RECORDS
OF THE BUDAPEST DIPLOMATIC CONFERENCE FOR THE CONCLUSION OF A TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE
1977

WORLD INTELLECTUAL PROPERTY ORGANIZATION
(WIPO)

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GENEVA
1980

EDITOR'S NOTE

The Records of the Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, held in Budapest, Hungary, from April 14 to 28, 1977, contains all the most important documents relating to that Conference which were issued before, during and after it.

The final text--that is the text as adopted and signed--of the Budapest Treaty and the Regulations thereunder appears on the right-hand (odd number) pages of the first part of this volume (up to page 43). On the opposite, left-hand (even number) pages (up to page 44) appears the text of the drafts of the said Treaty and Regulations as presented to the Budapest Diplomatic Conference. In order to facilitate the comparison of the drafts with the final texts, these pages do not contain in full the text of the drafts but they merely indicate where the texts are identical or specify the slight differences existing between the drafts and the final texts.

Page 91 contains the text of the (only) Resolution adopted by the Budapest Diplomatic Conference.

Page 95 contains the text of the Final Act adopted and signed by the Budapest Diplomatic Conference.

The part entitled "Conference Documents" (pages 99 to 174) contains three series of documents distributed before and during the Diplomatic Conference: "DMO/DC" (54 Documents), "DMO/DC/DC" (3 documents) and "DMO/DC/INF" (10 documents). The said documents contain in particular, all the written proposals for amendments submitted by delegations of States. Such proposals are frequently referred to in the summary minutes (see below) and are indispensable for the understanding of the latter.

The Rules of Procedure of the Budapest Diplomatic Conference appear on pages 105 to 116.

The part entitled "Verbatim and Summary Minutes" (pages 177 to 460) contains the verbatim minutes of the Plenary of the Diplomatic Conference (pages 177 to 198) and the summary minutes of the Main Committee of the latter (pages 199 to 460). These minutes were written in their provisional form by the International Bureau on the basis of transcripts of the tape recordings which were made of all interventions. The transcripts are preserved in the archives of the International Bureau. The provisional minutes were then made available to the speakers with the invitation to make suggestions for changes where desired. The final minutes, published in this volume, take such suggestions into account.

The part entitled "Participants in the Conference" (pages 463 to 475) lists the individuals who represented governments (pages 463 to 471), intergovernmental organizations other than the World Intellectual Property Organization (page 471), international non-governmental organizations (pages 472 to 473) and the World Intellectual Property Organization (pages 473 and 474). (The reports of the Credentials Committee appear on pages 150 and 161.) This part also lists the officers and the members of the subsidiary bodies of the Budapest Diplomatic Conference (page 475).

The part entitled "Post-Conference Documents" (pages 479 to 484) relates to the documents of the series "BP/PCD" (4 documents), and contains a reference to the document where the adopted texts have been reproduced, the full text of a memorandum prepared by the International Bureau of WIPO, document entitled "Summary and Main Advantages of the Budapest Treaty," and a reference to the documents containing the provisional minutes referred to above.

Finally, these Records contain five different indexes.

The first two (pages 489 to 531) are indexes relating to the subject matter of the Treaty and the Regulations under the Treaty. The first of these two indexes (Index A) lists by number each Article of the Treaty and each Rule of the Regulations and indicates, under each of them, the number which the Article or Rule had in the drafts presented to the Conference, the pages where the text of the draft and the final text of the Article or Rule appear, the pages where the written proposals for amendments to the Article or Rule are reproduced, and, finally, the serial numbers of those paragraphs of the summary minutes which reflect the discussion on and adoption of the Article or Rule; the first index also contains references to the Resolution adopted by the Conference and to the Statements approved by the Conference. The second index (Index B) is a catchword index, which lists alphabetically the main subjects dealt with in the Treaty and the Regulations. After each catchword, the number of the Article or Rule in which the particular subject is dealt with is indicated. By consulting Index A under the Article or Rule thus indicated, the reader will find the references to the pages or--in the case of the minutes--the paragraph numbers where the particular subject is treated.

The third index (pages 533 to 536) is an alphabetical list of States showing, under the name of each State, where to find the names of the members of its delegation as well as the written proposals for amendments submitted and the interventions made on behalf of that State and, finally, the signatories of the Budapest Treaty and the Final Act of the Budapest Diplomatic Conference.

The fourth index (pages 537 and 538) is an alphabetical list of Organizations showing, under the name of each State, where to find the names of the the observers representing it, as well as the interventions made on its behalf.

The fifth index (pages 539 to 547) is an alphabetical list of the participants indicating, under the name of each participant, the State or Organization which he represented, as well as the place in these Records where his name appears together with that of his delegation, as an officer of the Conference or of a Committee, as a speaker in the Plenary or Main Committee or as a plenipotentiary signing the Treaty or the Final Act of the Budapest Diplomatic Conference.

Geneva, 1980

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ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

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AS PRESENTED TO THE DIPLOMATIC CONFERENCE

TEXT OF THE TREATY
AS ADOPTED BY THE DIPLOMATIC CONFERENCE

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BUDAPEST TREATY
ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

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

INTRODUCTORY PROVISIONS

Article 1
Establishment of a Union

[Same as in the Final Text except that, in the Draft, the beginning of the sentence reads as follows: "The States and intergovernmental organizations party to this Treaty (hereinafter called "the Contracting Parties ...")."]

Article 2
Definitions

For the purposes of this Treaty and the Regulations:

(i) references to a "patent" shall be construed as references to patents for inventions and other titles for the protection of inventions, including in particular inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, and utility certificates of addition;

(ii) [Same as in the Final Text.]

(iii) [Same as in the Final Text.]

(iv) [Same as in the Final Text.]

(v) "Contracting State" means a Contracting Party which is a State;

(vi) "industrial property office" means an authority competent for the grant of patents;

INTRODUCTORY PROVISIONS

Article 1

Establishment of a Union

The States party to this Treaty (hereinafter called "the Contracting States") constitute a Union for the international recognition of the deposit of microorganisms for the purposes of patent procedure.

Article 2

Definitions

For the purposes of this Treaty and the Regulations:

(i) references to a "patent" shall be construed as references to patents for inventions, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, and utility certificates of addition;

(ii) "deposit of a microorganism" means, according to the context in which these words appear, the following acts effected in accordance with this Treaty and the Regulations: the transmittal of a microorganism to an international depositary authority, which receives and accepts it, or the storage of such a microorganism by the international depositary authority, or both the said transmittal and the said storage;

(iii) "patent procedure" means any administrative or judicial procedure relating to a patent application or a patent;

(iv) "publication for the purposes of patent procedure" means the official publication, or the official laying open for public inspection, of a patent application or a patent;

(v) "intergovernmental industrial property organization" means an organization that has filed a declaration under Article 9(1);

(vi) "industrial property office" means an authority of a Contracting State or an intergovernmental industrial property organization competent for the grant of patents;

[Article 2, continued]

(vii) [In the Final Text, there is no provision corresponding to Article 2(vii) of the Draft.]

"competent body" of a Contracting Party means:

(a) where the Contracting Party is a State, the industrial property office or any other authority, including any court, of that State or of any intergovernmental organization of which that State is a member, provided that such office or other authority is competent in any patent procedure having effect in that State;

(b) where the Contracting Party is an intergovernmental organization, the industrial property office or any other authority, including any court, of that organization or of any State member of that organization, provided that such office or other authority is competent in any patent procedure having effect in that organization under the international convention establishing that organization;

(viii) [Same as Article 2(vii) of the Final Text, except that the words corresponding to "the furnishing" read in the Draft as follows: "the making available."]

(ix) [Same as Article 2(viii) of the Final Text, except that, in the Draft, the words corresponding to "a depositary institution which has acquired ..." read as follows: "a depositary institution which, for the purposes of patent procedure before the competent bodies of the Contracting Parties, has acquired ...."]

(x) [Same as Article 2(ix) of the Final Text.]

(xi) [In the Final Text, there is no provision corresponding to Article 2(xi)of the Draft.]

"release of a sample" means the making available by an international depositary authority of a sample of the deposited microorganism to the depositor or a third party;

(xii) [Same as Article 2(x) of the Final Text.]

(xiii) [Same as Article 2(xi) of the Final Text, except that, in the Draft, the reference is Article 9 rather than Article 10.]

(xiv) [Same as Article 2(xii) of the Final Text.]

(xv) [Same as Article 2(xiil) of the Final Text.]

(xvi) [Same as Article 2(xiv) of the Final Text.]

(xvii) [Same as Article 2(xv) of the Final Text, except that, in the Draft, the reference is Article 11 rather than Article 12.]

(xviii) [In the Final Text, there is no provision corresponding to Article 2(viii) of the Draft.]

"Gazette" means the Gazette referred to in Article 10(1)(iii).

[Article 2, continued]

(vii) "depositary institution" means an institution which provides for the receipt, acceptance and storage of microorganisms and the furnishing of samples thereof;

(viii) "international depositary authority" means a depositary institution which has acquired the status of international depositary authority as provided in Article 7;

(ix) "depositor" means the natural person or legal entity transmitting a microorganism to an international depositary authority, which receives and accepts it, and any successor in title of the said natural person or legal entity;

(x) "Union" means the Union referred to in Article 1;

(xi) "Assembly" means the Assembly referred to in Article 10;

(xii) "Organization" means the World Intellectual Property Organization;

(xiii) "International Bureau" means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);

(xiv) "Director General" means the Director General of the Organization;

(xv) "Regulations" means the Regulations referred to in Article 12.

CHAPTER I

SUBSTANTIVE PROVISIONS

Article 3

Recognition of the Deposit of Microorganisms

(1) Any competent body of a Contracting Party which allows or requires the deposit of microorganisms for the purposes of patent procedure shall recognize as valid, for such purposes, the deposit of a microorganism with any international depositary authority, provided that proof of such deposit is or has been furnished to the industrial property office of the Contracting Party in the form of a receipt issued by that authority.

(2) The recognition of the validity of any deposit referred to in paragraph (1) shall include the recognition of the fact and date of the deposit as indicated by the international depositary authority as well as the recognition of the fact that what is released as a sample is a sample of the deposited microorganism.

Article 4

New Deposit

(1)(a) [Same as in the Final Text, except that, in the Draft, the words corresponding to "cannot" read as follows: "can no longer."]

CHAPTER I

SUBSTANTIVE PROVISIONS

Article 3

Recognition and Effect of the Deposit of Microorganisms

(1)(a) Contracting States which allow or require the deposit of microorganisms for the purposes of patent procedure shall recognize, for such purposes, the deposit of a microorganism with any international depositary authority. Such recognition shall include the recognition of the fact and date of the deposit as indicated by the international depositary authority as well as the recognition of the fact that what is furnished as a sample is a sample of the deposited microorganism.

(b) Any Contracting State may require a copy of the receipt of the deposit referred to in subparagraph (a), issued by the international depositary authority.

(2) As far as matters regulated in this Treaty and the Regulations are concerned, no Contracting State may require compliance with requirements different from or additional to those which are provided in this Treaty and the Regulations.

Article 4

New Deposit

(1)(a) Where the international depositary authority cannot furnish samples of the deposited microorganism for any reason, in particular,

(i) where such microorganism is no longer viable, or

(ii) where the furnishing of samples would require that they be sent abroad and the sending or the receipt of the samples abroad is prevented by export or import restrictions,

that authority shall, promptly after having noted its inability to furnish samples, notify the depositor of such inability, indicating the cause thereof, and the depositor, subject to paragraph (2) and as provided in this paragraph, shall have the right to make a new deposit of the microorganism which was originally deposited.

[Article 4(1), continued]

(b) [Same as in the Final Text, except that, in the Draft, the words "or where the international depositary authority with which the original deposit was made discontinues temporarily or definitively, the performance of its functions in respect of deposited microorganisms" do not appear.]

(c) [Same as in the Final Text, except that, in the Draft, the last sentence appears between square brackets.]

(d) [Same as in the Final Text, except that the words corresponding to "three months" read in the Draft as follows: "six months."]

(e) Where subparagraph (b)(i) applies and the depositor does not receive the notification referred to in subparagraph (a) within six months after the date on which the termination or limitation of the status of international depositary authority was published in the Gazette, the six-month time limit referred to in subparagraph (d) shall be counted from the date of the issue of the Gazette in which the said termination or limitation was published.

(2) [Same as in the Final Text, except that the words corresponding to "as long as that authority" read in the Draft as follows: "and that authority."]

Article 5

Export and Import Restrictions

If and to the extent to which regulations restricting the export or import of certain kinds of microorganisms are adopted, such regulations shall apply to microorganisms deposited, or destined for deposit, under this Treaty only where the restriction is necessary in view of the dangers entailed for health or the environment by the export or import of the microorganisms.

[Article 4(1), continued]

(b) The new deposit shall be made with the international depositary authority with which the original deposit was made, provided that:

(i) it shall be made with another international depositary authority where the institution with which the original deposit was made has ceased to have the status of international depositary authority, either entirely or in respect of the kind of microorganism to which the deposited microorganism belongs, or where the international depositary authority with which the original deposit was made discontinues, temporarily or definitively, the performance of its functions in respect of deposited microorganisms;

(ii) it may be made with another international depositary authority in the case referred to in subparagraph (a)(ii).

(c) Any new deposit shall be accompanied by a statement signed by the depositor alleging that the newly deposited microorganism is the same as that originally deposited. If the allegation of the depositor is contested, the burden of proof shall be governed by the applicable law.

(d) Subject to subparagraphs (a) to (c) and (e), the new deposit shall be treated as if it had been made on the date on which the original deposit was made where all the preceding statements concerning the viability of the originally deposited microorganism indicated that the microorganism was viable and where the new deposit was made within three months after the date on which the depositor received the notification referred to in subparagraph (a).

(e) Where subparagraph (b)(i) applies and the depositor does not receive the notification referred to in subparagraph (a) within six months after the date on which the termination, limitation or discontinuance referred to in subparagraph (b)(i) was published by the International Bureau, the three-month time limit referred to in subparagraph (d) shall be counted from the date of the said publication.

(2) The right referred to in paragraph (1)(a) shall not exist where the deposited microorganism has been transferred to another international depositary authority as long as that authority is in a position to furnish samples of such microorganism.

Article 5

Export and Import Restrictions

Each Contracting State recognizes that it is highly desirable that, if and to the extent to which the export from or import into its territory of certain kinds of microorganisms is restricted, such restriction should apply to microorganisms deposited, or destined for deposit, under this Treaty only where the restriction is necessary in view of national security or the dangers for health or the environment.

Article 6

Status of International Depositary Authority

(1) In order to qualify for the status of international depositary authority, any depositary institution must be located on the territory of a Contracting State and must benefit from a guarantee furnished by that State to the effect that the said institution complies and will continue to comply with the requirements specified in paragraph (2).

(2) [Same as in the Final Text, except for items (ii) and (viii).]

(ii) maintain a high scientific standing and have specialized staff, equipment and facilities, as prescribed in the Regulations;

(viii) [Same as in the Final Text, except that the first word reads in the Draft "release" rather than "furnish."]

(3)(i) [Same as in the Final Text, except that the words corresponding to "under the assurance" read in the Draft as follows: "under the guarantee."]

(ii) [Same as in the Final Text.]

Article 6

Status of International Depositary Authority

(1) In order to qualify for the status of international depositary authority, any depositary institution must be located on the territory of a Contracting State and must benefit from assurances furnished by that State to the effect that the said institution complies and will continue to comply with the requirements specified in paragraph (2). The said assurances may be furnished also by an intergovernmental industrial property organization; in that case, the depositary institution must be located on the territory of a State member of the said organization.

(2) The depositary institution must, in its capacity of international depositary authority:

(i) have a continuous existence;

(ii) have the necessary staff and facilities, as prescribed in the Regulations, to perform its scientific and administrative tasks under this Treaty;

(iii) be impartial and objective;

(iv) be available, for the purposes of deposit, to any depositor under the same conditions;

(v) accept for deposit any or certain kinds of microorganisms, examine their viability and store them, as prescribed in the Regulations;

(vi) issue a receipt to the depositor, and any required viability statement, as prescribed in the Regulations;

(vii) comply, in respect of the deposited microorganisms, with the requirement of secrecy, as prescribed in the Regulations;

(viii) furnish samples of any deposited microorganism under the conditions and in conformity with the procedure prescribed in the Regulations.

(3) The Regulations shall provide the measures to be taken:

(i) where an international depositary authority discontinues, temporarily or definitively, the performance of its functions in respect of deposited microorganisms or refuses to accept any of the kinds of microorganisms which it should accept under the assurances furnished;

(ii) in case of the termination or limitation of the status of international depositary authority of an international depositary authority.

Article 7

Acquisition of the Status of International Depositary Authority

(1)(a) A depositary institution shall acquire the status of international depositary authority by virtue of a written communication addressed to the Director General by the Contracting State on the territory of which the depositary institution is located and containing a declaration of guarantee to the effect that the said institution complies and will continue to comply with the requirements specified in Article 6(2).

(b) [Same as in the Final Text except that, in the Draft, the word "also" does not appear.]

(2)(a) [In the Final Text, there is no provision corresponding to Article 7(2)(a) of the Draft.]

The Director General shall promptly examine whether the communication contains the required declaration and the required information. He may ask the Contracting State having made the communication to complete the said information.

(b) [Same as Article 7(2)(a) of the Final Text except that the words corresponding to "includes" and to "the communication shall be promptly published by the International Bureau" read in the Draft, respectively, as follows: "contains" and "he shall publish the communication in the Gazette."]

(c) [Same as Article 7(2)(b) of the Final Text.]

(3) [Same as in the Final Text.]

Article 8

Termination and Limitation of the Status of International Depositary Authority

(1)(a) Any Contracting Party other than the Contracting State which, in respect of an international depositary authority, has made the communication referred to in Article 7(1) may request the Assembly to terminate, or to limit to certain kinds of microorganisms, such authority's status of international depositary authority on the ground that the requirements specified in Article 6 are not complied with.

(b) Before making the request under subparagraph (a), the Contracting Party shall, through the intermediary of the Director General, bring the reasons for the proposed request to the attention of the Contracting State which has made the communication referred to in Article 7(1) so that that State may, within six months, take appropriate action to obviate the need for making the proposed request.

Article 7

Acquisition of the Status of International Depositary Authority

(1)(a) A depositary institution shall acquire the status of international depositary authority by virtue of a written communication addressed to the Director General by the Contracting State on the territory of which the depositary institution is located and including a declaration of assurances to the effect that the said institution complies and will continue to comply with the requirements specified in Article 6(2). The said status may be acquired also by virtue of a written communication addressed to the Director General by an intergovernmental industrial property organization and including the said declaration.

(b) The communication shall also contain information on the depositary institution as provided in the Regulations and may indicate the date on which the status of international depositary authority should take effect.

(2)(a) If the Director General finds that the communication includes the required declaration and that all the required information has been received, the communication shall be promptly published by the International Bureau.

(b) The status of international depositary authority shall be acquired as from the date of publication of the communication or, where a date has been indicated under paragraph (1)(b) and such date is later than the date of publication of the communication, as from such date.

(3) The details of the procedure under paragraphs (1) and (2) are provided in the Regulations.

Article 8

Termination and Limitation of the Status of International Depositary Authority

(1)(a) Any Contracting State or any intergovernmental industrial property organization may request the Assembly to terminate, or to limit to certain kinds of microorganisms, any authority's status of international depositary authority on the ground that the requirements specified in Article 6 have not been or are no longer complied with. However, such a request may not be made by a Contracting State or intergovernmental industrial property organization in respect of an international depositary authority for which it has made the declaration referred to in Article 7(1)(a).

(b) Before making the request under subparagraph (a), the Contracting State or the intergovernmental industrial property organization shall, through the intermediary of the Director General, notify the reasons for the proposed request to the Contracting State or the intergovernmental industrial property organization which has made the communication referred to in Article 7(1) so that that State or organization may, within six months from the date of the said notification, take appropriate action to obviate the need for making the proposed request.

[Article 8(1), continued]

(c) Where the Assembly finds that the request is well founded, it shall decide to terminate, or to limit to certain kinds of microorganisms, the status of international depositary authority of the authority referred to in subparagraph (a). The decision of the Assembly shall require that [a majority][1] [a majority of two-thirds][1] of the votes cast be in favor of the request.

(2)(a) The Contracting State having made the declaration of guarantee referred to in Article 7(1)(a) may, by a communication addressed to the Director General, withdraw its declaration either entirely or in respect only of certain kinds of microorganisms.

(b) [Same as in the Final Text except that, in the Draft, the words corresponding to "declaration" read as follows: "declaration of guarantee."]

(3) [Same as in the Final Text.]

[In the Draft there is no provision corresponding to Article 9--"Intergovernmental Industrial Property Organizations"--of the Final Text.]

[1] The words within square brackets are possible alternatives.

[Article 8(1), continued]

(c) Where the Assembly finds that the request is well founded, it shall decide to terminate, or to limit to certain kinds of microorganisms, the status of international depositary authority of the authority referred to in subparagraph (a). The decision of the Assembly shall require that a majority of two-thirds of the votes cast be in favor of the request.

(2)(a) The Contracting State or intergovernmental industrial property organization having made the declaration referred to in Article 7(1)(a) may, by a communication addressed to the Director General, withdraw its declaration either entirely or in respect only of certain kinds of microorganisms and in any event shall do so when and to the extent that its assurances are no longer applicable.

(b) Such a communication shall, from the date provided for in the Regulations, entail, where it relates to the entire declaration, the termination of the status of international depositary authority or, where it relates only to certain kinds of microorganisms, a corresponding limitation of such status.

(3) The details of the procedure under paragraphs (1) and (2) are provided in the Regulations.

Article 9

Intergovernmental Industrial Property Organizations

(1)(a) Any intergovernmental organization to which several States have entrusted the task of granting regional patents and of which all the member States are members of the International (Paris) Union for the Protection of Industrial Property may file with the Director General a declaration that it accepts the obligation of recognition provided for in Article 3(1)(a), the obligation concerning the requirements referred to in Article 3(2) and all the effects of the provisions of this Treaty and the Regulations applicable to intergovernmental industrial property organizations. If filed before the entry into force of this Treaty according to Article 16(1), the declaration referred to in the preceding sentence shall become effective on the date of the said entry into force. If filed after such entry into force, the said declaration shall become effective three months after its filing unless a later date has been indicated in the declaration. In the latter case, the declaration shall take effect on the date thus indicated.

(b) The said organization shall have the right provided for in Article 3(1)(b).

(2) Where any provision of this Treaty or of the Regulations affecting intergovernmental industrial property organizations is revised or amended, any intergovernmental industrial property organization may withdraw its declaration referred to in paragraph (1) by notification addressed to the Director General. The withdrawal shall take effect:

(i) where the notification has been received before the date on which the revision or amendment enters into force, on that date;

[Article 9(2), continued]

(ii) where the notification has been received after the date referred to in (i), on the date indicated in the notification or, in the absence of such indication, three months after the date on which the notification was received.

(3) In addition to the case referred to in paragraph (2), any intergovernmental industrial property organization may withdraw its declaration referred to in paragraph (1)(a) by notification addressed to the Director General. The withdrawal shall take effect two years after the date on which the Director General has received the notification. No notification of withdrawal under this paragraph shall be receivable during a period of five years from the date on which the declaration took effect.

(4) The withdrawal referred to in paragraph (2) or (3) by an intergovernmental industrial property organization whose communication under Article 7(1) has led to the acquisition of the status of international depositary authority by a depositary institution shall entail the termination of such status one year after the date on which the Director General has received the notification of withdrawal.

(5) Any declaration referred to in paragraph (1)(a), notification of withdrawal referred to in paragraph (2) or (3), assurances furnished under Article 6(1), second sentence, and included in a declaration made in accordance with Article 7(1)(a), request made under Article 8(1) and communication of withdrawal referred to in Article 8(2) shall require the express previous approval of the supreme governing organ of the intergovernmental industrial property organization whose members are all the States members of the said organization and in which decisions are made by the official representatives of the governments of such States.

CHAPTER II

ADMINISTRATIVE PROVISIONS

Article 9

Assembly

(1)(a) [Same as Article 10(1)(a) of the Final Text, except that, in the Draft, the word corresponding to "States" reads as follows: "Parties."]

(b) [Same as Article 10(1)(b) of the Final Text, except that, in the Draft, the word corresponding to "State" reads as follows: "Party."]

[In the Draft, there is no provision corresponding to Article 10(1)(c) of the Final Text.]

(c) Any State not member of the Union which is a member of the Organization or of the International (Paris) Union for the Protection of Industrial Property and any intergovernmental organization specialized in the field of patents and not member of the Union may be represented by observers in the meetings of the Assembly and, if the Assembly so decides, in those of such committees or working groups as may have been established by the Assembly.

(2)(a) [Same as Article 10(2)(a) of the Final Text except for items (v) and (vi).]

(v) [Same as Article 10(2)(a)(v) of the Final Text, except that, in the Draft, at the end appear the words: "and of its organs."]

(vi) [Same as Article 10(2)(a)(vi) of the Final Text, except that, in the Draft, the words corresponding to "paragraph (1)(d)" and "other than intergovernmental industrial property organizations as defined in Article 2(v)" read, respectively, as follows: "paragraph (1)(c)" and "not members of the Union."]

CHAPTER II

ADMINISTRATIVE PROVISIONS

Article 10

Assembly

(1)(a) The Assembly shall consist of the Contracting States.

(b) Each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) Each intergovernmental industrial property organization shall be represented by special observers in the meetings of the Assembly and any committee and working group established by the Assembly.

(d) Any State not member of the Union which is a member of the Organization or of the International (Paris) Union for the Protection of Industrial Property and any intergovernmental organization specialized in the field of patents other than an intergovernmental industrial property organization as defined in Article 2(v) may be represented by observers in the meetings of the Assembly and, if the Assembly so decides, in the meetings of any committee or working group established by the Assembly.

(2)(a) The Assembly shall:

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

(ii) exercise such rights and perform such tasks as are specially conferred upon it or assigned to it under this Treaty;

(iii) give directions to the Director General concerning the preparations for revision conferences;

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

(v) establish such committees and working groups as it deems appropriate to facilitate the work of the Union;

(vi) determine, subject to paragraph (1)(d), which States other than Contracting States, which intergovernmental organizations other tnan intergovernmental industrial property organizations as defined in Article 2(v) and which international non-governmental organizations shall be admitted to its meetings as observers and to what extent international depositary authorities shall be admitted to its meetings as observers;

[Article 19(2)(a), continued]

(b) [Same as Article 10(2)(b) of the Final Text.]

(3) [Same as Article 10(3) of the Final Text, except that, in the Draft, the word corresponding to "State" reads as follows: "Party."]

(4) [Same as Article 10(4) of the Final Text, except that, in the Draft, the word corresponding to "State" reads as follows: "Party."]

(5)(a) [Same as Article 10(5)(a) of the Final Text except that, in the Draft, the word corresponding to "States" reads as follows: "Parties."]

(b) [Same as Article 10(5)(b) of the Final Text.]

(6)(a) Subject to Articles [8(1)(c),][1] 11(4) and 13(2)(b), the decisions of the Assembly shall require a majority of the votes cast.

(b) [Same as Article 10(6)(b) of the Final Text.]

(7)(a) [Same as Article 10(7)(a) of the Final Text.]

(b) [Same as Article 10(7)(b) of the Final Text, except that, in the Draft, the word corresponding to "States" reads as follows: "Parties."]

(8) [Same as Article 10(8) of the Final Text.]

[1] This reference applies only if a qualified majority is adopted in Article 8(1)(c).

[Article 10(2)(a), continued]

(vii) take any other appropriate action designed to further the objectives of the Union;

(viii) perform such other functions as are appropriate under this Treaty.

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

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

(4) Each Contracting State shall have one vote

(5)(a) One-half of the Contracting States shall constitute a quorum.

(b) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence as provided in the Regulations.

(6)(a) Subject to Articles 8(1)(c), 12(4) and 14(2)(b), the decisions of the Assembly shall require a majority of the votes cast.

(b) Abstentions shall not be considered as votes.

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

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

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

Article 10

International Bureau

[Same as Article 11 of the Final Text, except paragraph (1).]

(1) The International Bureau shall:

(i) [Same as Article 11(1)(i) of the Final Text, except that, in the Draft, the words "and the Regulations" do not appear.]

(ii) [Same as Article 11(1)(ii) of the Final Text.]

(iii) [In the Final Text there is no provision corresponding to Article 10(1)(iii) of the Draft.]

publish a Gazette, as prescribed in the Regulations.

Article 11

International Bureau

(1) The International Bureau shall:

(i) perform the administrative tasks concerning the Union, in particular such tasks as are specifically assigned to it under this Treaty and the Regulations or by the Assembly;

(ii) provide the secretariat of revision conferences, of the Assembly, of committees and working groups established by the Assembly, and of any other meeting convened by the Director General and dealing with matters of concern to the Union.

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

(3) The Director General shall convene all meetings dealing with matters of concern to the Union.

(4)(a) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly, and any other meeting convened by the Director General and dealing with matters of concern to the Union.

(b) The Director General, or a staff member designated by him, shall be ex officio secretary of the Assembly, and of the committees, working groups and other meetings referred to in sub-paragraph (a).

(5)(a) The Director General shall, in accordance with the directions of the Assembly, make the preparations for revision conferences.

(b) The Director General may consult with intergovernmental and international non-governmental organizations concerning the preparations for revision conferences.

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

(d) The Director General, or a staff member designated by him, shall be ex officio secretary of any revision conference.

Article 11

Regulations

[Same as Article 12 of the Final Text, except that the word corresponding to "State" in paragraph 4(b) reads in the Draft as follows: "Party."]

Article 12
Regulations

(1) The Regulations provide rules concerning:

(i) matters in respect of which this Treaty expressly refers to the Regulations or expressly provides that they are or shall be prescribed;

(ii) any administrative requirements, matters or procedures;

(iii) any details useful in the implementation of this Treaty.

(2) The Regulations adopted at the same time as this Treaty are annexed to this Treaty.

(3) The Assembly may amend the Regulations.

(4)(a) Subject to subparagraph (b), adoption of any amendment of the Regulations shall require two-thirds of the votes cast.

(b) Adoption of any amendment concerning the furnishing of samples of deposited microorganisms by the international depositary authorities shall require that no Contracting State vote against the proposed amendment.

(5) In the case of conflict between the provisions of this Treaty and those of the Regulations, the provisions of this Treaty shall prevail.

CHAPTER III

REVISION AND AMENDMENT

Article 12

Revision of the Treaty

(1) [Same as Article 13(1) of the Final Text, except that, in the Draft, the word corresponding to "States" reads as follows: "Parties."]

(2) [Same as Article 13(2) of the Final Text.]

(3) Articles 9, 10 and 13 may be amended either by a revision conference or according to Article 13.

Article 13

Amendment of Certain Provisions of the Treaty

(1)(a) Proposals for the amendment of Articles 9, 10 and the present Article, may be initiated by any Contracting Party or by the Director General.

(b) [Same as Article 14(1)(b) of the Final Text, except that, in the Draft, the word corresponding to "States" reads as follows: "Parties."]

(2)(a) [Same as Article 14(2)(a) of the Final Text.]

(b) Adoption shall require three-fourths of the votes cast, provided that adoption of any amendment to Article 9 and to the present subparagraph shall require four-fifths of the votes cast.

(3)(a) [Same as Article 14(3)(a) of the Final Text, except that, in the Draft, the word corresponding to "States" reads as follows: "Parties."]

(b) [Same as Article 14(3)(b) of the Final Text, except that, in the Draft, the word corresponding to "States" reads as follows: "Parties."]

(c) [Same as Article 14(3)(c) of the Final Text, except that, in the Draft, the words corresponding to "all States which become Contracting States" read as follows: "all States and intergovernmental organizations which become Contracting Parties."]

CHAPTER III

REVISION AND AMENDMENT

Article 13

Revision of the Treaty

(1) This Treaty may be revised from time to time by conferences of the Contracting States.

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

(3) Articles 10 and 11 may be amended either by a revision conference or according to Article 14.

Article 14

Amendment of Certain Provisions of the Treaty

(1)(a) Proposals under this Article for the amendment of Articles 10 and 11 may be initiated by any Contracting State or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.

(2)(a) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly.

(b) Adoption of any amendment to Article 10 shall require four-fifths of the votes cast; adoption of any amendment to Article 11 shall require three-fourths of the votes cast.

(3)(a) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting States members of the Assembly at the time the Assembly adopted the amendment.

(b) Any amendment to the said Articles thus accepted shall bind all the Contracting States which were Contracting States at the time the amendment was adopted by the Assembly, provided that any amendment creating financial obligations for the said Contracting States or increasing such obligations shall bind only those Contracting States which have notified their acceptance of such amendment.

(c) Any amendment which has been accepted and which has entered into force in accordance with subparagraph (a) shall bind all States which become Contracting States after the date on which the amendment was adopted by the Assembly.

CHAPTER IV

FINAL PROVISIONS

Article 14

Becoming Party to the Treaty

(1)(a) [Same as Article 15(1) of the Final Text.]

(b) [In the Final Text, there is no provision corresponding to Article 14(1)(b) of the Draft.]

Any intergovernmental organization to which several States have entrusted the task of granting regional patents and of which all the member States are members of the International (Paris) Union for the Protection of Industrial Property may become party to this Treaty by:

(i) signature followed by the deposit of a declaration of approval, or

(ii) deposit of a declaration of acceptance.

(2) [Same as Article 15(2) of the Final Text, except that the words "and declarations of approval or acceptance" do not appear in the Final Text.]

Article 15

Entry Into Force of the Treaty

(1) This Treaty shall enter into force, with respect to the first five States or intergovernmental organizations which have deposited their instruments of ratification or accession or declarations of approval or acceptance, three months after the date on which the fifth instrument of ratification or accession or declaration of approval or acceptance has been deposited.

(2) This Treaty shall enter into force with respect to any other State or intergovernmental organization three months after the date on which that State or intergovernmental organization has deposited its instrument of ratification or accession or declaration of approval or acceptance unless a later date has been indicated in the instrument of ratification or accession or declaration of approval or acceptance. In the latter case, this Treaty shall enter into force with respect to that State or intergovernmental organization on the date thus indicated.

Article 16

Denunciation of the Treaty

(1) [Same as Article 17(1) of the Final Text, except that, in the Draft, the word corresponding to "State" reads as follows: "Party."]

(2) [Same as Article 17(2) of the Final Text.]

CHAPTER IV

FINAL PROVISIONS

Article 15

Becoming Party to the Treaty

(1) Any State member of the International (Paris) Union for the Protection of Industrial Property may become party to this Treaty by:

(i) signature followed by the deposit of an instrument of ratification, or

(ii) deposit of an instrument of accession.

(2) Instruments of ratification or accession shall be deposited with the Director General.

Article 16

Entry Into Force of the Treaty

(1) This Treaty shall enter into force, with respect to the first five States which have deposited their instruments of ratification or accession, three months after the date on which the fifth instrument of ratification or accession has been deposited.

(2) This Treaty shall enter into force with respect to any other State three months after the date on which that State has deposited its instrument of ratification or accession unless a later date has been indicated in the instrument of ratification or accession. In the latter case, this Treaty shall enter into force with respect to that State on the date thus indicated.

Article 17

Denunciation of the Treaty

(1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.

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

[Article 16, continued]

(3) [Same as Article 17(3) of the Final Text, except that, in the Draft, the word corresponding to "State" reads as follows: "Party."]

(4) The denunciation of this Treaty by a Contracting State on whose territory an international depositary authority is located shall entail the termination of such authority's status of international depositary authority one year after the day on which the Director General received the notification referred to in paragraph (1).

Article 17
Signature and Languages of the Treaty

(1)(a) [Same as Article 18(1)(a) of the Final Text.]

[In the Draft, there is no provision corresponding to Article 18(1)(b) of the Final Text.]

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

(2) [Same as Article 18(2) of the Final Text.]

Article 18
Deposit of the Treaty; Transmittal of Copies
Registration of the Treaty

(1) [Same as Article 19(1) of the Final Text.]

(2) [Same as Article 19(2) of the Final Text, except that in the Draft, the words corresponding to "Article 15(1), to the intergovernmental organizations that may file a declaration under Article 9(1)(a)..." read as follows: "Article 14(1)(a) and to the intergovernmental organizations referred to in Article 14(1)(b)...."]

(3) [Same as Article 19(3) of the Final Text.]

(4) The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and to the Regulations to all Contracting Parties and, on request, to the Government of any State and to any intergovernmental organization referred to in Article 14(1)(b) where such State or organization is not a Contracting Party.

[Article 17, continued]

(3) The right of denunciation provided for in paragraph (1) shall not be exercised by any Contracting State before the expiration of five years from the date on which it becomes party to this Treaty.

(4) The denunciation of this Treaty by a Contracting State that has made a declaration referred to in Article 7(1)(a) with respect to a depositary institution which thus acquired the status of international depositary authority shall entail the termination of such status one year after the day on which the Director General received the notification referred to in paragraph (1).

Article 18

Signature and Languages of the Treaty

(1)(a) This Treaty shall be signed in a single original in the English and French languages, both texts being equally authentic.

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

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

(2) This Treaty shall remain open for signature at Budapest until December 31, 1977.

Article 19

Deposit of the Treaty; Transmittal of Copies; Registration of the Treaty

(1) The original of this Treaty, when no longer open for signature, shall be deposited with the Director General.

(2) The Director General shall transmit two copies, certified by him, of this Treaty and the Regulations to the Governments of all the States referred to in Article 15(1), to the intergovernmental organizations that may file a declaration under Article 9(1)(a) and, on request, to the Government of any other State.

(3) The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and to the Regulations to all Contracting States, to all intergovernmental industrial property organizations and, on request, to the Government of any other State and to any other intergovernmental organization that may file a declaration under Article 9(1)(a).

Article 19

Notifications

The Director General shall notify the Contracting Parties and those States not members of the Union which are members of the International (Paris) Union for the Protection of Industrial Property of:

(i) [Same as Article 20(i) of the Final Text, except that, in the Draft, the reference is Article 17 rather than Article 18.]

(ii) [Same as Article 20(ii) of the Final Text, except that, in the Draft, the words "and of declarations of approval or acceptance" appear and the reference is Article 14(2) rather than Article 15(2).]

[In the Draft, there is no provision corresponding to Article 20(iii) of the Final Text.]

(iii) [Same as Article 20(iv) of the Final Text, except that, in the Draft, the reference is Article 15(1) rather than Article 16(1).]

(iv) the decisions and communications under Articles 7 and 8 relating to the status of international depositary authority;

(v) [Same as Article 20(vi) of the Final Text, except that, in the Draft, the reference is Article 13(3) rather than Article 14(3).]

(vi) [Same as Article 20(vii) of the Final Text.]

(vii) [Same as Article 20(viii) of the Final Text.]

(viii) [Same as Article 20(ix) of the Final Text, except that, in the Draft, the reference is Article 16 rather than Article 17.]

Article 20

Notifications

The Director General shall notify the Contracting States, the intergovernmental industrial property organizations and those States not members of the Union which are members of the International (Paris) Union for the Protection of Industrial Property of:

(i) signatures under Article 18;

(ii) deposits of instruments of ratification or accession under Article 15(2);

(iii) declarations filed under Article 9(1)(a) and notifications of withdrawal under Article 9(2) or (3);

(iv) the date of entry into force of this Treaty under Article 16(1);

(v) the communications under Articles 7 and 8 and the decisions under Article 8;

(vi) acceptance of amendments to this Treaty under Article 14(3);

(vii) any amendment of the Regulations;

(viii) the dates on which amendments to the Treaty or the Regulations enter into force;

(ix) denunciations received under Article 17.

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

DONE at Budapest, this twenty-eight day of April, one thousand nine hundred and seventy-seven.*

AUSTRIA, December 22, 1977 (F. Frölichsthal); BULGARIA (Ivan Ivanov); DENMARK (K. Skjødt); FINLAND (Erkki Tuuli); FRANCE (G. Vianès); GERMANY,(FEDERAL REPUBLIC OF) (Hermann Kersting, Dr. Manfred Deiters); HUNGARY (E. Tasnádi); ITALY (Italo Papini); LUXEMBOURG, December 8, 1977 (J.A. Beelaerts van Blokland); NETHERLANDS (J. Wolfswinkel); NORWAY (Leif Nordstrand); SENEGAL, December 17, 1977 (M. Mbengue); SOVIET UNION, December 30, 1977 (F.P. Bogdanov); SPAIN (Salvador García Pruneda y Ledesma, Antonio Villalpando Martínez); SWEDEN, November 14, 1977 (Thomas Ganslandt); SWITZERLAND (J.-L Comte); UNITED KINGDOM (Ivor Davis, Anthony J. Needs); UNITED STATES OF AMERICA (Harvey J. Winter, Stanley D. Schlosser).

* Editor's Note: All signatures were affixed on April 28, 1977, unless otherwise indicated.

REGULATIONS
UNDER THE BUDAPEST TREATY
ON THE INTERNATIONAL RECOGNITION
OF THE DEPOSIT OF MICROORGANISMS
FOR THE PURPOSES OF PATENT PROCEDURE

TEXT OF THE DRAFT REGULATIONS
AS PRESENTED TO THE DIPLOMATIC CONFERENCE

TEXT OF THE REGULATIONS
AS ADOPTED BY THE DIPLOMATIC CONFERENCE

DRAFT REGULATIONS UNDER THE TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

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1.2 "Article"
1.3 "Signature"

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REGULATIONS UNDER THE BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

List of Rules*

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1.2 "Article"
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2.1 Legal Status
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3.1 Communication
3.2 Processing of the Communication
3.3 Extension of the List of Kinds of Microorganisms Accepted

Rule 4: Termination or Limitation of the Status of International Depositary Authority

4.1 Request; Processing of Request
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4.3 Consequences for Deposits

Rule 5: Defaults by the International Depositary Authority

5.1 Discontinuance of Performance of Functions in Respect of Deposited Microorganisms
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* This List of Rules does not appear in the original. It was added for the convenience of the reader.

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Rule 1

Abbreviated Expressions and Interpretation of of the Word "Signature"

1.1 "Treaty"

[Same as in the Final Text, except that, in the Draft, the word "Budapest" does not appear.]

1.2 "Article"

[Same as in the Final Text.]

1.3 "Signature"

[Same as in the Final Text, except that, in the Draft, the words corresponding to "State" read as follows: "Contracting State."]

Rule 2

International Depositary Authorities

2.1 Legal Status

Any international depositary authority may be a government agency, including public institutions attached to any public administration other than the central government, or a private entity.

2.2 Staff, Equipment and Facilities

The requirements referred to in Article 6(2)(ii) shall include in particular the following:

(i) the staff, equipment and facilities of any international depositary authority must be such that they enable that authority adequately to perform its scientific and administrative tasks under the Treaty and these Regulations; they must, in particular, enable the said authority to store the deposited microorganisms in a manner which ensures that they are kept viable and uncontaminated;

(ii) [Same as in the Final Text.]

2.3 Release of Samples

[Same as in the Final Text, except that, in the Draft, the word corresponding to "Furnishing" and "furnish" reads as follows: "release."]

Rule 1

Abbreviated Expressions and Interpretation of the Word "Signature"

1.1 "Treaty"

In these Regulations, the word "Treaty" means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

1.2 "Article"

In these Regulations, the word "Article" refers to the specified Article of the Treaty.

1.3 "Signature"

In these Regulations, whenever the word "signature" is used, it shall be understood that, where the law of the State on the territory of which an international depositary authority is located requires the use of a seal instead of a signature, the said word shall mean "seal" for the purposes of that authority.

Rule 2

International Depositary Authorities

2.1 Legal Status

Any international depositary authority may be a government agency, including any public institution attached to a public administration other than the central government, or a private entity.

2.2 Staff and Facilities

The requirements referred to in Article 6(2)(ii) shall include in particular the following:

(i) the staff and facilities of any international depositary authority must enable the said authority to store the deposited microorganisms in a manner which ensures that they are kept viable and uncontaminated;

(ii) any international depositary authority must, for the storage of microorganisms, provide for sufficient safety measures to minimize the risk of losing microorganisms deposited with it.

2.3 Furnishing of Samples

The requirements referred to in Article 6(2)(viii) shall include in particular the requirement that any international depositary authority must furnish samples of deposited microorganisms in an expeditious and proper manner.

Rule 3

Acquisition of the Status of International Depositary Authority

3.1 Communication

(a) The communication referred to in Article 7(1) shall be transmitted to the Director General through diplomatic channels.

(b) The communication shall:

(i) [Same as in the Final Text.]

(ii) contain detailed information on all facts relevant in appreciating the said institution's capacity to comply with the requirements specified in Article 6(2), including information on its legal status, scientific standing, staff, equipment and facilities;

(iii) where the requirement referred to in Article (6)(2)(v) is complied with only in respect of certain kinds of microorganisms, specify the kinds of microorganisms in respect of which the depositary institution, in its capacity of international depositary authority, will perform the tasks it is obliged to perform under the Treaty and these Regulations;

(iv) [Same as in the Final Text, except that, in the Draft, the word corresponding to "furnishing" reads as follows: "release."]

[In the Draft, there is no provision corresponding to Rule 3.2(v) of the Final Text.]

(v) where applicable, indicate the date on which the acquisition of the status of international depositary authority should take effect in respect of that institution.

3.2 Processing of the Communication

[Same as in the Final Text, except that, in the Draft, the words corresponding to "States and intergovernmental industrial property organizations" read as follows: "Parties."]

3.3 Extension of the List of Kinds of Microorganisms Accepted

The Contracting State having made the communication referred to in Article 7(1) may, at any time thereafter, notify the Director General that its guarantee is extended to specified kinds of microorganisms to which, so far, the guarantee has not extended. In such a case, and as far as the additional kinds of microorganisms are concerned, Article 7 and Rules 3.1 and 3.2 shall apply, *mutatis mutandis*.

Rule 3

Acquisition of the Status of International Depositary Authority

3.1 Communication

(a) The communication referred to in Article 7(1) shall be addressed to the Director General, in the case of a Contracting State, through diplomatic channels or, in the case of an intergovernmental industrial property organization, by its chief executive officer.

(b) The communication shall:

(i) indicate the name and address of the depositary institution to which the communication relates;

(ii) contain detailed information as to the said institution's capacity to comply with the requirements specified in Article 6(2), including information on its legal status, scientific standing, staff and facilities;

(iii) where the said depositary institution intends to accept for deposit only certain kinds of microorganisms, specify such kinds;

(iv) indicate the amount of any fees that the said institution will, upon acquiring the status of international depositary authority, charge for storage, viability statements and furnishing of samples of microorganisms;

(v) indicate the official language or languages of the said institution;

(vi) where applicable, indicate the date referred to in Article 7(1)(b).

3.2 Processing of the Communication

If the communication complies with Article 7(1) and Rule 3.1, it shall be promptly notified by the Director General to all Contracting States and intergovernmental industrial property organizations and shall be promptly published by the International Bureau.

3.3 Extension of the List of Kinds of Microorganisms Accepted

The Contracting State or intergovernmental industrial property organization having made the communication referred to in Article 7(1) may, at any time thereafter, notify the Director General that its assurances are extended to specified kinds of microorganisms to which, so far, the assurances have not extended. In such a case, and as far as the additional kinds of microorganisms are concerned, Article 7 and Rules 3.1 and 3.2 shall apply, *mutatis mutandis*.

Rule 4

Termination or Limitation of the Status of International Depositary Authority

4.1 Request; Processing of Request

(a) [Same as in the Final Text, except that, in the Draft, the word corresponding to "addressed" reads as follows: "transmitted."]

(b) [Same as in the Final Text except item (ii).]

(ii) where it relates only to certain kinds of microorganisms, indicate the kinds of microorganisms to which it relates;

(c) If the request complies with paragraphs (a) and (b), it shall be notified by the Director General to all Contracting Parties.

(d) The Assembly shall consider the request not earlier than four and not later than eight months from the notification of the request.

(e) Where, in the opinion of the Assembly, respect of the time limit provided for in paragraph (d) could endanger the interests of actual or potential depositors, the Assembly may shorten that time limit.

(f) If the Assembly decides to terminate, or to limit to certain kinds of microorganisms, the status of international depositary authority, the said decision shall become effective six months after the date on which it was made. However, the Assembly may shorten that time limit where, in its opinion, respect of the said time limit could endanger the interests of actual or potential depositors.

4.2 Communication; Effective Date; Processing of Communication

(a) [Same as in the Final Text.]

(b) [Same as in the Final Text except items (ii) and (iii).]

(ii) [Same as in the Final Text, except that, in the Draft, the words corresponding to: "specify such kinds" read as follows: "indicate the kinds of microorganisms to which it relates."]

(iii) where the Contracting State making the communication desires that the effects provided for in Article 8(2)(b) take place at a date later than at the expiration of a period of six months from the date of the communication, indicate that later date.

Rule 4

Termination or Limitation of the Status of International Depositary Authority

4.1 Request; Processing of Request

(a) The request referred to in Article 8(1)(a) shall be addressed to the Director General as provided in Rule 3.1(a).

(b) The request shall:

(i) indicate the name and address of the international depositary authority concerned;

(ii) where it relates only to certain kinds of microorganims, specify such kinds;

(iii) indicate in detail the facts on which it is based.

(c) If the request complies with paragraphs (a) and (b), it shall be promptly notified by the Director General to all Contracting States and intergovernmental industrial property organizations.

(d) Subject to paragraph (e), the Assembly shall consider the request not earlier than six and not later than eight months from the notification of the request.

(e) Where, in the opinion of the Director General, respect of the time limit provided for in paragraph (d) could endanger the interests of actual or potential depositors, he may convene the Assembly for a date earlier than the date of the expiration of the six-month period provided for in paragraph (d).

(f) If the Assembly decides to terminate, or to limit to certain kinds of microorganisms, the status of international depositary authority, the said decision shall become effective three months after the date on which it was made.

4.2 Communication; Effective Date; Processing of Communication

(a) The communication referred to in Article 8(2)(a) shall be addressed to the Director General as provided in Rule 3.1(a).

(b) The communication shall:

(i) indicate the name and address of the international depositary authority concerned;

(ii) where it relates only to certain kinds of microorganisms, specify such kinds;

(iii) where the Contracting State or intergovernmental industrial property organization making the communication desires that the effects provided for in Article 8(2)(b) take place on a date later than at the expiration of three months from the date of the communication, indicate that later date.

[Rule 4.2, continued]

(c) [Same as in the Final Text, except that, in the Draft, the words corresponding to "three months" read as follows: "six months."]

(d) The Director General shall promptly notify all Contracting Parties of any communication received under Article 8(2) and of its effective date under paragraph (c). A corresponding notice shall be promptly published in the Gazette.

4.3 Consequences for Deposits

[Same as in the Final Text, except that, in the Draft, the words corresponding to "9(4) or 17(4)" read as follows: "or 16(4)."]

Rule 5

Defaults by the International Depositary Authority

5.1 Discontinuance of Performance of Functions in Respect of Deposited Microorganisms

(a) If any international depositary authority temporarily or definitively discontinues the performance of any of the tasks it should perform under the Treaty and these Regulations in relation to any microorganisms deposited with it, the Contracting State which, in respect of that authority, has guaranteed the compliance with the requirements specified in Article 6(2) shall:

(i) ensure that samples of all such microorganisms are transferred promptly and without deterioration from the said authority ("the defaulting authority") to another international depositary authority ("the substitute authority");

(ii) ensure that all mail or other communications addressed to the defaulting authority, and all files and other relevant information in the possession of that authority, in respect of the said microorganisms are promptly transferred to the substitute authority;

(iii) ensure that the defaulting authority promptly notifies all interested depositors of the discontinuance of the performance of its functions and the transfers effected; any interested depositor may ask the defaulting authority to retain samples of the microorganisms deposited with it;

(iv) promptly notify the Director General of the fact and the extent of the discontinuance in question and of the measures which have been taken by the said Contracting State under (i) to (iii).

(b) The Director General shall promptly notify the Contracting Parties and the industrial property offices thereof of the notification received under paragraph (a)(iv) and shall promptly publish it in the Gazette.

[Rule 4.2, continued]

(c) Where paragraph (b)(iii) applies, the effects provided for in Article 8(2)(b) shall take place on the date indicated under that paragraph in the communication; otherwise, they shall take place at the expiration of three months from the date of the communication.

(d) The Director General shall promptly notify all Contracting States and intergovernmental industrial property organizations of any communication received under Article 8(2) and of its effective date under paragraph (c). A corresponding notice shall be promptly published by the International Bureau.

4.3 Consequences for Deposits

In the case of a termination or limitation of the status of international depositary authority under Articles 8(1), 8(2), 9(4) or 17(4), Rule 5.1 shall apply, mutatis mutandis.

Rule 5

Defaults by the International Depositary Authority

5.1 Discontinuance of Performance of Functions in Respect of Deposited Microorganisms

(a) If any international depositary authority temporarily or definitively discontinues the performance of any of the tasks it should perform under the Treaty and these Regulations in relation to any microorganisms deposited with it, the Contracting State or intergovernmental industrial property organization which, in respect of that authority, has furnished the assurances under Article 6(1) shall:

(i) ensure, to the fullest extent possible, that samples of all such microorganisms are transferred promptly and without deterioration or contamination from the said authority ("the defaulting authority") to another international depositary authority ("the substitute authority");

(ii) ensure, to the fullest extent possible, that all mail or other communications addressed to the defaulting authority, and all files and other relevant information in the possession of that authority, in respect of the said microorganisms are promptly transferred to the substitute authority;

(iii) ensure, to the fullest extent possible, that the defaulting authority promptly notifies all depositors affected of the discontinuance of the performance of its functions and the transfers effected;

(iv) promptly notify the Director General of the fact and the extent of the discontinuance in question and of the measures which have been taken by the said Contracting State or intergovernmental industrial property organization under (i) to (iii).

(b) The Director General shall promptly notify the Contracting States and the intergovernmental industrial property organizations as well as the industrial property offices of the notification received under paragraph (a)(iv); the notification of the Director General and the notification received by him shall be promptly published by the International Bureau.

[Rule 5.1, continued]

(c) The depositor shall, promptly after receiving the receipt referred to in Rule 7.5, notify to any industrial property office of a Contracting Party with which a patent application was filed with reference to the original deposit the new accession number given to the deposit by the substitute authority.

(d) [Same as in the Final Text.]

(e) [Same as in the Final Text, except that, in the Draft, the words "expenses to the defaulting authority resulting" and "to the international depositary authority indicated by him" do not appear.]

[In the Draft, there is no provision corresponding to Rule 5.1(f) of the Final Text.]

5.2 Refusal To Accept Certain Kinds of Microorganisms

(a) If any international depositary authority refuses to accept for deposit any of the kinds of microorganisms which it should accept under the guarantee furnished, the Contracting State which, in respect of that authority, has made the declaration of guarantee referred to in Article 7(1) shall promptly notify the Director General of the relevant facts.

(b) The Director General shall promptly notify the other Contracting Parties of the notification received under paragraph (a) and shall promptly publish in the Gazette the notification and the measures which have been taken.

Rule 6

Making the Original Deposit or New Deposit

6.1 Original Deposit

(a) [Same as in the Final Text, except items (iii) and (v).]

(iii) details of the conditions necessary for the cultivation of the microorganism and also, where a mixture of microorganisms is deposited, descriptions of the components of the mixture and methods for checking their presence;

[Rule 5.1, continued]

(c) Under the applicable patent procedure it may be required that the depositor shall, promptly after receiving the receipt referred to in Rule 7.5, notify to any industrial property office with which a patent application was filed with reference to the original deposit the new accession number given to the deposit by the substitute authority.

(d) The substitute authority shall retain in an appropriate form the accession number given by the defaulting authority, together with the new accession number.

(e) In addition to any transfer effected under paragraph (a)(i), the defaulting authority shall, upon request by the depositor, transfer a sample of any microorganism deposited with it to any international depositary authority indicated by the depositor other than the substitute authority, provided that the depositor pays any expenses to the defaulting authority resulting from the transfer of that sample. The depositor shall pay the fee for the storage of the said sample to the international depositary authority indicated by him.

(f) On the request of any depositor affected, the defaulting authority shall retain, as far as possible, samples of the microorganisms deposited with it.

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5.2 Refusal To Accept Certain Kinds of Microorganisms

(a) If any international depositary authority refuses to accept for deposit any of the kinds of microorganisms which it should accept under the assurances furnished, the Contracting State or intergovernmental industrial property organization which, in respect of that authority, has made the declaration referred to in Article 7(1)(a) shall promptly notify the Director General of the relevant facts and the measures which have been taken.

(b) The Director General shall promptly notify the other Contracting States and intergovernmental industrial property organizations of the notification received under paragraph (a); the notification of the Director General and the notification received by him shall be promptly published by the International Bureau.

Rule 6

Making the Original Deposit or New Deposit

6.1 Original Deposit

(a) The microorganism transmitted by the depositor to the international depositary authority shall, except where Rule 6.2 applies, be accompanied by a written statement bearing the signature of the depositor and containing:

(i) an indication that the deposit is made under the Treaty;

(ii) the name and address of the depositor;

(iii) details of the conditions necessary for the cultivation of the microorganism, for its storage and for testing its viability and also, where a mixture of microorganisms is deposited, descriptions of the components of the mixture and at least one of the methods permitting the checking of their presence;

[Rule 6.1(a), continued]

[In the Draft, there is no provision corresponding to Rule 6.1(a)(v) of the Final Text.]

(b) [Same as in the Final Text.]

6.2 New Deposit

(a) [Same as in the Final Text except items (i) and (iii).]

(i) [Same as in the Final Text, except that, in the Draft, the words corresponding to "to (v)" read as follows: "to (iv)."]

(iii) the most recent scientific description and/or proposed taxonomic designation indicated in connection with the original deposit as existing on the date relevant under Article 4(1)(e).

(b) [Same as in the Final Text.]

[In the Draft, there is no provision corresponding to Rule 6.3 of the Final Text.]

[Rule 6.1(a), continued]

(iv) an identification reference (number, symbols, etc.) given by the depositor to the microorganism;

(v) an indication of the properties of the microorganism which the international depositary authority cannot be expected to foresee but which are dangerous to health or the environment, particularly in the case of new microorganisms.

(b) It is strongly recommended that the written statement referred to in paragraph (a) should contain the scientific description and/or proposed taxonomic designation of the deposited microorganism.

6.2 New Deposit

(a) Subject to paragraph (b), In the case of a new deposit made under Article 4, the microorganism transmitted by the depositor to the international depositary authority shall be accompanied by a copy of the receipt of the original deposit, a copy of the most recent statement concerning the viability of the microorganism originally deposited indicating that the microorganism is viable and a written statement bearing the signature of the depositor and containing:

(i) the indications referred to in Rule 6.1(a)(i) to (v);

(ii) a declaration stating the reason relevant under Article 4(1)(a) for making the new deposit, the statement required under Article 4(1)(c), and, where applicable, an indication of the date relevant under Article 4(1)(e);

(iii) where a scientific description and/or proposed taxonomic designation was/were indicated in connection with the original deposit, the most recent scientific description and/or proposed taxonomic designation as existing on the date relevant under Article 4(1)(e).

(b) Where the new deposit is made with the international depositary authority with which the original deposit was made, paragraph (a)(i) shall not apply.

6.3 Requirements of the International Depositary Authority

(a) Any international depositary authority may require that the microorganism be deposited in the form and quantity necessary for the purposes of the Treaty and these Regulations and be accompanied by a form established by such authority and duly completed by the depositor for the purposes of the administrative procedures of such authority.

(b) Any international depositary authority shall communicate any such requirements and any amendments thereof to the International Bureau.

Rule 7

Receipt

7.1 Issuance of Receipt

[Same as in the Final Text.]

7.2 Form; Language; Signature

(a) [Same as in the Final Text, except that, in the Draft, the words "in those languages which the Assembly shall designate" do not appear.]

(b) Any text matter in the receipt shall be in English or French. It may be in both English and French. Any text matter appearing in the receipt in English or French may also appear therein in any other language.

(c) [Same as in the Final Text.]

7.3 Contents in the Case of the Original Deposit

Any receipt referred to in Rule 7.1 and issued in the case of an original deposit shall contain at least the following indications:

(i) to (v) [Same as in the Final Text.]

Rule 7
Receipt

7.1 Issuance of Receipt

The international depositary authority shall issue to the depositor, in respect of each deposit of microorganism effected with it or transferred to it, a receipt in attestation of the fact that it has received and accepted the microorganism.

7.2 Form; Languages; Signature

(a) Any receipt referred to in Rule 7.1 shall be established on a form called an "international form," a model of which shall be established by the Director General in those languages which the Assembly shall designate.

(b) Any words or letters filled in in the receipt in characters other than those of the Latin alphabet shall also appear therein transliterated in characters of the Latin alphabet.

(c) The receipt shall bear the signature of the person or persons having the power to represent the international depositary authority or that of any other official of that authority duly authorized by the said person or persons.

7.3 Contents in the Case of the Original Deposit

Any receipt referred to in Rule 7.1 and issued in the case of an original deposit shall indicate that it is issued by the depositary institution in its capacity of international depositary authority under the Treaty and shall contain at least the following indications:

(i) the name and address of the international depositary authority;

(ii) the name and address of the depositor;

(iii) the date of receipt of the microorganism by the international depositary authority;

(iv) the identification reference (number, symbols, etc.) given by the depositor to the microorganism;

(v) the accession number given by the international depositary authority to the deposit;

[Rule 7.3, continued]

(vi) [Same as in the Final Text, except that, in the Draft, the words corresponding to ", a reference to that fact," do not appear.]

7.4 Contents in the Case of the New Deposit

[Same as in the Final Text except item (iii).]

(iii) where Rule 6.2(iii) applies, the scientific description and/or proposed taxonomic designation;

7.5 Receipt in the Case of Transfer

The international depositary authority to which samples of micro-organisms are transferred under Rule 5.1(a)(i) shall issue to the depositor, in respect of each deposit in relation with which a sample is transferred, a receipt containing at least:

(i) [Same as in the Final Text.]

(ii) [Same as in the Final Text.]

(iii) [In the Final Text, there is no provision corresponding to Rule 7.5(iii) of the Draft.]

the most recent scientific description and/or proposed taxonomic designation, if any;

(iv) [Same as Rule 7.5(iii) of the Final Text.]

[Rule 7.3, continued]

(vi) where the written statement referred to in Rule 6.1(a) contains the scientific description and/or proposed taxonomic designation of the microorganism, a reference to that fact.

7.4 Contents in the Case of the New Deposit

Any receipt referred to in Rule 7.1 and issued in the case of a new deposit effected under Article 4 shall be accompanied by a copy of the receipt of the original deposit and a copy of the most recent statement concerning the viability of the microorganism originally deposited indicating that the microorganism is viable, and shall at least contain:

(i) the indications referred to in Rule 7.3(i) to (v);

(ii) an indication of the relevant reason and, where applicable, the relevant date as stated by the depositor in accordance with Rule 6.2(ii);

(iii) where Rule 6.2(iii) applies, a reference to the fact that a scientific description and/or a proposed taxonomic designation has/have been indicated by the depositor;

(iv) the accession number given to the original deposit.

7.5 Receipt in the Case of Transfer

The international depositary authority to which samples of microorganisms are transferred under Rule 5.1(a)(i) shall issue to the depositor, in respect of each deposit in relation with which a sample is transferred, a receipt indicating that it is issued by the depositary institution in its capacity of international depositary authority under the Treaty and containing at least:

(i) the indications referred to in Rule 7.3(i) to (v);

(ii) the name and address of the international depositary authority from which the transfer was effected;

(iii) the accession number given by the international depositary authority from which the transfer was effected.

[Rule 7, continued]

'In the Draft, there is no provision corresponding to Rule 7.6 of the Final Text.]

Rule 8

Later Indication or Amendment of the Scientific Description and/or Proposed Taxonomic Designation

8.1 Communication

[Same as in the Final Text.]

8.2 Attestation

[Same as in the Final Text, except that, in the Draft, the words corresponding to "deliver to him" read as follows: "and without charging a fee, deliver to him."]

[Rule 7, continued]

7.6 Communication of the Scientific Description and/or Proposed Taxonomic Designation

On request of any party entitled to receive a sample of the deposited microorganism under Rules 11.1, 11.2 or 11.3, the international depositary authority shall communicate to such party the scientific description and/or proposed taxonomic designation referred to in Rules 7.3(vi) or 7.4(b)(ii).

Rule 8

Later Indication or Amendment of the Scientific Description and/or Proposed Taxonomic Designation

8.1 Communication

(a) Where, in connection with the deposit of a microorganism, the scientific description and/or taxonomic designation of the microorganism was/were not indicated, the depositor may later indicate or, where already indicated, may amend such description and/or designation.

(b) Any such later indication or amendment shall be made in a written communication, bearing the signature of the depositor, addressed to the international depositary authority and containing:

(i) the name and address of the depositor;

(ii) the accession number given by the said authority;

(iii) the scientific description and/or proposed taxonomic designation of the microorganism;

(iv) in the case of an amendment, the last preceding scientific description and/or proposed taxonomic designation.

8.2 Attestation

The international depositary authority shall, on the request of the depositor having made the communication referred to in Rule 8.1, deliver to him an attestation showing the data referred to in Rule 8.1(b)(i) to (iv) and the date of receipt of such communication.

Rule 9

Storage of Microorganisms

9.1 Duration of the Storage

[Same as in the Final Text, except that, in the Draft, the word corresponding to "furnishing" reads as follows: "release."]

9.2 Secrecy

As long as no publication for the purposes of patent procedure has occurred, the fact that the deposit has been made shall, subject to Rule 11.3, be kept secret by the international depositary authority, and such authority shall not give any information concerning the deposit to any person, except with the written authorization of the depositor [or if the said information is requested by an industrial property office of a Contracting Party.]*

Rule 10

Viability Test and Statement

10.1 Obligation to Test

[Same as in the Final Text except items (i) and (ii).]

(i) [Same as in the Final Text, except that, in the Draft, the words "referred to in Rule 6" do not appear.]

(ii) [Same as in the Final Text, except that, in the Draft, the word corresponding to "reasonable" reads as follows: "regular."]

10.2 Viability Statement

(a) Same as in the Final Text except items (i) and (iii).]

(i) to the depositor, promptly after the deposit or any transfer referred to in Rule 5.1;

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* These words are placed within square brackets because it is not obvious that they are needed: as a matter of fact, industrial property offices can already, under Rule 11.1, receive much more than the information referred to in Rule 9.2, namely a sample of the deposited microorganism, and can also obtain from the person applying for the patent any additional information they require.

Rule 9
Storage of Microorganisms

9.1 Duration of the Storage

Any microorganism deposited with an international depositary authority shall be stored by such authority, with all the care necessary to keep it viable and uncontaminated, for a period of at least five years after the most recent request for the furnishing of a sample of the deposited microorganism was received by the said authority and, in any case, for a period of at least 30 years after the date of the deposit.

9.2 Secrecy

No international depositary authority shall give information to anyone whether a microorganism has been deposited with it under the Treaty. Furthermore, it shall not give any information to anyone concerning any microorganism deposited with it under the Treaty except to an authority, natural person or legal entity which is entitled to obtain a sample of the said microorganism under Rule 11 and subject to the same conditions as provided in that Rule.

Rule 10
Viability Test and Statement

10.1 Obligation To Test

The international depositary authority shall test the viability of each microorganism deposited with it:

(i) promptly after any deposit referred to in Rule 6 or any transfer referred to in Rule 5.1;

(ii) at reasonable intervals, depending on the kind of microorganism and its possible storage conditions, or at any time, if necessary for technical reasons;

(iii) at any time, on the request of the depositor.

10.2 Viability Statement

(a) The international depositary authority shall issue a statement concerning the viability of the deposited microorganism:

(i) to the depositor, promptly after any deposit referred to in Rule 6 or any transfer referred to in Rule 5.1;

(ii) to the depositor, on his request, at any time after the deposit or transfer:

[Rule 10.2(a), continued]

(iii) [Same as in the Final Text, except that, in the Draft, the words corresponding to "such furnishing of samples" read as follows: "such release."]

(b) [Rule 10.2(b) of the Final Text corresponds partly to Rule 10.2(b) and (e) of the Draft.]

The viability statement shall indicate whether or not the microorganism is or is no longer viable.

(c) [Same as in the Final Text.]

(d) [Same as in the Final Text.]

(e) The viability statement shall contain:

(i) the name and address of the international depositary authority issuing it;

(ii) the name and address of the depositor;

(iii) the date of the deposit of the microorganism and of the transfer, if any;

(iv) the accession number given by the said authority;

(v) the date of the test to which it refers;

(vi) information on the conditions under which the viability test has been performed, provided that the said information has been requested by the party to which the viability statement is issued and that the results of the test were negative.

[Rule 10.2(a), continued]

(iii) to any industrial property office, other authority, natural person or legal entity, other than the depositor, to whom or to which samples of the deposited microorganism were furnished in conformity with Rule 11, on his or its request, together with or at any time after such furnishing of samples.

(b) The viability statement shall indicate whether the microorganism is or is no longer viable and shall contain:

(i) the name and address of the international depositary authority issuing it;

(ii) the name and address of the depositor;

(iii) the date of the deposit of the microorganism and of the transfer, if any;

(iv) the accession number given by the said authority;

(v) the date of the test to which it refers;

(vi) information on the conditions under which the viability test has been performed, provided that the said information has been requested by the party to which the viability statement is issued and that the results of the test were negative.

(c) In the cases of paragraph (a)(ii) and (iii), the viability statement shall refer to the most recent viability test.

(d) As to form, languages and signature, Rule 7.2 shall apply, mutatis mutandis, to the viability statement.

[Rule 10.2, continued]

(f) The issuance of the viability statement referred to in paragraph (a)(i) shall be free of charge. Any fee payable under Rule 12.1(a)(ii) in respect of any other viability statement shall be chargeable to the party requesting the statement and shall be paid before or at the time of making the request, provided that, where the request is made by an industrial property office of a Contracting Party, the fee shall be chargeable to the depositor.

Rule 11

Release of Samples

11.1 Release to Interested Industrial Property Offices

Any international depositary authority shall release a sample of any deposited microorganism to the industrial property office of any Contracting Party, upon the request of the latter, provided that the request shall be accompanied by a declaration to the effect that:

(i) an application referring to the deposit of that microorganism has been filed with that office for the grant of a patent and that the subject matter of that application is an invention which involves the use of the said microorganism;

(ii) such application is pending before that office or has led to the grant of a patent;

(iii) the sample is needed for the purposes of patent procedure before a competent body of the said Contracting Party;

(iv) the said competent body will use the sample and any information accompanying or resulting from it only for the purposes of its patent procedure.

11.2 Release to or with the Authorization of the Depositor

Any international depositary authority shall release a sample of any deposited microorganism:

(i) to the depositor, on his request,

(ii) to any authorithy, natural person or legal entity (hereinafter referred to as "the authorized party"), on the request of such party, provided that the request is accompanied by a declaration bearing the signature of the depositor and authorizing the requested release.

11.3 Release to Parties Legally Entitled

(a) Any international depositary authority shall release a sample of any deposited microorganism to any authority, natural person or legal entity (hereinafter referred to as "the certified party"), on the request of such party, provided that the request is accompanied by a declaration bearing the signature of the industrial property office of a Contracting Party and certifying that:

[Rule 10.2, continued]

(e) In the case of paragraph (a)(i) or where the request is made by an industrial property office, the issuance of the viability statement shall be free of charge. Any fee payable under Rule 12.1(a)(iii) in respect of any other viability statement shall be chargeable to the party requesting the statement and shall be paid before or at the time of making the request.

Rule 11

Furnishing of Samples

11.1 Furnishing of Samples to Interested Industrial Property Offices

Any international depositary authority shall furnish a sample of any deposited microorganism to the industrial property office of any Contracting State or of any intergovernmental industrial property organization, on the request of such office, provided that the request shall be accompanied by a declaration to the effect that:

(i) an application referring to the deposit of that microorganism has been filed with that office for the grant of a patent and that the subject matter of that application involves the said microorganism or the use thereof;

(ii) such application is pending before that office or has led to the grant of a patent;

(iii) the sample is needed for the purposes of a patent procedure having effect in the said Contracting State or in the said organization or its member States;

(iv) the said sample and any information accompanying or resulting from it will be used only for the purposes of the said patent procedure.

11.2 Furnishing of Samples to or with the Authorization of the Depositor

Any international depositary authority shall furnish a sample of any deposited microorganism:

(i) to the depositor, on his request;

(ii) to any authority, natural person or legal entity (hereinafter referred to as "the authorized party"), on the request of such party, provided that the request is accompanied by a declaration of the depositor authorizing the requested furnishing of a sample.

11.3 Furnishing of Samples to Parties Legally Entitled

(a) Any international depositary authority shall furnish a sample of any deposited microorganism to any authority, natural person or legal entity (hereinafter referred to as "the certified party"), on the request of such party, provided that the request

[Rule 11.3(a), continued]

(i) an application referring to the deposit of that microorganism has been filed with that office for the grant of a patent and that the subject matter of that application is an invention which involves the use of the said microorganism;

(ii) publication for the purposes of patent procedure has been effected by that office;

(iii) the certified party has a right to a sample of the microorganism under the law governing patent procedure before that office and, where the said law makes the said right dependent on the fulfillment of certain conditions, that that office is satisfied that such conditions have actually been fulfilled.

[(b) Paragraph (a) shall apply with the exception of item (ii) thereof where the following conditions are fulfilled and where the industrial property office certifies, in the declaration referred to in paragraph (a), that they are fulfilled:

(i) the need exists, for the purposes of a patent procedure pending before that office, to establish the priority of the invention;

(ii) such need exists for the certified party;

(iii) such need exists prior to the publication, in that patent procedure, of the patent application or patent which refers to the deposited microorganism.]*

* Paragraph (b) is placed within square brackets since it may not be necessary, in view of the fact that, in the case intended to be covered by that provision, the release of a sample could be obtained under Rule 11.2.

[Rule 11.3(a), continued]

is made on a form whose contents are fixed by the Assembly and that on the said form the industrial property office certifies:

(i) that an application referring to the deposit of that microorganism has been filed with that office for the grant of a patent and that the subject matter of that application involves the said microorganism or the use thereof;

(ii) that, except where the second phrase of (iii) applies, publication for the purposes of patent procedure has been effected by that office;

(iii) either that the certified party has a right to a sample of the microorganism under the law governing patent procedure before that office and, where the said law makes the said right dependent on the fulfillment of certain conditions, that that office is satisfied that such conditions have actually been fulfilled or that the certified party has affixed his signature on a form before that office and that, as a consequence of the signature of the said form, the conditions for furnishing a sample to the certified party are deemed to be fulfilled in accordance with the law governing patent procedure before that office; where the certified party has the said right under the said law prior to publication for the purposes of patent procedure by the said office and such publication has not yet been effected, the certification shall expressly state so and shall indicate, by citing it in the customary manner, the applicable provision of the said law, including any court decision.

(b) In respect of patents granted and published by any industrial property office, such office may from time to time communicate to any international depositary authority lists of the accession numbers given by that authority to the deposits of the microorganisms referred to in the said patents. The international depositary authority shall, on the request of any authority, natural person or legal entity (hereinafter referred to as "the requesting party"), furnish to it a sample of any microorganism where the accession number has been so communicated. In respect of deposited microorganisms whose accession numbers have been so communicated, the said office shall not be required to provide the certification referred to in Rule 11.3(a).

[Rule 11.3, continued]

(c) [In the Final Text, there is no provision corresponding to Rule 11.3(c).]

The industrial property office of any Contracting Party may declare, through a notification addressed to the Director General, that, for the purposes of its patent procedure, paragraph[s] (a) [and (b)]* shall not apply and, in such a case:

(i) the said office shall, for each patent application referring to the deposit of a microorganism, communicate to the international depositary authority with which the deposit has been made the date on which the deposited microorganism becomes available for release to any third party requesting a sample thereof (hereinafter referred to as "the requesting party") under the law governing patent procedure before the said office; such date may not precede the date of publication by the said office for the purposes of patent procedure; the said office shall also communicate, where applicable, the conditions which any requesting party must fulfill; the communication shall be made by transmitting to the international depositary authority a form, to which the signature of any requesting party shall be affixed before the release is effected;

(ii) any international depositary authority which has received the communication referred to in (i) shall release a sample of the deposited microorganism, on or after the date indicated in the communication, to any requesting party having affixed his signature to the form referred to in (i).

(d) [In the Final Text, there is no provision corresponding to Rule 11.3(d) of the Draft.]

