful. I am referring, of course, to Dr. da Costa of Brazil whom you elected as Chairman of the Main Commission.

1791.4 As Chairman of the Drafting Committee, you wisely selected a person who contributed so much to the successful development of this Convention in the preparatory meetings in Lausanne, Paris and Nairobi - Ms. Elisabeth Steup of the Federal Republic of Germany. Under her excellent chairmanship, the language of this Convention was clarified and refined. The importance of this task cannot be overestimated, for it is the words and phrases of the Convention that are enforced by Member States and studied by the legal experts and jurists in the years to come.

1791.5 Sometimes, Mr. Chairman, there are political problems at a diplomatic conference about accreditation, powers to sign and so on, but under the wise guidance of the Chairman of the Credentials Committee, Mr. N'Diaye of Senegal, we have avoided these problems.

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1791.6 Now, fellow delegates, I hope that you will not think that the United States delegation is immodest when I praise the scholarly Report of the General Rapporteur, Ms. Barbara Ringer, for she just happens to be a member of the U.S. delegation, as you know. She has worked long and hard on this document. I sincerely believe, and I have heard other delegations express the same thought, and this is further evidenced by the round of applause that she received in this meeting, that this Report on the Brussels Convention will come to be regarded as one of the finest reports in the field of intellectual property.

1791.7 We all know that the important Conference documents do not come tumbling out of Xerox and reproduction machines without a great deal of human intelligence and efforts behind them. I am referring, of course, to the hardworking staff of the two Secretariats, the World Intellectual Property Organization and the United Nations Educational, Scientific and Cultural Organization. Their work has been guided on the one hand by Dr. Arpad Bogsch, Director General of WIPO, and his chief assistant, Mr. Claude Masouye, and on the other by Mr. Claude Lussier, Director of Unesco's Office of International Standards and Legal Affairs, and his chief assistant, Ms. Marie-Claude Dock.

1791.8 The next group of persons that I wish to pay tribute to, is a group that is absolutely essential if a conference is to function at all. Without their valuable services, we would be literally tongue-tied and at a loss for words. This group is the interpreters who put up with our sometimes lengthy sessions and statements with good grace and humour. The group of interpreters at the Brussels Conference have done an outstanding job in making our interventions seem intelligent and meaningful, even when they may not have been so.

1791.9 And finally, lady delegates and gentleman delegates, I wish to pay tribute to you. It is really through your work, your wisdom, and your co-operation, that we have achieved the goal that we came here for, namely the adoption of the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite.

1792.1 The CHAIRMAN [F]: I thank the delegate of the United States of America.

1792.2 The delegate of Mexico has the floor.

1793. Mr. LARREA RICHERAND (Mexico) [S]: The delegation of Mexico would like to associate itself with the words spoken by the delegate of the United States of America, and would also like to associate itself with the delegation of France with regard to document CONFESAT/40 that refers to a draft resolution of the Plenary Meeting to thank the Government of Belgium for its work in organizing this Diplomatic Conference.

1794. The CHAIRMAN [F]: I thank the delegate of Mexico. Ladies and Gentlemen, I declare the Conference closed. I thank you and wish you a good journey home. The signing ceremony will take place in a few minutes.

LIST OF WORKING DOCUMENTS

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- UNESCO/WIPO/CONFESAT/1 Provisional Agenda
- 2 Provisional Rules of Procedure
 - 3 Report on the third committee of governmental experts on problems in the field of copyright and of the protection of performers, producers of phonograms and broadcasting organizations raised by transmission via space satellites held at Nairobi from 2 to 11 July 1973
 - 4 Comments received from governments
 - 5 Comments received from intergovernmental and international non-governmental organizations
 - 6 Proposed Amendments submitted by the Delegation of the United States of America
 - 7 Proposed Amendments submitted by the Delegation of Japan
 - 8 Proposed Amendments submitted by the Delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic
 - 9 Proposed Amendments submitted by the Delegation of Switzerland
 - 10 Proposed Amendments submitted by the Delegations of the Federal Republic of Germany and Austria
 - 11 Proposed Amendments submitted by the Delegation of the Democratic and Popular Republic of Algeria
 - 12 Proposed Amendments submitted by the Delegation of Italy
 - 13 Proposed Amendment submitted by the Delegation of the United Kingdom
 - 14 Proposed Amendment submitted by the Delegation of Mexico
 - 15 Proposed Amendments submitted by the Delegation of the United Kingdom
 - 16 Proposed Amendment submitted by the Delegations of Canada and the United States of America
 - 17 Proposed Amendment submitted by the Delegation of Australia
 - 18 Proposed Amendments submitted by the Delegation of France

List of working documents

- UNESCO/WIPO/CONFESAT/19 Proposed Amendment submitted by the Delegation of Japan
- 20 Proposed Amendment submitted by the Delegations of Denmark and Mexico
- 21 Proposals concerning Article 3 submitted to the Main Commission by the Working Group
- 22 Credentials Committee - First Report
- 23 Proposed Amendment submitted by the Delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic, the Byelorussian Soviet Socialist Republic, the German Democratic Republic, the Socialist Republic of Czechoslovakia, and the People's Republic of Hungary
- 24 Proposed Amendments submitted by the Delegation of Argentina
- 25 Proposed Amendment submitted by the Delegation of the Federal Republic of Germany
- 26 Proposed Amendment submitted by the Delegation of the Democratic and Popular Republic of Algeria
- 27 Proposed Amendments submitted by the Delegation of Argentina
- 28 Proposed Amendment submitted by the Delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic, the Byelorussian Soviet Socialist Republic, the Hungarian People's Republic, the German Democratic Republic and the Czechoslovak Socialist Republic
- 29 Proposed Amendment submitted by the Delegation of Australia
- 30 Proposal submitted to the Main Commission by the Working Group on Article 7
- 31 Proposed Amendment submitted by the Delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic
- 32 Proposed Amendment submitted by the Delegations of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic
- 33 Proposal submitted to the Plenary Meeting by the Delegations of Algeria, Brazil, Central African Republic, Czechoslovakia, Arab

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Republic of Egypt, Ghana, Guatemala, Hungary, Ivory Coast, Mexico, Morocco, Senegal, Tunisia, Union of Soviet Socialist Republics, Ukrainian Soviet Socialist Republic

- UNESCO/WIPO/CONFESAT/34 Proposal of the Working Group concerning document UNESCO/WIPO/CONFESAT/23
- 34 Rev. Proposal of the Working Group concerning document UNESCO/WIPO/CONFESAT/23 as revised by the Drafting Committee
- 35 Draft Final Act
- 36 Draft Convention submitted to the Main Commission by the Drafting Committee
- 37 Draft Letter relating to document UNESCO/WIPO/CONFESAT/23 submitted to the Plenary Meeting by the Main Commission
- 38 Draft Convention submitted to the Plenary Meeting by the Main Commission
- 39 Draft Final Act submitted to the Plenary Meeting by the Main Commission
- 40 Draft Resolution submitted to the Plenary Meeting by the Delegation of France
- 41 Credentials Committee - Second Report
- 42 Prov. Draft Final Report
- 42 Report of the General Rapporteur

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UNESCO/WIPO/CONFESAT/1 - PROVISIONAL AGENDA

1. Opening of the Conference
2. Election of the Chairman
3. Adoption of the Rules of Procedure
4. Election of other members of the Bureau
5. Adoption of the Agenda
6. Preparation of an International Convention on the Distribution of Programme-Carrying Signals Transmitted by Satellite
7. Adoption of the Report
8. Adoption of the Convention
9. Signature of the Convention
10. Closing of the Conference

UNESCO/WIPO/CONFESAT/2 - PROVISIONAL RULES OF PROCEDURE

I. COMPOSITION OF THE CONFERENCE

Rule 1 - Delegations

Delegations of the States invited to the Conference both by the Director-General of Unesco in the name of the Executive Board of Unesco and by the Director General of the World Intellectual Property Organization (WIPO) may participate in the work of the Conference, with the right to vote.

Each delegation may consist of delegates, advisers and experts.

Rule 2 - Observers and representatives

The following may take part in the Conference without the right to vote:

- (a) representatives of the United Nations and other organizations within the United Nations system;
- (b) observers from intergovernmental organizations invited to the Conference both by the Director-General of Unesco in the name of the Executive Board of Unesco and by the Director-General of WIPO;
- (c) subject to the provisions of Rule 16, paragraph 4, observers

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from international non-governmental organizations invited to the Conference both by the Director-General of Unesco in the name of the Executive Board of Unesco and by the Director General of WIPO.

II. CREDENTIALS

Rule 3 - Presentation of credentials

1. The credentials empowering delegates to participate in the Conference shall be issued by the Head of State, the Head of Government or the Minister of Foreign Affairs. They shall be communicated to the Secretariat of the Conference. The names of advisers and experts attached to delegations and the names of the observers and representatives referred to in Rule 2 shall also be communicated to the Secretariat.

2. Full powers shall be required for signing the instrument to be adopted by the Conference. Such full powers may be included in the credentials referred to in paragraph 1 above.

Rule 4 - Provisional admission

1. Any delegation to whose admission an objection has been made shall be seated provisionally with the same rights as other delegations until the Conference has given its decision concerning this objection after hearing the report of the Credentials Committee.

2. Any delegation which submits credentials not fulfilling the conditions laid down in Rule 3, paragraph 1, may be authorized by the Conference to be seated provisionally with the same rights as other delegations, subject to presenting credentials in proper form subsequently.

III. ORGANIZATION OF THE CONFERENCE

Rule 5 - Elections

The Conference shall elect its Chairman,... Vice Chairmen and General Rapporteur.

Rule 6 - Subsidiary bodies

1. The Conference shall establish a Credentials Committee, a Main Commission, a Bureau and a Drafting Committee.

2. The Conference and the Main Commission may also establish such working parties as are necessary for the conduct of their work. Each of these bodies shall elect its Chairman and Rapporteur.

Rule 7 - Credentials Committee

The Credentials Committee shall consist of seven members elected by the Conference on proposal of the Chairman from among the States

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specified in Rule 1. The Committee shall elect its own Chairman; it shall examine and report to the Conference without delay on the credentials of delegations; it shall also examine and report on the credentials of observers.

Rule 8 - Main Commission

The Main Commission, in the work of which all delegations are invited to participate, shall make a detailed study of the proposals for revision of the Draft Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, and shall prepare draft texts for submission to the Conference at a plenary meeting. The Main Commission shall elect its own Chairman, ... Vice-Chairmen, and Rapporteur.

Rule 9 - Bureau

The Bureau shall consist of the Chairman, Vice-Chairmen and General Rapporteur of the Conference, the Chairman and Vice-Chairmen of the Main Commission, the Chairman of the Credentials Committee and the Chairman of the Drafting Committee. Its function is to 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 ... members elected by the Conference on the proposal of the Chairman. The General Rapporteur of the Conference and the Chairman of the Main Commission shall be members ex officio. The Committee shall elect its Chairman and Vice-Chairman; it is responsible for drawing up the final revised text of the instrument in the four working languages of the Conference.

Rule 11 - Duties of the Chairman

The Chairman shall open and close each plenary meeting of the Conference. He shall direct the discussions, ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions. He shall rule on points of order and, subject to the present Rules, shall control the proceedings and the maintenance of order.

The Chairman and Vice-Chairmen of the subsidiary bodies of the Conference shall have the same duties with regard to the bodies over which they are called to preside.

Rule 12 - Acting Chairman

If the Chairman finds it necessary to be absent during a meeting or any part thereof, the Vice-Chairman designed by him shall replace him as Acting Chairman. A Vice-Chairman sitting as Chairman shall have the same powers and responsibilities as the Chairman.

Rule 13 - The Chairman shall not vote

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The Chairman, or Vice-Chairman, acting temporarily as Chairman, shall not vote, but may designate a member of his delegation to vote in his place.

IV. CONDUCT OF BUSINESS

Rule 14 - Public meetings

All plenary meetings and the meetings of the Main Commission shall, unless the body concerned decides otherwise, be held in public.

Rule 15 - Quorum

1. At plenary meetings of the Conference, a majority of the States represented at the Conference shall constitute a quorum.
2. A quorum is not required for the subsidiary bodies of the Conference.
3. The Conference cannot deliberate, in plenary session without the quorum defined in sub-paragraph (1) above.

Rule 16 - Order and time-limit of speeches

1. Subject to the provisions of paragraph 2 of this Rule, the Chairman shall call upon speakers in the order in which they signify their wish to speak. The Secretariat is responsible for drawing up the list of speakers.
2. The Chairman or the Rapporteur of a subsidiary body of the Conference may be accorded precedence for the purpose of explaining the conclusions reached by the body of which he is the Chairman or the Rapporteur.
3. To facilitate the conduct of business the Chairman may limit the time to be allowed to each speaker.
4. The Consent of the Chairman must be obtained whenever an observer of an international non-governmental organization wishes to make a verbal communication.

Rule 17 - Points of order

During a discussion, any delegation may rise to a point of order and such point of order shall be immediately decided by the Chairman. An appeal may be made against the ruling of the Chairman. Such appeal shall be put to the vote immediately, and the Chairman's ruling shall stand unless it is overruled by a majority of the delegations present and voting.

Rule 18 - Suspension, adjournment and closure

1. In the course of a discussion, any of the delegations referred to in Rule 1 may move the suspension or adjournment of the meeting,

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or the adjournment or closure of the debate.

2. Such motions shall be immediately put to the vote. Subject to the provisions of Rule 17, the following motions shall have precedence in the following order over all other proposals or motions:

- (a) to suspend the meeting;
- (b) to adjourn the meeting;
- (c) to adjourn the debate on the item under discussion;
- (d) for the closure of the debate on the item under discussion.

Rule 19 - Resolutions and amendments

1. Draft resolutions and amendments shall be transmitted in writing to the Secretariat of the Conference which shall circulate copies to delegations. As a general rule, no resolution or amendment shall be discussed or put to the vote unless it has been circulated sufficiently in advance to all delegations in the working languages.

2. A proposal may be withdrawn by the delegation which has made it at any time before voting on it has commenced, provided that it has not been amended. A proposal thus withdrawn may be immediately re-introduced by any other delegation.

Rule 20 - Reconsideration of proposals adopted or rejected

When a proposal has been adopted or rejected, it may not be reconsidered unless so decided by a two-thirds majority of the delegations present and voting. Permission to speak on a motion to reconsider shall be accorded only to one speaker supporting the motion and to two speakers opposing it, after which it shall be immediately put to the vote.

V. VOTING

Rule 21 - Voting rights

Each delegation referred to in Rule 1 shall have one vote in the Conference and in each of the subsidiary bodies on which it is represented.

Rule 22 - Majority required

1. 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, 10, 14, 17, 18 and 32.1, where a simple majority is sufficient. At the meetings of all other bodies of the Conference, decisions shall be taken by a simple majority of the delegations present and voting.

2. For the purpose of the present Rules, the expression "delegations present and voting" means delegations casting an affirmative

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or negative vote. Delegations abstaining from voting shall be considered as not voting.

Rule 23 - Method of voting

1. Voting shall normally be by show of hands.
2. Vote by roll-call shall be taken if it is requested by not less than two delegations. The request shall be made to the Chairman of the meeting before voting takes place or immediately after a vote by show of hands. The Chairman may also take a second vote by roll-call when the result of a vote by show of hands is in doubt. The names of States having the right to vote shall be called in French alphabetical order, beginning with the delegation the name of which has been drawn by lot by the Chairman. When a vote is taken by roll-call, the vote of each delegation participating shall be recorded in the summary record of the meeting.
3. Only proposals or amendments submitted by a delegation referred to in Rule 1 and supported by at least one other delegation shall be put to the vote.

Rule 24 - Procedure during voting

Once the Chairman has announced the beginning of voting, it may not be interrupted except by raising a point of order on the voting procedure. The Chairman may allow delegations to explain their votes either before or after voting.

Rule 25 - Voting on proposals

When two or more proposals refer to the same question, the body concerned, unless it decides otherwise, shall vote on the proposals in the order in which they have been submitted.

After each vote, the body concerned may decide whether to vote on the following proposal.

Rule 26 - Division of proposals and amendments

Any delegation may propose that a separate vote be taken on parts of a proposal or of any amendment thereto. When an objection is raised to the motion for a separate vote, the motion shall be put to the vote. Permission to speak on a motion for a separate vote shall be accorded only to one speaker for the motion and two speakers opposing it. If the motion for a separate vote is accepted, the different parts of the proposal or amendment shall be put to the vote separately, after which those parts which have been approved shall be put to a final vote in their entirety. If all the operative parts of the proposal or amendment have been rejected, the proposal or amendment shall also be considered to have been rejected as a whole.

Rule 27 - Voting on amendments

When an amendment to a proposal is moved, the amendment shall be

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voted on first. When two or more amendments to a proposal are moved, the Conference shall first vote on the amendment deemed by the Chairman to be furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on. If however the adoption of any amendment necessarily implies the rejection of another amendment or of the original proposal, the latter amendment or the proposal shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Rule 28 - Equally divided votes

Subject to Rule 22, if a vote is equally divided, in voting not concerned with elections, the proposal or amendment shall be considered as lost.

VI. WORKING LANGUAGES

Rule 29 - Working languages

English, French, Russian 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 their speeches into one of the working languages.

VII. SECRETARIAT OF THE CONFERENCE

Rule 30 - Secretariat

1. The Secretariat of the Conference shall be provided jointly by the Director-General of Unesco and the Director General of WIPO.
2. The Director-General of Unesco and the Director General of WIPO shall appoint, from among the staffs of their respective organizations, the officials forming the Secretariat of the Conference.

Rule 31 - Duties of the Secretariat

1. 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.
2. The Director-General of Unesco, the Director General of WIPO or their representatives, as well as any other member of the Secretariat of the Conference, may make statements, either written or oral, concerning any matter under consideration by the Conference.

VIII. AMENDMENTS TO THE RULES OF PROCEDURE

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Rule 32

1. The present Rules shall be adopted by simple majority.
2. The present Rules may be amended by a two-thirds majority.

UNESCO/WIPO/CONFESAT/3 - REPORT ON THE THIRD COMMITTEE OF GOVERNMENTAL EXPERTS ON PROBLEMS IN THE FIELD OF COPYRIGHT AND OF THE PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS RAISED BY TRANSMISSION VIA SPACE SATELLITES, HELD AT NAIROBI FROM 2 TO 11 JULY 1973
[Covering note omitted]

INTRODUCTION

1. The Third Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission Via Space Satellites (hereafter called "the Committee"), met at Kenyatta Conference Centre, Nairobi, Kenya, from July 2 to 11, 1973, at the invitation of the Government of Kenya.
2. The Committee was convened jointly by the Directors General of the United Nations Educational, Scientific and Cultural Organization (Unesco) and of the World Intellectual Property Organization (WIPO). The meeting was called in response to the resolution adopted by the Second Committee of Governmental Experts, which met at Unesco House, in Paris, from May 9 to 17, 1972, to examine the problems referred to in the Committee's title. It was held in accordance with resolutions 5.123, 5.134 and 5.161 adopted by the General Conference of Unesco at its fifteenth, sixteenth and seventeenth sessions, respectively, and of decisions adopted by the Executive Board of Unesco at its 91st and 92nd sessions and of the Executive Committee of the Berne Union at its fourth ordinary session.
3. The Second Committee, like the First Committee which had met at Lausanne, Switzerland, from April 21 to 30, 1971, was convened for the purpose of studying problems raised by transmissions by satellites in the field of copyright and of the protection of performers, producers of phonograms and broadcasting organizations. In particular, the mandate of the Committees included the duty to specify whether the protection of television signals transmitted by communications satellites would require modification of existing conventions or the preparation of a new instrument. After reviewing the draft Convention prepared by the First Committee of Governmental Experts (hereafter called "the Lausanne text"), the Second Committee prepared a new draft (hereafter called "the Paris text"), and adopted a resolution recommending that the Secretariats of Unesco and WIPO prepare explanatory notes on the draft, together with possible proposals for simplifications and clarifications. The resolution further recommended that the explanatory notes and Paris report be communicated to governments and interested organizations for comments, and that a Third Committee of Governmental Experts be convened in 1973 to examine this documentation and the comments received on it, and to "take a decision upon the advisability of holding, in 1974, a

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diplomatic conference for the purpose of adopting a convention concerning programme-carrying signals passing through satellites".

4. The participants in the meeting were:

(i) governmental experts from the following 31 States: Algeria, Australia, Austria, Belgium, Brazil, Canada, Colombia, Denmark, Egypt, Finland, France, Germany (Federal Republic of), Ghana, Hungary, India, Israel, Italy, Ivory Coast, Japan, Kenya, Mexico, Morocco, Netherlands, Norway, Senegal, Spain, Sweden, Turkey, United Kingdom, United States of America, Viet-Nam;

(ii) observers from the following two States: Holy See, Union of Soviet Socialist Republics;

(iii) observer from the following intergovernmental organization: International Labour Office (ILO);

(iv) observers from the following 12 international non-governmental organizations: European Broadcasting Union (EBU), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Actors (FJA), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Music Council (IMC), International Publishers Association (IPA), International Secretariat of Entertainment Trade Unions (ISETU), International Writers Guild (IWG), Internationale Gesellschaft für Urheberrecht (INTERGU), Union of National Radio and Television Organizations of Africa (URTFNA).

OPENING OF THE MEETING

5. The meeting was opened by His Excellency, the Honourable Charles Njonjo, the Attorney-General of Kenya, who extended his Government's cordial greetings and best wishes for a successful meeting. He noted that the occasion was an historic one for two reasons: it was the first time a major international conference on intellectual property had been held in Kenya, and it was the very first occasion that the new Kenyatta Conference Centre was being put to use. As the representative of a developing country of Africa, the Attorney-General stressed the importance of achieving international agreement over the protection of signals transmitted via satellites, and urged that a compromise be sought that would provide adequate protection of all rights concerned and would also recognize the special needs of developing countries in this area. He hoped that the meeting would adopt as its motto the national slogan "Harambee", a concept inspired by the President of Kenya, Mzee Jomo Kenyatta, conveying the idea of pulling together and settling all personal differences in order to accomplish some herculean labour.