The declaration referred to in paragraph (c) may be withdrawn at any time through a notification addressed to the Director General.

(e) [In the Final Text, there is no provision corresponding to Rule 11.3(e) of the Draft.]

The declaration referred to in paragraph (c) and any withdrawal referred to in paragraph (d) shall be published in the Gazette.

11.4 Common Rules

(a) Any request made under Rules 11.1, 11.2 or 11.3, any declaration referred to in Rules 11.1, 11.2 or 11.3(a) and any form referred to in Rule 11.3(c)(i) shall be established at least in English or in French, shall be in writing, shall bear a signature, shall be dated and shall contain the following indications:

(i) the name and address of the industrial property office making the request, of the authorized party, of the certified party or of the requesting party, as the case may be;

(ii) the accession number given to the deposit;

(iii) in the case of Rule 11.1, the date and number of the application or patent referring to the deposit;

[Rule 11.3, continued]

11.4 Common Rules

(a) Any request, declaration, certification or communication referred to in Rules 11.1, 11.2 and 11.3 shall be

(i) in English, French, Russian or Spanish where it is addressed to an international depositary authority whose official language is or whose official languages include English, French, Russian or Spanish, respectively, provided that, where it must be in Russian or Spanish, it may be instead filed in English or French and, if it is so filed, the International Bureau shall, on the request of the interested party referred to in the said Rules or the international depositary authority, establish, promptly and free of charge, a certified translation into Russian or Spanish;

(ii) in all other cases, it shall be in English or French, provided that it may be, instead, in the official language or one of the official languages of the international depositary authority.

[Rule 11.4(a), continued]

(iv) in the case of Rule 11.3, the indications referred to in (iii) and the name and address of the industrial property office which has made the declaration referred to in Rule 11.3(a) or the communication referred to in Rule 11.3(c)(i).

(b) Notwithstanding paragraph (a), any international depositary authority may agree with any industrial property office that the request and the declaration referred to in Rule 11.1 shall or may be in a given language other than English or French.

(c) The container in which the released sample is placed shall be marked by the international depositary authority with the accession number given to the deposit.

(d) The international depositary authority having effected the release of the sample shall promptly notify the depositor in writing of that fact, as well as of the date on which the release was effected, and of the name and address of the industrial property office, of the authorized party, of the certified party or of the requesting party, to whom or to which the sample was released. The said notification shall be accompanied by a copy of the pertinent request, of any declarations submitted under Rules 11.1, 11.2 or 11.3(a) in connection with the said request, and of any forms bearing the signature of the requesting party in accordance with Rule 11.3(c).

[Rule 11.4, continued]

(b) Notwithstanding paragraph (a), where the request referred to in Rule 11.1 is made by an industrial property office whose official language is Russian or Spanish, the said request may be in Russian or Spanish, respectively, and the International Bureau shall establish, promptly and free of charge, a certified translation into English or French, on the request of that office.

(c) Any request, declaration, certification or communication referred to in Rules 11.1, 11.2 and 11.3 shall be in writing, shall bear a signature and shall be dated.

(d) Any request, declaration or certification referred to in Rules 11.1, 11.2 and 11.3(a) shall contain the following indications:

(i) the name and address of the industrial property office making the request, of the authorized party or of the certified party, as the case may be;

(ii) the accession number given to the deposit;

(iii) in the case of Rule 11.1, the date and number of the application or patent referring to the deposit;

(iv) in the case of Rule 11.3(a), the indications referred to in (iii) and the name and address of the industrial property office which has made the certification referred to in the said Rule.

(e) Any request referred to in Rule 11.3(b) shall contain the following indications:

(i) the name and address of the requesting party;

(ii) the accession number given to the deposit.

(f) The container in which the sample furnished is placed shall be marked by the international depositary authority with the accession number given to the deposit and shall be accompanied by a copy of the receipt referred to in Rule 7.

(g) The international depositary authority having furnished a sample to any interested party other than the depositor shall promptly notify the depositor in writing of that fact, as well as of the date on which the said sample was furnished and of the name and address of the industrial property office, of the authorized party, of the certified party or of the requesting party, to whom or to which the sample was furnished. The said notification shall be accompanied by a copy of the pertinent request, of any declarations submitted under Rules 11.1 or 11.2(ii) in connection with the said request, and of any forms or requests bearing the signature of the requesting party in accordance with Rule 11.3.

[Rule 11.4, continued]

(e) The release of samples referred to in Rule 11.1 shall be free of charge. Where the release of samples is made under Rule 11.2 or 11.3, any fee payable under Rule 12.1(a)(iii) shall be chargeable to the depositor, to the authorized party, to the certified party or to the requesting party, as the case may be, and shall be paid before or at the time of making the request for release.

Rule 12

Fees

12.1 Kinds and Amounts

(a) Any international depositary authority may, with respect to the procedure under the Treaty and these Regulations, charge a fee:

(i) for storage;

[In the Draft, there is no provision corresponding to Rule 12.1(a)(ii) of the Final Text.]

(ii) subject to Rule 10.2(f), first sentence, for the issuance of viability statements;

(iii) subject to Rule 11.4(e), first sentence, for the release of samples.

(b) [Same as in the Final Text.]

(c) The amount of any fee shall not vary on account of the nationality or residence of the depositor or of any authority, natural person or legal entity requesting the issuance of a viability statement or release of samples.

12.2 Change in the Amounts

(a) Any change in the amount of the fees charged by any international depositary authority shall be notified to the Director General by the Contracting State which, under Article 7(1), made the declaration of guarantee in respect of that authority. The notification may, subject to paragraph (c), contain an indication of the date from which the new fees will apply.

(b) The Director General shall promptly notify all Contracting Parties of any notification received under paragraph (a) and of its effective date under paragraph (c). He shall promptly publish the said notification and date in the Gazette.

(c) Any new fees shall apply as of the date indicated under paragraph (a), provided that, where the change consists of an increase in the amounts of the fees or where no date is so indicated, the new fees shall apply as from the thirtieth day following the publication of the change in the Gazette.

[Rule 11.4, continued]

(h) The furnishing of samples referred to in Rule 11.1 shall be free of charge. Where the furnishing of samples is made under Rule 11.2 or 11.3, any fee payable under Rule 12.1(a)(iv) shall be chargeable to the depositor, to the authorized party, to the certified party or to the requesting party, as the case may be, and shall be paid before or at the time of making the said request.

Rule 12

Fees

12.1 Kinds and Amounts

(a) Any international depositary authority may, with respect to the procedure under the Treaty and these Regulations, charge a fee:

(i) for storage;

(ii) for the attestation referred to in Rule 8.2;

(iii) subject to Rule 10.2(e), first sentence, for the issuance of viability statements;

(iv) subject to Rule 11.4(h), first sentence, for the furnishing of samples.

(b) The fee for storage shall be for the whole duration of the storage of the microorganism as provided in Rule 9.1.

(c) The amount of any fee shall not vary on account of the nationality or residence of the depositor or on account of the nationality or residence of the authority, natural person or legal entity requesting the issuance of a viability statement or furnishing of samples.

12.2 Change in the Amounts

(a) Any change in the amount of the fees charged by any international depositary authority shall be notified to the Director General by the Contracting State or intergovernmental industrial property organization which made the declaration referred to in Article 7(1) in respect of that authority. The notification may, subject to paragraph (c), contain an indication of the date from which the new fees will apply.

(b) The Director General shall promptly notify all Contracting States and intergovernmental industrial property organizations of any notification received under paragraph (a) and of its effective date under paragraph (c); the notification of the Director General and the notification received by him shall be promptly published by the International Bureau.

(c) Any new fees shall apply as of the date indicated under paragraph (a), provided that, where the change consists of an increase in the amounts of the fees or where no date is so indicated, the new fees shall apply as from the thirtieth day following the publication of the change by the International Bureau.

Rule 13

The Gazette

13.1 Frequency of Issue and Contents; Languages

(a) Issues of the Gazette shall be published at least once every six months. The Director General may publish an extraordinary issue of the Gazette whenever information on international depositary authorities requires urgent divulgation.

(b) Each issue shall contain an up-to-date list of the international depositary authorities, indicating in respect of each such authority the kinds of microorganisms that may be deposited with it and the amount of the fees charged by it.

(c) Full information on the following facts shall be published in the Gazette once, in the first issue published after the occurrence of the fact:

(i) acquisition, termination and limitation of the status of international depositary authority, and the measures taken in connection with such termination and limitation;

(ii) discontinuance of the functions of international depositary authorities, refusal to accept certain kinds of microorganisms, and the measures taken in connection with such discontinuance and refusal;

(iii) changes in the fees charged by the international depositary authorities;

(iv) declarations referred to in Rule 11.3(c) and any withdrawals thereof.

(d) The Gazette shall be published in English and French.

13.2 Price

The subscription price and the price of any individual issue of the Gazette shall be fixed by the Director General.

Rule 13

Publication by the International Bureau

13.1 Form of Publication

Any publication by the International Bureau referred to in the Treaty or these Regulations shall be made in the monthly periodical of the International Bureau referred to in the Paris Convention for the Protection of Industrial Property.

13.2 Contents

(a) At least in the first issue of each year of the said periodical, an up-to-date list of the international depositary authorities shall be published, indicating in respect of each such authority the kinds of microorganisms that may be deposited with it and the amount of the fees charged by it.

(b) Full information on any of the following facts shall be published once, in the first issue of the said periodical published after the occurrence of the fact:

(i) any acquisition, termination or limitation of the status of international depositary authority, and the measures taken in connection with that termination or limitation;

(ii) any extension referred to in Rule 3.3;

(iii) any discontinuance of the functions of an international depositary authority, any refusal to accept certain kinds of microorganisms, and the measures taken in connection with such discontinuance or refusal;

(iv) any change in the fees charged by an international depositary authority;

(v) any requirements communicated in accordance with Rule 6.3(b) and any amendments thereof.

Rule 14
Expenses of Delegations

14.1 Coverage of Expenses

[Same as in the Final Text.]

Rule 15
Absence of Quorum in the Assembly

15.1 Voting by Correspondence

[Same as in the Final Text, except that, in the Draft, the word corresponding to "States" reads as follows: "Parties" and the reference is Article 9(5)(b) rather than Article 10(5)(b).]

Rule 14

Expenses of Delegations

14.1 Coverage of Expenses

The expenses of each delegation participating in any session of the Assembly and in any committee, working group or other meeting dealing with matters of concern to the Union shall be borne by the State or organization which has appointed it.

Rule 15

Absence of Quorum in the Assembly

15.1 Voting by Correspondence

(a) In the case provided for in Article 10(5)(b), the Director General shall communicate any decision of the Assembly (other than decisions relating to the Assembly's own procedure) to the Contracting States which were not represented when the decision was made and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication.

(b) If, at the expiration of the said period, the number of Contracting States having thus expressed their vote or abstention attains the number of Contracting States which was lacking for attaining the quorum when the decision was made, that decision shall take effect provided that at the same time the required majority still obtains.

RESOLUTION

RESOLUTION

adopted by the Budapest Diplomatic Conference on April 28, 1977

The Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure held in 1977,

Invites the Executive Committee of the Paris Union for the Protection of Industrial Property to set up an Interim Advisory Committee, consisting of the States which have signed the Budapest Treaty and/or participated in the Budapest Diplomatic Conference, for preparing the entry into force of that Treaty, including the preparations necessary for the first session of the Assembly created by that Treaty,

Recommends that the interested intergovernmental and non-governmental organizations be invited as observers to the sessions of the Interim Advisory Committee.

FINAL ACT

TEXT OF THE FINAL ACT
AS ADOPTED BY THE DIPLOMATIC CONFERENCE

SIGNATORIES

FINAL ACT
of the
BUDAPEST DIPLOMATIC CONFERENCE
FOR THE CONCLUSION OF A TREATY ON THE
INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS
FOR THE PURPOSES OF PATENT PROCEDURE

In accordance with the decision of the Assembly of the International (Paris) Union for the Protection of Industrial Property in September/October 1976, following preparations by member States of the Paris Union and by the International Bureau of the World Intellectual Property Organization, and on the invitation of the Government of the Hungarian People's Republic, the Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure was held from April 14 to 28, 1977.

The Budapest Diplomatic Conference adopted the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

The said Treaty was opened for signature at Budapest on April 28, 1977.

IN WITNESS WHEREOF, the undersigned, being Delegates of the States members of the International (Paris) Union for the Protection of Industrial Property participating in the Budapest Diplomatic Conference, have signed this Final Act.

DONE at Budapest, this twenty-eighth day of April, one thousand nine hundred and seventy-seven in the English and French languages.

AUSTRALIA (G. Henshilwood); AUSTRIA (O. Leberl); BULGARIA (Ivan Ivanov); CZECHOSLOVAKIA (Z. Círman); DENMARK (K. Skjødt); FINLAND (Erkki Tuuli); FRANCE (G. Vianès); GERMAN DEMOCRATIC REPUBLIC (F. Jonkisch); GERMANY (FEDERAL REPUBLIC OF) (Hermann Kersting, Dr. Manfred Deiters); HUNGARY (E. Tasnádi); ITALY (Italo Papini); JAPAN (H. Iwata); NETHERLANDS (J. Wolfswinkel); NORWAY (L. Nordstrand); POLAND (R. Farfal); ROMANIA (V. Bolojan); SOVIET UNION (L. Komarov); SPAIN (Salvador García Pruneda y Ledesma, Antonio Villalpando Martínez); SWEDEN (L. Jonson); SWITZERLAND (J.-L. Comte); UNITED KINGDOM (Ivor Davis, Anthony J. Needs); UNITED STATES OF AMERICA (Harvey J. Winter, Stanley D. Schlosser).

CONFERENCE DOCUMENTS

LIST OF THE CONFERENCE DOCUMENTS "DMO/DC"

(DMO/DC/1.Rev. to DMO/DC/54)

Document Number	Submitted by	Subject
1.Rev.	The Director General of WIPO	Draft Agenda
2.	The Director General of WIPO	Draft Rules of Procedure
3.	The International Bureau of WIPO	Draft Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
4.	The International Bureau of WIPO	Draft Regulations under the Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
5.	United Kingdom	Observations and proposals concerning the Draft Treaty and the Draft Regulations (Articles: 3; 4(1), (d) and (e); 6(1), 6(2)(ii) and 6(3); 7(1)(a), 7(2)(a) and (b); 8(1)(a), 8(2)(a) and (b); Rules: 2.2; 3.1(b)(ii), (iii) and (iv); 3.2; 3.3; 4.1(f); 4.2(b)(iii) and (c); 5.1(a)(iii) and (c); 5.2; 9.1; 11.3(a)(iii) and (b); 11.4(a)(i) and (iv), 11.4(d) and (e); 12.1; 12.2(a); 13.1(c)(iv))
6.	France	Observations and proposals concerning the Draft Treaty and the Draft Regulations (Articles: 1; 2(i), (ii) and (ix); 3; 5; 6(1)(i), (ii) and (iii), 6(2)(vii); 7(1)(a), 7(2)(a) and (b); 8(2)(a) and (b); Rules: 3.3; 9.2 (Title); 11.3(b) to (e); 11.4)
7.	Japan	Observations and proposals concerning the Draft Treaty (Articles: 4 to 9 and 18)
8.	United States of America	Proposal concerning the Draft Treaty (Article 3)
9.	United States of America	Proposal concerning the Draft Treaty (Article 5)
10.	Soviet Union	Proposals concerning the Draft Treaty (Articles: 1; 2(i); 3(3) and 17(1))
11.	Romania	Proposals concerning the Draft Treaty (Articles: 1; 2(i), (ix), (x) and (xi); 4(1) and (2); 5; 6(1), 6(2)(vii))

Document Number	Submitted by	Subject
12.	Federal Republic of Germany	Proposals concerning the Draft Treaty and the Draft Regulations (Articles: 3(1) and 4(1)(c); Rule 10.2) and proposal for a statement in the Records of the Diplomatic Conference
13.	France	Proposal for a resolution concerning restrictions on the export and import of certain kinds of micro-organisms
14.	The Main Committee	Texts emerging from the discussion of the Main Committee (Article 3 and passage for the Records of the Diplomatic Conference)
15.	Japan	Observations and proposals concerning the Draft Regulations (Rules: 5.1(e); 9; 10.2(f); 11.3(b))
16.	The Secretariat of the Conference	Observations and proposals concerning the Draft Treaty. Provisions concerning intergovernmental organizations prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee. (New Article 8bis; replacing of "Contracting Party(ies)" by "Contracting State(s)"; Articles: 1; 2(v) and (vii); 6(1); 7(1)(a) and (2)(b); 8(1)(a) and (b), 8(2)(a); 9(1)(b)bis and 9(1)(c); 9(2)(a)(vi))
17.	The Plenary of the Budapest Diplomatic Conference	Rules of Procedure. Text adopted by the Budapest Diplomatic Conference
18.	Sweden	Proposals concerning the Draft Regulations (Rules: 10.1(i); 10.2 (a)(i), (b) and (e); 11.1(ii))
19.	Switzerland	Proposals concerning the Draft Regulations (Rules: 11.3(a)(ii)and (iii), (b), (c), (d) and (e))
20.	Federal Republic of Germany	Observations and proposals concerning the Draft Treaty (Article 17.1)--Languages of the Treaty)
21.	Federal Republic of Germany	Proposals concerning the Draft Regulations (Rules: 11.1(i), 11.3(a)(i), (c)(i); 11.4(c))
22.	Czechoslovakia	Observations and proposals concerning the Draft Regulations (Rules: 6.1; 7.3(i); 11; 13)
23.	The Secretariat of the Conference	Proposals concerning the Draft Treaty. Amendments to Article 4 prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee (paragraph (1)(a), (b)(i),(e))
24.	Romania	Proposals concerning the Draft Regulations (Rules: 6.1(b); 7.3(vi); 8.1(a); 11.3(c)bis)

Document Number	Submitted by	Subject
25.	Japan	Observations and proposals concerning the Draft Regulations (Rule 6.1)
26.	United States of America	Proposals concerning the Draft Regulations (Rules: 5.1(c); 6.2(a)(iii); 9.1; 10.2(e)(vi); 11.3(c); 11.4(d); 12.1(a))
27.	Italy	Observations and proposals concerning the Draft Regulations (Rules: 6.1(b); 6.2(a)(iii); 7.3(vi); 8.1(a) and (b))
28.	Hungary	Proposals concerning the Draft Regulations (Rule 11.4(a) and (d))
29.	Soviet Union	Proposals concerning the Draft Regulations (Rules: 6.1(iii); 7.2(b); 11.4(a))
30.	The Credentials Committee	Report (Prepared by the Secretariat of the Conference)
31.	The Secretariat of the Conference	Proposals concerning the Draft Treaty (Articles 11 and 17). Text corresponding to the so-called Third Solution prepared by the Secretariat of the Conference on the basis of the discussions of the Main Committee
32.	The Secretariat of the Conference	Proposals concerning the Draft Treaty and the Draft Regulations. Provisions concerning intergovernmental organizations prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee (Supplement to document DMO/DC/16) (Replacing of "Contracting Party(ies)" by "Contracting State(s)"; Articles: 13(3)(c); 14(1) and (2); 15(1) and (2); 18(2) and (4); 19; Rules: 3.1; 3.2; 3.3; 4.1(c); 4.2(b)(iii), 4.2(d); 5.1(a) and (b); 5.2(a) and (b); 9.2; 10.2(f); 11.1; 11.3(a) and (c); 12.2(a) and (b))
33.	United States of America	Proposal concerning the Draft Regulations (Rule 10.1(ii))
34.	Federal Republic of Germany	Proposal concerning the Draft Regulations (Rule 11.2(ii))
35.	The Secretariat of the Conference	Text of Article 17 resulting from the discussion of the Main Committee (on the morning of April 20, 1977)
36.	Federal Republic of Germany	Proposal concerning the Draft Regulations (New Rule 11.3(a)*bis*)
37.	The Secretariat of the Conference	Proposal concerning the Draft Regulations (Rule 11.3(a)--Redraft prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee)
38.	The Chairman of the Main Committee	Draft Resolution

Document Number	Submitted by	Subject
39.	The Secretariat of the Conference	Proposal concerning the Draft Regulations (Rule 6.3--Draft prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee)
40.	United States of America	Proposal concerning the Draft Regulations (Rule 11.3(b))
41.	The Secretariat of the Conference	Proposal concerning the Draft Regulations (Rule 11.3(b)--Re-draft prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee)
42.	The Secretariat of the Conference	Proposals concerning the Draft Regulations (Rule 9.2--Redraft prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee)
43.	The Drafting Committee	Draft Treaty (Articles 1 to 20) submitted to the Main Committee
44.	The Drafting Committee	Draft Regulations (Rules 1 to 15) submitted to the Main Committee
45.	The Secretariat of the Conference	Proposed changes in documents DMO/DC/43 and DMO/DC/44 (Note by the Secretariat of the Conference, approved by the Chairman of the Main Committee and the Chairman of the Drafting Committee--Articles: 2(vii) and (ix); 3(1)(a) and (b); 4(2); 8(1)(a); Rule 11.1(iii) and (iv))
46.	The Secretariat of the Conference	Draft Statements to be included in the Records of the Budapest Diplomatic Conference (Texts prepared by the Secretariat of the Conference on the request of the Chairman of the Main Committee)
47.	The Main Committee	Draft Treaty (Articles 1 to 20) (submitted for adoption by the Plenary of the Budapest Diplomatic Conference)
48.	The Main Committee	Draft Regulations (Rules 1 to 15) (submitted for adoption by the Plenary of the Budapest Diplomatic Conference)
49.	The Main Committee	Draft Statements to be included in the Records of the Budapest Diplomatic Conference (submitted for approval by the Plenary of the Budapest Diplomatic Conference)
50.	The Main Committee	Draft Resolution (submitted for adoption by the Plenary of the Budapest Diplomatic Conference)
51.	The Credentials Committee	Additional Report (prepared by the Secretariat of the Conference)

Document Number	Submitted by	Subject
52.	The Plenary of the Budapest Diplomatic Conference	Final Act adopted by the Plenary of the Budapest Diplomatic Conference on April 27, 1977
53.	The Secretariat of the Conference	Memorandum by the Secretariat of the Conference. Texts adopted or approved by the Plenary of the Budapest Diplomatic Conference
54.	The Secretariat of the Conference	Signatures. Memorandum by the Secretariat of the Conference (Budapest Treaty; Final Act)

TEXT OF THE CONFERENCE DOCUMENTS "DMO/DC"

(DMO/DC/1.Rev. to DMO/DC/54)

DMO/DC/1.Rev. April 14, 1977 (Original: English)

THE DIRECTOR GENERAL OF WIPO

Draft Agenda

1. Opening of the Conference by the Director General of WIPO
2. Adoption of the Rules of Procedure (see document DMO/DC/2)
3. Election of the President of the Conference
4. Adoption of the Agenda (see the present document)
5. Election:
   (i) of the Vice-Presidents of the Conference
   (ii) of the Chairman and Vice-Chairmen of the Main Committee
   (iii) of the members of the Credentials Committee
   (iv) of the members of the Drafting Committee
6. Consideration of the first report of the Credentials Committee
7. Consideration of the draft Treaty and Regulations on the basis of documents DMO/DC/3 and 4 and any proposed amendments (This item will be dealt with by the Main Committee)
8. Consideration of the second report of the Credentials Committee
9. Consideration and adoption of the texts submitted by the Main Committee
10. Closing of the Conference by its President (The signing ceremony will take place immediately after the closing of the Conference)

DMO/DC/2 October 14, 1976 (Original: English)

THE DIRECTOR GENERAL OF WIPO

Draft Rules of Procedure

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CHAPTER I: OBJECTIVE, COMPOSITION AND BODIES

Rule 1: Objective

The objective of the Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977 (hereinafter referred to as "the Conference"), is to negotiate and conclude on the basis of the drafts contained in documents DMO/DC/3 and 4 a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (hereinafter referred to as "the Treaty") and Regulations under the Treaty.

Rule 2: Composition

(1) The Conference shall consist of Delegations (see Rule 4) of the States members of the International Union for the Protection of Industrial Property ("Paris Union") invited to the Conference. Only the said Delegations shall have the right to vote. They are referred to hereinafter as "Member Delegations."

(2) Delegations of other States (hereinafter referred to as "Observer Delegations") and representatives of intergovernmental and non-governmental organizations invited by the Director General of the World Intellectual Property Organization (WIPO) (hereinafter referred to as "Observer Organizations") may participate in the Conference, as specified in these Rules of Procedure.

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

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

Rule 3: Bodies

(1) The Plenary of the Conference shall be competent for:

(i) adopting and amending these Rules of Procedure (hereinafter referred to as "Rules");

(ii) adopting the instruments referred to in Rule 1;

(iii) adopting any recommendation or resolution whose subject matter is germane to the instruments referred to in Rule 1;

(iv) adopting any final act of the Conference;

(v) dealing with all other matters referred to it by these Rules or appearing on its agenda.

(2) The Conference shall have such committees and working groups as shall be established in accordance with these Rules.

(3) The Conference shall have a Secretariat provided by WIPO.

CHAPTER II: REPRESENTATION

Rule 4: Representation of Governments

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

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

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

Rule 5: Representation of Observer Organizations

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

Rule 6: Credentials and Full Powers

(1) Each Member Delegation shall present credentials.

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

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

Rule 7: Letters of Appointment

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

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

Rule 8: Presentation of Credentials, etc.

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

Rule 9: Examination of Credentials, etc.

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

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

Rule 10: Provisional Participation

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

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

(1) The Conference shall have a Credentials Committee.

(2) The Credentials Committee shall consist of 11 members elected by the Plenary from among the Member Delegations.

(3) The officers of the Credentials Committee shall be elected by, and from among, its members.

Rule 12: Main Committee

(1) The Conference shall have a Main Committee.

(2) Each Member Delegation shall be a member of the Main Committee.

(3) The officers of the Main Committee shall be elected from among its members by the Plenary.

(4) The Main Committee shall establish draft texts which it shall submit to the Plenary.

Rule 13: Drafting Committee

(1) The Conference shall have a Drafting Committee.

(2) The Drafting Committee shall consist of 9 members elected by the Plenary from among the Member Delegations.

(3) The officers of the Drafting Committee shall be elected by, and from among, its members.

(4) The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Main Committee or the Plenary. It shall review the drafting of all texts provisionally adopted, and shall report as appropriate either to the Main Committee or to the Plenary.

Rule 14: Working Groups

(1) The Main Committee may establish such working groups as it deems useful.

(2) The members of any working group shall be elected by, and from among, the members of the Main Committee.

(3) The officers of any working group shall be elected by, and from among, its members.

Rule 15: Steering Committee

(1) The Steering Committee of the Conference shall consist of the President of the Conference and the Chairmen of the Credentials Committee, the Main Committee and the Drafting Committee.

(2) The Steering Committee shall meet from time to time to review the progress of the Conference and to make decisions for furthering such progress.

CHAPTER IV: OFFICERS

Rule 16: Officers

(1) The Plenary shall, in a meeting presided over by the Director General of WIPO, elect the President of the Conference, and, in a meeting presided over by the President of the Conference, elect 6 Vice-Presidents of the Conference and the Chairman and three Vice-Chairmen of the Main Committee.

(2) The President and the Vice-Presidents of the Conference shall also act as Chairman and Vice-Chairmen, respectively, of the Plenary and of the Steering Committee.

(3) The Credentials Committee and the Drafting Committee shall each have one Chairman and two Vice-Chairmen.

(4) Precedence among the Vice-Presidents and among the Vice-Chairmen shall depend on the place occupied by the name of the State of each of them in the list of Member Delegations established in the French alphabetical order.

Rule 17: Acting President or Acting Chairman

(1) If the President of the Conference or any Chairman is absent from any meeting of a body, such meeting shall be presided over, as Acting President or Acting Chairman, by that Vice-President or Vice-Chairman of that body who, among all the Vice-Presidents or Vice-Chairmen present, has precedence over all the others.

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

Rule 18: Replacement of President or Chairman

If the President of the Conference or any Chairman of a body is, for the rest of the duration of the Conference, unable to perform his functions, a new President or Chairman shall be elected by that body.

Rule 19: Presiding Officer Not Entitled To Vote

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

CHAPTER V: SECRETARIAT

Rule 20: Secretariat

(1) The Director General of WIPO shall, from among the staff of WIPO, designate the Secretary General of the Conference, the Assistant Secretary General of the Conference and a Secretary for each of the committees and working groups. The Secretary General shall serve as the Secretary of the Steering Committee.

(2) The Secretary General shall direct the staff required by the Conference.

(3) The Secretariat shall provide for the receiving, translation, reproduction, and distribution of the required documents; the interpretation of oral interventions; the preparation and circulation of the verbatim and summary minutes (see Rule 46); and the general performance of all other work required for the Conference.

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

CHAPTER VI: CONDUCT OF BUSINESS

Rule 21: Quorum

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

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

Rule 22: General Powers of the Presiding Officer

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

Rule 23: Speeches

(1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 24 and 25, the Presiding Officer shall call upon speakers in the order in which they signify their desire to speak.

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

Rule 24: Precedence

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

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

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

Rule 25: Points of Order

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

Rule 26: Time Limit on Speeches

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

Rule 27: Closing of List of Speakers

During the discussion of any matter, the Presiding Officer may announce the list of speakers and, unless the Member Delegations object, declare the list closed. He may, however, accord the right of reply to any Delegation if a speech delivered after he has declared the list closed makes it desirable.

Rule 28: Adjournment of Debate

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

Rule 29: Closure of Debate

Any Member Delegation may at any time move the closure of the debate on the question under discussion, whether or not any other Delegation has signified its wish to speak. Permission to speak on the motion for closure of the debate shall be accorded to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote. If the vote is in favor of closure, the Presiding Officer shall declare the debate closed. The Presiding Officer may limit the time to be allowed to Member Delegations under this Rule.

Rule 30: Suspension or Adjournment of the Meeting

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

Rule 31: Order of Procedural Motions

Subject to Rule 25, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

(a) to suspend the meeting,
(b) to adjourn the meeting,
(c) to adjourn the debate on the question under discussion,
(d) to close the debate on the question under discussion.

Rule 32: Basic Proposals and Proposals for Amendments

(1) Documents DMO/DC/3 and 4 shall constitute the basis of the discussions in the Conference ("basic proposals").

(2) Any Member Delegation may propose amendments.

(3) Proposals for amendments shall, as a rule, be submitted in writing and handed to the Secretary of the competent body. The Secretariat shall distribute copies to the participants represented on the body concerned. As a general rule, no proposal for amendment shall be discussed or put to the vote in any meeting unless copies of it have been made available not later than 5 p.m. on the day before that meeting. The Presiding Officer may, however, permit the discussion and consideration of a proposal for amendment even though copies have not been distributed or have been made available only on the day it is considered.

Rule 33: Withdrawal of Procedural Motions and Proposals for Amendments

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

Rule 34: Reconsideration of Matters Decided

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

CHAPTER VII: VOTING

Rule 35: Voting Rights

Each Member Delegation shall have one vote in each body of which it is a member. A Member Delegation may represent and vote in the name of its own Government only.

Rule 36: Required Majorities

(1) Adoption of the Treaty and of the Regulations thereunder shall require a majority of two-thirds of the Member Delegations present and voting in the final vote in the Plenary.

(2) Subject to Rule 34, any other decisions by the Plenary and all decisions in any other body shall require a simple majority of the Member Delegations present and voting.

Rule 37: Meaning of the Expression "Present and Voting"

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

Rule 38: Requirement of Seconding; Method of Voting

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

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

Rule 39: Conduct During Voting

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

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

Rule 40: Division of Proposals

Any Member Delegation, seconded by another Member Delegation, may move that parts of the basic proposals or of proposals for amendments be voted upon separately. If objection is made to the request for division, the motion for division shall be put to a vote. Permission to speak on the motion for division shall be given only to one Member Delegation in favor and two Member Delegations against. If the motion for division is carried, all parts separately approved shall again be put to the vote, together, as a whole.

Rule 41: Voting on Proposals for Amendments

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

Rule 42: Voting on Proposals on the Same Question

Subject to Rule 41, where two or more proposals relate to the same question, the body concerned shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Rule 43: Elections on the Basis of Proposals Made by the President of the Conference

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

Rule 44: Equally Divided Votes

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

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

CHAPTER VIII: LANGUAGES AND MINUTES

Rule 45: Languages of Oral Interventions

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

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

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

Rule 46: Verbatim and Summary Minutes

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

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

Rule 47: Languages of Documents and Minutes

(1) Any proposal shall be filed in English or French with the Secretary of the body concerned.

(2) All documents shall be distributed in English and French.

[Rule 47, continued]

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

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

CHAPTER IX: OPEN AND CLOSED MEETINGS

Rule 48: Meetings of the Plenary and of the Main Committee

The meetings of the Plenary and of the Main Committee shall be open to the public unless the body concerned decides otherwise.

Rule 49: Meetings of Other Bodies

The meetings of all committees other than the Main Committee and of working groups shall be open only to the members of the body and the Secretariat.

CHAPTER X: OBSERVERS

Rule 50: Observers

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

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

CHAPTER XI: AMENDMENTS TO THE RULES OF PROCEDURE

Rule 51: Amendments to the Rules of Procedure

The Plenary may amend these Rules.

CHAPTER XII: FINAL ACT

Rule 52: Final Act

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

DMO/DC/3 October 14, 1976 (Original: English)

THE INTERNATIONAL BUREAU OF WIPO

Draft Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

Editor's Note: The text of the Draft Treaty as appearing in this document is reproduced on the even numbered pages from page 10 to page 44 above. The comments which accompanied the Draft Text of the Treaty are reproduced hereunder.

Preliminary Observations on the Draft Treaty

1. Disclosure of the invention is a generally recognized requirement for the grant of patents. Normally, an invention is disclosed by means of a written description. Where an invention involves the use of a microorganism which is not available to the public, such a description is not sufficient for disclosure. That is why in the patent procedure of an increasing number of countries it is necessary not only to file a written description but also to deposit, with a specialized institution, a sample of the microorganism. Patent offices are not equipped to handle microorganisms, whose preservation requires special expertise and equipment to keep them viable, to protect them from contamination and to protect health or the environment from contamination. Such preservation is costly. The release of samples by the institution also requires specialized expertise and equipment.

2. When protection is sought in several countries for an invention involving the use of a microorganism, the complex and costly procedures of the deposit of the microorganism might have to be repeated in each of those countries. It was in order to eliminate or reduce such multiplication of deposits that the United Kingdom proposed, in 1973, that WIPO should study the possibilities of one deposit serving the purposes of all the deposits which would otherwise be needed. The proposal was adopted by the Executive Committee of the Paris Union for the Protection of Industrial Property (Paris Union) at its 1973 session. Thereafter, the Director General of WIPO convened a Committee of Experts, which held three sessions, in 1974, 1975 and 1976. In the first session of the Committee of Experts, the matter was thoroughly discussed and the general outlines of a solution emerged; moreover, the Committee of Experts found that the solution required the conclusion of a treaty. In its second session, the Committee of Experts examined the first draft, prepared by the International Bureau of WIPO, of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, and of Regulations thereunder. In its third session, the Committee of Experts examined a second draft of the said Treaty and Regulations, also prepared by the International Bureau.

3. The third draft of the said Treaty and Regulations, which is now submitted to the Diplomatic Conference for adoption, has been prepared by the International Bureau on the basis of the conclusions of the Committee of Experts at its third session, and its main features are the following.

(i) The Treaty would be a special agreement within the meaning of Article 19 of the Paris Convention for the Protection of Industrial Property (Paris Convention). It would be open for ratification or accession not only by States members of the Paris Union but also by intergovernmental organizations to which several States have entrusted the task of granting regional patents and of which all member States are members of the Paris Union (Articles 1 and 14).

(ii) Institutions providing for the receipt, acceptance and storage of microorganisms and the making available of samples thereof would acquire the status of "international depositary authority" as a result of the furnishing, by the Contracting State on the territory of which they are located, of a guarantee to the effect that they comply with the requirements of the Treaty and the Regulations (Articles 6 and 7). Such status could be terminated by a decision of the Assembly of the Union, or through the withdrawal of the guarantee by the State which furnished it, or as a result of the denunciation of the Treaty by that State (Articles 8 and 16).

(iii) The deposit of a microorganism with a single international depositary authority would be recognized as valid for the purposes of the patent procedure of all the Contracting States and organizations in which protection for the invention involving the use of the microorganism is sought (Article 3).

(iv) A new deposit of the microorganism, with retroactive effect, would be allowed under certain conditions (Article 4).

(v) As far as the release of samples of deposited microorganisms to third parties is concerned, provision would be made for a system according to which the applicable national law or regional treaty, and not the Treaty or the Regulations, determines who has the right to a sample (Rule 11).

Observations on Article 1

This Article is similar to the corresponding Articles of other special agreements established under Article 19 of the Paris Convention among countries members of the Paris Union. Article 14 of the present draft Treaty limits the possibility of becoming party to the proposed Treaty--as far as States are concerned--to those which are members of the Paris Union.

Article 19 of the Paris Convention does not state that intergovernmental organizations may also be party to special agreements. This is understandable since the recognition of the legal capacity of intergovernmental organizations to be party to treaties is of more recent date. For that reason, and because the Paris Convention does not expressly prohibit intergovernmental organizations from becoming party to a special agreement, it is believed that Article 1 of the proposed Treaty is compatible with Article 19 of the Paris Convention.

Not every intergovernmental organization may become party to the proposed Treaty but only those which fulfill the following two conditions provided for in Article 14(1)(b) of the present draft:

(i) the intergovernmental organization must be one to which several States have entrusted the task of granting regional patents, and

(ii) all the member States of the intergovernmental organization must be members of the Paris Union.

As of today only one intergovernmental organization fulfills these two conditions: the African Intellectual Property Organization (OAPI). When the European Convention on the Grant of European Patents (European Patent Convention) enters into force, the European Patent Organisation will also qualify.

The reason for which it is proposed that such intergovernmental organizations should be able to become party to the proposed Treaty is that one of their essential tasks is to process patent applications and that the deposit of microorganisms for the purposes of patent procedure is an integral part of processing patent applications. Furthermore, the proposed solution would allow such an intergovernmental organization to become party to the proposed Treaty even if some of the member States of that organization did not become party to it; thus it would spare those States the trouble of ratifying or acceding to the proposed Treaty but would still allow their nationals and residents to use the facilities it offers to patent applicants.

Observations on Article 2

ad (i): This definition follows to a large extent the definition contained in Article 2(ii) of the Patent Cooperation Treaty.

ad (ii): The term "microorganism" has various meanings depending on the context in which it is used, including, in particular, "strain of microorganism" and "culture of microorganism." It includes a "mixture" of microorganisms. Specification of these meanings for the purposes of the Treaty does not seem to be necessary.

As regards the kinds of microorganisms covered, these should be interpreted in the broadest sense, taking into account the purposes of the Treaty; such interpretation need not necessarily correspond to usage in some scientific circles. It includes all microorganisms which can be stored by a depositary institution.

"International depositary authority" is defined in item (ix).

ad (iii): "Patent procedure" includes not only the procedure preceding the grant and the grant itself but also procedure after the grant, such as maintenance of the patent and nullity, infringement or opposition proceedings in which the patent is involved. It also covers procedures such as those for the grant of a compulsory license or for the invalidation of the patent.

ad (iv): This definition takes into account international procedures, such as the procedure under the Patent Cooperation Treaty, and procedures under regional agreements, such as the future procedure under the European Patent Convention. It is relevant to Rules 9.2 and 11.3.

ad (v): This definition is necessary in view of the fact that certain provisions of the Treaty and the Regulations (e.g., Article 7) refer specifically to "Contracting States" and not to "Contracting Parties," which include intergovernmental organizations.

ad (vi): A regional patent office is also "an authority competent for the grant of patents."

ad (vii): In the case of the European Patent Organisation, the European Patent Office would be "the industrial property office...of that organization."

ad (viii): This definition is relevant to Articles 6 to 8.

ad (ix): "Competent body" is defined in item (vii).

ad (x) to (xviii): These items do not seem to call for any observations.

Observations on Article 3

ad (1): As to the acquisition of the status of international depositary authority, see Article 7. As to the making of the deposit, see Rule 6.1; as to the receipt, see Rule 7.

The time at which the receipt should be filed with the industrial property office is determined by the applicable national or regional law, which also determines the maximum time limit within which a receipt can be validly filed as proof of the deposit.

ad (2): This paragraph is intended to clarify paragraph (1) by mentioning the most important aspects of the obligation to recognize the validity of deposits of microorganisms.

Observations on Article 4

ad (1)(a): The inability to furnish samples may be general or partial. It is general where the international depositary authority is unable to furnish samples in any country because the deposited microorganism is no longer viable (item (i)) or in other similar cases, for example, because the microorganism has been lost or destroyed. The inability to furnish samples is partial in the case of export or import restrictions (item (ii)): where there are export restrictions in the country in which the international depositary authority is located, samples cannot be sent abroad but can be furnished in that country; where there are import restrictions in a country other than the said country, samples can be furnished in the said country and can be sent abroad from the said country but they cannot be received in the country in which there are import restrictions.

Where the inability of an international depositary authority to furnish samples is due to the termination or limitation of its status or to the temporary or definitive discontinuance of the performance of its functions, the microorganism should be available in another international depositary authority since Rules 4.3 and 5.1 provide for the obligation to transfer a sample of the microorganism to such other authority. However, should this obligation not be fulfilled, a new deposit is permitted since Article 4(2) does not apply in such a case.

The notification provided for in Article 4(1)(a) is not sent to interested industrial property offices since the international depositary authority has no means of knowing which those offices are.

ad (1)(b): The general obligation to make the new deposit with the same international depositary authority should prevent possible abuses by the depositor.

ad (1)(c): The signature of the statement by the depositor makes the latter responsible for the correctness of the statement. The national or regional law may provide that the depositor must also file his statement with the industrial property office.

The sentence concerning the burden of proof is placed within square brackets since the principle it expresses goes without saying; consequently, the sentence could be omitted. It would seem to be sufficient if the principle expressed by the said sentence appeared in the Records of the Diplomatic Conference as something that was understood by that Conference.

ad (1)(d): The principle referred to in the preceding subparagraph applies also to the burden of proof as regards compliance with the conditions provided in this provision.

The six-month period does not start, except in the case covered by subparagraph (e), as long as the depositor has not received the notification referred to in subparagraph (a).

ad (1)(e): This provision means that actual awareness, on the part of the depositor, of the termination or limitation of the status of international depositary authority is not required.

ad (2): The exclusion referred to in this paragraph is self-explanatory.

Additional observations: It is to be noted that nothing in the Treaty prevents the making of deposits of the same microorganism, by the same depositor, with several international depositary authorities. On the other hand, the Treaty contains no express reply to the question whether any national law or regional treaty may exclude the possibility of referring, in any given patent application, to more than one deposit of the same microorganism.

Observations on Article 5

The import, and sometimes the export, of certain microorganisms, particularly if they are dangerous, is generally prohibited by national law or by regulations emanating from supranational authorities. Such prohibitions could completely frustrate the aims of the Treaty whenever the international depositary authority and the would-be depositor or the person or authority requesting the release of a sample are in different countries.

The Treaty would consequently limit the freedom of the Contracting Parties to impose import or export restrictions: those restrictions could be imposed only when they were "necessary" and only when they were necessary for the protection of "health" (whether human, animal or plant) or of "environment" (for example, for the purity of soil, water or air). The national authorities of any Contracting State can require the exporter or importer, who may also be the depositor, to provide them with information on the harmful effects that the microorganisms exported from or imported into that State might have on health or the environment; they may also require him to examine those harmful effects or bear the cost of such an examination.

The consequence of the fact that part of the disclosure of the invention to which a patent or patent application relates is not accessible to the public on account of a restriction on the export or import of the deposited microorganism (or for any other reason) is determined by the applicable law. Moreover, a new deposit may be possible in accordance with Article 4 and Rule 6.2 (see Article 4(1)(a)(ii)).

Observations on Article 6

ad (1): Location on the territory of a Contracting State has the consequence that--by virtue of its laws, decrees or other appropriate measures, including contracts which it could conclude with the international depositary authority--the State has direct means of compelling that authority to respect its obligations and is in a position to supervise the compliance by that authority of the requirements specified in paragraph (2).

The guarantee principle established by paragraph (1) and refined in other provisions of the Treaty and the Regulations is dictated both by a practical consideration and by a legal consideration. The practical consideration is the fact that depositary institutions are usually not branches of a government. The legal consideration is that, for the said reason, they cannot become party to a treaty. Thus, instead of providing that the institution will do this or that, the Treaty provides that the Contracting State on whose territory the institution is located guarantees the compliance by that institution of the requirements under the Treaty. Consequently, the acquisition of the status of international depositary authority flows, automatically, from the sole will of the guaranteeing State, from its having given the required guarantee.

If, later on, the international depositary authority no longer complies with the requirements of the Treaty, the guaranteeing State will withdraw its declaration of guarantee, which will entail the termination of the said authority's status of international depositary authority.

ad (2): This provision specifies the requirements which must be complied with by international depositary authorities; the details of these requirements are provided in the Regulations.

The Treaty does not regulate the question of the liability of international depositary authorities for acts or omissions under the Treaty and the Regulations. Thus, any claims against those authorities are governed by the applicable national law. Naturally, differences may exist between various national laws as regards the provisions on liability. Under certain systems, liability may be excluded for particular cases or limited as regards the amount of damages. Differences may also exist between government institutions and private institutions, and for the latter the law may require the conclusion of liability insurance. The provisions of the national law on liability may or may not be mandatory. In so far as they are not mandatory, contractual stipulations may establish additional liability or limit or exclude liability provided for under the applicable law.

ad (2)(i): Naturally, it cannot be guaranteed that the institution will last for ever. The provision is mainly intended to emphasize that the institution should have a long existence without interruptions while it lasts. Should the institution, qua international depositary authority, still discontinue the performance of its functions, temporarily or definitively, the guaranteeing State will have to see to it that the deposits held by the said institution are transferred to another such authority (see paragraph (3)(i) and Rule 5.1).

ad (2)(ii): As to staff, equipment and facilities, see Rule 2.2.

ad (2)(iii): If the institution is financed by the government, is a State or private university or a scientific association, or is simply a private enterprise (even when working for profit), it may still qualify although, occasionally, it accepts deposits from a government agency of the same State, the research branch of the same university or the owners of the same private enterprise, as long as such State, branch or owners do not exercise upon it any material influence which could endanger its impartiality. As regards the requirements of objectiveness and impartiality, the Assembly will weigh all the circumstances and, if it is not satisfied, it will terminate the status under Article 8(1).

ad (2)(iv): As to "the same conditions," see for example Rule 12.1(c).

ad (2)(v): As to "certain kinds of microorganisms," see also Article 4(1)(b)(i) and Rules 3.1(b)(iii) and 3.3.

As to the examination of viability, see Rule 10.

As to the acceptance of microorganisms, see Rules 6 and 7. As to the refusal of certain kinds of microorganisms, see Rule 5.2.

As to storage, see Rule 9. It is understood that nothing relieves the international depositary authority of its obligation to keep any deposited microorganism for at least 30 years and to preserve the secrecy as long as the relevant patent application or patent has not been published for the purposes of patent procedure.

ad (2)(vi): As to the receipt, see Rule 7. It is understood that the national or regional law may require the person applying for a patent to provide a translation of any document submitted in support of the patent application, including the receipt.

As to the viability statement, see Rule 10.2. It is understood that, if an industrial property office wishes to receive a statement on the viability of the microorganism before receiving a sample, it can obtain one through the intermediary of the person applying for the patent.

ad (2)(vii): As to secrecy, see Rule 9.2.

ad (2)(viii): The question who has a right to a sample of the microorganism, and when and under what conditions, is dealt with in the Regulations (Rule 11) rather than in the Treaty itself so as to allow for amendment, in the light of experience, without having to have recourse to the cumbersome procedure of revising the Treaty. However, because the matter is so important, mainly for the depositors, it seems appropriate to provide that the rules concerning the release of samples can be amended only by a unanimous decision of the States (and organizations) party to the Treaty (Article 11(4)(b)).

Rule 11 distinguishes between three cases:

The first case is where the release of a sample is needed by a competent body of a Contracting Party (see Article 2(vii)) for its patent procedure (Rule 11.1). With respect to Rule 11.1(i), it should be noted that the word "use" should be understood as also including use as inoculating material in a process of propagation to obtain more cells constituting a final product. In that first case, the release is made, upon request, to the industrial property office of the said Contracting Party.

The second case is where a sample is to be released on the express request, or with the express authorization, of the depositor (Rule 11.2).

The third case concerns release of a sample neither to the industrial property office nor to the depositor or a person authorized by him but to some other person, including, possibly, a competitor of the depositor.

The solution provided for in Rule 11.3 is that the question who has the right to a sample is not answered by the Treaty or the Regulations, but is left for the applicable national law or regional treaty to deal with.

Taking this latter principle into account, Rule 11.3 provides for two alternative procedures. Under the first procedure (paragraphs (a) and (b)), the (national or regional) industrial property office with which an application referring to the deposit of a microorganism has been filed for the grant of a patent for an invention involving the use of the deposited microorganism (Rule 11.3(a)(i)) must certify that under the law or regional treaty by virtue of which that office operates the party desiring the release of a sample has a right to obtain such sample. Thus, Rule 11.3 leaves the matter to the national law (or the regional treaty) applicable according to the procedure of those industrial property offices with which applications have been filed, except that, whatever that law (or treaty), release will not be permitted before the description of the said invention has been published (Rule 11.3(a)(ii); see however, Rule 11.3(b)).

Rule 11.3(a)(iii) further provides that, where the said law makes the right to the release of a sample "dependent on the fulfillment of certain conditions," the said office must satisfy itself that such conditions have in fact been fulfilled. Such conditions may include, for example, the requirement that the party desiring the release must sign an undertaking to the effect that he will not give the sample to third persons and/or that he will use the sample only for purposes of identification and research and particularly not for industrial or commercial exploitation of the invention involving the use of the microorganism.

Rule 11.3(b) takes care of the situation where the release of a sample is required, under the patent procedure before an industrial property office, before the publication of the description of the invention involving the use of the deposited microorganism. This is the case, for example, in interference procedures under the law of the United States of America. The reasons why Rule 11.3(b) appears within square brackets are explained in a footnote to that provision.

The second procedure (Rule 11.3(c), (d) and (e)) may be chosen, at the option of the industrial property office of any Contracting Party, through a notification to the Director General. It provides for a system of communication to the international depositary authority with which the microorganism has been deposited of the date from which release may be effected and, where applicable, of the conditions to be fulfilled. The said communication must be made, even if there is no actual request for release, by transmitting to the international depositary authority a form to be signed by any party which may request release of a sample, before such release is effected (Rule 11.3(c)(i)). It is thus ensured that the release can be effected without delay as soon as the patent or patent application has been published. Simultaneous availability might be important in order to ensure that the published patent or patent application is included in the prior art as of the date of publication.

Under either of the two procedures, the question may arise as to which national law governing release of samples of deposited microorganisms should apply where the deposit is made for the purpose of patent applications pending in several countries having different legal requirements for release. For example, where patent applications for an invention involving the use of a microorganism have been filed in countries A, B, and C, the international depositary authority (independently of its location) with which the microorganism has been deposited will release a sample of that microorganism to any party requesting such sample under Rule 11.3(a) if the request is accompanied by a declaration by the industrial property office of either country A or B or C; if a party requests such sample under Rule 11.3(c), the authority will release a sample to that party on the basis of the communication made by the industrial property office of any of the said countries. Consequently, it is the industrial property office and not the international depositary authority which is responsible for the correct application of the law on release of samples.

It should be noted, however, that, notwithstanding the provision under which release is not permitted before the description of the invention is published, national or regional laws governing release of samples may differ as to the time at which publication is made and as regards other conditions of release. Thus, the depositor should take into consideration such differences when filing patent applications.

Rule 11.4 contains common provisions for requests and declarations under Rule 11.1, 11.2 or 11.3. Rule 11.4(d) ensures that the depositor is fully informed of the release of a microorganism.

ad (3): As to discontinuance, see Rule 5.1. As to refusal, see Rule 5.2. As to termination or limitation of status, see Rule 4.3.

It is understood that the transfer is free of charge to the depositor and to the industrial property office concerned. If an international depositary authority refuses to accept certain kinds of microorganisms, the guaranteeing Contracting State should proceed as provided in Article 8(2). In any case, such refusal could lead, under Article 8(1), to the termination or limitation, by the Assembly, of the status of international depositary authority.

Observations on Article 7

See Rule 3.

Observations on Article 8

See Rule 4.

Observations on Articles 9 to 19

The contents of Articles 9 to 19 follow so closely the corresponding provisions of treaties recently concluded under the aegis of WIPO--in particular, the Patent Cooperation Treaty and the Trademark Registration Treaty--that it seems superfluous to comment on them (this holds also for Rule 15.1 concerning voting by correspondence referred to in Article 9(5)(b)); the following points should, however, be mentioned:

Article 9(2)(a)(vi) does not consider the possibility of admitting depositary institutions to the meetings of the Assembly before they have acquired the status of international depositary authority, since it is only the said status that seems to justify such admission.

Article 9(7)(b) provides for the possibility of convening an extraordinary session of the Assembly. In the case of a request for the termination of the status of international depositary authority in accordance with Article 8(1), such an extraordinary session might be necessary in order to permit compliance with the time limits prescribed in Rule 4.1(d).

Article 10(4) and (5)(d): It is understood that the staff members referred to in these provisions are staff members of the International Bureau.

Article 13 follows the precedents of other treaties administered by WIPO. The list of Articles which may be subjected to an amendment procedure is contained in paragraph (1)(a); it corresponds to the list contained in Article 12(3); this means that this list may not be amended under Article 13 since Article 12(3) may be modified only by a revision conference.

Article 18(2) and (4): It is understood that it will be possible to obtain, on request, more than two copies of the Treaty and the Regulations and of any amendment thereof.

The one major difference between the administrative provisions of the other treaties administered by WIPO and those of the present Treaty is that, while the other treaties contain financial provisions, this one does not. The reason is that, once the Treaty becomes operational, the tasks of the International Bureau, though important substantively, will be modest as far as costs are concerned. Those tasks would probably be mainly the following:

(i) preparing the documentation for the meetings of the Assembly and other possible bodies convened under the Treaty,

(ii) providing the secretariat, meeting rooms, interpretation, etc., for such meetings,

(iii) publishing the Gazette (probably not more than a dozen pages per year).

It is proposed that these relatively modest costs arising from the Treaty should be borne by the budget of the Paris Union. They do not seem to warrant the complications that a system of contributions (for such small amounts) would entail for the contributing States (and organizations).

DMO/DC/4 October 14, 1976 (Original: English)

THE INTERNATIONAL BUREAU OF WIPO

Draft Regulations under the Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

Editor's Note: The text of the Draft Regulations as appearing in this document is reproduced on the even numbered pages from page 48 to page 86 above.

DMO/DC/5 April 13, 1977 (Original: English)

UNITED KINGDOM

Observations and Proposals concerning the Draft Treaty and the Draft Regulations

OBSERVATIONS

THE TREATY

Article 3. This is the basic Article of the Treaty. It requires that the competent body recognise the deposit as "valid." In our view, this goes too far. We could not accept this without consideration of possible evidence to the contrary. The most we could do is to "recognise" the deposit for the purposes of our patent procedure while leaving the question of whether it is a valid one open. We have expressed this idea in new Article 3(1), while Article 3(2) we replace by a provision of the type at present contained in Article 27(1) of the PCT. This has the effect that no Contracting State may refuse to recognise the deposit on formal grounds provided these formalities laid down in the Treaty and Regulations are complied with.

Article 4. The admissibility of a gap in availability of a microorganism in the circumstances specified is, as far as we know, not at present clearly determined by national laws and, in particular, is not clearly permitted under Rule 28 of the European Patent Convention. We would prefer, therefore, to retain flexibility on this point as provided by our amendment to Article 4(1)(d).

Articles 6 and 7. We do not think that we could "guarantee" a depositary institution. The most we could do is to provide a written assurance to the Director General that the depositary is a reputable one and can meet the requirements of paragraph 2. Articles 6 and 7 have been amended to incorporate this idea.

THE REGULATIONS

Rule 2. We propose merely the deletion of the word "equipment" from Rule 2.1 and the heading because in our view, it is contained in "facilities."

Rule 3.1(b)(ii) is simplified since we feel that "all facts relevant in appreciating" the institution's capacity is too onerous.

Rule 3.1(b)(iii) is simplified.

Rule 3.1(b)(iv) requiring the Contracting State nominating the depositary to indicate the amount of fees has been dropped since this information may change at any time and is best provided by the authority itself. We have so provided in Rule 12.2.

Rule 3.1(b)(v) becomes 3.1(b)(iv) and is simplified to refer to Article 7(1)(b).

Rule 3.2 is dropped because it seems to be fully covered by Article 7(2)(a) of our revised draft.

Rule 3.3 becomes Rule 3.2 and is changed only in that the references to a "guarantee" are changed to references to an "assurance" in conformity with revised Articles 6 and 7.

Rule 4 is changed only in that in 4.1(f) and 4.2(b)(iii) and (c) an alternative period of 3 months is specified in conformity with the acquiring of the status of international depositary in our Article 7(2)(b).

Rule 5. This Rule requires the Contracting State which has guaranteed or, in our wording, made the assurance in respect of the depositary authority to undertake certain responsibilities on discontinuance of function by an international depositary authority. We could not do this under our domestic law, nor could we envisage any simple changes of law which would make it possible to do so. We imagine that the situation is much the same for other delegations. The changes proposed to 5.1 transfer this responsibility to the depositary authority, it being understood that it will undertake this responsibility at the time it becomes an authority. The other changes are all consequential on this shift of authority. We could accept some limited obligation on the Contracting State by way of publicizing the discontinuance.

Rule 5.2 is deleted because of the provision we have incorporated in Article 8(2)(a) which obliges the Contracting State to withdraw the assurance when it is no longer applicable.

Rule 9. We wonder whether it is desirable to limit the system under the Treaty to deposits which are guaranteed in advance by the depositaries to be available for at least 30 years, and possibly indefinitely. This seems necessary only if laws of some member States require it. We could accept Rule 9 if it is clear that depositaries are willing to operate on that basis but we propose an amendment to Rule 9 which transfers to the applicant the responsibility for keeping the deposit available.

Rule 11.3. There is little change of substance in our draft but we think that our presentation simplifies 11.3 and that, in particular, the procedure in 11.3(c) intended to meet the requirements of Rule 28 of the European Patent Convention, is considerably clarified. We have also eliminated the need for a declaration to the Director General by the industrial property office indicating that it will apply the procedure of 11.3(c). The effect of this is that the depositary releases the sample either on the appropriate certification of the industrial property office or on signature by the person requiring the sample of a form received from the industrial property office immediately after publication of the patent application. The aim is to make the situation as clear and simple for the depositary as possible.

Rule 11.3(b) which we understand is intended to relate to interference procedures in the United States is dropped because it seems to us to be entirely contained within 11.1.

Rule 12. The changes are consequential to those made in Rule 3 and Rule 9.

Rule 13. The proposed change is consequential on the change to Rule 11.

PROPOSALS

TREATY

Article 3: Recognition of the Deposit of Microorganisms

(1) Any competent body of a Contracting Party which allows or requires the deposit of microorganisms for the purposes of patent procedure shall recognize, for such purposes, the deposit of a microorganism with any international depositary authority. The Contracting Party may require that a copy of a dated receipt from the authority be furnished to its industrial property office within a specified time limit.

(2) No Contracting Party may require compliance with requirements relating to the deposit of microorganisms and the availability of samples thereof different from or additional to those which are provided for in this Treaty and the Regulations.

Article 4: New Deposit

(1)(a), (b) and (c) No change.

(d) The extent to which the Competent Body of a Contracting Party shall be obliged to recognise such new deposit shall be a matter for the law governing its patent procedures.

(e) Delete.

(2) No change.

Article 6: Status of International Depositary Authority

(1) In order to qualify for the status of international depositary authority, any depositary institution must be located on the territory of a Contracting State and must benefit from an assurance by the Contracting State in question that it is satisfied that the depositary is a reputable one and is able and willing to comply with the requirements specified in paragraph (2).

(2)(i) No change.

(ii) have the necessary staff and facilities to perform its scientific and administrative tasks under the Treaty and Regulations;

(iii), (iv), (v), (vi), (vii) and (viii) No change.

(3) The Regulations shall provide the measures to be taken:

(i) where an international depositary authority discontinues, temporarily or permanently, the performance of its functions in respect of deposited microorganisms or refuses to accept kinds of microorganisms which it should accept under the assurance furnished;

(ii) in case of the termination or limitation of the status of international depositary authority of a depositary authority.

Article 7: Acquisition of the Status of International Depositary Authority

(1)(a) A depositary authority shall acquire the status of international depositary authority by virtue of a written communication addressed to the Director General by the Contracting State on the territory of which the depositary institution is located and containing the assurance referred to in Article 6(i).

(b) No change.

(2)(a) If the Director General finds that the communication complies with para (1) he shall promptly publish the salient facts of the communication in the Gazette and notify all Contracting Parties.

(b) The status of international depositary authority shall be acquired as from (three) (six) months after the date of publication of the communication or, where a date has been indicated under paragraph (1)(b), from that date if it is later.

(3) No change.

Article 8: Termination and Limitation of the Status of International Depositary Authority

(1)(a) Any Contracting Party other than the Contracting State which, in respect of an international depositary authority, has made the communication referred to in Article 7(1) may request the Assembly to terminate, or to limit to certain kinds of microorganisms, that authority's status of international depositary authority on the ground that the requirements specified in Article 6 have not been or are no longer complied with.

(b) and (c) No change.

(2)(a) The Contracting State having communicated the assurance in accordance with Article 7(1)(a) may by a communication addressed to the Director General withdraw that assurance either entirely or in respect only of certain kinds of microorganisms and in any event shall do so when and to the extent that it is no longer applicable.

(b) Such a communication shall, from the date provided for in the Regulations, entail, where it relates to the entire assurance, the termination of the status of international depositary authority or where it relates to certain kinds of microorganisms only, a corresponding limitation of such status.

(3) No change.

REGULATIONS

Rule 1: No change.

Rule 2.1: No change.

Rule 2.2: Delete "equipment" from (i) and heading.

Rule 2.3: No change.

Rule 3.1(a): No change.

(b)(i) No change.

(ii) contain detailed information as to the said institution's capacity to comply with the requirements specified in Article 6(2), including information on its legal status, scientific standing, staff, and facilities;

(iii) where the requirement referred to in Article 6(2)(v) is complied with only in respect of certain kinds of microorganisms, specify those kinds;

(iv) where applicable, indicate the date referred to in Article 7(1)(b).

Rule 3.2: The Contracting State having made the communication referred to in Article 7(1) may, at any time thereafter, notify the Director General that its assurance is extended to specified kinds of microorganisms to which, so far, the assurance has not extended. In such a case, and as far as the additional kinds of microorganisms are concerned, Article 7 and Rules 3.1 and 3.2 shall apply, mutatis mutandis.

Rule 4.1(a) to (e): No change.

Rule 4.1(f): Change to "... become effective (three) (six) months after...."

Rule 4.2(b)(iii) and (c): Change "six months" to "(three) (six) months."

Rule 4.3: No change.

Rule 5.1.(a): If any international depositary authority temporarily or permanently discontinues the performance of any of the tasks it should perform under the Treaty and these Regulations in relation to any micro-organisms deposited with it, that authority shall [to the best of its ability].

(i) and (ii) No change.

(iii) promptly notify all depositors affected of the discontinuance of the performance of its functions and the transfers effected; any depositor affected may ask the defaulting authority to retain samples of the micro-organisms deposited with it;

(iv) No change.

(b) No change.

(c) The industrial property office of any Contracting Party with which a patent application was filed with reference to the original deposit may require that the depositor shall, promptly after receiving the receipt referred to, notify that office of the new accession number given to the deposit by the substitute authority.

(d) No change.

(e) No change.

Rule 5.2: Delete.

Rule 6: No change.

Rule 7: No change.

Rule 8: No change.

Rule 9.1: Any microorganism deposited with an international depositary authority shall be stored by such authority with all care necessary to keep it viable and uncontaminated for a period of twenty-five years from deposit subject to payment of any necessary fees.

Rule 9.2: No change.

Rule 10: No change.

Rules 11.1 and 11.2: No change.

Rule 11.3: Any international depositary authority shall release a sample of any deposited microorganism to any authority, natural person or legal entity (hereinafter referred to as "the requesting party"), on request of such party, provided that either:

(a) the request is accompanied by a form of declaration bearing the signature and stamp of the industrial property office of a Contracting Party certifying that:

(i) and (ii) No change.

(iii) Change to "The requesting party has a right ... been fulfilled."

or (b) the requesting party signs a form of declaration transmitted to the depositary by the industrial property office of a Contracting Party when publication for the purposes of patent procedures has been effected by that Office, such form setting out the conditions which the requesting party must undertake to fulfill under the law governing patent procedures before that Office.

Rule 11.4(a): Any request, declaration or form of declaration under Rule 11.1, 11.2 or 11.3 shall be established in English or French, shall be dated and shall contain the following indications:

(i) the name and address of the industrial property office making the request or issuing the form, of the authorised party or of the requesting party as the case may be.

(ii) and (iii) No change.

(iv) in the case of Rule 11.3, the indications referred to in (iii) and the name and address of the industrial property office concerned.

(b) and (c) No change.

(d) The international depositary authority having effected release of the sample shall promptly notify the depositor of the fact, as well as of the date on which the release was effected, and of the name and address of the industrial property office, of the authorized party or of the requesting party, to whom or to which the sample was released. The said notification shall be effected by transmitting a copy of the pertinent request, of any declaration submitted under Rule 11.1 or 11.2 and of any form of declaration submitted under Rule 11.3 which shall bear, in the case of Rule 11.3(b), the signature of the requesting party.

(e) Delete "to the certified party" from line 4.

Rule 12.1(a): Replace "charge a fee" by "charge fees."

(b) Delete.

(c) Re-number 12.1(b).

Rule 12.2(a): The amount of the fees charged by any international depositary authority including any changes shall be notified by the depositary to the Director General. In the case of changes in fees, the notifications may contain an indication of the date from which the new fees shall apply.

(b) and (c) No change.

Rule 13: Delete 13.1(c)(iv).

DMO/DC/6 April 14, 1977 (Original: French)

FRANCE

Observations and Proposals concerning the Draft Treaty and the Draft Regulations

TREATY

Article 2:

(i) Should read: "certificats d'auteurs d'invention." (Does not affect the English text.)

(ii) and (ix) Should read: "autorité internationale de dépôt." This change should be made wherever appropriate. (Does not affect the English text.)

Article 3:

"(1) Any competent body of a Contracting Party which allows or requires the deposit of microorganisms for the purposes of patent procedure shall recognize the deposit of a microorganism with any international depositary authority as adequate for such purposes provided that ... (the remainder of the paragraph unchanged).

(2) The provisions of paragraph (1) shall mean the recognition of the fact ... (the remainder of the paragraph unchanged)."

Article 5: "The application of this Treaty shall not constitute an obstacle to the application of any regulations restricting the export of certain kinds of microorganisms."

Article 6:

"(1) In order to enjoy the status of international depositary authority, any depositary institution must:

(i) make a declaration to the effect that it complies with the requirements specified in paragraph (2);

(ii) be located on the territory of a Contracting State;

(iii) be authorized thereto by that State."

(2) The depositary institution must, in its capacity of international depositary authority:

(i) to (vi) No change.

(vii) "observer le secret sur les microorganismes déposés, conformément au Règlement d'execution." (Does not affect the English text.)

(viii) No change.

(3) No change.

Article 7:

"(1)(a) A depositary institution shall acquire the status of international depositary authority by virtue of a written communication addressed to the Director General by the Contracting State having authorized it and containing both the declaration referred to in Article 6(1)(i), to the effect that the said institution complies and will continue to comply with the requirements specified in Article 6(2), and a declaration by the Contracting State to the effect that it has authorized the depositary institution to become an international depositary authority.

(b) No change.

(2)(a) The Director General... the required declarations and the required information... (the remainder of the paragraph unchanged.

(b) If the Director General... the required declarations... Gazette.

(c) (No change.)"

(3) No change.

Article 8:

"(1) No change.

(2)(a) The Contracting State having made the declaration of authorization referred to in Article 7(1)... (the remainder of the paragraph unchanged).

(b) Such a communication... where it relates to the entire declaration of authorization, the termination... (the remainder of the paragraph unchanged)."

REGULATIONS

Rule 9.2: Replace "Discrétion" by "Secret". The text of the paragraph unchanged. (Does not affect the English text.)

Rule 11.3(b): This Rule should be maintained.

Rule 11.3(c) to (e): These Rules could be deleted and Rule 11.4 modified accordingly.

Rule 3.3: Replace "guarantee" by "authorization."

OBSERVATIONS

TREATY

Article 1: The Delegation of France sees no objection to intergovernmental organizations being able to become party to the Treaty. This possibility would not seem to conflict with the Paris Convention for the Protection of Industrial Property even if it is not foreseen by Article 19 of the Convention, which finally, is not referred to in the draft Treaty.

It is nevertheless a fact that this concept leads to a certain number of singularities. Although the States and the intergovernmental organizations are equally parties to the Treaty, their rights and obligations differ:

- the Contracting States are required to be members of the Paris Union, but not the intergovernmental organizations as such (Article 14);

- in the absence of financial provisions--the Delegation of France intends to intervene on this point--the Union's expenditure is to be borne by the Paris Union, in which the organizations as such are not members (observations on Articles 8 and 9 in fine);

- only the States may grant the status of international depositary authority (Article 6); on the other hand, the organizations may obtain, on the same basis as the States, termination of this status (Article 8).

Article 3: A proposal has been made for the amendment of this Article. The change is an editorial one and it is proposed to delete the word "valid" as being ambiguous in respect of the scope of recognition, particularly as regards the restrictions made to the concept of validity by Article 3(2).

Article 5: A proposal has been made for the amendment of this Article. The current wording does not seem to apply to regulations in force (thus singularly restricting its scope), in addition to which it encroaches on national law, which must be avoided in a procedural agreement which, in France, will not be submitted to Parliament.

Article 6: A proposal has been made for the amendment of this Article. It would not seem possible, from the legal point of view, for a State to give the required guarantee. This guarantee could be called into question under the provisions of Article 8 and can therefore hardly be accepted. Furthermore, the guarantee, and particularly the perpetual character of the depositary institution, would appear to be in contradiction with other provisions (Rule 5) which envisage the default of that institution.

Articles 7 and 8: The proposed amendments are editorial and result from the amendments proposed for Article 6.

REGULATIONS

Rule 11.3(b): The provisions of 11.2 would not seem capable of covering the case referred to in paragraph (b), which in no way requires the authorization of the depositor. This paragraph should therefore be maintained.

Rule 11.3(c): These provisions place administrative tasks on the depositary institutions which they are not capable of satisfactorily carrying out and they therefore run the risk of making themselves liable in respect of the depositor. They could therefore be deleted if the provisions of paragraphs (a) and (b), which would seem to cover the various cases of release of samples under national regulations, were maintained.

DMO/DC/7 April 15, 1977 (Original: English)

JAPAN

Observations and Proposals concerning the Draft Treaty

Article 1: It should be examined by the Conference whether the inclusion of intergovernmental organizations should be maintained or not.

Reason: 1. As of today, only the African Intellectual Property Organization (OAPI) has the legal capacity of an intergovernmental organization and it is reported that the European Patent Organisation will also qualify in the near future.

2. We believe that there are little grounds to make exceptions to the traditional system according to which, under the Paris Convention, only States can become members of a Special Union. This problem should be discussed and investigated in relation to the revision work of the Paris Convention which is now going on.

Articles 4 to 8: Articles 6 to 8 should become Articles 4 to 6; Article 5 should become Article 7 and Article 4 should become Article 8.

Reason: It is more logical to present first the Article concerning the International Depositary Authority and then put the provisions concerning export and import restrictions and new deposits.

Article 4: The sentence in brackets should be maintained.

Reason: It is desirable that the sentence concerning the burden of proof be kept since this sentence makes clear that the domestic law will govern this matter.

Article 5:

1. We understand that the expression "microorganisms deposited, or destined for deposit" means microorganisms which are either deposited or exported or imported for the purpose of deposit with an international depositary authority. In other words, the microorganisms that are so far known and would not be deposited with any international depositary authority would not be covered by this article.

2. We understand that this article shall be applied for only new regulations restricting the export or import of certain kinds of microorganisms, which are adopted after this treaty has entered into force for the contracting parties.

Article 6:

1. In Article 6(2), after (iv), insert as new paragraph (3) the following sentence: "The depositary institution shall, in its capacity of international depositary authority," and renumber (v) to (i), (vi) to (ii), (vii) to (iii) and (viii) to (iv), respectively.

2. Article 6(3) is to a large extent almost duplicated by Article 8(3); so it seems to be proper to delete this paragraph.

Reason: Article 6(2)(i) to (iv) relates to the capacities of an international depositary authority, while Article 6(2)(v) to (viii) defines the work to be performed by an international depositary authority. Therefore, the latter part shall be separated as a new paragraph (3).

Article 7:

The term "contain information" of paragraph (1)(b) should be changed to "contain the required information" and "as provided in the Regulation" should be deleted.

Reason: Article (1)(b) seems to duplicate paragraph (3) of this Article.

Article 8:

1. As to brackets in (1)(c), we would like to choose a majority of two-thirds as alternative.

Reason: Termination and limitation of the status of International Depositary Authority should be treated prudently at the decision of the Assembly.

2. We suggest to delete: "from the date provided for in the Regulations" from (2)(b) of this Article.

Reason: This phrase is not necessary, in view of paragraph (3) of this Article.

Article 9:

1. The expression "exercise rights conferred upon it" in Article 9(2)(a)(ii) should be changed to "perform such tasks as are specially assigned to it under other provisions of this Treaty."

Reason: This expression gives an impression as if the Assembly would have special rights on this Treaty.

2. We suggest to delete "and its organs" in (2)(a)(v) of this Article.

Reason: There is neither reference nor definition of the word "organs" and the meaning of the word is not clear as well.

3. We do not understand the reason why there is discrepancy in expression with respect to the Assembly between (2)(a)(v) of this Article and PCT Article 53(2)(viii). We suggest to change "a majority" to "two-thirds" in paragraph (6)(a).

Reason: Refer to Article 53(6)(a) of the PCT and Strasbourg Agreement Article 7(3)(d).

Article 18:

Both certified copies of the Treaty and the Regulations as well as certified copies of any amendment to the Treaty and to the Regulations should be addressed to the same bodies.

Reason: There is no reason to treat differently both kinds of certified copies, for they have the same effects.

DMO/DC/8 April 14, 1977 (Original: English)

UNITED STATES OF AMERICA

Proposal concerning the Draft Treaty

Article 3 should read as follows:

(1) Any competent body of a Contracting Party which allows or requires the deposit of microorganisms for the purposes of patent procedure shall recognize, for such purposes, the deposit of a microorganism with any international depositary authority, provided that proof of such deposit is or has been furnished to the industrial property office of the Contracting Party in the form of a receipt issued by that authority.

(2) The recognition of any deposit referred to in paragraph (1) shall include the recognition of the fact and date of the deposit as indicated by the international depositary authority.

DMO/DC/9 April 14, 1977 (Original: English)

UNITED STATES OF AMERICA

Proposal concerning the Draft Treaty

Article 5: Insert before "such Regulations" the words "it is recommended that."

DMO/DC/10 April 15, 1977 (Original: English)

SOVIET UNION

Proposals concerning the Draft Treaty

1. Article 1 of the Treaty should read as follows: "The States parties to this Treaty (hereinafter referred to as "the Contracting States") constitute a Union for the international recognition of the deposit of microorganisms for the purposes of patent procedure."

In all subsequent provisions "the Contracting Parties" should be replaced by "Contracting States."

2. To make the following presentation of Article 2(i) of the subject Treaty: "reference to a "patent" shall be construed as references to patents for inventions, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, and utility certificates of addition."

3. To add in Article 3 the following paragraph (3): "The reference to the "Contracting State" in this Article shall be regarded as referring to any intergovernmental organization to which a number of States entrusted the granting of regional patents and of which all the member States are, at the same time, members of the Paris Union for the Protection of Industrial Property, should such organization declare that it takes the responsibility envisaged by this Article."

4. Article 17(1)(a) should read as follows: "This Treaty shall be signed in a single original in the English, French and Russian languages, all the texts being equally authentic." In view of the above it is proposed to delete the reference to the Russian language from Article 17(1)(b).

DMO/DC/11 April 15, 1977 (Original: French)

ROMANIA

Proposals concerning the Draft Treaty

Article 1: In harmony with Article 19 of the Paris Convention, delete the words "and intergovernmental organizations."

Article 2(i): The proposals relate only to the French text (replace "certificats d'inventeur" and "certificats d'inventeur additionnels" by "certificats d'auteur d'invention" and "certificats d'auteur d'inventions complémentaires," respectively).

Article 2(ix): Add the words "for microorganisms" after the words "international depositary authority."

Article 2(x): The proposal relates only to the French text (add "internationale" after "à une autorité de dépôt").

Article 2(xi): Add the words ", interested industrial property offices" after the words "to the depositor."

Article 4(1)(a): Replace the words "furnish" and "furnishing" by the word "release."

Article 4(2): Replace the words "to furnish" by the words "to release."

Article 5: Add at the end of the text the words "in the case where the depositor has not taken the measures specified by the international depositary authority."

Article 6(1): Add the words "for microorganisms" after the words "In order to qualify for the status of international depositary authority."

Article 6(2)(vii): Add the words "and be responsible for an unauthorized disclosure of microorganisms to third parties."

DMO/DC/12 April 15, 1977 (Original: English)

FEDERAL REPUBLIC OF GERMANY

Proposals concerning the Draft Treaty and the Draft Regulations

1. Article 3(1): The words "for such purposes, the deposit..." should be replaced by the following wording: "... for such purposes, any deposit...."

2. Article 4(1)(c): The second sentence should be replaced by the following wording:

"The international depositary authority, any competent body of a Contracting Party and any third party may contest the allegation of the depositor; the burden of proof shall be governed by the applicable law."

3. Rule 10.2: The following paragraph should be added:

"(g) In the event that the allegation of the depositor is contested under Article 4(1)(c), the viability statement shall be accompanied by a corresponding declaration."

4. Proposal for a statement in the Records of the Diplomatic Conference:

"The Conference came to the conclusion that the question of liability of a Contracting State for having given the guarantee according to Article 6(1) and of the liability of international depositary authorities for acts or omissions under the Treaty and the Regulations is governed by the applicable national law and that the Treaty and the Regulations do not create a liability which in a similar situation would not exist in the absence of the Treaty."

DMO/DC/13 April 15, 1977 (Original: French)

FRANCE

Proposal for a Resolution concerning restrictions on the export and import of certain kinds of microorganisms

It is proposed that the Conference adopt the following Resolution:

Resolution
concerning restrictions on the
export and import of certain kinds of microorganisms

The Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, convened from April 14 to 28, 1977,

Considering that the aims of the Treaty can only be attained on the express condition that samples of microorganisms deposited with an international depositary authority, located on the territory of a Contracting State, may be exported to the territory of another Contracting State,

Conscious that the import and export of certain kinds of microorganisms are or may be prohibited by national laws,

Considering that if these prohibitions are not of an exceptional character, justified by the dangers that the import or export of certain kinds of microorganisms entail, for example, for health or the environment, they would be of a nature as to compromise the application of the Treaty,

Adopts unanimously the following Resolution:

"The Contracting States of the Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure are invited forthwith to take all necessary measures permitting the full application of the Treaty by limiting, in so far as it is possible to do so, restrictions on the import or export of microorganisms deposited, or destined for deposit, under the Treaty."

DMO/DC/14 April 15, 1977 (Original: English)

THE MAIN COMMITTEE

Texts emerging from the discussions of the Main Committee

I. Article 3: Recognition of the Deposit of Microorganisms

(1) Any competent body of a Contracting Party which allows or requires the deposit of microorganisms for the purposes of patent procedure shall recognize, for such purposes, the deposit of a microorganism with any international depositary authority. Such recognition shall include the recognition of the fact and date of the deposit as indicated by the international depositary authority as well as the recognition of the fact that what is released as a sample is a sample of the deposited microorganism. The competent body of any Contracting Party may require that a copy of the receipt, showing the fact and the date of the deposit, from the international depositary authority be furnished to such body [within a specified time limit].

(2) As far as matters regulated in this Treaty and the Regulations are concerned, no Contracting Party may require compliance with requirements different from or additional to those which are provided in this Treaty and the Regulations.

II. Passage for the Records of the Diplomatic Conference

When adopting the second sentence of Article 3(1), the Diplomatic Conference understood that the fact, date and identity therein mentioned may, under the applicable law, always be contested on the ground that they are based on an error, misrepresentation or other grounds which, according to the general principles of law, allow contesting allegations.

DMO/DC/15 April 15, 1977 (Original: English)

JAPAN

Observations and Proposals concerning the Draft Regulations

Rule 5.1(e):

1. Insert before "any expenses" the words "to the defaulting authority."

2. Add to the end of the second sentence "to the international depositary authority indicated by him."

Reason: Although Rule 5.1(e) provided that the depositor shall pay the charge for the transfer and the storage, this rule does not indicate the recipient of such charge.

Rule 9.1:

Insert the following paragraph 9.2 (Rule 11.2 of document DMO/IV/3) after Rule 9.1, and renumber the present paragraph 9.2 as 9.3:

"9.2 Return or Destruction of the Deposited Microorganism

As long as no publication for the purposes of patent procedure has occurred, the depositor may request the international depositary authority to return to him the deposited microorganism or to destroy it, and the said authority shall promptly comply with the request."

Reason: As it seems to be meaningless to keep for 30 years a microorganism for which no publication for the purposes of patent procedure has occurred and for which there is no possibility to be released, provisions should be made for the return to the depositor or destruction of such microorganism.

Rule 9.2:

Renumber 9.2 as 9.3.

Maintain the words within square brackets.

Reason: We believe it is preferable to keep the part in brackets because there may be occasions when it is necessary in the course of examination of a patent application before its publication to confirm whether the said microorganism is actually deposited or not.

Rule 10:

Delete the second sentence of Rule 10.2(f).

Reason: We believe that this provision concerns a matter which should be dealt with by national legislation.

Rule 11:

Maintain the provision 11.3(b) in brackets.

Reason: In examining two conflicting applications earlier and subsequently filed in time, in accordance with Article 39 of Japanese Patent Law, there may be occasions when examination of the subsequently filed application may be undertaken before the earlier filed application is published, and in that case, the release of the microorganism concerned becomes necessary although the earlier application is not published. In order to make such procedure possible, this provision in brackets should be maintained.

DMO/DC/16 April 18, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Observations and Proposals concerning the Draft Treaty. Provisions concerning intergovernmental organizations prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee

1. The present paper is based on the following assumptions:

(a) that intergovernmental organizations are not to become party to the Budapest Treaty;

(b) that intergovernmental organizations fulfilling certain conditions may, by a declaration addressed to WIPO, accept the effects of those provisions of the Treaty and the Regulations which refer to such organizations;

(c) that the said provisions would, essentially, mean:

(i) that the effects of the deposits of microorganisms under the Treaty would be recognized by such organizations;

(ii) that the guarantee or assurances concerning international depositary authorities could be furnished by such organizations;

(iii) that such organizations may propose to the Assembly the termination of the international depositary authority status of international depositary authorities designated by others;

(iv) that such organizations would have a special observer status in the Assembly and all the committees and working groups; they would not have the right to vote; "special" would mean only that they must be invited to all meetings.

2. The key provision would be Article 8bis, which could read as follows:

"Article 8bis: Intergovernmental Industrial Property Organizations

(1) Any intergovernmental organization to which several States have entrusted the task of granting regional patents and of which all the member States are members of the International (Paris) Union for the Protection of Industrial Property may file with the Director General a declaration that it accepts the obligation of recognition provided for in Article 3(1), the obligation concerning the requirements referred to in Article 3(2) and all the effects of the provisions of this Treaty and the Regulations applicable to intergovernmental industrial property organizations. If filed before the entry into force of this Treaty according to Article 15(1), the declaration referred to in the first sentence of this paragraph shall become effective on the date of the said entry into force. If filed after such entry into force, the said declaration shall become effective three months after its filing unless a later date has been indicated in the declaration. In the latter case, the declaration shall take effect on the date thus indicated.

(2) Where any provision of this Treaty or of the Regulations affecting intergovernmental industrial property organizations is revised or amended, any intergovernmental industrial property organization may withdraw its declaration referred to in paragraph (1) by notification addressed to the Director General. The withdrawal shall take effect:

(i) where the notification has been received before the date on which the revision or amendment enters into force, on that date;

(ii) where the notification has been received after the date referred to in (i), on the date indicated in the notification or, in the absence of such indication, three months after the date on which the notification was received.

(3) In addition to the case referred to in paragraph (2), any intergovernmental industrial property organization may withdraw its declaration referred to in paragraph (1) by notification addressed to the Director General. The withdrawal shall take effect two years after the date on which the Director General has received the notification. No notification of withdrawal under this paragraph shall be receivable during a period of five years from the date on which the declaration took effect.

(4) The withdrawal referred to in paragraph (2) or (3) by an intergovernmental industrial property organization whose communication under Article 7 has led to the acquisition of the status of international depositary authority by a depositary institution shall entail the termination of such status one year after the date on which the Director General received the notification of withdrawal."

3. The other main changes in the Introductory Provisions and in Chapters I and II of the Treaty would be the following (those concerning Chapters III and IV of the Treaty and the Regulations would be proposed once the provisional decisions of the Main Committee on the Treaty will be known):

General: replace "Contracting Party" by "Contracting State" and "Contracting Parties" by "Contracting States."

Article 1, first line, delete "and intergovernmental organizations."

Article 2(v) would be replaced by the following text: " 'intergovernmental industrial property organization' means an organization that has filed a declaration under Article 8bis(1)."

Article 2(vii), first line, delete "of a Contracting Party."

Article 2(vii)(a), first line, delete "where the Contracting Party is a State,...."

Article 2(vii)(b), delete the words "where the Contracting Party is an intergovernmental organization," in the first line and replace in the third line "that organization or" by "an intergovernmental industrial property organization or."

Article 6(1), the following sentence should be added: "The said guarantee may be furnished also by an intergovernmental industrial property organization; in that case, the depositary institution must be located on the territory of a State member of the said organization."

Article 7(1)(a), the following sentence should be added: "The said status may be acquired also by virtue of a written communication, addressed to the Director General by an intergovernmental industrial property organization, containing the said declaration."

Article 7(2)(a), third line, after "Contracting State" insert "or the intergovernmental industrial property organization."

Article 8(1)(a) should read: "Any Contracting State or any intergovernmental industrial property organization, with the exception of the Contracting State or the intergovernmental industrial property organization which, in respect of an international depcsitary authority, has made the communication referred to in Article 7(1)," [continued without change].

Article 8(1)(b) should read: "Before making the request under subparagraph (a), the Contracting State or the intergovernmental industrial property organization shall, through the intermediary of the Director General, bring the reasons for the proposed request to the attention of the Contracting State or the intergovernmental industrial property organization which has made the communication referred to in Article 7(1) so that that State or organization may ..." [continued without change].

Article 8(2)(a), first line, insert "or intergovernmental industrial property organization" after "Contracting State."

Article 9(1), insert after subparagraph (b) the following subparagraph (b)bis:
"Any intergovernmental industrial property organization shall be represented by special observers in the meetings of the Assembly and in those of the committees and working groups established by the Assembly."

Article 9(1)(c) would read as follows: "Any State not member of the Union which is a member of the Organization or of the International (Paris) Union for the Protection of Industrial Property and any intergovernmental organization specialized in the field of patents other than an intergovernmental industrial property organization may be represented by observers in the meetings of the Assembly and, if the Assembly so decides, in those of such committees or working groups as may have been established by the Assembly."

Article 9(2)(a)(vi) should read: "determine, subject to paragraph (1)(c), which States other than Contracting States, which intergovernmental organizations other than intergovernmental industrial property organizations and which international non-governmental organizations shall be admitted to its meetings as observers and to what extent international depositary authorities shall be admitted to its meetings as observers;...."

DMO/DC/17 April 15, 1977 (Original: English)

THE PLENARY OF THE BUDAPEST DIPLOMATIC CONFERENCE

Rules of Procedure. Text adopted by the Budapest Diplomatic Conference

Editor's Note: The Rules of Procedure adopted by the Budapest Diplomatic Conference are those set forth in document DMO/DC/2 (see page 105 of these Records).

DMO/DC/18 April 18, 1977 (Original: English)

SWEDEN

Proposals concerning the Draft Regulations

I. It is proposed that Rule 10 be amended as follows:

(a) Rule 10.1(i) should read:

(i) promptly after any deposit referred to in Rule 6 or any transfer referred to in Rule 5.1;

(b) Rule 10.2(a)(i) should read:

(i) to the depositor, promptly after any deposit referred to in Rule 5.1;

(c) Rule 10.2(b) should be deleted.

(d) Insert in Rule 10.2(e) as a new item (vi) the follwoing words:

(vi) the result of the viability test;

The present item (vi) then becomes item (vii).

(e) In Rule 10.2(e)(vi) of the present text, the words "and that the results of the test were negative" should be deleted.

II. Rule 11.1(ii) should be deleted.

DMO/DC/19 April 18, 1977 (Original: French)

SWITZERLAND

Proposals concerning the Draft Regulations

1. Rule 11.3(a)(ii) should read as follows:

"publication referring to that deposit has been effected by that office for the purposes of patent procedure;"

2. In Rule 11.3.(a)(iii), the words "makes the said right dependent" should be replaced by the words "makes, or allows the said right to be made, dependent."

3. Rule 11.3.(b) should be deleted.

4. Rule 11.3.(c) should be deleted; consequently, Rules 11.3.(d) and 11.3.(e) should also be deleted.

DMO/DC/20 April 18, 1977 (Original: English)

FEDERAL REPUBLIC OF GERMANY

Observations and Proposal concerning the Draft Treaty (Articles 17(1)--Languages of the Treaty

In document DMO/DC/10 it is proposed that Article 17(1)(a) of the Treaty should read as follows: "This Treaty shall be signed in a single original in the English, French and Russian languages, all the texts being equally authentic."

The Delegation of the Federal Republic of Germany understands the reasons inspiring this proposal, but nevertheless would like to point out the following:

German is the official language in several of the States represented at the Conference. It has moreover since long played an important part in the field of industrial property.

For these reasons it would be indicated to make also German one of the authentic treaty languages. Since, however, this Treaty is established under Article 19 of the Paris Convention for the Protection of Industrial Property, the Delegation of the Federal Republic of Germany has so far abstained from submitting a corresponding proposal to the Conference.

If, however, the proposal contained in the above mentioned document is adopted, Article 17(1)(a) should read as follows: "This Treaty shall be signed in a single original in the English, French, German and Russian languages, all the texts being equally authentic." In this case it is further proposed to delete the reference to the German language from Article 17(1)(b).

DMO/DC/21 April 18, 1977 (Original: English)

FEDERAL REPUBLIC OF GERMANY

Proposals concerning the Draft Regulations

1. In Rule 11.1(i), delete the words "is an invention which" and "the use of."

2. In Rule 11.3(a)(i), delete the words "is an invention which" and "the use of."

3. In Rule 11.3(c)(i), the last part of the sentence, as from "the said office," should be redrafted to read as follows:

> "the said office shall also transmit a form on the basis of the conditions which any requesting party must fulfill, to which the signature of the said party shall be affixed before the release is effected;"

4. Rule 11.4(c) should be amended as follows:

> "and shall be accompanied by a copy of the receipt referred to in Rule 7.4."

DMO/DC/22 April 18, 1977 (Original: English)

CZECHOSLOVAKIA

Observations and proposals concerning the Draft Regulations

Rule 6.1: To be added: "The depositor must indicate the properties of the microorganism dangerous to health or environment if any."

Rule 7.3(i): To be added (after the semicolon): "an express statement of possessing the status of an international depositary authority under this Treaty."

Rule 11: Both the Draft Treaty and the Draft Regulations fully ignore the necessity of any effective international regulation in order to overcome the risk of misusing the release of samples of deposited microorganisms. By this way, the practical value of this Treaty is substantially reduced. Reserving the regulation of this problem to national legislation is not reasonable since the sense thereof should be to prevent the misuse preponderably from abroad. (A foreign misuser cannot be sued, of course, in his home country under the law of another country, i.e. under the law of the country of the depositor or of that of the deposit.)

For this reason, a very important--carginal--provision should be inserted in any suitable place, e.g. as a new item (v) in Rule 11.4(a)) as follows:

> "(v) a written undertaking of the requesting party that the sample will not be used for any industrial or commercial purpose and/or transmitted to any other natural person or legal entity, comprising an obligation of compensating any damage resulting from breaking the said undertaking."

Moreover, an express provision should be included in Rule 11 entrusting member States with issuing more detailed rules regulating the release of samples of deposited microorganisms.

Rule 13: The content of this Rule should be deleted and replaced by another provision in the sense that all information and communications provided in this Rule will be notified by an already existing journal of WIPO (such as "Industrial Property" or the like) issued monthly or more frequently.

Reasons:

1. The frequency proposed in this Rule (twice a year) is insufficient and inoperative.

2. The publication of such a separate gazette would be uneconomical and undesirable for the sole purpose of publicizing the necessary official information instead of concentrating it in a collective official gazette of WIPO.

DMO/DC/23 April 18, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Proposals concerning the Draft Treaty. Amendments to Article 4 prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee

1. Paragraph (1)(a), first line, replace "can no longer" by "cannot."

2. Paragraph (1)(b)(i), add at the end, "or where the international depositary authority with which the original deposit was made discontinues, temporarily or definitively, the performance of its functions in respect of deposited microorganisms."

3. Paragraph (1)(e), fourth line, after "authority" insert "or the discontinuance of performance of functions"; last line replace "termination or limitation" by "termination, limitation or discontinuance."

DMO/DC/24 April 18, 1977 (Original: French)

ROMANIA

Proposals concerning the Draft Regulations

Rule 6(1)(b) should read as follows: "The written statement referred to in paragraph (a) must contain the proposed scientific description and/or taxonomic designation of the deposited microorganism."

The purpose of this proposal is to give the possibility to verify the identity between the deposited microorganism and its description.

Rule 7(3)(vi): In view of the proposal concerning Rule 6(1)(b), the text of Rule 7(3)(vi) should have the following wording: "(vi) the proposed scientific description and/or taxonomic designation of the microorganism."

Rule 8(1)(a): The text of Rule 8(1)(a) sould be completed by the addition of the following words: "...until the date of issuance of the receipt."

Rule 11(3): This Rule should be completed by the addition, after paragraph (c)(ii), of the following wording: "(c)bis Paragraph (a) shall apply with the exception of items (i), (ii) and (iii) when the industrial property office certifies in the declaration referred to in paragraph (a) that the rights of the owner have ceased."

DMO/DC/25 April 19, 1977 (Original: English)

JAPAN

Observations and proposal concerning the Draft Regulations

If Article 3 is adopted as proposed in document DMO/DC/14, add in Rule 6.1 the following paragraph (c): "(c) The international depositary authority may require the depositor to fulfill the condition necessary for the acceptability of the microorganisms to be deposited."

Reason: An international depositary authority may need to ask the depositor to submit to him a certain number of samples prepared in a specified state such as lyophylized preparation or slant, and to complete a certain form needed for technical and administrative reasons only.

The proposed new Article 3(2) (document DMO/DC/14) does not provide that any international depositary authority may require from the depositor compliance with requirements different from or additional to those which are provided in the Treaty and the Regulations.

We, however, are afraid that the new Article 3(2) seems to prohibit the above requirement of an international depositary authority which is a national organ.

DMO/DC/26 April 19, 1977 (Original: English)

UNITED STATES OF AMERICA

Proposals concerning the Draft Regulations

1. It is proposed that Rule 5.1(c) be revised to read: "The depositor shall within three months after receiving the receipt referred to in Rule 7.5..."

2. Rule 6.2(a)(iii) should be redesignated as Rule 6.2(b) and read: "(b) It is strongly recommended that the written statement referred to in paragraph (a) should contain the most recent..."

3. In Rule 9.1, the last word "deposit" should be changed to "first application for a patent."

4. In Rule 10.2(e)(vi), a period should be placed after the word "issued" and the rest of the paragraph deleted.

5. It is proposed that a new paragraph (c)(i) be added to Rule 11.3:

"the said office may provide for release of a sample of such deposit upon notification to the international depositary authority that a patent referring to such deposit has been granted; or"

Rule 11.3(c), paragraphs (i) and (ii) should be reidentified as paragraphs (ii) and (iii).

6. In Rule 11.4(d), second line, the words ", if requested," should be inserted after "shall."

7. A new Rule 12.1(a)(iii) should be added: "subject to Rule 11.4(d), first sentence, for notification of release of samples."

Present Rule 12.1(a)(iii) would be renumbered as (iv).

DMO/DC/27 April 19, 1977 (Original: English)

ITALY

Observations and Proposals concerning the Draft Regulations

1. It is proposed that Rule 6.1(b) be replaced by the following Rule 6.1(a)(v): "the scientific description and proposed taxonomic designation of the deposited microorganism."

2. It is accordingly proposed that Rule 6.2(a)(iii) be modified by deleting the words: "indicated in connection with the original deposit as existing on the date relevant under Article 4(1)(e)."

3. The Delegation of Italy is of the opinion that the scientific description and taxonomic designation should be given both in connection with the original deposit and the new deposit, if any, at the date at which they are made, to allow a comparison of the two descriptions and designations, should a new deposit become necessary under Article 4.

If the foregoing proposal is accepted, the following changes are also to be introduced.

4. Rule 7.3(vi) has to be worded as follows: "the scientific description and proposed taxonomic designation of the microorganism."

5. Rule 8.1(a) has to be modified as follows: "The depositor may amend the scientific description and taxonomic designation presented in connection with the deposit of a microorganism."

6. In Rule 8.1(b) the words "Any such later indication or" should be deleted and replaced by the word "The."

7. In Rule 8.1(b)(iv) the words "in the case of an amendment" should be deleted.

DMO/DC/28 April 19, 1977 (Original: English)

HUNGARY

Proposals concerning the Draft Regulations

1. Rule 11.4(a) gives some prescriptions concerning the language of the documents enumerated here. The list of these documents seems necessary to be completed with the "communication" provided under Rule 11.3(c)(i) which contains--among others--the date of the availability of the microorganism for release. The same applies to Rule 11.4(d).

For this reason we propose to add in line 2 of Rule 11.4(a) after the words "or 11.3(a)" and in line 8 of Rule 11.4(d) after the words "the said request" the following words: ", the communication referred to in Rule 11.3(c)(i)."

2. In the last line of Rule 11.4(d) we propose to refer to Rule 11.3(c)(i), and in line 6 of this paragraph to add after the words "the pertinent request" the words: "made under Rules 11.1, 11.2 or 11.3."

A similar formulation is applied in the first line of Rule 11.4(a).

DMO/DC/29 April 19, 1977 (Original: English)

SOVIET UNION

Proposals concerning the Draft Regulations

1. Rule 6.1(iii): The text of Rule 6.1(iii) should read as follows: "the purpose for which the microorganism is meant, details of the conditions necessary for the cultivation of the microorganism, as well as its storage and viability test, and also, where a mixture of microorganisms is deposited, descriptions of the components of the mixture and methods for checking their presence;"

2. Rule 7.2(b): Rule 7.2(b) should read as follows: "Any text matter in the receipt shall be in English or French or Russian. It may be simultaneously in two of the above languages. Any text matter appearing in the receipt in English, French or Russian may also appear therein in any other language."

3. Rule 11.3(c)(i): To include reference to possiblity of the Russian language usage.*

*Editor's Note: There is a mistake in the text of this document. Item 3 concerns Rule 11.4(a) rather than Rule 11.3(c)(i).

DMO/DC/30 April 19, 1977 (Original: English)

CREDENTIALS COMMITTEE

Report (Prepared by the Secretariat of the Conference)

1. The Credentials Committee (hereinafter referred to as "the Committee"), established by the Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (hereinafter referred to as "the Budapest Diplomatic Conference"), on April 14, 1977, met on April 18, 1977.

Composition

2. The delegations of the following States members of the Committee attended the meeting: Austria, Bulgaria, Denmark, Hungary, Indonesia, Italy, Romania, Soviet Union, Spain. Brazil and Canada were not represented.

Opening of the Meeting

3. The President of the Budapest Diplomatic Conference, Mr. E. Tasnádi (Hungary) opened the meeting.

Officers

4. On the proposal of the President of the Budapest Diplomatic Conference, the Committee unanimously elected Mr. G. Gudkov (Soviet Union) as Chairman and H.E. S. García de Pruneda y Ledesma (Spain) and Mr. A. Pareang (Indonesia), as Vice-Chairmen.

Examination of Credentials, etc.

5. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Budapest Diplomatic Conference on April 14, 1977 (hereinafter referred to as "the Rules of Procedure"), the Committee examined the credentials, full powers, letters or other documents presented for the purposes of Rules 6 and 7 by the Member Delegations, the Observer Delegations and the representatives of the Observer Organizations.

Member Delegations

6. The Committee found in due form, in accordance with Rule 6 of the Rules of Procedure, the credentials and full powers presented by the Member Delegations of the following States members of the International Union for the Protection of Industrial Property (hereinafter referred to as "the Paris Union"): Denmark, France, German Democratic Republic, Germany (Federal Republic of), Norway, Poland, Soviet Union, Spain, Switzerland, United Kingdom United States of America.

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

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

Observer Delegations

8. The Committee found in due form, in accordance with Rule 7(1) of the Rules of Procedure, the document of appointment presented by the Observer Delegation of the following State invited to participate in the Budapest Diplomatic Conference as an observer, in accordance with Rule 2(2) of the Rules of Procedure: Pakistan.

Observer Organizations

9. The Committee found in due form, in accordance with Rule 7(2) of the Rules of Procedure, the letters or documents of appointment presented by the representatives of the following intergovernmental and international non-governmental organizations invited to participate in the Budapest Diplomatic Conference as observers: (a) Interim Committee of the European Patent Organisation (EPO); (b) Committee of National Institutes of Patent Agents (CNIPA), Council of European Industrial Federations (CEIF), European Federation of Agents of Industry in Industrial Property (FEMIPI), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Federation of Patent Agents (FICPI), International Federation of Pharmaceutical Manufacturers Associations (IFPMA), Pacific Industrial Property Association (PIPA), Union of European Patent Attorneys and Other Representatives before the European Patent Office (UNEPA), Union of Industries of the European Community (UNICE), World Federation for Culture Collections (WFCC).

Further Procedure

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

Report

11. The Committee authorized the Secretariat to prepare the report of the Committee for submission to the Budapest Diplomatic Conference.

DMO/DC/31 April 19, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Proposals concerning the Draft Treaty. Text corresponding to the so-called Third Solution prepared by the Secretariat of the Conference on the basis of the discussions of the Main Committee

Article 11:

(1) [as in document DMO/DC/3]

(2) The Regulations adopted at the same time as this Treaty are, in the English and French languages, annexed to this Treaty. Official texts of the Regulations in the other languages referred to in Article 17(1) and (2) shall be established by the Director General after consultation with the interested Governments.

(3) to (5) [as in document DMO/DC/3]

Article 17:

(1) This Treaty shall be signed in a single original in the English, French, (A) and (B) languages. In case of divergence between on the one hand the English and the French texts and on the other hand any of the texts in the other said languages, the English and the French texts shall prevail.

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

(3) This Treaty shall remain open for signature at Budapest until December 31, 1977.

DMO/DC/32 April 19, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Observations and proposals concerning the Draft Treaty and the Draft Regulations. Provisions concerning intergovernmental organizations prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee (supplement to document DMO/DC/16)

As regards the Chapters of the Treaty and the Regulations not covered by document DMO/DC/16, the following amendments result from the Main Committee's decision concerning the said document.

I. TREATY

General: replace "Contracting Party" by "Contrating State" and "Contracting Parties" by "Contracting States."

Article 13(3)(c): delete "and intergovernmental organizations."

Article 14(1): delete subparagraph (b).

Article 14(2): delete "and declarations of approval or acceptance."

Article 15(1): delete "or intergovernmental organizations," and "or declarations of approval or acceptance" and "cr declaration of approval or acceptance."

Article 15(2): delete "or intergovernmental organization" and "or declaration of approval or acceptance."

In Article 18(2), "Article 14(1)(a)" should be replaced by "Article 14(1)" and "referred to in Article 14(1)(b)" by "which have the right to make a declaration under Article 8bis(1)."

Article 18(4): Replace, after "Regulations," the end of the provision by "to all Contracting States and to all intergovernmental industrial property organizations and, on request, to the Government of any other State and to any other intergovernmental organization which has the right to make a declaration under Article 8bis(1)."

Article 19 should read:

"Notifications"

The Director General shall notify the Contracting States, the intergovernmental industrial property organizations and those States not members of the Union which are members of the International (Paris) Union for the Protection of Industrial Property of:

(i) signatures under Article 17;

(ii) deposits of instruments of ratification or accession under Article 14(2);

(iibis) declarations under Article 8bis(1);

(iii) to (viii) [no change]

(ix) withdrawals under Article 8bis(2) or (3)."

II. REGULATIONS

General: Replace "Contracting Party" by "Contracting State" and "Contracting Parties" by "Contracting States."

Rule 3.1: Replace "transmitted" by "addressed" and "through diplomatic channels" by ", in the case of a Contracting State, through diplomatic channels and, in the case of an intergovernmental industrial property organization, by its chief executive officer."

Rule 3.2: After "Contracting States" insert "and intergovernmental industrial property organizations."

Rule 3.3: After "Contracting State" insert "or intergovernmental industrial property organization."

Rule 4.1(c): After "Contracting States" add "and intergovernmental industrial property organizations."

Rule 4.2(b)(iii): After "Contracting State" insert "or intergovernmental industrial property organization."

Rule 4.2(d): After "Contracting States" insert "and intergovernmental industrial property organizations."

Rule 5.1(a): After "Contracting State" insert "or intergovernmental industrial property organization."

Rule 5.1(b): After "Contracting States and" insert "the intergovernmental industrial property organizations as well as."

Rule 5.2(a): After "Contracting State" insert "or intergovernmental industrial property organization."

Rule 5.2(b): After "Contracting States" insert "and intergovernmental industrial property organizations."

Rule 9.2: In the bracketed part at the end after "Contracting State" add "or of an intergovernmental industrial property organization."

Rule 10.2(f): After "of a Contracting State" insert in the last line "or of an intergovernmental industrial property organization."

Rule 11.1: After "Contracting State" insert "or of any intergovernmental industrial property organization" and replace the words "the latter" by "such office."

Rule 11.1(iii): After "Contracting State" add "or of the said organization; ...."

Rule 11.3(a): After "Contracting State" insert "or of an intergovernmental industrial property organization."

Rule 11.3(c): After "Contracting State" insert "or of any intergovernmental industrial property organization."

Rule 12.2(a): After "Contracting State" insert "or intergovernmental industrial property organization."

Rule 12.2(b): After "Contracting States" insert "and intergovernmental industrial property organizations."

DMO/DC/33 April 19, 1977 (Original: English)

UNITED STATES OF AMERICA

Proposal concerning the Draft Regulations

It is proposed that Rule 10.1(ii) be deleted.

DMO/DC/34 April 20, 1977 (Original: English)

FEDERAL REPUBLIC OF GERMANY

Proposal concerning the Draft Regulations

Rule 11.2(ii), last line, should be amended as follows: after "release" add "or by a declaration of the industrial property office stating that according to the national law the authorization is considered to be given by the depositor."

DMO/DC/35 April 20, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Text of Article 17 resulting from the discussions of the Main Committee (on the morning of April 20, 1977)

(1)(a) This Treaty shall be signed in a single original in the English and French languages, both texts being equally authentic and of equal legal force.

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

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

(2) This Treaty shall remain open for signature at Budapest until December 31, 1977.

DMO/DC/36 April 20, 1977 (Original: English)

FEDERAL REPUBLIC OF GERMANY

Proposal concerning the Draft Regulations (new Rule 11.3(a)bis)

After Rule 11.3(a) the following provision should be inserted as Rule 11.3(a)bis:

"Paragraph (a) shall apply with the exception of item (ii) thereof where the industrial property office certifies, in the declaration referred to in paragraph (a), that, under the law governing patent procedure before that office, the certified party has a right, prior to the publication of the patent application referring to the deposited microorganism, to inspect the files of the said application, and that the depositor has been notified of the request of the certified party to inspect the files."

DMO/DC/37 April 21, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Proposal concerning the Draft Regulations (Rule 11.3(a)). Redraft prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee

11.3 Release to Parties Legally Entitled

(a) Any international depositary authority shall release a sample of any deposited microorganism to any authority, natural person or legal entity (hereinafter referred to as "the certified party"), on the request of such party, provided that the request is made on a form issued by the International Bureau and that on the said form the industrial property office of a Contracting State or of an intergovernmental industrial property organization certifies that:

(i) an application referring to the deposit of that microorganism has been filed with that office for the grant of a patent and that the subject matter of that application involves the said microorganism or the use thereof;

(ii) that, except where the second sentence of (iii) applies, publication for the purposes of patent procedure has been effected by that office;

(iii) that the certified party has a right to a sample of the microorganism under the law governing patent procedure before that office and, where the said law makes the said right dependent on the fulfillment of certain conditions, that that office is satisfied that such conditions have actually been fulfilled or, where the said law allows it that the said right be made dependent on the fulfillment of certain conditions, the fulfillment of such conditions was actually required and that they have actually been fulfilled; where the certified party has the said right under the said law prior to publication for the purpose of patent procedure by the said office and such publication has not yet been effected, the certification shall expressly state so and shall indicate, by citing it in the customary manner, the applicable provision of the said law, including any court decision.

DMO/DC/38 April 21, 1977 (Original: English)

THE CHAIRMAN OF THE MAIN COMMITTEE

Draft Resolution

Editor's Note: This document contains the text of the Draft Resolution as proposed by the Chairman of the Main Committee and is the same as the Final Text of the Resolution adopted by the Budapest Diplomatic Conference (see page 91 of these Records). It is not reproduced here.

DMO/DC/39 April 21, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Proposal concerning the Draft Regulations (Rules 6.3--Draft prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee)

6.3 Requirements of the International Depositary Authority

Any international depositary authority may require that the microorganism be deposited in the form and quantity necessary for complying with the requirements of the Treaty and these Regulations and be accompanied by a completed form necessary for the administrative procedure of such authority.

DMO/DC/40 April 21, 1977 (Original: English)

UNITED STATES OF AMERICA

Proposal concerning the Draft Regulations

Rule 11.3(b):

(b) Notwithstanding paragraph (a), any international depositary authority shall release a sample to any authority, natural person or legal entity on the basis of a communication received from any industrial property office certifying that the microorganism, identified by the accession number given to it by the international depositary authority, is referred to in a patent granted and published by that office.

DMO/DC/41 April 22, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Proposal concerning the Draft Regulations (Rule 11.3(b)--Redraft prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee)

(b) In respect of patents granted and published by any industrial property office, such office may from time to time communicate to any international depositary authority lists of the accession numbers given by that authority to the deposited microorganisms referred to in the said patents. The international depositary authority shall, on the request of any authority, natural person or legal entity, release to it a sample of any microorganism where the accession number has been so communicated. In respect of deposited microorganisms whose accession numbers have been so communicated, such office shall not be required to provide the certification referred to in Rule 11.3(a).

DMO/DC/42 April 22, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Proposal concerning the Draft Regulations (Rule 9.2--Redraft prepared by the Secretariat of the Conference at the request of the Chairman of the Main Committee)

9.2 Secrecy

No international depositary authority shall give information to anyone whether a microorganism has been deposited with it under the Treaty. Furthermore, it shall not give any information to anyone concerning any microorganism deposited with it under the Treaty except to an authority, natural person or legal entity which is entitled to obtain a sample of the said microorganism under Rule 11 and subject to the same conditions as provided in that Rule.

DMO/DC/43 April 25, 1977 (Original: English/French)

THE DRAFTING COMMITTEE

Draft Treaty (Articles 1 to 20) submitted to the Main Committee

The Drafting Committee met under the chairmanship of Mr. I. Davis (United Kingdom) on April 23, 1977, and, on the basis of the decisions of the Main Committee of the Budapest Diplomatic Conference meeting under the chairmanship of Mr. J.-L. Comte (Switzerland) on April 14, 15, 18, 19, 20, 21 and 22, 1977, prepared the attached text.

It is herewith submitted to the Main Committee.

Editor's Note: This document contains the text of the Draft Treaty. It is not reproduced in this volume. In the following is indicated the sole difference between this text and the Final Text adopted by the Diplomatic Conference (see the odd numbered pages from 11 to 43 of these Records).

Article 4(2): The words "as long as that authority is in a position to furnish samples of such microorganism" appear, in the Draft, between square brackets.

DMO/DC/44 April 25, 1977 (Original: English/French)

THE DRAFTING COMMITTEE

Draft Regulations (Rules 1 to 15) submitted to the Main Committee

The Drafting Committee met under the chairmanship of Mr. I. Davis (United Kingdom) on April 23, 1977, and, on the basis of the decisions of the Main Committee of the Budapest Diplomatic Conference meeting under the chairmanship of Mr. J.-L. Comte (Switzerland) on April 14, 15, 18, 19, 20, 21 and 22, 1977, prepared the attached text.

It is herewith submitted to the Main Committee.

Editor's Note: This document contains the text of the Draft Regulations. It is not reproduced in this volume. In the following are indicated only the differences between this text and the Final Text adopted by the Diplomatic Conference (see the odd numbered pages from 49 to 87 of these Records).

1. Rule 5.1(b): Same as in the Final Text except that, in the Draft, the words corresponding to "paragraph (a)(iv); the notification of the Director General and the notification received by him" read as follows: "paragraph (a)(iv) and that notification."

2. Rule 8.2: Same as in the Final Text except that, in the Draft, the words corresponding to "Rule 8.1, deliver" read as follows: "Rule 8.1, and against payment of a fee, deliver."

3. Rule 10.2(e): Same as in the Final Text except that, in the Draft, the reference is Rule 12.1(a)(ii) rather than Rule 12.1(a)(iii).

4. Rule 11.4(h): Same as in the Final Text except that, in the Draft, the reference is Rule 12.1(a)(iii) rather than Rule 12.1(a)(iv).

5. Rule 12.1: The wording of this Rule reads, in the Draft, as follows:

"(a) Any international depositary authority may, with respect to the procedure under the Treaty and these Regulations, charge a fee:

(i) for storage;

(ii) subject to Rule 10.2(e), first sentence, for the issuance of viability statements;

(iii) subject to Rule 11.4(h), first sentence, for the furnishing of of samples."

DMO/DC/45 April 25, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Proposed changes in documents DMO/DC/43 and DMO/DC/44 (Note by the Secretariat of the Conference, approved by the Chairman of the Main Committee and the Chairman of the Drafting Committee)

I.

1. The changes proposed in handwriting in

Article 2(vii) and (ix)
Article 3(1)(a) and (b)
Rule 11.1(iii) and (iv)

are based on the following considerations.

2. Once the complete text of the draft Treaty and the draft Regulations was established by the Drafting Committee, it was realized that:

(a) the term defined in Article 2(vii)(a)--that is, "competent body of a Contracting State"--is only used in one of the Articles (Article 3(1)(a) and (b)) of the Treaty and is not used at all in the Regulations;

(b) the term defined in Article 2(vii)(b)--that is, "competent body of an intergovernmental industrial property organization"--is not used at all in the Treaty and is only used in one of the Rules (Rule 11.1(iii) and (iv)) of the Regulations;

(c) the term defined in Article 2(vii)(c)--that is, "competent body"--is only used in one of the Articles (Article 2(ix)) of the Treaty and is not used at all in the Regulations.

3. Consequently, it seems hardly worthwhile to define the said terms.

4. In any case, the definitions are rather complicated.

5. Furthermore, it was found that the use of the terms in question could be avoided through changes in all those (very few) instances in which they are used, and such changes would only render the texts clearer and more precise.

6. It is proposed that these provisions be changed as indicated in handwriting.

II.

7. It is proposed that the words appearing within square brackets be included in Article 4(2), for the sake of more precision.

III.

8. The exception provided for in Article 8(1)(a) has been expressed in a separate sentence for the sake of clarity.

DMO/DC/46 April 25, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Draft Statements to be included in the Records of the Budapest Diplomatic Conference (Texts prepared by the Secretariat of the Conference on the request of the Chairman of the Main Committee)

1. Ad Article 3(1)(a): "When adopting the second sentence of Article 3(1)(a), the Diplomatic Conference understood that the fact, date and identity therein mentioned may, under the applicable law, at any time be contested on the ground that they are based on an error, misrepresentation or other grounds which, according to the general principles of law, allow contesting allegations."

2. Ad Article 4(1)(c): "When adopting the second sentence of Article 4(1)(c), the Diplomatic Conference understood that the expression "contested" covers the case that an industrial property office does not accept the allegation of the depositor."

3. Ad Article 6: "When adopting Article 6, the Diplomatic Conference understood that the liability, if any, of a Contracting State for having furnished the assurances under Article 6(1) and the liability, if any, of an international depositary authority for acts or omissions under the Treaty and the Regulations are governed by the applicable national law and that the Treaty and the Regulations do not create any liability which does not exist in the absence of the Treaty and the Regulations."

4. Ad Rule 11: "When adopting the provisions of Rules 11.1, 11.2 and 11.3, the Diplomatic Conference understood that the entitlement to the furnishing of a sample of the microorganism is not affected by the expiration of the patent in which the said microorganism is referred to."

DMO/DC/47 April 26, 1977 (Original: English/French)

THE MAIN COMMITTEE

Draft Treaty (Articles 1 to 20) (submitted for adoption by the Plenary of the Budapest Diplomatic Conference)

Editor's Note: This document contains the text of the Draft Treaty (Articles 1 to 20) as adopted by the Main Committee on April 26, 1977, and submitted for adoption by the Plenary of the Budapest Diplomatic Conference; this text is the same as the Final Text adopted by the Diplomatic Conference (see the odd numbered pages from 11 to 43 of these Records). It is not reproduced here.

DMO/DC/48 April 26, 1977 (Original: English/French)

THE MAIN COMMITTEE

Draft Regulations (Rules 1 to 15) (submitted for adoption by the Plenary of the Budapest Diplomatic Conference)

Editor's Note: This document contains the text of the Draft Regulations (Rules 1 to 15) as adopted by the Main Committee on April 26, 1977, and submitted for adoption by the Plenary of the Budapest Diplomatic Conference; this text is the same as the Final Text adopted by the Diplomatic Conference (see the odd numbered pages from 49 to 87 of these Records). It is not reproduced here.

DMO/DC/49 April 26, 1977 (Original: English/French)

THE MAIN COMMITTEE

Draft Statements to be included in the Records of the Budapest Diplomatic Conference (submitted for approval by the Plenary of the Budapest Diplomatic Conference)

Editor's Note: This document contains the text of the Draft Statements to be included in the Records of the Budapest Diplomatic Conference, as approved by the Main Committee on April 26, 1977, and submitted for approval by the Plenary of the Budapest Diplomatic Conference. They are the same as those contained in document DMO/DC/46, except item "4. Ad Rule 11" which should read as follows:

4. Ad Rule 11: "When adopting the provisions of Rules 11.1, 11.2 and 11.3, the Diplomatic Conference understood that the expiration of the patent referring to the deposited microorganism does not alter the rules which the international depositary authority and the requesting party must follow in connection with the furnishing of samples; it was however noted that the conditions which allow an industrial property office to give the required certification may be different before and after the expiration of the patent."

DMO/DC/50 April 27, 1977 (Original: English/French)

MAIN COMMITTEE

Draft Resolution (submitted by the Main Committee for adoption by the Plenary of the Budapest Diplomatic Conference)

Editor's Note: This document contains the text of the Draft Resolution as adopted by the Main Committee on April 26, 1977, and submitted for adoption by the Plenary of the Budapest Diplomatic Conference; this text is the same as the Final Text adopted by the Diplomatic Conference (see page 91 of these Records).

DMO/DC/51 April 27, 1977 (Original: English)

CREDENTIALS COMMITTEE

Additional Report (prepared by the Secretariat of the Conference)

1. The Credentials Committee of the Budapest Diplomatic Conference held its second meeting on April 26, 1977, under the chairmanship of Mr. G. Gudkov (Soviet Union).

2. The Credentials Committee found that, since the preparation of its report on its first meeting (document DMO/DC/30), the member Delegations of the following States members of the Paris Union had presented full powers in due form, in accordance with Rule 6 of the Rules of Procedure: Bulgaria, Finland, Hungary, Italy and the Netherlands.

DMO/DC/52 April 27, 1977 (Original: English/French)

THE PLENARY OF THE BUDAPEST DIPLOMATIC CONFERENCE

Final Act adopted by the Plenary of the Budapest Diplomatic Conference on April 27, 1977

Editor's Note: This document contains the text of the Final Act as adopted by the Plenary of the Budapest Diplmatic Conference on April 27, 1977; (see page 95 of these Records).

DMO/DC/53 April 27, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Memorandum by the Secretariat of the Conference (Texts approved by the Plenary of the Budapest Diplomatic Conference)

The Plenary of the Budapest Diplomatic Conference in its meeting on April 27, 1977

(a) adopted the following texts:

(i) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (as set forth in document DMO/DC/47);

(ii) the Regulations under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (as set forth in document DMO/DC/48);

(iii) a Resolution concerning the setting up of an Interim Advisory Committee (as set forth in document DMO/DC/50);

(b) approved the texts of statements to be included in the Records of the Budapest Diplomatic Conference (as contained in document DMO/DC/49).

iv) the Final Act (as set forth in document DMO/DC/52);

DMO/DC/54 April 28, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Signatures. Memorandum by the Secretariat of the Conference (Budapest Treaty, Final Act)

The following States signed, on April 28, 1977, the following instruments adopted at the Budapest Diplomatic Conference:

1. BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

Bulgaria, Denmark, Finland, France, Germany (Federal Republic of), Hungary, Italy, Netherlands, Norway, Spain, Switzerland, United Kingdom, United States of America.

2. FINAL ACT

Australia, Austria, Bulgaria, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Italy, Japan, Netherlands, Norway, Poland, Romania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America.

LIST OF THE CONFERENCE DOCUMENTS "DMO/DC/DC"

(DMO/DC/DC/1 to DMO/DC/DC/3)

Document Number	Submitted by	Subject
1.	The Secretariat of the Conference	Draft Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (submitted to the Drafting Committee)
2.	The Secretariat of the Conference	Draft Regulations Under the Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (submitted to the Drafting Committee)
3.	The Secretariat of the Conference	Draft Statements to be included in the Records of the Budapest Diplomatic Conference (Texts resulting from the discussions of the Main Committee)

TEXT OF THE CONFERENCE DOCUMENTS "DMO/DC/DC"
(DMO/DC/DC/1 to DMO/DC/DC/3)

DMO/DC/DC/1 April 21, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Draft Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (submitted to the Drafting Committee)

Editor's Note: This document contains the text of the Draft Treaty as submitted to the Drafting Committee by the Secretariat of the Conference. It is not reproduced in this volume. In the following are indicated only the differences between this text and the Final Text adopted by the Diplomatic Conference on April 28, 1977 (see the odd numbered pages from 11 to 43 of these Records).

1. Title of the draft Treaty. The words "Draft Treaty" are replaced, in the Final Text, by the words "Treaty of Budapest."

2. Article 2(vi) to (xviii). The wording of this Article is, in the Draft, as follows:

"(vi) "industrial property office" means an authority competent for the grant of patents;

(vii) "competent body" means:

(a) the industrial property office or any other authority, including any court, of a Contracting State or of any intergovernmental organization of which that State is a member, provided that such office or other authority is competent in any patent procedure having effect in that State;

(b) the industrial property office or any other authority, including any court, of an intergovernmental industrial property organization or of any State member of that organization, provided that such office or other authority is competent in any patent procedure having effect in that organization under the international convention establishing that organization;

(viii) "depositary institution" means an institution which provides for the receipt, acceptance and storage of microorganisms and the making available of samples thereof;

(ix) "international depositary authority" means a depositary institution which, for the purposes of patent procedure before any competent body, has acquired the status of international depositary authority as provided in Article 7;

(x) "depositor" means the natural person or legal entity transmitting a microorganism to an international depositary authority, which receives and accepts it, and any successor in title of the said natural person or legal entity;

(xi) "release of a sample" means the making available by an international depositary authority of a sample of the deposited microorganism to the depositor or to an industrial property office or any other third party;

(xii) "Union" means the Union referred to in Article 1;

(xiii) "Assembly" means the Assembly referred to in Article 10;

(xiv) "Organization" means the World Intellectual Property Organization;

(xv) "International Bureau" means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);

(xvi) "Director General" means the Director General of the Organization;

(xvii) "Regulations" means the Regulations referred to in Article 2;

(xviii) "published by the International Bureau" means publication by the International Bureau as provided in the Regulations."

3. The title: "CHAPTER I. SUBSTANTIVE PROVISIONS" does not appear in the Draft.

4. Article 3(1). The wording of this Article is, in the Draft, as follows:

"Recognition of the Deposit of Microorganisms

(1)(a) Any competent body of a Contracting State which allows or requires the deposit of microorganisms for the purposes of patent procedure shall recognize, for such purposes, the deposit of a microorganism with any international depositary authority. Such recognition shall include the recognition of the fact and date of the deposit as indicated by the international depositary authority as well as the recognition of the fact that what is released as a sample is a sample of the deposited microorganism.

(b) Any competent body may require that a copy of the receipt of the deposit referred to in subparagraph (a), issued by the international depositary authority, be furnished to such body."

5. Article 4(2). The wording of this Article is, in the Draft, as follows:

"(2) The right referred to in paragraph (1)(a) shall not exist where the deposited microorganism has been transferred to another international depositary authority and that authority is in a position to furnish samples of the said microorganism."

6. Article 5. The words "the dangers for health or the environment" read, in the Draft, as follows: "the dangers entailed for health or the environment by the export or import of the microorganisms."

7. Article 6(1)(viii). The word "furnish" reads, in the Draft, as follows: "release."

8. Article 8(1)(a). The wording of this Article is, in the Draft, as follows:

"(1)(a) Any Contracting State or any intergovernmental industrial property organization, with the exception of the Contracting State or the intergovernmental industrial property organization, which, in respect of an international depositary authority, has made the communication referred to in Article 7(1) may request the Assembly to terminate, or to limit to certain kinds of microorganisms, that authority's status of international depositary authority on the ground that the requirements specified in Article 6 have not been or are no longer complied with."

9. Article 9(1). The wording of this Article is, in the Draft, as follows:

"(1) Any intergovernmental organization to which several States have entrusted the task of granting regional patents and of which all the member States are members of the International (Paris) Union for the Protection of Industrial Property may file with the Director General a declaration that it accepts the obligation of recognition provided for in Article 3(1)(a), the obligation concerning the requirements referred to in Article 3(2) and all the effects of the provisions of this Treaty and the Regulations applicable to intergovernmental industrial property organizations. If filed before the entry into force of this Treaty according to Article 16(1), the declaration referred to in the first sentence of this paragraph shall become effective on the date of the said entry into force. If filed after such entry into force, the said declaration shall become effective three months after its filing unless a later date has been indicated in the declaration. In the latter case, the declaration shall take effect on the date thus indicated."

10. Article 9(3). The reference is, in the Draft, paragraph (1) rather than paragraph (1)(a).

11. Article 9(4). The reference is, in the Draft, Article 7 rather than Article 7(1).

12. Article 9(5). The reference is, in the Draft, paragraph (1) rather than paragraph (1)(a) and the words corresponding to "whose members are all the States members of the said organization and in which decisions are made by the official representatives of the Governments of such States" read in the Draft as follows: "consisting of the official representatives of the Governments of all the States members of the said organization."

13. Article 10(1)(d) and (2)(a)(vi). The words corresponding to "intergovernmental industrial property organizations as defined in Article 2(v)" read in the Draft as follows: "intergovernmental industrial property organizations."

14. Article 11(1)(i). The words corresponding to "under this Treaty and the Regulations or by the Assembly" read in the Draft as follows: "under this Treaty or by the Assembly."

15. Article 12(4)(b). The word "furnishing" reads, in the Draft, as follows: "release."

16. Article 17(4). The wording of this Article is, in the Draft, as follows:

"(4) The denunciation of this Treaty by a Contracting State which has made a declaration referred to in Article 7(1)(a) with respect to a depositary institution which thus became an international depositary authority shall entail the termination of such authority's status of international depositary authority one year after the day on which the Director General received the notification referred to in paragraph (1)."

17. Article 19(2) and (4). The reference is, in the Draft, Article 9(1), rather than Article 9(1)(a).

18. Article 20(iii). The reference is, in the Draft, Article 9(1) rather than Article 9(1)(a).

19. Article 20(v). The wording of this Article is, in the Draft, as follows: "the decisions and communications under Articles 7 and 8;...."

DMO/DC/DC/2 April 22, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Draft Regulations under the Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (submitted to the Drafting Committee)

Editor's Note: This document contains the text of the Draft Regulations as submitted to the Drafting Committee by the Secretariat of the Conference. It is not reproduced in this volume. In the following are indicated only the differences between this text and the Final Text adopted by the Diplomatic Conference on April 28, 1977 (see the odd numbered pages from 49 to 87 of these Records.

1. Title of the draft Regulations and Rule 1.1. The words "Budapest Treaty" appearing in the title and in Rule 1.1 of the Final Text read, in the Draft, as follows: "Treaty."

2. Rule 2.1. The words corresponding to "including any public institution attached to a public administration" read, in the Draft, as follows: "including public institutions attached to any public administration."

3. Rule 2.3. The words corresponding to "Furnishing of Samples" and "furnish samples" read, in the Draft, as follows: "Release of Samples" and "release samples."

4. Rule 3.1(b)(iii). The words corresponding to "specify such kinds" read, in the Draft, as follows: "specify the latter;"

5. Rule 3.1(b)(iv). The word "furnishing" reads, in the Draft, as follows: "release."

6. Rule 3.1(b)(v). The same as Rule 3.1(b)(vi) of the Final Text. In the Draft, there is no provision corresponding to Rule 3.1(b)(v) of the Final Text.

7. Rule 4.1(b)(ii) and Rule 4.2(b)(ii). The words corresponding to "specify such kinds" read, in the Draft, as follows: "specify the latter."

8. Rule 4.1(c). The word "promptly" before the word "notified" does not appear in the Draft.

9. Rule 4.1(e). The words corresponding to "the date of the expiration of the six-month period" read, in the Draft, as follows: "than the commencement of the two-month period ...."

10. Rule 4.2(b)(iii). The words corresponding to "the expiration of three months" read, in the Draft, as follows: "the expiration of a period of three months."

11. Rule 4.3. The wording of this Rule is, in the Draft, as follows: "In the case of a termination or limitation of the status of international depositary authority under Articles 8(1), 8(2) or 17(4), Rule 5.1 shall apply mutatis mutandis."

12. Rule 5.1(a)(i). The words corresponding to "deterioration or contamination read, in the Draft, as follows: "deterioration and contamination."

13. Rule 5.1(a)(iii). The words corresponding to "all depositors affected" read, in the Draft, as follows: "all interested depositors affected."

14. Rule 5.1(b). The words corresponding to "paragraph (a)(iv); the notification of the Director General and the notification received by him shall be" read, in the Draft, as follows: "paragraph (a)(iv) and that notification shall be."

15. Rule 5.1(e)--second sentence. The words corresponding to "international depositary authority" read, in the Draft, as follows: "industrial property office."

16. Rule 5.2(b). The words corresponding to: "the notification of the Director General and the notification received by him" read, in the Draft, as follows: "the notification and the measures which have been taken."

17. Rule 6.1(a)(iii). The wording of this Rule is, in the Draft, as follows: "details of the conditions necessary for the cultivation of the microorganism as well as for its storage and its viability test, and also, where a mixture of microorganisms is deposited, descriptions of the components of the mixture and any methods for checking their presence;"

18. Rule 6.1(a)(v). The wording of this Rule is, in the Draft, as follows: "an indication of any unexpectable properties of the microorganisms dangerous to health or the environment, particularly in the case of new microorganisms."

19. Rule 6.3. The wording of this Rule is, in the Draft, as follows: "Any international depositary authority may require that the microorganism be deposited in the form and quantity necessary for the purposes of the Treaty and these Regulations and be accompanied by a form duly completed, necessary for the administrative procedures of such authority. Any international depositary authority shall communicate any such requirement and any amendments thereof to the International Bureau."

20. Rule 7.2(a). The word "designate" reads, in the Draft, as follows: "decide."

21. Rule 7.2(b). The words "or letters filled in" read, in the Draft, as follows: "or signs appearing."

22. Rule 7.3(vi). In the Draft, there is no provision corresponding to Rule 7.3(vi) of the Final Text.

23. Rule 7.4(iii). In the Draft, there is no provision corresponding to Rule 7.4(iii). Rule 7.4(iii) of the Draft corresponds to Rule 7.4(iv) of the Final Text.

24. Rule 7.6. In the Draft, there is no provision corresponding to Rule 7.6 of the Final Text.

25. Rule 8.2. The words corresponding to "Rule 8.1, deliver" read, in the Draft, as follows: "Rule 8.1, and against payment of an appropriate fee."

26. Rule 9.1. The word "furnishing" reads, in the Draft, as follows: "release."

27. Rule 10.2(a)(iii). The words corresponding to "furnished" and "furnishing of samples" read, in the Draft, respectively, as follows: "released" and "release."

28. Rule 10.2(e). The words corresponding to "an industrial property office" read, in the Draft, as follows: "the industrial property office of a Contracting State or an intergovernmental industrial property organization."

29. Rules 11.1, 11.2 and 11.3. The words "Furnishing of Samples" and "furnish a sample" read, in the Draft, as follows: "Release" and "release a sample."

30. Rule 11.1(iii). The wording of this Rule is, in the Draft, as follows: "the sample is needed for the purposes of patent procedure before a competent body of the said Contracting State or of the said organization."

31. Rule 11.1(iv). The wording of this Rule is, in the Draft, as follows: "the said competent body will use the sample and any information accompanying or resulting from it only for the purposes of its patent procedure."

32. Rule 11.3(a)(iii). The words corresponding to "the certified party has affixed his signature on a form before that office and that, as a consequence of the signature of the said form, the conditions for furnishing a sample to the certified party are deemed to be fulfilled" read, in the Draft, as follows: "the certified party has signed a form before that office and that with the signature of the said form, the conditions for release of a sample to the certified party are fulfilled."

33. Rule 11.3(b). The words "the deposits of the microorganisms" and "furnish" read, in the Draft, respectively, as follows: "the deposited microorganisms" and "released."

34. Rule 11.4(a)(i). The end of this Rule reads, in the Draft, as follows: "translation into Russian or Spanish; the details shall be regulated by the Assembly;...."

35. Rule 11.4(f). The words "the request of the authorized party," read, in the Draft, as follows: "the request, as well as of the authorized party."

36. Rule 11.4(f). The word "furnished" reads, in the Draft, as follows: "released."

37. Rule 11.4(g). The wording of this Rule is, in the Draft, as follows: "The international depositary authority having effected the release of the sample shall promptly notify the depositor in writing of that fact, as well as of the date on which the release was effected and of the name and address of the industrial property office, of the authorized party, of the certified party or of the requesting party, to whom or to which the sample was released. The said notification shall be accompanied by a copy of the pertinent request, of any declarations submitted under Rules 11.1 or 11.2 in connection with the said request and of any forms or requests bearing the signature of the requesting party in accordance with Rule 11.3."

38. Rule 11.4(f). The wording of this Rule is, in the Draft, as follows: "The release of samples referred to in Rule 11.1 shall be free of charge. Where the release of samples is made under Rule 11.2 or 11.3, any fee payable under Rule 12.1(a)(iii) shall be chargeable to the depositor, to the authorized party, to the certified party, as the case may be, and shall be paid before or at the time of making the request for release."

39. Rule 12.1(a). The wording of this Rule is, in the Draft, as follows:

"(a) Any international depositary authority may, with respect to the procedure under the Treaty and these Regulations, charge a fee:

(i) for storage;

(ii) subject to Rule 10.2(e), first sentence, for the issuance of viability statements;

(iii) subject to Rule 11.4(f), first sentence, for the release of samples."

40. Rule 12.1(c). The wording of this Rule is, in the Draft, as follows:

"(c) The amount of any fee shall not vary on account of the nationality or residence of the depositor or of any authority, natural person or legal entity requesting the issuance of a viability statement or release of samples."

41. Rule 12.2(b). The wording of this Rule is, in the Draft, as follows:

"(b) The Director General shall promptly notify all Contracting States and intergovernmental industrial property organizations of any notification received under paragraph (a) and of its effective date under paragraph (c). The said notification and date shall be promptly published by the International Bureau."

42. Rule 13. The wording of this Rule is, in the Draft, as follows:

"13.1 Form of Publication

The publication referred to in Article 2(xviii) shall be a part of the monthly periodical of the International Bureau referred to in Article 15(3) of the Paris Convention for the Protection of Industrial Property.

13.2 Contents

(a) At least in the first issue of each year an up-to-date list of the international depositary authorities shall be published, indicating in respect of each such authority the kinds of microorganisms that may be deposited with it and the amount of the fees charged by it.

(b) Full information on the following facts shall be published once, in the first issue published after the occurrence of the fact:

(i) acquisition, termination and limitation of the status of international depositary authority, and the measures taken in connection with such termination and limitation;

(ii) discontinuance of the functions of international depositary authority, refusal to accept certain kinds of microorganisms and the measures taken in connection with such discontinuance or refusal;

(iii) changes in the fees charged by the international depositary authorities;

(iv) requirements communicated in accordance with Rule 6.3 and any amendments thereof."

DMO/DC/DC/3 April 23, 1977 (Original: English)

THE SECRETARIAT OF THE CONFERENCE

Draft Statements to be included in the Records of the Budapest Diplomatic Conference (Texts resulting from the discussions of the Main Committee)

Editor's Note: This document contains the text of draft Statements to be included in the Records of the Budapest Diplomatic Conference. It is not reproduced in this volume. In the following, is indicated only the difference between this text and that contained in document DMO/DC/DC/46, reproduced on page 159 of these Records.

3. Ad Article 6. The words: "which is a similar situation would not exist in the absence of the Treaty" as appearing in document DMO/DC/DC/3 of April 23, 1977, are replaced, in document DMO/DC/46 of April 25, 1977, by the following text: "which does not exist in the absence of the Treaty and the Regulations."

LIST OF THE CONFERENCE DOCUMENTS "DMO/DC/INF"
(DMO/DC/INF/1 to DMO/DC/INF/10)

Document Number	Submitted by	Subject
1.	WIPO	General Information
2.	The Secretariat of the Conference	Composition of the Secretariat
3.	The Secretariat of the Conference	Officers and Committees
4.	The Secretariat of the Conference	First Provisional List of Participants
5.	The Secretariat of the Conference	Second Provisional List of Participants
6.	The Secretariat of the Conference	Documents of the Budapest Diplomatic Conference
7.	The Secretariat of the Conference	Addendum to the Second Provisional List of Participants
8.	The Secretariat of the Conference	Officers
9.	The Secretariat of the Conference	List of Participants
10.	The Secretariat of the Conference	Final List of Documents of the Budapest Diplomatic Conference

TEXT OF THE CONFERENCE DOCUMENTS "DMO/DC/INF"
(DMO/DC/INF/1 to DMO/DC/INF/10)

DMO/DC/INF/1 February 21, 1977 (Original: English)

WIPO

General Information

Editor's Note: This document contains general information for participants concerning the organization of the Diplomatic Conference, the documents, etc. It is not reproduced here.

DMO/DC/INF/2 April 14, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Composition of the Secretariat

Editor's Note: This document contains a list of officers and members of the Secretariat. It is not reproduced here. For the composition of the Secretariat, see page 475 of these Records.

DMO/DC/INF/3 April 14, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Officers and Committees

Editor's Note: This document contains a list of officers of the Plenary and the Main Committee and a list of the members of the Committees. For the full list of officers of the Conference, see page 475 of these Records. In the following is only reproduced the list of the members of the Credentials Committee and the Drafting Committee.

Credentials Committee: Austria, Brazil, Bulgaria, Canada, Denmark, Hungary, Indonesia, Italy, Romania, Soviet Union, Spain.

Drafting Committee: Czechoslovakia, France, Germany (Federal Republic of), Mexico, Netherlands, Poland, Senegal, United Kingdom, United States of America.

DMO/DC/INF/4 April 14, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

First Provisional List of Participants

Editor's Note: This document contains the first provisional list of participants. It is not reproduced here. For the full list of participants in the Conference, see pages 463 to 475 of these Records.

DMO/DC/INF/5 April 19, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Second Provisional List of Participants

Editor's Note: This document contains the second provisional list of participants. It is not reproduced here. For the full list of participants in the Conference, see pages 463 to 475 of these Records.

DMO/DC/INF/6 April 22, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Documents of the Budapest Diplomatic Conference (issued until April 22, 1977)

Editor's Note: This document contains the list of all the documents issued for the Budapest Diplomatic Conference until April 21, 1977. It is not reproduced here. For the full list of the Conference documents, see pages 99 to 103, 163 and 171 of these Records.

DMO/DC/INF/7 April 26, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Addendum to the Second Provisional List of Participants

Editor's Note: This document contains the addendum to the second provisional list of participants. It is not reproduced here. For the full list of participants in the Conference, see pages 463 to 475 of these Records.

DMO/DC/INF/8 April 26, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Officers

Editor's Note: This document contains a list of officers. It is not reproduced here. For the full list of officers, see page 475 of these Records.

DMO/DC/INF/9 April 27, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

List of Participants

Editor's Note: This document contains a list of participants in the Conference. It is not reproduced here. For the full list of participants in the Conference, see pages 463 to 475 of these Records.

DMO/DC/INF/10 April 27, 1977 (Original: English/French)

THE SECRETARIAT OF THE CONFERENCE

Final List of Documents of the Budapest Diplomatic Conference

Editor's Note: This document contains a final list of documents of the Budapest Diplomatic Conference. It is not reproduced here. For the full list of the Conference documents, see pages 99 to 103, 163 and 171 of these Records.

VERBATIM AND SUMMARY MINUTES

PLENARY OF THE BUDAPEST DIPLOMATIC CONFERENCE FOR THE CONCLUSION OF A TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

President: Mr. E. TASNÁDI (Hungary)

Vice-Presidents: Mr. G. HENSHILWOOD (Australia)
Mr. A. HABIB (Egypt)
Mr. E. TUULI (Finland)
Mr. H. IWATA (Japan)
Mr. G. BUDEWITZ (German Democratic Republic)

Secretary General: Mr. L. BAEUMER (WIPO)

Assistant Secretary General: Mr. G. LEDAKIS (WIPO)

First Meeting
Thursday, April 14, 1977
Morning

Opening address

Mr. BOGSCH (Director General of WIPO):

1. Mr. Minister of Health, Dr. Schultheisz, Mr. President of the Budapest Metropolitan Council, Dr. Szépvölgyi, Mr. Vice-Minister for Foreign Affairs, Mr. Szarka, Mr. President of the National Office of Inventions, Engineer Tasnádi, Honorable Delegates and Members of the Diplomatic Corps in Budapest, Honorable Representatives of governmental and intergovernmental organizations, Ladies and Gentlemen, I have the honor and the great pleasure to open this Conference, the Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. You and I shall have further opportunities to express the thanks of the World Intellectual Property Organization and of the participants in this Conference to the Hungarian authorities for the premises and the general organization of this Conference. But since several eminent and distinguished representatives of the Hungarian Government and the City of Budapest, in particular Dr. Schultheisz and Dr. Szépvölgyi, are with us today, permit me to say that the Conference premises are both beautiful and functional and that the general organization is and promises to be excellent in every respect. We are very

grateful for the attention, the care and the friendly manner in which everything has been provided to facilitate the work of the participants. It is in the true Hungarian tradition of hospitality. May I now ask Dr. Schultheisz, Minister of Health of Hungary, to address the Conference on behalf of the Hungarian Government. Dr. Schultheisz has the floor.

Mr. SCHULTHEISZ (Minister of Health, Hungary):

2.1 Mr. Director General, Distinguished Delegates, Ladies and Gentlemen, in the name of the Government of the Hungarian People's Republic, I have the honor to welcome you, the representatives of governments and international organizations, the Director General of WIPO and his collaborators, and all the participants in the Conference. We are very happy that this important international organization has accepted the invitation of the Hungarian Government and that this great and important Diplomatic Conference is taking place in Budapest. I hope it is not immodest of me to consider this fact to be at least partly a recognition of Hungary's share in the activities of the Organization.

2.2 Mr. Director General, Ladies and Gentlemen, the Government of the Hungarian People's Republic attaches great importance in its activity to the extension of international cooperation based upon equality and mutual advantages in the field of both bilateral and multilateral relations, for it is just such cooperation that will result in direct advantages for the participants and favorably influence the establishment of relations. Allow me to refer to the final document of the Helsinki Conference, which affords new prospects of European cooperation, but the importance and influence of which in fact spreads beyond the continent of Europe. Wherever possible Hungary takes the necessary steps towards the development of international cooperation. We were therefore pleased to propose Budapest as the venue for this important Diplomatic Conference. We sincerely hope that the Conference will mark an important step in the extension of international cooperation.

2.3 This Diplomatic Conference is an important stage in the development of the Paris Convention which looks back on a long successful past, and to which Hungary has been party since 1909. The Hungarian Government knows well and appreciates highly the role and importance of the Paris Convention in the utilization of the products of science and technology.

2.4 Until now, the function of the Paris Convention has been above all to promote the utilization of the latest products of science and technology for the benefit of mankind by looking for and finding solutions to the problems raised by development. The Paris Convention's aim is now still the same in helping the industrial utilization, for the benefit of mankind, of the important results that are being obtained in the field of an extraordinarily fast-developing science, namely, biology. Because of the extremely complicated and sometimes dangerous character of these biological results, their industrial utilization calls for international

regulation and cooperation. The work performed by you will have a bearing not only on progress in the field of industrial property, but also on such important problems as public health and protection of the environment.

2.5 Ladies and Gentlemen, your task is neither insignificant nor easy. I do think, however, and I hope that you will agree with me, that the draft Treaty elaborated by the experts will be an appropriate basis for the successful work of the Conference. I therefore wish to express my sincere gratitude to the experts for their work and to everybody who participated in the preparation of this Conference, the bulk of which naturally fell to the Director General and his collaborators. I hope that, when your work is finished, you will sign this Treaty, which will thus be a permanent result of international cooperation in the field of industrial property.

2.6 Finally, allow me to wish you, in the name of the Hungarian Government, much success in your work. It is my wish that you will feel as welcome in Hungary as it is our sincere pleasure and affection to have you here in our country.

Mr. BOGSCH (Director General of WIPO):

3. Thank you very much, Mr. Minister, for your welcoming words, which have placed in the proper perspective our Conference and its importance both for industrial property and for that part of industrial property which is particularly concerned with the health of the people and which you, as both Minister and practising doctor, incarnate here among us. I now have the pleasure to give the floor to the President of the Budapest Metropolitan Council, Dr. Szépvölgyi.

Mr. SZÉPVÖLGYI (President of the Budapest Metropolitan Council, Hungary):

4.1 Ladies and Gentlemen, in the name of the capital of the host country, the Budapest Metropolitan Council and the population of our capital, as well as in my own name, allow me first of all to welcome, with honor and appreciation, the members of the delegations participating in the Budapest Diplomatic Conference which opens today. I welcome especially to our capital Dr. Arpad Bogsch, Director General of WIPO. It is a special pleasure for us that your Organization, highly respected and active as it is in the field of international relations, has chosen Budapest as the place for the meeting. Until now a Diplomatic Conference in the field of industrial property has never taken place in Hungary, although the East-West Symposium, organized by the predecessor of WIPO in 1966, contributed greatly to the establishment of not only very useful but also agreeable relations between the international body responsible for industrial property and the capital of Hungary. I consider this Diplomatic Conference to be a further development in those relations, and in my opinion it is a great honor for Budapest to host this very important meeting.

4.2 The subject of this Diplomatic Conference is the International Recognition of the Deposit of Microorganisms, and its aim is to simplify and accelerate patent procedure. It is a very important event, not only for developed industrial countries but also for developing countries, struggling with the troubles of progress. The rapid pace of scientific and technological development and the permanent increase of international exchanges of goods call for constant development in the protection of industrial property. The discussion and eventual acceptance of this draft Treaty is renewed proof of successful international cooperation which ensures development in the field of industrial property and the more up-to-date satisfaction of industrial property requirements.

4.3 Ladies and Gentlemen, for a few days only you will be the guests of our capital, characterized by its extraordinary dynamic growth and its present population of 2.1 million. When you have time you will certainly take walks in the streets and squares of Budapest and you will see evidence of our efforts and achievements. You will recognize that our problems of urban development--which often have a connection with your excellent profession--are similar to those besetting the great cities of the world. I hope you will have a little time to acquaint yourselves with the old and new features of our city. You have to take into consideration the fact that people already lived on the site of Budapest before the Christian era. Celtic, Roman and Hungarian people founded a city here. In the Middle Ages several cities existed here: where we are now was the King's residence, Buda, with Pest on the opposite side of the Danube and further north, on the site of the Roman Aquincum, Obuda. The above three cities were not united until 1873, in other words 104 years ago, and it is only since then that Budapest as we know it today has been the capital of the country. Reviewing the history of our city, I have to mention that, while there were excellent periods of development, the life of the population was unfortunately not free of tragedy. At the end of the Second World War a large section of the city was in ruins and the number of inhabitants had diminished from 1.3 million to 800,000. Our bridges had been blown up and 70% of the buildings had been destroyed or damaged. A considerable part of our industrial works had been destroyed or the machinery dismantled and removed. There was hardly a vehicle left in the city. We who live here were not only witnesses to this destruction, but also witnesses to and participants in the excellent reconstruction which has taken place in our capital and country since their liberation. We are still unsatisfied with many things, of course. We know that we have to solve many tasks in connection with the city's development, the improvement of living conditions, traffic and housing, the creation of a healthier way of living and the protection of the environment. When we consider where we started from in 1945, and in the knowledge that, as a result of the Government's special attention and the understanding assistance and the work of people who love their capital, that capital is now going through

a dynamic development never experienced before, with all the attendant advantages and evolutionary difficulties, we have a feeling rather of pride than of satisfaction. I think you will appreciate this when you see our residential districts or travel on the Metro, when you cross the rebuilt Elisabeth bridge or look down from the Fishermen's Bastion or the Mountain Hármashatárhegy and see the wonderful panorama of our capital and observe the dynamic and bustling yet peaceful everyday life of our people.

4.4. Ladies and Gentlemen, I should like to assure you that you are welcomed in our country with pleasure and affection. We would be happy if the work of the Conference could allow you to acquaint yourselves with the beautiful capital of our Socialist country, the everyday life of our hospitable, gay, friendly and diligent people, with their passion for living, and the extensive cultural life of our capital. I would be pleased if you were to return and visit us privately, with your families, on the strength of your favorable impressions. It is my wish that you will perform your important tasks successfully and contribute new scientific results to the peaceful, happy, healthy, more beautiful and richer future of mankind. I wish the Conference and all the participants good results, strength and health, and a happy private life. Thank you for your attention.

Mr. BOGSCH (Director General of WIPO):

5. Mr. President, Budapest is a beautiful, dynamic and very hospitable city, and those of the delegates who have come here for the first time in their lives will soon realize the truth of this contention; moreover, we are very pleased indeed that the First Magistrate of this beautiful city has come to the meeting and honored us, with others of his colleagues in the Government, at the inauguration of this Diplomatic Conference. We know, Gentlemen at the head table, that most of you have other urgent obligations and, while thanking you very much for your presence, we shall now escort you out of this room and the meeting will resume in five minutes. Thank you for your presence.

[Suspension]

Mr. BOGSCH (Director General of WIPO):

6.1 Honorable Delegates, Ladies and Gentlemen, would you be so kind as to turn now to document DMO/DC/1 Rev., which contains our draft agenda. If somebody does not have it, let him please raise his hand and we shall provide him with it. You will see in this document that, after the opening of the Conference, the next item is the adoption of the Rules of Procedure. The Rules of Procedure are contained in document DMO/DC/2. They are of the usual, classical kind for a diplomatic conference which adopts a new treaty, as distinguished from diplomatic conferences which revise existing treaties. If you have no objection, I propose to go through this document very rapidly, calling out each Rule, and if anybody wishes to speak on it--or on any of the Rules--he or she will be given the floor.