6. Mr. Claude Lussier, on behalf of the Director-General of Unesco, expressed deep gratitude to the Government of Kenya for its generous invitation to hold the meeting in Nairobi and emphasized

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what a privilege and honour it was for Unesco to be a co-sponsor of the first meeting to be held in the Kenyatta Conference Centre. With respect to the draft Convention, Mr. Lussier felt that there was some reason for concern. Although the two earlier Committees had achieved marked progress toward the difficult but essential goal of effectively preventing the poaching of satellite signals throughout the world without upsetting a fair balance among the various rights involved, it was obvious that the Paris text did not represent a final answer. In his opinion, the time for defining the problem was past, and the success of the Nairobi meeting would be judged by whether or not it could find a solution that would be widely accepted. He expressed confidence that it would be possible to look back upon the Nairobi meeting as a break-through, but emphasized that, unless this prediction proved to be true, it would be necessary for everyone to take a cold, hard look at the future of the project.

7. On behalf of WIPO, Dr. Arpad Bogsch, First Deputy Director General of WIPO, associated himself with the views expressed by Mr. Lussier on the goals of the meeting and the substance of the matter, and expressed his pride that a WIPO-Unesco meeting was the first to occupy the magnificent new Conference Centre. He spoke with admiration and gratitude for the preparation of the meeting and in particular the contribution of Mr. David J. Coward, the Registrar-General of Kenya, to the preparatory work.

ELECTION OF THE CHAIRMAN

8. On the proposal of the delegation of Kenya, supported by the delegations of the United States of America, Morocco, United Kingdom, India, Netherlands, Spain, France and Mexico, Mrs. Elisabeth Steup, head of the delegation of the Federal Republic of Germany, was unanimously elected Chairman of the Committee. Upon taking the chair, the Chairman expressed gratitude to the delegates for the honour done to her and her country, and to the Government of Kenya for its invitation to hold the meeting in Nairobi and for its enormous efforts to have the Centre ready in time. The invitation, and the labour and sacrifices it entailed, were all the more appreciated because they came from a developing country. The Chairman felt sure that their stay in Kenya would help delegates from developed countries better to understand the special problems and needs of developing countries, which must be taken care of in the convention under consideration.

ADOPTION OF THE RULES OF PROCEDURE

9. The Committee then adopted its Rules of Procedure as they appear in document UNESCO/WIPO/SAT.3/2, it being understood that the drafting of the report of the meeting would be entrusted to the Secretariats of Unesco and WIPO.

ADOPTION OF THE AGENDA

10. With respect to the Agenda proposed in document UNESCO/WIPO/SAT.3/1, the delegation of Brazil proposed that the detailed

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examination of the draft Convention prepared by the Second Committee be preceded by a general discussion of the problems underlying the draft, and of possible alternative means of solving them. Following a debate of this proposal, the Committee agreed that consideration of the draft Convention should begin with a general discussion of the subject, but that it was unnecessary to amend the provisional agenda for this purpose. The proposed agenda was therefore adopted unanimously by the Committee.

ELECTION OF OTHER OFFICERS

11. On the proposal of the delegation of Austria, supported by the delegation of the Ivory Coast, the Committee unanimously elected as Vice-Chairmen the heads of the delegations of India, Kenya and the United States of America, that is, Messrs. Kanti Chaudhuri, David J. Coward, and Daniel MacLeod Searby.

DOCUMENTATION

12. The working documents of the Committee consisted of the commentary on the Paris text prepared by the Secretariats of Unesco and of WIPO which, in accordance with the resolution adopted by the Second Committee of Governmental Experts, had been communicated to governments and interested organizations for comments. The comments received were reproduced in documents UNESCO/WIPO/SAT.3/3, 3/3 Add.1 and SAT.3/4.

GENERAL DISCUSSION

13. The delegation of the United States of America opened the general discussion by affirming its belief that space satellites offer an opportunity to nations to make significant improvements in international co-operation and communication. The initiative in the matter had originally been taken by the broadcasting industry, and the objective had been to find a way of guaranteeing that signals would not be broadcast into unauthorized areas, an important goal if the development of satellite communications were not to be hampered. Poaching of satellite signals is now taking place and is likely to increase, and it is thus in the interest of all countries to develop an equitable and workable agreement; as at Paris, its Government's position was that the Paris text, with Article IV limited to the first paragraph in the draft, offered the basis for such an agreement. The delegation of the United States of America recognized and fully sympathized with the position taken by many governments regarding the protection of authors and other contributors to programmes. It took the view that this important protection appropriately came within the scope of other international instruments in the field, but that the proposed Convention should in no way derogate from the rights protected under these instruments. These safeguards would be effectively provided by paragraph (1) of Article IV. The United States therefore urged that the Committee approve the adoption of a draft convention limited to the simple concept of the protection of the broadcast signal. At the same time, it declared that it would be more than willing to investigate other means of accomplishing these

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objectives after the Committee had fully explored the Paris text.

14. The delegation of Brazil, while recognizing that the wording of Articles 3, 6 and 13 of the Rome Convention could be improved, reaffirmed its position that the Rome Convention can be applied as it stands to satellite transmissions. Referring to the objection raised against that Convention on the ground that up to the present it had received relatively few ratifications, the delegation of Brazil declared that the occurrence of certain recent events should remove the principal intrinsic obstacles blocking its ratification by developing countries. These obstacles included the requirement for adherence to the Universal Copyright Convention or the Berne Convention as a condition for adherence to the Rome Convention, and the technical difficulties in applying that Convention. However, the copyright Conventions were revised in 1971 in a way that permits developing countries to accede without difficulties; moreover, the Secretariats of ILO, Unesco and WIPO have prepared a draft model law on neighbouring rights to facilitate the implementation of the Rome Convention.

With respect to the suggestion that the proposed new treaty be limited to the protection of signals, without reference to copyrights or neighbouring rights, on the theory that the latter are amply protected by the existing conventions, the delegation of Brazil announced its formal opposition. Such a treaty, coming after that recently adopted for the producers of phonograms, would toll the death knell for the Rome Convention, hence leaving neighbouring rights without international protection.

In conclusion, the delegation of Brazil declared that if it proved impossible to offer effective protection to signals under the Rome Convention, it would favour a solution similar to that suggested by the delegation of Italy at the First Committee at Lausanne; this consisted of a protocol concerning the transmission of signals of satellites, to be attached to the Rome Convention. However, in a constructive and conciliatory spirit, the delegation of Brazil would participate in the work of finding an independent solution, provided it was a well-balanced one.

15. As a preliminary question, the delegation of France asked whether the risk of piracy of signals transmitted by satellites is sufficiently serious to justify the preparation of a new convention. Its Government was not convinced of the need for a new convention, but assuming that international opinion was in favour of a new treaty, separate from those now in existence, it was willing to abide by that opinion.

The French delegation, noting that several solutions had been put forward previously for resolving these problems, declared that, regardless of the solution adopted, it would be essential to establish a balance between the protection offered to signals and the rights of contributors to programmes transmitted by satellites. Broadcasting organizations already enjoy a "neighbouring right" in their broadcasts under the Rome Convention, and the question has been raised as to whether or not satellite communications are covered by the provisions

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of the Rome Convention. Since it was not party to that international instrument, France did not consider it appropriate to offer an opinion on the point; however, if the answer to the question is affirmative, it would not be possible to establish the need for a new and separate instrument.

The delegation of France also stressed that the Paris text involved protection for the distribution of programme-carrying signals transmitted by satellites. Distribution is a new concept which is not dealt with in the existing conventions, including that of Rome, in the way it is proposed to be dealt with in a separate treaty. It would be appropriate to evolve a code governing distribution and applicable to all of the contributors to programmes transmitted by satellite; however, France considered that persons other than authors and owners of neighbouring rights should not be included among such contributors. The important thing was to harmonize the legal rights protected by the international conventions and capable of being affected by the new treaty, without going beyond that goal.

As for the various alternative solutions proposed, the delegation of France explained that, although it could not accept the Rome Convention, it did not reject that Convention as a solution to the problem. With respect to the possibility of modifying the regulations administered by the International Telecommunication Union, it appeared that this tended essentially to remain a technical matter that did not involve questions concerning intellectual property. In conclusion, the French delegation felt that, if the present Committee of Experts failed to reach an agreement, the Committee should accept the fact that the international community could not at present reach agreement upon a solution to the problems in question, and should confine itself to adopting a resolution condemning the piracy of signals transmitted by satellites, leaving these problems to be re-examined at a later time.

16. The delegation of Austria stated that its Government's position had remained unchanged since the Paris meeting; it favoured the Paris text with Alternative A. In the meantime Austria had become a party to the Rome Convention and, although it would have been happy if a solution could be found under that instrument, it did not feel that this was possible. The written comments of Governments contained in the documents reveal very deep differences between those that considered it essential to give affirmative protection to authors and performers and those that preferred including only a statement such as that in paragraph (1) of Article IV. These differences appeared to be too deep to reconcile by means of a compromise between them, so the delegation of Austria felt that a new approach should be sought, and brought forward a new idea with the hope that it would lead to a possible compromise. This idea would be to split the convention into two parts: the convention itself, and an annexed protocol. The convention itself would protect only signals carrying programmes consisting of current events, including sports, together with other material contained accidentally or incidentally in the programmes. The annexed protocol would protect all programme-carrying signals, and would affirmatively safeguard the rights of authors and performers. This suggestion was not put forward as a formal proposal of the

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delegation of Austria, but as an idea which it strongly recommended that the Committee consider carefully.

17. The delegation of Canada recalled its participation in the earlier meetings at Lausanne and Paris, and explained that its position remained essentially unchanged. There are two significant developments which Canada must take into account before reaching a final decision: the current complete review of Canadian intellectual property law, and the activities of the UN Working Group on Direct Broadcasting by Satellites. The scope of the ITU Convention and Radio Regulations should also be reviewed in connexion with this convention. The suggestion made by several delegations that consideration be given to alternatives to the approach in the Paris draft met with some favour in Canada, but additional time would be needed to study alternative solutions. The Austrian proposal appeared to it to have merit, and the Canadian delegation urged that this proposal be given further study at the present meeting.

18. Describing it as a matter of fundamental importance to its Government, the delegation of the Federal Republic of Germany favoured the establishment of adequate protection not only for broadcasting organizations but also for authors and the owners of neighbouring rights. Safeguarding the interests of those who make the main cultural contribution to the broadcasts in question was, in its view, a matter of justice. However, after reading the various written comments on the draft text, the delegation of the Federal Republic of Germany recognized that there were widely divergent views among the States: a certain number of them preferred a convention protecting only broadcasting organizations, while others held the view, shared by its government on the point, that it was essential to safeguard the legitimate interests of all groups concerned. On this delicate situation, a compromise solution had to be found. For this reason, the delegation of the Federal Republic of Germany was very grateful to the Austrian delegation for its compromise proposal, which it considered very constructive and the study of which it strongly recommended.

19. Without taking any stand on the question whether the Rome Convention covers the satellite signal, the delegation of Kenya made three points. First, although the Rome Convention is linked to the copyright conventions, ground stations which can and do pirate satellite transmissions are located in countries not party to a copyright convention. Second, whatever the merits of the Rome Convention, it has achieved only 14 adherences in 12 years, this is insufficient to deal with a phenomenon that by definition is worldwide in nature. Finally, the French delegation was correct in speaking of distribution as a new concept, which includes cable transmissions as well as broadcasting; unlike the Paris text, the Rome Convention does not protect against cable retransmissions.

Concerning the suggestion that the problem be dealt with in the concept of the International Telecommunication Union, the delegation of Kenya asserted that the ITU and the delegations to the ITU do not wish to become involved in any problem of private rights. Attempts

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to introduce provisions protecting satellite signals into the Radio Regulations or the ITU Convention were made in 1971 and in connexion with the forthcoming Plenary Conference of the ITU, but both attempts failed. The third proposed solution was for a resolution condemning piracy, which the delegation of Kenya considered to serve no useful purpose.

As to the proposed Convention itself, the Kenyan delegation emphasized that the piracy of satellite signals is increasing, especially for major sporting events, to the extent that the negotiation of rights is becoming extremely difficult. It is important that a convention against piracy be ratified as rapidly as possible, and for this purpose it was important that the text be kept simple, so that developing countries would not need to change their legislation in order to ratify. The Convention would still be needed even after direct broadcast satellites have come into common use, since point-to-point satellites will still be in use, and there will be technical overspill from direct satellite broadcasts into adjoining countries where the signal could be carried further.

The delegation of Kenya expressed complete agreement with the views expressed by the delegation of the United States of America; as in the Phonograms Convention, paragraph (1) of Article IV is needed to avoid possible misinterpretation of the copyright and neighbouring rights conventions, but no additional clauses are necessary. However, it found the Austrian proposal interesting, not only as a compromise proposal but also as a realistic approach to the actual situation. Because of the high cost of satellite circuits, it will be many years before works protected by copyright are transmitted by satellite otherwise than incidentally or accidentally, and the use of supersonic airplanes for the intercontinental transport of tapes of programmes in a few hours may obviate the use of satellites for ordinary entertainments. The Kenyan delegation therefore welcomed the Austrian proposal, and hoped that a text would be presented.

20. The delegation of Australia declared that, although its country was likely to remain a receiver rather than an originator of satellite broadcasts, this in no way lessened Australia's interest in establishing an adequate and appropriate legal framework within which satellite broadcasts may be regulated. This framework is needed to allow satellite broadcasts to develop to the advantage of all countries. As to the most appropriate instrument for this purpose, Australia would support amendments of the copyright conventions, thus avoiding the proliferation of conventions. Accession to the Rome Convention is under active consideration in Australia, but the reasons why it may not provide an effective solution to the problem of satellite piracy are recognized. The delegation of Australia was therefore prepared to accept that the establishment of a separate instrument is the most practicable course, although this did not indicate any intention by the Australian Government not to accede to the Rome Convention. The Australian delegation favoured a convention protecting authors, producers of phonograms and performers as well as broadcasters, and found the Paris text an appropriate basis for the negotiation of such a treaty. It was, nevertheless, prepared to discuss the Austrian

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proposal in the spirit of compromise.

21. The delegation of Mexico declared that its Government had ratified the Rome Convention; in its opinion that Convention solved the problems arising in the field of transmissions by satellite and protection of authors, producers of phonograms and performers. However, it must be recognized that to date the Rome Convention did not have very many adherents and, furthermore, the situation had developed internationally to the point that all countries now have the possibility of making satellite transmissions. Since so few States have ratified the Rome Convention, and since some of these States did not consider that the instrument protects transmissions by satellites, it was necessary to look for a means by which the rights of authors, producers of phonograms and performers be protected specifically and definitely. It is for this reason the Mexican delegation declared that, if the Committee decided to elaborate a new convention, such protection should be clearly defined; if not there would be a risk of protecting only the economic interests of powerful, transnational organizations which are, in the majority of cases, little concerned with the value of culture and those who animate and create it.

On the other hand, the delegation of Mexico declared that the Committee should take into account the precise mandate that the governments have submitted to it, and therefore look for solutions in the fields of copyright and protection of authors, producers of phonograms, performers and broadcasting organizations. Referring to the Austrian proposal, the delegation of Mexico thought that it expressed an interesting thought, but that it should be scrutinized closely. Under the mandate received from governments, what would be dealt with in the Convention and what would be dealt with in the Protocol must be made very clear. The delegation of Mexico felt that the question should be approached from a different angle than that adopted by the delegation of Austria.

22. The delegation of Denmark explained that, as at Paris, its view remained that a new international instrument for the protection of satellite signals was not desirable, and that its necessity was very doubtful. It would make no sense to have a convention in this field unless ratifications by a great number of States, including those where abuses might occur, could be obtained. It was unrealistic to consider the Paris text as the basis for such a convention. Protection of the contributors to programmes would be essential, but it would necessarily complicate the text, and the Convention contains nothing to appeal to the self-interest of countries. Just as good or better results might be obtained by a simple condemnation by a suitable international body. Nevertheless, the Danish delegation was willing to co-operate in the endeavour to find a solution. It hoped that the Austrian proposal would be carefully examined by the Committee.

23. The delegation of Japan declared that it was in favour of establishing a new, separate convention for the protection of satellite signals, on condition that the legitimate interests of

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authors and other contributors of programmes are safeguarded. This could be accomplished neither within the framework of the Rome Convention, since it does not take account of traditional copyright protection, nor within the framework of the ITU, which is beyond the scope of intellectual property. The delegation of Japan considered the Paris text, including Alternative A of Article IV, as the best solution to the problem. Although it felt that the Austrian proposal was worthy of study, it had doubts as to whether it offered sufficient protection to authors and other contributors.

24. The delegation of Morocco recalled that its country was a member of Unesco and a party to the Berne Convention, but that for economic reasons it had not been possible for it to adhere to the Rome Convention. Morocco was aware of the importance of satellite transmissions and the problems raised in the field of copyright by this modern method of communication. What is needed is a solution which will maintain an equilibrium and be susceptible of a wide ratification. The Government of Morocco would have preferred a solution within the scope of the regulations administered by the International Telecommunication Union. However, it would not be opposed to the study of any other compromise solution so long as it takes into account the interests not only of the broadcasting organizations but also of authors, and was not linked with the Rome Convention. The delegation of Morocco indicated that later on it would present its observations on the text elaborated in Paris in 1972, and particularly on Articles II and IV.

25. Recognizing that the majority of delegations appeared to agree upon the necessity for finding a means to prevent the piracy of signals transmitted by satellites, the delegation of Sweden considered that the difficulty presented by the draft Convention derived from the repercussions on the rights of authors and performers. The creation of a new international instrument in this field could easily prejudice the Rome Convention. For this reason, and to avoid any adverse effect on the interests of authors and performers and on the Rome Convention, the Swedish delegation favoured Alternative A of Article IV of the Paris text, even if this formula tended to complicate the Convention. Nevertheless, it was prepared to study any proposal for compromise that might be presented.

26. In the opinion of the delegation of Israel, the interdependence of all of the rights and interests concerned could not be ignored, and the same was true of the special needs and rights of developing countries and of other receiving countries. In view of the inadequacy of the Rome Convention to offer the necessary protection, the Israeli delegation considered that a new and separate convention would be justified, but recognized that the Paris text was unacceptable. The delegation of Israel felt that there was merit in the Austrian proposal, but that further clarification was needed.

27. The delegation of the United Kingdom declared that its views remained the same as those expressed at the earlier meetings, which were the same as those of the Danish delegation: that a satellite convention was neither necessary, desirable, nor likely to be

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effective. However, it would work together with other delegations in exploring constructive solutions, and it condemned piracy of satellite transmissions without reservation.

28. The delegation of India, agreeing with the delegations of Brazil and the United Kingdom, suggested that adoption of a simple resolution condemning piracy of programme-carrying signals would meet the requirements of the situation. In the alternative, the Rome Convention could also be suitably revised to allow world-wide ratification. In case, however, a new treaty had to be worked out, India suggested that the treaty should provide: (1) issue of compulsory licence and determination of equitable remuneration by the Contracting States, where authorization is refused by the originating organization which is a national of another Contracting State; and (2) for exploiting organized sports for commercial purposes, the right of developing countries as a "contributor" to the programme must be recognized in the determination by that country of equitable remuneration to be paid for compulsory licenses. The Indian delegation welcomed consideration of the Austrian proposal, but suggested that the above points be incorporated in the new proposal. Otherwise, the cost factor in the establishment of earth stations, and the huge cost of purchasing satellite time and in sending teams for participation in organized sports, will influence developing countries to refuse to ratify any treaty of this nature.

29. The delegation of Spain declared that, in spite of all the work that had gone into the development of the Paris text, it must be recognized that it had not given satisfaction. Not having ratified the Rome Convention, Spain did not feel that it would be appropriate to favour this instrument as a solution to the problem. Furthermore, any text prepared should be universally acceptable, and the Rome Convention was limited to States party to the Berne Convention or to the Universal Copyright Convention. Certain States, particularly developing countries, would thus not be allowed to adhere to it since they could not become members to the two Conventions. The delegation of Spain added that no doubt everyone at the meeting was conscious of the need to protect the rights in question, but it was obviously not going to be easy to find the best means. The Spanish delegation had followed the debate very closely and had seen that opinions were deeply divergent. It also wished to point out that it would be very dangerous to protect the interests of broadcasting organizations in preference to those of the authors and performers; it might be true that, at present, authors and performers have no problems concerning programmes transmitted by satellite, but this did not mean that in the future there would never be any transmissions in which the rights of authors and performers would not be of prime importance. Although the delegation of Spain did not have any clear idea as to how the instrument should be drafted, it did think that the Austrian proposal might perhaps be interesting and should be studied. In any case, whatever the solution adopted, the delegation of Spain would support the decision of the majority in a spirit of collaboration.

30. The delegation of the Netherlands was of the opinion that, if

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the majority of the Committee was in favour of the preparation of a new and independent convention, it must take the most simple possible form to reach the widest possible acceptance. It was obvious that the Paris draft was not satisfactory from this point of view, and the Austrian proposal was therefore welcome as a basis for discussion, assuming that the protection of authors and performers remained a part of the dual proposal. The Netherlands delegation therefore suggested that the Committee discuss the Austrian proposal.

31. The delegation of Algeria declared that the problems to be faced were of major importance, since what was involved was the need to reconcile the protection given to authors, whose role in development is a vital one, with the demands made upon their works by modern communication techniques. The problems to be faced were also complex, because it was necessary for each country to take account of its individual needs, and while these needs were legitimate, they were not always complementary. Thus, all of the proposals made aimed at condemning piracy but carried diverging implications in the way they were worked out. To assure the necessary protection of signals, the delegation of Algeria indicated its preference for a solution that would avoid a multiplication of international conventions, and that would consist of a revision of the Radio Regulations, covering only the signal as such and leaving the protection of authors to the existing conventions. However, it would participate in the study of all proposals, notably that of Austria, and hoped that the needs of developing countries would be taken into account.

32. The delegation of Finland declared its willingness to co-operate in the development of a convention based on the Paris proposals, and to accept any solution that gained general support. It expressed interest in the Austrian proposal as a possible basis for compromise, but found some aspects of it puzzling. In particular, it questioned whether a country accepting only the main convention protecting signals embodying current events should be free to pirate other signals incorporating works of authorship and performances, and it recommended that signals of all kinds should be protected against piracy.

33. Following the interventions of governmental experts, the representatives of international non-governmental organizations were invited to take the floor.