I see no objection to this proposal. I call out Rule 1: adopted. Rule 2: adopted. Rule 3: adopted. Now we go to Chapter II, entitled "Representation;" I put Rules 4, 5, 6, 7, 8, 9 and 10 up for consideration. No remarks? Adopted. We go on to Chapter III, entitled "Committees and Working Groups." Rules 11, 12, 13, 14 and 15. No observations? Adopted. Chapter IV, entitled "Officers." Rules 16, 17, 18 and 19. No observations? Adopted. Chapter V, "Secretariat." Rule 20. No observations? Adopted. Chapter VI, "Conduct of Business." Rules 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34. No observations? Adopted. Chapter VII, "Voting." Rules 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44. No observations? Adopted. Chapter VIII, "Languages and Minutes." Rules 45, 46 and 47. No observations? Adopted. Chapter IX, "Open and Closed Meetings." Rules 48 and 49. No observations? Adopted. Chapter X, "Observers." Rule 50. No observations? Adopted. Chapter XI, "Amendments to the Rules of Procedure." Rule 51. No observations? Adopted. Chapter XII, "Final Act." Rule 52. No observations? Adopted. I declare the Rules of Procedure adopted unanimously by the Plenary of the Diplomatic Conference.

6.2 I return now to the draft agenda, where you will see that item 3 calls for the election of the President of this Diplomatic Conference. I will entertain any proposals that are made. I recognize the Honorable Delegate of the United States of America, Mr. Winter.

Mr. WINTER (United States of America):

7. The Delegation of the United States of America proposes Mr. Tasnadi as President of the Diplomatic Conference, as a man who is a recognized authority in the field of industrial property. He participated in the Stockholm Diplomatic Conference of 1967 which negotiated among other things the Convention Establishing the World Intellectual Property Organization. He also participated in the Washington Diplomatic Conference in 1970 which resulted in the Patent Cooperation Treaty, and was a very active participant in the Locarno Conference in 1968. Mr. Tasnádi has for 19 years held the distinguished post of President of the National Office of Inventions (Hungary). He is also Chairman of the important Committee for Intellectual Creation of the Hungarian Chamber of Commerce. He himself has displayed a great deal of creativity, having written numerous articles and papers in the field of industrial property. In recognition of this long and distinguished career he has been decorated with the highest State award. Mr. Director General, it is with a great deal of pleasure that the United States Delegation proposes Mr. Emil Tasnádi as President of the Budapest Diplomatic Conference.

Mr. BOGSCH (Director General of WIPO):

8. Thank you, Honorable Delegate of the United States of America. The Honorable Delegate of the Soviet Union has the floor.

Mr. GUDKOV (Soviet Union):

9. Mr. Director General, the Delegation of the Soviet Union fully supports the proposal by the Delegation of the United States of America that Mr. Tasnádi, President of the National Office of Inventions of the Hungarian People's Republic, be elected President of the Conference. Mr. Tasnádi enjoys the reputation of a great specialist among those concerned with patents throughout the world. His thorough knowledge of all aspects of patent law and of the questions that constitute the subject matter of this Conference will undoubtedly contribute to its success. Thank you.

Mr. BOGSCH (Director General of WIPO):

10. Thank you, Honorable Delegate of the Soviet Union. Does any other delegation wish to take the floor? The Delegate of the Federal Republic of Germany has the floor.

Mr. KERSTING (Federal Republic of Germany):

11. Mr. Director General, the Delegation of the Federal Republic of Germany supports the proposal that Mr. Tasnádi be elected President of the Conference.

Mr. BOGSCH (Director General of WIPO):

12. Thank you, Honorable Delegate of the Federal Republic of Germany. We have a proposal which has been seconded, and there are no other speakers asking for the floor. The proposal is that Mr. Emil Tasnádi, President of the National Office of Inventions (Hungary), be the President of this Diplomatic Conference. I see many signs of endorsement. It is therefore a great pleasure for me to declare that President Tasnádi has been unanimously elected President of the Budapest Diplomatic Conference, and I ask him to take the presidential chair.

Mr. TASNÁDI (Hungary - President of the Diplomatic Conference):

13.1 Honorable Delegates, Ladies and Gentlemen. First, I wish to thank you for the kind words said about me by the Delegates of the United States of America, of the Soviet Union and of the Federal Republic of Germany.

13.2 It is a great honor for the Government of the Hungarian People's Republic, and for myself, that I should have been elected President of the Diplomatic Conference convened for the discussion of the drafts of the Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure and of the Regulations under that Treaty.

13.3 As you know, the World Intellectual Property Organization, desiring to contribute to the development of general international cooperation within the framework of the Paris Convention, began the preparation of the Draft Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure in 1974.

13.4 In the course of this preparatory work, which was carried on from 1974 to 1976, the Committee of Experts met three times. General problems were discussed at the first meeting, while the second and third were devoted to the elaboration of the drafts of the Treaty and Regulations. The experts of the majority of the delegations present today took an active part in that work. The efficient work of those experts contributed to the creation of all the conditions necessary for the organization of this Diplomatic Conference. The success of the preparatory work is to a large extent due to the World Intellectual Property Organization, and to its distinguished Director General and his collaborators, whose professional competence and experience in the field of organization contributed greatly to the preparation of the documents and drafts that have been submitted to the Diplomatic Conference.

13.5 Personally, I am very happy that the World Intellectual Property Organization should have accepted the invitation of the Government of the Hungarian People's Republic to organize the Diplomatic Conference in Budapest, the capital of our country. This gesture could be interpreted as recognition of the Hungarian pharmaceutical industry, which has wide experience in the field of the manufacture of medicines produced with the aid of microorganisms, as well as of the action carried on in Hungary for the protection of national industry.

13.6 I am certain that the conclusion of a Treaty will to a large extent facilitate the securing of legal protection for inventions based on the use of microorganisms on the territory of all Contracting States. At present, microorganisms have to be deposited separately, with very few exceptions, in each country; under the Treaty, the Contracting Parties would grant a single receipt of deposit of the microorganisms through the intermediary of any international depositary authority. Diplomatic conferences are generally organized for the purpose of concluding international agreements of a general character. In the majority of cases, the preparations for diplomatic conferences have lasted several years and sometimes several decades. I am pleased that the preparation of this Conference has taken only three years and that we already have before us excellent drafts of the Treaty and Regulations. Such rapid work proves that we are all aware of the need for the development of collaboration in this field; moreover, the work done shows that it has been possible, in the course of the meetings of the Committee of Experts, to prepare drafts that take into account, as a rule, the interests of all countries. I am also very pleased to have been able to follow the preparatory work closely from the outset and I am certain that our work here will be crowned with success. As far as I know, the positions adopted by the various delegations in relation to the fundamental problems are identical, or at least very close to one another. We may therefore hope that any differences of opinion will be eliminated in the course of this Diplomatic Conference, which will enable us, with the aid of a new Treaty, to broaden our collaboration in the field of industrial property protection. I trust that our work in the course of the coming weeks will be profitable.

13.7 In my capacity of Delegate of the Hungarian People's Republic, the host of this Conference, I should like to express the hope that you will be able not only to accomplish good work in the course of the meetings of the Conference, but also to acquaint yourselves with our country and its capital, Budapest, and, as suggested by Mr. Szépvölgyi, President of the Budapest Metropolitan Council, to get to know the Balaton region. I hope that in that way you will be able to form a positive opinion of our country and of the life of our nation.

13.8 And now, Honorable Delegates, Ladies and Gentlemen, allow me to move on to item 5 on the agenda, which provides for the election of the Officers of the Conference and its Committees. Excuse me: first we have to rule on item 4 of the agenda. Does anyone wish to speak? Does everyone agree to adopt item 4? The Director General has the floor.

Mr. BOGSCH (Director General of WIPO):

14. Mr. President, I should simply like to say that the agenda indicates that after the adoption we should have the elections and after the elections the consideration of the first report of the Credentials Committee. In view of the fact that the Credentials Committee has not yet had an opportunity to meet, I presume you will find it in order that the first report of the Credentials Committee be heard perhaps tomorrow or at the latest on Monday, rather than immediately after item 5. So, with this reservation, I recommend that the agenda should be as in the document.

Mr. TASNÁDI (President of the Diplomatic Conference):

15.1 The question is whether someone wishes to speak on item 4 and whether everybody agrees to accept the agenda as proposed. Nobody has asked for the floor. I therefore consider the agenda to have been adopted. Thank you.

15.2 We now move on to item 5, which is the election of the Officers of the Conference and its Committees. May I propose that the Delegates of the following countries be elected to the posts of Vice-Presidents of the Conference: Australia, Egypt, Finland, German Democratic Republic, Japan, Soviet Union. Does someone wish to speak? If there are no questions, I shall continue. I propose that a Delegate of Switzerland be elected Chairman of the Main Committee and that the Delegates of Sweden, Yugoslavia and Zambia be elected Vice-Chairmen of that Committee. Are there any objections? I now propose that the Credentials Committee be composed of the Delegates of the following countries: Austria, Brazil, Bulgaria, Canada, Denmark, Hungary, Indonesia, Italy, Romania, Soviet Union and Spain. Finally, I propose that the Delegates of the following countries be elected members of the Drafting Committee: Czechoslovakia, France, Germany (Federal Republic of), Mexico, Netherlands, Poland, Senegal, United Kingdom and United States of America. Does someone wish to speak on the subject of these proposals? I note that the proposals are unanimously adopted. I now propose a ten-minute break. Thank you.

Mr. BOGSCH (Director General of WIPO):

16. The Main Committee will meet in ten minutes.

Second Meeting [Last]
Wednesday, April 27, 1977
Morning

Mr. TASNÁDI (President of the Diplomatic Conference):

17.1 Ladies and Gentlemen, allow me to welcome you to this last meeting of the Plenary. I am very pleased that even the weather is kind on this beautiful, sunny spring day, as if to symbolize its thanks for our efforts.

17.2 You are of course aware of the tasks that we have to perform today, but allow me to remind you of them once more. First, Mr. Gudkov will present us with the report of the Credentials Committee. Then we shall consider the Draft Treaty and --if you agree--hear the report of Mr. Comte, Chairman of the Main Committee. We shall then give our attention, in turn, to the Draft Regulations (document DMO/DC/48), the Draft Resolution (DMO/DC/50), and the Final Act of the Conference whose text will be distributed to you in a few moments in the course of this meeting.

17.3 I give the floor to Mr. Gudkov, Chairman of the Credentials Committee.

Mr. GUDKOV (Chairman of the Credentials Committee):

18. Thank you, Mr. President. The Credentials Committee met twice, on April 19 and 26, 1977. On those occasions, I drew up two reports, which appear in documents DMO/DC/30 (report) and DMO/DC/51 (additional report). All the delegations have these documents in their possession and I now submit them to the Plenary of the Diplomatic Conference. The Credentials Committee recommends to the Plenary of the Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure that it study those documents during this meeting. Thank you for your attention.

Mr. TASNÁDI (President of the Diplomatic Conference):

19. Thank you, Mr. Gudkov, for having presented your report. Does somebody wish to speak on the subject of this report? I note that nobody wishes to take the floor, which means that you are willing to adopt the report of the Credentials Committee. Thank you. I consider the report adopted. And now I ask Mr. Comte to be so kind as to present the report of the Main Committee to us.

Mr. COMTE (Chairman of the Main Committee):

20. Mr. President, Ladies and Gentlemen, the work of the Main Committee, which, as you know, took seven days and one half-day, resulted in the unanimous adoption of two drafts, that of the Treaty and that of the Regulations, which you have before you (documents DMO/DC/47 and DMO/DC/48). I have no particular comments to make on

these two documents, which have been discussed at great length and studied in detail. I think all the points that had to be discussed were discussed in the Main Committee and that the document which the Main Committee has the honor to submit to you is therefore a uniform and balanced whole. There are also two additional documents that our Committee submits to you: on the one hand, a draft containing explanatory statements on certain Articles of the Treaty or certain Rules of the Regulations, and, on the other hand, a Draft Resolution calling for the establishment of an Interim Advisory Committee. This, then, is very briefly the report that I am able to make to you, Mr. President, on the work of the Main Committee. It goes without saying that I am ready to give the Plenary any information it may require if there are questions to be answered. Thank you, Mr. President.

Mr. TASNÁDI (Chairman of the Diplomatic Conference):

21. Thank you, Mr. Comte. I should like to ask the Plenary if it is willing to adopt document DMO/DC/47, containing the draft of the Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. Does anyone wish to speak? Are you prepared to adopt this document? May I now ask you whether you are prepared to adopt the text of the Regulations of the Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure in document DMO/DC/48. Does anyone wish to speak? As no one has asked for the floor, we are prepared to adopt these documents. Adopted. Finally, may I ask you if you are prepared to adopt document DMO/DC/49 containing the Draft Statements to be included in the Records of the Budapest Diplomatic Conference. Does anyone wish to speak? I note that no one has asked for the floor and that the Plenary is prepared to adopt this document also. We are now going to consider the question of the adoption of the Draft Resolution contained in document DMO/DC/50. Once again, I ask you if you are prepared to adopt it. I note that everybody is prepared to adopt this document also. Adopted. We have just received the text of the Final Act. I propose that the meeting be suspended for five minutes so that we may read it. We shall resume our discussions after the break.

[Suspension]

Mr. TASNÁDI (President of the Diplomatic Conference):

22. We have all had the opportunity to read the text of the Final Act. I wish to draw your attention to the fact that it is customary to adopt a Final Act for each diplomatic conference even though it does not have any legal effect. I ask you then to consider this Final Act in the light of what I have just said. I also wish to draw your attention to the fact that tomorrow two documents may be signed, according to the wish of each delegation. The first is the text of the Treaty itself, containing the Regulations, the Resolution and the Statements. The second document contains the Final Act of the Conference. Each delegation may sign either both documents or only one of the two, namely, the Final Act. May I

now ask you, Honorable Delegates, whether you have any observations to make on the subject of the Final Act and whether anyone wishes to speak, or alternatively whether you are prepared to adopt the text of the Final Act. The Delegate of Romania has the floor.

Mr. STOENESCU (Romania):

23. Thank you, Mr. President. I refer to the last lines of the Final Act which read as follows: "The Treaty was opened for signature at Budapest on April 28, 1977." Yet Article 18.2) of the Treaty states that the Treaty will be open until December 31, 1977. It seems to me that there is a slight discrepancy here.

Mr. BOGSCH (Director General of WIPO):

24. The Treaty may be signed up to the end of the year but the Final Act may be signed only tomorrow. The last sentence says only: "The said Treaty was opened for signature at Budapest on April 28, 1977." I think that the Final Act, as presented here, corresponds both to reality and to the traditions of diplomatic conferences. Thank you.

Mr. TASNÁDI (President of the Diplomatic Conference):

25.1 Does this satisfy the Honorable Delegate of Romania? Thank you. Does anyone else wish to speak? Nobody else has asked for the floor, which means that we have all adopted the text of the Final Act.

25.2 Ladies and Gentlemen, as you see, we have achieved good results and we shall soon have reached the end of the last meeting of the Plenary. The delegations have participated actively and constructively in the debates that have been going on for two weeks in Budapest, the capital of our country. We have adopted the documents that mark the completion of our work. Allow me, in my capacity of President of this Conference, and also on behalf of the Government of the Hungarian People's Republic, to convey my thanks to the members of all the delegations, and in particular to Mr. Comte, who presided over the Main Committee in a remarkable way. He has shown us that he is not only an eminent specialist on the subject, but also a man and a colleague possessed of the highest qualities. I also wish to thank Mr. Davis, Chairman of the Drafting Committee, whom we have known well for a long time and who has also shown us how such a difficult task should be carried out to a successful conclusion. Finally, allow me to address our thanks to Dr. Bogsch, Director General of WIPO, and to all his collaborators, who, with their competence and their rapid and efficient work, contributed greatly to the ultimate success of the Conference and the adoption of the Treaty. I wish to express our thanks to all the interpreters who helped us overcome the differences between our many languages, and also to all the technical staff for their hard work. I am certain that the conclusion of this Treaty will contribute to a great extent to the provision of legal protection, on the territory of each of the countries that have taken part in the Conference, for inventions based on the use of micro-

organisms. This Treaty will, we hope, promote the industrial application of such inventions, and will make their legal protection possible. I believe the conclusion of the Treaty represents a considerable step forward along the path of collaboration under the auspices of WIPO. It gives me personally great pleasure that a Diplomatic Conference held with the participation of the Socialist countries should have taken place for the first time in our country, Hungary, and should have achieved such good results with the conclusion of so important a Treaty. I think that we can all be pleased with such a constructive spirit, and with the efforts made in the interests of reaching agreement and mutual understanding in the course of the discussions, efforts which are largely responsible for the positive results of our work.

25.3 I hope that, apart from the important work that we have just accomplished, you have had the opportunity of acquainting yourselves with the work and achievements, traditions and future plans of Budapest, our capital, and of making the acquaintance of our country and our people. I hope that, on the whole, your impressions are positive, and that you have been conscious of the hospitality of our nation. Please keep these memories in mind. Once again I thank you for your work and, even though we shall meet again tomorrow during the signing ceremony, I wish you all, here and now, a pleasant return to your respective countries, continued success in your work and happiness in your private lives. I wish you success in your professional life and in your contribution to the development of your industry, in the interests of your nations and of mankind as a whole. Thank you for your attention.

Mr. DAVIS (United Kingdom):

26.1 Thank you, Mr. President. It now becomes the turn of the delegates to address you their thanks. I may be taking a little upon myself in speaking in their name, but I think the fact that the United Kingdom played a small part at the beginning of this perhaps gives me a right to speak on behalf of all of us. We will keep the happiest memories of Budapest. There are various things that have happened here which we will not forget. Behind the scenes there are the arrangements for the Conference. They have been unobtrusive and efficient, but we would like you to know that we realize only too well the amount of effort that goes into this sort of thing. The harassments, the difficulties, they all have to be cleared before you can run a successful conference. We know that you have done it and we are grateful to you for having done it, and particularly grateful to your staff who have worked with you.

26.2 So much for the Conference. We come now to the hospitality and kindness which we have received everywhere in Budapest. We have been overwhelmed with hospitality and everyone has shown us such consideration that really we can go home with nothing but the warmest memories. I think that the words you have addressed to me personally are perhaps a shade too kind, but, should you care to transcribe them, I shall send them home to my authorities.

26.3 I would therefore just close by saying, on behalf of the delegations here, thank you again, and may we wish the Hungarian Delegation and the Hungarian people the same pleasures that you wished to us.

Mr. TASNÁDI (President of the Diplomatic Conference):

27. Thank you, Mr. Davis, for your very kind words. Does anyone else wish to speak? The Delegate of Romania has the floor.

Mr. STOENESCU (Romania):

28.1 Mr. President, Ladies and Gentlemen, the work of the Budapest Diplomatic Conference is nearing completion. The proposal made by the United Kingdom four years ago has materialized with the conclusion of the Budapest Treaty on the Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. The Paris Convention has thus been given a useful complement in the form of a number of regulatory provisions in a particularly important field.

28.2 Allow me, Mr. President, in the name of the Delegation of Romania, to address the warmest and most sincere congratulations to Mr. Comte, Chairman of the Main Committee, for the competence and objectiveness with which he has conducted the debates of this Diplomatic Conference, which were sometimes difficult. At the same time, we address our sincerest congratulations to the Director General of WIPO, who, throughout our work, has gratified us with his well-known competence, making remarkable observations and suggestions with a view to devising the best solutions to the delicate problems that we sometimes had to face. We express our gratitude to the Drafting Committee and to the Secretariat of the Conference, which made a major contribution to the elaboration of the drafts of the Treaty and the Regulations in such a way as to become a uniform whole with clear texts adopted almost entirely by unanimous consent.

28.3 In conclusion, we are particularly keen on expressing our sincere and heart-felt gratitude to the Hungarian Government for the very warm welcome extended to the Conference in this wonderful city of Budapest. In particular, we thank Mr. Tasnádi and all his collaborators at the National Office of Inventions (Hungary) for their remarkable efforts, so happily crowned with complete success. We trust that we shall see our kind hosts soon again, and we wish the delegations present here a safe return. Thank you, Mr. President.

Mr. TASNÁDI (President of the Diplomatic Conference)

29. Thank you, Honorable Delegate of Romania. The Delegate of Austria, Mr. Leberl, has the floor.

Mr. LEBERL (Austria):

30.1 Thank you, Mr. President. At the end of this Conference, which has dealt with a relatively narrow subject matter, though one of great significance for the

development of technological progress and for industry as such, it seems to be the right moment to look back, on the one hand, and, to be hopeful for the further development of this special area of industrial property, on the other hand. Looking back, Mr. President, it can be said that these two weeks in Budapest have shown clearly how much consideration and reflection is necessary in order to put together, stone by stone, something which is of real and practical value. In this context, we should mention and express our appreciation to those who have prepared the basis for this Diplomatic Conference. Special gratitude should be expressed to the International Bureau of WIPO and in particular to its Director General, Dr. Bogsch, for drafting the Treaty and Regulations before, during and after the negotiations of this Conference. The Director General himself has the merit of having shown and ultimately found the right way out of some difficult situations during the Conference. We should in addition express our gratitude to the President of the Conference, Mr. Tasnádi, and to the Chairmen of the Drafting Committee and the Credentials Committee, and especially to Mr. Comte for his excellent and impartial chairmanship of the Main Committee. Furthermore, we should like to thank all the delegations for the good cooperation which allowed unanimous decisions to be reached on all the important aspects of the Treaty.

30.2 In its opening address, the Austrian Delegation stated that a journey to the capital of Hungary was more than just a visit to a neighbor. The cordial atmosphere of this Conference has proved that we had not been expecting too much. For that, a special word of thanks to our hosts. The hospitality of the Government of the Hungarian People's Republic and the hospitality and kindness of the Hungarian people, of the officials of the competent Hungarian authorities and of the capital of Hungary, one of the most charming cities of Europe, have contributed in a rather special manner to the achievements and the excellent results of the Conference.

30.3 For reasons laid down in the Austrian Constitution, the Austrian Delegation is not in a position to sign the Treaty at the end of this Conference, but it will sign the Final Act. Nevertheless, we expect that the Treaty will be signed in the near future after the necessary administrative steps have been taken. Our best wishes to Hungary and to the Hungarian people. Thank you, Mr. President.

Mr. TASNÁDI (President of the Diplomatic Conference):

31. Thank you, Honorable Delegate of Austria, for your kind words. I am particularly pleased that it should be the Delegate of a neighboring country who has spoken them. I give the floor to the Delegate of the Soviet Union.

Mr. KOMAROV (Soviet Union):

32.1 Our Delegation fully shares the feelings of sincere and heartfelt thanks towards our Hungarian hosts, and towards Mr. Tasnádi personally and the Officers of the Conference and its Committees. I wish to thank separately Mr. Comte, who took upon himself an enormous burden in accomplishing this work, and the Directorate of the International Bureau and its technical staff, who did their utmost within the limits of their competence to ensure the smooth organization of the Conference, thereby contributing to its ultimate success.

32.2 From our point of view--like that of the other delegations--the Conference has been completed successfully. This result deserves to be underlined, among other things because this Conference may be regarded as constituting an excellent example of profitable international collaboration in the industrial property field, and within the specific areas of inventive activity and rationalization.

32.3 In conclusion, I wish to thank our Hungarian hosts for their excellent welcome and for their hospitality; I thank also all the delegates for their substantial collaboration and wish all the delegations a safe return to their respective countries. Thank you, Mr. President.

Mr. TASNÁDI (President of the Diplomatic Conference):

33. Thank you, Mr. Komarov. Does anyone else wish to speak? The Delegate of France has the floor.

Mr. GUERIN (France):

34.1 Mr. President, first, I have to present to you and to the Conference the apologies of Mr. Vianès, Head of the Delegation of France, who, having been detained at the last minute in Paris, was not able to attend today but will be here tomorrow for the signature of the Treaty. This Treaty is useful: it concerns an aspect of the protection of inventions which at present is in full development--speaking of microorganisms, I should say in full mutation. It has been said that the law follows life but, in this case, the Treaty to some extent precedes these developments for which national legislation has not yet provided. Therefore, when we amend the French law on inventions, we shall take account of the Treaty and its various Rules. This Treaty, which brings into play the collaboration of bodies and institutions of different countries, is also an important step forward in international cooperation.

34.2 Mr. President, Ladies and Gentlemen, the fact that we have been able to adopt here the Treaty and its Regulations is, in my opinion, due, to a large extent, first to the spirit of understanding and compromise shown by all the delegations and, second, to the kindly yet firm manner in which Mr. Comté, the Chairman of the Main Committee, conducted the debates. It is due also to Dr. Bogsch, the Director General, who, whenever a difficulty arose, found the right solution without striking a blow. It is due also to the Chairman of the Drafting Committee, Mr. Davis, who has enabled us to ensure the harmonization of the texts of the Treaty. It is due finally to the Secretariat which has efficiently carried out a difficult task.

34.3 Finally, Mr. President, our Delegation wishes to thank you personally, as President of the Conference and President of the National Office of Inventions (Hungary), and to ask you also to convey our thanks to your Government for the magnificent hospitality extended to us in this wonderful city of Budapest. Thank you, Mr. President.

Mr. TASNÁDI (President of the Diplomatic Conference):

35. Thank you, Honorable Delegate of France. The Delegate of Italy has the floor.

Mr. PAPINI (Italy):

36. Thank you, Mr. President. The Delegation of Italy wishes to endorse wholeheartedly the thanks addressed to the authorities, the Director General, the Secretariat and the city authorities; I should also mention, however, that the participation of the Delegation of Italy in this work and the signature that I will affix on the new instrument tomorrow are the signal for more active, more intense involvement on the part of both the Italian government authorities and Italian industry in a sector that is of ever greater interest and one which, in future, will have ever greater importance.

36.2 Mr. President, I would ask you to convey on our behalf to the Hungarian authorities our thanks for putting at our disposal the magnificent premises in which the Conference has been held in this beautiful and famous city of Budapest; for me it has been a revelation, because I knew Budapest only superficially through my reading. Thank you, Mr. President.

Mr. TASNÁDI (President of the Diplomatic Conference):

37. Thank you, Honorable Delegate of Italy. The Delegate of Norway has the floor.

Mr. NORDSTRAND (Norway):

38.1 Mr. President, Norway, being a small country, has always been highly interested in efforts towards developing cooperation between independent States. Such cooperation very often has professional reasons as its starting point, but at the same time it benefits mutual understanding. The Treaty which we have just agreed upon is in fact one of the milestones on the road towards the mutual trust and confidence which, as we all know, is the necessary condition for consolidating a peaceful future for mankind. I am glad to be able to state that my Delegation is very satisfied with the final text of the Treaty and we are ready to sign it. We wish to congratulate WIPO and the Conference, and all those who have borne the burden of the work before and during the Conference, on the excellent results of their deliberations. Last, but not least, Mr. President, my Delegation wishes to thank the host of this Diplomatic Conference, the Hungarian Government, and you, Mr. Tasnádi, the President of the Conference, as well as your colleagues, for the unforgettable days in Budapest, this famous capital in the heart of Europe and its beautiful surroundings. Thank you, Mr. President.

Mr. TASNÁDI (President of the Diplomatic Conference):

39. Thank you, Honorable Delegate of Norway. The Delegate of the Federal Republic of Germany has the floor.

Mr. DEITERS (Federal Republic of Germany):

40.1 Thank you, Mr. President. On behalf of the Delegation of the Federal Republic of Germany, I wish to join other delegations in expressing our appreciation of the outstanding hospitality of the Hungarian Government. The members of my Delegation are deeply impressed by the warm friendliness and the help we have received everywhere in this beautiful and, at the same time, historical and modern capital of Budapest. This Delegation would also like to associate itself with the expressions of gratitude for the excellent work of the Secretariat and its collaborators, who had to work very hard in order to make the text of the Treaty available in time.

40.2 This meeting should not close its deliberations here today without thanking you also, Mr. President, most sincerely, for conducting the proceedings of the Plenary. Our special thanks, Mr. President, are also due to the Chairman of the Main Committee--it is in fact largely thanks to the excellent manner in which he presided over that Committee and to the valuable support of the Director General of WIPO that the result of this Conference is the text of a Treaty which is ready for signature tomorrow.

40.3 The Delegation of the Federal Republic of Germany would like to express its satisfaction that it has been possible to bring this Conference to a successful conclusion. It certainly has not been an easy matter to achieve this success. The Delegation is therefore all the more pleased that the traditional spirit of cooperation and willingness to compromise that has long characterized deliberations in the field of international protection of industrial property has again succeeded in overcoming all difficulties. We are convinced that the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure is an acceptable compromise and is so conceived as to ensure a practical procedure for patents involving microorganisms, which is a special field of increasing importance. We are sure that the Treaty will on the whole stand the crucial test of practice. Its real practical significance will definitely depend on the number of States which accept it. We hope that many States will be able to do this. For its part, the Federal Republic of Germany is willing to sign the Treaty tomorrow. Thank you, Mr. President.

Mr. TASNÁDI (President of the Diplomatic Conference):

41. Thank you, Honorable Delegate of the Federal Republic of Germany. The Delegate of the United States of America has the floor.

Mr. WINTER (United States of America):

42. Thank you very much Mr. President. I will be very brief. May we say that, on behalf of my Government, we wish to express our wholehearted agreement with all the praise and the very nice things that have been said about you and your Government, all of which have contributed to the success of this Conference. I had the honor to nominate you as President of this Conference and, at the close of the Conference, I want to say, completely and sincerely, that you and your

Government have made a major contribution to its success. As has been indicated by some of the earlier speakers, the principal work was done in the Main Committee. But the real work of this Conference, the foundation for it, was laid in the many months of hard work beforehand that you, the National Office of Inventions (Hungary), your associates and your Government as a whole contributed. We sincerely congratulate you, personally, as an old friend, and I would like to say that this Treaty is acceptable to the United States of America and we will sign it tomorrow. Thank you.

Mr. TASNÁDI (President of the Diplomatic Conference):

43. Thank you, Honorable Delegate of the United States of America. The Delegate of Spain has the floor.

Mr. VILLALPANDO (Spain):

44.1 Mr. President, the Delegation of Spain fully endorses the words of congratulation and gratitude addressed by the previous speakers to you, as President, and to the Chairmen of the Main Committee and the Drafting Committee for the magnificent task accomplished by them. We are also pleased to congratulate all the staff of the Secretariat, headed by Dr. Bogsch, the Director General of WIPO.

44.2 Mr. President, the Delegation of Spain is gratified by the favorable outcome of the work, which represents a new success in the field of international cooperation in the field of patents. My Delegation intends to sign the Treaty tomorrow.

44.3 Before ending, I wish to express our sincere gratitude to the Hungarian authorities and to the city of Budapest for the cordiality and kindness shown by them. Thank you.

Mr. TASNÁDI (President of the Diplomatic Conference):

45. Thank you, Honorable Delegate of Spain. The Delegate of Finland has the floor.

Mr. TUULI (Finland):

46.1 Mr. President, it is no wonder that this Conference, held in the beautiful surroundings of Budapest and with the friendly spirit shown by the kind Hungarian people and their hospitality, should have succeeded as completely as it now has done. The Finnish Delegation would like to thank the Hungarian Government and you, yourself, Mr. President, as well as your Hungarian colleagues, and to convey our best wishes to our relatives, the people of Hungary. The excellent final result of our Conference was very much due to the careful and spirited preparatory work done by WIPO, but also to the ability and dedication of the Secretariat of WIPO during the Conference. To the Director General we express our deepest appreciation, since it is he with his skilful motions and settlements that led us to accept the Treaty unanimously. Let us also not forget the abilities of the Chairmen of the Committees, and especially the Chairman of the Main Committee: his work is of the highest merit.

46.2 Mr. President, the Finnish Delegation will sign the Treaty tomorrow. Thank you, Mr. President.

Mr. TASNÁDI (President of the Diplomatic Conference):

47. Thank you, Honorable Delegate of Finland. The Delegate of the Netherlands has the floor.

Mr. van WEEL (Netherlands):

48.1 Mr. President, the Dutch Delegation came here with the hope that an instrument would be created which would be helpful to our industries in the field of microbiology. Now that the Conference is over, we can say that we have achieved a result which is entirely positive, and it is to be expected that this Treaty will lead a prosperous life for the benefit of future applicants for patents in the field of microbiology. This result, Mr. President, is due in the first place to the sense of collaboration of the delegations of all countries present at this Conference, and to the excellent conduct of the debates by the Chairman of the Main Committee.

48.2 This success is however also due to a great extent to the efforts of WIPO, which I wish to thank particularly for all the work done before and during the Conference.

48.3 We also wish to extend our thanks to you, Mr. President, and to the Hungarian Government, which received us in such a magnificent and charming way in beautiful Budapest. The Dutch Delegation will go home tomorrow, after having signed the Treaty, with the best possible memories of this Conference. Thank you, Mr. President.

Mr. TASNÁDI (President of the Diplomatic Conference):

49. Thank you, Honorable Delegate of the Netherlands. The Delegate of Sweden has the floor.

Mr. JONSON (Sweden):

50.1 Thank you, Mr. President. I cannot add much to all the eloquent speeches that have been made here by the different delegations. The Swedish Delegation does, however, wish to associate itself wholeheartedly with all the words of thanks that have been spoken here. I may add that, for constitutional reasons, Sweden will not sign the Treaty tomorrow, but we are convinced that the Swedish Government will decide to sign it within a short time. Thank you.

Mr. TASNÁDI (President of the Diplomatic Conference):

51. Thank you, Honorable Delegate of Sweden. The Delegate of Switzerland has the floor.

Mr. COMTE (Switzerland):

52.1 Thank you, Mr. President. First, I wish to say to you, Mr. President, Ladies and Gentlemen, how much I have appreciated the words of thanks addressed to me. At the beginning, when I took on this task, I said that I would endeavor to fulfill it objectively and efficiently. Your words show me, I think, that this aim has been achieved. The Delegation of Switzerland wishes to endorse all that has been said, the words of thanks to the Director General and all his collaborators, and above all the thanks addressed to our Hungarian hosts, to the Government and Delegation of Hungary, to our President, Mr. Tasnádi, and to the authorities of the city of Budapest, which we have come to know and which has left us with the warmest memories.

52.2 The Delegation of Switzerland already mentioned in its first declaration the importance that it attaches to this Treaty, an importance which has nothing to do with the number of inventions it concerns, but derives rather from the fact that the inventions it does concern have a bearing on the health of mankind, and, perhaps tomorrow, will enable difficult problems in the food context to be resolved. We think the results achieved by this Conference are satisfactory in all respects, and we believe that the Treaty we have produced will be important also on account of the fact that even before its entry into force--and this is something we are convinced of--it will inspire national and regional legislations and patent office practice. With all this in mind, Mr. President, the Delegation of Switzerland declares itself to be in agreement with the texts that we have adopted today. Thank you, Mr. President.

Mr. TASNÁDI (President of the Diplomatic Conference):

53. Thank you, Honorable Delegate of Switzerland. The Delegate of Australia has the floor.

Mr. HENSHILWOOD (Australia):

54.1 Thank you, Mr. President. I would like to express the gratitude of my Delegation for the very considerable preparatory work that you and your colleagues must have carried out to make this Conference possible. I would like to congratulate you as well as the Secretariat of WIPO for the smooth way in which the Conference has been conducted.

54.2 I would like to add my thanks for the very generous hospitality that you and the various Hungarian institutions have extended to the delegates at this Conference. Speaking personally, I am very grateful for the opportunity to visit your country and to meet your very friendly people. I will take back with me to Australia some happy memories of the two weeks I have spent here.

54.3 I am particularly pleased for the absence of any major disputes in the course of the Conference that would have required me to obtain instructions from my Government. As Australia is nine hours ahead of the time of day in Budapest, I would have found that my colleagues in Australia had gone to bed by the time I had to speak to them. I thank you.

Mr. TASNÁDI (President of the Diplomatic Conference):

55. Thank you, Honorable Delegate of Australia. The Delegate of Japan has the floor.

Mr. IWATA (Japan):

56.1 Thank you, Mr. President. Japan offers its congratulations on the adoption of this Treaty. It is a symbol of international cooperation in the field of industrial property.

56.2 The Delegation of Japan first expresses sincere thanks for the kindness and hospitality extended to us by the Hungarian Government and the Hungarian people, who arranged this Conference so beautifully and created such a warm and friendly atmosphere. That is why this Conference has been brought to a completely successful conclusion.

56.3 I also appreciate the magnificent efforts and remarkable work of the President, the Director General, Mr. Comte as Chairman of the Main Committee, Mr. Davis as Chairman of the Drafting Committee, the Secretariat and the interpreters, and I should particularly like to thank Mr. Baeumer and Mr. Ledakis for cooperating and assisting me in many respects. In that way I was able to complete my task at this Conference. We shall go back home with the warmest memories of Budapest. Thank you, Mr. President.

Mr. TASNÁDI (President of the Diplomatic Conference):

57. Thank you, Honorable Delegate of Japan. The Delegate of Denmark has the floor.

Mr. SKJØDT (Denmark):

58.1 Thank you, Mr. President. Allow me to join the previous speakers in expressing my gratitude for the satisfactory results we have obtained at this Conference. My Delegation is prepared to sign the Treaty tomorrow.

58.2 May I express my thanks for the very efficient way in which you have carried on this work, and I should like to say the same to the Secretariat and to the Director General of WIPO.

58.3 Finally, I want to thank you, Mr. President, for the very happy days we have spent here in the Hungarian capital, for the great friendliness that has been shown us and the hospitality we have received from everybody in this charming city. Thank you.

Mr. TASNÁDI (President of the Diplomatic Conference):

59.1 Thank you, Honorable Delegate of Denmark.

59.2 Now, Ladies and Gentlemen, after all your kind remarks, allow me to remind you that the signature of the Treaty and the Final Act will take place in this room at 12.30 p.m. tomorrow.

59.3 I hereby declare the Budapest Diplomatic Conference closed.

MAIN COMMITTEE
OF THE BUDAPEST DIPLOMATIC CONFERENCE
FOR THE CONCLUSION OF A TREATY
ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS
FOR THE PURPOSES OF PATENT PROCEDURE

Chairman: Mr. J.-L. COMTE (Switzerland)

Vice-Chairmen: Mr. G. BORGGÅRD (Sweden)
Mr. V. DJUKIĆ (Yugoslavia)
. ... (Zambia)

Secretary: Mr. F. CURCHOD (WIPO)

First Meeting
Thursday, April 14, 1977
Morning

General Debate

60.1 The CHAIRMAN declared open the first meeting of the Main Committee. He said how much he appreciated the honor shown to him by the delegates in choosing him as Chairman of the Main Committee and promised to be worthy of the Conference.

60.2 After giving certain details concerning the organization of work, the Chairman opened discussion on the draft Treaty and Regulations prepared by the International Bureau of WIPO. He recalled that the discussion usually commenced by a general debate during which delegations made their views known.

61.1 Mr. PUSZTAI (Hungary) welcomed the Chairman on behalf of the Delegation of the host country and expressed the hope that the work accomplished under his wise guidance would lead to a successful conclusion. His country was particularly interested in the protection of microorganisms and he was therefore very happy that the Conference was meeting in Hungary. He complimented the International Bureau of WIPO on the preparation of the documents which were to serve as the basis for discussion.

61.2 He stated that his Delegation reserved the right to make its comments on the said documents at the appropriate time and declared that it would do its utmost to ensure the success of the Conference.

62. The CHAIRMAN thanked the Delegate of Hungary for the kind words addressed to him and gave the floor to the Delegate of Switzerland.

63.1 Mr. BRAENDLI (Switzerland), on behalf of his Delegation, thanked the Government of Hungary for acting as host to the Conference and for creating an atmosphere propitious to a successful conclusion. He also expressed his gratitude to WIPO, its Director General and his staff for the meticulous preparation of the documents submitted to the delegates.

63.2 He recalled that the Swiss Delegation had actively participated in the preparatory work for the Conference and had thus been able to study the problems in detail and to define the general outlines of a solution. He expressed the hope that the Conference could adopt the main points arising out of the preliminary discussions and that the success of the future Treaty would not be compromised by casting doubts on its basic concepts. The Treaty dealt with a very specialized field. National rights had not always advanced at the same speed as technical developments; therefore, it was important to adopt provisions which could enter into force without compelling member States to modify their substantive law beforehand. It would, in fact, be illusory to prescribe international solutions in those cases where national rights themselves had not yet been codified. For the Delegation of Switzerland, the central element of the Treaty remained the unification of the conditions of form which a deposit of a microorganism must satisfy in order to be properly carried out, universally recognized and available to those having the right to it. Even on this level, the Delegation of Switzerland could only support articles and rules which were both easily applicable in practice and acceptable to depositors, because the establishment of a perfect but complicated system would be a step in the opposite direction. Inventors would not use such a system and would either continue to effect deposits according to national requirements or would keep their inventions in that field secret, to the detriment of universal technical development in a sector where progress was beneficial to health and nutrition. The Delegate of Switzerland declared that it was in this spirit that, bearing the above points in mind, his Delegation hoped that the Conference would reach a successful conclusion.

64.1 Mr. KERSTING (Federal Republic of Germany) noted that great progress had been achieved concerning a system for the international protection of patents and he cited the Patent Cooperation Treaty (PCT and the Convention on the Grant of European Patents. Those instruments served the interests of inventors and the promotion of the national economy in those States which were party to them because their main objectives were to strengthen protection in the industrial property field, to facilitate patent procedure, to lower costs and to avoid duplication of work in patent offices. He stated that his country had always been committed to such objectives and had therefore endeavored to further international cooperation in the field of patents. Based on the experience gained in the German Patent Office, the Federal Republic of Germany had supported the efforts made by WIPO in order to draw up a treaty on the international recognition of the deposit of microorganisms for the purposes of patent procedure.

64.2 He thanked the Director General of WIPO, his staff and the experts from governments and international organizations who, in only three preparatory sessions, had prepared and submitted a draft in so short a time whose essential elements already had the support of his Government. The Delegate of the Federal Republic of Germany pointed out that any amendments proposed by his Delegation would be aimed at improving the procedures envisaged in the draft Treaty and that, in view of the legal situation in each country, one would have to become resigned to the fact that questions in relation to the deposit of microorganisms would continue to be resolved by national law. Based on the results of the preparatory work, he expressed the hope that international cooperation in that particular field would once again prove its worth and that the discussions would result in the adoption of a treaty to which as many States as possible would accede.

64.3 He concluded by expressing his gratitude to the Hungarian Government for organizing the Diplomatic Conference in Budapest, a city in which several important meetings on the protection of microorganisms had already taken place.

65.1 Mr. FRESSONNET (France) wished first of all to thank the Hungarian authorities for acting as host to the Conference in Budapest, one of the most beautiful European cities of high renown and great traditions. His first contact with the city had considerably impressed him. He then underlined the Chairman's skill in conducting the debates and he was certain that the Chairman would succeed in submitting a text for the Treaty which would be acceptable to all.

65.2 He warmly congratulated the Director General of WIPO for the way in which the draft text had been submitted to the delegates. He repeated that his Delegation was always prepared to take part in international cooperation in the field under discussion and that it had come to Budapest with the intention of signing the text which, as important as it was, represented, as it were, a follow-up to the PCT; it was of the same nature and was aimed at facilitating the obligations devolving on depositors and simplifying the tasks of national authorities. In his opinion, it was an agreement on procedure and none of its provisions could prevent the application of national law with regard to the substance. In the opinion of the Delegation of France, the draft Treaty contained a certain number of provisions which should be amended and those were essentially to be found in Article 5 on Export and Import Restrictions, which supplanted national provisions. That Article clearly stated that the regulations did not apply, or only applied subject to certain conditions. In the case of France, such provision would require parliamentary approval. The Delegation of France did not wish to follow such a course and preferred to remain at the level of procedural regulations. For that reason, it had submitted a certain number of draft amendments and it hoped that the reasons underlying its remarks would be convincing to the delegates.

65.3 Having made the above comments of a general nature, the Delegate of France wished the Conference every success in its work.

66. The CHAIRMAN stated that the amendments proposed by the Delegation of France had been submitted to the Conference Secretariat, which was preparing a document to be distributed shortly.

67.1 Mr. LEBERL (Austria) congratulated the Chairman on his election to the Chair of the Main Committee. He noted that the Diplomatic Conference, which was meeting in Budapest under the Presidency of Mr. Tasnádi, bore witness to the pioneering role played by Hungary in the international development of patent procedures and problems relating to the use of microorganisms. For his Delegation, the journey to the capital of Hungary was more than just a visit to a neighbor, it was a welcome occasion to renew and intensify their close human and cultural relations, based on several centuries of common history. The Delegate of Austria expressed his gratitude to the Hungarian Government for their kind invitation and for the hospitality enjoyed by the delegates and affirmed his conviction that the Conference, the goal of which was to fill a gap existing in the legal instruments assuring the protection of industrial property, would achieve success in the atmosphere of international understanding which prevailed. Austria had a long-standing tradition and a well-developed national administration in the patent field and, recognizing the importance of the Conference's aims, it had actively participated in the preparatory work. The establishment of international legal provisions concerning certain problems in patent procedure, in conformity with Article 19 of the Paris Convention, could be considered a significant step forward for international cooperation in the field of industrial property.

67.2 The Delegation of Austria drew attention to the important role played by WIPO and its International Bureau in preparing the documents for discussion. His Delegation would make its remarks concerning specific points in the draft Treaty and Regulations during the discussions which would follow.

68.1 Mr. WINTER (United States of America), on behalf of his Delegation, expressed his sincere gratitude to the Hungarian Government for acting as host to such an important Conference and he was convinced that, under the skillful leadership of the Chairman of the Main Committee, the Conference would be a success. He congratulated WIPO and its Director General, Dr. Bogsch, for the excellent preparatory work accomplished before the Budapest Diplomatic Conference.

68.2 The Delegate of the United States of America recalled that, at present, no international treaty existed governing the deposit of microorganisms with a view to obtaining patents. Microbiological inventions were of growing importance in the pharmaceutical, food and chemical industries. National laws currently determined whether or not a deposit must be made as a condition for receiving a patent. Where protection for an invention involving the use of a microorganism was sought in a number of countries, the complex and costly procedures for the deposit of

such a microorganism had to be undertaken and repeated in each of those countries. Bearing that fact in mind, he recalled that in 1973 the United Kingdom had suggested that WIPO should study the problem. In September 1973, the Executive Committee of the Paris Union had approved the proposal and three successful preparatory meetings had taken place before the current Diplomatic Conference was convened.

68.3 The Delegate of the United States of America took the opportunity to mention a few problems which his Delegation deemed important. While noting that the draft Treaty enjoyed the full support of the Government of the United States of America, he mentioned Article 6, which was the keystone of the entire Treaty, and Article 5, to which his Delegation would propose certain amendments. The said Treaty would set up an international system to approve depositary authorities and the deposits therein--in conformity with the disclosure requirements of each country party to the Treaty--and to ensure the maintenance of the highest standards by depositary institutions and the acceptance by member States of deposits made with depositary authorities recognized at the international level In conclusion, the Delegate of the United States of America stated that, if the Treaty were adopted, it would follow the important precedents set by the Patent Cooperation Treaty (PCT) and the Trademark Registration Treaty (TRT) in furthering international cooperation and in the search for simplified procedures in the international field of industrial property.

69.1 Mr. VILLALPANDO (Spain), on behalf of his Delegation, congratulated the Chairman on his well-merited election to the Chair of the Main Committee and expressed his conviction that the Chairman's personal qualities would be a decisive factor in the finalization and adoption of the Treaty before the Diplomatic Conference. He also expressed the gratitude of the Government of Spain and the members of his Delegation to the Hungarian Government for their generous hospitality in organizing the meeting in their capital city.

69.2 The Delegate of Spain recalled that the draft Treaty submitted to the delegates was the result of exhaustive studies undertaken by the Committee of Experts from different countries which had met during the preceding three years. The Committee's conclusions had been collected and submitted in the documents prepared by the International Bureau of WIPO with their customary precision and clarity. In his opinion, the observations accompanying the provisions were extremely useful and would lighten the task of the delegates. The Delegate of Spain pointed out that his country had actively participated in the preparatory work and attached great importance to the questions to be discussed. The interested Spanish scientific circles had also participated in the preliminary meetings. The Spanish Delegation was in agreement with the general outline of the draft and considered that the Treaty should be adopted; however, it contained a certain number of points which could give rise to discussion and those should be taken up. His country wished to find a suitable solution to the problems of multiple deposits of microorganisms for different categories of inventions, when protection was sought in different countries. In conclusion, he reserved the right to intervene should the concrete aspects of the draft require amendment in order to arrive at a more expedient solution.

70. The CHAIRMAN thanked the Delegate of Spain for his kind words and gave the floor to the Delegate of Finland.

71.1 Mr. TUULI (Finland), on behalf of the Delegation of Finland, expressed his warmest congratulations to Mr. Tasnádi on his election as President of the Conference and to Mr. Comte on his election to the Chair of the Main Committee. He wished to thank the Hungarian Government for their invitation, for the friendly reception given to the delegates and the warm spirit in which the Conference had commenced its work. Hungary's example would undoubtedly inspire other countries--for example, Finland--which would perhaps have to face the same problems (in particular, that of language) and would give them the courage to undertake preparations for a future diplomatic conference on their territory. He likewise expressed his sincere thanks to WIPO, its Director General and his staff.

71.2 From such divergent points of view, on the basis of differing needs and practices and in respect of a subject which was so difficult to define, it had proved possible to envisage a thoroughly safe system permitting the deposit of applications for patents concerning microorganisms. He declared that his Delegation had come to Budapest with the intention of accepting the Treaty to be formulated on the basis of the principles put forward in the draft. He recalled that in his country, as in the other Nordic countries, no depositary institutions as provided for in the draft Treaty existed and, in the case of Finland, it would not be possible to establish one in the near future. It was, therefore, wise to set up a system under which it would be possible to make deposits of microorganisms in complete safety. With regard to the draft Treaty, the Finnish Delegation accepted the new principle according to which, for the reasons given, not only States but also intergovernmental organizations could become Contracting Parties. It accepted the possibility of a new deposit, but wished to see more detailed provisions in the Regulations. Furthermore, it considered that it was extremely important to set up a system which could be changed without having to amend national patent legislation. Therefore, the Finnish Delegation hoped that the draft under discussion would have the same content when it became final.

71.3 In the opinion of the Delegate of Finland, the most important question was to ascertain under whose responsibility the deposit was to be effected and who was responsible for making such a deposit when, for example, a microorganism's culture was destroyed. He thought it appropriate that the responsibility of the depositary institution should be determined on the basis of national law in the country on whose territory the said depositary institution was situated.

71.4 Practice would undoubtedly show that many details would have to be amended during application of the Treaty and it would perhaps be convenient to do so within the Assembly. In that context, the Finnish Delegation wished to draw attention to a provision contained in Rule 11.4(a) which stated that any request, declaration, or form referred to in Rules 11.1, 11.2 or 11.3 must be in English or French. For that reason, on behalf of small countries which did not have one of the principal languages as a national language, it proposed that such requests, declarations or forms should at least always be established in English.

72.1 Mr. DAVIS (United Kingdom) joined with other speakers in thanking the Hungarian Authorities and in congratulating Mr. Tasnádi and Mr. Comte for their respective appointments as President of the Diplomatic Conference and Chairman of the Main Committee.

72.2 Referring to the documents prepared by the International Bureau of WIPO and to the statement of the Delegate of the United States of America, which had generously acknowledged the role played by the United Kingdom, the Delegate of the United Kingdom said that his country's proposal stemmed from a very simple general concept. A single deposit was a great advantage to the inventor because he no longer had to worry about making numerous other deposits. It was an extremely valid idea, but, as with many such ideas, the concept was easier than the practical implementation. The Delegate of the United Kingdom stated that his country's authorities had been frankly surprised by the drafts, although that should not be construed as criticism. He thought that the matter should have been given deeper consideration at an earlier stage and underlined the fact that the problem was probably more complex than expected. Several speakers had laid stress on the necessity to adopt a text whose application would not require major changes in national legislation. He stated that his Delegation's point of view on several problems was shared by other countries; however, he was ready to admit that not all countries would be able to agree with his Delegation concerning all the points it wished to raise. For that reason, the comments and amendments submitted by the Delegation of the United Kingdom had been set out in detail in a somewhat lengthy document issued under the number DMO/DC/5. Not all the points in the document were equally vital. The Delegate of the United Kingdom pointed out that his Delegation would prefer to see certain questions dealt with in a manner different from that envisaged in the draft, but, in the final analysis, it was up to the Diplomatic Conference to decide thereon. Although the moment for detailed discussion of specific points had not yet been reached, the Delegate of the United Kingdom wished to raise certain problems.

72.3 The first point concerned Article 3 and here the difficulty was probably of a semantic nature. The word "valid" possessed an extremely special significance in the United Kingdom and the Delegate of the United Kingdom stated that recognizing the validity of something presented great difficulties in his country. Therefore, the United Kingdom could not accept Article 3 in its entirety if it were based on the concept that a deposit made in one country could not be challenged in another. On the other hand, it would not refuse to take the deposit into account merely because it had not been made in the United Kingdom. Perhaps the word "valid" gave rise to more problems in the United Kingdom than elsewhere.

72.4 With regard to the problem of a "new deposit" (Article 4), or rather "new deposits," the Delegate of the United Kingdom wished to hear the views of other delegates. In his country a new law was in the process of being drafted, but he was not sure that national laws in different countries were sufficiently developed to permit the United Kingdom to establish a law with the desired purport. In respect of a new deposit, in his opinion, it was essential to maintain some degree of freedom with regard to recognition of validity. Although he agreed that it was perfectly reasonable that the benefits of recognition by the

competent body of a Contracting Party should not be lost merely because the deposit was made with an international depositary authority in another country, he did not think it wise to go any further.

72.5 The Delegate of the United Kingdom said that he had certain misgivings concerning the question of export and import envisaged in Article 5 and on which the Delegates of France and the United States of America had already spoken. The question was one of determining whether or not the two particular cases mentioned in the draft covered every possibility. In his view, to cite only two possible cases in which a State could refuse export and import was somewhat risky and could impede ratification. He would be glad to hear other points of view on the question.

72.6 The Delegate of the United Kingdom concluded by taking up the problem of guarantees, as provided for in Article 6 and already referred to by the Delegation of the United States of America. He recalled that a number of speakers had stated that their countries did not wish to amend their national laws and said that he would be surprised if any patent office or competent authority really had the power to ensure the guarantee in question. The word "guarantee" seemed to him to be too strong. In his opinion, its meaning was the following: if a State declared that an international depositary authority would act in a particular way and it did so, then it was responsible for the consequences. However, he could not envisage the United Kingdom Patent Office having the power to answer for the failures of international depositary authorities. Likewise with regard to guarantees, Rule 5 implied that Contracting States would seek to determine what had provoked the failure of the international depositary authority it guaranteed. Current laws in the United Kingdom did not provide for such powers and, in the opinion of the Delegate of the United Kingdom, it would be extremely difficult to introduce such provisions.

72.7 Without wishing to enter into more detailed discussions at that time, the Delegate of the United Kingdom reserved the right to come back to such questions when they were discussed individually.

73. The CHAIRMAN closed the meeting and reminded the delegates that the afternoon meeting would commence with statements by the Delegations of the German Democratic Republic, the Netherlands and Sweden.

Second Meeting
Thursday, April 14, 1977
Afternoon

74. The CHAIRMAN opened the General Debate and made some remarks concerning simultaneous interpretation and the use of the technical apparatus provided for the delegates.

75. Mr. BUDEWITZ (German Democratic Republic) expressed his Delegation's satisfaction at the convocation of the Diplomatic Conference and thanked the International Bureau of WIPO for the considerable work it had accomplished in preparing the Conference. He also expressed his sincere thanks to the Hungarian Government for the hospitality shown to the Delegates in Budapest and noted that the Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, which was to be concluded at the Conference, was of great urgency. The utilization of microorganisms in science and technology grew daily in importance; therefore, an international instrument to facilitate their legal protection was necessary. The Conference's task was to finalize a text which was in keeping with the need to encourage cooperation between States with different social systems and which was based on the principles of equality and mutual benefit. In conclusion, the Delegation of the German Democratic Republic expressed the hope that the Conference would make an important contribution to the implementation of the principles set forth in the Final Act of the Helsinki Conference, particularly in the field of legal protection of industrial property.

76. Mr. van WEEL (Netherlands) joined other speakers in thanking the Hungarian Government for organizing the Conference, as well as the Direction of WIPO for the meticulous preparation of the Conference documents. He expressed the conviction that the Conference would come to a successful conclusion and that a simplified procedure for industries would be established in countries party to the Treaty and thus the grant of patents in the field of microbiology would be facilitated.

77. Mr. BORGGÅRD (Sweden) expressed his gratitude to the Hungarian Government and the city of Budapest for their invitation to hold the Conference in the beautiful capital of Hungary. The Delegation of Sweden also wished to thank WIPO for the important role it had played during the preparatory work, as well as its Director General, Dr. Bogsch, for the great interest he took in those problems and in the Conference itself. He declared that his Delegation was in general prepared to accept the solutions contained in the draft presented to the Conference and, at the same time, was ready to examine any proposal which might improve the text of the proposed Treaty.

78. Mr. IWATA (Japan), on behalf of his Delegation, expressed his gratitude to the Hungarian Government and thanked the Director General of WIPO, as well as his competent staff, for the preparations for the Conference. He stated his agreement with the basic principle of the Treaty, which would obviate the necessity to make deposits of microorganisms in several countries and would thus facilitate the deposit of international applications for patents involving microorganisms. However, the Delegate of Japan pointed out that there were some points in the draft Treaty and Regulations which were not quite clear to him and that his Delegation would put forward its views and submit certain proposals as and when each article was examined.

79. Mr. HENSHILWOOD (Australia), on behalf of his Delegation, thanked the Hungarian Government for its invitation and congratulated the Chairman on his election. His Delegation did not have any reservations concerning the principal elements of the draft under discussion.

80. Mr. ROKICKI (Poland) joined the other speakers in expressing his congratulations. He recalled that his country had not participated in the preparatory work carried out by the Committee of Experts but noted that the drafts submitted appeared to him to constitute a good basis for the Conference's work.

81. The CHAIRMAN noted that no further delegations from member States wished to make general statements and he gave the floor to the Representative of the Union of Industries of the European Community (UNICE).

82.1 Mr. CRESPI (Union of Industries of the European Community (UNICE)) made some preliminary general remarks on behalf of the following group of non-governmental organizations: the Council of European Industrial Federations (CEIF), the European Federation of Agents of Industry in Industrial Property (FEMIPI), International Federation of Pharmaceutical Manufacturers Associations (IFPMA), the International Chamber of Commerce (ICC) and the International Association for the Protection of Industrial Property (IAPIP). He stated that interested circles in the world of microbiology included not only private industry, but also researchers supported by public funds and those in universities and similar establishments. The draft submitted to the Conference offered to all the benefits of great practical convenience and economy of effort and expense. The Representative of UNICE expressed the hope that the increasing burdens placed on culture collections of microorganisms and the purely administrative difficulties could be minimized as much as possible. For that reason, he welcomed suggestions on ways to relieve culture collections of microorganisms from the task of verifying whether the legal conditions for the furnishing of samples had been fulfilled. In that respect, he recalled that the Union of European Patent Attorneys (UNEPA) had a specific proposal which he supported and he expressed the hope that it would be adopted and explained by certain delegates in due course.

82.2 The draft Treaty posed the complex problem associated with the furnishing of a sample of the microorganism within the context of national law. Such a solution had finally been accepted by the interested circles, but with some degree of reluctance and disappointment. The Representative of UNICE agreed that it was not opportune to discuss the matter in detail at the present time; nevertheless, observer organizations hoped that a further study of conditions for the furnishing of samples would be undertaken at the international level. Those organizations noted the general support given by the delegates to the principle of a 25 or 30-year term for keeping the deposit. The financial implications for the depositor

were not insignificant; therefore, the depositor should not be forced to bear the burden alone for a longer period than that during which the deposit was of use to him from the point of view of patent protection. Mr. Crespi hoped that the temptation to let national laws govern the problems which might arise would not be too strong. Thus, with regard to new deposits which, in his opinion, would not arise frequently, he urged the Conference not to miss the excellent opportunity to remove certain uncertainties for the depositor to the latter's advantage. In conclusion, he stated that the reservations expressed in no way detracted from the approval given by the observer organizations to the fundamental concept of the Treaty, nor from the hope that the latter would be signed and ratified by the largest possible number of States, that it would be used extensively by microbiologists and that it would encourage them to continue to innovate in this important field under the full protection of patent legislation.

83. Mr. IANCU (Romania) thanked the Hungarian Government and underlined the fact that the drafts submitted were of vital importance for the development of international cooperation in the field of industrial property and in that respect he acknowledged the important role played by the Director General of WIPO during the preparatory phase.

84. The CHAIRMAN closed the General Debate and opened discussion on the two drafts. He proposed that the Main Committee should take up the provisions of the draft Treaty article by article, it being understood that should an amendment be accepted it would in general be necessary to make a corresponding change in the Regulations.

85. It was so decided.

Title of the Treaty

86. The CHAIRMAN asked whether there were any remarks or comments concerning the proposed title for the Treaty. He noted that no one wished to take the floor.

87. The title proposed for the Treaty was adopted, subject to possible amendment in the Drafting Committee.

Article 1: Establishment of a Union

88. The CHAIRMAN opened the discussion on Article 1 and requested the Secretariat to enumerate the various proposals for amendment which had been submitted.

89. Mr. BAEUMER (Secretary General of the Conference) informed the Committee that three Delegations had submitted observations concerning the draft Treaty: the United Kingdom (document DMO/DC/5), France (document DMO/DC/6) and Japan (document DMO/DC/7); the two latter documents containing comments on Article 1 would be distributed shortly.

90. The CHAIRMAN asked if the Delegation of Japan would agree to an oral discussion of its proposal and whether it would be prepared to explain the latter.

91. Mr. HIROOKA (Japan) said that, in the preliminary observations on the draft Treaty, two intergovernmental organizations were cited, namely, the African Intellectual Property Organization (OAPI) and the European Patent Organisation (EPO). He wondered whether such specific and exceptional stipulations could be included in a treaty concluded within the framework of the Paris Union, which to date only recognized participation by States. He considered that the problem should be discussed within the framework of the revision of the Paris Convention.

92. Mr. FRESSONNET (France) recalled that, in document DMO/DC/6, his Delegation had made an observation which, in fact, contained a proposal. He did not object to intergovernmental organizations becoming party to the Treaty and such a possibility did not seem to him to be in contradiction with the provisions of the Paris Convention for the Protection of Industrial Property, even if it were not specifically provided for in Article 19 of the said Convention. Nevertheless, the fact that, according to the terms of Article 1, States, on the one hand, and intergovernmental organizations, on the other, would be party to the Treaty did in fact give rise to a number of problems. Firstly, the Contracting States must be members of the Paris Union, which was not the case for the intergovernmental organizations as such. Secondly, the expenses of the new Union were to be borne by the Paris Union; the intergovernmental organizations, not being members of the Paris Union, would therefore have no financial obligations. Thirdly, according to the terms of Article 6 of the draft Treaty, States alone could confer the status of international depositary authority, intergovernmental organizations not being entitled to do so. Referring to the European Patent Convention and, in particular, Rule 28 of the Regulations under the Convention, the Delegate of France stated that the President of the European Patent Office would be authorizing depositary institutions in order to meet the needs of the Office. It was therefore possible that some such institutions might be situated on the territory of a State party to that Convention and thus be a member of an intergovernmental organization, but not situated on the territory of a State party to the Treaty under discussion, which would be a serious handicap. He wondered, therefore, whether it were not possible to assimilate a depositary institution authorized by an intergovernmental organization party to the proposed Treaty with a depositary institution situated on the territory of one of the Contracting States. Such a provision inserted under Article 6 would, in his opinion, overcome such a difficulty. The Delegate of France concluded by saying that he had made his comments at that stage in order to point out that Article 1 concerned both States and intergovernmental organizations party to the Treaty, whereas the rights given to States and intergovernmental organizations were not the same.

93. Mr. GUDKOV (Soviet Union) referred to the text of Article 19 of the Paris Convention, according to which "the countries of the Union reserve the right to make separately between themselves special agreements" and he concluded that the participation of intergovernmental organizations in the Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure was not justified. He was not convinced by the points made in the comments on the draft Treaty, some of whose precepts were difficult for the Delegation of the Soviet Union to accept. For that reason, his Delegation had prepared a written proposal which would shortly be submitted to the Secretariat.

94. The CHAIRMAN apologized to the Delegate of the Soviet Union for the technical incidents which had prevented him from taking the floor and he requested him to submit his proposal to the Secretariat as quickly as possible. He proposed that the Main Committee should postpone its decision concerning Article 1 until it was able to discuss the proposal of the Delegate of the Soviet Union on the basis of a written text.

95. Mr. BOGSCH (Director General of WIPO) noted that the Secretariat had not received the proposal of the Delegation of the Soviet Union in written form and he wondered whether it were not possible to discuss it immediately as had been done with the proposal of the Delegation of Japan.

96. The CHAIRMAN asked whether the Delegation of the Soviet Union was in a position to explain briefly the substance of its proposal on Article 1.

97. Mr. GUDKOV (Soviet Union) said that his Delegation proposed deleting the words "and intergovernmental organizations" in Article 1 and replacing the words "the Contracting Parties" by the words "the Contracting States." In addition, he proposed adding to Article 3 a new paragraph (3) as follows: "The reference to the 'Contracting State' in this Article shall be regarded as referring to any intergovernmental organization to which a number of States entrusted the granting of regional patents and of which all the member States are, at the same time, members of the Paris Union for the Protection of Industrial Property, should such organization declare that it takes the responsibility envisaged by this Article."

98. Mr. DAVIS (United Kingdom) remarked on the faulty functioning of his earphones and said that he unfortunately had been unable to hear the last statement and was thus not in a position to take part in the discussion.

99. Mr. BORGGÅRD (Sweden) expressed the view that the discussion on Article 1 should be continued when the text of the proposal of the Delegation of the Soviet Union had been distributed.

100. The CHAIRMAN proposed postponing the decision on Article 1 in order to allow the delegates an opportunity to examine the written text of the proposals of the Delegations of Japan and the Soviet Union.

101. It was so decided. (Continued at paragraph 338)

Article 2: Definitions

102.1 The CHAIRMAN opened the discussion on Article 2 and suggested examining it point by point as it concerned definitions.

102.2 He pointed out that the proposal submitted by the Delegation of France (document DMO/DC/6) contained an observation concerning the definition of the term "patent" and he requested the Delegate of France to clarify it.

103. Mr. FRESSONNET (France) stated that it was in fact a drafting amendment. In the French text of Article 2(i) of the draft Treaty, the term "certificat d'inventeur" was used, whereas the Paris Convention and the Patent Cooperation Treaty used the expression "certificat d'auteur d'invention." The other observation concerned solely the French text of all the provisions containing the expression "autorité de dépôt internationale." The Delegate of France considered that it would be more suitable to use the words "autorité internationale de dépôt" and he proposed that the two observations be submitted to the Drafting Committee.

104. The CHAIRMAN inquired whether the Main Committee could accept the proposal of the Delegate of France and noted that there was no objection.

105. It was so decided.

106. Mr. BRAENDLI (Switzerland) drew attention to the second proposal of the French Delegation concerning the replacement of the expression "autorité de dépôt internationale" by the words "autorité internationale de dépôt." He was not sure whether such an amendment did not confer an international character on the authority in question, even when it was a purely national institution. He considered that the basis of the system contained in the draft Treaty was rather that of international recognition of a deposit--as was made clear in the title. Therefore, the present wording seemed to him more appropriate than that proposed by the Delegation of France and he asked that Delegation what were its reasons for wishing to amend the text.

107. Mr. FRESSONNET (France) replied that he did not intend to modify the sense of the provisions and drew the delegates' attention to the fact that, in the French text of the draft--for example, in Article 2(ix)--there were the words "autorité de dépôt internationale." It was therefore the authority which was "internationale," otherwise in French the qualifying adjective would have been in the masculine.

108. Mr. BOGSCH (Director General of WIPO) recalled the chronology of the expression "autorité de dépôt internationale." During previous meetings, in such cases, the expressions "autorité internationalement reconnue" (internationally recognized authority) or "autorité qui traite des dépôts internationalement reconnus" (authority dealing with internationally recognized deposits) had been used. He considered that such expressions were in fact correct, because neither the deposit nor the authority were international. Deposit was normally effected with a private institution which, in most cases, was subject to national jurisdiction and legislation. In the draft Treaty, it had only been intended to underline the "international character" given to the deposit. The English term "internationally recognized deposit" seemed to be acceptable, but the French equivalent appeared to be extremely ponderous. The Director General of WIPO noted that it was a question of drafting and that it would perhaps be appropriate to come back to the question if an acceptable term could be found in French.

109. Mr. DEMENTIEV (Soviet Union) stated that, in respect of Article 2(i), the proposal submitted by the Delegation of the Soviet Union sought to follow the wording of Article 2(ii) of the PCT.

110. The CHAIRMAN resumed the discussion and proposed that the problems raised by the Delegation of France be submitted to the Drafting Committee.

111. It was so decided.

112. The CHAIRMAN therefore proposed to return to the remarks made by the Delegation of the Soviet Union.

113. Mr. BOGSCH (Director General of WIPO) recalled that the Delegate of the Soviet Union had referred to Article 2(ii) of the PCT, whose wording was almost word for word that of Article 2(i) of the draft Treaty under discussion. The word "patents" also referred to inventors' certificates and other forms of protection of industrial property. It was for reasons of economy that it had been placed at the beginning, because it was thus possible to avoid repeating the same expression each time the word "patent" was used in the Treaty. For the same reason, the provisions of Article 2(iii) dealt with patent procedure as a procedure which related to inventors' certificates and other titles of protection for inventions.

114. Mr. IANCU (Romania) apologized for not having been able to present his proposal for amendment in writing. The Delegate of Romania stated that, according to Romanian law, the title of protection for an invention was a patent and, although the law also mentioned "inventors' certificates," that title in Romania, as in Poland, was merely an official title which certified the status of inventor. In view of the fact that Bulgarian, Soviet and Czechoslovak legislation contained special provisions concerning protection, the Delegation of Romania considered it necessary in the French text to replace the terms "certificat d'inventeur" and "certificat d'inventeur additionnel" used in Article 2(i) by the expressions "certificat d'auteur d'invention" and "certificat d'auteur d'invention additionnel," respectively.

115. The CHAIRMAN noted that the proposal made by the Delegate of Romania was akin to that of the Delegation of France and suggested that he should ask the Drafting Committee also to take it into account.

116. Mr. JONKISCH (German Democratic Republic), on behalf of his Delegation, supported the proposal made by the Delegation of the Soviet Union and proposed drafting Article 2(i) to make a clearer distinction between the different titles of protection for inventions, for example: "References to a 'patent' shall be construed as references to patents for inventions, inventors' certificates (certificats d'auteur d'invention), utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition (certificats d'auteur d'invention additionnels) and utility certificates of addition, and other titles of protection for inventions."

117. Mr. CÍRMAN (Czechoslovakia) supported the proposal of the Delegation of the Soviet Union and said that the wording of that provision proposed by the Delegation of the German Democratic Republic was acceptable to him.

118. Mrs. PARRAGH (Hungary) wished to keep the wording derived from Article 2(ii) of the PCT.

119. Mr. BRAENDLI (Switzerland) said that the Swiss Delegation preferred to maintain the wording of the draft, subject to the amendment proposed by the Delegation of France.

120. Mr. WINTER (United States of America) supported the text as proposed in the draft Treaty.

121. Mr. BOGSCH (Director General of WIPO) said that he now had a better understanding of the proposal made by the Delegation of the Soviet Union. The difference between the PCT text and that proposed by the Soviet Delegation was that, in the latter, inventors' certificates were not considered to be "titles of protection." That point of view had been confirmed by the Delegation of Romania. He therefore considered that it would be wiser not to refer to inventors' certificates. The English word "title" implied a proprietary interest and, in the present instance, that was not the case. When an inventor received an inventor's certificate that did not yet mean that the said inventor was the proprietor; such a certificate only gave him the possibility of receiving remuneration and other rewards. The more neutral text of the PCT avoided such controversy. The Director General of WIPO thought that the majority of delegations preferred the text based on the PCT and he recognized that such innovatory zeal was perhaps not a good idea. He informed the Committee that the Secretariat of the Conference was ready to agree to the text as it appeared in the PCT.

122. Mr. KERSTING (Federal Republic of Germany) declared that he was in favor of the text based on the PCT.

123. Mr. ROKICKI (Poland) supported the proposals for amendment of Article 2(i) submitted by the Delegations of the Soviet Union and France.

124. The CHAIRMAN noted that there were three possible solutions, each of which was supported by at least two delegations and it was therefore possible to take a vote. The first possibility was to maintain the text drafted by the International Bureau of WIPO; the separate question raised by the Delegation of France would be referred to the Drafting Committee. The second was the proposal submitted by the Delegation of the Soviet Union and defined by the Delegation of the German Democratic Republic which, in the Chairman's opinion, was the furthest from the present text. Finally, the third was the proposal by the Delegation of Hungary, supported by the Delegation of the Federal Republic of Germany and by the Director General of WIPO, to repeat the text of the corresponding Article in the PCT.

125. Mr. BOGSCH (Director General of WIPO) requested the President to try to avoid a vote, if possible, on a question which, in his opinion, was not of very great significance. Addressing himself to the Delegate of Switzerland and other delegates who had expressed the same opinion, he said that the problem before the Main Committee was that of deciding whether to include in the text of the proposed Treaty the text of a similar provision in the PCT. He suggested accepting the interpretation of the Socialist countries according to whose legislation an "inventor's certificate" did not qualify as a title of protection and he appealed to all the delegations to accept the text based on the PCT.

126. Mr. DEMENTIEV (Soviet Union), in order to avoid any possible misunderstanding due to eventual inaccurate interpretation, repeated that the proposal of the Delegation of the Soviet Union concerning Article 2(i) of the draft Treaty was to reproduce the text of the corresponding article in the PCT.

127. Mr. WINTER (United States of America) declared that, in a spirit of compromise, his Delegation was prepared to accept the text based on the PCT in order to avoid a vote and because it was logical to accept the text as it appeared in the PCT.

128. The CHAIRMAN noted that the various points of view had come closer together and asked whether the Delegate of Switzerland upheld his point of view.

129. Mr. BRAENDLI (Switzerland) confirmed that his Delegation maintained its point of view, but that it could accept a wording based on a similar provision in the PCT if it stated that the reference to a "patent" should be construed as a reference to a patent for an invention and to an inventor's certificate.

130. Mr. FRESSONNET (France) fully supported the analysis made by the Director General of WIPO. The proposal made by the Delegate of Switzerland, in his opinion, followed very closely the text of the PCT. Therefore, he also found himself in agreement with the proposed amendment submitted by the Delegation of Switzerland.

131. The CHAIRMAN noted that, following the new exchange of views, only one proposal on substance remained and he asked whether the Main Committee agreed to refer Article 2(i) of the draft to the Drafting Committee requesting it to take into account the observation made by the Delegation of France on the use, in the French text, of the words "certificat d'inventeur" or "certificat d'auteur d'invention," the harmonization of Article 2(i) of the draft with Article 2(ii) of the PCT and, finally, the proposal submitted by the Delegation of Switzerland and supported by the Delegation of France.

132. It was so decided.

[Suspension]

133.1 The CHAIRMAN reopened the meeting and gave the delegates information concerning the reception organized for them and the technical problems involved in the sound system in the meeting room.

133.2 He opened the discussion on Article 2(ii) and noted that it did not give rise to any comments.

134. Article 2(ii) was adopted, subject to possible amendment in the Drafting Committee in respect of the statement of the Delegation of France on the expression "international depositary authority" (see paragraphs 103 and 107).

135. The CHAIRMAN opened the discussion on Article 2(iii) and (iv) and noted that it did not give rise to any comments.

136. Article 2(iii) and (iv) was adopted as appearing in the draft.

137. The CHAIRMAN opened the discussion on Article 2(v).

138. Mr. DAVIS (United Kingdom) wished to make the position of his Delegation clear in relation to Article 1. He stated that the Delegation of the United Kingdom had not abandoned its view that intergovernmental organizations could become party to the proposed Treaty, but he did not wish to pursue the question until a specific proposal had been received from the Delegation of Japan.

139. The CHAIRMAN said that if, following any amendments that might be made to Article 1, it were necessary to amend various definitions, such amendments would be made.

140. Article 2(v) was adopted, subject to possible amendments made necessary by the amendment of Article 1.

141. The CHAIRMAN opened the discussion on Article 2(vi), (vii) and (viii).

142. Article 2(vi), (vii) and (viii) was adopted with the same reservation as in the case of Article 2(v).

143. The CHAIRMAN opened the discussion on Article 2(ix) and said that the follow-up given to the statement by the Delegation of France (see paragraphs 103 and 107) would have a bearing on the final drafting of the Article.

144. Mr. IANCU (Romania) thought that it would be useful to specify the meaning of the expression "international depositary authority" in order to facilitate the interpretation of the Treaty after its adoption.

145. The CHAIRMAN requested the Delegation of Romania to clarify his proposal.

146. Mr. BOGSCH (Director General of WIPO) explained that--if he had understood correctly--according to the Delegate of Romania, the expression "international depositary authority," both in English and French, did not specify whether it involved the deposit of microorganisms. It was therefore appropriate to specify that it in fact concerned an international authority for the deposit of micro-organisms each time that that expression was used in the text. He noted that the problem arose due to the difficulty of explaining this complicated concept concisely in French.

147. Mr. IANCU (Romania) stated that he was in agreement with the explanation given by the Director General of WIPO.

148. The CHAIRMAN noted that there were no more observations on Article 2(ix).

149. Article 2(ix) was adopted, subject to possible amendment in the Drafting Committee.

150. The CHAIRMAN opened the discussion on Article 2(x) to (xviii).

151. Mr. FRESSONNET (France) wondered whether it was necessary to have a special gazette and asked the Director General of WIPO whether it would not be more economical to consider the publication of the Paris Union--La Propriété industrielle/Industrial Property--as also fulfilling the role of the gazette mentioned in Article 2(xviii) of the draft Treaty.

152. Mr. BOGSCH (Director General of WIPO) thought that it would be an excellent idea.

153. The CHAIRMAN inquired whether the suggestion met with the approval of the Main Committee and noted that it did.

154. It was so decided.

155. Article 2(x) to (xviii) was adopted, subject to possible amendment in the Drafting Committee.

156. Article 2 was adopted as a whole, subject to possible amendment in the Drafting Committee.

Article 3: Recognition of the Deposit of Microorganisms

157. The CHAIRMAN opened the discussion on Article 3 and said that several delegations had already submitted proposals in writing. As the documents containing the proposals of two delegations had not yet been distributed, he wondered whether it was opportune to open the debate on the Article before having the necessary documents.

158. Mr. BOGSCH (Director General of WIPO) hoped that, as far as possible, all proposals concerning the Treaty would be submitted in writing to the Secretariat of the Conference that evening and all proposals concerning the Regulations would be submitted in writing by the following evening. Translation and preparation of the documents would thus be facilitated and it would no longer be necessary to postpone discussion on other Articles in the Main Committee.

159. The CHAIRMAN concurred with the hope expressed by the Director General of WIPO and proposed postponing the discussion on Article 3.

160. It was so decided. (Continued at paragraph 219)

Article 4: New Deposit

161. The CHAIRMAN opened the discussion on Article 4 and proposed discussing the paragraphs one after the other starting with paragraph (1)(a).

162. Mr. van WEEL (Netherlands) noted that, when reading the provisions of Article 4(1)(a), (d) and (e) of the draft (document DMO/DC/3), it appeared that it was the task of the international depositary authority to inform the depositor, at the moment of deposit, of all the difficulties he might encounter in the different countries of the Union. The Delegate of the Netherlands did not, however, think that such was the meaning of Article 4. In his opinion, the wording was limited to cases where a sample had been requested. It would therefore be appropriate to mention that when a sample was requested, the furnishing of such a sample might require it to be sent abroad.

163. The CHAIRMAN wondered whether he understood correctly the question raised by the Delegate of the Netherlands and whether it could be summarized as follows: was the case an abstract one, that is, should the depositary authority be expected to know in advance all the restrictions which might exist in particular States in cases where samples were requested; or was it a concrete case in which, confronted with a request for a sample, export difficulties were encountered and in that specific instance the authority intervened and informed the interested party?

164. Mr. BOGSCH (Director General of WIPO) considered that in fact the international depositary authority would probably inform the depositor in specific instances that it was unable to fulfill the request. Nevertheless, a problem arose when, in a country where it was permitted to export certain microorganisms, a legal or governmental decision intervened which henceforth prohibited such exports: was the international depositary authority then bound to notify the decision automatically to all owners who might potentially be affected by the decision? Basing himself on the text of the draft, the reply of the Director General of WIPO would be in the affirmative. According to the suggestion made by the Delegate of the Netherlands, the reply would be in the negative and only a person actually affected by the decision would be informed.

165. The CHAIRMAN asked other delegations for their points of view on the question raised by the Delegation of the Netherlands and, in particular, what was the opinion of interested circles. He also wondered whether the explanation given by the Director General of WIPO satisfied the Delegation of the Netherlands or whether the latter wished to see the text changed.

166. Mr. van WEEL (Netherlands) stated that he did not wish to change the text, but he wondered whether the task of the international depositary authority, under the terms of Article 4, was not too heavy. However, if the said authorities did not complain, he could accept such wording.

167. Mr. IANCU (Romania) pointed out that Article 2(xi) defined the term "release of a sample," whereas Article 4 did not use the same terminology and used the words "furnish samples." He thought that it was desirable to harmonize the terminology used in the two Articles.

168. The CHAIRMAN assured the Delegate of Romania that the International Bureau of WIPO, which had prepared the text of the draft Treaty, had not wished to express two different concepts when it used two different terms and it was simply a question of drafting.

169. Mr. BOGSCH (Director General of WIPO) agreed with the Chairman and noted that the slight difference of meaning which existed in English between "release" and "furnishing" was somewhat lost in the French text between "remise" and "fourniture." It was a problem which concerned the drafting of the French text and it should be referred to the Drafting Committee.

170. The CHAIRMAN asked whether the Main Committee agreed to refer the question to the Drafting Committee.

171. It was so decided.

172.1 The CHAIRMAN opened the discussion on Article 4(1)(b) and noted that there were no observations.

172.2 With regard to Article 4(1)(c), he said that the Main Committee had to decide on the question raised by the square brackets around the second sentence and he pointed out that the Delegation of Japan had already made its views known in document DMO/DC/7.

173. Mr. HIROOKA (Japan) was in favor of keeping the sentence which was in square brackets because it clarified the principle of the application of national law in this regard.

174. Mr. DEITERS (Federal Republic of Germany) was likewise in favor of keeping the sentence which was in square brackets and said that his Delegation would that evening submit a written proposal concerning its wording.

175. The CHAIRMAN proposed that the Main Committee should first of all decide on the principle of keeping or deleting the second sentence which was within square brackets and that it should subsequently discuss the proposal of the Delegation of the Federal Republic of Germany.

176. Mr. SCHLOSSER (United States of America) declared himself in favor of keeping the sentence within square brackets.

177. Mr. DAVIS (United Kingdom) pointed out that the proposal submitted by his Delegation concerning Article 4(1)(d) was closely linked to the question raised in Article 4(1)(c) and to the problem of the recognition of validity in Article 3. These problems were, in his opinion, all tied together.

178. The CHAIRMAN asked whether the Main Committee agreed to adopt Article 4(1)(c), keeping the second sentence which is at present within square brackets, subject to the new wording proposed by the Delegation of the Federal Republic of Germany and the consequences which might arise from the proposal of the United Kingdom on Article 3 (document DMO/DC/5).

179. It was so decided.

180. The CHAIRMAN opened the discussion on Article 4(1)(d) and recalled that the Delegation of the United Kingdom had submitted a proposal relating thereto in document DMO/DC/5.

181. Mr. DAVIS (United Kingdom) considered that Article 4(1)(d) was of fundamental importance. Previous provisions concerned the rights of the depositor if something should happen to the deposit, whereas Article 4(1)(d) concerned the recognition which a State must grant to a new deposit. The Delegate of the United Kingdom said that his country's laws did not specify the length of the period during which a deposit must be kept, although it was assumed that the deposit must be available at the time of publication of the patent document. He imagined that the situation was similar in a number of countries. He did not know whether the deposit should be kept during the period for which the patent was granted or indefinitely, nor did he know whether it would be possible to cope with a situation in which it was

proven that the deposit had not been available for a period of six months. He underlined the lack of decisions concerning the question of the availability of microorganisms. However, the Delegate of the United Kingdom stated that Article 4(1)(d) should not be a stumbling block because in the United Kingdom a new law was being drafted and it could probably provide that the absence of samples for a period of six months should not be fatal to the patent. He was in favor of retaining some degree of flexibility. He reminded those Delegations from countries which were members of the European Patent Organisation that Rule 28(3) of the Regulations of the Convention on the Grant of European Patents stipulated that the culture deposited should be available to any person, upon request, from the date of publication of the application. It could be that the words "available to any person upon request" included the possibility of a six-month period, but, on the other hand, perhaps it was not so. For that reason, it was preferable to amend the national legislation in the United Kingdom in order to deal with the question of a new deposit. The latter would not be less favorably dealt with because it had been made merely under the terms of the Treaty rather than under the national legislation; it should have exactly the same treatment. Therefore, the Delegate of the United Kingdom suggested to the Main Committee that the question of a new deposit should be governed by national law and not by the Treaty.

182. Mr. BOGSCH (Director General of WIPO) agreed with the Delegate of the United Kingdom that the provisions of Article 4(1)(d) concerned a rather secondary problem related to the very important problem which was dealt with in Article 3. He therefore proposed that the discussion on Article 4(1)(d) be deferred until it was possible to see clearly what would be the wording of Article 3. He added parenthetically that, if the proposal of the United Kingdom on Article 3 were adopted by the Conference rather than the text of the draft, the wording of Article 4(1)(d) could be made less strong.

183.1 The CHAIRMAN asked whether it was appropriate to defer continuation of the discussion on Article 4(1)(d) in view of the links existing between it and Article 3. He expressed the opinion that, on that point, he found no difficulty in accepting the proposal of the Director General of WIPO.

183.2 The CHAIRMAN also proposed suspending discussion on Article 4(1)(e) as the proposal of the Delegation of the United Kingdom envisaged the deletion of Article 4(1)(e) and as subparagraphs (d) and (e) were closely linked. He proposed taking up Article 4(2).

184. It was decided to postpone discussion of Article 4(1)(d) and (e) to a later date. (Continued at paragraph 297)

185. Mrs. PARRAGH (Hungary) said that Article 4(2) contained the stipulation that the right to make a new deposit of a microorganism depended on whether the substitute authority was in a position to furnish samples. During the time limit granted by that Article, the depositor could not himself control the ability of the substitute authority to furnish samples, but he could assume that such an authority

was able to fulfill the task. For that reason, the Delegation of Hungary proposed to insert a full stop after the words "international depositary authority" in Article 4(2) and to delete the words which followed.

186. The CHAIRMAN asked whether any other delegation supported the proposal made by the Delegation of Hungary.

187. Mr. BOGSCH (Director General of WIPO) wondered whether it did not amount to the same to keep that part of the sentence or to delete it, because if one spoke, at the beginning of Article 4(2), of the right granted in paragraph 1(a), the right to deposit anew existed when the deposited microorganism had been transferred to another international depositary authority and when the latter was not in a position to furnish a sample of the said microorganism. Consequently, in the opinion of the Director General of WIPO, the interpretation of that sentence, even should the last part be deleted, would necessarily remain the same.

188. Mrs. PARRAGH (Hungary) was not sure that the depositor could, during six months, control whether or not the substitute authority was able to furnish samples.

189. The CHAIRMAN was aware of the difficulty for the depositor, during the relatively short period of six months, to ascertain whether the new authority could or could not itself furnish samples. However, he wondered if the fact of saying or not saying it did, in fact, alter the matter.

190. Mr. BOGSCH (Director General of WIPO) said that, if he understood the Delegate of Hungary correctly, the depositor might find it difficult to ascertain in time whether the new authority was able to furnish samples. That was of little importance to him, because, in case of doubt, he could always make a new deposit and the only thing that could happen was that the new deposit would prove to be superfluous.

191. Mrs. PARRAGH (Hungary) asked whether the Drafting Committee could look into the problem.

192. The CHAIRMAN said that the Drafting Committee would be asked to study the suggestion of the Delegation of Hungary and to ensure that, if the deletion were agreed, it would not detract from the depositor's rights.

193. Mr. IANCU (Romania), for the reasons given in connection with paragraph 1(a), proposed replacing in the French text the word "fournir" in Article 4(2) by the word "remettre" respectively.

194. The CHAIRMAN confirmed that the Drafting Committee would also be requested to study that point.

195. Article 4(2) was adopted as appearing in the draft, subject to reexamination by the Drafting Committee of the proposals of the Delegations of Hungary and Romania.

Article 5: Export and Import Restrictions

196. The CHAIRMAN opened the discussion on Article 5 and noted that he had before him a proposal by the Delegation of France contained in document DMO/DC/6. He informed the delegates that they would shortly be receiving documents containing a proposal from the Delegation of the United States of America and the observations of the Delegation of Japan. He requested the Delegate of France to explain his proposal.

197.1 Mr. FRESSONNET (France) repeated that his Delegation had come to Budapest with the intention of signing the Treaty. The only serious obstacle was Article 5, which was liable to hinder application of the provisions of national legislation. In the first sentence of the Article, it was stated that if a regulation restricting the export or import of certain kinds of microorganisms existed, such a regulation would only apply where the restriction was necessary. That amounted to saying that national legislation could be overruled by the Treaty and, in France, such a provision would necessitate ratification by Parliament. Subsequently, the text stated that national regulations could not be overruled if "the restriction is necessary in view of the dangers entailed for health or the environment." Therefore, the national authority would have to decide whether the regulation was necessary or not, which could not be done in France where the Government establishes provisions in order that they should be applied. He recalled that the hypothesis referred to health and environment, two very important aspects which were the subject of discussion in every country. He pointed out, however, that other equally justifiable motives might exist and that they were deliberately left out of the possibility for application of the national law. He noted that, in certain cases, there was thus no possibility of sidestepping Article 5 as proposed and the national structure must cede its place to the Treaty, something he could not himself envisage. It was for that reason that the proposal of the French Delegation clearly indicated that implementation of the proposed Treaty did not prevent the application of any regulation limiting the export of certain types of microorganisms without mentioning which.

197.2 The Delegate of France was, however, ready to withdraw his proposal if Article 5 were simply deleted. He had no objection to the Diplomatic Conference expressing the desire that the governments of the contracting countries of the Treaty should make all possible efforts to limit the regulations which restricted the export or import of certain types of microorganisms.

198. Mr. IWATA (Japan) supported the proposals submitted by the Delegate of France. He pointed out that if those proposals were not adopted, his Delegation would submit another proposal to ensure that the microorganisms which were to be deposited were not subject to the provisions mentioned in Article 5 of the draft.

199. Mr. BELLENGHI (Italy) stated that he was in agreement with the proposal made by the Delegate of France and underlined the fact that it was possible to make a new deposit with another depositary authority should the initial authority refuse to furnish samples.

200. Mr. IANCU (Romania) was of the opinion that Article 5 concerning export and import restrictions was one of the basic principles of the Treaty. In his view, in order to ensure that the Treaty had a common practical application in relations between countries, the text of Article 5 should remain as it was. Consequently, the Delegation of Romania supported the proposed text and, in addition, suggested studying the possibility of completing the text by the words "or in any case where the depositor has not taken the measures specified by the international depositary authority in order to prevent such risks." A written proposal along those lines would be submitted.

201. The CHAIRMAN suggested limiting the discussion for the time being to the text as it appeared in the draft (document DMO/DC/3) and to the proposal by the Delegation of France.

202. Mr. SCHLOSSER (United States of America) stated that his Delegation well understood the misgivings of the Delegation of France. He informed the Main Committee that his Delegation had drafted a proposal, not yet distributed, which would solve the problem in a slightly different, but simple, way. The Delegate of the United States of America pointed out that in his country there was minimal control of exports and imports for reasons of health and protection of the environment, but it could be envisaged that in the future control could be extended for other reasons, economic and social ones for example. In such a case, the existence of Article 5 in its present form would be a serious handicap. He was not in favor of absolute prohibition and he thought that the Article in question was absolutely consistent with the objectives of the Treaty and would not impair its functioning. In practice, there would be very few cases where limitations would be imposed for a particular reason. Microbiological inventions would cross national frontiers in practically every case. If a State decided to restrict exports, it risked the impairment and cancellation of the patent rights of its own nationals. For those reasons, the Delegation of the United States of America had submitted a proposal which was very simple. It suggested that the words "It is recommended that" be inserted in the present text of Article 5 before the words "such regulations." That would reflect the suggestion made by the Committee of Experts and contained in document DMO/DC/16.

203. Mr. DEITERS (Federal Republic of Germany) did not see how the procedure could work if every State were able to restrict exports of microorganisms without any limitation. On the other hand, he well understood that there might be certain difficulties in specific cases. He was in favor of maintaining the text of Article 5 as it appeared in the draft and inserting at the end of the text certain additional elements such as, for example, the word "safety," along the lines of the proposal already submitted by the Delegation of the United Kingdom.

204.1 Mr. DAVIS (United Kingdom), in reference to the remark made by the Delegation of the Federal Republic of Germany concerning a proposal by the Delegation of the United Kingdom, explained that he had in fact circulated among the delegates to the Main Committee a note containing the proposal relating to Article 5. Following a discussion with the Director General, it had been decided not to overburden the Main Committee and to withdraw the proposal; therefore, it had not been formally submitted.

204.2 The Delegate of the United Kingdom said that he now better understood the motives underlying the proposal of the Delegation of France which, nevertheless, in his view, went too far. He thought that, during discussion in the Main Committee, it was not advisable to raise minor problems and obstacles to the adoption of a compromise solution. For the above reasons, he was somewhat inclined to support the idea expressed in the proposal of the Delegation of the United States of America (see paragraph 202).

205. Mr. VILLALPANDO (Spain) said that the Delegation of Spain had grave misgivings with regard to the position taken by the Delegation of France concerning Article 5. He was in favor of accepting the text of Article 5 as proposed by the International Bureau of WIPO.

206. The CHAIRMAN asked delegates whether they wished to express any other preliminary views on the question of principle, adding that the Main Committee was obviously not in a position to take a decision before having the written text before it.

207. Mr. BOGSCH (Director General of WIPO) noted that Article 5 raised a very serious problem which was a real dilemma from the legal point of view. As it was proposed in document DMO/DC/3, Article 5 implied a limitation on the freedom of legislation of each Contracting State and meant that export and import restrictions could be applied only in respect of deposits coming under the Treaty where health and environmental reasons justified such restrictions. Several speakers had stated that there might be other reasons which were difficult to foresee. The question therefore was whether the provisions of Article 5 should be broadened--as had been suggested by several delegations--or whether the text of Article 5 should be maintained as it appeared in the draft. The Director General of WIPO recognized that Article 5 was not so much a restriction on patent legislation as on general policy concerning the export and import of dangerous materials. He wondered whether such an undertaking of an international character could be ratified by certain countries and there was a real danger that such limitation of the freedom of national legislation could imply a refusal to ratify by Japan, the United States of America, France, or other countries which had spoken in a negative sense. If those Delegations really considered that they would be unable to ratify a Treaty containing Article 5 as it appeared in the draft, then it should be amended along the lines of the second proposal presented orally by the Delegation of France (see paragraph 197.2), namely, to replace the Article by a resolution or wish expressed by the Diplomatic Conference, or to insert the words "It is recommended that...," as suggested by the Delegation of the United States of America. Those two solutions would lead to the same result. The said resolution of the Diplomatic Conference would have approximately the following wording: "All the Contracting Parties are very seriously invited to interpret and apply their export/import restrictions and, if necessary, so to modify them so that no obstacle to the operation of this Convention which is not highly justified should result therefrom." He thought that, if the danger of non-ratification of the Treaty by a considerable number of countries were a reality, then the second proposal made by France should be taken into consideration as a solution.

208. The CHAIRMAN thanked the Director General of WIPO for his analysis which considerably clarified the position and he said that those delegations which were in favor of outright deletion of Article 5 or for its replacement--as had been suggested in the proposal made by the Delegation of France, which was in fact the affirmation of the existence of national law--had been requested by the Director General of WIPO to state whether an irreversible obstacle to the Treaty's ratification did in fact exist.

209. Mr. FRESSONNET (France) stated that, for the Treaty to function properly, it was necessary to avoid, as far as possible, restriction on the export and import of certain microorganisms. The legal aspect of the provision under discussion meant that national legislative power would be completely thwarted. In his view, his country would take all necessary measures to limit prohibition on the export and import of microorganisms on condition that the formula was fairly flexible and did not place obligations on States. He concluded by saying that the proposal he had made--namely, a resolution committing States and voted unanimously--was very binding.

210. Mr. BELLENGHI (Italy), basing his view of the principle that it was always possible to make a new deposit with another national authority, maintained his previous position (see paragraph 199).

211. Mr. HIROOKA (Japan) asked whether microorganisms which were already available or which were already the subject of a deposit would come under the terms of Article 5 of the draft Treaty.

212. The CHAIRMAN replied that, personally, he was convinced that if microorganisms were available, they would not be the subject of a deposit and that, consequently, they would not come under the Treaty.

213. Mr. SCHLOSSER (United States of America) replied in the affirmative to the question asked by the Director General of WIPO concerning whether the retention of Article 5 in its present form would hinder ratification of the Treaty by the United States of America.

214. The CHAIRMAN asked all the delegations to study the problem, which was of vital importance--taking into account the final statement by the Director General of WIPO and the replies given to him--and to try to reach a less mandatory solution thus enabling the widest possible implementation of the provisions of the Treaty, which would imply relatively free circulation of deposited microorganisms and samples requested.

Third Meeting
Friday, April 15, 1977
Morning

General Remarks

215.1 The CHAIRMAN opened the third meeting of the Main Committee and, in the name of all the delegates, thanked the Delegation of Hungary and Dr. Schultheisz, the Hungarian Minister of Health, for the magnificent and brilliant reception offered the previous evening.

215.2 He requested the Secretary of the Main Committee to read out the list of documents which had either been issued, were being distributed or were already available.

216. Mr. CURCHOD (Secretary of the Main Committee) gave certain details concerning documents DMO/DC/5 to DMO/DC/13, which had been distributed or were in the process of being distributed.

217. The CHAIRMAN suggested returning to discussion of the Articles which had been postponed, with the exception of Article 1 which raised the problem of the participation of intergovernmental organizations in the Treaty. He proposed taking up the discussion on that Article at the afternoon meeting in order to give Delegations of States party to the European Patent Convention time to meet and discuss the problem.

218. It was so decided.

Article 3: Recognition of the Deposit of Microorganisms (Continued from paragraph 160)

219. The CHAIRMAN turned to Article 3 and asked the Secretary of the Main Committee to enumerate the proposals concerning that Article.

220. Mr. CURCHOD (Secretary of the Main Committee) gave details concerning the five written proposals on Article 3 contained in documents DMO/DC/5, DMO/DC/6, DMO/DC/8, DMO/DC/10 and DMO/DC/11, submitted respectively by the Delegations of the United Kingdom, France, the United States of America, the Soviet Union and the Federal Republic of Germany.

221. The CHAIRMAN suggested taking up the earliest proposal, namely, that of the United Kingdom.

222. It was so decided.

223. Mr. DAVIS (United Kingdom) was prepared to initiate the debate by discussing the proposal of the Delegation of the United Kingdom, but he preferred to listen to the other proposals beforehand in order to see what effect they might have on his Delegation's proposal. He suggested that the meeting be suspended for a few moments in order to facilitate the discussion.

224. The CHAIRMAN mentioned that it was also possible to begin in a different way and to ask each Delegation which had made a written proposal to give a brief oral explanation or to ask the Director General of WIPO, who was perhaps the only person present at the meeting to have an overall view of the five proposals, to explain them briefly.

225.1 Mr. BOGSCH (Director General of WIPO) asked the Delegations in question to correct him should he interpret their proposals incorrectly during his explanation.

225.2 After reading out Article 3 as it appeared in the draft (document DMO/DC/3), the Director General of WIPO stated that, firstly, Article 3(2) of the draft tried to expand and explain what the words "recognize as valid" in Article 3(1) implied.

225.3 He noted that the Delegation of the United Kingdom proposed, in document DMO/DC/5, a new wording for Article 3 which was different from the draft. The words "as valid" had been deleted, the term "valid" not being considered acceptable. The United Kingdom could only "recognize" a deposit for the purposes of patent procedure without deciding whether the deposit was valid. With regard to Article 3(2), the proposal of the Delegation of the United Kingdom was based on Article 27(1) of the PCT. It stipulated that no Contracting State could refuse to recognize the deposit on formal grounds, provided that the formalities laid down in the Treaty and Regulations were complied with. Indeed, Article 3(2) as proposed by the Delegation of the United Kingdom was very similar to Article 27(1) of the PCT.

225.4 The Director General of WIPO recalled that the Delegation of France proposed in document DMO/DC/6 that Article 3(1) should read "... shall recognize the deposit of a microorganism with an international depositary authority as adequate for such purposes." The word "valid" was deleted there as well. Article 3(2) explained what was meant in Article 3(1). At the beginning of that Article, the following words were added: "The provisions of paragraph (1) shall mean ...."

225.5 In his view, the proposal of the Delegation of the United States of America (document DMO/DC/8) was similar, to a certain extent, to the proposals made by the Delegations of France and the United Kingdom, because it deleted the word "valid" and said: "... recognize, for such purposes ...." Article 3(2) in the proposal, in contrast to the text of the draft, did not give full enumeration to the meaning of recognition and merely stipulated that "The recognition of

any deposit referred to in paragraph (1) shall include the recognition of the fact and date of the deposit as indicated by the international depositary authority."

225.6 The proposal of the Delegation of the Soviet Union (document DMO/DC/10) was entirely different from the preceding proposals. It attempted to deal with the situation of intergovernmental organizations in the event that Article 1--as proposed by the Delegation of the Soviet Union and other Delegations--no longer contained any reference to such organizations. He considered that the proposal should be dealt with separately and only when the wording of Article 1 had been decided.

225.7 Turning to the proposal of the Delegation of the Federal Republic of Germany, the Director General of WIPO considered that it was mainly a drafting proposal because it did not alter the substance of Article 3. It only made the meaning somewhat clearer.

225.8 He therefore considered that only three proposals could be considered as belonging to the same group and they were those of the Delegations of the United Kingdom, France and the United States of America. The difference between them was that the Delegation of the United Kingdom based itself on the solution adopted in the PCT, whereas the Delegations of France and the United States of America had simplified the text by deleting the word "valid," which was subject to controversy.

226. The CHAIRMAN thanked the Director General for his clear analysis and asked the Delegation of the Federal Republic of Germany whether it agreed with the explanation given by the Director General of WIPO and with the suggestion made to treat its proposal separately from the others as it was, on the whole, a drafting proposal.

227. It was so decided.

228. The CHAIRMAN asked whether the Delegation of the Soviet Union agreed to postpone discussion of its proposal until the afternoon after discussion of Article 1.

229. It was so decided.

230. The CHAIRMAN said that only three proposals remained and he requested the Delegation of the United Kingdom, whose proposal had been the first, to explain its point of view.

231.1 Mr. DAVIS (United Kingdom) said that it was obvious that the word "valid" presented serious difficulties for a certain number of States, including the United Kingdom.

231.2 Turning to Article 3(2), he said that he preferred to replace it by a similar provision figuring in the PCT because, for his Delegation, nearly all the aspects of such a deposit were contestable; however, Article 3(2) as it appeared in the proposed draft, in referring specifically to fact and date, suggested that only those two points could not be challenged. He considered that "recognition" concerned several aspects of which the fact and date were part and that there was no reason to put the latter in a separate paragraph. He then explained that the wording derived from the PCT had been suggested in order to state quite simply that it should not be made more difficult to recognize a foreign deposit than to recognize a national deposit.

231.3 The Delegate of the United Kingdom said that he could accept the wording of Article 3(1) as proposed by the Delegation of the United States of America, but not the wording of Article 3(2) and he added that he would be very interested in listening to the explanations of the Delegate of the United States of America.

231.4 With regard to the proposal of the Delegation of France, he considered that it had much the same effect as that of his Delegation. However, a difficulty arose in connection with Article 3(2), which, in his view, conferred a special status on the date and fact, which his Delegation could not accept.

232.1 Mr. FRESSONNET (France) said that his Delegation--in common with the Delegation of the United Kingdom and, probably, the Delegation of the United States of America--wished to delete from the text the two terms which seemed ambiguous, namely, "valid" in Article 3(1) and "validity" in Article 3(2), while at the same time maintaining the system envisaged in Article 3 of the draft. He considered that his Delegation could not purposely commit itself to hindering any action at the national level because that would, in particular, challenge the validity of the deposit of microorganisms. In his opinion, the provisions of Article 3(1) covered the recognition of the fact and date of the deposit, which meant that it was recognized that there had been a deposit and a specific date. Naturally, it was still possible to invalidate the deposit if it appeared, for example, during national procedure, that the microorganism was not viable. The proof rested with the party questioning the recognition.

232.2 The Delegate of France thought that his Delegation's proposal was very close to that of the Delegation of the United States of America and that it was not really far from the proposal of the United Kingdom on Article 3(2). He would have no basic objection to adopting the latter proposal. However, he wondered whether that proposal, which contained two aspects, namely, the deposit of microorganisms and the availability of samples, was correct. He was not convinced that the availability of samples was the same in every State; in fact he believed that the contrary was true.

233. Mr. BEHAN (United States of America) said that, in order to save time, he would not take up Article 3(1) and would limit himself to making some observations on Article 3(2). He drew the Main Committee's attention to the fact that the title of Article 3, "Recognition of the Deposit of Microorganisms," did not correspond to the contents of Article 3(2), which dealt with the problem of availability and deposit. The "recognition" that the Delegation of the United States of America wished to see included was the recognition of a national deposit by a competent body. It was the recognition of the fact and date of the deposit which could be established in various ways. The word "include" had been retained in Article 3(2) because the recognition of the fact and date was a minimum. The possibility of expanding the scope of recognition was left to the national law if it were deemed desirable by a given Contracting Party. He added that his Delegation had considered the problem very carefully before formulating its proposal. He did not consider that the provision suggested by the Delegation of the United Kingdom for Article 3(2) was necessary because all the countries party to the Treaty were party to the Paris Convention, under which the possibility of discrimination did not exist.

234.1 The CHAIRMAN remarked that, after the first exchange of views between the three Delegations which had submitted proposals, it appeared that, with regard to Article 3(1), the three proposals were extremely close and each, more or less and in its own way, wished to delete the idea of "validity." On the other hand, concerning Article 3(2), the three proposals showed fundamental differences.

234.2 He proposed to limit the debate and to discuss only Article 3(1) in the first instance. He asked the other delegations for their views as to whether the words "recognize as valid" should be maintained or deleted and suggested that the proposal of the United Kingdom should be the basis for discussion.

235. Mr. BOGSCH (Director General of WIPO) considered that the deletion of the word "valid" could be accepted without hesitation without making any fundamental sacrifice, for if a deposit were recognized for the purposes of patent procedure, it must loosely mean that it was a good deposit.

236. Mr. VILLALPANDO (Spain) said that, in view of the reasons put forward by the Delegations of the United Kingdom, the United States of America and France and the explanations given by the Director General of WIPO, his Delegation could accept the deletion of the word "valid."

237. Mr. BELLENGHI (Italy) was also in favor of deletion of the word "valid" from Article 3(1).

238. Mr. OREDSSON (Sweden) said that his Delegation shared the view expressed by the Director General on the point under discussion and it was also prepared to accept the deletion of the word "valid."

239. The CHAIRMAN asked the Main Committee whether it agreed that the idea of "validity" should be deleted from Article 3(1).

240. It was so decided.

241. Mr. BOGSCH (Director General of WIPO) pointed out that, in connection with the second part of Article 3(1) (second sentence in the United Kingdom proposal), there was a difference between the text of the draft (document DMO/DC/3) and the proposals of the Delegations of the United States of America and France, on the one hand, and the proposal of the United Kingdom on the other. In his opinion, the latter was in fact more favorable to depositors because it gave complete freedom to the Contracting States to require proof of deposit without compelling them to do so. He thought that such a proposal would be acceptable to the States as their liberty of action was not limited thereby. There remained one small drafting point in the proposal of the Delegation of the United Kingdom to which he wished to draw the attention of the Main Committee before referring it to the Drafting Committee. In order to be in conformity with the other parts of the draft, perhaps it would be advisable to mention that it was the industrial property office or the authorities of the Contracting State which could require the proof.

242. The CHAIRMAN pointed out to the Main Committee that the proposal of the Delegation of the United Kingdom in respect of Article 3(1) contained two sentences and asked whether it was seconded by any other delegation.

243. Mr. BRAENDLI (Switzerland) seconded the proposal of the Delegation of the United Kingdom, although the difference between that proposal's second sentence and the proposal of the Delegation of the United States of America did not appear to him to be very clear. In his view, there was no legal discrepancy between the two texts, but the proposal of the Delegation of the United Kingdom seemed to him to be clearer.

244. Mr. BEHAN (United States of America) said that his Delegation could accept the proposal of the Delegation of the United Kingdom on Article 3(1).

245. The CHAIRMAN noted that the Delegates of Switzerland and the United States of America had seconded the proposal of the Delegation of the United Kingdom concerning the second sentence of Article 3(1) and asked whether the Main Committee agreed with that part of the said proposal, subject to drafting changes which might be necessary, in particular, to take account of the remarks made by the Director General of WIPO.

246. It was so decided.

247. Mr. STEIN (Federal Republic of Germany) indicated that the proposal made by his Delegation (document DMO/DC/12) also concerned the text of Article 3(1) as proposed by the Delegation of the United Kingdom. He merely wished to point out that it was possible to make several deposits--as had been emphasized by the Director General--and in order to make that clear, he proposed to replace the words "the deposit of a microorganism" by the words "any deposit of a microorganism."

248. The CHAIRMAN thanked the Delegate of the Federal Republic of Germany for having reminded him of that point. He suggested that the Drafting Committee should be asked also to take that proposal into account when it finalized the draft of Article 3(1), as well as the two amendments already adopted, namely, the deletion of the expression "as valid" and the division into two sentences of that provision in accordance with the suggestion made by the Delegation of the United Kingdom.

249. It was so decided.

250. The CHAIRMAN turned to Article 3(2) and emphasized that the proposals on that point showed greater divergency. He asked those delegations which had not spoken on those proposals to kindly do so.

251. Mr. BRAENDLI (Switzerland) said that his Delegation could support the proposal of the Delegation of the United Kingdom (DMO/DC/5) with regard to the formal requirements referred to in the Article, but not in respect of the availability of samples whose recognition should be left to national legislation.

252. The CHAIRMAN asked whether the Delegation of the United Kingdom wished to reply concerning the distinction drawn between those two conditions in its proposal.

253. Mr. DAVIS (United Kingdom) confessed that the problem was a difficult one. The draft Treaty fixed a number of conditions under which samples must be released by the depositary authorities. If the word "availability" were deleted, an a contrario argument might result.

254. Mr. BOGSCH (Director General of WIPO) wondered whether the difficulty could not be circumvented by using the expression: "As far as matters regulated in this Treaty and the Regulations are concerned, no Contracting State may require compliance with requirements different from (or additional to those) ...."

255. Mr. DAVIS (United Kingdom) said that such a proposal was perfectly acceptable to the Delegation of the United Kingdom.

256. Mr. IWATA (Japan) was opposed to the proposal of the Delegation of the United Kingdom concerning Article 3(2) because decisions on availability and release should be made by national legislation. His Delegation wished to see Article 3(2) remain as it appeared in document DMO/DC/3.

257. The CHAIRMAN asked the Delegate of Switzerland to give his views on the proposal of the Director General of WIPO.

258. Mr. BRAENDLI (Switzerland) replied that his Delegation was perfectly agreeable to the proposal made by the Director General of WIPO.

259. Mr. JACOBSSON (Sweden) said that the Delegation of Sweden was prepared to accept the proposal of the Director General of WIPO, but it considered that the text of the draft (document DMO/DC/3) should also be discussed because it treated the problem in a slightly different manner.

260. The CHAIRMAN remarked that, if he had understood the Delegate of Sweden correctly, the latter considered that the proposal made by the Director General of WIPO might be added to the present text of the draft instead of replacing it and he said that that question would be discussed in a few minutes.

261. Mrs. PARRAGH (Hungary) accepted the proposal made by the Director General of WIPO.

262. The CHAIRMAN noted that all the Delegations which had spoken had supported the proposal of the Director General of WIPO, with the exception of the Delegation of Japan which had not directly expressed its views on that point.

263. Mr. FRESSONNET (France) stated that he was in a position to accept the proposal of the Director General of WIPO, but he shared the point of view expressed by the Delegation of Sweden and considered that the said proposal should be added to the text of the draft under discussion, as amended in accordance with the proposal of the Delegation of France.

264. Mr. DEITERS (Federal Republic of Germany) was of the opinion that the text proposed by the Director General of WIPO should be added to the text of the draft as amended in accordance with the proposal made by the Delegation of the United States of America and not in accordance with that of the Delegation of France.

265. Mr. TAK (Netherlands) attached great importance to the provisions of Article 3(2) because they contained the essential elements of the Treaty, namely, the deposit, the maintenance of the strain and the furnishing of samples. If doubt were cast on any of those elements--including the identity of the sample furnished--the Treaty would be weakened. However, he could accept the text proposed by the Director General of WIPO.

266. The CHAIRMAN thought that the Main Committee was in principle prepared to adopt the proposal formulated by the Director General of WIPO and it remained to be determined whether that proposal should replace Article 3(2) or whether, as suggested by the Delegate of Sweden, it should be added to it, either as paragraph (2) or as paragraph (3). It was a drafting question which remained to be settled.

267. Mr. JACOBSSON (Sweden) said that in principle he wished to maintain the text as it appeared in the draft (document DMO/DC/3); nevertheless, he considered it was necessary to make an addition, namely, that such facts were not indisputable but were presumed to exist until proved to the contrary.

268. Mr. BOGSCH (Director General of WIPO) declared his satisfaction with the statement made by the Delegate of Sweden because he had been worried by the absolute nature of the statement contained in the proposals under discussion. The Director General of WIPO saw the problem as twofold. One was the question of whether a procedure of "disqualification" could be added to the Treaty--which was difficult to formulate at present. The other consideration was that the formula now adopted was broad enough to cover the entire problem. He wondered whether a statement included in the Records of the Budapest Diplomatic Conference explaining, with examples, what could not easily be done in the Treaty would be satisfactory. In other words, it could be said that the formula just accepted meant inter alia that, unless there were some grounds for contesting it on the basis of general principles of law, the fact and the date of the deposit and the identity of the microorganism were obviously included in the principle of recognition.

269. Mr. BEHAN (United States of America) said that the proposal made by the Director General seemed acceptable to him; however, he wished to make one suggestion to the Drafting Committee. He wondered whether it were not possible to include the concept of the fact and the date of the deposit in Article 3(1). Article 3(2) of the draft mentioned an optional date receipt, but the Delegation of the United Kingdom intended a receipt showing the date of deposit rather than the date on which the receipt was issued.

270. The CHAIRMAN thought it would be useful to have time to consider that question and suggested that the meeting be suspended.

271. It was so decided.

[Suspension]

272. The CHAIRMAN resumed the meeting and the discussion on the suggestion made by the Delegation of the United States of America concerning repeating in Article 3(1) in an appropriate form the concepts of the fact and date of the deposit. He thought that the proposal under discussion was to be understood thus.

273. Mr. BOGSCH (Director General of WIPO) asked the Delegation of the United States of America if the following wording, for example, would meet with their suggestion: "A Contracting Party may require that a copy of the receipt showing the fact and date of the deposit, ..."

274. Mr. BEHAN (United States of America) replied that such a formula would meet the point he had raised before the meeting adjourned.

275. Mr. FRESSONNET (France) recalled the views expressed by his Delegation during the discussion on Article 3 and said that it supported the proposal made by the Delegation of the United States of America and formulated by the Director General of WIPO. He added that the proposal would have to be finalized by the Drafting Committee.

276. Mr. DEITERS (Federal Republic of Germany) stated that he was in favor of combining the two solutions, namely, the text of Article 3(2) of the draft and the proposal made by the Director General of WIPO.

277. Mr. van WEEL (Netherlands) supported the proposal made by the Delegate of the Federal Republic of Germany.

278. Mr. BOGSCH (Director General of WIPO) remarked that, if the Main Committee decided that Article 3(2) should also include a statement that recognition implied recognition of the fact and date of the deposit, then, in his view, it was essential to include in the Records of the Budapest Diplomatic Conference a statement emphasizing that the Common Law provisions concerning errors or falsification were still opposable to that recognition. He hoped that such a solution would satisfy the Delegation of the United Kingdom.

279. Mr. VILLALPANDO (Spain) considered that the proposal made by the Delegation of the United States of America was a positive contribution which united the various positions. Consequently, his Delegation accepted that proposal, as well as the proposal concerning Article 3(2) made by the Director General of WIPO.

280. Mr. DEITERS (Federal Republic of Germany) did not consider the insertion of the proposal of the Delegate of the United States of America in Article 3(1) to be the same as the inclusion of the recognition of the facts in Article 3(2).

281. The CHAIRMAN asked whether the Main Committee accepted the proposal of the Delegation of the United States of America as formulated by the Director General of WIPO and concerning the inclusion in Article 3(1) of a reference to the fact and date of the deposit, which must be shown in the receipt which offices could request.

282. It was so decided.

283. The CHAIRMAN said that the question of Article 3(2) remained to be decided, namely, whether it was necessary in the above-mentioned Article to maintain a provision stating that recognition concerned in particular--but not exclusively--the fact and date of the deposit. He pointed out that opinions differed on the question and asked the delegations to be quite clear on the subject.

284. Mr. BRAENDLI (Switzerland) shared the point of view expressed by the Delegation of the Federal Republic of Germany, that a new paragraph (2) or (3) concerning the problem of the recognition of the fact and date of deposit should be inserted. The inclusion of those two concepts in the second sentence of Article 3(1) did not ensure that the fact and date of the deposit were recognized, precisely because that second sentence was purely optional for countries in the new context adopted by the Main Committee immediately before the suspension of the meeting.

285. The CHAIRMAN said that two Delegations, those of the Federal Republic of Germany and Switzerland, were in favor of the insertion of Article 3(2) as it appeared in the proposal of the Delegation of the United States of America (document DMO/DC/8) in the text to be adopted by the Main Committee, either as paragraph (2) or paragraph (3).

286. Mr. FRESSONNET (France) thought that recognition of the fact and date of the deposit should be included in the first sentence of Article 3(1) of the Treaty rather than in the second. He also noted that in all the statements made, an important point appearing in Article 3(2) of the text of the draft (document DMO/DC/3) had been forgotten, namely, that concerning the recognition of the identity of the sample of the microorganism. He considered that the omission of that part of the sentence was to be regretted.

287. Mr. DAVIS (United Kingdom) replied that the sentence had been abandoned precisely because the Delegation of the United Kingdom considered that its substance was already contained in Article 3(1) which it had proposed and where reference was made to three elements: the fact, the date and the identity. He thought that either the question of the identity of the deposit should be maintained in Article 3(2) or that Article 3(2) should be deleted; he was in favor of deletion.

288. Mr. TAK (Netherlands) was of the opinion that the furnishing of a sample was closely related to the deposit. The very meaning of "the deposit" was to ensure that the requesting party and the third party received a good sample which was identical to the original deposit. He supported the proposal made by the Delegation of France.

289. Mr. SCHLOSSER (United States of America), before deciding on the last proposal, wished to know whether it was proposed to maintain the provision solely in the Treaty, or to make a reference in the Records of the Budapest Diplomatic Conference to the possibility for national legislation not to recognize the identity of a deposit.

290. Mr. DAVIS (United Kingdom) had thought that the ideas expressed by the Director General of WIPO were the same as his own, namely that the provision of Article 3(2) was not necessary because the question appeared to be dealt with in Article 3(1). Since then, there appeared to have been a revival of interest in favor of the provision of Article 3(2) which he thought had been abandoned before the suspension of the meeting. The Delegate of the United Kingdom did not think that such a situation was satisfactory, but, as the question was being discussed anew, he considered it necessary to introduce certain explanations into the Records of the Budapest Diplomatic Conference in order to avoid misunderstandings.

291. Mr. BOGSCH (Director General of WIPO) said that, if he interpreted the statement of the Delegation of the United Kingdom correctly, the latter, despite a preference for only keeping the proposal made by the Director General of WIPO, was on the point of considering the possibility of accepting a declaration on the fact, date and identity of the deposit, provided that the Records of the Conference contained the necessary explanations. He agreed with the Delegate of France that, if such a sentence concerning the fact, date and identity of the deposit were included in the Treaty, then its place would be as a second sentence in Article 3(1). The third sentence of Article 3(1) would deal with the receipt and Article 3(2) would consist merely and solely of the sentence he had proposed earlier (see paragraph 273).

292. Mr. DEITERS (Federal Republic of Germany) accepted the proposal of the Director General of WIPO to include the clarification in the Records of the Conference, if that would facilitate matters in Common Law countries.

293. The CHAIRMAN noted that the positions of the delegations were becoming clearer, but that the delegates might wish clarification concerning the actual state of the text. He therefore suggested that the Conference Secretariat should attempt to sum up what had been achieved on Article 3 as a whole and submit to the Main Committee one, or if necessary two, proposals.

294. Mr. BOGSCH (Director General of WIPO) said that the Secretariat felt highly honored to have been entrusted with such a mandate.

295. The CHAIRMAN proposed adjourning the debate on Article 3 until the afternoon and to return to it on the basis of a new clarified text drawn up by the Conference Secretariat.

296. It was so decided. (Continued at paragraph 359)

Article 4: New Deposit

297. The CHAIRMAN took up Article 4 and said that he had before him a proposal from the Delegation of the Federal Republic of Germany concerning Article 4(1)(c) (document DMO/DC/12), another proposal from the Delegation of the United Kingdom concerning Article 4(1)(d) and (e) (document DMO/DC/5) and, finally, general observations from the Delegation of Japan on Articles 4 to 8 (document DMO/DC/7); he considered those observations to be of a drafting nature and therefore proposed to refer them to the Drafting Committee.

298. It was so decided.

299. Mr. STEIN (Federal Republic of Germany) said that his Delegation was particularly concerned by three questions. The first was whether the allegation of the depositor could be challenged; the second was the question of the burden of proof; and the third was who could contest the allegation of the depositor. In his Delegation's proposal, the allegation could be contested and the burden of proof was governed by the applicable law. With regard to the third question, he thought that not only should the competent body of the Contracting Party and the third party be entitled to contest, but also the international depositary authority if, when drawing up the statement of viability, it discovered that the allegation of the depositor was not correct.

300. Mr. DAVIS (United Kingdom) thought that the problem of contesting the allegation of the depositor arose when there was an infringement action in relation to the patent and he expressed doubts as to whether, under his country's legislation, the international depositary authority could be entitled to contest the depositor's allegation. Only the parties to the infringement action could have such a right and not the international depositary authority.

301. Mr. STEIN (Federal Republic of Germany) explained that the reason for which his Delegation suggested also granting the right to contest the depositor's allegation to the international depositary authority was that it could be useful not only in cases of action for infringement, but also in the patent application examination procedure, as well as to persons taking part in that procedure or in an opposition procedure.

302. Mr. FRESSONNET (France) pointed out that in the text of the draft (document DMO/DC/3) there existed the possibility of contesting the depositor's allegation without specifying who were the persons entitled to submit such a contestation. In his view, any person having an interest could do so. He thought that the points made by the Delegation of the Federal Republic of Germany were useful. He agreed that the three categories of persons mentioned in the text proposed by the Delegation of the Federal Republic of Germany could contest the depositor's allegation and for that reason he supported its proposal.

303. Mr. BOGSCH (Director General of WIPO) thought that there was merit in the remarks made by the Delegation of the Federal Republic of Germany, but he was not sure that the problem could be dealt with in the same sentence and in the way suggested by that Delegation. He agreed with the Delegate of the United Kingdom that the international depositary authority could not be party to the procedures but only a witness. He thought that the overall proposal of the Federal Republic of Germany contained a certain risk because it gave the impression that the international depositary authority was responsible for the comparison between two microorganisms, one of which did not exist. The Director General of WIPO wondered whether it would not be possible to state that the depositary authority could draw the attention of those concerned to the fact that doubts existed, without being either the party which contested or the judge taking a decision.

304. The CHAIRMAN said that, as the question concerned the future international depositary authorities, it would be useful to listen to the views of those interested. He therefore called on the Representative of the World Federation for Culture Collections (WFCC) to take the floor.

305. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) fully supported the remarks made by the Director General of WIPO. He thought that it would be a serious mistake to mix culture collections with the problem of the depositor's allegation. The only course open was to determine the viability of the deposit and to notify it to the depositor.

306. Mr. STEIN (Federal Republic of Germany) shared the opinion of the Director General of WIPO and emphasized that it was not his intention to state that the international depositary authority should fulfill the role of party to the procedures. He agreed that the wording should be changed, but it should state that it was the international depositary authority which drew attention to the fact that the newly deposited microorganism was not the same as that of the initial deposit. However, he wondered whether the international depositary authorities would be able to fulfill such a task, or even ready to do so.

307. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) said that the culture collection would not normally undertake a taxonomic study on a microorganism deposited for patent purposes, although it would certainly check the viability of the microorganism. Under those circumstances, it would have no means of comparing the deposited microorganism with an unknown microorganism, as the Director General of WIPO had previously pointed out. Consequently, he did not see any reason to include such a possibility, because it would put the culture collection in a situation which, in his opinion, would be extremely unhealthy both for the collections and for the depositor.

308. Mr. BORGGÅRD (Sweden) was of the opinion that contesting the depositor's allegation was a legal action against the depositor and such an action could not be initiated by an international depositary authority. He thought that such an authority should neither initiate such action nor cast doubt on the identity of a deposit. That would mean that the depositary authority was solely responsible for the viability of the deposit.

309. Mr. SCHLOSSER (United States of America) said that the text of the draft mentioned that the depositor's allegations could be contested and that the burden of proof was governed by the applicable law. That covered all the situations which could arise and he did not see the need to amplify it or to try to change something which was already sufficiently clear. He could not envisage any circumstances in which the international depositary authority would be interested in contesting anything and he could not entirely agree with the underlying philosophy which had led the Delegation of the Federal Republic of Germany to submit its proposal. The Delegate of the United States of America thought that the only way to make a correction was probably the suggestion made by the Director General of WIPO, according to which an explanatory statement could be included mentioning that the international depositary authority could be a witness but could not contest. In his opinion, however, all these suggestions overly complicated the original proposal which was clear. For the above reasons, the Delegation of the United States of America preferred the text of Article 4 as it appeared in the draft Treaty (document DMO/DC/3).

310. Mr. CRESPI (Union of Industries of the European Community (UNICE)) fully shared the point of view expressed by the Delegate of the United States of America. The wording of the draft (document DMO/DC/3) had the merit of simplicity, covered all situations and left the culture collections in the position of neutrality they desired. He also thought that there was a variety of circumstances in which the proof of the identity of a new deposit could be challenged and not only when there was an action for infringement. He wondered what legislation was applicable in all the circumstances which might arise; he supposed that it was national legislation, but that could vary from case to case. He thought that the matter required some clarification.

311. Mr. STEIN (Federal Republic of Germany) said that he was prepared to withdraw his Delegation's proposal as far as international depositary authorities were concerned. However, he considered that the wording "Any competent body of a Contracting Party and any third party..." should be kept. In his opinion, the text of the draft was not sufficient as it excluded the possibility of patent procedure at a patent office where there were no parties but only the patent office and the depositor.

312. The CHAIRMAN asked the Main Committee for its views on the new proposal made by the Delegation of the Federal Republic of Germany, which only differed from the previous proposal in the deletion of the reference to the international depositary authority, thus meeting the objection made, in particular, by the Delegation of the United Kingdom.

313. Mr. FRESSONNET (France) recalled that he had initially supported the proposal made by the Delegation of the Federal Republic of Germany. Then he had listened with great interest to the observations made by the Director General of WIPO, without, however, agreeing with his conclusions. At present, he could no longer support the Delegation of the Federal Republic of Germany with regard to the amendment of its proposal and he preferred to keep the original text of the draft, which did not specify matters but referred them to the applicable law.

314. The CHAIRMAN thought that the Main Committee should reflect on the problems raised in the light of the statements made and he proposed adjourning the debate.

Fourth Meeting
Friday, April 15, 1977
Afternoon

Article 4: New Deposit (continued from paragraph 314)

315. The CHAIRMAN returned to the discussion on Article 4(1)(c) and, in particular, the proposal made by the Delegation of the Federal Republic of Germany (document DMO/DC/12, item 2). He recalled that, following a preliminary exchange of views, the Delegation of the Federal Republic of Germany had withdrawn the first part of its proposal, namely, the reference to the international depositary authority (see paragraph 311). In his opinion, in the text of the Treaty itself, it should be necessary to mention that it was possible to verify the identity rather than to contest it, not only during opposition proceedings when the application for a patent was examined or during an action for nullity before a court, but also in the case of an ex officio examination.

316. Mr. STEIN (Federal Republic of Germany) stated that his Delegation had made a proposal on Article 4(1)(c) because it was not entirely satisfied with the wording of the Article in the draft, which read: "If the allegation of the depositor is contested...." In his view, the word "contested" implied a procedure between at least two parties; however, when examining an application for a patent, there were no parties but only the patent office and the depositor. On the other hand, it was also possible that the patent office would ask the depositor to prove his allegation. According to the text of the draft, the argument could be used a contrario and it could be said that, since the patent office was not a party, it necessarily had to accept the allegation of the depositor; such a concept was

not acceptable. The Delegate of the Federal Republic of Germany pointed out that he did not insist on his proposal and even declared his readiness to withdraw it; nevertheless, in view of the importance of the question, he wished at least to see a statement in the Records of the Budapest Diplomatic Conference to the effect that the second sentence of Article 4(1)(c), as it appeared in the draft, did not exclude the possibility of international depositary authorities requesting the depositor to prove his allegation.

317. Mr. BOGSCH (Director General of WIPO) considered that the Delegate of the Federal Republic of Germany was right in his general approach to the problem and said that there could be no doubt that what he proposed was a wish which had to be satisfied at least in the Records of the Conference. However, he thought that the discussion on the problem was somewhat premature as there was a likelihood that subparagraphs (d) and (e) would be modified in accordance with the proposal made by the Delegation of the United Kingdom. The proposal made by the Delegation of the Federal Republic of Germany presupposed that subparagraphs (d) and (e) would remain as they were in the draft (document DMO/DC/3), but that supposition was unlikely. The Director General of WIPO therefore proposed that the proposal be accepted in principle, but that it should be discussed again when the decision concerning the legal effect of a new deposit had been taken.

318.1 The CHAIRMAN considered that, from a procedural point of view, the proposal of the Director General of WIPO could be accepted and he assumed that the wish expressed by the Delegation of the Federal Republic of Germany corresponded to the views held by the Main Committee. The identity of a new deposit in relation to the initial deposit could be the subject of an ex officio examination, even without formal contestation by a third party and that idea could be reflected in due form in the Records of the Budapest Diplomatic Conference.

318.2 He proposed proceeding to subparagraphs (d) and (e) and noted that the Delegation of the Federal Republic of Germany had reserved the right to come back to subparagraph (c) if the decision taken on subparagraphs (d) and (e) did not correspond with its desire.

319. It was so decided.

320. The CHAIRMAN opened the discussion on Article 4(1)(d) and (e) and asked the Delegate of the United Kingdom to explain his proposal contained in document DMO/DC/5.

321. Mr. DAVIS (United Kingdom) said that he had already explained his Delegation's proposal during the second meeting of the Main Committee (see paragraph 181) and that his Delegation's position was summarized in the commentary to document DMO/DC/5. In his view, it was impossible to foresee with certitude what courts might decide in respect of the liberty to make new deposits and, therefore, the problem should be left to the national legislation. His Delegation could accept to say that a new deposit made in accordance with the Treaty would be recognized in the same way as new deposits in general. The proposal to delete

subparagraph (e) of the draft was merely a logical consequence of the proposal to let national law solve the question of the recognition of a new deposit.

322. Mr. BOGSCH (Director General of WIPO) reminded the Main Committee that, at its previous meeting (see paragraph 254 et seq.), it had adopted a provisional solution concerning Article 3 whose wording was as follows: "As far as matters regulated in this Treaty and the Regulations are concerned, no Contracting Party may require compliance with requirements different from or additional to those which are provided in this Treaty and the Regulations." He wondered whether it was not possible either to align Articles 3 and 4(1)(c) or to change the present provisions of Article 3, which only covered the initial deposit, so that they also included a new deposit. As a basis for discussion, the Director General of WIPO proposed the text based exactly on the wording of Article 3 of the draft, that is: "Any competent body of a Contracting Party which allows or requires a new deposit...."

323. Mr. DAVIS (United Kingdom) said that it appeared to be a very good proposal which seemed to solve the problem.

324. Mr. BOGSCH (Director General of WIPO) suggested that the Main Committee should adopt the following procedure: firstly, it should take a decision on Article 3 and then, secondly, it should choose one of the two solutions he had proposed (see paragraph 322).

325. The CHAIRMAN asked whether the Main Committee accepted the proposal of the Director General of WIPO and agreed to postpone discussion of Article 4(1)(d) and (e) until it had discussed and adopted a new text of Article 3, on which the Conference Secretariat had agreed to submit a proposal.

326. It was do decided. (Continued at paragraph 379)

Article 5: Export and Import Restrictions

327. The CHAIRMAN opened the discussion on Article 5 and on the proposal submitted by the Delegation of France (document DMO/DC/13) providing for the adoption by the Conference of a resolution which would replace Article 5. He requested the Delegate of France to explain briefly his proposal.

328.1 Mr. FRESSONNET (France) pointed out that his Delegation's proposal covered two aspects: the deletion of Article 5 of the draft and adoption by the Conference of a resolution whose text was included in the document DMO/DC/13. He emphasized that his Delegation was determined to ensure that the provisions of the Treaty could be applied in a satisfactory manner and it would endeavor to limit as far as possible the restrictions on the export and import of certain types of microorganisms. The aspect of Article 5 which gave his Delegation cause for concern was the legal nature of the text, which meant that it encroached on national law under conditions which he did not consider satisfactory.

328.2 The Delegate of France then rapidly resumed the objectives of the paragraphs of the proposed resolution. The first preambular paragraph emphasized that the aims of the Treaty could only be attained on the express condition that microorganisms could cross frontiers. The second preambular paragraph noted that national provisions could hinder export and import. With regard to the third preambular paragraph, it pointed out that such prohibitions, if they were not of an exceptional character, could be of such a nature as to compromise the entire application of the Treaty. Prohibitions should be of an exceptional character which could be justified, in particular, where export or import entailed dangers, for example, for health or the environment. Finally, the operative paragraphs of the resolution invited the Contracting States to take all necessary measures permitting the full application of the Treaty by limiting, insofar as it was possible to do so, restrictions on the import or export of microorganisms deposited, or destined for deposit, under the provisions of the Treaty.

329. The CHAIRMAN proposed that the Main Committee should first discuss the principle of whether or not to replace Article 5 by a resolution along the lines of that proposed and, if the principle were adopted, to discuss the proposal of the Delegation of France paragraph by paragraph.

330. It was so decided.

331. The CHAIRMAN asked whether any other delegation seconded the proposal of the Delegation of France.

332. Mr. van WEEL (Netherlands) seconded the proposal submitted by the Delegation of France and explained that his country was in the same situation as that of France. He feared that Article 5, as it appeared in the draft, might hinder ratification of the Treaty in his country and he hoped that the solution proposed by the Delegation of France would enable the Treaty to be ratified as soon as possible.

333. Mr. BRAENDLI (Switzerland) stated that the Delegation of Switzerland was, in principle, in agreement with the proposal of the Delegation of France.

334. The CHAIRMAN reminded delegates that the discussion was limited to the principle; the details of the proposal would be discussed later.

335. Mr. IANCU (Romania) considered that the text of Article 5 was a very important part of the Treaty and the Main Committee should take time for reflection. His Delegation could not yet take a definite decision on the French proposal.

336. The CHAIRMAN said that the Delegation of Romania had made a procedural suggestion and he asked whether the Main Committee agreed to postpone the discussion on Article 5 until the following meeting.

337. It was so decided. (Continued at paragraph 436)

Article 1: Establishment of a Union

338. The CHAIRMAN recalled that among the Articles on which discussion had been postponed were Article 1 and the question of principle concerning the participation of intergovernmental organizations as party to the Treaty, and Article 3 with regard to which a proposal by the Secretariat of the Conference would be distributed. He proposed taking up Article 1 and said that three proposals had been submitted by the following Delegations: Japan (document DMO/DC/7), Soviet Union (document DMO/DC/10) and Romania (document DMO/DC/11). He added that document DMO/DC/6, submitted by the Delegation of France, also contained some observations on that question. He gave the floor to the Delegate of the Soviet Union.

339. Mr. GUDKOV (Soviet Union), referring to Article 19 of the Paris Convention, stated that, in his view, the said Article granted the right to be party to international agreements to States and he considered that the observations made in the draft (DMO/DC/3) were not persuasive. He asked the Main Committee not to take a decision which might lead to uncertainty and make application of the Paris Convention difficult. Having studied closely the provisions of Articles 5, 6 and 7 of the draft in the light of Article 19 of the Paris Convention, the Delegate of the Soviet Union concluded that intergovernmental organizations could neither solve the problem of export and import of microorganisms nor guarantee depositary institutions. He did not agree with the principle of depositing microorganisms with intergovernmental authorities. His Delegation was opposed to Article 1 as it appeared in the draft and proposed deleting the reference to intergovernmental organizations and inserting a new paragraph in Article 3, which would provide as follows: "The reference to the 'Contracting State' in this Article shall be regarded as referring to any intergovernmental organization to which a number of States entrusted the granting of regional patents and of which all the member States are, at the same time, members of the Paris Union for the Protection of Industrial Property, should such organization declare that it takes the responsibility envisaged by this Article."

340. Mr. STOENESCU (Romania) shared the views expressed by the Delegations of the Soviet Union and Japan. He put forward certain legal arguments in favor of the proposal submitted by his Delegation, namely: the Paris Convention provided that only States could be party to an international treaty; up to the present moment, the question of the participation of intergovernmental organizations as party to a treaty had not been raised. He recalled that the problem had been discussed for several years in the United Nations within the framework of the Sixth Committee on International Law and no solution had been found. In view of present circumstances, he considered that it would be preferable to limit participation in the Treaty solely to States.

341. Mrs. KONRÁD (Hungary) supported the proposals made by the Delegations of the Soviet Union and Romania. In her view, the Union to be constituted by the Treaty should be composed solely of States.

342. Mr. JONKISCH (German Democratic Republic) supported the proposal made by the Delegation of the Soviet Union which, in his opinion, followed the provisions of Article 19 of the Paris Convention and gave intergovernmental organizations the possibility of benefiting from the advantages of the Treaty.

343. Mr. CÍRMAN (Czechoslovakia) agreed with the proposal made by the Delegation of the Soviet Union and emphasized the following point: if the Union were composed of States and intergovernmental organizations, the former, in addition to their own votes, would also have a proportion of the votes belonging to intergovernmental organizations of which they were members.

344. Mr. ROKICKI (Poland) supported the proposal made by the Delegation of the Soviet Union.

345. Mr. PETROV (Bulgaria) also supported the proposal made by the Delegation of the Soviet Union.

346. Mr. WINTER (United States of America) did not think that there was any legal objection to an intergovernmental organization becoming party to the Treaty. He recalled that Article 14 of the draft, which dealt with the provisions for becoming party to the Treaty, laid down certain conditions, namely that all States members of any intergovernmental organization which had been entrusted by several States with the authority to grant regional patents must be members of the Paris Union. It was obvious that such an intergovernmental organization, by virtue of the convention establishing it, must have the necessary authority to meet all its responsibilities. Recalling that at present, the only intergovernmental organization of that nature was the African Intellectual Property Organization, the Delegate of the United States of America asked to hear the views of the future Member States of the European Patent Organisation.

347.1 Mr. FRESSONNET (France) informed the Main Committee that the Delegations of the States which had signed the Convention on the Grant of European Patents had met at the beginning of the afternoon in order to study the proposals submitted by the various Delegations, in particular, that of the Soviet Union. On behalf of those States, he wished to explain to the Main Committee the conclusions which had been reached during the meeting.

347.2 He pointed out that the representatives of the Interim Committee set up in Brussels to implement the Convention had never requested the inclusion of intergovernmental organizations in Article 1 of the draft and he wondered whether the Director General of WIPO, if he thought it advisable, could perhaps explain why they had been included. During the afternoon meeting, it had been noted that, under the provisions of the draft Treaty, intergovernmental organizations were not treated on the same equal footing as Contracting States. For example, they did not have the right to designate international depositary authorities, which right had been granted to Contracting States. In addition, it had been noted that participation by intergovernmental organizations in the Treaty would constitute a precedent. Therefore, the Delegations of the signatory States of the European Patent Convention, not considering the reference to intergovernmental organizations in Article 1 of the draft to be particularly important, wondered whether it was appropriate to retain it.

348. Mr. DIA (Senegal) expressed his surprise at the lengthy discussion on the inclusion in Article 1 of the draft of intergovernmental organizations, such as the African Intellectual Property Organization, as Contracting Parties. He said that the majority of African States which were beginning to become interested in patent rights were grouped together in the African Intellectual Property Organization and, in order to participate actively in the work of international organizations, they needed to be better organized and to gain experience. It would merely be an act of justice and equality to grant intergovernmental organizations the right to become party to the Treaty.

349.1 Mr. BOGSCH (Director General of WIPO) did not share the view that intergovernmental organizations could not become party to the Treaty and he recalled that precedents already existed. Neither did he agree with the opinion expressed by several Delegations that, according to Article 19 of the Paris Convention, only member States of the Paris Union could conclude special agreements amongst themselves and cited as examples the numerous bilateral treaties on trademarks concluded between China and States participating in the Budapest Diplomatic Conference, as well as the inter-American treaties on industrial property, where the majority of parties were not members of the Paris Union.

349.2 He then explained that the inclusion of intergovernmental organizations in Article 1 of the draft had been prompted by the following objective: to ensure full application of the Treaty by such important bodies as the African Intellectual Property Organization, the future European Patent Office and, possibly, other future regional patent offices.

349.3 The Director General of WIPO noted that it was unlikely that Article 1 would be accepted as it appeared in the draft. The proposal made by the Delegation of the Soviet Union would enable the objective to be attained if one or two provisions were added specifying that intergovernmental organizations had the right to propose or even nominate international depositary authorities, that they had to give the same guarantees as States, that they could enjoy ex officio partlcipation in meetings of the Assembly of the Union, even without the right to vote, and that, as was the case for Contracting States, they had the right to withdraw from such participation.

350. The CHAIRMAN pointed out that, following upon the statement made by the Director General of WIPO, the Main Committee should not infer that the Director General and his staff were solely responsible for the inclusion of intergovernmental organizations as Contracting Parties in the draft Treaty. The Chairman, who had also presided over the Committee of Experts which had discussed the draft, confirmed that the Committee of Experts had always been conscious of the fact that the Diplomatic Conference alone could take a decision on the matter and he had requested the Secretariat to prepare two possibilities in order to meet all eventualities. He stated that, since an intergovernmental organization could be responsible for issuing patents for a certain number of countries, it was desirable that it should benefit from the advantages of the Treaty as quickly as possible without having to wait until each State had ratified the Treaty individually.

351. Mr. STOENESCU (Romania) thought that the problem could be solved in another way. States were sovereign entities and nothing hindered them from authorizing an intergovernmental organization to act as an international depositary authority for microorganisms or even to undertake any task on behalf of the State. It would, therefore, be sufficient to add certain provisions allowing for such possibility expressis verbis.

352. Mr. DAVIS (United Kingdom) declared that personally he would have been satisfied with a provision in the Treaty enabling intergovernmental organizations to become party to it. However, as such a provision was not likely to be accepted, he wished to ralse certain practical problems, taking the European Patent Organisation as an example. In his opinion, there was little advantage for the European Patent Organisation in becoming party to the Treaty since the latter, if worded in the manner proposed by the Delegation of the Soviet Union, allowed the European Patent Organisation to do precisely what it could do without acceding to the Treaty, namely designate depositary institutions as it wished. The draft Treaty compelled the European Patent Organisation to recognize foreign depositary institutions; therefore, the advantage accrued to those institutions and not to the European Patent Organisation. It was logical that, in exchange, the European Patent Organisation should have the right to vote, to desiqnate international depositary authorities or to terminate the international depositary status of such institutions. According to the proposal made by the Delegation of the Soviet Union, the European Patent Organisation would lose all such rights; therefore,

the Delegate of the United Kingdom did not see why the Organisation should become party to the Treaty. The proposal made by the Director General of WIPO (see paragraph 349) restored the balance to a great extent by giving back some of those rights to the European Patent Organisation. The Delegate of the United Kingdom was only prepared to consider the proposal made by the Delegation of the Soviet Union on that basis.

353. Mr. BOGSCH (Director General of WIPO) replied to the statement that nothing hindered a Member State of, for example, the European Patent Organisation, from authorizing the latter to undertake a task the State wished to entrust to it. To his knowledge, the European Patent Office did not intend to become a depositary of microorganisms in the same way as a national patent office and it was unlikely that it would be entrusted with such a task. The European Patent Office could hand the task over to another body or could recognize the other body as a depositary institution, but the question of the competence of the Office was governed by the European Patent Convention. However, the legal problem was that the depositary institution designated by the European Patent Office did not automatically become an international depositary authority since, in order to do so, it had to be recognized by the other States. How could a State be obliged, other than by a treaty, to recognize an international depositary authority nominated by the European Patent Office? It was therefore legally necessary to provide a certain connection in the reaty between the different procedures in question and, in the view of the Director General of WIPO, the proposal of the Delegation of the Soviet Union, together with the amendments he himself had proposed, would provide the necessary link.

354. Mr. FRESSONNET (France) pointed out that the proposal made by the Delegation of the Soviet Union was not in the interest of the European Patent Office. On the other hand, the improvements proposed by the Director General of WIPO, in the view of the Delegation of France, considerably altered the situation. He suggested that, for reasons of clarity, the Main Committee should receive a specific proposal in order to have a profitable discussion.

355. Mr. DEITERS (Federal Republic of Germany) drew attention to the fact that should the words "and intergovernmental organizations" be deleted, other problems would follow. He mentioned Rule 11, for example, which stated that the right to furnish samples was only given to the industrial property offices of a Contracting Party. If intergovernmental organizations were no longer considered Contracting Parties, then that Rule, and others, would have to be reexamined.

356.1 The CHAIRMAN informed delegates that document DMO/DC/14, which contained the results of the discussion on Article 3 and had been prepared at the request of the Main Committee, had just been distributed.

356.2 Before taking a decision on the procedure for debate, he suggested that the meeting be suspended.

[Suspension]

357.1 The CHAIRMAN, noting that no delegation wished to take the floor, endeavored to formulate a provisional conclusion on procedure. A clear majority had declared itself in favor of deletion of the reference to intergovernmental organizations in Article 1, which, if agreed upon, would mean certain other changes. During the debate, the idea had arisen that the objective allowing intergovernmental organizations to profit by the Treaty could be reached in another way, namely, by inserting references to those organizations in the appropriate articles, as had been suggested by the Director General of WIPO, supported by the Delegations of the United Kingdom and France.

357.2 He proposed that discussion of the draft Treaty should continue on the hypothesis that the reference to intergovernmental organizations in Article 1 had been deleted, although a formal decision on deletion could only be taken when certain concrete points had been discussed.

357.3 He then requested the Secretariat of the Conference, in particular, the Director General of WIPO, to prepare a working paper, with the assistance of the Delegations of the United Kingdom and France, setting out four or five provisions into which a direct or indirect reference could be inserted. He asked the Director General of WIPO whether he was prepared to accept such an additional task and also asked the Main Committee whether it accepted this procedural proposal.

358. It was so decided.

Article 3: Recognition of the Deposit of Microorganisms (continued from paragraph 296)

359. The CHAIRMAN opened the discussion on the proposal drawn up by the Director General of WIPO concerning Article 3 and contained in document DMO/DC/14. He requested the Director General of WIPO to introduce the document.

360. Mr. BOGSCH (Director General of WIPO) said that he wished to make only one remark. In Article 3(1), the words "within a specified time limit" were placed within square brackets because he was not sure that they were absolutely necessary.

361. The CHAIRMAN said that, since there were no comments on the first and second sentences of Article 3(1), he would take up the last sentence and that the words within square brackets could be discussed separately.

362. Mr. FRESSONNET (France) pointed out that the last sentence indicated that the competent authority of any Contracting Party could request a copy of the receipt issued by the international depositary authority "showing the fact and the date of the deposit." He remarked that, if the fact and the date of the deposit were mentioned, then it also would be desirable to mention the identity of the microorganism in the sentence. However, since Rule 7.3 enumerated the contents of the receipt, he proposed, in the name of his Delegation that the words "showing the fact and the date of the deposit" be deleted from the last sentence of Article 3(1) as it appeared in document DMO/DC/14. The receipt would, therefore, include the fact and date of the deposit in accordance with Rule 7, as well as the identity of the microorganism.

363. Mr. BOGSCH (Director General of WIPO) said that the original English text of his proposal employed the word "showing," for which the most exact French translation would be "indiquant." Replying to the statement by the Delegate of France, he noted that the text could be adopted with the proposed amendment and suggested that it should also be specified that it was a receipt of deposit.

364. Mr. FRESSONNET (France) considered that it was a question of drafting which should be referred back to the Drafting Committee.

365. The CHAIRMAN asked whether the Main Committee accepted the proposal made by the Delegate of France.

366. It was so decided.

367. The CHAIRMAN stated that a decision had to be taken concerning the words "within a specified time limit" appearing in square brackets and since no Delegation considered those words essential, he suggested that they be deleted.

368. It was so decided.

369. Article 3(1) was adopted in its entirety.

370. The CHAIRMAN opened the discussion on Article 3(2).

371. Mr. FRESSONNET (France) proposed changing the wording in the French text by deleting the words "les matières réglementées par le présent Traité" and replacing them by the words "les matières régies par le présent Traité."

372.1 The CHAIRMAN said that he would transmit the proposal made by the Delegation of France to the Drafting Committee.

372.2 He asked whether the Main Committee agreed to adopt Article 3(2) in the form proposed.

373. It was so decided.

374. The CHAIRMAN recalled that the proposal concerning the text to be included in the Records of the Budapest Diplomatic Conference still had to be examined.

375. Mr. DAVIS (United Kingdom) said that in the English text he would prefer to replace the word "always," appearing before the words "be contested," by the expression "at any time."

376. The CHAIRMAN noted that there were no further comments and proposed to refer the proposal made by the Delegation of the United Kingdom to the Drafting Committee.

377. It was so decided.

378. Article 3 was adopted in its entirety.

Article 4: New Deposit (continued from paragraph 326)

379. The CHAIRMAN returned to the discussion on Article 4(1)(d) and (e), and recalled that the Director General of WIPO had proposed a text based on the text of revised Article 3.

380. Mr. BOGSCH (Director General of WIPO) thought that the following text might be appropriate: "Any competent body of a Contracting Party which allows or requires the deposit of microorganisms for the purposes of patent procedure shall recognize, for such purposes, the new deposit of a microorganism in conformity with Article 4, with any international depositary authority. Such recognition shall include the recognition of the fact and date of the new deposit as indicated by the international depositary authority as well as the recognition of the fact that what is released as a sample is a sample of the deposited microorganism. The competent body of any Contracting Party may require that a copy of the receipt of the new deposit from the international depositary authority be furnished to such body. As far as matters regulated in this Treaty and the Regulations are concerned, no Contracting Party may require compliance with requirements different from those which are provided in this Treaty and the Regulations in respect of new deposits."

381. The CHAIRMAN asked the Delegation of the United Kingdom whether, in its view, a solution could be found along the lines suggested by the Director General of WIPO.