34. Identifying the organizations of broadcasters as the most directly concerned of those represented, the observer of the European Broadcasting Union (EBU) stressed that the matter under consideration was becoming more urgent with each passing day. Like everyone else, the EBU would have preferred to find the solution to the problem within the framework of one of the legal instruments already in force, but it was necessary to recognize that none of them would provide an effective answer. To solve the problem, the coverage of the instrument must be worldwide, including all countries with earth stations, and must be as simple as possible to avoid difficulties in changing national legislation. Immediate action at the international level is needed for signals now being transmitted

by satellite, which for the most part consist of news, sports and current events; even to the minor extent that copyrights and neighbouring rights are involved, they would be protected automatically, ipso facto and ipso jure, by protection of signals. Broadcasters are not asking for a new right exclusively for themselves; they ask for protection for the programme-carrying signal, balancing as they now exist the rights of all concerned. As a simple and practical solution, the EBU supported a text based on Articles II and IV(1) of the Paris text. It noted with interest the proposal of Austria, put forward as a possible way out of the deadlock, but pointed out that most European countries would be likely to ratify the protocol which contains a clause like Alternative A of Article IV. Thus, in substance, the Austrian proposal would be no better than the Paris text with Alternative A for European broadcasters. Despite their need for a solution to the problem of preventing signal poaching, the observer of the EBU declared that broadcasters were not prepared to pay any price for such an instrument.

35. The observer of the International Writers Guild (IWG), on behalf of authors writing for cinema and television, agreed with the principle of protection for programme-carrying signals transmitted by satellite, but declared that his organization could not accept any formula that gave protection to broadcasters without guaranteeing to the authors an exclusive right to control satellite transmissions of their works. Although Article IV, Alternative A, of the Paris text provided a guarantee of this sort, it obviously was not acceptable to all. As he understood the Austrian proposal, the observer of the IWG did not regard it as a compromise at all; instead he felt that it would aggravate the situation with respect to the rights of authors, since they were relegated to an optional protocol which would not be accepted by many countries and would be opposed by broadcasters. A convention limited to satellite signals consisting of sports and current events would be outside the mandate of the Committee, and by protecting only broadcasters would effectively derogate from the rights of authors.

36. The observer of the International Publishers Association (IPA) referred to two misconceptions that seemed to have crept into the discussions. The first was that defense of copyright is the responsibility of developed rather than developing countries. That developing countries need copyright even more than developed countries was evidenced strikingly by the extreme book shortage in that part of the world; unless copyright is defended, the developing countries may have nothing to read. Besides, many developed countries were becoming increasingly interested in the art and music of developing areas, and this valuable national resource should not be eroded by limiting copyright protection. The second misconception arose from the assumption that any instrument must be simple to be acceptable to developing countries. On the contrary, developing countries would be quite prepared to adopt even a complicated instrument if this were required to protect their interests. The observer of the IPA supported the Rome Convention, with possible revisions, as the best approach to meeting the needs of the situation.

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37. The observer from the International Federation of the Phonographic Industry (IFPI) recalled that her organization had always recognized that broadcasting organizations should be protected against unauthorized distribution of satellite signals, because such distribution was no more than an extension of conventional broadcasting means. IFPI believed that this protection should be found within the International Telecommunication Convention and the Radio Regulations, and even now an attempt should be made to take up the question with the ITU conference of plenipotentiaries to be held in the autumn of 1973. If this proved impossible, protection of signals would constitute a neighbouring right and should be dealt with in the framework of the Rome Convention, which IFPI believed would provide both a valid legal and an effective practical solution. IFPI was, however, prepared to accept the Paris text with Article IV, Alternative A, including paragraph (5), subject to its being made clear that this would not prejudice the Rome Convention. As regards the Austrian proposal, it appeared to fall outside the mandate of the Committee since the programmes it covered would carry no protected material. Besides, satellite programming already contains material contributed by authors, performers, and producers of phonograms which would be left unprotected, since the protocol envisaged in the Austrian proposal would be voluntary and there would be no guarantee that it would be widely ratified. Cheap satellite transmission of programmes carrying material protected by copyright and neighbouring rights is highly likely in the near future, and this factor must be taken into account.

38. The observer of the Union of National Radio and Television Organizations of Africa (URTNA) said that his organization was not opposed to the development of an international instrument justified by the evolution of modern technology, on condition that it took full account of the special needs of developing countries, in which the broadcasting organizations serve an extremely important educational, cultural and informational function while operating under severe financial handicaps. These organizations were not prepared to accept the Rome Convention as a solution to the problem of satellite piracy, but URTNA still favoured the use of the instruments administered by the International Telecommunication Union as the most effective means for dealing with the situation. Nevertheless, URTNA was prepared to co-operate in searching for any other solution, and it had several specific comments on the Paris text, which it found lacking in simplicity and clarity. As for the Austrian proposal, URTNA reserved its comments until there had been an opportunity for detailed study.

39. The observer from the International Federation of Musicians (IFM) referred to the basic need for provisions requiring the prior consent of musicians before their performances are recorded, broadcast or transmitted by satellite. During his short stay in Kenya the IFM observer had been impressed by the strict protection of personal rights and these fine feelings also extended to protecting wild animals against the inroads of civilization and technology. The authors and performers of Kenya are also finding themselves threatened by technology, and are seeking more protection. As a

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matter of simple and natural justice, the personal and economic interests of performers deserve as much protection as any other group of people or threatened cultural resource. FIM could not agree to any one group being singled out for protection while the needs of performers are ignored in the same situation. The Austrian proposal therefore did not offer a way out of the difficulties, since it made protection of broadcasts mandatory while leaving that of performers optional.

40. The observer from the International Federation of Actors (FIA) said that, although the subject matter under discussion was simple, the discussions were becoming complex, artificial and confused. They seemed to have shifted from the field of protecting intellectual property rights to the question of protecting commercial interests in news and sporting events, and the needs of developing countries to preserve their national heritage are forgotten. Broadcasting organizations are seeking to protect themselves against other broadcasting organizations. The new proposal by the delegation of Austria did not basically involve copyright, and was outside the competence of the Committee and the intellectual property fields appropriately dealt with by WIPO and Unesco. He recalled that many delegations had spoken of maintaining balance amongst the various interests involved. Article IV of the Paris text contained protection for performers below the level prescribed in the Rome Convention, but at least it was compulsory. The protocol of the new instrument proposed by the delegation of Austria would contain even less protection and would also be optional.

41. The observer representing both the International Confederation of Societies of Authors and Composers (CISAC) and the International Literary and Artistic Association (ALAI) favoured a long-term and realistic solution. Authors considered that piracy in all its forms was to be condemned; they were aware that doubts had arisen as to the applicability of existing conventions with respect to the universal phenomenon which satellite utilization represents. The protection granted to broadcasting organizations would be illusory if relations with other copyright owners were not clearly defined. The proposed Convention aimed at establishing an appropriate legal basis for the distribution of signals, and consequently a balance must be maintained between the interests involved. ALAI and CISAC continued to support Alternative A of Article IV of the Paris text as being the only one capable of guaranteeing authors some degree of protection for their rights. These organizations would consider it unacceptable and incomprehensible if authors' rights were not protected in the instrument under consideration, since simplicity should not lead to injustice. As for the Austrian proposal, authors were surprised at the priority given to the protection of commercial interests of press agencies and the sponsors of sporting events since the problem was a general one. The organizations representing authors, artists and producers of phonograms had already shown much reticence with respect to this compromise proposal, which suggested that its future was not bright.

42. The observer of the Internationale Gesellschaft für Urheberrecht

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(INTERGU) associated his organization with the views expressed by the observers of the other non-governmental organizations who had spoken. He expressed the opinion that the Rome Convention was sufficient to cover the present situation effectively. Even if the Rome Convention had not many adherents at present, it could be expected that more countries would accept it in the future. The problem under consideration was a false problem, since satellites are only new kinds of carriers, being only an extension of various earlier forms of carriers. The proliferation of treaties implied the danger not only of increasing the complexity of the legal framework, but also of eroding the international protection of authors and performers and the conventions already intended to provide that protection. INTERGU considered the Austrian proposal unrealistic and unacceptable, since it created two categories of signals, and provided only optional protection for one of them. With respect to the Paris text, INTERGU strongly supported Alternative A of Article IV, and hoped that it would be maintained.

43. Before the closing of the general discussion, several delegations asked for the floor to supplement their earlier remarks. The delegation of France explained that the instructions of its Government would not permit it to deal with matters outside the mandate of the Committee as defined by its title. The Austrian proposal seemed to exceed the scope of the Committee's mandate since, in the main convention at least, protection would be offered only to subject matter not protected by copyright or neighbouring rights. It also wondered whether the interests sought to be protected in the main convention were not too narrow to provide the basis for a new treaty, especially in view of the desirability of avoiding the proliferation of international instruments. The French delegation also objected to the Austrian proposal on the ground that, unless safeguards were added to the text, the limiting of protection in the main convention to certain programme-carrying signals would lead to the interpretation, a contrario, that all other programme-carrying signals would be left without any form of intellectual property protection for the rights of authors, performers, producers of phonograms, and broadcasting organizations. For all these reasons, the delegation of France declared that it was unable to accept the Austrian proposal.

44. In summarizing the very widely divergent opinions among the various delegations, the delegation of Brazil noted that, although the Austrian proposal had been put forward as a compromise, in its opinion it represented an extreme solution. The widespread extent to which a convention might be ratified did not depend upon the simplicity of the text; developing countries were perfectly capable of implementing even a complicated convention. Moreover, as the delegation of India had said, developing countries could not support any convention unless it contained special provisions for their benefit with respect to programmes intended for scientific research and teaching, including adult education. In closing, the Brazilian delegation expressed agreement with two of the points made by the delegation of France: that concerning the mandate of the Committee, and the argument that, on the basis of an a contrario interpretation, the Austrian proposal could leave unprotected programme-carrying signals outside the scope of the convention.

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45. The delegation of the United States of America declared that, in view of the wide divergence of opinions, it would be willing to consider all possible compromises, in particular the proposal of the delegation of Austria.

CONSIDERATION OF PROCEDURE

46. In line with a question raised by the delegation of the Ivory Coast, the delegation of France considered that, in view of the earlier decision concerning the agenda, it was necessary to proceed with an examination of the draft text prepared by the Second Committee of Experts, before taking up the Austrian proposal. This view was supported by the delegations of Brazil and the Ivory Coast.

47. The delegation of France proposed that, if the majority of the delegations disagreed with this position, the Committee should take into consideration, at the same time as the Austrian proposal, the draft resolution appearing in document UNESCO/WIPO/SAT.3/6. The delegation of the United Kingdom supporting this proposal suggested that, in due course, the meeting consider not only the Austrian proposal but also a draft resolution condemning the unauthorized taking of satellite transmissions. It regarded the text submitted by the French delegation as a suitable basis for such a discussion.

48. During the discussion of the procedural question, the delegation of Israel suggested that, as an alternative approach to the compromise embodied in the Austrian proposal, the Committee might consider adopting a unitary text permitting States to make reservations on the provisions of Article IV.

49. The Committee decided to proceed with a consideration of the Paris text, and concurrently to review other proposals for solving the problem, including a text embodying the Austrian proposal (document UNESCO/WIPO/SAT.3/5), the French draft resolution (document UNESCO/WIPO/SAT.3/6), and the suggestion of the Israeli delegation (later embodied in document UNESCO/WIPO/SAT.3/8).

50. The Committee then proceeded to an article-by-article examination of the Paris text, referring on certain points to the Secretariat's commentary on it and to the alternative draft prepared to implement the Austrian proposal and submitted for discussion by the Chairman as document UNESCO/WIPO/SAT.3/5. The results of this detailed discussion will be reported later, under the appropriate provisions of the new text as drawn up by the Third Committee of Governmental Experts (hereafter referred to as "the Nairobi text").

51. During the course of the examination of the Paris text, first in connexion with Article II and again at the outset of the discussion on Article IV, a proposal was put forward by the delegations of Morocco, Brazil and India (document UNESCO/WIPO/SAT.3/10), involving a fundamental change in the philosophy and legal framework of the future draft Convention. This proposal was accepted by the Committee, and a Working Group was established to study the changes required in the various provisions of the Paris text to implement the proposal

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and to make proposals for appropriate revisions by the Committee. The Working Group was composed of Governmental Experts from the delegations of Australia, Brazil, France, India, Japan, Kenya, Morocco, Mexico, Sweden, the United Kingdom and the United States of America, and included the Chairman of the full Committee as member ex officio. The Working Group elected as its chairman Mr. D.L.T. Cadman, Head of the delegation of the United Kingdom.

52. The report of the Working Group was presented by its Chairman orally and in the form of draft proposals for revisions in Articles I to V of the Paris text (document UNESCO/WIPO/SAT.3/14). These proposals were examined by the full Committee, which entrusted to a Drafting Committee the task of putting into final form the text of the draft Convention as it emerged from the deliberations of the Third Committee of Governmental Experts at the Nairobi meeting. Under the chairmanship of Mr. D.J. Coward, Head of the delegation of Kenya, the Drafting Committee was composed of Governmental Experts from the delegations of France, India, Kenya, Spain, the United Kingdom, and the United States of America, with the Chairman of the full Committee serving in an ex officio capacity.

PHILOSOPHY AND LEGAL FRAMEWORK OF THE DRAFT CONVENTION

53. Although the revisions proposed by the delegations of Morocco, Brazil and India in document UNESCO/WIPO/SAT.3/10 were directed to Article II of the Paris text, they involved such a fundamental change in the philosophy and legal framework of the draft Convention that their acceptance by the Committee entailed revisions throughout the text. The discussions involving this change will therefore be summarized separately in this section of the report, and the next section will report on the provisions of the draft Convention as they emerged following the Committee's decision to accept the change in philosophical approach.

54. The proposal that became the basis for this change was first put forward by the delegation of Morocco during the discussion of Article II of the Paris text, which required a Contracting State to "ensure that it is illicit to distribute on its territory programme-carrying signals without the authorization of the originating organization". While the delegation of Morocco was convinced of the need to suppress satellite piracy, it urged that this be not done by conferring exclusive rights on broadcasting organizations. It proposed to change the entire economic philosophy behind the Convention by eliminating any notion of private rights, leaving the States free to decide for themselves the most appropriate means for suppressing piracy on their territory. Rather than obliging States to enforce individual property rights in the form of an exclusive right of authorization, the Convention would require States to take appropriate measures against distribution on its territory of satellite signals by distributors for whom those signals were not intended. The Moroccan delegation, supported from the outset by the delegation of Brazil, insisted that this was a matter of substance rather than of form, involving a fundamental shift in the philosophical basis of the Convention.

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55. The Committee's later decision to accept this proposal was taken in the context of the discussion of Article IV of the Paris text as a solution preferable to that text, the compromise proposals of Austria and Israel, and the idea of a simple resolution condemning piracy. Essentially, the decision was that, in the absence of a sufficiently broad agreement on the point at issue, the effort to establish and balance various exclusive rights under the Convention should be abandoned, and each State should be left to decide for itself the best means for suppressing piratical distribution of satellite signals on or from its territory. Adoption of this change meant not only the deletion of all references to the rights of broadcasters to grant or withhold authorization, and to distributions as being "authorized" or "unauthorized". It also meant the deletion of paragraphs (2) to (5) of Article IV, Alternative A, of the Paris text, which had represented an attempt to clarify the existing rights and to create new rights on behalf of the owners of copyrights and neighbouring rights, counterbalancing the new rights of broadcasting organizations originating satellite signals. Since the Convention itself would confer no new rights to broadcasters, there was no longer any corresponding need to create additional new rights to safeguard the interests of programme-contributors. Instead, it would be left to the States to decide how best to suppress satellite piracy and, if necessary, how best to balance the various interests concerned.

56. When formally introduced, this proposal was embodied in document UNESCO/WIPO/SAT.3/10, submitted by the delegations of Morocco, Brazil and India; the delegation of Mexico also asked that it be considered one of the sponsors. The delegation of Morocco, in introducing the proposal, declared that its effects would be the following: (1) no new exclusive right, with its serious implications, would be created; (2) the owners of the legal right of authorization, that is, the contributors to the programmes, would in no way be deprived of their right; (3) the originating organization, once authorized by the holders of the property right, would be competent to designate the recipients of the programmes carried by the signals; (4) the nature of the protection of the broadcasting organization would then be left entirely to domestic law; (5) some of the objections and reservations raised by the Paris text of Article IV would be met; and (6) the proposed Convention would then be likely to be ratified by a substantial number of Governments.

57. In light of these explanations, the delegation of France considered that the proposal in question represented the only formula capable of circumventing the failure of the Committee's work. After recalling its definite preference for the solution embodied in Alternative A of Article IV of the Paris text, and the impossibility of arriving at general agreement on a balance among the various individual property rights involved, it declared that the only solution capable of gaining widespread acceptance would be one that deliberately avoided dealing with the matter in terms of exclusive rights. The French delegation emphasized that the proposal under consideration had the great merit of having found the appropriate formula.

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58. The delegation of Senegal, after expressing its regrets for having been unable to participate from the beginning in the Committee's deliberations, indicated that it found itself puzzled by the adoption of a text which appeared to it to have departed completely from the field of private law, since the approach both at Lausanne and at Paris had been directed to that field. However, after consideration of the explanations given for this change, it declared its support for the draft Convention which, in its opinion, did not create any additional right.

59. The proposal embodied in document UNESCO/WIPO/SAT.3/10, which came to be known as the "Moroccan proposal", attracted considerable support among the members of the Committee. A large majority welcomed it as the basis for discussion, and among these a number accepted the proposal in principle and agreed to revise the draft Convention in line with its philosophical approach. There was no outright opposition to the proposal among the members of the Committee, although several delegations reserved the positions of their Governments concerning it, as explained in paragraphs 65 to 67 below. The principal points made during the debate are summarized in paragraphs 60 to 64.

60. The sponsors and supporters of the Moroccan proposal argued that, although it might not be an ideal solution, it represented a common denominator and the only realistic way out of the dilemma. In their view, the Paris text represented not one but two separate draft conventions, which were completely incompatible. While a certain number of delegations had preferred the compromise proposals put forward by the delegations of Austria and Israel, they felt that under the circumstances it would not be possible to obtain general agreement on these proposals; since the Committee could not continue meeting time after time, these proposals were unacceptable. A convention based on the Moroccan proposal would be simple and clear, and could gain wide acceptance, which was not true of any of the other proposals except a simple condemnatory resolution. The Moroccan proposal would be better than a resolution since, rather than allowing them merely to make pious declarations, it would impose an affirmative obligation on the Contracting States to implement the requirement to prevent piracy of satellite signals.

61. In answer to questions, the point was made that the main difference between the Paris text and the Moroccan proposal is that the latter would transport the Convention from the field of international private law to that of international public law. As far as the Convention is concerned, no one would be granted any property rights or any exclusive rights, such as copyrights and neighbouring rights, to grant or withhold authorization to distribute satellite signals. While it was true that the originating organization would often be the one making the decision as to the distributors for whom the signals were intended, this did not imply the creation of any economic rights under the Convention.

62. It was pointed out that, under the proposal, the Contracting States are left completely free to implement the basic requirement

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of the Convention - to take all appropriate measures to prevent distribution of signals by distributors for whom the signals are not intended - in any way they see fit: by administrative measures, by telecommunications laws or regulations, by penal sanctions, or by laws granting specific protection to signals under theories of copyright or neighbouring rights. The good faith of the States in providing effective measures against piracy could and should be assumed. It was agreed that such measures could be supplemented by approaches at the diplomatic level made to non-Contracting States.

63. In response to questions implying some concern about possible derogation to the rights of authors, performers, and other programme contributors under the Moroccan proposal, it was asserted that any fears in this connexion were exaggerated, since under the proposal no new rights were granted to broadcasters, no balance would be upset, and nearly all countries could be counted on to protect the rights of authors and other contributors in this situation under other treaties and their domestic laws. Similarly, in response to expressions of concern about the effect of the new Convention upon the Rome Convention, the point was made that, on the contrary, the new treaty would complement the Rome Convention and, by diminishing the virulence of the attacks on it, would promote new adherences.

64. In the light of assertions that, under the proposal, the Convention would no longer be based on concepts of copyright or neighbouring rights, questions were raised as to whether the Committee was still operating within its mandate. In reply, the argument was made that, although States would be free to fulfil the obligation imposed by the Convention by other means, many of them would choose to grant specific rights to signals under their laws on copyright or neighbouring rights. It was also pointed out that, the Committee had, in accordance with its mandate, carried out a broad study of alternative solutions, the solution it decided upon was necessarily also within the mandate; if the Committee would have been competent to adopt a simple resolution, it would also have competence to adopt a treaty such as that proposed.

65. The delegations as a whole supported the proposal and the draft text based on it, but some delegations formally reserved the positions of their Governments: Australia, Austria, Denmark, the Federal Republic of Germany, Japan and the United Kingdom. The delegation of Japan raised a number of questions concerning the theory, structure, effect, wording, approach and practical purposes of the Nairobi text. The intention of the Japanese delegation in raising these questions was not to oppose the compromise solution, which it felt might prove better than nothing. Its purpose was to remove the veil from a number of uncertainties and undiscussed problems it felt were presented by the new text.

66. The delegation of Sweden also expressed some doubts as to whether the proposal took sufficient account of the interests of authors and performers. Even if this proposal did not grant an explicit new right to broadcasting organizations, it placed them in a position that, as a practical matter, almost amounted to a right. For this reason the delegation of Sweden doubted whether

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the provisions of paragraphs (2) to (5) of Alternative A of Article IV of the Paris text should be simply deleted.

67. The delegations of Canada and the United States of America expressed their agreement in principle with the draft text. However, these delegations declared that they would have to reserve their position on the new text, since their governments would now have to consult with all interested groups in their respective countries.

68. During the debate on the Moroccan proposal the Chairman invited the observers from international intergovernmental and non-governmental organizations to make additional comments.

69. The observer from the International Writers Guild (IWG) indicated his complete agreement with the solution thus proposed. It put an end to misinterpretations, as well as to the possible need for counterbalancing between the rights of the contributors to programmes and a private right that might have been established for the benefit of broadcasting organizations. He pointed out that, if this solution ended by giving a certain power of decision to broadcasting organizations with respect to the destination of the signals, it would also give authors the possibility of participating in this decision by means of contracts which would be negotiated with them. Broadcasting organizations would be given every guarantee against the piracy of their signals, but their destination would be decided upon in agreement with the contributors to the programmes, thus preserving a balance between the respective interests.

70. The observer from the International Confederation of Societies of Authors and Composers (CISAC) felt that the situation had been totally transformed by the Moroccan proposal, which he considered most constructive and interesting. In his opinion, the objections previously voiced by the observers from non-governmental organizations representing authors and other contributors to programmes would be likely to be removed by the proposal. He thanked those delegations that had expressed concern about the effect of the proposal on authors' rights, but he considered that the complicated provisions of Article IV, Alternative A of the Paris text had no place in the new context.

71. The observer of the European Broadcasting Union (EBU) regarded the Moroccan proposal as an excellent way out of the deadlock. The Paris text had been erroneously interpreted to give exclusive rights to broadcasters at the expense of other groups, and he was happy to see this misunderstanding avoided by adoption of the criterion of the proper and lawful destination of a programme, subject to the copyrights and neighbouring rights of all contributors.

72. The observer of the International Federation of the Phonographic Industry (IFPI), associating her views with those expressed by the observers from the authors' organizations, welcomed the Moroccan proposal as a solution to the problem, on condition that the explanations given by the sponsors and supporters of the proposal were

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reflected in the preamble of the draft Convention and summarized in this report.

73. The observer of the International Federation of Musicians (FIM) reiterated the opposition of his organization to all forms of piracy and declared that, since the new proposal essentially represents a condemnation of piracy, FIM could hardly oppose it. He reviewed the long history of the efforts to obtain international recognition of performers' rights, and pointed out that, despite the performers' pioneering role in the development of the Rome Convention, it remained the group with the most urgent need of protection against piracy.

74. The observer representing the International Labour Office (ILO) recalled that the views of the ILO concerning the proposed new Convention had been made known, both orally and in writing, at each of the meetings of the Committee of Experts. In principle, the ILO doubted whether such a convention was necessary: the problem, as it had been presented, was essentially to prevent one broadcaster from pirating the signals of another broadcaster, and the ILO believed that broadcasting organizations were well able to deal with such a situation, should it arise, by measures taken among themselves, without recourse to an international instrument. As for the text prepared in Paris, the ILO had already pointed out that the interests of performers and other contributors to programmes were not sufficiently protected even in Alternative A of Article IV. The new proposal presented by the delegation of Morocco had been favourably received by some of the non-governmental organizations, but the observer of the ILO wondered whether this proposal was in fact as satisfactory as it appeared, particularly for performers. It was true that, in law, the broadcasters would no longer be granted an exclusive property right. However, in practice, the result might well be just the same as if such a right had been given. In countries where other contributors to programmes were not well organized they would not be able effectively to enter into contractual arrangements with broadcasters, and thus the ultimate destination of the programme-carrying signals would be determined in fact by the broadcaster alone. If this fear was justified, there would be grounds for including in the new Convention a provision giving at least the protection envisaged in Alternative A of Article IV of the Paris text, even though that did not go as far as the ILO would wish.

75. The observer of the International Secretariat of Entertainment Trade Unions (ISETU) said that although his organization watched with great concern the international concentration of industrial power in the mass media, it recognized that technological progress could be of great benefit to all contributors. Like man-power and natural resources, the products of the individual human mind must be protected against the inroads of technology and industrial concentration. ISETU strongly favoured individual creativity and individual ownership of copyrights and neighbouring rights, and it deplored the undermining of the Rome Convention by various competing instruments such as this one. While the Moroccan proposal might appear at first glance as an attractive way to break the deadlock, the observer of ISETU felt that it would not alter the objections

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of his organization, which would probably continue its strict opposition to the draft Convention.

76. The International Federation of Actors (FIA), speaking through its observer, did not greet the new proposal with satisfaction. Broadcasters could find all of the protection they needed in the Rome Convention, but they would not avail themselves of the protection intended for them because other interested parties were also beneficiaries under that Convention. Were it not for the opposition of broadcasters, the Rome Convention would be a perfect worldwide instrument. Performers have not supported the Paris text or the Austrian proposal, because their protection of performers was only on paper. The Moroccan proposal, at least, did not establish a damaging precedent by providing illusory safeguards, and FIA could understand why authors support the new compromise since most countries have copyright laws protecting their rights; but this was not true of performers' rights, and if the Moroccan proposal was to meet their needs it must safeguard them explicitly and at the same level as the Rome Convention.

77. The observer representing the Internationale Gesellschaft für Urheberrecht (INTERGU) disagreed with the views expressed by the speakers immediately preceding him, and supported the position expressed by the observers of IWG and CISAC, among others, welcoming the Moroccan proposal as the basis for the new Convention.

DRAFT CONVENTION

78. The change in the philosophical approach and legal framework brought about in the draft Convention by acceptance of the Moroccan proposal resulted in some radical revisions in the Paris text, notably in the title, preamble, and Articles I to IV. The most dramatic of these was, of course, the suppression of everything in Article IV after the first paragraph. In addition to these important consequential changes, there were additional changes and polishing in the Paris text, as noted below.

79. In preparation for consideration of the Nairobi text by a diplomatic conference, it was agreed to renumber all of the articles consecutively, using arabic rather than roman numerals. The following table will assist in locating corresponding provisions in the two texts:

<u>Nairobi</u>		<u>Paris</u>
1	I and II
2	I <u>bis</u>
3	III (2)
4	V
5	IV <u>bis</u>
6	IV(1)
7	new
8	VI
9	VII

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<u>Nairobi</u>		<u>Paris</u>
10	VIII
11	IX
12	X

TITLE

80. The Committee recognized that, consistent with the new philosophy underlying the Convention, it would be necessary to change the title to avoid any reference to the distribution of signals being "unauthorized", "illicit", or the like. It therefore adopted a new title which, while not very informative, is sufficiently specific to identify the Convention without including any terminology that might be misleading.

PREAMBLE

81. Of the five paragraphs of the preamble, the first and the last are retained from the Paris text with minor changes in wording, while paragraphs (b), (c) and (d) are completely new. The new paragraphs are intended to reflect as accurately as possible the thinking behind the new concept upon which the Nairobi text is based.

82. The delegation of France noted specially that since the new text deliberately avoided any reference to the rights of authors and other contributors that may be affected by satellite transmissions, the preamble should not refer to "safeguarding the interests" of these persons. In its view, any such expression might lead to the erroneous conclusion that the Convention, as newly conceived, actually dealt with problems which in fact had not yet been resolved. This viewpoint underlies the wording of paragraph (c) of the preamble, which merely "recognizes the importance" of the interests in question.

83. The delegation of Austria proposed that a new paragraph be added to the preamble, following paragraph (d), reading: "Recognizing the existence of the right of freedom of information". Having received no support this proposal was withdrawn with the request that it be mentioned in this report.

84. A proposal was made by the delegation of Morocco, supported by the delegations of Algeria, Ghana, Ivory Coast, and Senegal, to delete the specific reference to the Rome Convention from paragraph (e) of the preamble or, alternatively, to suppress the paragraph completely. The delegation of Brazil, supported by delegations from six other States parties to the Rome Convention, opposed the proposal. In their view, the Rome Convention offered protection to programme-carrying signals transmitted by satellite, and it was therefore important for the new Convention to include a provision explicitly safeguarding the Rome Convention. In a spirit of co-operation, the delegations favouring deletion of the reference agreed that it could be maintained for the time being, on the understanding that the

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matter would be left for decision by the Diplomatic Conference.

ARTICLE I: SUBJECT MATTER AND OBLIGATION

85. The basic provision of the Nairobi text is Article 1, which represents a combination of Articles I and II of the Paris text as completely redrafted in accordance with the Moroccan proposal. The Moroccan proposal itself is incorporated nearly verbatim in paragraph (1) of the Article, and its four key phrases - "all appropriate measures", "prevent", "distributor" and "intended" - were left untouched. The intended meaning and implications of the Moroccan proposal are discussed above in paragraphs 54 to 64. Because "all appropriate measures" refers to any suitable adequate and effective method, a Government may choose to implement its obligation under Article 1(1), the provisions of paragraph (1) of Article III of the Paris text were deleted as redundant. The Committee agreed, however, that under no circumstances would jamming, which is prescribed by the ITU Regulations, be considered an "appropriate measure".

86. The delegation of India referred to the need to make it clear that Article 1(1) would not prevent Contracting States from stopping, for reasons of security or because of political considerations, the distribution of certain objectionable signals even when they were intended for that State. He accordingly desired that the following statement be added to this report: "On a point raised by the delegation of India in connexion with Article 1(1), the Committee noted that the proposed Convention did not contain any obligation for any Contracting State as to the distribution, on the territory of that State, of signals where the emitted signal is intended for such distribution. Consequently, nothing in the proposed Convention would prevent the authorities of a State from prohibiting distributors operating on its territory from distributing these signals - for example, because they carried programmes contrary to public order or morality - even where the distribution would be based on signals coming from abroad and intended for distribution on the territory of that State".

87. In accordance with the suggestion in paragraph 21 of the Secretariat's commentary on the Paris text, the Committee agreed to change the operative phrase "distribution on its territory" to read "distribution on or from its territory", thus imposing an obligation upon a Contracting State to prevent piratical transmission from a sending station located on its territory, even where the members of the public for whom the transmission is intended are entirely outside its territory.

88. Although it was pointed out that, at present and in the foreseeable future, there is no possible method for intercepting a signal during the "up-link" of a satellite transmission, the Committee considered it wise to cover the possibility for the future. Thus, once signals have been sent to a satellite, a Contracting State is obliged to stop any distribution on or from its territory by a distributor for whom the signals were not intended, regardless of the point at which they were intercepted: on the up-link (assuming

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this becomes a physical possibility), in the satellite storage unit, on the down-link, or in a later distribution not covered by paragraph (2). The obligation arises not only with respect to distributions made immediately and contemporaneously with the original emission, but also to distributions, made later by distributors for whom they were not intended, of fixations of signals, emitted to a satellite, regardless of the point in the transmission at which the fixation had been made.

89. The Committee considered the question of whether and to what extent the Convention covers broadcasting from direct broadcast satellites, especially in light of the newly-worded obligation imposed on Contracting States to prevent distribution on or from its territory "by any distributor for whom the signal ... is not intended". A proposal dealing with this question was submitted by the United States of America (UNESCO/WIPO/SAT.3/11 Corr.), but this was withdrawn during the Working Group's discussions of this extremely complex and difficult problem.

As a starting point, the Committee agreed that the concept of "distribution" includes distribution by direct broadcast satellite, and that a "distributor" includes a broadcasting organization that is distributing signals directly to the public via such a satellite. Thus, a distributor in a Contracting State would be prevented from picking up signals from a direct broadcasting satellite source and distributing them further either by terrestrial means or by direct broadcasting satellites. Similarly, an unintended distributor in a Contracting State would be prevented from intercepting signals from a point-to-point transmission and distributing them further by direct broadcasting satellites.

On the other hand, the obligation of Article 1 would not apply where the originating organization and the distributor are one and the same. For example, assume that an organization in Country X is broadcasting by direct broadcast satellite, and the broadcasts are capable of being received on home receiving sets in Country Y. Even if both countries are Contracting States there would be no obligation or possibility for Country Y to prevent the distribution of the signals directly from the satellite to home receivers on its territory. Since the originating organization is also the distributor of the signals in Country Y, this is not a case where the distributor is one "for whom the signal emitted to or through the satellite is not intended", and Article 1 therefore does not cover the situation. Moreover, since the operations resulting in distribution on the territory of Country Y are carried out elsewhere, in Country X and in the satellite itself, there would be no way for Country Y to prevent the distribution except by means, such as jamming or distraction of the satellite, that have been acknowledged to be illegal and prohibited under other treaties.

90. The Committee struggled with the conceptual definitions arising from the purely technical fact that, during the course of a transmission or as the result of a fixation, a programme-carrying signal nearly always changes its characteristics or is replaced by another

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signal which is generated from it. To deal with this problem the Committee adopted the concept of a "derived signal" which, as electromagnetic energy, is constituted by or is reconstituted from the signal as originally emitted. As long as the starting point was the "emitted signal", it makes no difference whether the signal actually carrying the programme is physically the very one that was emitted, was amplified or changed in frequency or other characteristics, or was fixed and later regenerated. The legal result is the same in all four of the cases covered in items (i) and (ii) of Article 1(1):

"Signal A: the same signal;

Signal B: another signal derived without fixation from Signal A;

Signal C: a signal derived from a fixation of Signal A;

Signal D: a signal derived from a fixation of Signal B.

91. Another difficult point is that involved in paragraph (2) of Article 1. The wording of the equivalent paragraph in the Paris text was extremely obscure, and the provision was completely rewritten both for the sake of clarity and to conform with the modalities of the Moroccan proposal.

92. Essentially, the case involves the following elements: (1) a signal that has passed through a satellite; (2) a chain of distributions of the signal taking place after the passage through the satellite; (3) a distributor, for whom the signal was not intended, who intercepts the signal along the chain; and (4) a distribution on or from the territory of a Contracting State. The following questions were considered in this connexion:

(a) Should the Convention deal with any distribution other than the first one? The Committee decided that it should. For example, if the first distribution was made by an unintended distributor in a non-Contracting State it would not be prevented under the Convention, but if the signals were picked up from the distribution and redistributed by an unintended distributor in a Contracting State, the Convention should apply.

(b) Should the Convention deal with all distributors of the signal after it has passed through a satellite, regardless of whether any of the distributors in the chain were intended to receive and distribute the signals? This would be the result if paragraph (2) of Article 1 were omitted, but the Committee felt that the Convention should not go this far in dealing with situations which are already fully covered in the Rome Convention.

(c) Should the Convention deal only with distributions of signals that have passed through a satellite where none of the distributors in the chain were intended to receive the signals? This was the conclusion adopted by the Committee and incorporated in Article 1(2).

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ARTICLE 2: DEFINITIONS

General points

93. On July 9, 1973, during the plenary session at which the Committee adopted the draft text of the proposed Convention, the delegation of Austria recommended reversing the order of Articles 1 and 2. Although this suggestion received some support, the Austrian delegation recognized that for practical reasons it would be wise to defer the proposals to the Diplomatic Conference.

94. Of the eight definitions appearing in Article 2 of the Nairobi text, four ("signal", "programme", "satellite", and "originating organization") are identical with those in the Paris text. The definition of "distribution" was revised in the light of the new approach in Article 1, and a complementary definition of "distributor" was added. Also added were definitions of "emitted signal" or "signal emitted" and of "signal distributed" to assist in clarifying the field of application of the draft Convention as specified in Article 1.

"programme"

95. The Committee considered the alternatives presented in the definition of "programme" in an effort to decide whether the Convention should be limited to television signals or should also deal with signals consisting of sounds alone. Finding itself almost evenly divided on the question, the Committee agreed to retain the alternatives in brackets.

"emitted signal" or "signal emitted"

96. The Secretariat's commentary on the Paris text had recommended adding a definition of "emission" to Article 2, and the Committee agreed that the concept should not be left undefined. As redrafted at Nairobi, the text contains a number of references to "emitted signal" or "signal emitted", notably in Article 1, and the definition of those terms appears in Article 2(iv). Essentially, an "emitted signal" is a programme-carrying signal that is sent to or through a satellite, either from the earth or from another satellite or other extra-terrestrial body.

"signal distributed"

97. The definition of "signal distributed" incorporates by reference the concept enunciated in items (i) and (ii) of Article 1(1) (see paragraph 85 above).

"distribution" and "distributor"

98. The new definition of "distribution" shifts the emphasis to the operative act performed by a "distributor", and away from the results of the act ("transmission"). As in the earlier definition, however, the key element in the concept of "distribution" is that there must

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be a transmission of programme-carrying signals "to the general public and any section thereof". "Distributor" is defined in terms of the natural or legal person with ultimate decision-making responsibility in the distribution process.

ARTICLE 3: DURATION

99. Even before the compromise proposal deleting any requirements for protection of exclusive rights had been accepted, the Committee was divided as to whether a minimum term should be attached to the obligations imposed by the Convention on Contracting States. After acceptance of the Moroccan proposal the differences of opinion remained even though the reasons behind them had changed to some extent. The Committee therefore agreed to reword the provision and to retain it in brackets for consideration by the Diplomatic Conference.

100. Certain delegations favouring deletion of this article argued that a provision creating a minimum term would be inconsistent with a convention carrying no obligation to protect private property rights and leaving States free to decide for themselves the most appropriate means for preventing piracy of satellite signals. It was also pointed out that the very concept of duration of protection is obscure when applied to signals considered as a physical phenomenon, and that what seemed in fact to be involved was a duration of protection of the programmes themselves, a protection that is completely outside the scope of the Convention. Other delegations took the view that, unless a provision such as Article 3 were included, the Convention could be interpreted as imposing a permanent obligation with respect to signals that have been recorded, and any such result would be burdensome and unnecessary, especially for old signals. On the other hand, the lack of a specific provision might also present the opposite danger: that States might feel free to construe the obligation to "take all appropriate measures" as something that could be disregarded a short time or immediately after the signal had been emitted to the satellite. The position of these delegations was that the Convention should clearly free States from their obligation with respect to particular signals after a given time, and that the time should be computed from the emission of those signals.

101. Other delegations opposed Article 3 for a somewhat different reason: their view was that the obligations of States to prevent distribution of satellite signals based on recordings of old programmes should end definitely at some point, and should not spring back to life each time the programme is rebroadcast by satellite. The prevailing view of the Committee, however, was that, since the Convention is dealing with signals and not programmes, each emission of signals gives rise to a new obligation under the Convention, regardless of whether the programmes embodied in the signals are old or new. Thus, if a term were attached to the obligation, each new emission of signals carrying the same programme would give rise to a new term, though it would not extend the term with respect to the signals as originally emitted.

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102. It was reiterated at Nairobi that the term provided in Article 3 concerned only the distribution of programme-carrying signals, and not the programme carried. The twenty-year term applies only to recorded signals, and represents a minimum; States are free to observe the obligations of the Convention for as long as they choose.

ARTICLE 4: EXCEPTIONS

103. Despite the change in philosophy accompanying acceptance of the Moroccan proposal and the deletion of all references to exclusive rights or rights of authorization, the Committee considered it indispensable to retain a provision similar to Article V of the Paris text, making specific reference to certain situations in which the Contracting States would not be required to observe the obligation provided for in Article 1(1). This provision, which became Article 4 of the Nairobi text, was based on a draft proposed by the delegations of Brazil and Mexico (UNESCO/WIPO/SAT.3/12 Rev.), as amended by a proposal submitted by the delegation of the Federal Republic of Germany. The delegation of France had submitted a text (UNESCO/WIPO/SAT.3/13) similar to that proposed by Brazil and Mexico but retired it in favour of the latter.

104. Although redrafted substantially to conform to the new philosophy, the provisions of paragraphs (i) and (iii) of Article 4 of the Nairobi text are substantially the same as paragraphs (i) and (ii) of Article V of the Paris text. A clause was added to make clear that in this context "teaching" includes "teaching in the framework of adult education". Paragraph (ii) of Article 4, based on the amendment proposed by the delegation of the Federal Republic of Germany, broadens the exceptions under certain circumstances to include, as "quotations", short excerpts of the programme carried by the emitted signal.

105. At the request of the delegation of the United States of America, the following remarks from paragraph 49 of the Secretariat's commentary on the Paris text are reprinted in this report: Under paragraph (i), short excerpts of a contest or spectacle could be distributed if the genuine purpose was the reporting of a newsworthy event, but only to the extremely brief extent "justified by the informatory purpose". To warrant the use of a short excerpt under this provision, the programming must be done as part of a report of general news of the day and would therefore, as a rule, have to be transmitted on the basis of a fixation. The possibilities of distributing all or any part of a sporting event under paragraph (ii) seem even more limited, since the sole purpose of the distribution must be teaching.

106. The delegation of India submitted a proposal (document UNESCO/WIPO/SAT.3/7) for amendment of Article 4 to provide for compulsory licensing and determination of equitable remuneration where authorization is refused by an originating organization; the proposal made special mention of situations involving "exploiting organized sports for commercial purposes". This proposal had been

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submitted before the Committee had accepted the Moroccan proposal as the basis for the Nairobi text, and several delegations took the position that any provision for compulsory licensing would be out of place in the context of the new legal framework of the draft Convention. During the discussion a question was also raised as to whether a Contracting State could meet its obligation to take "all appropriate measures" to prevent piracy of satellite signals by granting copyright protection to signals but, at the same time, making that protection subject to compulsory licensing. The Committee did not discuss this question, but the delegation of India asked that a reference to the point be included in this report. It provisionally withdrew the proposal contained in document UNESCO/WIPO/SAT.3/7 in favour of that submitted in document UNESCO/WIPO/SAT.3/16, which was accepted as the basis for the provision now appearing within brackets as Article 7 (see paragraph 112 below).

ARTICLE 5: NON-RETROACTIVITY

107. With some slight modifications in wording this provision was retained from the earlier texts, as recommended by the Working Party. It was pointed out that, if it were accepted that the obligation imposed on States under the Moroccan proposal need not be perpetual, the provision would be of some substantive importance. Moreover, the provision would be necessary for some States whose constitutions prohibit the enactment of laws having retroactive effect.

ARTICLE 6: SAFEGUARD OF INTERESTS OF CONTRIBUTORS TO PROGRAMMES

108. As part of the compromise solution deriving from acceptance of the Moroccan proposal, it was agreed that paragraph (1) of Article IV of the Paris text had substantive importance and should be retained. Its purpose was to make it clear that, under the new Convention, none of the "appropriate measures" adopted by a Contracting State could be allowed to impinge in any way upon the existing rights of authors, performers, phonogram producers or broadcasting organizations, whether the protection of those rights derived from domestic law, from either of the copyright Conventions or from the Rome Convention. Since the safeguard clause was now addressed specifically to the protection of the four groups covered by the conventions on copyright and neighbouring rights, it was agreed to delete the reference to "other contributors to the programmes", which had been included in brackets in the Paris text.

109. In connexion with Article 6, the observer of the International Federation of Actors (FIA) stated that, regardless of what the text says, the draft Convention would in fact prejudice the interests mentioned. The identity of the party who decides for whom a signal is "intended" is obscure, and there is no guarantee that performers would have any voice in the matter. The decision might be left to the originating organization, and this might in turn even be a pirate operating on the high seas. This problem had been dealt with in Article IV, Alternative A of the Paris text and, since there is

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no corresponding provision in the Nairobi text, his organization would have to reserve its position on the latter. Meanwhile, he hoped that this problem would be carefully studied before the Diplomatic Conference.

110. In regard to Article 6, the delegation of India proposed that a second paragraph be added, reading as follows: "Further, this Convention shall in no way be interpreted to confer any more protection to the signal than the degree of protection secured to authors, performers, producers of phonograms and broadcasting organizations under any domestic law or international agreement". Since this proposed amendment was put forward orally during the plenary session of the Committee on July 9, 1973, at which the final text of the draft Convention was considered for adoption, it was decided that the proposal had been submitted too late for consideration by the Committee, but that it should be mentioned in this report as the opinion of the delegation of India.