382. Mr. DAVIS (United Kingdom) was of the opinion that a solution could be found along those lines. He considered that the formula "recognition of the fact that what is released as a sample is a sample of the deposited microorganism," if it were accepted, would solve the problem.

383. The CHAIRMAN asked whether the Main Committee preferred to continue discussion on the general concept of the proposal made orally by the Director General of WIPO, or whether it requested to be furnished with a written text of the proposal.

384. Mr. van WEEL (Netherlands) said that his Delegation could accept the proposal made by the Director General of WIPO, but it wished to know whether the six-month period mentioned under Article 4(1)(d) and (e) of the draft (document DMO/DC/3) would be maintained.

385. Mr. BOGSCH (Director General of WIPO) replied that, in his opinion, the Delegation of the United Kingdom had not wished to impose any time limit on national law; therefore, the mention of a six-month period should be deleted.

386. Mr. TAK (Netherlands) asked whether the depositor would delay his new deposit indefinitely if there were no mention of a time limit.

387. The CHAIRMAN considered that it was a question to be resolved by the national legislation.

388. Mr. BOGSCH (Director General of WIPO), replying to the Delegate of the Netherlands, suggested that the sentence he had proposed could, for example, be terminated by the following text: "Any competent body of a Contracting Party which allows or requires a new deposit to be made within a certain time limit... will have the same effect..."

389. Mr. TAK (Netherlands) asked whether, if a sample were no longer available, the international depositary authority was obliged to notify the fact not only to the depositor but also to all the patent offices.

390. Mr. BOGSCH (Director General of WIPO) thought that the question concerned Article 4(1)(a), rather than Article 4(1)(d) and (e) since, during the procedure, if the patent office required a sample, it would request it either from the depositor or from the patent owner and would, therefore, inevitably be informed that the sample was no longer available. Should the patent office not request a sample because it did not see the necessity for one, the fact that no sample was available would not concern that particular patent office.

391. Mr. BRAENDLI (Switzerland) stated that the discussion on the new wording of Article 4 put the Delegation of Switzerland in a certain quandary. It is true that his delegation had declared in its initial statement (see paragraph 63) that national law should not be infringed upon, but, on the other hand, the new proposal submitted by the Director General of WIPO and inspired by the proposal made by the Delegation of the United Kingdom, appeared to weaken the Treaty. The Delegate of Switzerland recalled that Article 3 of the Treaty required member States to recognize a deposit made with an international depositary authority in the same way as a deposit made in accordance with their legislation where the latter stipulated that a deposit had to be made. Article 4 at present provided that, under certain practical circumstances, a new deposit could be made. According

to the structure of Article 4 as it appeared in the draft (document DMO/DC/3), the member States recognized the new deposit as having a certain priority, that is having the date of the original deposit since a depositor should not be punished for circumstances over which he had no control. However, the Delegate of Switzerland considered that the new formula left the question entirely open because if national law provided for a new deposit in accordance with the Treaty, it would have the same effect as any new deposit made in accordance with the national legislation. Considerable legal uncertainty for depositors would arise, whereas the new deposit should be recognized as having effect from the date on which the original deposit was made. For the above reason, the Delegation of Switzerland considered that the situation should be internationalized--which was the objective of Article 4--and he proposed that the structure and contents of Article 4(1)(d) and (e) of the draft be retained without necessarily maintaining the same wording. He then compared that Article with Article 4C(4) of the Paris Convention on the right of priority.

392. Mr. OREDSSON (Sweden) shared the views expressed by the Delegate of Switzerland and said that the basic text of the draft (document DMO/DC/3) should be retained. In his view, it was extremely important that depositors know whether they would be allowed to make a new deposit in the cases mentioned in paragraph (1) and whether such a new deposit would be dealt with by all the Contracting Parties as though it had been made on the date on which the original deposit had been made.

393. Mr. DEITERS (Federal Republic of Germany) agreed with the views expressed by the Delegation of Switzerland.

394. Mr. FRESSONNET (France) also supported the proposal made by the Delegation of Switzerland.

395. Mr. IWATA (Japan) declared himself in favor of the proposal made by the Delegation of Switzerland.

396. Mr. SCHLOSSER (United States of America) found himself unable to agree with the Delegation of Switzerland. He was not sure that, under his country's legislation, a new deposit was permitted and he thought that the same situation prevailed in many other countries. He stated that the courts in the United States of America had never considered the question of a new deposit and his Delegation was reluctant to take a decision which would bind the courts in their future decisions. He considered that the problem of new deposits would seldom arise but, should it do so, he would prefer to see the question regulated under national law and it was the latter's role to determine whether the new deposit could be considered as an original deposit.

397. Mr. BELLENGHI (Italy) declared that, despite the statement made by the Delegation of the United States of America, he supported the proposal put forward by the Delegation of Switzerland.

398. Mr. DAVIS (United Kingdom) thought that the position of the Delegation of Switzerland lacked consistency since it appeared to be in favor of maintaining Article 4(1)(d) and (e), as well as the six-month time limit and yet, at the same time, it did not wish to change national law. He would be surprised if Swiss law contained any decision on the question of a new deposit but, if it did, he would be extremely interested to hear of it. The position of the Delegation of the United Kingdom was exactly the same as that of the Delegation of the United States of America.

399.1 Mr. BRAENDLI (Switzerland) recalled that his Delegation had stated that the Treaty should encroach as little as possible on national law. However, having followed the discussion on Article 4 of the draft, it had become obvious, in his opinion, that an aspect existed which required that priority be given to regulation in order to make the Treaty effective: that aspect concerned the circumstances underlying Article 4 of the draft, which could lead to changes in national legislation, as had been the case with Article 4C(4) of the Paris Convention.

399.2 Replying to the question of the Delegation of the United Kingdom, he said that Swiss law did not contain provisions relating to a new deposit.

399.3 The Delegate of Switzerland concluded by stating that, in his opinion, the new wording (referral to national law) weakened Article 4 and he repeated his proposal to retain the text of the draft.

400. Mr. CRESPI (Union of Industries of the European Community (UNICE)) welcomed the statement made by the Delegate of Switzerland since the procedural complications raised by the proposed amendment to Article 4 gave cause for concern. He declared that he was concerned about the prospect of losing a concession concerning new deposits which existed in the draft Treaty (document DMO/DC/3). UNICE had always considered the concession to be a reasonable one in view of the fact that it concerned living biological material possessing its own internal laws, which were often inconvenient. The Representative of UNICE did, however, understand the serious legal objections raised by the Delegations of the United Kingdom and the United States of America with regard to the absence of a legal precedent, and had the problem been raised at a meeting of the Committee of Experts, UNICE would have submitted a proposal. It was perhaps not too late to put forward his organization's proposal since the problem appeared to arise solely from the gap existing between the moment of the loss of viability and that of the new deposit. He hoped that the gap would be a short one and he thought that it could be filled by the depositor himself: in effect, the original text of Article 4(1)(d) could be expanded to specify that, during the period preceding the new deposit, the depositor himself must undertake to furnish samples himself directly to persons requesting them. If the depositor were unable to do so, the legal consequences would be

governed by national law; the same rule would apply where the depositor could furnish the same culture and it was challenged. The Representative of UNICE hoped that the solution outlined would meet the points made by the Delegates of the United Kingdom and the United States of America and that it would overcome the obstacles mentioned by the Delegate of Switzerland.

401. Mr. DAVIS (United Kingdom) declared that, as he had raised the difficulties during the debate, it was his duty to clarify matters. The mere fact that no legal precedent existed did not, in his view, mean that no legal solution existed with regard to microorganisms. He also considered that it was obvious that the delegates during the debates in the Main Committee were seeking to make changes in patent law by considering a microorganism as being available even when it was not available during a six-month period. Therefore, basic points of patent law were involved, namely, the concept of disclosure, the period during which the microorganism must be available and disclosure in connection with microorganisms.

402. Mr. SCHLOSSER (United States of America) said that, when he had made his previous statement (see paragraph 396), he had not been aware of the solution proposed by the Representative of UNICE. He therefore wished to have time to consider that proposal and he would make his observations subsequently.

403. Mr. BOGSCH (Director General of WIPO) considered the proposal of the Representative of UNICE to be very ingenious, but he feared that certain countries entertained doubts on the question of whether national law permitted a new deposit and those doubts would not be dispelled by the mere fact that the interested party himself would furnish samples of the microorganism that he alleges to be identical to the initial deposit. He thought that it would be a real pity to ruin the prospect of ratification by certain important countries for the sake of a few dead microorganisms, although it was fortunately rare that microorganisms died since they were held by excellent depositary institutions which kept them alive. The Director General of WIPO thought that the problem under discussion was relatively unimportant for the majority of the international community and he wondered whether it would not be wiser to retain Article 4(1)(d) and (e) of the draft and to leave open the possibility of reservations for those countries which found application of the Treaty difficult: whereas in Switzerland and certain other countries, when the Treaty was ratified, it would immediately become operative, in the United States of America or the United Kingdom, ratification of the Treaty could only be envisaged if the patent laws were changed to include the provisions of Article 4(1)(d) and (e), which might take some time. The Director General of WIPO asked the delegates to reflect on the problem during the weekend and to decide whether, with regard to such a minor point, it might not be possible to allow reservations on Article 4(d) and (e) and thus retain the original text.

404. The CHAIRMAN adjourned the discussion on Article 4(1). (Continued at paragraph 410)

Fifth Meeting
Monday, April 18, 1977
Morning

Organization of Work

405.1 The CHAIRMAN, on behalf of all participants, first of all thanked the Delegation of Hungary and, in particular, its Head and the President of the Diplomatic Conference, Mr. Tasnádi, for the excursion offered to the delegates to the Conference, which had enabled them to appreciate the beauty of the country and to become better acquainted with its history.

405.2 He stated that the Secretariat of the Conference had distributed documents DMO/DC/15 to DMO/DC/22 which, with the exception of documents DMO/DC/16 and DMO/DC/20, all concerned the Regulations, and he summarized the situation after the first four meetings. The first five Articles of the draft had been discussed, but discussion had not been fully concluded on any of them. The Main Committee had suggested an alternative text for Article 1, which was contained in document DMO/DC/16. Article 2 had been adopted, subject to the amendments necessitated by changes in Article 1. With regard to Article 3, the text of the first two paragraphs had been adopted, but the possible third paragraph proposed by the Delegation of the Soviet Union had still to be studied. Article 4(1)(d) and (e) had not been resolved and, in respect of Article 5, the basic decision on whether to adopt an amended text of the Article or the resolution proposed by the Delegation of France had not yet been made. In addition, the 14 remaining Articles and the Regulations had not been discussed. The Chairman suggested that the first seven Articles should be concluded during the day, with the exception of the amendments to Article 1 and the subsequent changes resulting therefrom, which could be discussed the following day, together with the other Articles of the Treaty concerning which much fewer amendments had been proposed. The following day it would thus be possible to take up the Regulations, which it did not seem necessary to discuss in numerical order, and he therefore proposed that, in view of the wish expressed by a certain number of delegates, the discussion commence with Rule 11. In accordance with Article 32 of the Rules of Procedure, he emphasized that, during the discussion on the Regulations, only proposals submitted in writing would be accepted, which was a somewhat stricter procedure justified by the fact that the Regulations dealt with details and not fundamental issues necessitating unanimous decisions. He requested those delegations which still wished to submit proposals in writing to do so before the next meeting.

406. Mr. van WEEL (Netherlands) proposed that the Delegations from the States party to the European Patent Convention should meet in order to define a common position.

407. The CHAIRMAN, after consultation with the Director General of WIPO and the Conference Secretariat, invited Delegations of States party to the European Convention to meet the following morning.

408. Mr. CRESPI (Union of Industries of the European Community (UNICE)) asked whether it would be possible for the interested circles, including the World Federation of Culture Collections (WFCC), to present observations in writing on Rule 11 of the Regulations and to request the Secretariat to distribute the document.

409. The CHAIRMAN, with the agreement of the Director General of WIPO and the Conference Secretariat, replied that the latter would reproduce and distribute the document of UNICE, but he emphasized that the document would only be for informational purposes.

Article 4: New Deposit (continued from paragraph 404)

410. The CHAIRMAN returned to the debate on Article 4, of which subparagraphs (d) and (e) of paragraph (1) had been left in abeyance and he resumed the discussion: on the one hand, the Delegation of Switzerland, supported by the Delegations of Sweden, the Federal Republic of Germany, France, Japan and Italy, wished to retain the original text (document DMO/DC/3) and, on the other hand, the Delegation of the United Kingdom, supported by the Delegation of the United States of America, proposed that the question should be governed by national law (document DMO/DC/5); faced with this situation, the Director General of WIPO had proposed that the provisions of Article 4(1)(d) and (e) should be maintained as they appeared in document DMO/DC/3 and, at the same time, States whose national law did not permit them to adopt such provisions should have the possibility of making a reservation thereto. He requested interested delegations to express their views on the question.

411. Mr. SCHLOSSER (United States of America) stated that, in accordance with the suggestion made by the Director General of WIPO, his Delegation had had consultations with the Delegation of the United Kingdom and both Delegations were prepared to accept the text of Article 4(1)(d) and (e) as it appeared in the draft Treaty.

412. The CHAIRMAN, for the sake of form, asked the Delegation of the United Kingdom whether it withdrew its proposal.

413. Mr. DAVIS (United Kingdom) confirmed the statement made by the Delegate of the United States of America.

414. The CHAIRMAN considered that withdrawal of the proposal considerably facilitated the discussion.

415. Mr. HALLMAN (Federal Republic of Germany) referred to Article 4(1)(d) and (e) and proposed that the words "within six months" be replaced by the words "within three months" since the latter time limit was sufficient, in particular, for the depositor.

416. Mrs. PARRAGH (Hungary) wished to make an observation on Article 4(1)(e), which also referred to Article 4(1)(b)(i). The latter used the expression "ceased to have the status" which--as could be understood from paragraph (1)(e)--meant the termination or limitation of the status of international depositary authority. However, the definition of the expression "ceased to have the status" did not figure in Article 2. Furthermore, she thought that in paragraph (1)(e) of Article 4, it was necessary to refer to the fact of discontinuance of performance of functions inasofar as, on the one hand, the fact could also be included in the expression "ceased to have the status" and, on the other hand, the consequences of termination and limitation of the status and those of discontinuance of functions were identically defined in Rule 5.1 of the Regulations. Therefore, the Delegate of Hungary proposed that the words "or the fact and the extent of the temporary or definitive discontinuance of performance of functions of the international depositary authority" should be added to Article 4(1)(e) after the words "international depositary authority."

417. The CHAIRMAN requested the Delegate of Hungary to repeat her proposal more slowly.

418. Mrs. PARRAGH (Hungary) repeated her proposal and underlined the fact that her Delegation sought to take into account the interests of the depositor, not only in cases of termination and limitation but also in cases of discontinuance of performance of functions.

419. The CHAIRMAN noted that, in principle, the adoption of subparagraphs (d) and (e) of paragraph (1) of Article 4 was no longer in doubt and he proposed that subparagraph (d) should be discussed first, after which he would take up subparagraph (e) on which the Delegation of Hungary had just made a proposal.

419.2 He asked whether any other delegation seconded the proposal of the Delegation of the Federal Republic of Germany to change the time limit for a new deposit from six to three months.

420. Mr. FRESSONNET (France) stated that his Delegation supported the proposal made by the Delegation of the Federal Republic of Germany.

421. Mr. KÄMPF (Switzerland) declared that, before taking a decision on the question, he wished to hear the opinion of the interested circles.

422. Mr. BELLENGHI (Italy) said that, on the basis of his own professional experience in the field, a time limit of three months was sufficient to make a new deposit of a microorganism; therefore, he supported the proposal made by the Delegation of the Federal Republic of Germany.

423. Mr. WERNER (European Federation of Agents of Industry in Industrial Property (FEMIPI) and Union of Industries of the European Community (UNICE)), speaking on behalf of those organizations, said that a time limit of three months was entirely sufficient.

424. Mr. SCHLOSSER (United States of America) also supported the proposal made by the Delegation of the Federal Republic of Germany.

425. The CHAIRMAN, in order to shorten the discussion, asked whether any delegations were opposed to the proposal and wished to maintain the time limit of six months. He noted that such was not the case.

426. It was agreed to replace the time limit of six months by a time limit of three months, in Article 4(1)(d) and (e), in accordance with the proposal made by the Delegation of the Federal Republic of Germany.

427. Subject to the amendment mentioned in the above paragraph, Article 4(1)(d) was adopted as it appeared in the draft.

428. The CHAIRMAN requested the International Bureau to express its views on the proposal made by the Delegation of Hungary on Article 4(1)(e).

429. Mr. BOGSCH (Director General of WIPO) considered that the proposal made by the Delegation of Hungary was a valid one and that it would be possible to include the proposed amendment, or similar wording, in Article 4(1)(e). He also thought that the beginning of Article 4(1)(a) should be changed to read "cannot furnish" instead of "can no longer furnish," since the expression "no longer" implied that the international depositary authority was definitively unable to fulfill the task, whereas suspension of the functioning of an international depositary authority could be temporary, although a suspension of one or two years could appear to be almost a definitive suspension.

430. The CHAIRMAN asked whether any delegation seconded the proposal made by the Delegation of Hungary.

431. Mr. KÄMPF (Switzerland) seconded the proposal made by the Delegation of Hungary.

432. The CHAIRMAN proposed that the principle of the proposal should be discussed first, namely, whether a new deposit was possible when an international depositary authority had temporarily ceased to be in a position to perform its functions.

433. Mr. BOGSCH (Director General of WIPO) emphasized that, when an international depositary authority suspended its activity, it was frequently difficult to ascertain whether the situation was definitive or temporary. If the suspension were temporary, there would be two deposits but, in his view, that was an advantage both for the depositor and for the public.

434. The CHAIRMAN thanked the Director General of WIPO for his explanation and requested the Conference Secretariat to prepare a document containing the amendments which would have to be made to Article 4 following upon the proposal of the Delegation of Hungary. He therefore proposed that discussion on Article 4(1)(e) be adjourned until the Main Committee had studied the document to be prepared by the Conference Secretariat.

435. It was decided to continue discussion on Article 4(1)(e) at a later stage in accordance with the proposal of the Chairman mentioned in the previous paragraph (continued at paragraph 628).

Article 5: Export and Import Restrictions (continued from paragraph 377)

436.1 The CHAIRMAN opened the discussion on Article 5 and reminded the Main Committee that it had to choose between two alternative proposals, namely, the original text as amended by the Delegations of the United States of America, Japan and Romania and, on the other hand, the draft resolution submitted by the Delegation of France (document DMO/DC/13) and supported by the Delegations of the Netherlands and Switzerland.

436.2 He asked whether any delegations wished to speak in favor of the draft resolution submitted by the Delegation of France.

437. Mr. WERNER (European Federation of Agents of Industry in Industrial Property (FEMIPI)), on behalf of interested circles, supported the draft resolution submitted by the Delegation of France.

438. Mr. WINTER (United States of America) wondered whether it would not be more appropriate to discuss Article 5 as amended by his Delegation in document DMO/DC/9 before discussing the draft resolution, since the latter presupposed that Article 5 had been deleted.

439. The CHAIRMAN agreed with the Delegate of the United States of America that it would be logical first of all to discuss Article 5 and the amendments thereto, but he emphasized that, should a vote be required, he would be obliged to put the resolution to the vote first since it was the proposal which was the furthest from the original text.

440. Mr. IANCU (Romania) stated that Article 5 was of fundamental importance, it was closely linked to Articles 2, 3, 4, 6 and 7 and the latter two Articles could not be applied without Article 5. In addition, it was not at present possible to foresee all the consequences which would follow from the deletion of Article 5. For the above reason, the Delegation of Romania was in favor of retaining Article 5.

441. Mr. BOGSCH (Director General of WIPO) observed that Article 4 already contained a provision to cover the eventuality that import or export of microorganisms was not possible, namely, a new deposit. Therefore, in his opinion, the Treaty would apply even in such exceptional and undesirable cases where, for one reason

or another, a microorganism could not be transferred from one country to another. He did not consider that the Treaty would lose all its value by deletion of Article 5.

442. The CHAIRMAN took note of the position of the Delegation of Romania on the principle of Article 5 and remarked that the proposal submitted by the Delegation of Romania (document DMO/DC/11) concerned a question of detail which would be discussed at a later stage.

443. Mr. KÄMPF (Switzerland) agreed that the question of Article 5 could be solved by a separate document such as, for example, a resolution, provided that a more binding formula than that proposed by the Delegation of France could be found. He wondered whether the following text might not be appropriate: "the Contracting States are forthwith requested and agree to take all necessary measures...."

444. Mr. DEITERS (Federal Republic of Germany) thought that Article 5 should appear in the Treaty even though it was merely a recommendation. His Delegation was, therefore, in favor of the proposal made by the Delegation of the United States of America (document DMO/DC/9) and he suggested that the word "security" should be added at the end of Article 5.

445.1 Mr. JACOBSSON (Sweden) said his Delegation was fully aware of the fact that, if restrictions were made, the whole functioning of the Treaty would, to a large extent, be endangered. On the other hand, as certain delegations found considerable difficulty in accepting the text of Article 5, he stated that he was prepared to support the suggestion of a resolution, whose wording would be stricter, as had been proposed by the Delegation of Switzerland.

445.2 With regard to the proposal made by the Delegation of the United States of America, he could not accept that, in an article of a convention, the words "it is recommended that" should be included since, in a strictly legal instrument such as the Treaty under discussion, it was not customary to include recommendations.

446. Mr. IWATA (Japan) supported the amendment proposed by the Delegation of the United States of America in view of the fact that the entry into force of the Treaty could be considerably delayed if the Treaty and the Regulations required the amendment of national legislation.

447. Mr. DELICADO (Spain) considered that Article 5 should be maintained as it appeared in the draft (document DM/DC/3). He did not think that separate resolutions or recommendations contained in Article 5 would be sufficient, on a legal level, in order to obtain the desired results, even though they might be sufficient in practice. He wondered whether it would be possible to transfer the question to Article 6 concerning the conditions which the international depositary authority must fulfill, and to lay down as a condition for such an authority that the State in which it was situated not to impose restrictions on the import and export of microorganisms in its national legislation other than those concerning health and the environment.

448. Mr. BOGSCH (Director General of WIPO) proposed a slightly different wording to that proposed by the Delegation of the United States of America. If a majority of delegations were in favor of the solution proposed by the Delegation of the United States of America, he thought it would be more appropriate to avoid using the word "recommendation" and to amend Article 5 as follows: "The Contracting States recognize that it is highly desirable that, if and to the extent which regulations restricting the export or import of certain kinds of microorganisms are adopted, such regulations should apply...."

449. The CHAIRMAN proposed that the amendments submitted by the Delegations of Romania and the Federal Republic of Germany should be temporarily set aside and that a solution should first of all be sought on the principle. He recalled that three possibilities existed: the first was to have a binding article such as Article 5 of the draft (proposal made by the Delegation of Romania), or to move its wording to Article 6 in a different form (proposal made by the Delegation of Spain); the second solution was to have an article containing a recommendation (proposal made by the Delegation of the United States of America, supported by the Delegations of the Federal Republic of Germany and Japan) or a text stronger than a recommendation, as the Director General of WIPO had suggested; finally, the third solution gave that recommendation the form of a resolution (proposal made by the Delegation of France, supported by the Delegations of the Netherlands, Switzerland and Sweden). The Chairman asked the delegates to express their views on those proposals and, in particular, the suggestion made by the Director General of WIPO (see paragraph 448).

450. Mr. DEITERS (Federal Republic of Germany) stated that his Delegation could accept the proposal made by the Director General of WIPO.

451. Mr. WINTER (United States of America) stated his support for the compromise proposal made by the Director General of WIPO.

452. Mr. FRESSONNET (France) considered that the delegations tended to exaggerate the importance of the restrictions, which were in any case an exception and, as such, could not be considered a real obstacle to the functioning of the Treaty. He explained that the position of his Delegation was dictated by the fact that, in his country, the concepts expressed in Article 5 were concepts of public law. It was extremely difficult to accept loss of sovereignty where public order was concerned. He could, however, accept the proposal made by the Delegation of the United States of America if the text of Article 5 started with the words suggested by the Director General of WIPO: "The Contracting States recognize that it is highly desirable that...." The Delegate of France noted that, in its present wording, Article 5 only appeared to be concerned with future situations and he would prefer to see the Article amended to cover the situation both before and after signature of the Treaty. He also did not consider the word "regulation" to be suitable and suggested that another less binding word should be used, for example "measures." Furthermore, the Delegate of France considered that it was not sufficient to confine the restrictions to health and environment alone since other motives existed, for instance, security. He, therefore, proposed that the words "in particular, for health or the environment" be used. Finally, he stated that, with the exception of the reservations expressed above, his

453. Mr. BOGSCH (Director General of WIPO) thought that the problems raised by the Delegate of France could be solved by using the word "restriction" instead of "regulation" or "measures" and replacing the words "are adopted" by the words "is restricted," which would result in the following text: "to the extent to which... is restricted...."

454. The CHAIRMAN asked whether those Delegations which had supported the proposal made by the Delegation of France could accept the compromise solution proposed by the Director General of WIPO.

455. Mr. IANCU (Romania) declared himself in favor of the proposal made by the Director General of WIPO; however, he requested that the new wording of Article 5 also take into account the proposal submitted by his Delegation.

456. Mr. JACOBSSON (Sweden) stated that he was not entirely satisfied with the formulation proposed by the Director General since it was still a recommendation. Nevertheless, he agreed that it represented a valid compromise and said that his Delegation could accept it, subject to subsequent comparison of the text with the drafting amendments proposed by the Delegation of France.

457. Mr. van WEEL (Netherlands) said that his Delegation's position was the same as that of the Delegation of Sweden. He added that he would have preferred the first proposal made by the Delegation of France, but was prepared to accept the proposal made by the Director General of WIPO.

458. Mr. WINTER (United States of America) requested the Chairman to read out the text or to inform him whether the revised text would take into account the statement made by the Delegation of France.

459. Mr. BOGSCH (Director General of WIPO) read out the new text in English, emphasizing that the Drafting Committee would decide on the final text.

460. Mr. FRESSONNET (France) said that to a large extent, the text read out by the Director General of WIPO met the points raised by the Delegation of France, but the words "in particular" had been omitted before the words "for health or the environment."

461. Mr. VILLALPANDO (Spain) stated that his Delegation could accept the text proposed by the Director General of WIPO.

462. Mr. KOMAROV (Soviet Union) likewise declared himself in favor of accepting the text proposed by the Director General of WIPO.

463. Mr. IANCU (Romania) noted that the words "in particular" proposed by the Delegation of France could alter the scope of the Article by increasing the number of exceptions whereas the present text limited them. He therefore suggested that the question be studied in order to ensure that the words "in particular" did not change the basic concept of Article 5.

464. Mr. IWATA (Japan) said that his Delegation could not accept the proposal made by the Director General since it would involve changes in national law.

465. Mr. BELLENGHI (Italy) stated that his Delegation accepted the proposal made by the Director General of WIPO.

466. Mr. FICHTE (Asutria), on behalf of his Delegation, supported the proposal made by the Director General of WIPO.

467. Mr. BOGSCH (Director General of WIPO) explained why he had not proposed insertion of the words "in particular": firstly, it was extremely difficult to envisage fields other than the environment, health and national security which would represent a danger for the export and import of microorganisms; secondly, if the words "dangers entailed, in particular, for health or the environment" were used, the impression was given that dangers for the national economy could also be taken into account and that possibility should be avoided as far as possible.

468. The CHAIRMAN proposed that the meeting should be suspended for 15 minutes.

[Suspension]

469.1 The CHAIRMAN reopened the discussion and informed the delegates of the arrangements for the reception to be given by the Director General of WIPO the following evening.

469.2 Returning to Article 5, he said that there had been a nearly unanimous agreement to accept the new text proposed by the Director General of WIPO, although the question of the words "in particular" remained to be settled. The Chairman thought that the problem could be solved by specifically mentioning the three possibilities: health, the environment and security, as had been suggested by the Delegation of the Federal Republic of Germany and that, by listing the three possibilities, it was no longer necessary to use the words "in particular."

470. Mr. GUERIN (France) wished to raise a question concerning the interpretation of the new wording of Article 5. In his view, the new wording concerned solely national restrictions, whereas the former wording of Article 5 had been general and concerned both national and international restrictions. He recalled that the observations on the draft mentioned that international restrictions could derive from supranational authorities.

471. The CHAIRMAN replied that, if such a difference existed, it was certainly not voluntary.

472. Mr. KÄMPF (Switzerland) said that the problem raised by the Delegation of France did not concern his country. Such international regulations would be based on treaties which, when approved, became an integral part of national law.

473. Mr. BOGSCH (Director General of WIPO) reminded delegates that his proposal had used the words "to the extent to which...is restricted..." in a Contracting State without specifying why the restriction had been enforced. He agreed with the Delegate of France that restrictions could derive from supranational law.

474. The CHAIRMAN proposed that the above remark should be referred to the Drafting Committee requesting it to ensure that the wording did not a priori exclude international regulations and, in particular, regional regulations.

475. Article 5 was adopted as proposed by the Director General of WIPO with the amendments mentioned (see paragraphs 448 and 453) and subject to the final text to be drawn up by the Drafting Committee.

Article 6: Status of International Depositary Authority

476. The CHAIRMAN opened the discussion on Article 6 and suggested that it should be discussed paragraph by paragraph. He said that there were three proposals concerning the first paragraph. The first solely concerned drafting and had been submitted by the Delegation of Romania (document DMO/DC/11). It merely proposed that, in various paragraphs of the Treaty, it should be specified that it was an international depositary authority for microorganisms. He proposed that the amendment should be referred to the Drafting Committee and noted that the Delegation of Romania agreed with his suggestion.

477. It was so decided.

478.1 The CHAIRMAN said that the other two proposals overlapped and both concerned substance. The document submitted by the Delegation of the United Kingdom (document DMO/DC/5) proposed that the word "guarantee" be replaced with the word "assurance," whereas the proposal submitted by the Delegation of France (document DMO/DC/6) replaced the same word with the words "be authorized."

478.2 He requested the Delegations of the United Kingdom and France to explain briefly their proposals.

479. Mr. DAVIS (United Kingdom) stated that in his country it was not possible for the State to guarantee a depositary authority and he thought that the same problem had motivated the proposal made by the Delegation of France. In his view, the word "guarantee" was too strong since it implied that the United Kingdom authorities would be responsible for all the activities and errors committed by an international depositary authority. The Delegate of the United Kingdom stated that in his country no law was sufficiently complex to permit such action and he therefore proposed to say only that the State should provide assurances concerning the international depositary authority.

480. Mr. FRESSONNET (France) agreed that his Delegation had been motivated by the same concern as that of the Delegation of the United Kingdom. From a legal point of view, it seemed to him that the State could not guarantee an international

depositary authority because, in French law, a guarantee had legal consequences which went too far. He noted that, according to Article 8, such a guarantee might be blocked by other Contracting States which did not consider that the international depositary authority fulfilled the tasks assigned to it in a satisfactory manner. Furthermore, the guarantee, in particular of the perpetuity of the depositary authority, contradicted other provisions of the Regulations, for example, Rule 5 on defaults by the authority. He proposed that Article 6(1) should read as follows: "In order to enjoy the status of international depositary authority, any depositary institution must: (i) declare that it complies with the requirements specified in paragraph (2); (ii) be located on the territory of a Contracting State; and (iii) obtain the authorization of that State." He added that the word "assurance" in French is likely also not to receive the support of his Delegation and emphasized that the words "be authorized" were the most appropriate in view of the fact that the State would only so authorize after having assured itself that the international depositary authority fulfilled the conditions laid down in the Treaty.

481. Mr. BOGSCH (Director General of WIPO) agreed that the word "assurance" proposed by the Delegation of the United Kingdom was more appropriate than the word "guarantee." With regard to the proposal made by the Delegation of France, he thought that it would be difficult to accept for several reasons. A declaration emanating from an international depositary authority did not have great value; what was required was a declaration made by the State. Concerning the statement by the Delegate of France that a declaration given by the State was an authorization, the Director General of WIPO responded that such an authorization was not strictly necessary since Article 7 stated that the State itself must propose that a depositary institution become an international depositary authority. It was thus difficult to imagine that such a proposal could be made by a State if the latter did not authorize a depositary institution to become an international depositary authority. He thought that the proposal made by the Delegation of the United Kingdom implied that the Contracting State would make a form of solemn declaration in order to give other Contracting States and depositors an assurance concerning the wholly serious nature of the international depositary authority it had proposed.

482. The CHAIRMAN considered that the problem before the Main Committee was principally of a linguistic nature, since it concerned the translation of the English word "assurance" and the French word "habilitation." He requested the Delegates of France and the United Kingdom to attempt to analyze the difference between their Delegations' proposals.

483. Mr. FRESSONNET (France) thought that the word "guarantee" had a legal character and he agreed with the Delegation of the United Kingdom that it should not be used. In French, the word "assurance" had several meanings: assurance in the strict sense of the word, an assurance taken out with an organization, and, finally, the assurance given that an authority would fulfill the legal conditions, for example. He did not consider the word "assurance" to be sufficiently precise and preferred the word "authorized." He thought that a State would only authorize an authority after having assured itself that the authority fulfilled the con-

ditions laid down in the Treaty; therefore, the State would have verified that the authority was in a position to perform its functions without being involved in the legal consequences that defaults by the authority would entail.

484. Mr. DAVIS (United Kingdom) pointed out that the fundamental difference between the proposal of his Delegation and that of the Delegation of France was that, in his proposal, the government itself would give a solemn declaration of assurance to the Director General of WIPO. On the other hand, in the proposal made by the Delegation of France, the government only authorized the international depositary authority, which then made its own declaration. He considered that a solemn assurance by a government was the preferable solution, particularly in view of the fact that the assurance, however solemn, did not entail legal consequences for the government.

485. Mr. BOGSCH (Director General of WIPO) thought that the difference principally lay in the fact that the assurance was a communication from one State to other States through the Director General of WIPO, whereas authorization was a declaration from a State to a depositary institution. After having listened to the explanations, he noted that the word "assurance" had the same advantages and disadvantages in both French and English. It was a loose term of little legal significance which could be used instead of the word "guarantee."

486. Mr. WINTER (United States of America) recalled that, in his opening statement (see paragraph 68), he had made it quite clear that his Delegation considered Article 6 to be the keystone of the Treaty. He considered that this Article would assure continuing high administrative and technical standards in depositaries. The basic concept contained in Article 6 was that, in the unlikely event that the depositary institution could no longer continue to comply with its obligations as an international depositary authority, the sponsoring State would ensure the continued viability of the deposited microorganism by arranging for the sample to be transferred to another depositary institution. With regard to the two proposals submitted by the Delegations of the United Kingdom and France, the Delegate of the United States of America considered that his Delegation's position was closer to that of the Delegation of the United Kingdom and that a compromise solution would be possible.

487. Mr. van WEEL (Netherlands) declared that Article 6 was one of the most important Articles of the Treaty and it was the task of States to propose depositary institutions. His Delegation was in favor of maintaining Article 6 as it appeared in the draft (document DMO/DC/3) and replacing the word "guarantee" by the word "assurance."

488. Mr. DEITERS (Federal Republic of Germany) noted that, according to the statements made by the Delegations of France and the United Kingdom, assurance did not imply any legal obligation and his Delegation could accept that word. He said that his Delegation was concerned by the question of whether this assurance implied a civil liability for the State and he reminded the Main Committee that he had requested clarification of the question in the Records of

the Conference (document DMO/DC/12). However, he thought that such a clarification would not be necessary if the Main Committee clearly understood that no civil liability for the State was implied.

489. The CHAIRMAN asked delegates to study briefly the problem raised by the Delegate of the Federal Republic of Germany.

490. Mr. DEITERS (Federal Republic of Germany) specified that his concern was only with a civil guarantee and that his Delegation did not wish to have a civil liability which would not have existed in the absence of the Treaty.

491. The CHAIRMAN asked whether the Main Committee shared the views expressed by the Delegation of the Federal Republic of Germany with regard to the fourth item in document DMO/DC/12.

492. Mr. BOGSCH (Director General of WIPO), speaking on behalf of the Conference Secretariat, replied that there was no civil liability for the State.

493. The CHAIRMAN said that the statement by the Federal Republic of Germany could figure in the Records of the Conference and he asked whether any delegation held a different point of view on the question of civil liability.

494. Mr. JACOBSSON (Sweden) said that for technical reasons he had been unable to follow the entire statement made by the Director General of WIPO and he wondered whether the word "liability" should not be clarified by adding the word "civil."

495. Mr. BOGSCH (Director General of WIPO) confirmed that his statement had been to that end.

496. The CHAIRMAN asked whether the Main Committee approved the proposal made by the Delegation of the Federal Republic of Germany.

497. In accordance with the proposal made by the Delegation of the Federal Republic of Germany, it was decided to include the following statement in the Records of the Budapest Diplomatic Conference: "The Conference came to the conclusion that the question of liability of a Contracting State for having given the guarantee according to Article 6(1) and of the liability of international depositary authorities for acts or omissions under the Treaty and the Regulations is governed by the applicable national law and that the Treaty and the Regulations do not create a liability which in a similar situation would not exist in the absence of the Treaty."

498. The CHAIRMAN returned to the question of the word "guarantee" and recalled that, up to the present moment, all the delegations had either spoken in favor of retaining the text of the draft or of amending the text along the lines proposed by the Delegation of the United Kingdom.

499. Mr. FICHTE (Austria) was of the opinion that, if an additional statement were included in the Records of the Budapest Diplomatic Conference, as had been proposed by the Delegation of the Federal Republic of Germany, the original wording of Article 6(1) could be retained.

500. Mr. BOGSCH (Director General of WIPO) emphasized that the slight difference of meaning which existed between the English words "guarantee" and "assurance" created difficulties. Both words were vague, but "assurance" was the vaguer; thus the Director General of WIPO thought that a statement that the government had no liability could be considered as being in contradiction with the word "guarantee." He stated that he had never interpreted the word as involving civil liability. In view of the fact that such an interpretation would probably not be acceptable to the United Kingdom, he considered that it was safer to choose the word "assurance" which was slightly more vague. He was convinced that the interpretation of the Delegation of the Federal Republic of Germany could not be considered as being in contradiction with the word "assurance," whereas it could be construed as being incompatible with the word "guarantee."

501. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) wondered whether the Treaty did not introduce liabilities for the culture collection which did not exist in the absence of the Treaty.

502. Mr. BOGSCH (Director General of WIPO) thought that, in his opinion, there was no reason to fear any change in the present situation since, with the exception of new obligations such as the issuance of a receipt, nothing in Article 6(2) changed the present situation of depositary institutions: for example, it was not stated that they would, in certain cases, have to pay damages.

503. The CHAIRMAN asked other delegations to express their views in order to reach a conclusion which would reflect the widest possible range of opinions.

504. Mr. DEITERS (Federal Republic of Germany) was in favor of the word "assurance."

505. Mr. BELLENGHI (Italy) was also in favor of the word "assurance" in Article 6.

506. Mr. VILLALPANDO (Spain) said that if the proposal made by the Federal Republic of Germany, which was supported by his Delegation, were accepted, he saw no need to change the word "guarantee" in Article 6. Nevertheless, his Delegation could accept the word "assurance" which, in Spanish ("seguridad") reflected the objective to be attained. His Delegation considered that assurances given by Contracting States were sufficient guarantees.

507. Mr. FICHTE (Austria) said that, in his view, the choice between the words "guarantee" and "assurance" was a linguistic one and said that his Delegation did not object to replacing the word "guarantee" by the word "assurance."

508. Mr. JACOBSSON (Sweden) said that he could accept the word "assurance."

509. The CHAIRMAN noted that the proposal made by the Delegation of France concerning the words "be authorized" had not been approved nor had it been seconded and that there was a majority, even unanimity, in favor of replacing the word "guarantee" by the word "assurance," with an observation to be transmitted to the Drafting Committee that the word "assurance" could be used in the plural.

510. Mr. FRESSONNET (France) said that he could accept the word "assurance."

511. The CHAIRMAN thanked the Delegate of France for having once more facilitated the task of the Main Committee.

512. Mr. BOGSCH (Director General of WIPO) stated that a slight difference existed between the United Kingdom proposal (document DMO/DC/5) and the original text of the Article (document DMO/DC/3) with regard to the last two lines of Article 6(1). The text of the draft stated that the institution "complies and will continue to comply with the requirements specified in paragraph (2)," whereas the proposal of the Delegation of the United Kingdom stated that the institution "is a reputable one and is able and willing to comply with the requirements specified in paragraph (2)." He asked which of the two texts was to be retained.

513. The CHAIRMAN asked the Delegate of the United Kingdom to explain the difference between the text of his proposal and that of the draft submitted by the International Bureau of WIPO.

514. Mr. DAVIS (United Kingdom) thanked the Director General of WIPO for having drawn his attention to the problem. In his view, the assurance that "the institution complies and will continue to comply with the requirement" was a somewhat empty one. In the opinion of his Delegation, the assurance should be that the depositary institution proposed was a reputable one and that it was able and willing to comply with the requirements.

515. Mr. WINTER (United States of America) said that his Delegation, by its silence, had indicated its agreement with the replacement of the word "guarantee" by the word "assurance"; however, it did not think that the Main Committee had yet taken up the substance of the proposal made by the Delegation of the United Kingdom. The Delegation of the United States of America was in favor of the wording of Article 6(1) as it appeared in the draft (document DMO/DC/3), which it considered to be one of the advantages of the Treaty and, when a depositary institution was proposed by a State as an international depositary authority, its continuing existence was of great importance to persons involved in patent procedure.

516. Mr. DAVIS (United Kingdom) had no objection to the wording of Article 6(1) as it appeared in the draft (document DMO/DC/3), with the exception of the words "will continue to comply." In his view, it implied that the State had assumed the obligation that the international depositary authority would continue to comply with the conditions. The only course open to the State was to undertake to withdraw the status of international depositary authority if the latter ceased to comply with the requirements. The Delegate of the United Kingdom was not sure that it was possible to make an "assurance" which "guaranteed" that the international deposi-

tary authority would continue indefinitely to perform its functions. He concluded by saying that it was a question on which a compromise could be reached, for example, by stating "insofar as the State is aware, will continue to comply with the requirements."

517. Mr. BOGSCH (Director General of WIPO) considered that the Delegate of the United Kingdom had suggested the solution to the dilemma: the draft provided the possibility for any State to withdraw the assurances it had given; careful study of Article 6(1) of the draft revealed that the assurance was given until it was withdrawn, which meant for an indeterminate period which could be terminated. The text proposed by the Delegation of the United Kingdom would have the same result.

518.1 Mr. von PECHMAN (Union of European Patent Attorneys and Other Representatives Before the European Patent Office (UNEPA)) thanked WIPO for having given UNEPA and other interested non-governmental organizations the opportunity to participate in the Budapest Diplomatic Conference.

518.2 The Representative of UNEPA declared that he was in favor of retaining the original text of Article 6(1) as it appeared in the draft (document DMO/DC/3) since it was the solution which best served the interests of depositors.

519. Mr. DAVIS (United Kingdom) drew the Main Committee's attention to the proposal of his Delegation on Article 8 (document DMO/DC/5). In that proposal it stated that the Contracting State having communicated the assurance may withdraw it and, in any event, must do so when and to the extent that it was no longer applicable. Article 8 thus constituted a specific provision for withdrawing the assurance if the conditions were no longer fulfilled.

520. The CHAIRMAN wondered whether it would be possible to bring the points of view of the Delegations of the United Kingdom and the United States of America closer together, taking into account the explanation given by the Director General of WIPO and the last statement made by the Delegate of the United Kingdom.

521. Mr. BOGSCH (Director General of WIPO) proposed that the Records of the Budapest Diplomatic Conference should mention that Article 6 should be read in conjunction with Articles 7 and 8.

522. Mr. WINTER (United States of America) supported the proposal made by the Director General of WIPO to include such a statement in the Records of the Budapest Diplomatic Conference.

523. The CHAIRMAN noted that the text of Article 6(1) as it appeared in the draft (document DMO/DC/3) was retained, subject to the word "guarantee" being replaced by the word "assurance," and that, on the other questions, the Records of the Budapest Diplomatic Conference would include the necessary clarifications.

524. Article 6(1) was adopted with the reservation and inclusion mentioned in the preceding paragraph and was referred to the Drafting Committee.

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525. The CHAIRMAN opened the meeting and asked the Secretary of the Main Committee to read out the list of documents which would be distributed shortly.

526. Mr. CURCHOD (Secretary of the Main Committee) gave details concerning the proposals received by the Secretariat.

Article 6: Status of International Depositary Authority (continued from paragraph 524)

527. The CHAIRMAN summarized the proposals concerning Article 6(2). The Delegation of the United Kingdom had proposed that the contents of Article 6(2)(ii) be specified (document DMO/DC/5). The Delegation of France had submitted two drafting proposals, one on the first sentence of Article 6(2) and the other on Article 6(2)(vii) (document DMO/DC/6). The Delegation of Japan had proposed that paragraph (2) be divided into two paragraphs, the first four subparagraphs remaining in paragraph (2) and the following four subparagraphs forming part of paragraph (3) (document DMO/DC/7). The Delegation of Romania had proposed an addition to Article 6(2)(vii) (document DMO/DC/11). The Chairman proposed that the proposals made by the Delegations of France, Japan and the United Kingdom be referred to the Drafting Committee since they only concerned the wording of the text.

528. It was agreed to refer the proposals of the Delegations of France, Japan and the United Kingdom to the Drafting Committee.

529. The CHAIRMAN requested the Delegation of Romania to explain its proposal.

530. Mr. IANCU (Romania) remarked that his proposal only concerned drafting since it proposed merely adding several words.

531. The CHAIRMAN said that he was nevertheless reluctant to refer the proposal to the Drafting Committee and he wished to hear views on the question.

532. Mr. DEITERS (Federal Republic of Germany) agreed with the Chairman that it was not simply a question of drafting.

533. The CHAIRMAN explained that the proposal made by the Delegation of Romania concerned the addition of several words to Article 6(2)(vii) with regard to the unauthorized disclosure of the sample of a microorganism to third parties.

534. Mr. BOGSCH (Director General of WIPO) said that, during the preparatory meetings, the question of the responsibility of international depositary authorities had been discussed at length and it had been decided that their responsibility should be governed by national law. He did not think that the solution should be modified.

535. Mr. WINTER (United States of America) agreed with the Chairman that it was not a matter of drafting, but rather a question of substance and said that his Delegation was opposed to the amendment proposed by the Delegation of Romania.

536. Mr. DEITERS (Federal Republic of Germany) shared the opinion expressed by the Director General of WIPO.

537. The CHAIRMAN asked whether the proposal submitted by the Delegation of Romania was supported by any other delegation.

538. Mr. IANCU (Romania) explained that his Delegation had merely intended to clarify the text and not to raise a question of substance. For that reason, it had proposed that the question be referred to the Drafting Committee.

539. The CHAIRMAN recalled that, at its last meeting, the Main Committee had decided to include the statement proposed by the Delegation of the Federal Republic of Germany (see paragraph 497). It had been clearly established that the Treaty did not alter the situation with regard to civil liability, including that of international depositary authorities, and that the question was governed by national law. He thought that the statement to be included in the Records of the Budapest Diplomatic Conference would meet the point raised by the Delegation of Romania.

540. Article 6(2)(vii) was adopted as it appeared in the draft.

541. Article 6(2) was adopted in its entirety, subject to the drafting changes necessitated by the proposals contained in documents DMO/DC/5 to DMO/DC/7.

542. The CHAIRMAN said that two amendments had been proposed to Article 6(3). The first had been submitted by the Delegation of the United Kingdom (document DMO/DC/5) and was a result of the changes made to Article 6(1); it could, therefore, be considered a drafting proposal. The second had been submitted by the Delegation of Japan (document DMO/DC/7) and proposed deleting the third paragraph which, in the opinion of the Delegation of Japan, overlapped with Article 8(3). He asked whether it could be considered a question of drafting and thus be referred to the Drafting Committee.

543. Mr. IWATA (Japan) said that, in his view, the question could be referred to the Drafting Committee.

544. It was so decided.

545. Article 6(3) was adopted subject to drafting changes.

Article 7: Acquisition of the Status of International Depositary Authority

546. The CHAIRMAN took up Article 7 and said that there were two proposals concerning Article 7(1)(a), namely that of the Delegation of France (document DMO/DC/6) and that of the Delegation of the United Kingdom (document DMO/DC/5).

547. Mr. FRESSONNET (France) stated that, in view of the fact that the Main Committee had not accepted the wording "to authorize" proposed by his Delegation, its proposal on Article 7(1)(a) was no longer relevant and he therefore withdrew it, together with the proposal on Article 8.

548. The CHAIRMAN noted that the Main Committee would still consider, however, the proposal by the Delegation of France concerning the use of the words "autorité internationale de dépôt" rather than "autorité de dépôt internationale."

549. Mr. DAVIS (United Kingdom) stated that his proposal followed upon the decision already taken with regard to Article 6(1) and that, in his opinion, it did not contain any substantive change.

550. The CHAIRMAN proposed that the amendment submitted by the Delegation of the United Kingdom be referred to the Drafting Committee.

551. Article 7(1)(a) was adopted subject to the examination in the Drafting Committee of the proposal made by the Delegation of the United Kingdom.

552. The CHAIRMAN opened the debate on Article 7(1)(b) and recalled that the proposal submitted by the Delegation of Japan concerned the problem of overlapping between paragraphs (1)(b) and (3). He proposed that the question be referred to the Drafting Committee.

553. Article 7(1)(b) was adopted, subject to the examination in the Drafting Committee of the proposal made by the Delegation of Japan.

554. The CHAIRMAN informed the delegates that there were two proposals on Article 7(2): that of the Delegation of France (document DMO/DC/6) and that of the Delegation of the United Kingdom (document DMO/DC/5).

555. Mr. FRESSONNET (France) said that the proposals submitted by the Delegation of France on Articles 7 and 8 were a result of the proposals made on Article 6. Subsequent to the decisions taken by the Main Committee, they were no longer necessary.

556. The CHAIRMAN noted the statement made by the Delegation of France and took up the proposal made by the Delegation of the United Kingdom on Article 7(2).

557. Mr. DAVIS (United Kingdom) considered that his Delegation's proposal was mainly concerned with drafting. The only point necessitating discussion was Article 7(2)(b) (document DMO/DC/5) with regard to the period of three or six months required in order to acquire the status of international depositary authority. In addition, his Delegation proposed that Article 7(2)(a) of the draft Treaty be deleted since it was superfluous.

558. The CHAIRMAN asked whether the proposal submitted by the Delegation of the United Kingdom was supported by any other delegation.

559. Mr. BOGSCH (Director General of WIPO) had no objection to deleting paragraph (2)(a) since it was to be expected that if a communication were not entirely in order, the Director General would contact the State in order to clarify matters.

560. Mr. KÄMPF (Switzerland) supported the proposal made by the Delegation of the United Kingdom with regard to the deletion of Article 7(2)(a) of the draft.

561. Mr. DEITERS (Federal Republic of Germany) stated that he was likewise in favor of deleting Article 7(2)(a).

562. Mr. WINTER (United States of America) said that he supported the proposal made by the Delegation of the United Kingdom.

563. Mr. FRESSONNET (France) did not consider the deletion of the second sentence of Article 7(2)(a) to be indispensable; nevertheless, if its provisions were implied in Article 7(2)(b), then he agreed that paragraph (2)(a) could be deleted.

564. Mr. IWATA (Japan) wished to retain the text of Article 7(2)(a) as it appeared in the draft since, in conformity with Article 7(2)(b), if the Director General of WIPO found that the communication were not sufficient, he could turn to Article 7(2)(a).

565. The proposal of the Delegation of the United Kingdom to delete Article (7)(2)(a) of the draft was adopted, it being understood that the provisions of that Article were implicitly contained in Article 7(2)(b) of the draft.

566. The CHAIRMAN turned to Article 7(2)(b) of the draft (presently Article 7(2)(a)) and the proposal submitted by the Delegation of the United Kingdom to provide for a period of three or six months in order to acquire the status of international depositary authority. He asked the Delegation of the United Kingdom which time limit it would prefer.

567. Mr. DAVIS (United Kingdom) replied that his Delegation was in favor of a three-month period.

568. Mr. DEITERS (Federal Republic of Germany) did not agree that a time limit was necessary and thought that it was preferable to maintain the text proposed by the International Bureau of WIPO.

569. Mr. FRESSONNET (France) shared the views expressed by the Delegation of the Federal Republic of Germany.

570. Mr. SCHLOSSER (United States of America) agreed with the opinions expressed by the Delegations of the Federal Republic of Germany and France that the text of Article 7(2)(b) of the draft (presently Article 7(2)(a)) should be retained.

571. Mr. JACOBSSON (Sweden) said that his Delegation was in favor of retaining the text of Article 7(2)(b) (presently Article 7(2)(a)) as it appeared in the draft.

572. The CHAIRMAN noted that the proposal submitted by the Delegation of the United Kingdom with regard to a time limit had not been supported and that all the Delegations which had spoken had been in favor of retaining the text of the draft, which did not mention a time limit.

573. Article 7(2) was adopted, subject to the deletion of subparagraph (2) and any changes made by the Drafting Committee.

574. The CHAIRMAN opened the debate on Article 7(3) and said that, with the exception of the drafting proposal submitted by the Delegation of Japan (document DMO/DC/7), there were no other observations.

575. Article 7(3) was adopted as appearing in the draft, subject to possible drafting changes resulting from the proposal submitted by the Delegation of Japan.

Article 8: Termination and Limitation of the Status of International Depositary Authority

576. The CHAIRMAN opened discussion on Article 8. He said that the Delegation of the United Kingdom had submitted a proposed amendment to Article 8(1)(a) (document DMO/DC/5).

577. Mr. DAVIS (United Kingdom) considered that the amendment solely concerned drafting and that it was a result of his Delegation's proposals on Articles 6 and 7. He suggested that it should be referred to the Drafting Committee.

578. Mr. BOGSCH (Director General of WIPO) said that the only difference between the text of the draft and that proposed by the Delegation of the United Kingdom was to be found at the end of Article 8(1)(a) where the words "are not complied with" had been replaced by the words "have not been or are no longer complied with." Therefore, according to the proposal made by the Delegation of the United Kingdom, it would be possible to terminate an authority's status of international depositary authority in cases where that authority had failed to function satisfactorily at any particular moment, even though it had subsequently improved and functioned correctly.

579. The CHAIRMAN asked the Delegate of the United Kingdom whether, after having heard the explanation given by the Director General of WIPO, he still considered that it was merely a drafting matter.

580. Mr. DAVIS (United Kingdom) stated that the amendments proposed by his Delegation to Articles 6, 7 and 8 were closely linked and he therefore suggested that the Main Committee ask the Drafting Committee to examine together the proposals to amend the three Articles.

581. The CHAIRMAN asked whether the Main Committee agreed to refer Article 8(1)(a) to the Drafting Committee, requesting it to take into account the proposal made by the Delegation of the United Kingdom to the extent that the amendments to Article 6 adopted by the Main Committee so required.

582. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) stated that there was no clear provision in the draft for the notification of an extension of the facilities of a culture collection. Termination and limitation were mentioned, but it was possible that a culture collection might wish to extend its activities.

583. The CHAIRMAN remarked that the problem raised by the Representative of CNIPA was dealt with in Rule 3 of the Regulations and he requested him, if necessary, to repeat his observations when the Main Committee discussed Rule 3.

584. Article 8(1)(a) was adopted, subject to any drafting changes made by the Drafting Committee.

585. Mrs. PARRAGH (Hungary) wished to make a comment on the drafting of Article 8(1)(b). In the text of the draft the date from which the time limit of six months was to be calculated was not specified. In her view, the limit should be calculated from the date of notification of the request.

586. The CHAIRMAN said that the remark made by the Delegate of Hungary was extremely valid and he referred the question to the Secretariat of the Diplomatic Conference.

587. Mr. BOGSCH (Director General of WIPO) agreed that the time limit should be calculated from the date of notification.

588. The CHAIRMAN asked the Main Committee whether it agreed to incorporate the clarification suggested by the Delegation of Hungary.

589. In paragraph (1)(b) it was decided to specify that the time limit of six months should be calculated from the date of notification of the request.

590. Article 8(1)(b) was adopted, subject to the addition mentioned in the previous paragraph.

591. The CHAIRMAN said that the Main Committee would have to choose between the two possibilities set out in square brackets in Article 8(1)(c).

592. Mr. KOMAROV (Soviet Union) was in favor of a two-thirds majority.

593. The CHAIRMAN noted the statement of the Delegate of the Soviet Union and said that the Delegation of Japan had declared its preference for a majority of two-thirds in writing in document DMO/DC/7.

594. Mr. WINTER (United States of America) stated that his Delegation was in favor of a simple majority.

595. Mr. CÍRMAN (Czechoslovakia) said that his Delegation was in favor of a two-thirds majority.

596. Mr. JONKISCH (German Democratic Republic) likewise preferred a two-thirds majority.

597. Mr. VILLALPANDO (Spain) declared himself in favor of a qualified majority ot two-thirds.

598. Mrs. PARRAGH (Hungary) was in favor of a two-thirds majority.

599. Mr. van WEEL (Netherlands) also preferred a two-thirds majority.

600. Mr. ROKICKI (Poland) expressed a preference for a two-thirds majority.

601. Mr. TUULI (Finland) was in favor of a two-thirds majority.

602. Mr. LOSSIUS (Norway) was also in favor of a two-thirds majority.

603. Mr. KÄMPF (Switzerland) preferred a two-thirds majority.

604. Mr. PETROV (Bulgaria) declared himself in favor of a two-thirds majority.

605. Mr. TRESSONNET (France) said that, since it was solely a technical question, he preferred a simple majority.

606. Mr. WINTER (United States of America) stated that, in view of the lack of strong support for a simple majority, he would not insist upon it.

607. Mr. IANCU (Romania) was also in favor of a two-thirds majority.

608. Article 8(1)(c) was adopted, with the alternative of a majority of two-thirds, as appearing in the draft.

609. The CHAIRMAN opened the debate on Article 8(2) and said that the Delegation of the United Kingdom had submitted a proposal on Article 8(2)(a).

610. Mr. DAVIS (United Kingdom) recalled that he had already commented on that proposal during the previous meeting when the Main Committee had discussed Article 6 (see paragraph 519). He pointed out that a Contracting State could not only terminate an authority's status of international depositary authority by withdrawing its declaration of assurance, but it was obliged to withdraw its declaration if it were aware that the depositary authority was not correctly fulfilling its functions.

611. Mr. BOGSCH (Director General of WIPO) said that the Conference Secretariat considered the proposal made by the Delegation of the United Kingdom to be extremely sensible and he supported it.

612. Mr. DEITERS (Federal Republic of Germany) supported the proposal made by the Delegation of the United Kingdom.

613. The CHAIRMAN noted that the proposal made by the Delegation of the United Kingdom had been seconded and it was thus open for discussion.

614. Mr. KOMAROV (Soviet Union) asked if the Delegation of the United Kingdom could repeat its proposal.

615. Mr. DAVIS (United Kingdom) explained that, in Article 6, the Delegation of the United Kingdom had proposed the word "assurance" but, in order to ensure that the assurance was not devoid of meaning, his Delegation had included in Article 8(2)(a) an obligation on a State to withdraw its declaration of assurance as soon as it had become aware that the international depositary authority in respect of which it had made the assurance no longer complied with the requirements of the Treaty.

616. Mr. SCHLOSSER (United States of America) supported the proposal made by the Delegation of the United Kingdom.

617. Mr. KÄMPF (Switzerland) also supported the proposal made by the Delegation of the United Kingdom.

618. The CHAIRMAN noted that four delegations were in favor of the proposal and none had spoken against.

619. The proposal submitted by the Delegation of the United Kingdom on Article 8(2)(a) was adopted.

620. The CHAIRMAN said that two proposals had been submitted on Article 8(2)(b). The proposals made by the Delegations of Japan (document DMO/DC/7) and the United Kingdom (DMO/DC/16) were, in his opinion, drafting proposals. He asked whether the Main Committee agreed to refer them to the Drafting Committee.

621. It was so decided.

622. Article 8(2)(b) was adopted subject to drafting changes.

623. The CHAIRMAN stated that the Delegation of Japan had made an observation on the drafting of Article 8(2)(c) (document DMO/DC/7) and he proposed that it be referred to the Drafting Committee.

624. It was so decided.

625. Article 8(2)(c) was adopted, subject to drafting changes.

626. Article 8 was adopted, subject to any changes which the Drafting Committee might make in conformity with the decisions mentioned in paragraphs 584, 590, 608, 619, 622 and 625.

627. The CHAIRMAN proposed that, before discussing Chapter II of the Treaty, Article 4(1)(e), which had not been completed during the previous meeting (see paragraph 435), be discussed. He suggested that the meeting be suspended in order to permit the delegates to study document DMO/DC/23 submitted by the Conference Secretariat.

[Suspension]

Article 4: New Deposit (continued from paragraph 435)

628. The CHAIRMAN resumed the meeting and opened the debate on the amendments to Article 4 submitted by the Secretariat following upon the proposal made by the Delegation of Hungary. He asked the Delegation of Hungary whether the proposed amendments prepared by the Secretariat corresponded to its proposal.

629. Mrs. PARRAGH (Hungary) thanked the Secretariat for its assistance and said that her Delegation was quite satisfied with the work accomplished.

630. Mr. IANCU (Romania) recalled that his Delegation had proposed that, in the French text, the word "fournir" should be replaced by the word "remettre" and the word "fourniture" by the word "remise," in order to bring those words into line with the provisions of Article 2.

631. The CHAIRMAN replied that the proposal submitted by the Delegation of Romania (document DMO/DC/11) concerning Article 4(1)(a) had been referred to the Drafting Committee and that if the Delegation of Romania were not satisfied with the new drafting, it would be at liberty to return to the question.

632. Mr. KÄMPF (Switzerland) stated that his Delegation had supported the proposal made by the Delegation of Hungary at the previous meeting and he confirmed that his Delegation was satisfied with the proposals prepared by the Conference Secretariat.

633.1 Mr. SCHLOSSER (United States of America) first drew attention to a question of drafting. The amendment proposed to Article 4(1)(b)(i), as set out in document DMO/DC/23, referred to temporary or definitive discontinuance. In his view, a depositor learning of the default of an international depositary authority would not be able to ascertain whether the discontinuance of exercise of functions was temporary or not; in addition, the question was not of importance to the depositor since, immediately after he became aware of the default, he would wish to make a new deposit. He therefore questioned whether the words "temporarily or definitively" were strictly necessary.

633.2 The Delegate of the United States of America considered that depositors should only be allowed to make a new deposit when the international depositary authority or the government having made the assurance had not taken the necessary measures to transfer the deposited microorganism. On the other hand, if the microorganism were transferred in accordance with Rule 5, a new deposit would not be necessary. For that reason, he wondered whether the proposed provision was not subject to the application of Article 4(2).

634. The CHAIRMAN thought that the proposal made in document DMO/DC/23 did not alter Article 4(2): when a deposited microorganism had been transferred to another depositary authority, the possibility of making a new deposit did not arise.

635. Mr. BAEUMER (Secretary General of the Conference) explained that the words "temporarily or definitively" signified that whether the discontinuance was temporary or definitive was of little importance since in both cases the provision applied.

636. Mr. SCHLOSSER (United States of America), while noting that the Secretary General had given the same reason for retaining the words "temporarily or definitively" as he had given for deleting them, said that he could understand the point made.

637. The CHAIRMAN said that the fact that contradictory opinions had been heard proved that the problem raised by the words "temporarily or definitively" was a matter of drafting. He therefore suggested that the Drafting Committee be asked to study the question.

638. Mrs. PARRAGH (Hungary) drew the Main Committee's attention to the fact that, in Rule 5.1(a), the words "temporarily or definitively" were also used and she thought that they should be maintained.

639. The CHAIRMAN entrusted the Drafting Committee with the question of the words "temporarily or definitively," which would be maintained unless a valid reason was put forward for deleting them.

640. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) expressed the view that a question of drafting was involved. He presumed that the word "definitively" meant "permanently." With regard to the words "...in respect of deposited microorganisms," he supposed that the provision did not cover all types of microorganisms since the provisions of the Treaty gave international depositary authorities the possibility to limit themselves to certain types of microorganisms. He suggested that that possibility be taken into account when the text of the Treaty was finalized.

641. Mr. STOENESCU (Romania) observed that the text of Article 4(1)(e) should be brought into line with the text of Article 4(1)(d), in which the Main Committee had decided to change the time limit from six to three months.

642. The CHAIRMAN assured the Delegate of Romania that his remark would be taken into account.

643. Mr. BAEUMER (Secretary General of the Conference) pointed out that the period of six months mentioned in the second line of Article 4(1)(e) was not related to the period of six months mentioned in Article 4(1)(d), during which the depositor must take the necessary steps in order to make a new deposit.

644. The CHAIRMAN thought that the misunderstanding was due to the fact that in Article 4(1)(e) a period of six months was mentioned twice; the period mentioned in the fourth line of subparagraph (e) of the draft ("the six-month time limit referred to in subparagraph (d)" would be amended by the Drafting Committee in accordance with the amended period mentioned in subparagraph (d).

645. The amendments to Article 4 proposed by the Secretariat in document DMO/DC/23 were adopted, subject to the drafting change mentioned in the preceding paragraph.

Chapter II: Administrative Provisions

Article 9 - Assembly (in the text as signed, Article 10: Assembly)

646. The CHAIRMAN took up Chapter II ("Administrative Provisions") and opened the debate on Article 9. He emphasized that discussion on paragraph (1) would be of a general nature and that decisions would be taken subject to the amendments to be made as a result of the proposals made by the Conference Secretariat on the provisions concerning intergovernmental organizations (DMO/DC/16).

647. Article 9(1) was adopted, subject to the amendments mentioned in the preceding paragraph.

648. The CHAIRMAN stated that the Delegation of Japan had submitted an observation on Article 9(2)(a)(ii) and (v) (document DMO/DC/7). He requested the Delegate of Japan to explain his proposal.

649. Mr. IWATA (Japan) considered that it was a drafting proposal and that it should be discussed in the Drafting Committee.

650. The CHAIRMAN replied that he was reluctant to refer the proposal to the Drafting Committee since the replacement of the words "exercise rights" by the words "perform such tasks" was not, at least in the French language, a question of drafting.

651. Mr. IWATA (Japan) considered that the words "conferred upon it" referred to a task to be performed rather than a right.

652. The CHAIRMAN, replying to the Delegate of Japan, said that if, for example, the Treaty gave the Assembly the possibility of amending the Regulations, it was undoubtedly a task but, in his view, it was also a right. He requested the Director General of WIPO to express his opinion on the problem.

653. Mr. BOGSCH (Director General of WIPO) shared the view expressed by the Chairman.

654. Mr. IWATA (Japan) informed the Main Committee that his Delegation would not insist upon its proposal.

655. Article 9(2)(a)(ii) was adopted as appearing in the draft.

656. The CHAIRMAN said that the Delegation of Japan had submitted an amendment to delete the words "and its organs" in Article 9(2)(a)(v). He requested the Delegation of Japan to explain the reasons for its proposal.

657. Mr. IWATA (Japan) thought that his Delegation's proposal was justified by the fact that the draft Treaty did not use the word "organs" in any other article.

658. Mr. BOGSCH (Director General of WIPO) said that the Secretariat had no objection to the proposal. There was in fact no uniformity in the practice followed by WIPO, for example, the PCT only mentioned "the Union," whereas the TRT mentioned "the Union and its organs."

659. Mrs. PARRAGH (Hungary) supported the proposal made by the Delegation of Japan. She wondered whether the provisions of Article 9(2)(a)(iii) should not also be reworded in order to specify that it was for the Assembly to decide upon revision conferences and to give directions to the Director General for the convening of such conferences.

660. The CHAIRMAN asked Delegates to concentrate for the moment on Article 9(2)(v) and he noted that the proposal made by the Delegation of Japan was seconded and he therefore opened the debate.

661. Mr. STOENESCU (Romania) also supported the proposal made by the Delegation of Japan and said that, in his opinion, the word "Union" also included its organs.

662. It was decided to delete the words "...and its organs" in Article 9(2)(v), in accordance with the proposal submitted by the Delegation of Japan.

663. Article 9(2)(a)(v) as amended was adopted.

664. The CHAIRMAN suggested that the Main Committee should come back to the question raised by the Delegate of Hungary with regard to Article 9(2)(a)(iii) (see paragraph 659).

665. Mr. BOGSCH (Director General of WIPO) explained that the list of tasks of the Assembly contained in Article 9(2)(a) was not restrictive. Other provisions of the Treaty also mentioned the Assembly.

666. The CHAIRMAN thought that the answer to the problem raised by the Delegate of Hungary was to be found in the words "and perform such tasks as are..." in Article 9(2)(a)(ii).

667. Mrs. PARRAGH (Hungary) said that her Delegation was satisfied with the explanations given and withdrew its proposal.

668. Article 9(2)(a)(iii) was adopted as appearing in the draft.

669. Article 9(2) was adopted, subject to amendments which might be made as a result of the work of the Drafting Committee.

670. The CHAIRMAN opened the debate on Article 9(3), (4) and (5).

671. Article 9(3), (4) and (5) was adopted without discussion as appearing in the draft.

672. The CHAIRMAN pointed out that the Delegation of Japan had submitted a proposal for amendment to Article 9(6) (document DMO/DC/7) and he asked it to explain its proposal.

673. Mr. IWATA (Japan) said that his Delegation wished the majority provided for in Article 9(6)(a) to be the same as that laid down in Article 53(6)(a) of the PCT, namely a majority of two-thirds of the votes cast.

674. The CHAIRMAN asked whether any other delegation supported the proposal made by the Delegation of Japan.

675. Mr. VILLALPANDO (Spain) shared the concern expressed by the Delegate of Japan and he asked why the draft Treaty provided for a simple majority whereas the other conventions and agreements administered by WIPO stipulated a two-thirds majority.

676. Mr. BOGSCH (Director General of WIPO) was of the opinion that the reason for the difference lay in the fact that the draft Treaty did not contain any financial provisions. During the preparatory work, it had been considered that the decisions to be taken within the framework of this Treaty would be of lesser importance than those taken in other treaties. In order to make it easier for the Assembly to reach a decision, it had been proposed that its decisions should require "a majority of the votes cast" (Article 9(6)(a)), except in the case of more important decisions when a majority of two-thirds (Articles 8(1)(c) and 11(4)(a)), or three-fourths (Article 13(2)(b)), or even four-fifths (Article 13(3)(a)) was required.

677. The CHAIRMAN informed the delegates that the Secretary of the Main Committee had pointed out to him that the solution of a simple majority had also been stipulated in the TRT (Article 32(6)(a)) and he opened the debate on the proposal made by the Delegation of Japan and supported by the Delegation of Spain.

678. Mr. VILLALPANDO (Spain) said that his Delegation was entirely satisfied with the explanations given by the Director General of WIPO.

679. The CHAIRMAN noted that the proposal made by the Delegation of Japan was no longer supported by the Delegation of Spain and that it could not, therefore, be discussed.

680. Article 9(6) was adopted as appearing in the draft and the reference to Article 8(1)(c) which appeared in square brackets was deleted.

681. The CHAIRMAN opened the debate on Article 9(7) and (8).

682. Article 9(7) and (8) was adopted without discussion as appearing in the draft.

683. Mr. KÄMPF (Switzerland) wished to raise a general question concerning Article 9. As the Treaty did not contain any financial provisions, it had been proposed that the expense involved in its application be attributed to the budget of the Paris Union because the complications which a system of contributions would entail for contributor States were not justified. Without opposing the principle, the Delegation of Switzerland wished to know whether, if half the member countries of the Paris Union did not ratify the Treaty or did not accede to it, the functioning of the Treaty would not be paralyzed by the majority of countries of the Paris Union who would not accord the financial means necessary to permit the Treaty to function. He asked the Secretariat to give him an assurance that the expenses would be sufficiently low to eliminate such a risk.

684. Mr. BOGSCH (Director General of WIPO) said that he could give such an assurance without the least hesitation since, according to his calculations, the expenses would not exceed 0.5% of the budget of the Paris Union.

685. The CHAIRMAN thought that the Director General had replied to the first of the two points raised by the Delegation of Switzerland. The second point concerned the possible danger that the functioning of the future Union could be paralyzed by a majority of countries not members of that Union.

686. Mr. BOGSCH (Director General of WIPO) said that there were many activities within the Paris Union which interested member States to varying degrees and yet, up to the present moment, funds had never been refused. He believed that there was a certain solidarity between members and, as long as the funds remained low, it could be hoped that there would be no such danger.

687. The CHAIRMAN asked the Delegate of Switzerland whether he was satisfied with the explanations given by the Director General of WIPO and he noted that such was the case.

Article 10: International Bureau (in the text as signed, Article 11: International Bureau)

688. The CHAIRMAN opened the debate on Article 10 and said that the Delegation of France had submitted a proposal concerning the publication of a gazette (see paragraph 151). He recalled that the Main Committee had decided that the gazette should not be a separate publication but that it should form part of the periodical Industrial Property (see paragraph 154).

689. Mr. FRESSONNET (France) suggested that the question could be solved by a provision in the Regulations.

690. Mr. BOGSCH (Director General of WIPO) pointed out that if it were decided not to have a gazette, the provision of Article 10(1)(iii) should be deleted and the question of publication in Industrial Property would be dealt with in the Regulations.

691. The CHAIRMAN asked whether the Main Committee was prepared to adopt the proposal made by the Director General.

692. It was decided to delete Article 10(1)(iii) and to deal with the question of publication in the Regulations.

693. Article 10(1) was adopted as appearing in the draft, subject to the deletion mentioned in the preceding paragraph.

694. The CHAIRMAN opened discussion on Article 10(2).

695. Mr. DAVIS (United Kingdom) asked what was the meaning of the words "chief executive of the Union."

696. Mr. BOGSCH (Director General of WIPO) replied that, when it proved necessary to speak on behalf of the Union, the Director General of WIPO would do so within the limits laid down by the Assembly. Similar provisions existed, for example, in the Paris Convention (Article 15(1)(c)) and in the PCT (Article 55(3)).

697. Mr. DAVIS (United Kingdom) thanked the Director General of WIPO for his clarification.

698. Article 10(2) was adopted without discussion as appearing in the draft.

699. The CHAIRMAN opened discussion on Article 10(3), (4) and (5).

700. Article 10(3), (4) and (5) was adopted without discussion as appearing in the draft.

Article 11: Regulations (in the text as signed, Article 12: Regulations)

701. The CHAIRMAN opened the debate on Article 11 and noted that there were no comments on Article 11(1), (2) and (3).

702. Article 11(1), (2) and (3) was adopted without discussion as appearing in the draft.

703. The CHAIRMAN opened discussion on Article 11(4).

704. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)), referring to Article 11(4)(b), which stated that "no Contracting Party vote against the proposed amendment," remarked that it seemed to him to be dangerous to stipulate that one State alone could block an amendment which was otherwise considered valid.

705. The CHAIRMAN asked whether any governmental delegation wished to take up the remark made by the Representative of CNIPA and make a proposal thereon. That not being the case, he said that the point could not be discussed.

706. Mr. DEITERS (Federal Republic of Germany) did not understand Article 11(4)(b) in view of the rule of unanimity stipulated therein and the rule of qualified majority laid down in Article 13 of the Treaty.

707. Mr. BOGSCH (Director General of WIPO) stated that, if Article 13 were adopted as appearing in the draft, the Assembly would not have the right to amend Article 11. A revision conference alone could amend the Article. The question of the majority in a revision conference was not regulated in the Treaty.

708. The CHAIRMAN noted that the explanation given by the Director General of WIPO satisfied the Delegate of the Federal Republic of Germany and that there were no further remarks on Article 11(4) and (5).

709. Article 11(4) and (5) was adopted as appearing in the draft.

Chapter III: Revision and Amendment

Article 12: Revision of the Treaty (in the text as signed, Article 13: Revision of the Treaty)

710. The CHAIRMAN turned to Chapter III ("Revision and amendment") and asked delegates whether they had any remarks on Article 12.

711.1 Mr. FRESSONNET (France) first of all pointed out an error in the French text of Article 13(1)(a) where it stated "articles 9 et 10 du présent article" instead of "articles 9, 10 et du présent article".

711.2 Referring to Article 12(3), the Delegate of France proposed that the first reference to Article 13 (the words "and 13") be deleted so that Article 13 could only be amended by a revision conference.