111. In Article 4, and elsewhere in the English text of the draft Convention, the Nairobi text uses the term "domestic law" rather than the term "national legislation" employed in the Paris text. This was to avoid any problem of interpretation arising from the fact that, in ordinary English usage, the term "legislation" refers to statutory enactments by a legislative body and could be taken to exclude judge-made and administrative law.

ARTICLE 7: PREVENTION OF ABUSE OF MONOPOLIES

112. In response to a proposal submitted by the delegation of India (document UNESCO/WIPO/SAT.3/16), supported by the delegation of Mexico, the Committee adopted, as an alternative presented in square brackets, a saving clause intended to preserve the right of a Contracting State to prevent abuse of monopolies under its domestic law. The Indian delegation explained that it considered such a clarification desirable in the text of the Convention, especially to deal with problems arising from the licensing of worldwide rights in certain satellite transmissions and the setting of prices for these rights at a level that developing countries could not pay.

113. This Indian proposal attracted some support, but in view of opposition from other delegations it was agreed to include the provision as a separate article entirely within brackets. There was also disagreement as to whether the word "international" should be added to the reference to "abuse of monopolies", and if so whether it should modify the word "abuse" or the word "monopolies". Under these circumstances, the word "international" was itself bracketed, within the entire bracketed article. The delegation of India wished this report to reflect his statement that, if this proposal were not adopted, it would consider reviving its proposal for the establishment of a system of compulsory licensing as put forward in document UNESCO/WIPO/SAT.3/7.

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ARTICLE 8: APPLICATION OF THE CONVENTION

114. With the addition of one alternative, the Nairobi Committee adopted the Paris text of this provision. The delegation of France, supported by the delegation of Mexico, proposed that, instead of opening the Convention for worldwide adherence as in the Paris text, the provision should require adherents to be members of the Berne Union or parties to the Universal Copyright Convention. The French delegation argued that the narrowing of the field of application of the Convention would induce more countries, particularly developing countries, to join the copyright conventions, and that thus ensuring copyright protection in countries assuming the obligation to prevent piracy of satellite signals would be even more important under the approach of the Moroccan proposal. The delegation of Kenya, supported by several other delegations, opposed the French proposal on the grounds that, as in the case of the Rome Convention, limiting the new treaty to countries parties to one of the copyright Conventions would effectively prevent worldwide acceptance, which was essential in view of the nature of satellite communications. In particular, it noted that important ground stations were currently operating in countries belonging to no international copyright arrangement, and that narrowing the field of application would be likely to prevent their adherence. In view of the importance of this problem, it was agreed to include the French proposal as an alternative in the text of Article 8(1), leaving it to the Diplomatic Conference to take a decision on the matter.

ARTICLE 9: ENTRY INTO FORCE

115. The Committee retained the wording of this provision as originally formulated in the Lausanne text and maintained in the Paris text. It decided, however, to specify that the number of instruments of ratification, acceptance or accession needed to bring the Convention into force would be set at five.

ARTICLE 10: DENUNCIATION

116. The Committee adopted the Lausanne/Paris text of this provision without change.

ARTICLE 11: RESERVATIONS

117. Article 11, forbidding States to make reservations except in two specific situations, attracted a good deal of discussion at the Nairobi meeting. Since, despite the change in philosophy, the nationality of the originating organization remains the sole point of attachment under Article 1, it was necessary to maintain the sense of Article IX(2) of the Paris text, allowing countries whose law so provides to substitute the criterion of the place from which the signals are emitted. The language of this provision was completely redrafted to avoid wording that might not be consistent with the new philosophy of Article 1, and to conform the operative date to that chosen in paragraph (3).

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118. The delegations of Canada, the United States of America and the United Kingdom declared that, because of the particular legal situation in their respective countries, in order for their Governments to consider adherence to the new Convention, it would be essential that the basic provisions of Article IX(3) of the Paris text be retained and that for this purpose it would be necessary to delete the proviso appearing in square brackets. This view was supported by other delegations.

119. The Committee agreed to retain the wording of the first part of paragraph (3) without substantial change from the Paris text; since the phrase "limits or denies protection" accurately describes the legal situation in a country that would justify a reservation to the obligations of the Convention, and it is not attempting to characterize the obligations themselves, the reference to "protection" is unobjectionable under the new philosophy.

120. As for the proviso in brackets, it was agreed to retain the text exactly as drafted in the Paris draft, leaving it to the Diplomatic Conference to decide whether to delete the clause or, as favoured by several delegations, to maintain it in the final text.

121. As the result of a suggestion by the delegation of Canada, the Committee adopted the following interpretation of the provisions of Article 11(3): It is understood that, since the object of the present Convention is to prevent the distribution of signals received from a satellite by a distributor for whom the signals were not intended, it is clear that the Convention would in no way affect a Contracting State's domestic law with respect to the distribution by cable systems of copyrighted material subject to other relevant international conventions.

122. The delegation of the Netherlands called attention to paragraph 91 of the report of the Paris meeting, referring to the opinion of some delegations that "the reservation should apply only to the extent that the national legislation expressly withholds, limits or denies protection in cases of distribution by wire and similar means". The same thought was expressed even more strongly in paragraph 54 of the Secretariat's commentary on the Paris text: "The modality of a country's domestic law would necessarily have to be established on the basis of some express provision of law or court precedent; the mere absence of a provision or decision explicitly on the point would not be sufficient to permit a reservation". The delegation of the Netherlands explained that the domestic law in its country on the question of cable transmission was not explicit, and asked how, under the circumstances, it could ratify the new treaty. It could also be the case in other countries that the courts had not yet had occasion to rule on the exact juridical situation of the new phenomenon of cable transmission. Since this process could take some time, it would be important to choose, as the effective date, the date of entry into force of the Convention in the particular State making the reservation in question. The Committee did not adopt an interpretation different from that in the Secretariat's commentary. Instead, as a partial answer to the problem posed by the Netherlands delegation,

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it made the operative date in paragraphs (2) and (3) of Article 11 the date of entry into force of the Convention for the State making the reservation, rather than (as had previously been contemplated) the first day on which signature of the Convention is possible.

123. In paragraph (3) of Article 11, the phrase "wires, cables or other communications channels" was revised to refer to "other similar communications channels" to make clear in the text what had been explained in paragraph 55 of the commentary of the Secretariats on the Paris text; that the reference to "communications channels" means connections, other than wire or cable, whether material or immaterial, by which programme material can be directed to specific receivers without being received by the public at large; examples may include transmission by laser beams and microwave transmissions of coded material which can be decoded only by a subscriber.

ARTICLE 12: NOTIFICATIONS

124. The wording of this provision, as formulated in the Lausanne text and maintained at Paris, was adopted by the Committee. In addition, however, it was agreed to delete the square brackets around the reference to the International Telecommunication Union, thus assuring that the Secretary-General of the ITU would receive the various notifications referred to in paragraph (3).

RESOLUTION ADOPTED BY THE COMMITTEE

125. With respect to the results of the meeting and the next steps to be taken, the Committee was presented with a draft resolution submitted by the delegation of Kenya (document UNESCO/WIPO/SAT.3/17). This draft proposed that the Committee declare that it had "successfully fulfilled its mandate by drawing up a draft Convention susceptible of general acceptance", and recommend that "a Diplomatic Conference for the purpose of concluding an international convention on this subject be convened in 1974".

126. A very large majority of the Governmental Experts agreed that the work entrusted to the Committee had been completed, that the results were positive, and that the draft Convention should be submitted to a Diplomatic Conference at an early date. While the word "successfully" was changed to "entirely" on grounds of the impossibility of predicting the future, the remainder of the draft resolution, with its tone of cautious optimism, was maintained, as it appeared in document UNESCO/WIPO/SAT.3/20.

127. In keeping with its mandate, the Committee recommended that the Diplomatic Conference be convened in 1974. The delegation of India disagreed with this decision, and asked that the following statement be inserted in this report: As regards the proposal for convening the Diplomatic Conference in 1974, the Indian delegation expressed doubt about the advisability of rushing to a Diplomatic Conference when many aspects remain to be studied, such as the extent of stealing of signals, what are the rates at which world

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rights for sporting events are bought, at what high rates they are sold to developing countries, and to what extent it impedes the free flow of information and culture.

128. The resolution adopted by the Committee appears as Annex B of this report.

ADOPTION OF THE REPORT

129. A draft report of the meeting, prepared by the Secretariats, was examined paragraph by paragraph. After certain modifications the present report was adopted, and it includes, as Annex A, the draft text of the proposed Convention relating to the distribution of programme-carrying signals transmitted by satellites, as formulated by the Committee.

CLOSING OF THE MEETING

130. After considering alternative methods by which all of the delegations could express their gratitude to the Government of Kenya for its invitation and hospitality, as proposed in document UNESCO/WIPO/SAT.3/21, the Committee agreed for the Chairman to send, on its behalf, a letter of thanks to the Minister of Foreign Affairs of Kenya, adding a paragraph summarizing the results achieved at the Nairobi meeting.

131. The Chairman, noting that the Committee had completed its task, made a closing address which, at the request of the delegation of Kenya, is attached to this report as Annex C.

132. After the delegations of Mexico, Kenya and France had expressed the appreciation and thanks of the Committee to the Chairman and to the Secretariats, the meeting was declared closed.

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Annex A

DRAFT TEXT OF THE PROPOSED CONVENTION

Adopted by the Committee on July 9, 1973

CONVENTION RELATING TO THE DISTRIBUTION OF PROGRAMME-CARRYING SIGNALS TRANSMITTED BY SATELLITE

The Contracting States,

(a) Aware that the use of satellites for the distribution of programme-carrying signals is rapidly growing both in volume and geographical coverage;

(b) Concerned that there is no world-wide system to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors, and that this lack is likely to hamper the use of satellite communications;

(c) Recognizing, in this respect, the importance of the interests of authors, performers, producers of phonograms and broadcasting organizations;

(d) Convinced that an international system should be established under which measures would be provided to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors;

(e) Conscious of the need not to impair in any way international agreements already in force, and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers, producers of phonograms and broadcasting organizations,

Have agreed as follows:

ARTICLE 1

(1) Each Contracting State undertakes to take all appropriate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or through the satellite is not intended. This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed

(i) is the emitted signal or is derived therefrom, or

(ii) is derived from a fixation of the emitted signal or of a signal derived therefrom.

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(2) The obligation provided in paragraph (1) shall not apply to the distribution of signals derived from signals which have already been distributed by a distributor for whom the emitted signals were intended.

ARTICLE 2

For the purposes of this Convention,

(i) "signal" is an electronically-generated carrier capable of transmitting programmes,

(ii) "programme" is a body of live or recorded material consisting of Alternative A: images or a combination of sounds and images / Alternative B: images, sounds or both embodied in signals emitted for the purpose of ultimate distribution,

(iii) "satellite" is any device in extraterrestrial space capable of transmitting signals,

(iv) "emitted signal" or "signal emitted" is any programme-carrying signal that goes to a satellite and any such signal that goes through a satellite,

(v) "signal distributed" is the programme-carrying signal referred to in Article 1(1)(i) and (ii),

(vi) "originating organization" is the person or entity that decides what programme the signals will carry,

(vii) "distribution" is the operation by which a distributor transmits signals to the general public or any section thereof,

(viii) "distributor" is the person or entity that decides that the transmission of the signals to the general public or any section thereof should take place.

ARTICLE 3

The obligation provided in Article 1(1) shall, in respect to any emitted signal, continue at least until the expiration of twenty years from the end of the year in which such signal was emitted.

ARTICLE 4

No Contracting State shall be required to observe the obligation provided for in Article 1(1) where the signal distributed on its territory by a distributor for whom the emitted signal is not intended

(i) carries short excerpts of the programme carried by the emitted signal, consisting of reports of current events, but only to the extent justified by the informatory purpose of such excerpts,

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(ii) carries, as quotations, short excerpts of the programme carried by the emitted signal, provided that such quotations are compatible with fair practice and are justified by the informative purpose of such quotations,

(iii) carries, where the said territory is that of a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, a programme carried by the emitted signal, provided that the distribution is solely for the purpose of teaching, including teaching in the framework of adult education, or scientific research.

ARTICLE 5

No Contracting State shall be required to apply this Convention with respect to any signal emitted before this Convention entered into force for that State.

ARTICLE 6

This Convention shall in no way be interpreted to limit or prejudice the protection secured to authors, performers, producers of phonograms, or broadcasting organizations, under any domestic law or international agreement.

ARTICLE 7

This Convention shall in no way be interpreted as limiting the right of any Contracting State to apply its domestic law in order to prevent international abuse of monopolies.

ARTICLE 8

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until for signature by any State that is Alternative A: a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice/ Alternative B: a party to the Berne Convention for the Protection of Literary and Artistic Works or the Universal Copyright Convention/.

(2) This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1).

(3) Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nations.

(4) It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its domestic law to give effect to the provisions of the Convention.

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ARTICLE 9

(1) This Convention shall enter into force three months after the deposit of the fifth instrument of ratification, acceptance or accession.

(2) For each State ratifying, accepting or acceding to this Convention after the deposit of the fifth instrument of ratification, acceptance or accession, this Convention shall enter into force three months after the deposit of its instrument.

(3) (a) Any State may, at the time of ratification, acceptance or accession, or at any later date, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall apply to all or any one of the territories for whose international affairs it is responsible. This notification shall take effect three months after the date on which it is received.

(b) However, subparagraph (a) may in no case be interpreted as implying recognition or tacit acceptance by any one of the Contracting States of the actual situation in any territory to which the present Convention is made applicable by another Contracting State by virtue of the said subparagraph.

ARTICLE 10

(1) Any Contracting State may denounce this Convention by written notification addressed to the Secretary-General of the United Nations, on its own behalf or on behalf of all or any of the territories referred to in Article 9(3).

(2) Denunciation shall take effect twelve months after the date on which the notification referred to in paragraph (1) is received.

ARTICLE 11

(1) Subject to paragraphs (2) and (3), no reservation to this Convention shall be permitted.

(2) Any Contracting State whose domestic law, on the date on which this Convention enters into force for that State, so provides may, by a notification deposited with the Secretary-General of the United Nations, declare that, for its purposes, the words "where the originating organization is a national of another Contracting State" appearing in Article 1(1) shall be considered as if they were replaced by the words "where the emitted signal is emitted from the territory of another Contracting State".

(3) (a) Any Contracting State which, on the date on which this Convention enters into force for that State, limits or denies protection with respect to the distribution of programme-carrying signals by means of wires, cable or other similar communications

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channels to subscribing members of the public may, by a notification deposited with the Secretary-General of the United Nations, declare that, to the extent that and as long as its domestic law limits or denies protection, it will not apply this Convention to such distributions provided that:

(i) the distribution in question takes place simultaneously with or after a distribution of the programme-carrying signals by wireless means on the territory of the State, or

(ii) if the distribution in question is derived from a distribution made by the satellite itself, the signals can be received by the general public in that State, or any section of that public/.

(b) Any State that has deposited a notification in accordance with subparagraph (a) shall notify the Secretary-General of the United Nations, within six months of their coming into effect, of any changes in its domestic law whereby the reservation under that subparagraph becomes inapplicable or more limited in scope.

ARTICLE 12

(1) This Convention shall be established in a single original in English, French, Russian and Spanish, all four versions being equally authentic.

(2) In addition, official versions of this Convention shall be established in by

(3) The Secretary-General of the United Nations shall notify the States referred to in Article 8(1), as well as the Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director General of the World Intellectual Property Organization, the Director General of the International Labour Office and the Secretary-General of the International Telecommunication Union, of

(i) signatures to this Convention;

(ii) deposits of instruments of ratification, acceptance and accession;

(iii) the date of entry into force of this Convention under Article 9(1);

(iv) the deposit of notifications relating to Article 11, together with the text of the declarations made;

(v) the receipt of notifications of denunciation.

(4) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to all States referred to in Article 8(1).

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

DONE at, this _____ day of _____, _____

Annex B

RESOLUTION

adopted by the Committee on July 9, 1973

The Third Committee of Governmental Experts on Problems in the Field of Copyright and the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission Via Space Satellites, meeting at Nairobi, Kenya, from July 2 to 11, 1973,

- (1) Having examined, in accordance with its mandate, the problems described in its title,
- (2) Considers that it has entirely fulfilled its mandate by drawing up a draft Convention susceptible of general acceptance and
- (3) Recommends that a Diplomatic Conference for the purpose of concluding an international convention on this subject be convened in 1974.

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Annex C

Closing remarks of Mrs. Elisabeth Steup, Chairman of the Committee

Ladies and Gentlemen,

We have now reached the end of our task and I should like with your permission to look back for a moment on what has been done.

During three hard-working meetings we have devoted our attention; as our mandate prescribes, to the "problems in the field of copyright and of the protection of performers, producers of phonograms and broadcasting organizations raised by transmission via space satellites". We have explored many and - I should say - every avenue that seemed promising.

During our third meeting here in Nairobi a solution has been found - thanks to the proposal put forward by the Moroccan delegation - which has commanded widespread support.

Certainly, as was to be expected, some delegations have reserved their position, and there is no doubt that in the coming months the draft we have drawn up here will be scrutinized with great care by all concerned.

I think, however, that we can leave Nairobi with a clear conscience, for we have laboured hard, in fairness and goodwill, and have found a way out of what appeared for a time to be an impasse. I am very grateful to you all, ladies and gentlemen, for your great sense of compromise, which governed the debates and which made my task as chairman a very easy one.

We now have to leave Nairobi and Kenya. We do it with regret since we liked and enjoyed it here very much, but we leave with wonderful recollections of the beauty of this country and the gentleness and great hospitality of its people and its authorities. Thanks to the arrangements so thoughtfully made by our hosts, we have been able to admire not only the wonderful weather of Kenya, its parks and animals, its flowers and its birds, but also the great efforts for development undertaken by an active people and an active Government. Our visit to the Mount Margaret satellite ground station, one of the most modern technical installations in the world, situated in the breathtaking landscape of the great Rift Valley, will be unforgettable for us all. Every day it was also possible for us to enjoy this beautiful conference centre, a meeting place outstanding for its remarkable architecture and facilities. The international community will welcome it as an important new venue for its conferences. We were also most impressed every morning to see the pace at which this building proceeds to its final completion and the admirable skill of the many workers who are doing their best to finish this great work.

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Being here also gave us an opportunity to read the Kenyan press, and we were greatly impressed by the many activities in Nairobi and throughout Kenya for the development of all areas and all people living in this beautiful country. I think this is the greatest impression we take home: that Kenya is a country where people with a thriving activity and a great devotion to their ideals are doing all they can for the development of their country.

For the great hospitality we enjoyed in this country, and for the warm friendship extended to us, we have to thank many persons. Indeed, we must thank the whole people of Kenya and their great President. We must thank their Government so ably represented by the Attorney-General, who honoured us by opening our meeting and showed a great interest in our work and who, with Mrs. Njonjo, graciously received us in a lovely garden under a magnificent evening sky. We have to thank all his collaborators and especially our dear friend Mr. Coward, who worked hard and long to prepare this meeting, to make it possible, and to keep it running smoothly for the benefit of all of us.

Let me, on behalf of you all, express our deep gratitude to the President, the Government and the people of Kenya. Their great hospitality made it possible that a new step on the way to the fruitful co-operation of all countries of the world could be made, and that in the spirit of Harambee we could complete our work.

I should like now to turn to those who have been with us through all our deliberations, and who will, I hope, accompany us and help us with the next step. The two Secretariats have worked extremely hard to give us the help we needed, and to draft an outstanding and magnificent report. Without the devotion of the Secretariats to our work, without their efficiency, we would have neither been able to reach the results we have accomplished, nor would it have been possible to take all of the documentation with us and to study it at home. We also appreciate very much the work of the interpreters who made it possible for us to understand each other and saw to it that this beautiful conference centre did not turn into the Tower of Babel. We owe gratitude to all those who worked long hours after our meetings so that we could meet again the next day with all the preparations we cannot do without. To the Secretariats and all their collaborators, and also to the interpreters, our warm and grateful thanks.

I should like now, ladies and gentlemen, to say goodbye and to wish you a good and safe journey back to your country. I sincerely hope that we all will meet again at the Diplomatic Conference next year.

Thank you.

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UNESCO/WIPO/CONFESAT/4 - COMMENTS RECEIVED FROM GOVERNMENTS

The joint Secretariat of the Conference has received from the Government of Mexico, for communication to the Conference, the text reproduced hereafter.

MEXICO

Ministry of Public Education
General Direction of Copyright

Resolution adopted by the Assembly of the First National Symposium for Intellectual Workers

The First National Symposium for Intellectual Workers which met at Mexico City from 4 to 8 March 1974, presents its compliments to the International Conference of States convened for the purpose of adopting a convention relating to the distribution of programme-carrying signals transmitted by satellite and draws their attention to what follows:

- (1) the principles of international public law proposed by the Third Committee of Governmental Experts at Nairobi (Kenya) in July 1973, are the only ones capable of guaranteeing that the balance between the parties directly concerned by the programme which are transmitted by satellite will not be seriously altered;
- (2) the proposed convention constitutes nevertheless an important concession on the part of States party to the Rome Convention or of those adopting the principles of equilibrium established by that convention;
- (3) in exchange for this concession and for the additional protection to be granted in the proposed Brussels Convention, the national or international broadcasting organizations should conform to the principles of equilibrium referred to above and renounce any action which may prevent a more general acceptance of the Rome Convention; and
- (4) in the event that this objective is not realized, the additional protection loses its significance and, consequently, the processes of bringing the proposed Brussels Convention into force should not be pursued.

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UNESCO/WIPO/CONFESAT/5 - COMMENTS RECEIVED FROM INTERGOVERNMENTAL AND INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS.

As of 31 March 1974, comments had been received on the subject to be considered by the above-mentioned Conference of States from the following international non-governmental organization: European Broadcasting Union.

These comments are reproduced hereafter.