712. The CHAIRMAN asked delegates to study Article 12 and enquired whether any other delegation seconded the proposal made by the Delegation of France.

713. Mr. KÄMPF (Switzerland) seconded the proposal made by the Delegation of France.

714. Mr. DEITERS (Federal Republic of Germany) also supported the proposal made by the Delegation of France.

715. Mr. BELLENGHI (Italy) likewise supported the proposal put forward by the Delegation of France.

716. Mr. JACOBSSON (Sweden) was in favor of the proposal made by the Delegation of France.

717. It was decided to delete the first reference to Article 13 in Article 12(3).

718. Article 12 as amended was adopted.

Article 13: Amendment of Certain Provisions of the Treaty (in the text as signed, Article 14: Amendment of Certain Provisions of the Treaty)

719. The CHAIRMAN, following up on the remark previously made by the Delegation of France (see paragraph 713), agreed that there was an error in the French text of Article 13(1)(a), which should read as follows: "Des propositions de modification des articles 9, 10 et du présent article peuvent être présentées...." He noted that as a result of the decision taken on Article 12(3) (see paragraph 717), the words "and the present Article" should be deleted in Article 13(1)(a).

720. Article 13(1) as amended was adopted.

721. The CHAIRMAN opened the debate on Article 13(2).

722. Mr. JACOBSSON (Sweden) considered that, following the decision to amend the text of Article 12(3) (see paragraph 717), it would also be necessary to amend the text of Article 13(2)(b).

723. Mr. FRESSONNET (France) agreed with the Delegate of Sweden that, in view of the decision taken on Article 12(3), the words "and to the present subparagraph" should be deleted in Article 13(2)(b).

724. Mr. DEITERS (Federal Republic of Germany) supported the proposal made by the Delegation of Sweden.

725. In accordance with the proposal made by the Delegation of Sweden, it was decided to delete the words "and to the present subparagraph" in Article 13(2)(b).

726. Article 13(2) as amended was adopted.

727. The CHAIRMAN took up Article 13(3).

728. Article 13(3) was adopted without discussion as appearing in the draft.

729. Mr. FRESSONNET (France), referring to Article 13, raised a general question with regard to paragraph (3)(b), which contained the following words: "...provided that any amendment creating financial obligations for the said Contracting Parties or increasing such obligations shall bind only those Contracting Parties which have notified their acceptance of such amendment." In view of the fact that the Treaty did not contain specific provisions on financial obligations and that all the expenses were to be charged to the budget of the Paris Union, the Delegate of France wondered how the provision of Article 13(3)(b) could function.

730. The CHAIRMAN explained that it was possible to amend the present text by adding an article on financial provisions and he thought that the remark made by the Delegate of France concerned rather the second part of the alternative: "or increasing such obligations."

731. Mr. BOGSCH (Director General of WIPO) said that two amendments to the Treaty were concerned: the first would lay down financial obligations and the second would increase them.

732. Mr. FRESSONNET (France) accepted the explanation given by the Director General of WIPO, even though he was not entirely convinced of the necessity to include such a provision in the Treaty.

Chapter IV: Final Provisions

Article 14: Becoming Party to the Treaty (in the text as signed, Article 15: Becoming Party to the Treaty)

733. The CHAIRMAN opened the debate on Article 14(1). He stated that subparagraph (b), referring to intergovernmental organizations, should be considered as having been deleted.

734. Article 14(1)(a), having become Article 14(1) after deletion of sub-paragraph (b), was adopted as appearing in the draft.

735. The CHAIRMAN opened the discussion on Article 14(2) and said that the words "and declarations of approval or acceptance" should be deleted.

736. Article 14(2) was adopted as appearing in the draft, subject to the deletion mentioned in the preceding paragraph.

Article 15: Entry Into Force of the Treaty (In the text as signed, Article 16: Entry Into Force of the Treaty)

737. The CHAIRMAN opened the debate on Article 15. He pointed out that it was also necessary to delete the words "or intergovernmental organizations," "or declarations of approval or acceptance" and "declaration of approval or acceptance" in the first paragraph.

738. Article 15(1) was adopted as appearing in the draft, subject to the deletions mentioned in the preceding paragraph.

739. The CHAIRMAN opened the debate on Article 15(2). He noted that it was also necessary to delete the references to intergovernmental organizations, namely the words: "or intergovernmental organization," "or declaration of approval or acceptance," "or declaration of approval or acceptance" and "or intergovernmental organization."

740. Article 15(2) was adopted as appearing in the draft subject to the deletions mentioned in the preceding paragraph.

Article 16: Denunciation of the Treaty (in the text as signed, Article 17: Denunciation of the Treaty)

741. The CHAIRMAN opened the debate on Article 16 and recalled that the amendments to be made to Article 16(1) and (3) consisted in replacing the words "Contracting Party" by the words "Contracting State."

742. Mr. BECKER (Council of European Industrial Federations (CEIF)) observed that, in the event of denunciation of the Treaty by a Contracting State, the international depositary authority located in that State lost its status. In his view, Article 16 did not clearly provide that the State denouncing the Treaty had an obligation to transfer the deposited microorganisms to another depositary institution.

743. Mr. CURCHOD (Secretary of the Main Committee) said that the answer to the question raised by the Representative of the CEIF was to be found in Rule 4.3 of the Regulations (document DMO/DC/4), which referred to Article 16(4) of the Treaty and stated that Rule 5.1, which contained the obligation for the Contracting State to transfer the microorganisms, would apply.

744. Article 16 was adopted as appearing in the draft, subject to changes which might be made in the Drafting Committee.

Article 17: Signature and Languages of the Treaty (in the text as signed, Article 18: Signature and Languages of the Treaty)

745. The CHAIRMAN informed the delegates that two written proposals had been submitted on Article 17, the first by the Delegation of the Soviet Union (document DMO/DC/10) and the second by the Delegation of the Federal Republic of Germany (document DMO/DC/20). He requested the Delegate of the Soviet Union to explain his proposal.

746. Mr. KOMAROV (Soviet Union) stated that WIPO had become a specialized agency of the United Nations, where the Russian language was an official language having the same status as English and French. In addition, Russian was one of the working languages of the Budapest Diplomatic Conference. He asked that those considerations should be taken into account when a decision was taken on the languages of the Treaty.

747.1 Mr. DELICADO (Spain) supported the proposal made by the Delegation of the Soviet Union for an official text of the Treaty in the Russian language.

747.2 Furthermore, he proposed that the Treaty should also be drawn up and signed in Spanish. His country's Delegation had already made such a proposal during meetings of the Committee of Experts in 1975 and 1976; however, in view of the fact that the question could not be decided within that body, it had been agreed that it would be studied in further detail during the Budapest Diplomatic Conference. In support of his proposal, the Delegation of Spain stated that WIPO was a specialized agency of the United Nations and, for many years, not only had many United Nations documents been published in Spanish, but also documents from other specialized agencies, such as WHO or FAO. He recalled that during the Lisbon Conference in 1958, BIRPI had proposed that revision conferences should also take place in Spanish, but, unfortunately, Spanish had not been accepted as a working language. At the Stockholm Conference of 1967, the same problem of languages had been studied and, although the Convention Establishing WIPO provided in Article 20 that "This Convention shall be signed in a single copy in English, French, Russian and Spanish, all texts being equally authentic...," the question of using Spanish as an official language had not been solved by the Convention Establishing WIPO. The Delegation of Spain was of the opinion that the official texts of WIPO, in particular, the text of the draft under consideration, should be drawn up in the official languages of the United Nations, namely, English, French, Russian and Spanish.

748. The CHAIRMAN said that the Delegate of Spain had raised two points: the first was his support of the proposal of the Delegation of the Soviet Union, and the second was the proposal concerning the Spanish language. Taking into account

Article 42 of the Rules of Procedure, he suggested taking up the proposals in the order in which they had been made and asked the Delegate of the Federal Republic of Germany to introduce his proposal.

749. Mr. DEITERS (Federal Republic of Germany) stated that his Delegation's proposal was governed by whether or not the proposal made by the Delegation of the Soviet Union was adopted.

750. The CHAIRMAN therefore proposed that the debate begin with the proposal made by the Delegation of the Soviet Union.

751. Mr. HIROOKA (Japan) wished to retain the text of Article 17 as it appeared in the draft (document DMO/DC/3). He recalled that the PCT contained a similar provision (Article 67). If the proposals made by the Delegations of the Soviet Union, the Federal Republic of Germany and Spain were adopted, he would be compelled to propose that a Japanese text of the Treaty should also be recognized as authentic.

752. Mr. JONKISCH (German Democratic Republic) supported the proposal made by the Delegation of the Soviet Union, pointing out that Russian was an official language of the United Nations.

753. Mr. WINTER (United States of America) understood the desire of certain countries to have an official text in a language other than English or French, but he considered that it would lead to practical problems for the Conference Secretariat in translating and printing several authentic texts in time for signature and, in addition, it would lead to increased expense. He suggested that the Main Committee study the proposals just made very carefully.

754. Mr. van WEEL (Netherlands), before taking a decision on the problem, asked the Director General of WIPO whether it would be possible for the Conference Secretariat to prepare authentic texts in six languages for the end of the following week. He wondered whether the arguments put forward by the Delegation of the Soviet Union for the Russian language also applied to the German language.

755. Mr. CÍRMAN (Czechoslovakia) proposed that the Russian language be added to Article 17(1)(a) as a third authentic language for the reasons which had been set forth by the Delegation of the Soviet Union.

756. Mr. KÄMPF (Switzerland) stated that Switzerland, not being a member of the United Nations Organization, was only authorized to sign the text to be adopted by the Diplomatic Conference in English or French.

757. Mr. ROKICKI (Poland) supported the proposal made by the Delegation of the Soviet Union and underlined the fact that the Russian language was used by one quarter of the States members of the United Nations and that the Convention Establishing WIPO had also been signed in the Russian language.

758. Mr. DAVIS (United Kingdom) said that his Delegation would have to ask its Government for instructions.

759. Mrs. PARRAGH (Hungary) said that her Delegation would like to see the official text of the Treaty drawn up in the Russian and Spanish languages, which were official languages of the United Nations.

760. Mr. PETROV (Bulgaria) supported the proposal made by the Delegation of the Soviet Union.

761. Mr. FRESSONNET (France) said that he would have to ask his Government for instructions. He said that the technical aspect of the problem should also be taken into account: the fact of having several official texts could lead to disputes and different interpretations. The Delegate of France wondered whether a decision to change a formula already accepted for treaties such as the PCT should not be taken, for example, during a revision of the fundamental act constituted by the Paris Convention. He thought that the technical and political problems raised called for careful study.

762. Mr. STOENESCU (Romania) was of the opinion that the official text should be drawn up in English, French, Russian and Spanish.

763. Mr. BELLENGHI (Italy) proposed that the discussion should be adjourned in order to allow the delegations to consult their governments.

764. The CHAIRMAN emphasized that he did not intend to call for a vote but that he merely wished to hear the views of the delegations.

765. Mr. FICHTE (Austria) expressed his conviction that all the delegations present, including his own, would prefer to take part in the debates and to sign the Treaty in their mother tongue; however, it was obvious that such a wish could not be realized. In his view, it was reasonable to maintain the solution proposed in Article 17 in order to save time and money.

766.1 Mr. BOGSCH (Director General of WIPO) stated that he was concerned by the fact that certain delegations would have to wait several days in order to receive instructions from their governments before taking a decision. If a decision were taken at the present meeting, or at the following meeting, it would not be impossible to add one language if need be, but if the decision were only taken at the end of the week or during the following week, it would be absolutely impossible, for practical reasons, to draw up the texts in languages other than those provided for in Article 17. He suggested that a vote should be taken immediately in order to clarify the situation. He emphasized that not all the treaties administered by the United Nations were signed in Chinese, English, French, Russian and Spanish, and that no rule existed in the United Nations stating that texts must be signed in all the five official languages. Furthermore, no legal grounds existed for asserting that United Nations rules on languages should also

necessarily apply to WIPO because it was a specialized agency. The procedure followed by WIPO was different to that of the United Nations where, in the committees, documents were frequently only published in one language. He stated that the Secretariat of the Conference had been surprised at the proposals made, but that it would do everything in its power to carry out the decision taken, with the exception of the Regulations which, in his view, could be annexed to the Treaty only in the English and French languages.

766.2 The Director General of WIPO proposed a compromise solution. The Conference Secretariat was not in a position to prepare official texts in several languages within the space of a few days; however, it could be stated in the Treaty itself that the Director General was required to prepare official translations in certain languages within two months following the signature of the Treaty. When the certified copies of the Treaty were circulated to all the Contracting States, they would be accompanied by the certified official translations; in that way, at the time of ratifying the Treaty, the legislative bodies of a Contracting State would possess an official text in several languages. Such a procedure would be a departure from present practice in WIPO since, under treaties such as the PCT or the TRT, the translation only became official when the Assembly started to function and could take the necessary decisions, whereas for the Treaty under discussion, it would be possible to prepare official texts without awaiting the entry into force of the Treaty. He thought that a period of 60 days would be sufficient not only to prepare the translations but also to have them verified by the interested governments, to print them and to circulate the copies certified by the Director General of WIPO to the interested States.

767. The CHAIRMAN emphasized that, according to the compromise solution put forward by the Director General of WIPO, the translations would also include the Regulations.

768. The CHAIRMAN thought that the Main Committee required time to study the problem and he therefore proposed that the debate be adjourned and that the question be discussed first at the following meeting in order to allow the Director General to receive the decision of the Main Committee as rapidly as possible

769. It was so decided. (Continued at paragraph 812)

Seventh Meeting
Tuesday, April 15, 1977
Morning

New Article 8bis: Intergovernmental Industrial Property Organizations (in the text as signed, Article 9: Intergovernmental Industrial Property Organizations)

770. The CHAIRMAN opened the meeting and reminded the Main Committee that the provisions concerning intergovernmental organizations (document DMO/DC/16) still had to be discussed. He regretted that the Delegate of Senegal was not present, since no delegation was then in a position to take the floor on behalf of the African Intellectual Property Organization (OAPI). He drew the Main Committee's attention to the fact that OAPI was a regional organization which alone was authorized to issue patents for member States and that, in order to interest those States in the Treaty, the latter's provisions should be drafted in such a way as to allow OAPI the privileges of national offices in general.

771.1 Mr. BOGSCH (Director General of WIPO) stated that the assumptions on which the proposed provisions were based were set out in document DMO/DC/16. The basic difference between the original text (document DMO/DC/3) and that proposed in document DMO/DC/16 was that, in the latter, intergovernmental organizations would not be party to the Budapest Treaty and, therefore, they would not be entitled to participate in meetings of the Assembly and the other committees on the same basis as States. They would have the status of "special observers" and would have the right to be invited as observers to all the meetings, without, however, having the right to vote.

771.2 The Director General of WIPO pointed out that the key provision was contained in new Article 8bis (Article 9 in the text as signed) according to which intergovernmental industrial property organizations would, for the purposes of patent procedure, assume the same obligations as States for the purposes of their own patent procedure before their own national office. This Article accorded intergovernmental organizations two rights: the right to furnish the assurances and, therefore, to designate a depositary institution as an international depositary authority and, when they deemed that an international depositary authority did not perform its functions in a satisfactory manner, the right to initiate a procedure before the Assembly in order to enable the latter to decide whether the authority should continue to perform its functions.

771.3 In reply to the question of whether an intergovernmental organization could furnish assurances having a legal status comparable to assurances given by a State, the Director General of WIPO said that, in his view, such assurances would be comparable to assurances given by a State since they were in fact given by all the member States of the organization as a form of collective assurance.

772. The CHAIRMAN proposed that the assumptions set out in item 1 of document DMO/DC/16 be discussed first, followed by the proposed new Article 8bis and, finally, the provisions of the Treaty requiring amendment or completion. He asked whether any delegations wished to make general statements.

773. Mr. FRESSONNET (France), on behalf of the Delegations of the signatory States of the European Patent Convention, thanked the Director General for his clear and full proposals, which represented a whole and were generally acceptable to him. There were three basic aspects to the proposals: (1) recognition of the effects of the deposit of microorganisms under the Treaty by intergovernmental organizations, including the future European Patent Office; (2) the ability to furnish assurances concerning international depositary authorities and (3) the right of intergovernmental organizations to propose to the Assembly termination of the status of international depositary authority. In conclusion, on behalf of the signatory States of the European Patent Convention, the Delegate of France said that it was an extremely constructive proposal which should be adopted.

774. Mr. FICHTE (Austria) recalled that several delegations had already proposed to delete the words "and intergovernmental organizations" from Article 1 since they considered that no exception should be made to the traditional system according to which, under the Paris Convention, States could become members of a special Union. On the other hand, as had been pointed out by the Delegate of Senegal (see paragraph 348), intergovernmental organizations such as the African Intellectual Property Organization should become party to the Treaty. In view of the efforts made to assist groups of developing countries to establish and strengthen common industrial property services by the creation of intergovernmental organizations and also the forthcoming entry into force of the European Patent Convention, it was neither practical nor reasonable to leave out provisions concerning intergovernmental organizations since many advantages accorded by the Treaty to patent applicants for inventions using microorganisms could be lost or reduced. Although the proposal made by the Delegation of the Soviet Union contained a solution to the dilemma, it was, nevertheless, inadequate in respect of the measures following the international recognition of the deposit of microorganisms. In the view of the Delegate of Austria, the new proposal put forward by the Director General provided a solution to the problem and should serve as a basis for finalization of the text of the Treaty.

775.1 Mr. KOMAROV (Soviet Union) emphasized that, in order to permit the Treaty to fulfill the role assigned to it, it should receive the agreement of the largest possible number of States participating in the Budapest Diplomatic Conference. He stated that the Delegation of the Soviet Union could not accept the participation of intergovernmental organizations in the Treaty as the Union established by the latter should be composed solely of States.

775.2 With regard to document DMO/DC/16 prepared by the Conference Secretariat, the Delegate of the Soviet Union considered that it gave excessive rights to intergovernmental organizations. He was in favor of introducing a new text for Article 6(1) into the Treaty since, in his view, it was possible, and even indispensable, that a certain number of countries issuing patents should be in a position to furnish assurances concerning the international depositary authority. The relevant decision would, nevertheless, have to be taken by the Assembly. The problem of observer status was of no relevance in his opinion. As far as the problem of the right to designate an international depositary authority was concerned, he stated that, in his view, it should be reexamined.

776. The CHAIRMAN took up the general principles underlying item 1 of document DMO/DC/16 and noted that there were no comments on the principles enumerated in item 1(a), 1(b) and 1(c)(i). Item 1(c)(ii) had been the subject of reservations expressed by the Delegation of the Soviet Union.

777. Mr. BOGSCH (Director General of WIPO), in order to meet the point raised by the Delegate of the Soviet Union, proposed that the following words be added to the text of Article 8bis at an appropriate juncture: "with the express agreement of the supreme governing organ of the organization consisting of all the States members of that organization."

778. The CHAIRMAN asked the delegations for their views on the proposal made by the Director General of WIPO.

779. Mr. FRESSONNET (France) considered the proposal put forward by the Director General of WIPO to be an extremely important and satisfactory one. In the case of the European Patent Office, it would no longer concern the President of the Patent Office but its supreme organ, namely the Administrative Council, which was composed of representatives of Contracting States of the European Patent Convention; therefore, Contracting States would furnish assurances indirectly. The Delegate of France stated that his Delegation was fully prepared to accept the proposal made by the Director General of WIPO.

780. The CHAIRMAN asked whether the other signatory States of the European Patent Convention supported the statement made by the Delegate of France.

781. Mr. FICHTE (Austria) supported the statement made by the Delegate of France and therefore accepted the proposal made by the Director General of WIPO.

782. Mr. KÄMPF (Switzerland) said that his Delegation had never interpreted Article 8bis any differently and that it considered the addition made by the Director General of WIPO to be a clarification of what was already contained in the text of the Article.

783. Mr. KOMAROV (Soviet Union) requested the Chairman to suspend the meeting in order to permit interested delegations to exchange views on the subject.

[Suspension]

784. The CHAIRMAN resumed the meeting and asked the Delegation of the Soviet Union to inform the Main Committee of the results of the consultation.

785. Mr. KOMAROV (Soviet Union) declared that the proposal was not very clear to him and he asked how, from a legal and practical point of view, an intergovernmental organization could furnish assurances.

786. The CHAIRMAN drew the attention of the Delegate of the Soviet Union to the fact that his last remark concerned item 1(c)(ii) of document DMO/DC/16 and he proposed leaving it in abeyance and returning thereto at the next meeting in order to allow delegations to discuss the matter among themselves.

787. Mr. KOMAROV (Soviet Union) said that the other items of the proposal under discussion were completely acceptable to his Delegation. The only problem which required clarification was that of the legal and practical aspects of the assurances mentioned.

788.1 Mr. BOGSCH (Director General of WIPO) assumed that the Delegate of the Soviet Union wished to have a comparison of those cases where assurances were furnished by a State with cases where they were given by an intergovernmental organization.

788.2 From a legal point of view, when a State furnished assurances, its government communicated the document containing the assurances to the Director General of WIPO and that document produced the effects provided in the Treaty. Where an intergovernmental organization furnished assurances in conformity with the proposal which the Director General of WIPO had just submitted orally (see paragraph 771), the communication would be signed by the chief officer of the organization, for example, in the case of the African Intellectual Property Organization (OAPI), by its Director General, or by the President of the European Patent Office. The difference would lie in the fact that the communication would be signed by the chief officer with the consent of the supreme organ of the organization composed of representatives of all the member States (for example, in the case of the European Patent Office, the Administrative Council). It was therefore a collective assurance given by all the States through the organization.

788.3 From a practical point of view, the Director General of WIPO considered that the situation of an international depositary authority would be the same whether it had been designated by a State or by an intergovernmental organization. In both cases, the same measures could be taken against an international depositary authority judged to be in default: any member State of the Union set up by the Treaty--for example, the Soviet Union--could at any time propose to the Assembly of the Union that the status of international depositary authority be withdrawn from an international depositary authority designated by another State and which had not carried out its tasks in a satisfactory manner.

789. The CHAIRMAN requested Mr. Pressonnet (France), Chairman of the Working Group on legal questions related to the creation of the European Patent Office, to inform the Main Committee about the said Office.

790. Mr. PRESSONNET (France) said that the remarks made by the Director General of WIPO had been quite correct as far as the European Patent Office was concerned and had aptly described what he considered to be the procedure. Article 33 of the European Patent Convention defined the competence of the Administrative Council; in paragraph (4), it provided that the Administrative Council had the competence to authorize the President of the European Patent Office to negotiate and, subject to its approval, to conclude agreements with States or intergovernmental organizations in the name of the European Patent Organization. The Administrative Council was composed of representatives of States and, therefore, its decisions were decisions of States uniting in an Administrative Council. The designation of an international depositary authority would be proposed by the President of the European Patent Office and would be the subject of discussion in the Administrative Council. Should it be approved, the President of the European Patent Office, on behalf of the States, would give the assurances provided for in the Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. In the view of the Delegate of France, the legal obligations laid down in the Treaty were limited, since in the case of the European Patent Office, it was not the President who initiated designation of an international depositary authority but the State on whose territory the authority was situated. The assurances would not be furnished by an officer, but by the Administrative Council composed of Contracting States.

791. Mr. KOMAROV (Soviet Union) considered that the explanations given by the Director General of WIPO and by the Delegate of France enabled the discussion to be cut short. In the light of those explanations, the text proposed was acceptable to him, provided that the Treaty specified that the representatives of all the member States of the Union set up by the Treaty composing the supreme organ of the organization had full powers.

792. Mr. BOGSCH (Director General of WIPO) read out the text of his proposal with the addition of the proposal made by the Delegation of the Soviet Union (see preceding paragraph): "with the express agreement of the supreme governing organ of the Organization consisting of all States members of that Organization [on the grounds of full powers granted by the Governments of the member States]". In his view, the representatives of Member States in the Administrative Council of the European Patent Organisation had full powers to represent their Governments, to vote in their name and to engage their responsibility. He suggested to the Delegates of France and other signatory States of the European Patent Convention that, if they agreed with that interpretation, it could be included in the official Records of the Budapest Diplomatic Conference rather than in the Treaty itself.

793. Mr. FRESSONNET (France) confirmed that, under Article 26 of the European Patent Convention, the Administrative Council was composed of representatives of Contracting States who were more or less plenipotentiaries entitled to engage the State in all the discussions of the Administrative Council.

794. Mr. KOMAROV (Soviet Union) stated that it had not been his intention to cast doubt on the accuracy of the information regarding the European Patent Organisation, but he was obliged to take into account other organizations, both existing and future. For that reason, he had to insist that the clarification he had suggested be included in the text of the Treaty itself.

795. Mr. BOGSCH (Director General of WIPO) thought that the question could be resolved by qualifying the supreme governing organ of the intergovernmental organization as an organ "composed of official representatives of all the member States." He assured the delegates that, with regard to the African Intellectual Property Organization, the supreme organ, which was called the "Administrative Council," was composed of official representatives of the governments of the member States.

796. The CHAIRMAN thought it would be possible to agree on a wording which would satisfy both the delegations of member States of intergovernmental organizations and the Delegation of the Soviet Union. He asked the Director General of WIPO whether the text he had proposed should be inserted in item 1(c)(ii) of document DMO/DC/16 or in the text of Article 8bis to be added to the draft Treaty.

797. Mr. BOGSCH (Director General of WIPO) recalled that, in his preliminary statement, he had said that the problem should be solved in the Treaty itself, the most likely place being in Article 8bis(1). He thought that the Main Committee could take a decision on the question, subject of course to any drafting change. He asked whether the wording he had proposed satisfied the Delegation of the Soviet Union.

798. Mr. KOMAROV (Soviet Union) emphasized that his statements had been aimed at contributing towards the establishment of an international instrument which satisfied all delegations and not only his own.

799. Mr. BOGSCH (Director General of WIPO) stated that he considered the amendment of the text to be in the interests of all the States represented at the Conference and that he had referred to the Delegation of the Soviet Union because it was that Delegation which had raised the problem.

800. The CHAIRMAN noted that there was agreement in principle on item 1(c)(ii) of document DMO/DC/16, subject to the specific wording of the provision in the text of the Treaty. He therefore proposed taking up item 1(c)(iii) concerning the right of intergovernmental organizations to propose to the Assembly the termination of the status of international depositary authority of international depositary authorities designated by others.

801. Mr. BOGSCH (Director General of WIPO) thought that, for reasons of uniformity, similar wording to that of item 1(c)(ii) should be adopted. An intergovernmental organization would also have to obtain the consent of the supreme organ of the organization composed of official representatives of governments.

802. The CHAIRMAN asked whether the suggestion of the Director General of WIPO to align the wording of the principle set out in item 1(c)(ii) on that of the principle of item 1(c)(iii) met with the agreement of the Main Committee.

803. Mr. FRESSONNET (France) supported the proposal made by the Director General of WIPO, which seemed to him to be logical.

804. Mrs. PARRAGH (Hungary) drew attention to the fact that item 1(c)(iii) of document DMO/DC/16 only dealt with the problem of termination of the status of international depositary authority and did not mention limitation of the status.

805.1 The CHAIRMAN replied that he was sure that the Secretariat's intention had been to take the two problems into account.

805.2 He turned to item 1(c)(iv) concerning the status of "special observer" and noted that it did not give rise to any comments.

805.3 He opened the discussion on the text of the new Article 8bis proposed in document DMO/DC/16 and noted that no delegation had wished to make any comments thereon.

806. The proposal of the Secretariat concerning a new Article 8bis was adopted (in the text as signed, Article 9: Intergovernmental Industrial Property Organizations), subject to drafting changes which might be necessary and to the inclusion in the Records of the Conference of the clarification proposed by the Director General of WIPO (see paragraphs 792 and 801) and approved by the Main Committee.

807. The CHAIRMAN summarized the amendments to other provisions proposed in item 3 of document DMO/DC/16 and noted that no Delegation wished to make any comments.

808. The proposals for the amendment of Articles 2, 6, 7, 8 and 9, grouped under item 3 of document DMO/DC/16, were adopted subject to the same reservations as those mentioned in paragraph 806.

809. The CHAIRMAN thanked the Director General of WIPO and his staff for having prepared document DMO/DC/16 and for assisting the Main Committee in obtaining a satisfactory result.

810. Mr. BOGSCH (Director General of WIPO) said that, if the Main Committee so desired, the Secretariat could prepare a document for the following day listing the amendments which would have to be made to the two other Chapters of the draft Treaty and to the draft Regulations.

811. It was decided to entrust the Secretariat with the preparation of the document mentioned in the preceding paragraph.

Article 17: Signature and Languages of the Treaty (in the text as signed, Article 18: Signature and Languages of the Treaty) (continued from paragraph 769)

812. The CHAIRMAN recalled that the question of the languages of the Treaty (Article 17 of the draft) had been left in abeyance and that the first exchange of views had led to the following result: the proposal made by the Delegation of the Soviet Union (document DMO/DC/10) to mention the Russian language in Article 17(1) had been supported by the Delegations of Spain, the German Democratic Republic, Czechoslovakia, Poland, Hungary, Bulgaria and Romania; the Delegation of the Federal Republic of Germany had submitted the same proposal in respect of the German language (document DMO/DC/20), and the Delegation of Spain had made an oral statement proposing that the Spanish language have the same status, which had been supported by the Delegation of Hungary; other delegations had either supported the text of the draft (document DMO/DC/3) or had stated that they would have to await instructions from their governments; lastly, various delegations had drawn attention to the practical difficulties which might ensue since the additional texts requested might not be ready by the end of the Diplomatic Conference. He reminded the delegates that he had asked them to study the explanations given by the Director General of WIPO and his compromise proposal. He asked the Director General of WIPO to repeat his proposal.

813. Mr. BOGSCH (Director General of WIPO) explained that one possible solution could be to insert in the Treaty itself a provision stating that the Director General of WIPO must prepare, within two months, an official translation of the Treaty and the Regulations in certain languages to be specified, and to add those translations to the certified copies circulated to States and intergovernmental organizations under Article 18(2). He had also stated that if the Conference decided that the text of the Treaty should be signed in languages other than English and French, for practical reasons the Regulations would be only in English and French.

814. Mr. FRESSONNET (France) said that, in accordance with instructions recently received from the Ministry of Foreign Affairs, the Delegation of France could not agree to a text other than that appearing in Article 17(1)(a); however, it could accept the proposal put forward by the Director General of WIPO.

815. Mr. DEITERS (Federal Republic of Germany) stated that he could accept the proposal made by the Director General of WIPO.

816. Mr. BOGSCH (Director General of WIPO) said that he did not wish to see one of the solutions he had mentioned called "the proposal made by the Director General of WIPO" since he desired to maintain a neutral position on the question of languages. Having heard the differences of opinion, he had tried to find another possible solution. The Director General of WIPO recalled that it was technically possible for the Conference Secretariat to prepare the text of the Treaty in other languages and the decision lay with the Diplomatic Conference.

817. The CHAIRMAN replied that in future he would not refer to the proposal made by the Director General of WIPO, but to "the first of two technical possibilities" which the Director General of WIPO had submitted to the Main Committee.

818. Mr. DEITERS (Federal Republic of Germany) said that his Delegation accepted the first proposal made by the Director General of WIPO.

819. The CHAIRMAN repeated that it concerned the preparation, within a specified period of two months, of a certain number of translations to be added to the certified copies and that they would thus assume an official character.

820. Mr. DAVIS (United Kingdom) stated that his Delegation's position was precisely that of the Delegation of the Federal Republic of Germany.

821. Mr. KÄMPF (Switzerland) said that his Delegation was only empowered to sign the text of the Treaty in English and French, but it could perfectly well accept the solution outlined by the Director General of WIPO to prepare official translations within a period of two, or even three months.

822. Mr. WINTER (United States of America) shared the view expressed by the Delegates of the Federal Republic of Germany and the United Kingdom and said that he was in a position to accept the first proposal put forward by the Director General of WIPO.

823. Mr. WERNER (European Federation of Agents of Industry in Industrial Property (FEMIPI) and Union of Industries of the European Community (UNICE)), speaking on behalf of those two international non-governmental organizations, urged delegations to adopt the proposal submitted by the Director General of WIPO. He emphasized that industry and its representatives needed the Treaty under discussion and he considered that the question of language was a highly political one which could only be solved at the general level, within WIPO, and not at the present Diplomatic Conference. If the only way of arriving at a result in the Diplomatic Conference was to be found in the proposal of the Director General of WIPO, he asked the delegates to adopt it immediately.

824. Mr. FICHTE (Austria) likewise accepted the proposal to prepare official translations in languages other than English and French within a period of two months.

825. Mr. HABIB (Egypt) supported the proposal of the Director General of WIPO and expressed the hope that Arabic would be one of the languages used in the official translations.

826. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) strongly supported the statement made by the Representative of FEMIPI and UNICE.

827. The CHAIRMAN asked those delegations which had submitted proposals the previous day to express their opinions, even if they were only preliminary.

828. Mr. VILLALPANDO (Spain) said that his Delegation was prepared to accept the solution proposed by the Director General of WIPO, provided that it was also accepted by the other delegations.

829. Mr. KOMAROV (Soviet Union) expressed his regret at not having heard any statements against his Delegation's proposal and took it to mean that they did not exist. He wished to see an authentic text in the Russian language and the solutions proposed were not acceptable. However, he hoped that it would be possible to reach a compromise.

830. Mr. BOGSCH (Director General of WIPO) put forward a third possible solution. The Treaty would be signed in English, French and also in Russian, but should there be differences between the texts, the English and French texts would prevail. He stated that it would be difficult for him, for strictly practical reasons, to prepare a Russian text in absolute conformity with the English and French texts during the week remaining before the end of the Diplomatic Conference. The Director General of WIPO urged the Delegation of the Soviet Union, as well as the other delegations which had supported it, to reconsider their position and to reflect on the third possibility, which would satisfy their legitimate desire to have the text of the Treaty signed in Russian.

831. The CHAIRMAN noted that the last proposal of the Director General of WIPO, from the point of view of authenticity, would differentiate between the texts due to the fact that the time available to the Conference Secretariat did not allow it to verify the texts with the necessary exactitude.

832. Mr. VILLALPANDO (Spain) reiterated that his Delegation was prepared to accept the first proposal only if it were unanimously accepted by the other delegations.

833. Mr. KOMAROV (Soviet Union) said that he understood the difficulties certain delegations encountered concerning their full powers to sign the Treaty in the Russian language. He was prepared to accept the compromise solution proposed by the Director General of WIPO, subject to an additional statement to be joined to the texts of the Treaty.

834. Mr. WINTER (United States of America), while understanding the desire of certain delegations to have authentic texts in other languages, was opposed to the adoption of three, four or even five authentic texts since it would entail very difficult problems for his country. As he had already indicated, the Delegation of the United States of America was in favor of the proposal of the Director General of WIPO to prepare an official translation of the Treaty and the Regulations in certain languages within a period of two months.

835. The CHAIRMAN thought that the last proposal of the Director General (see paragraph 830) warranted reflection and he suggested that discussion on the question be continued in the afternoon.

836. It was so decided. (Continued at paragraph 837)

Eighth Meeting
Tuesday, April 19, 1977
Afternoon

Article 17: Signature and Languages of the Treaty (in the text as signed, Article 18: Signature and Languages of the Treaty) (continued from paragraph 836)

837. The CHAIRMAN opened the meeting and indicated that, in his view, two conditions had to be fulfilled before the Main Committee could take a decision on the languages of the Treaty: firstly, that all Delegations clearly understood the different proposals which had been made and, secondly, that they had the necessary time to receive additional instructions from their Governments. He proposed that the Main Committee have an exchange of views on the proposals and postpone the adoption of a decision until the next meeting.

838. It was so decided.

839. The CHAIRMAN briefly summarized the three possible solutions to the problem of languages and he asked the Director General of WIPO to correct him if necessary. The first solution was to amend Article 17, which would then state that, within a specified period, for example, two months, the Director General would prepare official translations of the Treaty and the Regulations in languages whose number and nature were still to be determined. At the end of that period, the official translations would be added to the certified copies of the Treaty and Regulations to be circulated to interested States under Article 18 of the draft. The second solution was to prepare authentic texts of the Treaty in Spanish and Russian before the end of the Diplomatic Conference, the Regulations remaining solely in French and English; the latter solution would entail an

amendment to Article 11(2) of the draft Treaty which stipulated that the Regulations were an integral part of the Treaty. According to the third solution, the text of the Treaty and the Regulations submitted for signature would be drawn up in English, French, Russian and Spanish, and possibly also in other languages; however, the provision of the draft Treaty dealing with authentic texts would be amended to state that, if the texts in languages other than English and French differed from the English and French texts, the latter were deemed to be authentic.

840. Mr. BOGSCH (Director General of WIPO) did not wish to add any remark to the summary made by the Chairman, except to note that, in the third solution, the word "authentic" would not be used: the relevant provision would state that the Treaty would be signed in English, French and certain other languages and that, in case of divergence between the texts, only the English and French texts would prevail. With regard to the second solution, Article 11(2) of the draft Treaty would merely stipulate that the Regulations would be annexed to the Treaty in English and French.

841. The CHAIRMAN asked whether any delegations wished to raise questions on the three solutions proposed.

842. Mr. DEITERS (Federal Republic of Germany) did not fully understand the meaning of the third possibility and he asked for clarification.

843. Mr. BOGSCH (Director General of WIPO) read out Article 17(1) which, according to the third solution, would read as follows: "(a) This Treaty shall be signed in a single original in the English, French, X, Y and Z languages. In case of divergence, the English and French texts shall prevail. (b) Official texts shall be established by the Director General, after consultation with the interested governments, in languages A, B, C and D."

844. Mr. KOMAROV (Soviet Union) wondered whether there was not a reservation with regard to authenticity in the case of the second solution since it did not provide for translation of the Regulations in any language other than English and French.

845. Mr. BOGSCH (Director General of WIPO) emphasized that there was no question of a "reservation as to the authenticity" as he had only used the words "in case of divergence." If there were no divergence, it was obvious that no difference existed between the legal status of the different languages. He assumed that everyone wished to have an efficient Treaty and, therefore, as far as possible, satisfaction should be given to all. However, there was the practical problem of the lack of time and the impossibility of consulting the interested governments in order to verify whether there were any differences between the texts; for that reason, it was necessary to find a solution which would provide that,

in case of divergence, the English and French texts would prevail. At the political level, the objective would be attained since at Budapest countries would have the pleasure of signing a text in a language which was dear to their hearts. In his view, it was a matter of giving satisfaction, at the political level to certain countries, without creating real risks on the legal level for anyone. With regard to the different solutions put forward, he recommended that the Main Committee concentrate on the third solution.

846. The CHAIRMAN asked the Delegate of the Soviet Union whether the reply given by the Director General of WIPO satisfied him.

847. Mr. KOMAROV (Soviet Union) stated that he understood the situation and the practical difficulties involved in preparing equally authentic texts in several languages within a short period. He added that, although he did not, in principle, find difficulty with the second solution, he could not fully understand and accept the third solution and he requested the Director General of WIPO to furnish additional explanations.

848. Mr. BOGSCH (Director General of WIPO) indicated that, in both the second and third solutions, the Regulations would not exist in Russian, but only in English and French. He then explained that the fact that the Conference Secretariat was in a position to prepare, for example, a Russian text for signature did not yet imply that the delegations participating in the Budapest Diplomatic Conference would be prepared to recognize that, in case of divergence, the Russian text could also be invoked as being authentic. He realized that it was very important that the signatures should also be appended to the Russian text, but he pointed out that, in case of divergence, only the English and French texts would prevail. That was an inevitable consequence of the fact that the delegations had come to the Budapest Diplomatic Conference unprepared to deal with languages other than English and French.

849. Mr. WINTER (United States of America) asked whether there were not four possible solutions, the first being that of Article 17 of the Draft (document DMO/DC/3).

850. The CHAIRMAN agreed with the statement made by the Delegate of the United States of America and he proposed that a decision on Article 17 and the various proposals for amendment be adjourned until the following meeting.

851. It was so decided. (Continued at paragraph 1034)

Article 18: Deposit of the Treaty; Transmittal of Copies; Registration of the Treaty (in the text as signed, Article 19: Deposit of the Treaty; Transmittal of Copies; Registration of the Treaty)

852. The CHAIRMAN said that the Delegation of Japan had submitted an observation on Article 18 in document DMO/DC/7 and he asked the Delegate of Japan to explain his proposal.

853. Mr. IWATA (Japan) did not see why the certified copies of the Treaty and Regulations mentioned in Article 18(2), on the one hand, and the copies of any amendment to the Treaty and Regulations mentioned in Article 18(4), on the other hand, should be treated differently. He considered that certified copies of the amendments should be sent to the same recipients as those mentioned in Article 18(2).

854. Mr. BOGSCH (Director General of WIPO) replied that Article 18(4) of the draft referred to Contracting States--States party to the Budapest Treaty--whereas Article 18(2) concerned only States members of the Paris Union (referred to in Article 14(1) of the draft). In his opinion, the difference was necessary since, at the time of conclusion of the Budapest Diplomatic Conference and when the copies were sent, the States in question would not yet be States party to the Budapest Treaty. When it became necessary to amend the Budapest Treaty, the identity of the Contracting States would be known and at that moment only the governments of Contracting States would be concerned. However, the Director General of WIPO saw no objection to sending certified copies of the amendments to all members of the Paris Union; it would only involve increased postal expenditure.

855. The CHAIRMAN emphasized that Article 18 of the draft was, in the first place, aimed at communicating the text of the Treaty, when adopted, to all the States of the Paris Union in order to open it to all States which might become Contracting States. Amendments would only be transmitted to Contracting States and, upon request, to States desiring such information, which appeared to him to be logical. He asked whether any delegation wished to support the proposal made by the Delegation of Japan.

856. Mr. BOGSCH (Director General of WIPO) stated that the new text to be submitted the following day would be altered to take into account the new decisions taken with regard to intergovernmental organizations, which might also alter the contents of Article 18.

857. The CHAIRMAN said that, due to lack of support, the proposal put forward by the Delegation of Japan could not be adopted.

858. Article 18 was adopted, subject to amendments necessitated by the deletion of the reference to intergovernmental organizations in Article 1.

Article 19: Notifications (in the text as signed, Article 20: Notifications)

859. The CHAIRMAN turned to Article 19 and noted that there were no comments.

860. Mr. BOGSCH (Director General of WIPO) indicated that, in Article 19, there would also be changes following upon the decisions taken on the subject of intergovernmental organizations.

861. Article 19 was adopted, subject to amendments necessitated by the deletion of the reference to intergovernmental organizations in Article 1.

Regulations

Rule 1: Abbreviated Expressions and Interpretation of the Word "Signature"

862. The CHAIRMAN opened the debate on the Regulations (document DMO/DC/4) beginning with Rule 1 as a whole, with the three words: "Treaty," "Article," and "Signature." He noted that no delegation asked for the floor.

863. Rule 1 was adopted without discussion as appearing in the draft.

Rule 2: International Depositary Authorities

864. The CHAIRMAN indicated that the Delegation of the United Kingdom had proposed to delete the word "equipment" (document DMO/DC/5). He considered that the proposal concerned drafting and suggested that it be referred to the Drafting Committee.

865. It was so decided.

866. Rule 2 was adopted, subject to amendment by the Drafting Committee.

Rule 3: Acquisition of the Status of International Depositary Authority

867. The CHAIRMAN stated that the Delegation of the United Kingdom had submitted a proposal on Rule 3.1(b)(ii) (document DMO/DC/5).

868. Mr. DAVIS (United Kingdom) said that, in his opinion, the words "all facts relevant in appreciating the said institution's capacity" represented too onerous a requirement. He therefore proposed that the words "all facts" be deleted and the wording simply be "contain detailed information as to the said institution's capacity."

869. The CHAIRMAN asked the Delegate of the United Kingdom whether he considered that his proposal concerned drafting and that it could therefore be referred to the Drafting Committee.

870. Mr. DAVIS (United Kingdom) replied in the affirmative.

871. Mr. GUERIN (France) was of the opinion that the proposal submitted by the Delegation of the United Kingdom, which aimed especially at modifying Rule 3.1(b)(iv), was not a drafting proposal since the intentions of the future depositary authority with regard to the amount of the fees would not be known. Such an indication was important and should be maintained.

872. Mr. DAVIS (United Kingdom) emphasized that the present discussion was limited to Rule 3.1(b)(ii) and not Rule 3.1(b)(iv).

873. The CHAIRMAN proposed that Rule 3.1(b)(ii) and 3.1(b)(iii) be referred to the Drafting Committee, requesting them to take into account the wording proposed by the Delegation of the United Kingdom.

874. It was so decided.

875. The CHAIRMAN turned to Rule 3.1(b)(iv) and said that he shared the view expressed by the Delegate of France that deletion could not be considered a drafting proposal (see paragraph 871).

876. Mr. van WEEL (Netherlands) considered that Rule 3.1(b)(iv) should be maintained since all States were desirous of knowing the fees which would have to be paid to the depositary institution.

877. Mr. DAVIS (United Kingdom) explained that, in the view of his Delegation, the amount of the fees should be indicated by the international depositary authorities and not by the Contracting States. He suggested that the question be regulated in Rule 12.2 (document DMO/DC/5).

878. The CHAIRMAN asked the delegations for their views on the proposal to transfer the provisions of Rule 3.1(b)(iv) to Rule 12.

879. Mr. HALLMANN (Federal Republic of Germany) supported the proposal made by the Delegation of the United Kingdom.

880. The CHAIRMAN opened the discussion on the proposal submitted by the Delegation of the United Kingdom.

881. Mr. BOGSCH (Director General of WIPO) explained that the reason for choosing the solution which appeared in the text of the draft (document DMO/DC/4) had been the fact that transmitting the indication through the State which had given assurances might have a salutary affect on the development of the fees. Although the international depositary authority had the unlimited right to fix the fees, it had been felt that the State should be informed and could perhaps exercise a moderating influence on the international depositary authority should it tend to exaggerate.

882. The CHAIRMAN asked which delegations shared the views expressed on the draft by the Director General of WIPO.

883. Mr. GUERIN (France) agreed with the view expressed by the Director General of WIPO and was in favor of the text appearing in the draft.

884. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) said that, in respect of culture collections, two different methods of fixing the fees existed: the initial fees at the moment the Treaty entered into force and, later, changes in the amount of the fees. He wondered whether the text of the draft implied that the culture collection, if it were independent of the government, must first negotiate the amount of the fees with the government but could later change the fees without such negotiations.

885. Mr. BOGSCH (Director General of WIPO) stated that, according to the draft Regulations, the initial fees, as well as changes in their amount, must be notified by the Contracting State.

886. The CHAIRMAN put to a vote the proposal submitted by the Delegation of the United Kingdom, supported by the Delegation of the Federal Republic of Germany, concerning the deletion of the provision of Rule 3.1(b)(iv) and its insertion in Rule 12.2. He pointed out that the proposal was that the amount of the fees levied by the international depositary authority and the changes in the amount of those fees should be notified directly by the depositary authority to the Director General, whereas in the draft Regulations (document DMO/DC/4), notification would be made through the State which had given assurances concerning that authority.

887. The proposal submitted by the Delegation of the United Kingdom was rejected by 16 votes to 5.

888. The CHAIRMAN took up Rule 3.1(b)(v) of the draft (Rule 3.1(b)(iv) in the document submitted by the Delegation of the United Kingdom) and proposed that it be referred to the Drafting Committee.

889. It was decided to refer the proposal submitted by the Delegation of the United Kingdom on Rule 3.1(b)(v) of the draft to the Drafting Committee.

890. Rule 3.1 was adopted in its entirety, subject to drafting changes.

891. The CHAIRMAN turned to Rule 3.2 and recalled that the Delegation of the United Kingdom had proposed that it be deleted (DMO/DC/5).

892. Mr. DAVIS (United Kingdom) said that his Delegation withdrew its proposal.

893. Rule 3.2 was adopted, subject to amendments necessitated by the deletion of the reference to intergovernmental organizations in Article 1.

894. The CHAIRMAN took up Rule 3.3 and indicated that the word "guarantee," appearing twice in the text, would have to be replaced. With regard to the comments submitted by the Delegations of France and the United Kingdom, he considered that they solely concerned drafting.

895. Rule 3.3 was adopted, subject to drafting changes.

Rule 4: Termination or Limitation of the Status of International Depositary Authority

896. The CHAIRMAN turned to Rule 4 and noted that there were no comments on the provisions of Rule 4.1(a), (b) and (c).

897. Rule 4.1(a), (b), and (c) was adopted without discussion, as appearing in the draft.

898. Mrs. PARRAGH (Hungary) remarked that, under Article 8(1)(b), States had a period of six months in which to correct eventual faults and she considered that the Assembly should not be convened before expiration of the said period of six months. Therefore, on behalf of her Delegation, she proposed that the words "not earlier than four" in Rule 4.1(d) be replaced by the words "not earlier than six months," since, before expiration of a period of six months, even the Assembly could not recognize that the State was unable to eliminate the fault.

899. Mr. BOGSCH (Director General of WIPO) stated that, as was her wont, the Delegate of Hungary was quite correct.

900. The CHAIRMAN asked the delegates for their opinions on the proposal to replace a minimum period of four months by a period of six months.

901. Mr. GUERIN (France) supported the proposal made by the Delegation of Hungary.

902. The CHAIRMAN noted that the Conference Secretariat considered the proposal to be valid and that there were no objections.

903. Rule 4.1(d), amended in conformity with the proposal made by the Delegation of Hungary (see paragraph 898), was adopted.

904. Mr. KÄMPF (Switzerland) was not certain that he had fully understood the provisions of Rule 4.1(e). In his view, if the Assembly had to meet within the period provided for in Rule 4.1(d), it could no longer shorten that time limit and he suggested that the Director General should be entitled to shorten it.

905. Mr. BOGSCH (Director General of WIPO) thought that the solution put forward by the Delegate of Switzerland could be adopted because, in case of danger--as mentioned in Rule 4.1(e)--the Director General would convene the Assembly after having taken a provisional decision on the time limit and the Assembly would immediately take a decision on the said time limit.

906. The CHAIRMAN asked whether the Delegate of Switzerland wished to make a formal proposal to amend Rule 4.1(e).

907. Mr. KÄMPF (Switzerland) replied in the affirmative and proposed replacing the word "Assembly" in Rule 4.1(e) by the words "Director General."

908. The CHAIRMAN read out the amended wording of Rule 4.1(e) and asked whether the proposal submitted by the Delegation of Switzerland was supported by another delegation.

909. Mrs. PARRAGH (Hungary) supported the proposal made by the Delegation of Switzerland.

910. Mr. JACOBSSON (Sweden) recalled that Rule 4 was related to Article 8(1)(b) where it was stipulated that the State could, within a period of six months, take the appropriate measures. In view of the fact that the time limit of six months was laid down in the Treaty, he wondered whether the Assembly or the Director General of WIPO were entitled to shorten it since that possibility was not present in the Treaty itself and he asked the Director General of WIPO to clarify the issue.

911. Mr. BOGSCH (Director General of WIPO) requested the Secretary General of the Conference to list the provisions which could be applied in the case mentioned above.

912. Mr. BAEUMER (Secretary General of the Conference) analyzed the situation. A Contracting State would make a request to terminate the status of a given international depositary authority, which request must first of all be brought to the attention of the Contracting State which had given assurances in favor of the said international depositary authority. The latter then had a time limit of six months from the date on which the Director General of WIPO had notified it of the request in order to take appropriate measures to obviate the necessity for the request. Two possibilities existed: either the appropriate measures would be taken and the procedure terminated, or no solution would be found and the procedure continued. In the latter case, the Director General of WIPO would transmit the request to all the Contracting States, in conformity with Rule 4.1(c). The Assembly would then examine the request and decide whether the status of international depositary authority of the authority in question should be terminated. At that moment, the question of the time limit arose. Following the amendment adopted by the Main Committee, the time limit would be six to eight

months and the Assembly must therefore take action within a short span of time. It had the power to shorten the time limit if it considered that it endangered the interests of actual or potential depositors. In the view of the Secretary General of the Conference the question was to decide whether the power to shorten the time limit could be given to someone other than the Assembly.

913. Mr. BOGSCH (Director General of WIPO) drew the delegates' attention to Article 8 of the draft Treaty which, in paragraph (1)(b) mentioned the "proposed request" and in paragraph (1)(c) the "request." The existence of those provisions signified that the State which brought the complaint had to submit two requests: firstly, the "proposed request," which was a private matter between that State, the accused authority, the International Bureau and the Contracting State which had given the assurances, and, secondly, the "public" request to the Assembly. In the opinion of the Director General of WIPO, the two time limits were completely independent of each other.

914. The CHAIRMAN recalled that the discussion was still on the proposal of the Delegation of Switzerland (see paragraph 907), supported by the Delegation of Hungary, and he put it to a vote.

915. Mr. FRESSONNET (France) asked the Chairman to use his influence with the Drafting Committee to ensure that the word "raccourcir" in the French text was replaced by the word "réduire," since the former, in his opinion, evoked the guillotine.

916. Rule 4.1(e) was adopted, as amended in conformity with the proposal made by the Delegation of Switzerland (see paragraph 907).

917. The CHAIRMAN opened the debate on Rule 4.1(f) and recalled that the Delegation of the United Kingdom had submitted a proposal thereon (document DMO/DC/5).

918. Mr. DAVIS (United Kingdom) preferred a time limit of three months, since, once it had been decided to withdraw the status of international depositary authority from an authority, to allow it to continue as a depositary for a further six months was exaggerated.

919. The CHAIRMAN asked the Main Committee to give its views on the proposal made by the Delegation of the United Kingdom to shorten the time limit to three months.

920. Mr. HALLMANN (Federal Republic of Germany) supported the proposal submitted by the Delegation of the United Kingdom.

Mr. PELLENGHI (Italy) supported the proposal made by the Delegation of the United Kingdom.

922. Mr. FRESSONNET (France) also supported the proposal made by the Delegation of the United Kingdom.

923. The CHAIRMAN asked whether any delegations were opposed to the proposal submitted by the Delegation of the United Kingdom and whether there were any other comments on Rule 4.1.

924. Mr. FRESSONNET (France) wondered whether, in view of the amendments adopted, the last sentence of Rule 4.1(f) was still necessary.

925. Mr. DAVIS (United Kingdom) agreed that, if the period of six months were shortened to three months, it was probably not necessary to maintain the provision stipulating that the Assembly had the power to further shorten the said period. He confessed that he had not previously considered the question, but, at present, he thought that the last sentence of Rule 4.1(f) should be deleted.

926. Mr. FRESSONNET (France) was happy to note that the Delegate of the United Kingdom agreed with him that the last sentence of Rule 4.1(f) should be deleted.

927. Mr. KÄMPF (Switzerland) said that his Delegation also supported the proposal made by the French Delegation.

928. Rule 4.1(f) was adopted, subject to the replacement of a time limit of "six months" by a limit of "three months" and to the deletion of the second sentence.

929. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) was not certain that, in the provisions of Rule 4 which referred to Article 8, the situation was completely covered.

930. Mr. BOGSCH (Director General of WIPO) agreed that if a restaurant were a bad restaurant, it should not be visited for another three months, but he hoped that the fact that the restaurant was bad would be publicly known and that the clients would be warned.

931. The CHAIRMAN proposed adjourning the debate.

[Suspension]

932. The CHAIRMAN resumed the discussion on Rule 4 and recalled that the Delegation of the United Kingdom had submitted a proposal concerning Rule 4.2(b)(iii) (document DMO/DC/5) which sought to decrease the time limit from six to three months. He noted that there were no objections.

933. The proposal submitted by the Delegation of the United Kingdom on Rule 4.2(b)(iii) was adopted.

934. Rule 4.2 was adopted in its entirety and as amended in conformity with the proposal made by the Delegation of the United Kingdom, subject to any necessary drafting changes and to the amendment mentioned in the preceding paragraphs.

935. The CHAIRMAN turned to Rule 4.3 and noted that there were no observations.

936. Rule 4.3 was adopted as appearing in document DMO/DC/4.

Rule 5: Defaults by the International Depositary Authority

937. The CHAIRMAN took up Rule 5, which was of fundamental importance, and suggested that the introductory sentence of Rule 5.1(a) be discussed first. He recalled that the Delegation of the United Kingdom had proposed (document DMO/DC/5) that it should be the authority itself, and not the Contracting State, which carried out the different activities provided for under (i) to (iv). He read out the amended text of Rule 5.1(a) and asked the Delegation of the United Kingdom to explain the reason for its proposal.

938. Mr. DAVIS (United Kingdom) pointed out that this question of principle was as important to his Delegation as that of the "guarantee." His Delegation considered that in order to carry out the measures envisaged in the draft Regulations, certain powers were required to transfer samples of microorganisms and the United Kingdom Patent Office did not possess such powers and, most likely, would not obtain them. Therefore, the problem for his Delegation lay in the fact that there was an obligation to transfer the samples while, at the same time, there was no legal power to do so.

939. Mr. BOGSCH (Director General of WIPO) said that, from a legal point of view, international depositary authorities were not Contracting Parties to the Treaty and it was difficult to impose obligations on them. He therefore wondered whether it were not possible to state "... the Contracting State will to the maximum extent possible ensure...," and he asked whether that wording would satisfy the Delegation of the United Kingdom.

940. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) remarked that certain points were not clear, firstly, by what means could the international depositary authority relinquish its status of international depositary authority, secondly, to whom would the international depositary authority announce that it wished to withdraw, and finally, should it wish to withdraw from its status, would the patent office take responsibility for the transfer of cultures?

941. Mr. BOGSCH (Director General of WIPO) thought that, if a depositary authority wished to withdraw, it would notify the government of the State having given the assurances and the latter, sufficiently impressed by such a declaration would [illegible]ly withdraw its assurances. In his view, the patent office would not be [illegible]d since no provision in the draft specifically stated so. The word

"ensure" merely implied that the State would make sure that the measures provided under (i) and (iv) were taken. The Director General of WIPO then described the way in which he imagined the government could proceed. Before giving assurances in respect of a depositary institution, the government of the Contracting State would ask the depositary institution to sign a contract or an undertaking in which its obligations were laid down; thus, the international depositary authority would take its obligations seriously. He considered that it would be an elementary precaution on the part of any government giving assurances to obtain from the depositary institution in writing that it was willing and able to comply with the obligations laid down.

942. Mr. DAVIS (United Kingdom) agreed that the first suggestion made by the Director General of WIPO permitted some flexibility. The second suggestion could also prove useful if the Records of the Budapest Diplomatic Conference stated that any government which had concluded a contract with an international depositary authority under which the defaulting authority would apply the provisions of Rules 1 to 4 would be deemed to have met its obligations under the terms of Rule 5.1.

943. Mr. BOGSCH (Director General of WIPO) thought that the suggestion made by the Delegation of the United Kingdom went a little too far. It would be difficult for the Diplomatic Conference to express an opinion on a contract and a contracting party which it did not yet know. He considered that it would be wiser to insert the words "to the maximum extent possible" in the provisions of Rule 5.

944. Mr. WINTER (United States of America) was of the opinion that Article 6 was a key article of the Treaty in the same way that Rule 5 was one of the most important Rules of the Regulations. He said that his Delegation, by supporting the proposal, had tried to take into account the problem raised by the Delegation of the United Kingdom with regard to the word "guarantee." However, he considered that the proposal of the Delegation of the United Kingdom went too far. The Contracting States must be a link in the chain of assurance that the depositary authority would continue to perform its functions and had to verify the reputation and experience of a depositary institution before giving it the status of an international depositary authority. Turning to the flexibility of assurances, he believed that the addition of the words "to the maximum extent possible," proposed by the Director General of WIPO, represented a compromise solution.

945. Mr. DAVIS (United Kingdom) indicated that he was prepared to accept the proposal made by the Director General of WIPO once it had been submitted to the Main Committee.

946. Mr. OREDSSON (Sweden) was in favor of the text amended by the Director General of WIPO.

947. Mr. HALLMANN (Federal Republic of Germany) also preferred the text of the draft containing the amendment suggested by the Director General of WIPO.

948. Mr. IWATA (Japan) thought that the Contracting State should have some responsibility.

949. Mr. LOSSIUS (Norway) shared the views expressed by the Delegations of Sweden and the Federal Republic of Germany.

950. Mr. GUERIN (France) was in favor of retaining the original text, if necessary, with the amendment suggested by the Director General of WIPO.

951. Mr. CRESPI (Union of Industries of the European Community (UNICE)) pointed out that no speaker had taken up the question of the interests of the depositor, which still required clarification. In his view, the discontinuance of functions by an international depositary authority would be an extremely rare occurrence. He presumed that, should it take place, no problem arising from the maximum performance of assurances would unjustly affect the interests of the depositor and, in particular, the validity of the patent. He requested the Chairman to confirm his understanding that, should a problem arise, the depositor could refer to Article 4 of the draft Treaty, which concerned new deposits with a substitute authority.

952. Mr. BOGSCH (Director General of WIPO) confirmed the understanding of the Representative of UNICE.

953. The CHAIRMAN noted that the majority of delegations had supported the proposal put forward by the Director General of WIPO.

954. The first sentence of Rule 5.1(a), including the amendment proposed by the Director General of WIPO, was adopted, subject to more precise wording by the Drafting Committee.

955. The CHAIRMAN turned to the provisions of Rule 5.1(a)(i) and (ii) and noted that there were no comments.

956. Rule 5.1(a)(i) and (ii) was adopted without discussion as appearing in the draft.

957. The CHAIRMAN took up Rule 5.1(a)(iii) and recalled that the Delegation of the United Kingdom had submitted a drafting proposal thereon (document DMO/DC/5).

958. Mr. FRESSONNET (France) asked what was meant by the word "retain" in the last line of Rule 5.1(a)(iii).

959. Mr. BOGSCH (Director General of WIPO) thought that the word "keep" or "maintain" would be more appropriate.

960. Mr. FRESSONNET (France) wondered how an authority could maintain samples if it were in default and, in particular, if it had ceased performing its functions.

961. Mr. BOGSCH (Director General of WIPO) considered that, if all the samples were lost, the depositor would not make his application but that, if he did so, the application would remain without effect. He explained that Rule 5.1(a)(iii) was justified in cases where the authority had lost its status of international depositary authority, but could still be useful in other fields, for example, the storage of samples.

962. Mr. FRESSONNET (France) said that--if he had understood the statement of the Director General of WIPO correctly--in certain cases, the application by a depositor could very well not be honored since the depositary authority could be prevented from accepting it or could refuse it.

963. Mr. BELLENGHI (Italy) saw no reason for retaining the second sentence of Rule 5.1(a)(iii) since it merely concerned the principle of freedom of action of the depositor. He therefore proposed that it be deleted.

964. The CHAIRMAN stated that, during the preparatory stage, such a provision, or one similar, had been requested in order to provide a means of proof. The provision which envisaged the case of transfer of a microorganism from one depositary authority to another--because, for example, the original authority ceased activity in the field or wished to indulge in purely scientific work--and which proposed giving a depositor the right to request that authority to retain samples of microorganisms, was aimed at ultimately proving that the transferred microorganism deposited with the new authority was indeed that which had initially been deposited with the original authority. The Chairman considered that that was the reason for the provision.

965. Mr. BELLENGHI (Italy), when reading the second sentence of Rule 5.1(a)(iii), wondered whether the defaulting authority could refuse to retain samples of the microorganisms and he suggested that a drafting change be made clearly indicating that the said authority could not act in such a manner.

966. The CHAIRMAN assured the Delegate of Italy that his observations would be referred to the Drafting Committee and he added that, in his opinion, the words "may ask ... to retain" did not imply a right ensuring that the request would be accepted.

967. Mr. SCHLOSSER (United States of America) drew the attention of the Main Committee to a drafting problem in Rule 5.1(a)(i) concerning the deterioration of the sample which had been transferred. He presumed that deterioration also included contamination and he asked that the Drafting Committee take that point into account during the final drafting of the text of that provision.

968. The CHAIRMAN said that the Secretariat had noted the remark made by the Delegate of the United States of America and would transmit it to the Drafting Committee.

969. Rule 5.1(a) was adopted in its entirety, subject to necessary drafting changes.

970. The CHAIRMAN turned to Rule 5.1(b) and recalled that the words "Contracting Parties" would have to be amended.

971. Rule 5.1(b) was adopted, subject to necessary drafting changes.

972. The CHAIRMAN turned to Rule 5.1(c) and recalled that two proposals for amendment of that provision had been submitted: the first by the Delegation of the United Kingdom (DMO/DC/5) and the second by the Delegation of the United States of America (document DMO/DC/26). He suggested that the proposals be examined in chronological order.

973. Mr. DAVIS (United Kingdom) pointed out that the proposal submitted by his Delegation was in the nature of a drafting amendment and its intention was to remove any obligations on the depositor and to make the industrial property office initiate the action to be carried out in that event.

974. The CHAIRMAN asked whether the Main Committee agreed to refer the proposal submitted by the Delegation of the United Kingdom to the Drafting Committee.

975. Mrs. PARRAGH (Hungary) considered that the proposal submitted by the Delegation of the United Kingdom was not simply a drafting matter and that it should, therefore, be discussed in the Main Committee.

976. The CHAIRMAN noted that, under those circumstances, it was necessary for the Main Committee to take a decision on the matter and he asked whether the proposal made by the Delegation of the United Kingdom was seconded.

977. Mr. de BOER (Netherlands) stated that his Delegation supported the proposal submitted by the Delegation of the United Kingdom. For legal reasons, it was not possible to impose any obligation on the depositor.

978. Mr. BEHAN (United States of America) considered that the text appearing in the Draft should be retained since, if the default by the international depositary authority and the transfer of samples occurred after a patent had been granted and issued, the industrial property office was no longer involved in the procedure, whereas the public interested by the invention described in the patent should be alerted to the fact and the identity of the new deposit.

979. The CHAIRMAN, in order to clarify a question of procedure, asked the Delegation of the United States of America whether the adoption of the proposal of the United Kingdom would make the adoption of the proposal of the Delegation of the United States of America impossible. If such were the case, which he thought was likely, the Main Committee was obliged to discuss the two proposals at the same time.

980. Mr. SCHLOSSER (United States of America) considered that the proposal made by his Delegation could be considered separately. Rule 5.1(c) required that the depositor promptly notify an industrial property office of the new accession number given to the deposit by the substitute authority after having received the receipt. He thought that patent applicants would prefer to know exactly what was the time limit of "promptly." For that reason, he suggested that the word "promptly" should be replaced by the words "within three months," and added that the fact of specifying the time limit could only be of assistance to depositors.

981. The CHAIRMAN asked whether the proposal made by the Delegation of the United States of America was seconded.

982. Mr. HALLMANN (Federal Republic of Germany) supported the proposal made by the Delegation of the United States of America.

983. Mr. IWATA (Japan) declared that his Delegation supported the proposal made by the Delegation of the United States of America.

984. Mr. BOGSCH (Director General of WIPO) said that, in his opinion, the problem was secondary. He understood and shared the idea underlying the proposal submitted by the Delegation of the United Kingdom. If the proposal made by the Delegation of the United States of America were accepted, each national law would have to lay down a time limit of three months, which would imply that legislation was being made for national patent procedures. He suggested, however, that instead of referring to the industrial property office, as did the proposal made by the Delegation of the United Kingdom, a more general formula should be used: "Under the applicable patent procedure, it may be required that ...," thus giving complete freedom to the national law to fix the time limits.

985. The CHAIRMAN asked the Delegation of the United Kingdom to express its opinion on the proposal made by the Director General of WIPO to delete, in the text proposed by the said Delegation, the specific reference to the industrial property office by simply placing it within the context of national law or the rules governing national procedures.

986. Mr. NEEDS (United Kingdom) said that the Director General of WIPO, with his customary lucidity, had exactly expressed his idea.

987. The CHAIRMAN asked the Delegation of the Netherlands, which had supported the proposal made by the Delegation of the United Kingdom, whether it concurred with the amended version of that proposal.

988. Mr. de BOER (Netherlands) stated that he was, in general, in favor of as broad a wording as possible. Nevertheless, he wondered whether the proposal made by the Director General of WIPO also covered the situation in which, after the patent had been granted by the industrial property office, there could no longer be any patent procedures.

989. Mr. BOGSCH (Director General of WIPO) thought that there were procedures even after the grant of a patent (for example, the annual payment of fees). He emphasized that the provision would be drafted in such a way as not to give the impression that it only applied during the period of procedure to obtain a patent.

990. The CHAIRMAN wondered whether, after the explanations given by the Director General of WIPO, the Delegation of the United States of America maintained its proposal to specify the time limit.

991. Mr. SCHLOSSER (United States of America) stated that his Delegation could accept the proposal made by the Director General of WIPO.

992. The CHAIRMAN noted that the Delegations of the Federal Republic of Germany and Japan agreed with the proposal made by the Director General of WIPO and that there were no further proposals.

993. Rule 5.1(c), as proposed by the Director General of WIPO (see paragraph 984), was adopted, subject to the drafting change suggested by the Delegation of the Netherlands (see paragraph 988).

994. The CHAIRMAN turned to Rule 5.1(d), and noted that there were no comments thereon.

995. Rule 5.1(d) was adopted without discussion as appearing in the draft.

996. The CHAIRMAN took up Rule 5.1(e) and indicated that the Delegation of Japan had submitted two proposals which specified, in the text of the Rule itself, to whom the fees should be paid (document DMO/DC/15).

997. Mr. IWATA (Japan) recalled that Rule 5.1(e) provided that the depositor should pay the expenses of transfer and storage, but it did not specify to whom the fee should be paid. The Delegation of Japan therefore proposed that the words "to the defaulting authority" should be added after the word "pays" and, at the end of the last sentence, the words "to the international depositary authority indicated by him" should be added.

998. The CHAIRMAN concluded that the Delegate of Japan suggested that a distinction should be made between the expenses involved in the transfer--which were paid to the defaulting authority--and the fee for storage--which would be paid to the designated substitute authority. He asked the Secretariat whether it was merely a detail which was implicitly contained in the text of the draft or whether it was an amendment to the latter.

999. Mr. BOGSCH (Director General of WIPO) was of the opinion that the two proposals were already implicitly contained in the text of the draft and that they were, therefore, acceptable.

1000. The CHAIRMAN noted that the proposals submitted by the Delegation of Japan were therefore of a drafting nature since they merely specified what was already implicitly contained in the text of the draft.

1001. Rule 5.1(e) was adopted, subject to any amendments made by the Drafting Committee.

1002. The CHAIRMAN turned to Rule 5.2 and recalled that the Delegation of the United Kingdom had proposed the deletion of that Rule (document DMO/DC/5). He asked the Delegation of the United Kingdom to explain briefly the reasons for the deletion.

1003. Mr. NEEDS (United Kingdom) recalled that, under Article 8(2)(a) as proposed by his Delegation (document DMO/DC/5), when it became necessary for a Contracting State to withdraw its assurances, either in whole or in part, it was obliged to do so. The Delegate of the United Kingdom did not see the necessity of maintaining Rule 5.2, which only repeated the procedure.

1004. The CHAIRMAN remarked that the deletion of Rule 5.2 would make it necessary to alter the form of Article 6(3), which had already been adopted, since the latter distinctly referred to the provisions of the Regulations. In his opinion, the proposal submitted by the Delegation of the United Kingdom concerned drafting and he proposed to refer it to the Drafting Committee.

1005. Mrs. PARRAGH (Hungary) wished to retain Rule 5.2 and she made some remarks on the drafting. Should that rule be maintained, she wished to add the words "temporarily or definitively" at the beginning. Furthermore, she proposed that the words "and the measures which have been taken" should be transferred from Rule 5.2(b) to Rule 5.2(a).

1006. The CHAIRMAN asked whether the Main Committee accepted his suggestion to refer the question of the maintenance or deletion of Rule 5.2 to the Drafting Committee, and, should it be decided to maintain it, to add the proposals made by the Delegation of Hungary.

1007. Mr. von PECHMANN (Union of European Patent Attorneys and Other Representatives Before the European Patent Office (UNEPA)) raised the question of an applicant who sent a sample to an international depositary authority, which then refused to accept it. The depositor would lose priority. The Representative of UNEPA recalled that in Rule 5.1(a)(ii), it was stated that all mail and other communications were transferred to the substitute authority. He wondered whether it would not be necessary to have the same procedure in cases where the international depositary authority no longer accepted certain kinds of microorganisms. The sample already sent to the international depositary authority should be transferred to the substitute authority and the right of priority should not be lost.

1008. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) fully shared the opinion expressed by the Representative of UNEPA. It was quite possible for a depositary authority to accept certain kinds of microorganisms, but to impose a restriction if it discovered certain pathogenic characteristics. In his opinion, a form of guarantee, as proposed by the Representative of UNEPA, should exist.

1009. Mr. BOGSCH (Director General of WIPO) pointed out that, in his view, the question would necessitate at least one or two additional pages of new rules and, perhaps, even a reference in the Treaty since it concerned neither a new deposit nor a transfer: a new deposit which had not been accepted could not be transferred and, in that case, it could not be called a new deposit as long as there was no original deposit. The Director General noted that the question had not been dealt with in the drafts and, because of its new and complicated nature, it was not possible to continue the discussion without the backing of a written text. He wondered whether it was possible to prepare a text and to come back to the question, or whether it would be more appropriate to simply make a note in the Records of the Budapest Diplomatic Conference to the effect that, during the first revision of the Regulations, the question should be dealt with.

1010. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC)) stated that the majority of depositary institutions wished future depositors to have the courtesy to inform them that they intended to make a deposit before sending a sample of microorganism. It was useful to be warned in advance since it was possible that the depositary, at a particular moment, was not in a position to deal with the culture as soon as it arrived. If the depositors did so, the depositary would immediately inform them whether it did or did not accept the deposit of a culture. Referring to the remarks made by the Representative of CNIPA, the Representative of WFCC said that the only means by which a depositary could discover whether an organism was pathogenic, was if some person in the laboratory contracted an infection from that organism, since nothing in the Treaty nor in the Regulations required the depositor to check the properties of the deposited organism in any way whatsoever. It therefore appeared to him that the problem raised did not in fact exist.

1011. Mr. CRESPI (Union of Industries of the European Community (UNICE)) shared the opinion expressed by the Representative of WFCC. In his view, the obligation was on the depositor to check whether a particular culture collection could accept a microorganism.

1012. The CHAIRMAN was happy to note that the Conference benefited from the presence of persons used to effecting deposits of that nature in relation to the patent applications which they filed. He requested them to inform him whether, in practice, one always waited until the last minute in order to deposit a microorganism which, under the provisions of national law, was known to be part of what was called the disclosure of the invention. If such were the case, risks were taken. Taking into account the remarks made by the two previous speakers, the Chairman concluded that a request to the Director General of WIPO to draw up a text for discussion was not urgent.

1013. Mr. BEHAN (United States of America) concurred with the remarks made by the two previous speakers. Replying to the Chairman's question, he thought that it was fair to affirm that the moment at which a microorganism was deposited before the filing of a patent application would obviously depend on the progress of the inventor's research and other factors. At the same time, he also thought that inventors and innovators in that area of science were familiar with the types of microorganisms in which they were interested in a particular case and they knew whether different culture collections were willing and able to accept such microorganisms. He likewise considered that, from a practical point of view, the benefit accruing from a deposit did not exist until a viable deposit had been effected and accepted by the industrial property office.

1014. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) stated that, under the Paris Convention, the date of priority could be very important. For that reason, it could be urgent to effect a deposit of microorganisms, in particular, during the last twelve months, in order to secure an early priority. He thought that the statement made by the Representative of WFCC was entirely correct.

1015.1 The CHAIRMAN asked whether any governmental delegation wished the problem to be studied and a draft text of an additional rule to be submitted to the Main Committee. He noted that such was not the case. Having taken into account the assurances given by the Representative of WFCC, he concluded that the necessity of drafting a supplementary rule was not indispensable and that the statements made were, perhaps, an additional reason for specifically maintaining Rule 5.2.

1015.2 The Chairman declared the debate on Rule 5 closed.

Rule 6: Making the Original Deposit or New Deposit

1016. The CHAIRMAN turned to Rule 6 and stated that the Delegation of the Soviet Union had submitted a proposal concerning Rule 6.1(a)(iii) (document DMO/DC/29). He asked the Delegate of the Soviet Union to introduce his proposal.