EUROPEAN BROADCASTING UNION (EBU)

Director of Legal Affairs

Geneva, 11 February 1974

Introduction

1. By way of introduction to this memorandum the EBU wishes to express satisfaction that after several years of work and a third Committee of Governmental Experts, a draft convention has been drawn up which the Committee of Experts considered "susceptible of general acceptance" and regarding which it desired "that a Diplomatic Conference for the purpose of concluding an international convention on this subject be convened in 1974". The EBU likewise takes this opportunity of thanking the competent organs of WIPO and the Unesco Executive Committee, as well as the Belgian Government, for having organized the Diplomatic Conference at the earliest possible moment in order that one of mankind's most advanced and sophisticated activities and one most likely to foster closer relations among peoples, namely broadcasting by satellite, should be finally freed of the impediments due to piracy and can develop unrestrictedly in the interests of nations throughout the world. In this connexion it is appropriate to quote the new paragraph added to Article 33 of the International Telecommunication Convention at the recent Plenipotentiary Conference (Malaga/Torremolinos 1973) which states that "radio frequencies and the geostationary satellite orbit are limited natural resources, that they must be used efficiently and economically so that countries or groups of countries may have equitable success to both ... according to their needs and the technical facilities at their disposal". In finally placing satellite transmission of broadcast programmes on a secure legal basis, the present Conference will be making a very important advance from both the political and cultural standpoints.

2. Hitherto the transmission of broadcast programmes by satellite has been under constant threat of piracy and acts of piracy have actually occurred, both in connexion with news transmissions and transmissions of major sports events, the Olympic Games and the World Football Cup. No currently available legal resource has proved capable of ending this piracy, even though it was considered in some quarters that the 1961 Rome Convention was also applicable to programme-carrying satellite signals, even though others judged the various instruments of the International Telecommunication Union sufficient in the matter

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and, finally, even though one body of opinion advocated a solemn declaration by the Unesco General Conference. The ineffectiveness of such a declaration, which is not binding on governments, is obvious. The inadequacy of the ITU instruments is due to their very nature: their essential aim is to allocate frequency bands to the various services, afterwards to assign precise frequencies within these bands to states, to allocate orbital positions to states at a Planning Conference scheduled for 1977 and, finally, to register the frequencies actually used and thus provide them with a legal status enforceable erga omnes; these instruments do not, however, have the effect of preventing distributors, within the meaning of the draft convention, from distributing duly converted satellite signals not intended for them. This was why the ITU, in a reply concerning the draft convention produced by the second Committee of Experts, indicated that it had no observations to make on the text prepared by Unesco and WIPO. As for the Rome Convention, its ineffectiveness in this field requires no further demonstration. Without even taking up the question of whether or not it covers "satellite broadcasting" (implicitly, since it was drafted before the advent of communication satellites), it is obvious that its special character can offer no solution to the problem of the piracy it is desired to halt: after nearly 14 years of existence it has only 15 contracting states, whereas the satellite field is by definition of worldwide scope; it offers no protection against cable distribution, yet this is probably the most sensitive issue affecting the protection of satellite signals against their use by distributors for whom they are not intended; finally, Article 24 of the Rome Convention makes it a "closed" convention since accession is open only to states party to the Universal Copyright Convention or members of the International Union for the Protection of Literary and Artistic Works, whereas there are already numerous earth stations of both the Intelsat and Intersputnik systems which are situated outside a state bound by international copyright obligations.

A new convention is thus required by justice and necessity if it is desired to fill a void which may retard or halt the growth of broadcasting by satellite. This was equally true of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, which was concluded in October 1971 despite the fact that its subject-matter is entirely covered by the 1961 Rome Convention.

3. The success of the third Committee of Experts was due to a highly ingenious proposal originally made by Morocco, Brazil and India, to which Mexico expressly asked to be considered a co-signatory. This proposal injected into the draft convention a "new philosophy", which will be discussed below but which can be said at once to have obviated the conflicts fruitlessly waged at the first two Committees of Experts, and also to have brought about a simplification of the text which makes it much more easily acceptable to all the countries of the world since, as the case may be, it requires extremely rudimentary domestic legislation which any State can readily adopt with the minimum of delay.

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Another result of the "new philosophy" is to transfer the draft convention from the field of private international law to that of public international law, since under Article 1 the states undertaking to take appropriate measures to prevent distribution in certain cases can do so by public-law measures, e.g. administrative law, or within the framework of their telecommunications legislation, by stipulating in the licences issued to distributors of any kind that the licence will be suspended or withdrawn if the equipment it covers is employed to distribute signals not expressly intended for the distributor. It may be wondered - and this question will be considered more closely in connexion with Article 4 - whether the "new philosophy" is compatible with exceptions, in other words whether domestic legislation can, if only in wholly exceptional cases enumerated limitatively, authorize the distribution of signals by distributors for whom they are not intended.

However this may be, the EBU fully accepts the transformation which the draft convention has undergone as a result of the proposal of Morocco, Brazil, India and Mexico (UNESCO/WIPO/SAT.3/10) and considers that these four countries have opened the path which must be followed to the end in order to reach the desired goal.

Article 1

The EBU considers that Articles 1 and 2 should be inverted. Article 1 is admittedly the keystone of the entire draft convention, since it defines the obligations of contracting states. However, it makes use of concepts which are understandable only in the light of Article 2, such as the terms "distribution", "programme-carrying signals", "emitted signal" etc. It would facilitate the perusal and understanding of the convention if the definitions preceded the basic article, and this would do no more than follow the example of the above-mentioned Convention for the protection of phonogram producers, Article 1 of which contains the definitions while Article 2 outlines the obligations of Contracting states.

The EBU accordingly proposes that Article 1 should become Article 2 and that its place should be taken by the present Article 2.

Article 2

The definition of "programme" has included two alternatives since the first Committee of Governmental Experts. It is therefore time to opt for one of them and decide whether the new convention will apply only to signals carrying images, possibly accompanied by sounds, or also to signals carrying sounds only. In this connexion the Conference should bear two factors in mind. First, experience has shown that sound-only transmission by a transponder on a satellite is of superior quality to transmissions via undersea cables, and this results in a tendency to make use of a transponder, to the extent permitted by available facilities on board the satellite, rather than the physical conductor. Second, the Planning Conference

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scheduled for 1977 will assign frequencies to states not only for the transmission of image-carrying signals but also for the transmission of sound-carrying signals. It would be absurd to discriminate between these two types of transmission and for states to enter into obligations with respect to the one type which they do not assume with respect to the other.

The EBU therefore declares itself in favour of Alternative B in Article 2 (ii).

Article 3

The fact that this provision is in square brackets, and what is stated in paragraphs 99 to 102 of the Report adopted by the third Committee of Experts, indicate that this provision did not receive unanimous support from the experts, and the Report outlines the reasons why in the paragraphs mentioned. The EBU considers that Article 3 should definitely be maintained and the square brackets should be removed. Justice ought first to be done to the opinion that a minimum term is incompatible with the "new philosophy", in other words with the public international law character of the draft convention. It is well known that terms are by no means foreign to public law, that the notions of statute of limitations and of non-renewal of a purely administrative action exist in the public law of every state, and that criminal law involves a variety of terms. Hence the new legal nature of the draft convention remains entirely compatible with the notion of a term.

Second, the consequences of omitting Article 3 should be given careful consideration. The undertaking of contracting states provided for in Article 1 might cover a range which is prejudicial to the very efficacy of the new treaty, since some states could consider that they had met their obligations under the convention once they had taken appropriate measures solely to prevent simultaneous distribution on or from their territory. Other states might, on the contrary, consider that their obligations under Article 1 would be effectively met only if their internal measures prevented not only simultaneous but also subsequent distribution, although the time-lag between simultaneous and subsequent distribution may vary from state to state. This would result in so complex a system of terms that, first, originating organizations would find it difficult to invoke the new convention to offer their contracting partners (organizers of spectacles, organizers of sports events, news agencies) any reasonable and logical guarantee that the signal will not be used in the territories for which the rights have not been cleared and that, second, there would be no further reciprocity between contracting states because some would take measures only to prevent simultaneous distribution while the internal measures of others would be designed to prevent distribution over a much longer term.

In the final analysis, and this the Committee of Experts well understood, the object is to enable the originating organization to negotiate contracts with all those who contribute to the programmes carried by the signals for a predetermined area, without arousing

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fears on the part of its contracting partners that the signals will be distributed in other areas over which they thus lose all control or right to payment. To attain this fundamental objective it will not suffice if the measures taken by states cover only simultaneous distribution, since it would be too easy for any distributor to evade the national measures and, for example, record the satellite signal and distribute it only a few seconds after its emission to the satellite, thus placing himself outside those measures. It should also be added that the majority of states party to the Rome Convention consider that it also covers satellite signals. If this is the case, and since Article 22 of the Rome Convention precludes them from entering into special agreements granting less extensive rights, states party to the Rome Convention would be unable to become party to the new convention since they would be prevented from doing so by Article 14 of the Rome Convention which in respect of broadcasts, lays down a term of protection of 20 years from the end of the year in which the broadcast took place. Hence there are relevant grounds for considering that the obligations required by Article 1 of the draft convention should be subject to a minimum term, and this, having regard to the Rome Convention, should be of at least 20 years. The Convention for the protection of phonogram producers assigns to the obligations of contracting states a duration of not less than 20 years from the end of the year in which the phonogram was first fixed or published.

The EBU thus declares itself in favour of retaining Article 3 and of removing the square brackets at present surrounding it.

Article 4

Out of political considerations and on the grounds of its desirability, the EBU accepts the text of Article 4, while endorsing paragraph 105 of the Report adopted by the third Committee of Experts regarding the interpretation of paragraphs (i) and (iii) of this article. It may be questioned, however, whether exceptions are compatible with the "new philosophy" of the draft convention. Is it conceivable that an ITU member state, having regard to the obligations arising from the International Telecommunication Convention and its appended Radio Regulations, could expressly authorize that, to some extent, signals not intended for distributors on its territory may nevertheless be distributed by them? Does this provision not overstep the bounds of the "new approach" and the public international law character of the draft convention, and is it thinkable that an ITU member state could, for example, authorize the PTT to distribute to a local press agency incoming foreign telexes intended for a rival agency?

The Conference will need to solve this problem of principle, though without forgetting the political nature of the provisions in Article 4, of which the EBU once again confirms its acceptance, bearing in mind the restrictive interpretation of paragraphs (i) and (iii) of this article given in paragraph 105 of the Committee Report.

In considering the question of principle raised above, the

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Diplomatic Conference cannot ignore what is so clearly stated in paragraph 101 of the Report adopted by the third Committee of Experts, viz., "the prevailing view of the Committee, however, was that, since the convention is dealing with signals and not programmes, each emission of signals gives rise to a new obligation under the convention...". In other words, the prevailing view was that the subject-matter of the new convention is not the programme carried by the signals but the signals themselves, as is stated no less clearly in paragraph 102 of the Report. The question to be settled, then, is whether a state party to the ITU Convention and its appended instruments may, irrespective of the programmes carried, allow public use of the signals, that is, distribution within the meaning of the draft by distributors not designated as intended recipients at the source by the originating organization. It raises the whole problem of the secrecy of communications and of the exclusive nature of point-to-point communications, in the case of point-to-point communication satellites in contrast to direct broadcast satellites.

Article 7

The EBU believes that this provision should be omitted from the final convention. The fact that it is in square brackets and that the word "international" is itself bracketed inside these square brackets clearly reflects the differences among the experts, and these differences can probably be eliminated only by omitting the provision in question. What conclusions are prompted by an analysis of this provision? It should first be recalled that Article 7 is based on a proposal by the delegation of India which, according to paragraph 112 of the Nairobi Report "considered such a clarification desirable in the text of the convention, especially to deal with problems arising from the licensing of worldwide rights in certain satellite transmissions and the setting of prices for these rights at a level that developing countries could not pay". There seems little doubt that this reflects uncertainty as to the real and supposed scope of the new convention. As already stated on several occasions, its real scope lies in the undertaking by states to prevent distribution of signals, regardless of the programme they carry, by distributors who are not the intended recipients of those signals. In other words, the draft convention relates to the "container" and not the "content". On the other hand, the avowed object of Article 7 relates to the "content" and accordingly seems incompatible with the new approach of the treaty. If the originating organization has purchased the rights for satellite transmission of the Olympic Games to Japan, how can a state linked to this same satellite situated above the Indian Ocean, e.g. India, declare that the originating organization - since this alone is affected and not the organizer of the Olympic Games - is exercising a monopoly in purchasing the rights only for Japan and it is therefore in order for India to carry out a sort of expropriation for abuse of monopoly and authorize the distribution of the Games on its own territory against equitable remuneration of the originating organization, whereas the Olympic Games organizer may deem this inadequate and demand a large supplement from its contracting partner, the

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originating organization? In fact the object of Article 7 is to counter monopoly positions of persons in no way covered by, and wholly foreign to, the draft convention, viz. the contributors to the programmes, whether organizers of sports events, organizers of artistic events, news agencies etc., since the same example can be reconstructed by reference to a different case, satellite transmission of operas from famous theatres. Supposing that the Paris Opera has authorized the French television organization to feed signals into the satellite circuit, from the French earth station at Pleumeur-Bodou, carrying a given opera intended exclusively for Japan: can the authorities of a country situated "along the route", whose earth station works with the same satellite, claim that under a treaty relating to programme-carrying signals, but not the programme carried, it can nevertheless decree that a distributor on its own territory is permitted to receive and distribute the opera in question, under the pretext that the Paris Opera is exercising a monopoly and abusing it? The immediate reply which these questions prompt is that Article 7 would be out of place here, in the sense that it cannot be reconciled with the system of the treaty as envisaged, since formally it affects the originating organization whereas in fact, and this goes beyond the scope of the contemplated treaty, it refers to a contributor to the programmes carried by the signals.

The word "international" raises additional doubts. In its absence Article 7 could have been construed to mean that each state on whose territory one distributor only has been designated to distribute certain signals, may prescribe that that distributor is thus infringing domestic law on the abuse of monopolies and that other distributors on the same territory may likewise distribute the signal. To this extent Article 7 would not be wholly meaningless, since it would relate exclusively to a monopoly acquired by a national distributor vis-à-vis other distributors operating on the same territory. But the term "international" creates confusion since it clearly indicates that the activity under consideration is not pursued on the national territory of the state censuring the monopoly but on the territory of another state, perhaps not a contracting state, where a contributor to the programmes, e.g. the organizer of a major sporting or artistic event, has his headquarters.

The EBU repeats that insofar as the notion of the international abuse of monopolies is retained Article 7 is incompatible with the legal nature of the contemplated treaty, and is superfluous even if the term "international" is deleted, since every state is free to take action with regard to its own distributors, subject however to the obligations flowing from its membership of the International Telecommunication Union. The EBU is therefore of the opinion that in any event Article 7 cannot be retained in the draft convention.

Article 8

In Article 8, some members of the third Committee of Experts secured the inclusion of the idea that accession to the new convention be limited to states party to the Berne Convention for the

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Protection of Literary and Artistic Works or the Universal Copyright Convention. In introducing this idea, in the form of an alternative, these states are in fact making the same mistake as in 1961 when the Rome Convention was drawn up, and in the introductory section to this memorandum it was already stated how far this militates against the application of the Rome Convention to satellite signals, assuming that it is legally applicable to them at all. Transmitting and receiving earth stations already exist in states which are party to no international copyright convention. To consider that the new treaty can induce such states to become bound by a copyright convention is an error, which is borne out by the fact that a similar geographical limitation in the Rome Convention has not induced a single country to become bound by a multilateral copyright convention merely for the purpose of acceding to the Rome Convention. In other words, Alternative B in Article 8 revives a mistake already made in 1961 and, what is more, would deprive the new convention of its worldwide character whereas this character is, by the very subject-matter of the convention, worldwide by definition. It should not be forgotten that 50% at most of the states now independent and members of the United Nations are also party to one or other of the two copyright conventions, and it would be inconceivable to bar access to the new convention for the other 50% while asserting that it is a convention in public international law from which any connexion with copyright has been removed. The link between the Rome Convention and the two copyright conventions may be conceivable, despite its prejudicial effects, since the Rome Convention is largely built up on the model of a copyright convention. This is no longer true of the draft convention under discussion: Article 1 does not vest the originating organization with an exclusive right, and from this point of view Alternative B is markedly inconsistent with the rest of the draft convention.

The EBU expresses its determined support for Alternative A in Article 8.

Article 11

The EBU has no objection to the notification provided for in paragraph (2) of this article. On the other hand, it has serious misgivings about the notification provided for in paragraph (3). Distribution by cable and other similar communications channels is precisely the type of distribution which the draft convention is designed to prevent in future if the distributor is not the intended recipient of the signal. With the steadily falling cost of earth stations, especially of the receive-only type equipped for television alone, without the telecommunications element, there is a growing danger that cable distributors will invest in receiving equipment capable of picking up satellite signals for distribution purposes.

While thus having valid reason to regret paragraph (3) of Article 11, the EBU understands the need for this provision which arises from the legislations of certain countries of major significance in the satellite field, i.e. the United States and Canada

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among others. It is therefore willing to agree to the notification provided for in paragraph (3) and accordingly considers that this paragraph should be so drafted that these two states, and the United Kingdom, are caused no actual difficulty and can become parties to the new convention at the earliest opportunity. The EBU believes, however, that subparagraphs (i) and (ii) in square brackets are such as to render the accession of these states unlikely at the present time and in fact to nullify the result it is desired to obtain through the notification provided for in paragraph (3). The EBU considers that if a price must be paid to obtain the accession to the new treaty of certain states particularly active in the satellite field, this price should be paid unhesitatingly and in full, since there is no point in giving with one hand and taking away with the other.

For this reason the EBU declares itself in favour of retaining paragraph (3) in Article 11 and omitting the two subparagraphs at present in square brackets.

Other Proposals

Three proposals were made at the third Committee of Experts and the EBU considers that it should express its views on these proposals in case they are tabled by any of the participating states in the Diplomatic Conference.

1. In paragraph 86 of the Report adopted by the Committee, one delegation wished it to be stated that "nothing in the proposed convention would prevent the authorities of a state from prohibiting distributors operating on its territory from distributing these signals - for example, because they carried programmes contrary to public order or morality - even where the distribution would be based on signals coming from abroad and intended for distribution on the territory of that state".

The EBU considers that the new treaty should not include provisions reflecting this idea, since it is a strictly political problem under study in other quarters. This does not mean that the EBU does not endorse the views of the delegation which secured the inclusion of the above-quoted sentence in the Report; the convention as proposed requires contracting states to take measures to prevent distribution by distributors who are not the intended recipients of signals, but states nowhere undertake to allow the distribution, even by distributors who are intended recipients, of signals contrary to the domestic peace or the politics of the state concerned, or considered by that state as an attack on the liberties guaranteed by its constitution. The possibility of prohibiting the distribution of such signals is already entrenched in the Guiding Principles adopted by the Unesco General Conference in 1972 and, in the more specific and sensitive area of direct broadcast satellites, is at present under consideration in the United Nations and its Committee on the Peaceful Uses of Outer Space, which have before them a draft convention tabled by the USSR and Guiding Principles jointly submitted by Canada and Sweden. While endorsing the principle set forth in

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paragraph 86 of the Report adopted by the Committee the EBU therefore considers that this is a matter which falls outside the proposed convention.

2. The delegation of India made a proposal designed to provide for compulsory licenses and determine equitable remuneration where authorization is refused by an originating organization; the proposal made special mention of situations involving "exploiting organized sports for commercial purposes" (paragraph 106 of the Report adopted by the Committee).

As in the case of Article 7, the EBU believes that such a provision would be out of context in the convention as proposed. It cannot be stressed too often that the subject-matter of the contemplated treaty is the programme-carrying signal and not the programme itself. It should be added that it is not the originating organization which "exploits organized sports for commercial purposes" since it is not this organization which is the original owner of the television rights in such events but their organizer, who disposes of them for valuable consideration. If the originating organization has been able to acquire the rights only for a limited geographical area smaller than that covered by the satellite which will be used for the transmission, it cannot be criticized on this score or be exposed to sanctions such as the imposition of a compulsory licence. The draft convention would fail to achieve its real objects if the originating organization were to be subject, in respect of its signals when they carry certain programmes, to compulsory licensing on the part of a state for whose territory the signals have not been purchased. The originating organization would no doubt receive equitable remuneration in consideration of the licence enforced against it, but the organizer of the event, which had thus been distributed willy-nilly on a territory for which he has not sold the rights, might not be satisfied with the equitable remuneration and decide that in future he will no longer authorize satellite transmission of the events he organizes. The harm would be far greater than if the distributor or distributors in the state for which the rights have not been purchased by the originating organization simply negotiated on their own account with the owner of the television rights and thus enabled the originating organization to designate them among the distributors for whom the signals are intended.

A further argument, of a legal nature, may be added to these considerations of practical desirability. As already stated on a number of occasions, the majority of countries party to the Rome Convention consider that it also applies to satellite signals. But Article 15 of the Rome Convention, while specifying that domestic law may provide for the same limitations in the field covered by this Convention as in connexion with the protection of copyright, expressly stipulates that compulsory licences may not be instituted. In other words, if the proposal of India were adopted it would constitute an infringement of the Rome Convention for the states party to that Convention, and they would be unable to accede to the new treaty.

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3. The delegation of India desired to add in Article 6 a second paragraph which paragraph 110 of the Report adopted by the Committee quotes as follows: "Further, this convention shall in no way be interpreted to confer any more protection to the signal than the degree of protection secured to authors, performers, producers of phonograms and broadcasting organizations under any domestic law or international agreement." The EBU declares itself firmly opposed to the adoption of such a provision.

First of all, it is necessary to enquire into the actual meaning of the proposal. Does it mean that no contracting state shall extend wider protection to signals than it grants to authors, performers, producers of phonograms and broadcasting organizations under its own domestic law and the conventions to which it has acceded? Or does it mean that in each contracting state the protection of signals shall compulsorily be interpreted in terms of the lowest level of all domestic legislations and all international conventions, whether or not a given state possesses such legislation or is party to such a convention? Second, is it possible in a treaty to lay down a specified minimum, e.g. an obligation on states to take measures to prevent the distribution of signals by distributors who are not the intended recipients, and this for a certain period of time, but simultaneously provide in the same instrument that this obligation is in fact only theoretical since its level depends on the level of protection established by other domestic laws and other international conventions? Merely to raise these questions is to answer them, and demonstrates the unacceptability of the text in question, which would inject total uncertainty into the proposed treaty since no one would know any longer how far states are required to go in meeting their obligations under Article 1, or what is the meaning of the limitatively-enumerated exceptions which may be retained in Article 4.

Further, the same difficulty arises here as in 2 above, since the Indian proposal would automatically institute the compulsory licences that may exist in the field of copyright protection but whose application the Rome Convention rules out in its own field which, according to some opinions, includes satellite signals.

Finally, the Indian proposal revives the parallel between the proposed treaty and the protection of intellectual rights, and this runs directly counter to the "new philosophy" which enabled the third Committee of Experts to arrive at a text worthy of submission to a Diplomatic Conference. To admit this parallel would be a retrograde step and a return to the concept of a convention in private international law.

The EBU therefore states its opposition to this proposal, which the Committee did not adopt but decided to place on record in paragraph 110 of its Report.

Conclusions

Subject to the foregoing observations and suggestions, the EBU fully accepts the draft convention framed by the third Committee of

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Experts, and also approves the interpretation thereof contained in the excellent Report prepared by the Secretariat. The "new philosophy" jointly presented by Morocco, Brazil, India and Mexico is likely to ensure the success of the new instrument, just as it made it possible to simplify the drafting and eliminate the most serious divergences of view affecting the former Article IV of the text prepared by the second Committee of Experts, of which only the one paragraph of Article 6 of the present draft remains. Article IV of the previous draft sharply divided states, and the interested parties as well, because the originating organization was granted a right of authorization or prohibition comparable to a copyright, in return for which the copyright owners demanded a quid pro quo to "maintain the balance" and the owners of neighbouring rights likewise claimed additional protection. This resulted in complicated provisions reflected in Alternative A of Article IV, an apple of discord which, if retained in one form or another, might well have brought about the failure even of the third Committee of Experts. Compromise proposals, only partly based on Alternative A in Article IV, were nevertheless unsuccessful in winning the Committee's unanimous support. Only the new approach achieved this feat, and it would be highly dangerous to depart from this and attempt to reintroduce even a few elements from the former Alternative A in Article IV, under the pretext that it is necessary to round out the protection of authors or other right-owners in a field hitherto unforeseen, e.g. that of direct broadcast satellites. Other demands would immediately follow and the problems which have finally been eliminated would arise again with renewed force. The EBU believes that the method of guaranteeing a successful outcome for the Diplomatic Conference is to uphold the "new philosophy" and the implications this has for the entire text of the future treaty.

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UNESCO/WIPO/CONFESAT/6 - PROPOSED AMENDMENTS SUBMITTED BY THE DELEGATION OF THE UNITED STATES OF AMERICA.

Preamble - subparagraph (e):

Add a specific reference to the ITU Convention as follows:

"(e) Conscious of the need not to impair in any way international agreements already in force, including the International Telecommunications Convention and the Regulations annexed to that Convention, and in particular in no way to prejudice wider acceptance of the Rome Convention..." /new language underlined/

Article 6:

Add the following paragraph:

"(2) This Convention shall not be interpreted to supersede or in any way limit the application or administration of the International Telecommunications Convention and the Regulations annexed to that Convention."

UNESCO/WIPO/CONFESAT/7 - PROPOSED AMENDMENTS SUBMITTED BY THE DELEGATION OF JAPAN

Preamble, paragraphs (b) and (d)

Replace the words "which were not intended for those distributors" by the words "without the consent of the persons interested".

Article 1, paragraph (1), first sentence

Amend to read as follows:

Each Contracting State undertakes to take all appropriate measures to prevent any distributor from distributing, on or from the territory of that State, any programme-carrying signal transmitted by satellite, without the consent of the originating organization or, as the case may be, of both the originating organization and the other contributors to the programme.

Article 1, paragraph (2)

Replace the words "for whom the emitted signals were intended" by the words "with the consent of the person or persons referred to in the preceding paragraph".

Article 4

Replace the words "for whom the emitted signal is not intended" by the words "without the consent of any of the persons referred to in Article 1, paragraph (1)".

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UNESCO/WIPO/CONF/SAT/8 - PROPOSED AMENDMENTS SUBMITTED BY THE DELEGATIONS OF THE UNION OF SOVIET SOCIALIST REPUBLICS, THE UKRAINIAN SOVIET SOCIALIST REPUBLIC AND THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

I. Preamble

Add after (a) the following text:

"Admitting the necessity for an international agreement on principles governing the use by states of artificial earth satellites for direct television broadcasting in accordance with Resolution 2916 (XXVII) of the United Nations General Assembly".

Amend (e) to read as follows:

"Conscious of the need not to impair in any way international agreements already in force,

Have agreed as follows:"

II. Add to the draft Convention, after the Preamble, the following new articles:

Article

"Each Contracting State shall undertake to exclude from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred or otherwise aimed at interfering in the domestic affairs of other states or undermining their national laws, customs and traditions."

Article

"Each Contracting State shall undertake to broadcast via satellite to foreign states only with the express consent of the latter."

III. Add to the draft Convention, after Article 7, the following new articles:

Article

"Contracting States shall consider as unlawful and incurring international responsibility, any broadcasts which are especially intended for a foreign state but which are made without the express consent of that State, and also any broadcasts which contain material which should not be included in programmes under the terms of this Convention."

Article

"Contracting States shall bear international responsibility for all national activities connected with the use of satellites for

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broadcasting, irrespective of whether such broadcasting is carried out by governmental agencies or by non-governmental organizations and juridical persons."

IV. In Article 8 of the draft:

- a) In paragraph (1), a full stop should be placed after the words "by any State", and Alternatives A and B should be deleted;
- b) In paragraph (2), delete the last words reading "referred to in paragraph (1)".
- c) Delete paragraph (4).

V. In Article 9, delete paragraph (3).

VI. Article 10 should be amended as follows:

"(1) Any Contracting State may denounce this Convention by written notification addressed to the Secretary-General of the United Nations.

(2) Denunciation shall take effect twelve months after the date on which the notification referred to in paragraph (1) is received."

UNESCO/WIPO/CONFESAT/9 - PROPOSED AMENDMENTS SUBMITTED BY THE DELEGATION OF SWITZERLAND

Article 2 (vii)

Define "distribution" as follows:

"Distribution" is the operation by which a distributor transmits, simultaneously with their transmission or subsequently, signals to the general public or any section thereof.

Article 3

Delete Article 3 which fixes the minimum duration of protection at twenty years.

UNESCO/WIPO/CONFESAT/10 - PROPOSED AMENDMENTS SUBMITTED BY THE DELEGATIONS OF THE FEDERAL REPUBLIC OF GERMANY AND OF AUSTRIA

Article 6

Add a new paragraph (2) as follows:

"(2) Without prejudice to paragraph (1) the originating organization which is a national of a Contracting State and which uses a satellite for the distribution of programme-carrying signals made

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directly by the satellite itself shall be responsible vis-à-vis the authors, performers, producers of phonograms and broadcasting organizations in accordance with the legislation of the State of which the organization is a national, if and to the extent that such legislation grants to them rights in the case of the broadcasting of their works, performances, phonograms, or broadcasts."

NOTE: Among the governmental experts meeting in Paris (1972) and Nairobi (1973) it was undisputed that where a satellite is used for the distribution of programme-carrying signals made directly by the satellite itself, the originating organization, even without the insertion of such a provision in the Convention, is responsible for the distribution vis-à-vis the authors, performers, producers of phonograms and broadcasting organizations and cannot plead that the distribution was made in space and thus outside the sphere of application of any national law. However, since this view is disputed in legal literature it appears highly desirable to clarify the question by inserting an express provision.

UNESCO/WIPO/CONFESAT/11 - PROPOSED AMENDMENTS SUBMITTED BY THE DELEGATION OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA

Article 2

(1) Add the following definition of "derived signal" after paragraph (iv):

"derived signal" is any emitted signal partially diverted by a distributor before reaching the distributor for whom it was intended.

(2) Amend the definition of "distribution" in paragraph (vii) as follows:

"distribution" is the operation by which the originating distributor transmits signals to the general public or any section thereof through the intermediary of the distributor for whom it was intended.

UNESCO/WIPO/CONFESAT/12 - PROPOSED AMENDMENTS SUBMITTED BY THE DELEGATION OF ITALY

Article 2 (6)

In order to determine the originating organization, the following definition is proposed:

"Originating organization" is the person or entity which inserts the programme in the signal which carries it."

Article 3

Substitute for the words "the obligation provided" the words

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"the measures provided".

This article refers to the reservations mentioned in Article 1 and not to the obligation of Contracting States, an obligation which, if not denounced, remains in force sine die.

Article 4

Article 4 concerns the programme and not the signal; consequently, it is rather outside the Convention. However, if this article is retained, it is proposed that the words "the measures provided" be substituted for the words "the obligation provided" (in conformity with the suggestion made concerning Article 3).

Article 7

Since this article goes beyond the scope of the Convention, it should be deleted.

Article 8

The Delegation of Italy favours Alternative A since it feels the Convention should have a universal application.

UNESCO/WIPO/CONFESAT/13 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATION OF THE UNITED KINGDOM

Article 2 (vi)

Amend the definition of "originating organization" to read:

"Originating organization is the person or entity entitled to decide, or delegate the right to decide, what programme the signals will carry."

UNESCO/WIPO/CONFESAT/14 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATION OF MEXICO

Article 3

The measures established under paragraph (1) of the first Article of this Convention, concerning the transmission of programme-carrying signals, shall last for at least twenty years computed from the end of the year in which the said signal containing the programme was emitted.

UNESCO/WIPO/CONFESAT/15 - PROPOSED AMENDMENTS SUBMITTED BY THE DELEGATION OF THE UNITED KINGDOM

Article 3

The following wording is proposed:

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"The obligation provided in Article 1(1) shall, in respect to any emitted signal, continue at least until the expiration of twenty years from the year in which the programme carried by the signal was first transmitted by wireless means for public reception".

Article 11

At the end of paragraph (2), add the words:

"or supplemented by the words 'and the emitted signal is emitted from the territory of that Contracting State' ".

UNESCO/WIPO/CONFESAT/16 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATIONS OF CANADA AND THE UNITED STATES OF AMERICA

Article 1

Add a new paragraph to Article 1, as follows:

(3) The obligation provided in paragraph (1) shall not apply to the distribution of signals derived from signals which have been emitted [to or] through a satellite and which are intended for direct reception, by the general public or any section thereof.

NOTE: If the bracketed words "to or" were omitted, the obligation of the Convention would apply if a distributor intercepted signals from the up-leg of a direct broadcast satellite transmission. We believe that the Conference should consider whether, in this limited situation, the Convention should cover emissions to a direct broadcast satellite.

UNESCO/WIPO/CONFESAT/17 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATION OF AUSTRALIA

Article 3

Add the following paragraph:

(2) A Contracting State is not required to observe the obligations provided for in Article 1(1) in respect to a programme-carrying signal emitted after the expiration of twenty years from the end of the year in which a signal carrying the same programme was first emitted.

UNESCO/WIPO/CONFESAT/18 - PROPOSED AMENDMENTS SUBMITTED BY THE DELEGATION OF FRANCE

Article 3

Paragraph 1: Same as the sole paragraph in the Nairobi text.

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Paragraph 2 (new):

"However, where the measures referred to in Article 1 consist in the institution of a private right, the period provided for in the preceding paragraph may be calculated from the end of the year in which the programme carried by the signal was first transmitted for reception by the public."

UNESCO/WIPO/CONFESAT/19 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATION OF JAPAN

Article 3

"The duration of the obligation provided in Article 1 (1) shall be a matter for the domestic law of each Contracting State. However, if the domestic law prescribes a specific duration for the obligation, that duration shall not be less than twenty years from the end of the year in which a signal was emitted."

NOTE: The Japanese delegation prefers maintaining the Article 3 of the Nairobi draft. In case the Article 3 of the Nairobi draft is deleted, the Japanese Delegation would like to submit the above proposal.

UNESCO/WIPO/CONFESAT/20 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATIONS OF DENMARK AND MEXICO

Article 6:

Add a new paragraph (2) as follows:

"The originating organization which intends to include contributions by the persons or bodies mentioned in the preceding paragraph in an emission of programme-carrying signals, shall be required, as soon as possible and before the emission, to inform such persons or bodies of the names of the distributors for which the signals are intended, provided that the said contributions in the Contracting State of which the originating organization is a national are protected against broadcasting. It shall be a matter for the national legislation of each Contracting State to determine the sanctions for non-compliance with this provision."

UNESCO/WIPO/CONFESAT/21 - PROPOSALS CONCERNING ARTICLE 3 SUBMITTED TO THE MAIN COMMISSION BY THE WORKING GROUP

ALTERNATIVE A

Delete Article 3 and add a new paragraph to Article 1 as follows:

"(3) In any Contracting State in which the application of the measures referred to in paragraph 1 of this Article is limited in

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time, the duration thereof shall be fixed by the national legislation. It shall be notified to the Secretary-General of the United Nations at the time of ratification, acceptance or accession, or thereafter".

Insert the following sentence in the general report:

"With respect to the duration of the measures referred to in Article 1 (1) [the Conference considered] [it was generally considered] that a period of twenty years was a reasonable period".

ALTERNATIVE B

Delete Article 3 and add a new paragraph to Article 1 as follows:

"In any Contracting State in which the application of the measures referred to in paragraph 1 of this Article is limited in time, the duration thereof must be reasonable and fixed by the national legislation. It shall be notified to the Secretary-General of the United Nations at the time of ratification, acceptance or accession, or thereafter".

According to this alternative, the general report would not contain any commentary on the interpretation of the word "reasonable".

UNESCO/WIPO/CONF/SAT/22 - CREDENTIALS COMMITTEE - FIRST REPORT

1. The Credentials Committee, set up by the Conference on 6 May 1974, held its first session on the following day at 9.30 a.m.
2. The Committee consisted of delegates from the following States: Canada, France, Ghana, Hungary, Japan, Mexico and Senegal.
3. On the proposal of the delegation of France, the Committee unanimously elected as its Chairman Mr. N'Déné N'Diaye, head of the delegation of Senegal.
4. The Committee proceeded, in accordance with the provisions of Rules 3, 4 and 7 of the Provisional Rules of Procedure, to examine the credentials received by the Secretariat of the Conference.
5. The Committee noted that the delegations of States listed below, which were invited to the Conference under Rule 1 of the Provisional Rules of Procedure, were, in accordance with Rule 3(1) and (2) of the said Rules, duly accredited to participate in the Conference and also had full powers to sign the Convention adopted by the Conference: Brazil, Cyprus, Israel, Ivory Coast, Kenya, Lebanon, Morocco, Senegal, Spain, Switzerland, United Arab Emirates, United States of America.
6. The Committee recommended that the delegations of those States be admitted to participate in the work of the Conference and to sign

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the Convention.

7. The Committee noted that the delegations of the following States which were invited to the Conference under Rule 1 of the Provisional Rules of Procedure, were duly accredited, in accordance with Rule 3 (1) of the said Rules, to participate in the Conference: Byelorussian Soviet Socialist Republic, Canada, Denmark, Finland, France, Federal Republic of Germany, Ghana, Hungary, Japan, Netherlands, Norway, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom.
8. The Committee recommended that the delegations of those States be admitted to participate in the work of the Conference.
9. The delegations of the States listed below submitted documents which did not conform with the conditions provided for in Rule 3(1) of the Rules: Algeria, Australia, Austria, Belgium, Cameroon, Czechoslovakia, Ecuador, Egypt, German Democratic Republic, Guatemala, Iran, Iraq, Italy, Luxembourg, Mexico, Monaco, Tunisia.
10. The Committee proposed that these documents be accepted as the provisional credentials of the delegations of the States listed in the preceding paragraph, subject to their subsequent compliance with the provisions of Rule 4(2) of the Provisional Rules of Procedure, and that meanwhile those delegations be admitted to participate in the work of the Conference and be seated provisionally with the same rights as the other delegations.
11. The Committee examined the documents accrediting the delegations of the following States, as observers to the Conference: Bangladesh, Bulgaria, Holy See, Poland, Romania, San Marino, Zaire.
12. The Committee examined the documents accrediting the observers of the following intergovernmental organizations, invited to the Conference in conformity with Rule 2(a) and (b) of the Provisional Rules of Procedure: United Nations (UN), International Labour Organization (ILO), Council of Europe, Organization of Arab States for Education, Culture and Science (ALECSO), International Telecommunications Satellite Organization (INTELSAT).
13. Finally, the Committee examined the documents accrediting the observers of the following international non-governmental organizations, invited to the Conference in conformity with Rule 2(c) of the Provisional Rules of Procedure: European Broadcasting Union (EBU), Inter-American Association of Broadcasters (AIR), International Confederation of Professional and Intellectual Workers (CITI), International Confederation of Societies of Authors and Composers (CISAC), Internationale Gesellschaft für Urheberrecht (INTERGU), International Federation of Actors (FIA), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Federation of Variety Artistes (IFVA), International Film and Television Council (IFTC), International Literary and Artistic Association (ALAI), International Music Council (CIM), International Publishers Association (IPA),

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International Syndicate of Entertainment Trade Unions (ISETU), International Theatre Institute (ITI), International Writers Guild (IWG), Union of National Radio and Television Organizations of Africa (URTNA).

14. The Committee, having noted that some States invited to the Conference, had not yet sent credentials accrediting a delegation, expressed the wish that such powers be submitted to the Secretariat as soon as possible.

15. The delegation of Canada observed that the credentials which it had deposited with the Secretariat only authorized it to sign a final act and it asked whether provision had been made for the establishment of such a document at the close of the discussions of the Conference.

16. The delegation of Japan indicated that it was the custom in international conferences of States that a final act be submitted for signature, including in an annex a copy of the Convention adopted.

17. The Secretariat, referring to certain precedents, observed that the question of whether a final act should be established at the close of the deliberations of the Conference and what should be its content, was within the competence of the Conference itself and that, in the affirmative, it was a matter for the delegations present at the Conference to decide whether they were empowered to sign such an act.

UNESCO/WIPO/CONFESAT/23 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATIONS OF THE UNION OF SOVIET SOCIALIST REPUBLICS, THE UKRAINIAN SOVIET SOCIALIST REPUBLIC, THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC, THE GERMAN DEMOCRATIC REPUBLIC, THE SOCIALIST REPUBLIC OF CZECHOSLOVAKIA AND THE PEOPLE'S REPUBLIC OF HUNGARY

Article 3 (new)

"Each Contracting State shall undertake to exclude in all cases from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred and aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions."

UNESCO/WIPO/CONFESAT/24 - PROPOSED AMENDMENTS SUBMITTED BY THE DELEGATION OF ARGENTINA

Preamble

Delete paragraph (e) since it does not really correspond with the Convention under discussion.

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Article 7

Delete this article which does not come within the scope of the Convention.

UNESCO/WIPO/CONFESAT/25 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY

Article 11

Amend paragraph 3, sub-paragraph (a) to read:

"(3)(a) Any Contracting State which, on the date on which this Convention enters into force for that State, limits or denies protection with respect to the distribution of programme-carrying signals by means of wires, cable or other similar communications channels to subscribing members of the public may, by a notification deposited with the Secretary-General of the United Nations, declare that, to the extent that and as long as its domestic law limits or denies protection, it will not apply this Convention to such distributions, provided that the distributed signals are derived from signals which, after passing of the emitted signals through the satellite, have already been distributed by wireless means."

UNESCO/WIPO/CONFESAT/26 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATION OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA

Article 5 (new)

This Convention shall not apply to direct broadcasting by satellite.

UNESCO/WIPO/CONFESAT/27 - PROPOSED AMENDMENTS SUBMITTED BY THE DELEGATION OF ARGENTINA

Article 2

In order to avoid difficulties of interpretation, it is proposed that the technical definitions in the Convention be taken from CAMTE (Geneva, 1971) (World Administrative Conference on Telecommunications) and the terminology used be that adopted by the International Telecommunication Union.

Article 11

With respect to paragraph 2 of this Article, the phrase "where the emitted signal is emitted from the territory of another Contracting State" should be replaced by "where the signal has been emitted to the satellite from a place situated in another Contracting State".

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UNESCO/WIPO/CONFESAT/28 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATIONS OF THE UNION OF SOVIET SOCIALIST REPUBLICS, THE UKRAINIAN SOVIET SOCIALIST REPUBLIC, THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC, THE HUNGARIAN PEOPLE'S REPUBLIC, THE GERMAN DEMOCRATIC REPUBLIC AND THE CZECHOSLOVAK SOCIALIST REPUBLIC

Article 7 bis (new)

"Contracting States shall bear international responsibility for all national activities connected with the use of satellites for broadcasting, irrespective of whether such broadcasting is carried out by governmental agencies or by non-governmental organizations and juridical persons".

UNESCO/WIPO/CONFESAT/29 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATION OF AUSTRALIA

Article 11

Add the following paragraph:

(4) Any Contracting State which on the date on which this Convention enters into force for that State makes special provision in its domestic law with respect to the protection of a broadcast that is a repetition of an earlier broadcast may by a notification deposited with the Secretary-General of the United Nations declare that it will apply that provision in the measures required by Article 1 of this Convention.

UNESCO/WIPO/CONFESAT/30 - PROPOSAL SUBMITTED TO THE MAIN COMMISSION BY THE WORKING GROUP ON ARTICLE 7

Insert in the Report the following text:

"Article 7 is intended to preserve fully the application of domestic laws against monopolies and other oppressive situations. For purposes of this Convention, the application of these laws means that, if the conditions required by the law are met, a distributor not designated by the originating organization may be authorized by the competent national authorities to distribute programme-carrying signals. However, such a measure may not be applied when the originating organization does not possess the rights for a given country in the programme carried by the signals and no distributor in the said country has obtained these rights from their owner (organizer of an artistic or sporting event, author of a protected intellectual work, etc.). A measure under Article 7 would also not be justified by the simple fact that the originating organization is asking for the signal a price considered too high, if it has not been determined that this price is not justified by the production and transfer costs of the signal.

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In short, the Conference adopted Article 7 with the clear understanding that Contracting States shall apply it in good faith and only where its application appears to them entirely legitimate."

UNESCO/WIPO/CONFESAT/31 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATIONS OF THE UNION OF SOVIET SOCIALIST REPUBLICS, THE UKRAINIAN SOVIET SOCIALIST REPUBLIC AND THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Preamble

Add the following text after paragraph (a):

"Recognizing the obligation of States to exclude from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of national and racial hatred and aimed at interfering in the domestic affairs of other States".

UNESCO/WIPO/CONFESAT/32 - PROPOSED AMENDMENT SUBMITTED BY THE DELEGATIONS OF THE UNION OF SOVIET SOCIALIST REPUBLICS, THE UKRAINIAN SOVIET SOCIALIST REPUBLIC AND THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Preamble

Add the following text after paragraph (a):

"Recognizing the international responsibility of States for all national activity connected with the use of satellites for broadcasting".

UNESCO/WIPO/CONFESAT/33 - PROPOSAL SUBMITTED TO THE PLENARY MEETING BY THE DELEGATIONS OF ALGERIA, BRAZIL, CENTRAL AFRICAN REPUBLIC, CZECHOSLOVAKIA, ARAB REPUBLIC OF EGYPT, GHANA, GUATEMALA, HUNGARY, IVORY COAST, MEXICO, MOROCCO, SENEGAL, TUNISIA, UNION OF SOVIET SOCIALIST REPUBLICS, UKRAINIAN SOVIET SOCIALIST REPUBLIC

Insert the following sentence in the section of the General Report concerning Article 3:

"With respect to the duration of the measures referred to in Article 1(1), it was generally considered that a period of twenty years could constitute a reasonable period." (new words underlined).

UNESCO/WIPO/CONFESAT/34 - PROPOSAL OF THE WORKING GROUP CONCERNING DOCUMENT UNESCO/WIPO/CONFESAT/23

Sir,

1. The International Conference of States on the distribution of

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programme-carrying signals transmitted by satellite has been seized with a proposal of the Byelorussian Soviet Socialist Republic, the Czechoslovak Socialist Republic, The German Democratic Republic, the Hungarian People's Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics to insert in the Convention a new article the text of which is as follows:

"Each Contracting State shall undertake to exclude in all cases from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred and aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions."

2. Although the problem mentioned in paragraph 1 was thought to be an important one by an appreciable number of Delegations, the Conference considered that it was not within the scope of the Conference.

3. I am transmitting to you the attached report and the verbatim records of the Conference relating to this subject, in order that these documents may be sent to Member States as official documents of the United Nations Organization, and submitted to the Committee on the Peaceful Uses of Outer Space so that it may take them into account in its work.

Please accept, Sir, the assurances of my highest consideration.

The President of the Conference

Mr. Kurt Waldheim
Secretary-General
United Nations Organization

UNESCO/WIPO/CONFESAT/34 Rev. - PROPOSAL OF THE WORKING GROUP
CONCERNING DOCUMENT UNESCO/WIPO/CONFESAT/23 AS REVISED BY THE
DRAFTING COMMITTEE

Sir,

1. The International Conference of States on the distribution of programme-carrying signals transmitted by satellite has been seized with a proposal of the Byelorussian Soviet Socialist Republic, the Czechoslovak Socialist Republic, the German Democratic Republic, the Hungarian People's Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics to insert in the Convention a new article the text of which is as follows:

"Each Contracting State shall undertake to exclude in all cases from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred and aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions."

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2. Although the issue mentioned in paragraph (1) was thought to be an important one by a significant number of delegations, the Conference considered that it was not within the scope of the Conference.

3. I am transmitting to you the attached report and the verbatim records of the Conference relating to this subject, in order that these documents may be sent to Member States as official documents of the United Nations Organization, and submitted to the Committee on the Peaceful Uses of Outer Space so that it may take them into account in its work.

Please accept, Sir, the assurances of my highest consideration.

The President of the Conference

Mr. Kurt Waldheim
Secretary-General
United Nations Organization

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UNESCO/WIPO/CONFESAT/35 - DRAFT FINAL ACT

The International Conference of States on the Distribution of Programme-Carrying Signals Transmitted by Satellite, convened jointly by the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization,

Was held at Brussels on the invitation of the Belgian Government, from May 6 to 21, 1974, under the Chairmanship of Mr. Gérard de San (Belgium),

And held discussions on the basis of the Draft Convention drawn up by the Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations raised by Transmission via Space Satellites held at Nairobi (Kenya) from July 2 to 11, 1973.

The Conference established the text of the Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite as well as a report on its work, drafted by its General Rapporteur, Ms. Barbara Ringer (United States of America).

The text of the Convention, established in the English, French, Russian and Spanish languages, the four versions being equally authentic, is attached to the present Act.

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

DONE at Brussels, at the Palais d'Egmont, this twenty-first day of May 1974, in the English, French, Russian and Spanish languages, the original to be deposited in the archives of the United Nations Organization.

UNESCO/WIPO/CONFESAT/36 - DRAFT CONVENTION SUBMITTED TO THE MAIN COMMISSION BY THE DRAFTING COMMITTEE

CONVENTION RELATING TO THE DISTRIBUTION OF PROGRAMME-CARRYING SIGNALS TRANSMITTED BY SATELLITE

The Contracting States,

Aware that the use of satellites for the distribution of programme-carrying signals is rapidly growing both in volume and geographical coverage;

Concerned that there is no world-wide system to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors, and that this lack is likely to hamper the use of satellite communications;

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Recognizing, in this respect, the importance of the interests of authors, performers, producers of phonograms and broadcasting organizations;

Convinced that an international system should be established under which measures would be provided to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors;

Conscious of the need not to impair in any way international agreements already in force, including the International Telecommunication Convention and the Radio Regulations annexed to that Convention, and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers, producers of phonograms and broadcasting organizations,

Have agreed as follows:

Article 1

For the purposes of this Convention,

- (i) "signal" is an electronically-generated carrier capable of transmitting programmes;
- (ii) "programme" is a body of live or recorded material consisting of / Alternative A: images or a combination of sounds and images/ / Alternative B: images, sounds or both/ embodied in signals emitted for the purpose of ultimate distribution;
- (iii) "satellite" is any device in extraterrestrial space capable of transmitting signals;
- (iv) "emitted signal" or "signal emitted" is any programme-carrying signal that goes to a satellite;
- (v) "derived signal" is a signal obtained by modifying the technical characteristics of the emitted signal, whether or not there has been an intervening fixation;
- (vi) "originating organization" is the person or legal entity that decides what programmes the emitted signals will carry;
- (vii) "distributor" is the person or legal entity that decides that the transmission of the derived signals to the general public or any section thereof should take place;
- (viii) "distribution" is the operation by which a distributor transmits derived signals to the general public or any section thereof.

Article 2

- (1) Each Contracting State undertakes to take adequate

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measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or through the satellite is not intended. This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal.

(2) In any Contracting State in which the application of the measures referred to in paragraph (1) is limited in time, the duration thereof shall be fixed by its domestic law. The Secretary-General of the United Nations shall be notified of such duration at the time of ratification, acceptance or accession, or if the domestic law comes into force or is changed thereafter, within six months of the coming into force of that law.

(3) The obligation provided in paragraph (1) shall not apply to the distribution of derived signals taken from signals which have already been distributed by a distributor for whom the emitted signals were intended.

Article 3

This Convention shall not apply where the signals emitted by or on behalf of the originating organization are intended for direct reception from the satellite by the general public.

Article 4

No Contracting State shall be required to apply the measures referred to in Article 2 (1) where the signal distributed on its territory by a distributor for whom the emitted signal is not intended

(i) carries short excerpts of the programme carried by the emitted signal, consisting of reports of current events, but only to the extent justified by the informatory purpose of such excerpts, or

(ii) carries, as quotations, short excerpts of the programme carried by the emitted signal, provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations, or

(iii) carries, where the said territory is that of a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, a programme carried by the emitted signal, provided that the distribution is solely for the purpose of teaching, including teaching in the framework of adult education, or scientific research.

Article 5

No Contracting State shall be required to apply this Convention with respect to any signal emitted before this Convention entered

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into force for that State.

Article 6

This Convention shall in no way be interpreted to limit or prejudice the protection secured to authors, performers, producers of phonograms, or broadcasting organizations, under any domestic law or international agreement.

Article 7

This Convention shall in no way be interpreted as limiting the right of any Contracting State to apply its domestic law in order to prevent abuses of monopoly.

Article 8

(1) Subject to paragraphs (2) and (3), no reservation to this Convention shall be permitted.

(2) Any Contracting State whose domestic law, [on May 21, 1974] [on the date on which this Convention enters into force for that State], so provides may, by a notification deposited with the Secretary-General of the United Nations, declare that, for its purposes, the words "where the originating organization is a national of another Contracting State" appearing in Article 2(1) shall be considered as if they were replaced by the words "where the signal is emitted from the territory of another Contracting State."

(3) (a) Any Contracting State which, on May 21, 1974, limits or denies protection with respect to the distribution of programme-carrying signals by means of wires, cable or other similar communications channels to subscribing members of the public may, by a notification deposited with the Secretary-General of the United Nations, declare that, to the extent that and as long as its domestic law limits or denies protection, it will not apply this Convention to such distributions.

(b) Any State that has deposited a notification in accordance with subparagraph (a) shall notify the Secretary-General of the United Nations, within six months of their coming into effect, of any changes in its domestic law whereby the reservation under that subparagraph becomes inapplicable or more limited in scope.

Article 9

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until March 31, 1975, for signature by any State that is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice.

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(2) This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1).

(3) Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nations.

(4) It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its domestic law to give effect to the provisions of the Convention.

Article 10

(1) This Convention shall enter into force three months after the deposit of the fifth instrument of ratification, acceptance or accession.

(2) For each State ratifying, accepting or acceding to this Convention after the deposit of the fifth instrument of ratification, acceptance or accession, this Convention shall enter into force three months after the deposit of its instrument.

Article 11

(1) Any Contracting State may denounce this Convention by written notification addressed to the Secretary-General of the United Nations.

(2) Denunciation shall take effect twelve months after the date on which the notification referred to in paragraph (1) is received.

Article 12

(1) This Convention shall be signed in a single copy in English, French, Russian and Spanish, the four texts being equally authentic.

(2) Official texts shall be established by the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director General of the World Intellectual Property Organization, after consultation with the interested Governments, in the Arabic, Dutch, German, Italian and Portuguese languages.

(3) The Secretary-General of the United Nations shall notify the States referred to in Article 9(1), as well as the Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director General of the World Intellectual Property Organization, the Director General of the International Labour Office and the Secretary-General of the International Telecommunication Union, of

(i) signatures to this Convention;

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(ii) deposits of instruments of ratification, acceptance and accession;

(iii) the date of entry into force of this Convention under Article 10(1);

(iv) the deposit of any notification relating to Article 2(2) or Article 8(2) or (3), together with its text;

(v) the receipt of notifications of denunciation.

(4) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to all States referred to in Article 9(1).

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

DONE at Brussels, this twenty-first day of May, 1974.

UNESCO/WIPO/CONFESAT/37 - DRAFT LETTER RELATING TO DOCUMENT
UNESCO/WIPO/CONFESAT/23 SUBMITTED TO THE PLENARY MEETING BY
THE MAIN COMMISSION

Sir,

1. The International Conference of States on the distribution of programme-carrying signals transmitted by satellite has been seized with a proposal of the Byelorussian Soviet Socialist Republic, the Czechoslovak Socialist Republic, the German Democratic Republic, the Hungarian People's Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics to insert in the Convention a new article the text of which is as follows:

"Each Contracting State shall undertake to exclude in all cases from programmes transmitted via satellite any material detrimental to the maintenance of international peace and security, publicizing ideas of war, national and racial hatred and aimed at interfering in the domestic affairs of other States or undermining their national laws, customs and traditions."

2. Although the issue mentioned in paragraph (1) was thought to be an important one by a significant number of delegations, the Conference considered that it was not within the scope of the Conference.

3. I am transmitting to you the attached report and the verbatim records of the Conference relating to this subject, in order that these documents may be sent to Member States as official documents of the United Nations Organization, and submitted to the Committee on the Peaceful Uses of Outer Space so that it may take them into account in its work.

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Please accept, Sir, the assurances of my highest consideration.

The President of the Conference

Mr. Kurt Waldheim
Secretary-General
United Nations Organization

UNESCO/WIPO/CONFESAT/38 - DRAFT CONVENTION SUBMITTED TO THE
PLENARY MEETING BY THE MAIN COMMISSION

CONVENTION RELATING TO THE DISTRIBUTION OF
PROGRAMME-CARRYING SIGNALS TRANSMITTED
BY SATELLITE

The Contracting States,

Aware that the use of satellites for the distribution of programme-carrying signals is rapidly growing both in volume and geographical coverage;

Concerned that there is no world-wide system to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors, and that this lack is likely to hamper the use of satellite communications;

Recognizing, in this respect, the importance of the interests of authors, performers, producers of phonograms and broadcasting organizations;

Convinced that an international system should be established under which measures would be provided to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors;

Conscious of the need not to impair in any way international agreements already in force, including the International Telecommunication Convention and the Radio Regulations annexed to that Convention, and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers, producers of phonograms and broadcasting organizations,

Have agreed as follows:

Article 1

For the purposes of this Convention,

(i) "signal" is an electronically-generated carrier capable of transmitting programmes;

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(ii) "programme" is a body of live or recorded material consisting of images, sounds or both, embodied in signals emitted for the purpose of ultimate distribution;

(iii) "satellite" is any device in extraterrestrial space capable of transmitting signals;

(iv) "emitted signal" or "signal emitted" is any programme-carrying signal that goes to or passes through a satellite;

(v) "derived signal" is a signal obtained by modifying the technical characteristics of the emitted signal, whether or not there has been one or more intervening fixations;

(vi) "originating organization" is the person or legal entity that decides what programme the emitted signals will carry;

(vii) "distributor" is the person or legal entity that decides that the transmission of the derived signals to the general public or any section thereof should take place;

(viii) "distribution" is the operation by which a distributor transmits derived signals to the general public or any section thereof.

Article 2

(1) Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended. This obligation shall apply where the originating organization is a national of another Contracting State and where the signal distributed is a derived signal.

(2) In any Contracting State in which the application of the measures referred to in paragraph (1) is limited in time, the duration thereof shall be fixed by its domestic law. The Secretary-General of the United Nations shall be notified of such duration at the time of ratification, acceptance or accession, or if the domestic law comes into force or is changed thereafter, within six months of the coming into force of that law or of its modification.

(3) The obligation provided for in paragraph (1) shall not apply to the distribution of derived signals taken from signals which have already been distributed by a distributor for whom the emitted signals were intended.

Article 3

This Convention shall not apply where the signals emitted by or on behalf of the originating organization are intended for direct reception from the satellite by the general public.

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Article 4

No Contracting State shall be required to apply the measures referred to in Article 2(1) where the signal distributed on its territory by a distributor for whom the emitted signal is not intended

(i) carries short excerpts of the programme carried by the emitted signal, consisting of reports of current events, but only to the extent justified by the informatory purpose of such excerpts, or

(ii) carries, as quotations, short excerpts of the programme carried by the emitted signal, provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations, or

(iii) carries, where the said territory is that of a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, a programme carried by the emitted signal, provided that the distribution is solely for the purpose of teaching, including teaching in the framework of adult education, or scientific research.

Article 5

No Contracting State shall be required to apply this Convention with respect to any signal emitted before this Convention entered into force for that State.

Article 6

This Convention shall in no way be interpreted to limit or prejudice the protection secured to authors, performers, producers of phonograms, or broadcasting organizations, under any domestic law or international agreement.

Article 7

This Convention shall in no way be interpreted as limiting the right of any Contracting State to apply its domestic law in order to prevent abuses of monopoly.

Article 8

(1) Subject to paragraphs (2) and (3), no reservation to this Convention shall be permitted.

(2) Any Contracting State whose domestic law, on May 21, 1974, so provides may, by a notification deposited with the Secretary-General of the United Nations, declare that, for its purposes, the words "where the originating organization is a national of another Contracting State" appearing in Article 2(1) shall be considered as if they were replaced by the words "where the signal is emitted from

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the territory of another Contracting State."

(3) (a) Any Contracting State which, on May 21, 1974, limits or denies protection with respect to the distribution of programme-carrying signals by means of wires, cable or other similar communications channels to subscribing members of the public, may, by a notification deposited with the Secretary-General of the United Nations, declare that, to the extent that and as long as its domestic law limits or denies protection, it will not apply this Convention to such distributions.

(b) Any State that has deposited a notification in accordance with subparagraph (a) shall notify the Secretary-General of the United Nations, within six months of their coming into force, of any changes in its domestic law whereby the reservation under that subparagraph becomes inapplicable or more limited in scope.

Article 9

(1) This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until March 31, 1975, for signature by any State that is a Member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice.

(2) This Convention shall be subject to ratification or acceptance by the signatory States. It shall be open for accession by any State referred to in paragraph (1).

(3) Instruments of ratification, acceptance or accession shall be deposited with the Secretary-General of the United Nations.

(4) It is understood that, at the time a State becomes bound by this Convention, it will be in a position in accordance with its domestic law to give effect to the provisions of the Convention.

Article 10

(1) This Convention shall enter into force three months after the deposit of the fifth instrument of ratification, acceptance or accession.

(2) For each State ratifying, accepting or acceding to this Convention after the deposit of the fifth instrument of ratification, acceptance or accession, this Convention shall enter into force three months after the deposit of its instrument.

Article 11

(1) Any Contracting State may denounce this Convention by written notification deposited with the Secretary-General of the United Nations.

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(2) Denunciation shall take effect twelve months after the date on which the notification referred to in paragraph (1) is received.

Article 12

(1) This Convention shall be signed in a single copy in English, French, Russian and Spanish, the four texts being equally authentic.

(2) Official texts shall be established by the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director General of the World Intellectual Property Organization, after consultation with the interested Governments, in the Arabic, Dutch, German, Italian and Portuguese languages.

(3) The Secretary-General of the United Nations shall notify the States referred to in Article 9(1), as well as the Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director General of the World Intellectual Property Organization, the Director-General of the International Labour Office and the Secretary-General of the International Telecommunication Union, of

(i) signatures to this Convention;

(ii) the deposit of instruments of ratification, acceptance and accession;

(iii) the date of entry into force of this Convention under Article 10(1);

(iv) the deposit of any notification relating to Article 2(2) or Article 8(2) or (3), together with its text;

(v) the receipt of notifications of denunciations.

(4) The Secretary-General of the United Nations shall transmit two certified copies of this Convention to all States referred to in Article 9(1).

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

DONE at Brussels, this twenty-first day of May, 1974.

UNESCO/WIPO/CONFESAT/39 - DRAFT FINAL ACT SUBMITTED TO THE
PLENARY MEETING BY THE MAIN COMMISSION

The International Conference of States on the Distribution of
Programme-Carrying Signals Transmitted by Satellite, convened

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jointly by the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organization,

Was held at Brussels on the invitation of the Belgian Government, from 6 to 21 May 1974, under the Chairmanship of Mr. Gérard de San (Belgium).

The principal bodies established by the Conference were a Main Commission, chaired by Mr João Frank da Costa (Brazil), a Drafting Committee, chaired by Mrs Elisabeth Steup (Federal Republic of Germany) and a Credentials Committee, chaired by Mr. N'Déné N'Diaye (Senegal).

The Conference held discussions on the basis of the Draft Convention drawn up by the Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission via Space Satellites held at Nairobi (Kenya) from 2 to 11 July 1973.

The Conference established the text of the Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite as well as a report on its work, drafted by its General Rapporteur, Ms. Barbara Ringer (United States of America).

The text of the Convention, established in the English, French, Russian and Spanish languages, the four versions being equally authentic, is attached to the present Act.

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

DONE at Brussels, at the Palais d'Egmont, this twenty-first day of May 1974, in the English, French, Russian and Spanish languages, the original to be deposited in the archives of the United Nations Organization.

UNESCO/WIPO/CONF/SAT/40 - DRAFT RESOLUTION SUBMITTED TO THE
PLENARY MEETING BY THE DELEGATION OF FRANCE

The International Conference of States which met at Brussels from May 6 to 21, 1974, for the purpose of drawing up an international convention on the distribution of programme-carrying signals transmitted by satellite wishes, before concluding its work, to convey to the Belgian Government its immense gratitude and its most sincere thanks for the generous hospitality it has enjoyed as well as for the care taken both to provide for the organization and to ensure the success of the meeting.

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UNESCO/WIPO/CONFESAT/41 - CREDENTIALS COMMITTEE - SECOND REPORT

1. The Credentials Committee held its second session on May 20, 1974, at 11 a.m., under the chairmanship of Mr. N'Déné N'Diaye, Head of the Delegation of Senegal.
2. The Committee proceeded, in conformity with the provisions of Rules 3, 4 and 7 of the Rules of Procedure, to examine the credentials received by the Secretariat since its first session.
3. The Committee noted that the delegations of the States listed below, invited to the Conference under Rule 1 of the Rules of Procedure, were, in accordance with Rule 3(1) and (2) of the said Rules, duly accredited to participate in the Conference and also had full powers to sign the Convention which had been adopted: Belgium, Federal Republic of Germany, Italy, Luxembourg, Mexico, Monaco.
4. The Committee recommended that the delegations of these States be definitively admitted and authorized to sign the Convention which had been adopted.
5. On May 20, 1974, the complete list of States having delegates empowered to sign the Convention was as follows: Belgium, Brazil, Cyprus, Federal Republic of Germany, Israel, Italy, Ivory Coast, Kenya, Lebanon, Luxembourg, Mexico, Monaco, Morocco, Senegal, Spain, Switzerland, United Arab Emirates, United States of America.
6. The Committee noted that the delegations of the States listed below, invited to the Conference under Rule 1 of the Rules of Procedure, were duly accredited, in accordance with Rule 3(1) of the said Rules, to participate in the Conference: Australia, Austria, Central African Republic, Czechoslovakia, Arab Republic of Egypt, German Democratic Republic, Guatemala.
7. The Committee recommended that the delegations of these States be definitively admitted to participate in the work of the Conference.
8. The Delegations of Argentina and Yugoslavia submitted provisional credentials which did conform with the conditions provided for in Rule 3(1) of the Rules.
9. The Delegations of Colombia, Turkey and the Republic of Vietnam presented documents accrediting them as observers to the work of the Conference.
10. The Committee decided to authorize its Chairman to make a report, if necessary, directly to the Conference with respect to credentials which may be submitted before the end of the work.

UNESCO/WIPO/CONFESAT/42 Prov. - DRAFT FINAL REPORT

This document contains the text of the draft final report that

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was studied during the last Plenary Meeting of the Conference and adopted, subject to certain amendments. This document is not reproduced here but can be obtained from the Secretariat of the Conference.

UNESCO/WIPO/CONFOSAT/42 - REPORT OF THE RAPPORTEUR GENERAL

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(2) Up to document UNESCO/WIPO/CONFESAT/33, unless otherwise stated, the articles referred to in the working documents and in this Index are those of the Nairobi draft. A synoptical table of the Nairobi and Brussels texts will be found in paragraph 54 of the Report of the Conference.

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