1017. Mr. DEMENTIEV (Soviet Union) proposed the following wording for Rule 6.1(a)(iii): "the purpose for which the microorganism is meant, details of the conditions necessary for the cultivation of the microorganism, as well as its storage and viability test, and also, where a mixture of microorganisms is deposited, descriptions of the components of the mixture and methods for checking their presence." He pointed out that the wording proposed by his Delegation differed from the text of the draft on three points, namely an indication of the purpose (first point) for which a particular microorganism was meant, which would facilitate identification of the conditions necessary to ensure the storage of the microorganism (second point) and the viability test (third point). The amendment proposed by the Delegation of the Soviet Union was aimed not only at ensuring better protection and suitable conditions for the culture and storage of microorganisms, but also protection of the environment. In his opinion, mention of the conditions under which the viability test of the microorganism was carried out was indispensable since it was often true that the findings of such a test were a direct result of the said conditions.

1018. The CHAIRMAN repeated that the proposal made by the Delegation of the Soviet Union covered three aspects: (1) the purpose of the microorganism; (2) the obligation to mention the conditions in which the microorganism must be stored; and (3) the conditions necessary which must be met in order to test its viability. The formulation of the first point was not clear to him and he requested the Delegate of the Soviet Union to explain it.

1019. Mr. DEMENTIEV (Soviet Union) explained that it concerned only an indication of the possible field of application of the microorganism and, as an example, cited microorganisms used to make vaccines, which could be dangerous for man's health if precautionary measures were not taken.

1020. The CHAIRMAN considered, therefore, that in French the words "l'objectif auquel répond le micro-organisme" were not adequate.

1021. Mr. SZABO (United Kingdom) commented on the proposal submitted by the Delegation of the Soviet Union. An indication of the purpose, in his opinion, could be construed as an indication of the utility, which went far beyond what was really required for a deposit. A deposit was for the purpose of making a microorganism available. An invention might be based on one microorganism at one particular moment, but the inventor could then discover other uses for the microorganism and file additional applications referring to the same microorganism. An indication along the lines proposed by the Delegation of the

Soviet Union could have the effect of limiting the scope of the validity of the patent. The Delegate of the United Kingdom therefore considered that such a provision was not desirable.

1022. The CHAIRMAN remarked that the discussion was at present on the indications which the depositor must furnish with regard to the depositary authority and he added that such indications could be limiting and only available to the depositor and the international depositary authority.

1023. Mr. SZABO (United Kingdom) thought that, although it might be true that, at the time of deposit, such an indication was only available to the international depositary authority, it might also happen that, at the time the sample was furnished, such an indication would be given to any applicant together with the sample. The indication of purpose proposed by the Delegation of the Soviet Union could then affect any decisions or legal considerations which the applicant for a sample could have in respect of an invention.

1024. Mr. GUERIN (France) summarized by saying that the proposal on Rule 6.1(a)(iii) submitted by the Delegation of the Soviet Union, in comparison with the text of the draft, contained two amendments. The first, which concerned the indication of "the purpose for which the microorganism was meant," should be studied from the point of view of drafting. The Delegate of France was not in favor of such an amendment, but he considered that, if necessary, it could be accepted as a recommendation to be added, possibly, to Rule 6.1(b) and not as an obligation. With regard to the second amendment, namely the inclusion of an indication concerning the storage and viability test, he thought that such an indication could perhaps be useful, but only to the extent that the depositor considered it necessary.

1025. Mr. KÄMPF (Switzerland) thought that the indication of "the purpose for which the microorganism is meant" could perhaps be made in the patent application rather than in the file for the deposit of a microorganism. However, if the Delegation of the Soviet Union believed that the indication was necessary with a view to protecting the environment, the wording of the French text would have to be re-examined. With regard to the other additions proposed by the Delegation of the Soviet Union, in his view, they were acceptable.

1026. Mr. HALLMANN (Federal Republic of Germany) considered that the indication of "the purpose for which the microorganism is meant" was not necessary. It could seriously prejudice the patent procedure. The indication was not necessary for the culturing of the microorganism, for its storage or for the furnishing of samples. With regard to the questions of the storage of microorganisms and the viability test, the Delegate of the Federal Republic of Germany considered that they were already dealt with in Rule 6.1(a)(iii) of the draft by the words: "details of the conditions necessary for the cultivation of the microorganism...." He had no objection to amending the wording of that provision.

1027. Mr. SCHLOSSER (United States of America) fully shared the views expressed by the Delegate of the Federal Republic of Germany.

1028. Mr. TAK (Netherlands) wished to know whether the culture collections believed that the indication of "the purpose for which the microorganism is meant" really represented an advantage. He presumed that if a microorganism were used for preparing a vaccine, it would be treated with more care than if it were an ordinary microorganism used to make antibiotics. If the culture collections replied in the negative, the indication of purpose would merely be a burden for the depositor since any omission of the indication could lead to consequences such as, for example, the invalidation of the patent. While he agreed with the opinion expressed by the Delegate of the Federal Republic of Germany that conditions for culturing were the same as those for testing the viability, he thought that, for the very rare, or even nonexistent cases where those conditions were different, the words "if necessary..." should be added.

1029. Mr. BELLENGHI (Italy) shared the view expressed by the Delegation of the Federal Republic of Germany. He was in favor of an indication of the conditions for storage of the microorganism and for testing its viability, but he was opposed to an indication of "the purpose for which the microorganism is meant."

1030. Mr. OREDSSON (Sweden) shared the view expressed by the Delegation of the Netherlands.

1031. The CHAIRMAN noted that all those delegations which had taken the floor had supported the proposals of the Delegation of the Soviet Union with regard to the storage of microorganisms and the viability test. On the other hand, none of those delegations were in favor of the obligation on the depositor to indicate the field of application for which the microorganism was meant, such an indication being included in the patent application, as had been pointed out by one delegation.

1032. Mr. DEMENTIEV (Soviet Union) recognized that the negative attitude of delegates to the first point in the proposal made by the Delegation of the Soviet Union was probably due, in particular, to bad drafting of the French text. He again emphasized that his proposal had been motivated by a wish to limit the dangers which could be caused to health and the environment by the deposit and storage of certain microorganisms. He then remarked that his proposal complemented that of the Delegation of Czechoslovakia on Rule 6.1 (document DMO/DC/22), which stated that "The depositor must indicate the properties of the microorganism dangerous to health or environment..." In conclusion, he stated that the first point raised by his Delegation was related to Article 5 of the Treaty in which mention was made of the risks which the export and import of microorganisms entailed for health or the environment.

1033.1 The CHAIRMAN concluded by stating that the two proposals submitted by the Delegation of the Soviet Union with regard to the "conditions necessary for the ...storage" and the "conditions necessary for the...viability test" were adopted and included in the text of the draft. With regard to the third proposal concerning "the purpose for which the microorganism is meant," he requested the Delegate of the Soviet Union to return to it the following day, either together with the Delegation of Czechoslovakia or when the latter's proposal was discussed (document DMO/DC/22).

1033.2 The CHAIRMAN informed the delegates that discussions at the next meeting of the Main Committee would concern the question of languages (Article 17 of the Treaty on which a decision would finally have to be taken), Rule 11 on which twelve proposals for amendment had already been submitted and, finally, Rule 6.

Ninth Meeting
Wednesday, April 20, 1977
Morning

Treaty

Article 17: Signature and Languages of the Treaty (in the text as signed,
Article 18: Signature and Languages of the Treaty) (continued from paragraph 851)

1034.1 The CHAIRMAN returned to the discussion on the problem of languages (Article 17) which had been left unresolved. He expressed the hope that it would be possible for the Main Committee to find a solution acceptable to all without having to take a vote, as had been the case with the preceding 16 Articles of the draft Treaty. A formal vote should only be taken on technical questions, such as those contained in the Regulations. In his opinion, the Main Committee had not yet exhausted all the possibilities for negotiation, although it had been taken unaware by such an urgent problem being raised at such a late date. The longer the decision was put off, the shorter the time for the Secretariat to prepare the relevant texts. Furthermore, no precedent existed for guidance. After making a brief summary of the situation, he said that a broader solution than that of two languages would have to be found and he added that the framework of the Paris Convention seemed to him to be more appropriate than that of the Treaty under discussion. He thought that, if all participants more or less felt that other languages should be included, no one knew exactly how far to go.

1034.2 The CHAIRMAN then recalled that four possibilities had been discussed during the previous meeting, namely: (1) the Treaty and the Regulations would be drafted in two official languages: English and French (solution to be found in the draft Treaty); (2) the Director General of WIPO would be requested to prepare, within a specified time limit, for example, 60 days, official translations of the Treaty and the Regulations in languages which were yet to be determined, which translations would be attached to the copies to be officially transmitted to States under Article 18; (3) the Treaty alone would be drafted and signed in other languages to be specified, apart from English and French, and the Regulations would be drawn up in English and French only; (4) (solution prepared in writing by the Director General of WIPO (document DMO/DC/31)) the Regulations would be annexed to the Treaty in English and French, and the Treaty would be in English, French and other languages; however, if the text in one of those other languages diverged from the English and French versions, the latter would prevail.

1035.1 Mr. DEITERS (Federal Republic of Germany) thought that it would be useful to return to the second possibility mentioned by the Chairman and to seek a solution on that basis. He stated that his Delegation could not accept the third proposal.

1035.2 With regard to his Delegation's proposal to use the German language, he remarked that it was an official language in several countries represented at the Budapest Diplomatic Conference and that it had long played an important role in the field of industrial property. However, in order to avoid the considerable practical and technical difficulties which would be occasioned by signature in an additional language, his Delegation was prepared to withdraw its proposal if the Main Committee decided to limit the signature of the texts in the English and French languages alone.

1036. Mr. PAPINI (Italy) shared the view expressed by the Delegate of the Federal Republic of Germany. He said that his Delegation was also prepared to forego drafting and signature of the Treaty in Italian, which was a language spoken by approximately 60 million people in the world and even constituted one of Switzerland's official languages.

1037. Mr. KOMAROV (Soviet Union) had carefully studied the "third solution" contained in document DMO/DC/31, prepared by the Secretariat on the basis of the discussions in the Main Committee. His Delegation maintained its previous attitude on the principle and considered that, for reasons which had already been explained, the use of the Russian language was logical and justified. However, in order to find a way out of the problem, it was prepared to accept a compromise solution, namely, the following wording for Article 17:

"(1)(a) This Treaty shall be signed in a single original in the English and French languages, both the texts being authentic and of equal legal value.

(b) The official texts shall be made out by the Director General, after consultation with the Governments concerned, in the official languages of WIPO within the two months period after the signing of this Treaty.

(2) This Treaty shall remain open for signature at Budapest until December 31, 1977."

1038. The CHAIRMAN, in view of the importance of the proposal made and in order to avoid any misunderstandings, requested the Secretary General of the Conference to read out the corresponding English text, which had been given to the Main Committee by the Delegation of the Soviet Union at the same time.

1039. Mr. BAEUMER (Secretary General of the Conference) read out the English translation of the text of Article 17 as proposed by the Delegate of the Soviet Union.

1040. Mr. HIROOKA (Japan) asked what were the official languages of WIPO, apart from English and French.

1041. Mr. BOGSCH (Director General of WIPO) pointed out that no provision in the Convention laid down the official languages of WIPO. Therefore, the wording of the proposal submitted by the Delegation of the Soviet Union would have to be amended slightly in order to state that the official texts would be drawn up by the Director General in the other languages in which the Convention Establishing the World Intellectual Property Organization was signed, namely Russian and Spanish. With regard to the German, Japanese, Italian and Portuguese languages, the Director General of WIPO considered that the provision set out in the amended text of Article 17(1)(b) (see document DMO/DC/31) should be maintained.

1042. The CHAIRMAN asked the Delegate of the Soviet Union whether he accepted the suggestion made by the Director General of WIPO to replace the words "the official languages of WIPO" with the words "the languages in which the Convention Establishing WIPO was signed."

1043. Mr. KOMAROV (Soviet Union) stated that his Delegation, when using the expression "the official languages of WIPO," had meant "the languages in which the Convention Establishing WIPO was signed."

1044. The CHAIRMAN asked whether the Delegate of the Soviet Union also accepted the suggestion of the Director General of WIPO concerning the German, Japanese, Italian and Portuguese languages and others.

1045. Mr. KOMAROV (Soviet Union) replied in the affirmative.

1046. The CHAIRMAN summarized the situation: in accordance with the proposal made by the Delegation of the Soviet Union, the translations which the Director General of WIPO was requested to make within a period of two months were the translations into the two other languages in which the Convention Establishing WIPO was signed, namely the Russian and Spanish languages; in addition, it was proposed to add a new subparagraph taken from the text of Article 17 of the draft Treaty which would state approximately the following: "The official texts shall be established by the Director General, after consultation with interested Governments, in the...(list of languages other than the four languages already specifically mentioned) languages and in the other languages which the Assembly might indicate."

1047. Mr. KOMAROV (Soviet Union) emphasized once again that the Delegation of the Soviet Union had declared itself in favor of limiting the number of languages of the Treaty solely to facilitate the task of the Director General of WIPO, who was not in a position to prepare all those texts in such a short period. However, if the International Bureau were subsequently able to establish translations in other languages as well, then he would suggest the addition of the words "and in the other languages."

1048. Mr. BOGSCH (Director General of WIPO), in order to avoid confusion, repeated that, in accordance with the proposal submitted by the Delegation of the Soviet Union, Article 17(1)(b) would mention that the official texts of the Treaty must be established during the two-month period following its signature in the other languages (without specifying them) in which the Convention Establishing WIPO was signed; in addition, another subparagraph would repeat the wording of the draft Treaty (document DMO/DC/3), with the exception of the words "Spanish" and "Russian."

1049. Mr. VILLALPANDO (Spain) was in favor of the proposal submitted by the Delegate of the Soviet Union, as defined by the Director General of WIPO.

1050. Mr. STOENESCU (Romania) insisted that Article 17(1)(c) should terminate with the text used in the draft (document DMO/DC/3) "and such other languages as the Assembly may designate."

1051. The CHAIRMAN recalled that the final proposal made by the Director General of WIPO was to repeat paragraph (1)(b) of Article 17 as it appeared in the Draft, as paragraph (c), simply deleting the reference to the Spanish and Russian languages, which was already covered by paragraph (a).

1052. Mr. WINTER (United States of America) declared that his Delegation could accept the compromise proposal submitted by the Delegation of the Soviet Union and amended by the Director General of WIPO. He thought that the text would enable his country to consider signature at the end of the Diplomatic Conference, which would not have been the case if the final text had been too far from the draft Treaty.

1053. Mr. DAVIS (United Kingdom) said that his Delegation was grateful to the Delegation of the Soviet Union for having submitted a compromise proposal which it could accept. However, his Delegation also wished to see included the addition proposed by the Director General of WIPO.

1054. Mr. KÄMPF (Switzerland) reiterated that his Delegation had stated that it could only sign the text in English and French. He congratulated the Delegation of the Soviet Union on its compromise proposal and accepted the text as amended by the Director General of WIPO.

1055. Mr. DEITERS (Federal Republic of Germany) asked what would be the final formulation of Article 17.

1056. The CHAIRMAN replied that Article 17 would be composed of two paragraphs, the first containing three subparagraphs, (a), (b) and (c), and he repeated their contents.

1057. Mr. FRESSONNET (France) sincerely thanked the Delegation of the Soviet Union, which had shown a great spirit of understanding. Article 17 thus drafted was acceptable to his Delegation and enabled it to sign the Treaty.

1058. Mr. HABIB (Egypt) was in favor of the proposal of the Delegation of the Soviet Union as amended by the Director General of WIPO. He drew attention to his statement the previous day (see paragraph 825) in which he had requested the inclusion of the Arabic language in Article 17(1)(b) of the draft Treaty.

1059. Mr. BOGSCH (Director General of WIPO) declared that the Secretariat would welcome the addition of Arabic to the list of languages in Article 17(1)(c) (Article 17(1)(b) of the draft Treaty).

1060. The CHAIRMAN asked whether the proposal made by the Delegation of Egypt was seconded.

1061. Mr. FRESSONNET (France) supported the proposal.

1062. Mr. DEITERS (Federal Republic of Germany) accepted the proposal on paragraph (1)(c) made by the Soviet Union and amended by the Director General of WIPO, subject to its final wording.

1063. Mr. VILLALPANDO (Spain) supported the proposal made by the Delegation of Egypt.

1064. It was decided to add Arabic to the list of languages appearing in paragraph (1)(c) of Article 17.

1065. Mr. KOMAROV (Soviet Union) asked that a statement be included in the Records of the Budapest Diplomatic Conference mentioning that his Delegation had made a declaration to the effect that Russian should be used in WIPO on an equal level with French and English, in conformity with established practice in the United Nations. Therefore, authentic texts should also be established in the Russian language.

1066. The CHAIRMAN assured the Delegate of the Soviet Union that his statement would be included in the Records of the Conference.

1067. Mr. PETROV (Bulgaria) supported the statement made by the Delegation of the Soviet Union.

1068. Mr. VILLALPANDO (Spain) supported the last statement made by the Delegation of the Soviet Union and declared that his Delegation wished to add Spanish to the three languages.

1069. The CHAIRMAN assured the Delegate of Spain that his statement would also be included in the Records of the Budapest Diplomatic Conference.

1070. Mr. ROKICKI (Poland) supported the statement made by the Delegation of the Soviet Union.

1071. Mr. HABIB (Egypt) supported the statement made by the Delegation of Spain.

1072. Mr. HIROOKA (Japan) stated that his Delegation attached great importance to Article 17. He had not received instructions from his Government; therefore, he wished to maintain the text of the draft (document DMO/DC/3).

1073. The CHAIRMAN requested the Director General of WIPO to submit the full text of Article 17 as it resulted from the discussions to the Main Committee for formal approval at its next meeting. He then suspended the meeting (continued at paragraph 1214).

[Suspension]

Regulations

Rule 11: Release of Samples (in the text as signed, Rule 11: Furnishing of Sample)

1074.1 The CHAIRMAN resumed the meeting and turned to Rule 11 on which twelve proposals for amendment had been distributed. In chronological order, they were those submitted by the Delegations of the United Kingdom (document DMO/DC/15), France (document DMO/DC/6), Japan (document DMO/DC/15), Sweden (document DMO/DC/18), Switzerland (document DMO/DC/19), Federal Republic of Germany (document DMO/DC/21).

Czechoslovakia (document DMO/DC/22), Romania (document DMO/DC/24), the United States of America (document DMO/DC/26), Hungary (document DMO/DC/28), the Soviet Union (document DMO/DC/29) and the Federal Republic of Germany (document DMO/DC/34). He pointed out that amendments would have to be made to Rule 11 following the decision taken concerning intergovernmental organizations (document DMO/DC/32) and that an information paper dated April 19, 1977, had been drawn up by interested non-governmental organizations.

1074.2 The CHAIRMAN opened the discussion on Rule 11.1, "Release to Interested Industrial Property Offices," and suggested that document DMO/DC/32 be taken up first in order to note the amendments which would have to be made as a result of the decisic taken. He recalled that, in Rule 11.1, the words "of any Contracting Party" should be replaced by the words "of any Contracting State or of any intergovernmental industrial property organization." The Rule thus drafted provided that a sample could be released not only to national industrial property offices of Contracting States, but also to regional offices fulfilling the same role. He added that in Rule 11.1(iii) th words "of the said Contracting Party" should also be replaced by the words "of the sai Contracting State or of the said organization."

1075. The amendments to Rule 11.1 resulting from the decision not to use the words "Contracting Party" were adopted.

1076. The CHAIRMAN pointed out that, in Rule 11.1(i), the Delegation of the Federal Republic of Germany had suggested that the words "is an invention which involves the use of the said microorganism" should be replaced by the words "involves the said microorganism" (document DMO/DC/21). He requested the Delegate of the Federal Republic of Germany to explain his proposal.

1077. Mr. HALLMANN (Federal Republic of Germany), referring to the English text, considered that the words "is an invention which" should be deleted since, at that stage of the procedure, no competent authority, including the industrial property office, could judge whether it was an invention or not. It was simply an application noting a deposit which probably would not be examined as to its merits. The same applied to the words "the use of." The Delegate of the Federal Republic of Germany emphasized that he did not wish to exclude the protection of the microorganism as such, but he preferred to see the solution of the problem left to national law.

1078. The CHAIRMAN remarked that, in French, the words proposed by the Delegation of the Federal Republic of Germany, "son objet implique le micro-organisme," were difficult to accept and he added that it was probably a question of translation.

1079. Mr. HÜNI (Switzerland) supported the proposal made by the Delegate of the Federal Republic of Germany.

1080. Mr. BELLENGHI (Italy) also supported the proposal made by the Delegation of the Federal Republic of Germany.

1081. Mr. IANCU (Romania) said that in his opinion, the proposal made by the Delegation of the Federal Republic of Germany was perfectly clear and acceptable. With regard to the French text, he proposed that the words "son objet implique le micro-organisme" be replaced by the words "son objet implique l'utilisation du micro-organisme."

1082. The CHAIRMAN had understood that one of the objectives of the proposal made by the Delegation of the Federal Republic of Germany was precisely not to use the word "use" in order not to exclude cases where the invention did not concern the use of the microorganism, but the microorganism itself.

1083. Mr. IANCU (Romania) replied that, if that were the case, he supported the proposal made by the Delegation of the Federal Republic of Germany.

1084. Mr. OREDSSON (Sweden) said that his Delegation preferred the text of Rule 11.1 appearing in the draft (document DMO/DC/4) since, in his view, it was more consistent with Rule 28 of the Regulations of the European Patent Convention.

1085. Mr. FRESSONNET (France) shared the point of view expressed by the Chairman concerning the use, in the French text, of the words "l'objet de l'invention implique le micro-organisme." He reminded the Main Committee that Rule 28 of the Regulations of the European Patent Convention used the following wording: "If an invention concerns a microbiological process or the product thereof and involves the use of a micro-organism which is not available to the public...," and declared that his Delegation preferred the text appearing in the draft.

1086. Mr. BEHAN (United States of America) stated that his Delegation concurred with the proposal submitted by the Delegation of the Federal Republic of Germany to the extent that Rule 11.1(i) did not exclude the possibility that the invention was the microorganism itself. He suggested, however, that the wording proposed by the Delegation of the Federal Republic of Germany, "involves the said microorganism," should be replaced by the words "involves the said mircoorganism or the use thereof." In that way, it would be quite clear that both possibilities were taken into account.

1087. Mr. HALLMANN (Federal Republic of Germany) declared that his Delegation could accept the amendment proposed by the Delegation of the United States of America.

1088. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)), on behalf of CNIPA, supported the proposal made by the Delegate of the United States of America, which, in his view, coincided with the proposals for a new law being drawn up in the United Kingdom.

1089. Mr. TAK (Netherlands) also supported the proposal made by the Delegate of the United States of America.

1090.1 The CHAIRMAN said that, taking into account the proposals made, the wording of the French version of Rule 11.1(i) would be the following: "une demande faisant état du micro-organisme a été présentée auprès de cet office en vue de la délivrance d'un brevet, et dont l'objet porte sur un micro-organisme ou sur son utilisation"; (corresponding to the following English text: "an application referring to that microorganism has been filed with that office for the grant of a patent and whose subject matter involves the said microorganism or the use thereof";).

1090.2 With regard to the remarks made by the Delegates of France and Sweden concerning Rule 28 of the Regulations of the European Patent Convention, the Chairman pointed out that the text of Rule 11.1(i) of the draft Treaty should be broader than that of Rule 28 in order to be able to adapt it to all national and regional laws.

1091. Mr. DEMENTIEV (Soviet Union) supported the proposal of the Delegation of the United States of America concerning the protection not only of the use of the microorganism, but also of the microorganism itself.

1092. Rule 11.1(i), as amended in accordance with the proposals submitted by the Delegations of the Federal Republic of Germany and the United States of America, was adopted.

1093. The CHAIRMAN turned to Rule 11.1(ii) and said that the Delegation of Sweden had submitted a proposal for amendment (document DMO/DC/18).

1094. Mr. JACOBSSON (Sweden) said that Rule 11.1 was aimed at covering all those cases where there was a definite need for industrial property offices to have samples of deposited microorganisms at their disposal. He was not sure that as long as Rule 11.1(ii) was maintained, the text of the draft gave industrial property offices such a possibility when they were in need of a sample in certain cases. In certain States, an application for a patent was not accessible to the public if it were refused or withdrawn; the application and, consequently, the sample of the microorganism would always remain secret. In other States, for example, in the United States of America--if his information were correct--there was no publication until a patent was granted. Cases could arise--particularly when an application was withdrawn before publication--when it would be in the interests of national offices to have samples of the deposited microorganism, for example, in cases of dispute concerning whether or not another application could benefit from the priority of a first application. He wondered how the authority could keep such a microorganism at the disposal of the public if Rule 11.1(ii) were maintained.

1095. The CHAIRMAN concluded that the Delegate of Sweden proposed that the provision of Rule 11.1(ii) be deleted.

1096. Mr. BOGSCH (Director General of WIPO) said that the Delegate of Sweden had clearly explained what was implied in Rule 11.1, the aim of which was to prevent any patent office from requesting a sample, without the consent of the depositor, when no application was pending before the patent office or when a patent had not been granted. The Director General of WIPO stated that this was a question of substance and he had nothing to add on the matter. However, he would like to hear the views of those delegations which shared the view that their patent office might need samples related to withdrawn or rejected patent applications.

1097. Mr. DAVIS (United Kingdom) indicated that he did not wholly support the proposal submitted by the Delegation of Sweden, but he recognized that it was an important substantive point, as had been underlined by the Director General of WIPO. In his view, the problem did not only involve the release of a sample to the industrial property office itself, but also cases in which the office requested a sample for purposes of patent procedure before a competent body of the said Contracting Party (as laid down in Rule 11.1(iii)). He wondered whether, in fact, the Delegation of Sweden envisaged the particular case in which it was necessary to obtain a sample, even though the application had not resulted in the grant of a patent.

1098. Mr. JACOBSSON (Sweden) said that he had also thought of the question raised by the Delegate of the United Kingdom, namely, cases in which a sample was necessary for the purposes of proceedings before a court. In his view, it was an extremely important question which could be solved by deleting Rule 11.1(ii), as had been proposed by his Delegation.

1099. The CHAIRMAN asked the Delegate of Sweden to describe to him a case pending before a court without the application having resulted in the grant of a patent.

1100. Mr. JACOBSSON (Sweden) stated that, even though the application referring to the deposit of a microorganism had not resulted in the grant of a patent, a sample of the microorganism might be necessary for the purposes of legal proceedings in connection with another patent claiming priority from a first application and if, for example, the first application were withdrawn in another country, it would be extremely difficult to obtain a sample without the consent of the party concerned.

1101. Mr. BOGSCH (Director General of WIPO) emphasized that the Committee of Experts had expressed the view that if a sample were necessary during proceedings before a court, then the party concerned would be forced de facto to give an authorization for the release of the said sample, otherwise he would risk losing his case.

1102. The CHAIRMAN asked the Delegate of the United Kingdom whether it still wished to support the proposal made by the Delegation of Sweden.

1103. Mr. DAVIS (United Kingdom) said that he could not think of an example permitting him to support the proposal made by the Delegation of Sweden.

1104. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)), with regard to a situation in which release might be necessary, said that two cases occurred to him, subject, of course, to certain conditions: where, according to the law of the United States of America, there were interference proceedings and where, under certain national laws, there were legal proceedings before publication.

1105. Mr. CRESPI (Union of Industries of the European Community (UNICE)) confessed that the proposal made by the Delegation of Sweden had caused some anxiety in his organization. He recalled that UNICE had always maintained in the past, but without success, that an applicant should have the right to take back the deposited culture if he withdrew his patent application before publication. With regard to patent procedures, he did not think that they necessarily involved the depositor of the microorganism as a party. He had misgivings concerning the use which might be made of a sample in proceedings in which the depositor did not have the right to intervene. If, however, his application was still pending before the industrial property office, it gave him the possibility of protecting his position.

1106. Mr. JACOBSSON (Sweden) declared that his Delegation withdrew its proposal since it had received no support.

1107. Mr. BOUSFIELD (World Federation for Culture Collections WFCC)) wished for some clarification. Where the release of a sample to an industrial property office and its use by that office were concerned, he asked whether it was correct to assume that the sample would be sent to a microbiological laboratory designated by the industrial property office and not to the office itself.

1108. Mr. BOGSCH (Director General of WIPO) indicated that the text of the draft merely provided that the sample should be released to the national industrial property office, but he assumed that, in practice, the industrial property office would generally indicate the following: "We request you to send the sample to such and such institution."

1109. The CHAIRMAN noted that the Main Committee held the view that the release of the sample should be made to national offices by sending the sample to a microbiological laboratory equipped to receive and treat it.

1110. Rule 11.1 was adopted in its entirety with the amendments indicated in paragraphs 1075 and 1092.

1111. The CHAIRMAN took up Rule 11.2 and indicated that the Delegation of the Federal Republic of Germany had proposed an addition thereto (document DMO/DC/34).

1112. Mr. HALLMANN (Federal Republic of Germany) explained that the reason for the proposal was the necessity of having, at least at the level of national law, the possibility of releasing samples without the express authorization of the depositor in certain cases which were not covered in Rule 11.3(b). A third party might have the right to examine the deposit before publication and to obtain a sample if it could justify a legitimate interest. In that case, the request was established by an act, which could be a decision, and that decision, if it became final, replaced the authorization.

1113. Mr. TOCKMAN (United States of America) said that his Delegation supported the proposal made by the Delegation of the Federal Republic of Germany.

1114. Mr. BELLENGHI (Italy) also supported the proposal made by the Delegation of the Federal Republic of Germany.

1115. Mr. BECKER (Council of European Industrial Federations (CEIF)) remarked that the wording "the authorization is considered to be given...," proposed by the Delegation of the Federal Republic of Germany was highly ambiguous and vague. The patent office might consider that the depositor agreed; in fact, if the depositor had been informed, he would not agree and, in that case, he had the right to oppose. He, therefore, proposed that the wording be clarified.

1116. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) strongly supported the statement made by the Representative of CEIF, in view of the fact that the proposal made by the Delegation of the Federal Republic of Germany did not give the necessary guarantees to the depositor.

1117. Mr. HÜNI (Switzerland) considered that the text proposed by the Federal Republic of Germany was too vague. The authorization, in his opinion, should be given by the depositor and the words "is considered to be..." should not be used. The Delegate of Switzerland stated that if such an amendment were not made to the proposal of the Delegation of the Federal Republic of Germany, he could not support it.

1118. The CHAIRMAN asked the Delegate of Switzerland whether he wished to amend the text submitted by the Delegation of the Federal Republic of Germany.

1119. Mr. HÜNI (Switzerland) proposed that the words "according to the national law the authorization is considered to be given by the depositor" should be replaced by the words "according to the national law the authorization has been given by the depositor."

1120. Mr. FRESSONNET (France) first of all remarked that Rule 11.2 concerned the release of samples to the depositor or to any authority or any natural or legal person with his authorization. He therefore considered that if the proposal made by the Delegation of the Federal Republic of Germany were amended by deleting the words "the authorization is considered to be given...," then it would not come within the framework of Rule 11.2, since it would concern release with the authorization of the depositor, but would come under the provisions of Rule 11.3. The Delegate of France stated that he could not wholly support the proposal made by the Delegation of the Federal Republic of Germany and asked it whether, in conformity with its national legislation, the amendment in question was absolutely necessary.

1121. The CHAIRMAN thought that the text of the draft was limited to express authorization by the depositor and that the proposal made by the Delegation of the Federal Republic of Germany was aimed at including a form of tacit authorization resulting from another act by the depositor.

1122. Mr. HALLMANN (Federal Republic of Germany) confirmed that, in accordance with present national law in his country, the amendment was absolutely necessary.

1123. Mr. BOGSCH (Director General of WIPO) observed that the authorization was, as it were, wrung from the depositor by the force of law and it was somewhat dangerous, in an international treaty, to use such a broad formula allowing the will of a party to be replaced by the will of the State. He was of the opinion that it would be more appropriate to transfer the concept underlying the proposal of the Delegation of the Federal Republic of Germany to Rule 11.3, for example, and to state, in substance, that "when the law authorizes a person to have a sample, even before the publication of the application or the grant of the patent, this fact will be certified by the national office and, with this certificate, the person shall obtain a sample." He suggested that the Drafting Committee be entrusted with the task of drafting the provision and deciding on its final place in the text (continuation of Rule 11.3 or a completely separate new provision).

1124. The CHAIRMAN asked the Delegation of the Federal Republic of Germany whether it accepted the general principle of solving that particular problem within the framework of Rule 11.3 and noted its agreement.

1125. Mr. JACOBSSON (Sweden) stated that his Delegation fully concurred with the statement made by the Director General of WIPO.

1126. The CHAIRMAN concluded that the Main Committee considered the proposal by the Delegation of the Federal Republic of Germany on Rule 11.2 to be withdrawn, but that that Delegation retained the possibility of submitting a new text for Rule 11.3.

1127. Rule 11.2 was adopted as appearing in the draft.

1128.1 The CHAIRMAN turned to Rule 11.3 and warned the Main Committee that there were many proposals thereon. He pointed out that the proposal submitted by the Delegation of the United Kingdom, contained in document DMO/DC/5, concerned both Rule 11.3(a) and Rule 11.3(c). He therefore suggested that Rule 11.3(a) be examined first, followed by the principle of retaining or deleting Rule 11.3(b), which appeared in square brackets in the draft, and afterwards to take the proposal submitted by the Delegation of the United Kingdom.

1128.2 The CHAIRMAN noted that Rule 11.3(a) was not opposed as a whole, but that there were different proposals for amendments and additions to the Rule. He began with the amendments resulting from the decisions taken with regard to intergovernmental organizations, contained in document DMO/DC/32, namely in Rule 11.3(a) to replace the words "a Contracting Party" by the words "of a Contracting State or of an intergovernmental industrial property organization."

1129. It was so decided.

1130. The CHAIRMAN said that the Delegation of the Federal Republic of Germany had submitted a proposal concerning Rule 11.3(a)(i) contained in document DMO/DC/21. It consisted of replacing the words "is an invention which involves the use of the said microorganism" by the words "involves the said microorganism." He recalled that, in a similar case (Rule 11.1(i), see paragraph 1092), the Main Committee had adopted the following wording: "that application involves the said microorganism or the use thereof" and he proposed that it also be repeated in Rule 11.3(a)(i).

1131. Rule 11.3(a)(i) was adopted as amended.

1132. The CHAIRMAN turned to the provisions of Rule 11.3(a)(ii) and stated that, in document DMO/DC/19, the Delegation of Switzerland had proposed that the words "mentioning that deposit" be added after the word "publication." He asked the Delegate of Switzerland to explain his proposal.

1133. Mr. HÜNI (Switzerland) declared that his Delegation had wished to qualify the word "publication" by the addition of those words in order to cover the situation where the depositor withdrew the reference to the deposit prior to publication.

1134. The CHAIRMAN pointed out that the objective of the Delegation of Switzerland was to ensure that the reference to the deposit of the microorganism appeared not only in the original documents of the patent application, as already resulted from the provisions of Rule 11.3(a)(i), but that the reference also appeared in the documents published.

1135. Mr. BOGSCH (Director General of WIPO) proposed that, for greater clarification, the words "publication of the patent application or the patent mentioning the deposit" be used, since it must be ensured that the reference was not made in the document of a third party.

1136. The CHAIRMAN asked the Delegation of Switzerland for its views on the wording put forward by the Director General of WIPO.

1137. Mr. HÜNI (Switzerland) said that his Delegation felt that it was precisely the publication which should mention the deposit. In his opinion, if the patent application alone mentioned the deposit and not the publication, no samples should be released. He was not sure that that point had been taken into account in the proposal made by the Director General of WIPO.

1138. Mr. BOGSCH (Director General of WIPO) considered that it was a drafting matter which merited reflection.

1139. The CHAIRMAN asked whether the proposal submitted by the Delegation of Switzerland, as defined by the Director General of WIPO, was supported by any other delegation.

1140. Mr. IANCU (Romania) supported the proposal made by the Delegation of Switzerland and as amended by the Director General of WIPO.

1141. Mr. FRESSONNET (France) also supported the proposal made by the Delegation of Switzerland, with the amendments made by the Director General of WIPO.

1142. Mr. TAK (Netherlands) joined previous speakers in supporting the proposal.

1143. Mr. BEHAN (United States of America) said that his Delegation had considered the proposal for amendment submitted by the Delegation of Switzerland very carefully and regretted that it was unable to support it for several reasons. The word "publication" used in Rule 11.3(a)(ii) (document DMO/DC/4) was defined in Article 2(iv) of the Treaty (document DMO/DC/3). It therefore had a very precise meaning. The proposed amendment changed that defined term in such a way that the meaning was lost and the situations covered by the defined term would have to be examined. His Delegation believed that adoption of the proposal made by the Delegation of Switzerland could lead to considerable difficulties, particularly with regard to the question of priority. He wondered whether the priority document would refer to the deposited microorganism by its accession number and he expressed the view that, if it were so, the sample of the said microorganism should be available. Finally, the Delegate of the United States of America considered that the rules governing release of samples should also apply in situations where the accession number appeared in a patent or patent application of a person other than the depositor, on condition that knowledge of that accession number had been obtained legitimately.

1144. Mr. HÜNI (Switzerland) thought that the first point raised by the Delegation of the United States of America could easily be solved by the Drafting Committee in a formulation meeting the concern expressed by that Delegation. With regard to the other points, he considered that, if the published application did not cite the accession number of the deposit, the application should be treated as an application which did not benefit from that deposit. The Delegate of Switzerland stated that he did not understand the fears of the Delegation of the United States of America on that point.

1145. The CHAIRMAN said that the first observation made by the Delegate of the United States of America seemed to him to be a question of drafting. The other questions obviously concerned substantive points.

1146. Mr. BOGSCH (Director General of WIPO) wished to give some clarification to the discussion. He recalled that the proposal made by the Delegation of Sweden had been withdrawn (see paragraph 1106), but that it was not entirely different from one of the observations made by the Delegate of the United States of America. With regard to the proposal made by the Delegation of Sweden, it had been stated that, when an application was withdrawn, that was to say it was neither pending nor published nor had it resulted in the grant of a patent, no samples could be released. He imagined a case in which a patent application made reference to a deposited microorganism. In the course of procedure, before the application was published or the patent granted, the applicant modified the application in such a way that, for example, the claim was omitted, which was the only place where reference was made to the microorganism. Therefore, the modified application no longer contained any reference to the deposit. In his view, the question was whether a third party could legitimately have access to such a microorganism. He considered that, in view of the decision taken on the Swedish proposal, it was necessary to answer that that access was not legitimate. He thus thought that the present text should be amended as had been proposed by the Delegation of Switzerland.

1147. Mr. JACOBSSON (Sweden) wondered whether adoption of the proposal of the Delegation of Switzerland, which constituted a considerable limitation, would not be contrary to basic principles concerning the inspection of files: in many States, when an application for a patent was published, the file was opened for inspection and, since the deposit of a microorganism was considered to be a part, if not the basis, of the application, and appeared, at least in theory, to belong to the file, he wondered whether it was possible to limit the provision in question, as had been proposed by the Delegation of Switzerland, and, in support of his statement, he cited Article 128 of the European Patent Convention.

1148. The CHAIRMAN suggested that delegates should use the lunch break to reflect on the problem, which was not as simple as had originally appeared (continued at paragraph 1149).

Tenth Meeting
Wednesday, April 20, 1977
Afternoon

Rule 11: Release of Samples (in the text as signed, Rule 11: Furnishing of Samples) (continued from paragraph 1148)

1149. The CHAIRMAN resumed the debate on the proposal of the Delegation of Switzerland contained in document DMO/DC/19, which, in particular, proposed that a reference be made to the deposit of the microorganism in the published text. He recalled that the proposal had been supported by a number of delegations, but that it had also given rise to various observations and objections based on the specific provisions of national legislation. He was not certain that all the delegations had fully understood the gist of the objection of the Delegation of the United States of America and he requested it to be good enough to give additional explanations.

1150. Mr. BEHAN (United States of America) said that the comments made by his Delegation firstly concerned the definition of the word "publication." In that connection, it had been suggested that the problem be studied by the Drafting Committee. He thought that the suggestion was a reasonable one and, consequently, it was no longer necessary to discuss the question any further. The other problem was that the filed patent application would contain a reference to the deposit and would disclose its accession number. It seemed highly probable that the initial patent application containing the accession number of the deposit of the microorganism, even if it were withdrawn before publication in a given country, could be used as a priority document for deposit purposes in another country. Where patents were granted or patent applications published, the complete file, including the accession number of the deposit of the microorganism, became, under the terms of many laws, accessible to the public. In his view, where the number had been disclosed, the culture should be available to third parties requesting it.

1151. The CHAIRMAN asked the Delegation of Switzerland whether, in view of the additional explanation given by the Delegate of the United States of America, it thought it necessary to amend its proposal.

1152. Mr. HÜNI (Switzerland) noted that the apprehensions of the Delegation of the United States of America were based on a situation where priority was claimed in another country. But if, in the other country, the patent application contained no reference to the deposit, the said application was not related to the deposit and no right was alleged from the deposit; it was, therefore, not necessary to give the public the right to the release of samples. He concluded that the mere fact of the mention of a reference on a priority document did not, in his view, necessitate the release of a sample.

1153. Mr. DAVIS (United Kingdom) agreed that it was an extremely complex problem. He thought that the very general reference to national law appearing in Rule 11.3(a)(iii covered the question and enabled it to be stated, in particular, that, if according to national law it must be a published application or a published patent in which the published text made reference to the deposit of a microorganism, that could be required under subparagraph (a)(iii) and, therefore, it was not necessary to specify subparagraph (a)(ii).

1154. The CHAIRMAN asked whether the point of view of the Delegate of Switzerland was shared by other delegations.

1155. Mr. FRESSONNET (France) recalled that he had supported the proposal submitted by the Delegation of Switzerland (see paragraph 1141). Nevertheless, after the debate which had taken place, he was obliged to withdraw his support. He thought that, in the final analysis, it was not necessary to modify the provisions of Rule 11.3(a)(ii) for the reasons which had been given, in particular, by the Delegation of the United Kingdom. He noted that the problem had not yet been clearly resolved in the European patent system. However, he was prepared to accept that the present text corresponded to the European patent system and that it was not necessary to add anything to it.

1156. Mr. TAK (Netherlands) also recognized that it was an extremely complex problem and he confessed that, when his Delegation had supported the proposal made by the Delegation of Switzerland, it had not realized all the implications. After having had time to study the proposal, he had come to the conclusion that the text of the draft covered all possible cases and the fears of the Delegation of Switzerland were not justified. He therefore regretted that he had to withdraw his support from the proposal made by the Delegation of Switzerland.

1157. The CHAIRMAN returned to the view expressed by the Delegation of the United Kingdom, according to which Rule 11.3(a)(iii), referring to national law, allowed the national law to impose a certain number of additional conditions and, in particular--as in the case cited by the Delegation of Switzerland--in accordance with national law, it might be necessary for the published text to refer to a deposit of a microorganism. He asked whether the Main Committee agreed with that interpretation, in which case it would appear in the Records of the Conference, and whether the Delegation of Switzerland was prepared, should the reply to the first question be affirmative, to withdraw its proposal.

1158. Mr. HÜNI (Switzerland) stated that, if the interpretation given by the Chairman appeared in the Records of the Budapest Diplomatic Conference, his Delegation was prepared to withdraw its proposal.

1159. Mr. JACOBSSON (Sweden) said that his Delegation found no difficulty in accepting that the idea expressed by the Delegation of Switzerland should appear in the Records of the Conference. Should Rule 11.3(a)(ii) be retained as it

appeared in the draft, he wished to be sure that there would be no obstacles for countries such as Sweden, where the entire file on the patent application was available to the public, to the right of access to the deposit of the microorganism.

1160. The CHAIRMAN asked once again whether the Main Committee accepted the interpretation of the Delegation of the United Kingdom as completed by the Delegate of Sweden, as far as Swedish law was concerned. He noted that such was the case and he requested that the interpretation be very clearly mentioned in the Records of the Budapest Diplomatic Conference. He concluded that the proposal submitted by the Delegation of Switzerland (item 1 of document DMO/DC/19) had been withdrawn.

1161. Rule 11.3(a)(ii) was adopted as appearing in the draft.

1162. The CHAIRMAN turned to Rule 11.3(a)(iii) on which the Delegation of Switzerland had also submitted a proposal (document DMO/DC/19), which consisted of replacing the words "makes the said right dependent" by the words "makes, or allows the said right to be made, dependent."

1163. Mr. HÜNI (Switzerland) pointed out that such conditions were usually optional conditions which the certified party could fulfill for the purposes of the release of samples. He considered that the wording of Rule 11.3(a)(iii) in the draft was not sufficiently comprehensive and that it should be completed in the manner indicated in item 2 of document DMO/DC/19. He suggested that the question be considered a matter of drafting and be referred to the Drafting Committee.

1164. The CHAIRMAN hesitated to regard the proposal as a question of drafting and he put the matter before the Main Committee.

1165. Mr. BOGSCH (Director General of WIPO) wondered whether the proposal of the Delegation of Switzerland was not already contained in the text of the draft, which provided that "the said law makes the said right dependent on the fulfillment of certain conditions."

1166. The CHAIRMAN asked the Delegate of Switzerland to cite a concrete example.

1167. Mr. HÜNI (Switzerland) cited German law as an example. The German Supreme Court stated that the applicant had the right to impose certain conditions, but that the right to the release of samples was not dependent on them. He thought that there was a divergence there and he wished to see it brought out by clearer drafting.

1168. Mr. HALLMANN (Federal Republic of Germany) did not, for the time being, see what other conditions might be added to that contained in the decision of the German Supreme Court.

1169. Mr. BEHAN (United States of America) declared that the proposal of the Delegation of Switzerland was acceptable to his Delegation.

1170. The CHAIRMAN noted that the proposal submitted by the Delegation of Switzerland had been seconded.

1171. Mr. CRESPI (Union of Industries of the European Community (UNICE)) said that his organization was in favor of the proposal submitted by the Delegation of Switzerland and he expressed the view that the Treaty should not prevent national law from laying down further conditions.

1172. Mr. JACOBSSON (Sweden) shared the opinion expressed by the Director General of WIPO that the proposal of the Delegation of Switzerland would not add anything of substance to the text of the draft. However, if the other delegations wished to insert the proposed amendment, his Delegation would not oppose it.

1173. The CHAIRMAN asked whether any delegation was opposed to the proposal made by the Delegation of Switzerland, subject to the amendments to be made by the Drafting Committee; he noted that it was not the case.

1174. The proposal submitted by the Delegation of Switzerland (item 2 of document DMO/DC/19) to replace the words "makes the said right dependent" in Rule 11.3(a)(iii) by the words "makes, or allows the said right to be made, dependent" was adopted.

1175. Mr. von PECHMANN (Union of European Patent Attorneys and Other Representatives Before the European Patent Office (UNEPA)) made some remarks of principle concerning Rule 11.3(a). In a document dated April 18, 1977, UNEPA had proposed to create an international form for the purposes of the release of samples to third parties. Such a proposal had also been made in the IAPIP resolution adopted during the San Francisco Congress. UNEPA suggested that the request should always be filed directly with an industrial property office in order to simplify the whole procedure. He underlined the fundamental difference between that proposal and the text of the draft. According to the latter, when a third party submitted a request for the release of a sample of a microorganism after a patent application or patent had been published in one of the Contracting States, that party must, first of all, ask the industrial property office of that Contracting State for a declaration. At that particular stage, a request for the purposes of release of a sample did not really exist. Consequently, the industrial property office could only furnish a declaration stating that the third party had given a certain promise should there be a subsequent request. The Representative of UNEPA considered that the situation was unclear from a legal point of view and that it would be simpler, on the one hand, if the third party submitted the request directly to that industrial property office and, at the same time, gave the promise which might be necessary under the law of that country and, on the other hand, the office had the opportunity of examining

the legal grounds of the specific request already submitted. The depositary authority should be informed, by means of a form, in order to give the sample of the microorganism to a third party. In the opinion of the Representative of UNEPA, that procedure was both quick and easy.

1176. Mr. PALÁGYI (International Association for the Protection of Industrial Property (IAPIP)), in support of the statement made by the Representative of UNEPA, referred to the draft Treaty (document DMO/DC/3) and recalled that, in the observations on Article 6, it was clearly stated that it was the industrial property office, and not the international depositary authority, which was responsible for the correct application of the law on the release of samples.

1177. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)), while expressing his agreement with the two previous speakers, declared that he would be satisfied for his part if countries having an Anglo-Saxon legal tradition and, in particular, those with a federal system, such as the United States of America, for example, acted in such a way.

1178. Mr. CRESPI (Union of Industries of the European Community (UNICE)) fully supported the proposal made by the Representative of UNEPA which was, in his view, compatible with the form of procedure described in the document of April 19, 1977, submitted by the interested circles. He pointed out that such a procedure went further in its intention to simplify the problem from the point of view of culture collections: the latter held aloof from controversies concerning declarations and the application of national law.

1179. Mr. TAK (Netherlands) wished to take up the proposal of the non-governmental organizations.

1180. Mrs. SIMONSEN (Denmark) also supported that proposal.

1181. Mr. DAVIS (United Kingdom) said that he was not opposed to a proposal that an industrial property office should send to the international depositary authority a document informing it that a sample could be released. However, in his view, it would change the construction envisaged in the Treaty.

1182. The CHAIRMAN recalled that the proposal made by UNEPA had been taken up by the Delegation of the Netherlands and then by the Delegation of Denmark; he asked the Delegation of the Netherlands whether it wished to discuss the question on the basis of the proposal drawn up by the interested circles or whether it preferred to prepare a text itself.

1183. Mr. TAK (Netherlands) held the view that the discussion should be based on the documents already submitted to the Secretariat.

1184.1 The CHAIRMAN noted that the text referred to did not exist in French and that it could not, therefore, be discussed. He was thus obliged to adjourn the discussion on that particular point and he asked the Delegation of the Netherlands to contact the Secretariat in order to prepare a proposal for the amendment of Rule 11.3(a) in the two customary languages.

1184.2 The Chairman asked the Delegate of the Federal Republic of Germany to present the proposal concerning the provision (Rule 11.3(a)bis--document DMO/DC/36) to be inserted in Rule 11.3 after paragraph (a), which had, in principle, been adopted.

1185. Mr. HALLMANN (Federal Republic of Germany) emphasized that the proposal concerned the point raised by his Delegation according to which the release of the sample could take place, under the conditions laid down in the national law, before publication.

1186. The CHAIRMAN asked whether any delegation seconded the proposal.

1187. Mr. TOCKMAN (United States of America) supported the proposal submitted by the Delegation of the Federal Republic of Germany.

1188. Mr. FRESSONNET (France) asked the Delegation of the Federal Republic of Germany whether its proposal did not come under the case envisaged in Rule 11.3(b), to be found in square brackets in the draft.

1189. Mr. HALLMANN (Federal Republic of Germany) did not think that the case envisaged by his Delegation in document DMO/DC/36 was covered by Rule 11.3(b) since, in his view, the latter rule only concerned the necessity of establishing the priority of the invention for the purposes of a patent application pending before the office.

1190. Mr. BOGSCH (Director General of WIPO) agreed with the Delegation of the Federal Republic of Germany that Rule 11.3(b) was narrower than the proposal of that Delegation (document DMO/DC/36), which left considerable freedom of action to national legislation. He had no objection to the proposal since he believed that it was safer not to interfere in national law, and thus the latter could continue to prevail one hundred percent without any restriction. Consequently, he asked UNEPA and the other interested circles, which, during the preparatory meetings, had always been among those who wished all kinds of safeguards, why they were now ready to place themselves at the mercy of national legislation.

1191. Mr. HÜNI (Switzerland) asked whether the Delegation of the Federal Republic of Germany could specify the particular situations in which the provisions of its proposal would apply. Rule 11.3(b) was an exception to the general rule that a sample could not be released before publication. The Delegate of Switzerland thought that if the proposal submitted by the Delegation of the Federal Republic of Germany were accepted, Rule 11.3(b) would become entirely obsolete.

1192. Mr. de BOER (Netherlands), replying to the question asked by the Director General of WIPO, said that, when taking over the proposal of the non-governmental organizations, his Delegation had understood that the three conditions of Rule 11.3(a) would be maintained and that the proposal in question only concerned a matter of mechanism. He repeated that his Delegation could only take over the proposal of the non-governmental organizations if its implications were those he had put forward.

1193. Mr. JACOBSSON (Sweden) shared the view expressed by the Director General of WIPO that the proposal of the Delegation of the Federal Republic of Germany, as drafted, opened nearly all the doors and that most of the other provisions of Rule 11 became redundant. He recalled that during the previous meeting (see paragraph 1147) he had referred to the situation envisaged in Article 128(2) of the European Patent Convention, whereby a third party against whom an applicant for a European patent had invoked his rights could consult the file before publication of the said application. It was solely to cover that particular situation or some other important situation that the Delegation of Sweden could consider the need for a provision of the kind submitted by the Delegation of the Federal Republic of Germany and only on that condition that the Delegation of Sweden could support the said proposal.

1194. Mr. HALLMANN (Federal Republic of Germany), in reply to the Delegate of Sweden, said that, in his view, the solution envisaged in Article 128(2) of the European Patent Convention was not sufficient since German law mentioned the "justified interest" of a third party to inspect the file of the application and the expression "justified interest" covered other cases than those envisaged in Article 128(2) of the Convention, which seemed to be too restrictive.

1195. Mr. BOGSCH (Director General of WIPO) said that he personally had no objection to the very wide scope of the proposal made by the Delegation of the Federal Republic of Germany and supported by the Delegation of the United States of America. He wished to provoke the interested circles into expressing an opinion on the question. He thought that the rule could be extremely simple and that it could provide, for example, that the sample would be released upon request by (1) the depositor and (2) the industrial property office, according to national law. He did not therefore understand why, during the three preparatory meetings, there had been such a struggle on that rule.

1196. Mr. HÜNI (Switzerland) emphasized that, during the preparatory meetings in Geneva, governmental delegations, and certainly also the Delegation of Switzerland, had tried to find a compromise between the interests of the public and the interests of the depositor and the result had been precisely Rule 11 as proposed in document DMO/DC/4. He was of the opinion that the proposal of the Delegation of the Federal Republic of Germany went far beyond that compromise.

1197. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) shared the concern expressed by certain speakers that the proposal of the Delegation of the Federal Republic of Germany would remove the guarantees which were specifically contained in Rule 11.3(a)(iii). He stated that he failed to understand the statement of the Delegate of the Federal Republic of Germany with regard to Article 128 of the European Patent Convention, when Rule 28 of the Regulations of that Convention was borne in mind, since the latter contained safeguards against the release of samples.

1198. Mr. von PECHMANN (Union of European Patent Attorneys and other Representatives Before the European Patent Office (UNEPA)), referring to the proposal by interested circles which had only been submitted in English, explained that he had been obliged to submit it very early and that the Secretariat had refused to translate the document because it did not come from a governmental delegation. He considered that the proposal submitted by the Delegation of the Federal Republic of Germany was superfluous when it was stated that, in accordance with national law governing patent procedure, a person had the right to inspect the file of the application or to request the release of a sample of the microorganism which was the subject of the application. Since the file of the application remained a secret to the public before the application was published, it was only after publication that a third party could be informed and could submit a request for the purposes of release of a sample. He would be happy to see other wording, but in principle he thought that the proposal of the interested circles was very clear and brief and that it constituted the best solution, both for national law and the depositor.

1199. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) regretted that the document dated April 19, submitted both in English and French, had been confused with the document dated April 18. He would appreciate it if the Main Committee could study the document dated April 19, which constituted a simple statement of the needs of the WFCC.

1200. The CHAIRMAN proposed that discussion on Rule 11 be adjourned until the following day and he added that it should not be excluded that the proposal of the Delegation of the Netherlands could be drafted in such a way as to take into account all the other proposals which had been made and that it would, in part, make them superfluous.

1201. Mr. DEITERS (Federal Republic of Germany) suggested that the proposal of the Delegation of the United Kingdom contained in document DMO/DC/5 should be discussed since, although it provided for a different system, it might have repercussions on the debate.

1202. The CHAIRMAN took up the proposal of the Delegation of the United Kingdom (document DMO/DC/5), which contained a slightly different wording for Rule 11.3(a) and, in particular, a new Rule 11.3(b). He asked the Delegation of the United Kingdom to present its proposal.

1203. Mr. DAVIS (United Kingdom) recalled that his Delegation proposed that Rule 11.3(b) as appearing in the draft be deleted, because it appeared to deal with the interference procedure in the United States of America and was wholly contained in Rule 11.1. The new procedure set out in the provisions of Rule 11.3(b), as proposed by the Delegation of the United Kingdom, consisted of a procedure whereby if an international depositary authority received one of the declarations, it released the sample; it was therefore designed to avoid any error on the part of the international depositary authority. Nevertheless, the Delegate of the United Kingdom thought that it was a question of drafting which did not warrant longer discussion, in view of the basic nature of the questions of principle discussed.

1204. Mr. DEITERS (Federal Republic of Germany) considered that Rule 11.3(b)(i) and (ii) could simply be deleted and that Rule 11.3(b)(iii) alone should be retained.

1205. Mr. BOGSCH (Director General of WIPO) said that there were two different problems. The first, of little importance, was a pure question of mechanism: should the declaration mentioned in Rule 11 first of all go to the industrial property office or to the international depositary authority? The other problem concerned the fundamental conditions, of which the most important was that of the possibility of access to the deposit before publication of the application. The Director General of WIPO recalled that the condition of publication had been severely undermined by the proposals made by the Delegation of the Federal Republic of Germany and UNEPA or the interested circles, which excluded it. He concluded that complete freedom was thus left to national laws and regional treaties. He was not entirely sure that the provisions of Rule 11.3(b)(i) should be abandoned without the least hesitation and he expressed the opinion that, if the whole system were considerably simplified, the problem raised by Rule 11.3 would disappear.

1206. Mr. DEITERS (Federal Republic of Germany) agreed to maintain the provision of Rule 11.3(b)(i) and to delete that of Rule 11.3(b)(ii).

1207. Mr. JACOBSSON (Sweden) declared that, in the view of his Delegation, the conditions under Rule 11.3(b)(i) and (ii) of the draft were, in principle, necessary and should not be set aside unless there were serious reasons and he pointed out that the interested circles did not attach much importance to the publication. Even if that were not the case, he added that his Government considered that governments had a certain duty to ensure that there was a balance between the interests concerned, that is on the one hand, the interest of third parties to have access to the samples and, on the other hand, the justified interest of the depositor to keep his invention secret. For that reason, he thought that the provisions of Rule 11.3(b)(i) and (ii) of the draft should be retained.

1208. Mr. HÜNI (Switzerland) shared the point of view expressed by the Delegate of Sweden.

1209. Mr. TAK (Netherlands) concurred with the opinion expressed by the Delegate of Sweden.

1210. The CHAIRMAN asked other delegations for their views on the possibility of deleting Rule 11.3(b)(ii), in other words no longer to impose publication as an absolute condition and sine qua non for the release of samples to third parties, but to include it, as it were, in the provisions of Rule 11.3(b)(iii) of the draft, which referred to the conditions laid down by national law.

1211. Mr. BOGSCH (Director General of WIPO) wondered how long the list of exceptions would be and he listed several exceptions which would have to be taken into account in that case, namely: the interference procedure in the United States of America and Japan, the exception provided in Article 128 of the European Patent Convention, in which it was explained in what cases a person could have access to a sample before publication, as well as the exceptions cited by the Delegation of the Federal Republic of Germany. He said that it would only complicate the text under discussion and he could not see whether anything worthwhile remained to be preserved. A long list of conditions could be made, but it would not be possible to define the cases in which a third party had a legitimate interest to gain access to the file of the application because the decision was left to national law. The Director General of WIPO suggested that, during the break, delegates should reflect on the question, bearing in mind that three exceptions at least must be accepted and that the third exception was so broad that it in fact covered the provisions of Rule 11.3(b)(ii) of the draft.

1212. Mr. IWATA (Japan) stated that he was in favor of maintaining the provisions of Rule 11.3(b)(i), (ii) and (iii) as they appeared in the draft.

1213. The CHAIRMAN suspended the meeting and he informed the Main Committee that, after the break, he intended to open for discussion the revised version of Article 17 prepared by the Secretariat before coming back to the discussion on Rule 11 (continued at paragraph 1236).

[Suspension]

Treaty

Article 17: Signature and Languages of the Treaty (in the text as signed, Article 18: Signature and Languages of the Treaty) (continued from paragraph 1073)

1214. The CHAIRMAN resumed the meeting and opened the debate on the new version of Article 17 (document DMO/DC/35).

1215. Mr. FRESSONNET (France) remarked that in the text of Article 17(1)(a) two expressions were used: "both texts being equally authentic" and "of equal legal force." He did not see any difference between the two expressions and wondered whether there was not a pleonasm. He asked the Delegation of the Soviet Union to indicate the difference between the two formulations.

1216. Mr. KOMAROV (Soviet Union) did not consider that it was a question of principle and he did not insist on keeping the two expressions in the provision.

1217. Mr. FRESSONNET (France) emphasized that he did not consider it to be a question of principle. With regard to the expressions under discussion, he preferred the deletion of the second.

1218. The CHAIRMAN noted that there were no other comments on Article 17(1)(a).

1219. Article 17(1)(a) was adopted, subject to any drafting changes which might be made.

1220. The CHAIRMAN took up Article 17(1)(b).

1221. Mr. FARFAL (Poland) considered that all the delegations present, including his own, could accept the wording of Article 17(1)(b) proposed in document DMO/DC/35. He drew the Main Committee's attention to the fact that, in the English text, in his view the word "also" was missing; he proposed that it be added so that the sentence would read as follows: "from the date of signature of this Treaty, also in the other languages."

1222. The CHAIRMAN remarked that the addition of the word "aussi" in the French text would give the impression that the texts mentioned in Article 17(1)(a) had also been drawn up by the Director General of WIPO, which was not the case. He asked the other delegations for their views on the proposal as defined.

1223. Mr. HIROOKA (Japan) said that his Delegation still preferred the text of Article 17(1)(b) appearing in document DMO/DC/3 and he recalled that the provisions of Article 16(2) of the Strasbourg Agreement Concerning the International Patent Classification and Article 67(b) of the Patent Cooperation Treaty (PCT) contained similar provisions. The Delegation of Japan had doubts concerning the conformity of the provisions of Article 17 of the draft Treaty with similar provisions in other treaties and it did not see why only Article 17 should be changed. For that reason, it preferred to maintain the original text of the draft.

1224. The CHAIRMAN assured the Delegation of Japan that the Records of the Budapest Diplomatic Conference would contain, in regular form, the statement and reservation expressed by the Delegate of Japan and he returned to the proposal made by the Delegate of Poland.

1225. Mr. DAVIS (United Kingdom) thought that the proposal made by the Delegate of Poland to insert the word "also" in the English text between the words "this Treaty" and "in the other languages" was not correct, since it clearly implied that the English and French texts were official texts whereas they were in fact authentic texts.

1226. Mr. TROTTA (Italy) shared the opinion expressed by the Delegation of the United Kingdom. In his view, the text should remain as it was; otherwise, there would be differences of interpretation.

1227. Mr. HENSHILWOOD (Australia) also supported the statement made by the Delegate of the United Kingdom that the text of Article 17(1)(b), as proposed in document DMO/DC/35, was correct.

1228. Mr. KOMAROV (Soviet Union) declared that the addition to Article 17(1)(b) proposed by the Delegation of Poland appeared to him to correspond faithfully to the general tenor of that provision and it was in conformity with the position expressed by the Delegation of the Soviet Union. However, he did not think that it was sufficiently important to warrant reopening the discussion.

1229. Mr. FARFAL (Poland) withdrew his Delegation's proposal with regard to the addition of the word "also."

1230. Article 17(1)(b) was adopted as appearing in document DMO/DC/35.

1231. The CHAIRMAN turned to Article 17(1)(c) and 17(2) and noted that there were no comments thereon.

1232. Article 17(1)(c) and (2) was adopted as appearing in document DMO/DC/35.

1233. Article 17 was adopted as a whole as appearing in document DMO/DC/35.

Articles 13, 14, 15, 18 and 19 (in the text as signed, Articles 14, 15, 16, 19 and 20)

1234. The CHAIRMAN referred to document DMO/DC/32 concerning the amendments to be made to the relevant provisions concerning intergovernmental organizations and noted that there were no observations thereon.

1235. Articles 13, 14, 15, 18 and 19 as amended were adopted.

Regulations

Rule 11: Release of Samples (in the text as signed, Rule 11: Furnishing of Samples) (continued from paragraph 1213)

1236.1 The CHAIRMAN, returning to Rule 11.3, noted that the statements made by delegates before suspension of the discussion showed the necessity for the Main Committee to agree on a certain number of principles concerning Rule 11.3(a) in order to allow the Conference Secretariat to draw up a new version.

1236.2 The Chairman recalled that the Committee of Experts had unanimously accepted the principle that no State interested in the Treaty should, by virtue of the rule concerning the release of samples, be obliged to change the rules of its national law in order to be able to ratify the Treaty. One sole exception had been admitted, namely that publication constituted the minimum limit in time for the release to third parties (non-release of samples to third parties before publication). However, it would appear that such a limit was no longer valid and other exceptions would have to be provided for. In his view, the first question of principle to be decided was the maintenance or removal of the condition "non-release of samples before publication." If it were decided to keep it, a complete catalog of exceptions would have to be drawn up, in other words, the list of exceptions already mentioned would have to be revised and completed. If it were removed, reference would simply be made, in a somewhat more general form, to national law. In that case, when removing the provisions of Rule 11.3(b)(ii), it could be stated that, if national law made the right to the sample dependent on certain conditions, such conditions should also mention the moment from which the sample could be released.

1236.3 The second question was that of procedure. The Chairman pointed out that it was possible to envisage a form which, up to a certain point, would have an international character and would contain a reference to the conditions provided for in the present Rule 11.3(b)(i) and (iii). When that form arrived at the depositary authority, it would also bear the signature of the person requesting the sample. Consequently, that person, by signing the form, confirmed that he accepted the conditions of national law and the form would also be countersigned by the national office affirming that the conditions had been fulfilled. He emphasized that, when speaking of the conditions of national law, it should be understood in the broad sense of the presently amended draft Treaty, namely, the national or regional law applicable in a particular case. The office could thus verify whether the conditions were fulfilled and, as it were, give the green light for release of the sample, even adding special conditions (it could, for example, state that the requested sample could be released, but not before such and such date).

1236.4 The Chairman pointed out that with a solution on the principle based on the outline just given, the provisions of Rule 11.3(b) would, as it were, be incorporated and the third question which remained to be solved was that of deciding whether Rule 11.3(c) was still necessary.

1236.5 The Chairman wished to define those principles during the meeting and be able to give the Secretariat the necessary instructions for drawing up a revised draft of Rule 11.3. He opened the debate on the first question of principle.

1237. Mr. FRESSONNET (France), referring to the provisions of Rule 11.3(b)(ii), noted that it was not at present possible to make a complete catalog of all the exceptions and that it was in the end much simpler to remove that provision by referring purely and simply to national law. He shared the view expressed by the Chairman that, in that hypothesis, Rule 11.3(b)(iii) would have to be amended in order to make reference, among the conditions, to the time from which the sample could be released.

1238. Mr. DEITERS (Federal Republic of Germany) stated that he was in favor of that proposal.

1239. Mr. JACOBSSON (Sweden) stated that he was still in favor of maintaining the condition of publication and he emphasized that the exceptions to the principle should be as limited as possible.

1240. Mr. KÄMPF (Switzerland) shared the point of view expressed by the Delegation of Sweden.

1241. Mr. BEHAN (United States of America) also agreed with the opinion expressed by the Delegate of Sweden. He suggested that the Drafting Committee examine the possibility that all the exceptions fell into the two categories of determining either the priority or the patentability of an invention.

1242. Mr. FICHTE (Austria) fully shared the point of view expressed by the Delegate of Sweden.

1243. Mr. IWATA (Japan) also shared the opinion of the Delegation of Sweden.

1244. Mr. DEMENTIEV (Soviet Union) was in favor of maintaining the provisions of Rule 11.3(b)(ii).

1245. The CHAIRMAN asked the other delegations to express their opinions. He wished to be able to see a majority. A formal vote on a principle was, in his opinion, always somewhat dangerous.

1246. Mrs. SIMONSEN (Denmark) was in agreement with the statement made by the Delegation of Sweden.

1247. Mr. TAK (Netherlands) reminded the Chairman that he had already supported the declaration of the Delegate of Sweden.

1248. Mr. TROTTA (Italy) said that his country did not have a national law concerning the problem under discussion. He did not therefore wish to enter into the substance of the discussion. The Delegation of Italy was only indirectly concerned through the extension of Italian applications to other countries. His Delegation would accept the majority opinion and he asked the Main Committee to

1249.1 The CHAIRMAN noted that only two delegations were in favor of a general solution which did not include the clause concerning publication and which would be a simple referral to national law. On the other hand, nine delegations had supported the text of the draft, which would have to be accompanied by other exceptions which might be suggested. The task of the Conference Secretariat was thus defined, namely, the establishment of a catalog of exceptions to be added to the present text.

1249.2 The Chairman expressed the view that the formula proposed by the Delegate of the United States of America (see paragraph 1241) did not cover the case mentioned by the Delegation of the Federal Republic of Germany. It was not thus sufficient to cover all the exceptions and they would, therefore, have to be presented in the form of a catalog.

1249.3 The Chairman turned to the question of the procedure envisaged in order to obtain a sample and he recalled his suggestion concerning a form which might have an international character. He asked whether there were any proposals on that point.

1250. Mr. BEHAN (United States of America) stated that his Delegation, in principle, accepted the proposal of the Chairman for the signature of a form or for a certification procedure. However, he would be interested to know whether it was the only procedure available for adoption by an industrial property office. He hoped that the industrial property office could choose a simpler and more straightforward procedure, provided that it was in conformity with its national law.

1251. Mr. DEITERS (Federal Republic of Germany) stated that, in his view, it was necessary to envisage the possibility of the procedure mentioned in Rule 11.3(c), either on its own or with the procedure mentioned in Rule 11.3(a). He foresaw certain difficulties in applying the first procedure in his country and it would therefore be necessary to use the other procedure mentioned in Rule 11.3(a).

1252. Mr. DAVIS (United Kingdom) supported the proposal made by the Delegation of the United States of America.

1253. The CHAIRMAN opened the debate on the principle of alternative procedure. He recalled that the Delegation of the United States of America had already given a positive opinion, which had then been supported by the Delegations of the United Kingdom and the Federal Republic of Germany. He suggested that Rule 11.3(c) should be taken as the basis for discussion and he asked the Conference Secretariat to prepare a proposal containing an alternative solution.

1254. Mr. DEITERS (Federal Republic of Germany) said that the provisions of Rule 11.3(c) of the draft were, in principle, acceptable to him. The proposal for amendment submitted by his Delegation (item 3 of document DMO/DC/21) was, however, intended to emphasize that it was simply a form to be filled in by the interested party and not a decision to be taken by the international depositary authority.

1255. Mr. DAVIS (United Kingdom) referred to the proposal made by the Delegation of the Federal Republic of Germany. He wondered whether the proposal, which laid down that "the said office shall also transmit a form," meant that both a communication and a form should be sent at the same time.

1256. Mr. DEITERS (Federal Republic of Germany) agreed that the word "also" could be deleted.

1257. The CHAIRMAN thought it was difficult already to take a decision on the proposal made by the Federal Republic of Germany and he suggested that the Secretariat be entrusted with the task of taking that proposal into account when drawing up the amended text.

1258. Mr. FRESSONNET (France) recalled that his Delegation had proposed that subparagraphs (c), (d) and (e) be purely and simply deleted since they tended to give international depositary authorities complicated administrative tasks. He feared that, when carrying out those tasks, errors might be made which could have serious repercussions on the release of samples.

1259. Mr. HÜNI (Switzerland) shared the point of view expressed by the Delegate of France. He pointed out that the communication provided for in Rule 11.3(c)(i) must be made in each and every case of an application referring to a deposit, whereas only in a few cases would the question of release of a sample occur.

1260. The CHAIRMAN recalled that the proposed solution to Rule 11.3(c) appeared indispensable to the Delegation of the Federal Republic of Germany and he asked the Delegation of the United States of America whether the alternative solution it had just requested was a solution of the nature of that provided for in Rule 11.3(c) or whether it was of a different one.

1261. Mr. BEHAN (United States of America) replied that the alternative procedure which his Delegation had in mind was a procedure of the type it had proposed in document DMO/DC/26. He had no objection to Rule 11.3(c) of the draft but he thought that, in addition to that provision, the procedure proposed in document DMO/DC/26 should be envisaged; he added that if the principle of that procedure were adopted, the Drafting Committee could obviously reword the text of the provision. He acknowledged that the word "notification" used in the proposal made by his Delegation (document DMO/DC/26) could be misleading; its meaning was the following: in cases where it was allowed under national law and insofar as the depositary authority knew that a patent had been granted mentioning the accession number given by an international depositary authority, the sole knowledge of that fact was sufficient to permit the release of a sample of the microorganism. Obviously such a procedure would not be applicable in countries which imposed conditions on the release of samples of microorganisms.

1262. The CHAIRMAN said that the problem raised by the proposal made by the Delegation of the United States of America was precisely that once the patent had been granted, the release of samples would no longer be linked to any kind of condition.

1263. Mr. BEHAN (United States of America) confirmed that such was the meaning of the proposal of his Delegation and he repeated that, in order to limit the burdens of the patent office and for greater simplicity, in certain countries the certification and request addressed to the patent office should no longer be necessary.

1264. The CHAIRMAN noted that there were in fact three possibilities: (1) regulation under Rule 11.3(a) as amended, taking into account the principle previously agreed upon; (2) as an alternative, a procedure under Rule 11.3(c) in cases where national law laid down another date from which samples could be released rather than the date of the grant of the patent under certain conditions, and (3) release of samples once there was the grant of a patent. States should thus be allowed to choose between those three possibilities.

1265. Mr. BOGSCH (Director General of WIPO) compared the provisions of Rule 11.3(c)(i) of the draft with the proposal made by the Delegation of the United States of America and he tried to see whether the wording of the draft did not already cover the whole problem. Rule 11.3(c)(i) of the draft stated, first of all, that the industrial property office should communicate to the international depositary authority with which the deposit had been made the date on which a sample of the deposited microorganism could be released to any third party requesting it under the law governing patent procedure before the said office. He thought that that, in the case of the United States of America, was equivalent to the date of grant of a patent. He recalled that later on in Rule 11.3(c)(i) of the draft, it was stated that such a "date may not precede the date of publication by the said office for the purposes of patent procedure;" in the case of the United States of America, publication took place when the patent was issued. In the third part of Rule 11.3(c)(i) of the draft, it was stated in conclusion (its wording could be amended subsequently in accordance with the proposal made by the Delegation of the Federal Republic of Germany) that, if conditions had to be fulfilled, a form would be signed by any person requesting a sample of the microorganism, declaring, for example, that the sample would not be exported, sold, etc.; the Director General of WIPO thought that, if he had understood the proposal of the Delegate of the United States of America correctly, such conditions did not exist in the United States of America and, therefore, the last part of Rule 11.3(c)(i) would be inapplicable. He wished to know the reaction of the delegations concerning his analysis of the proposal submitted by the Delegation of the United States of America.

1266. Mr. BEHAN (United States of America), in reply to the Director General of WIPO, said that it had been his Delegation's intention to include in the proposal the currently frequent case in which the patent office would not have to make any communication to the international depositary authority. If the requesting party drew the international depositary authority's attention to an issued patent bearing an accession number, according to current legislation in the United States of America, that person had the right to the release of a sample of the microorganism.

1267. Mr. BOGSCH (Director General of WIPO), referring to the text of the proposal made by the Delegation of the United States of America (document DMO/DC/26), said that he now understood the word "notification": the fact that the patent mentioned the accession number given to a deposit of a microorganism constituted a "notification."

1268. Mr. BEHAN (United States of America) confirmed the understanding of the Director General of WIPO.

1269. Mr. BOGSCH (Director General of WIPO) therefore considered that the question was of little importance to governments, but rather was of interest to international depositary authorities: were they prepared to release a sample on presentation of a copy of the patent? He did not think that there would be any objections on that subject.

1270. Mr. DONOVICK (World Federation of Culture Collections (WFCC)) was convinced that it would obviously create considerable complications for culture collections. He pointed out that when a culture collection received a request to release a sample of a culture deposited with a culture collection in another country, it did not know whether it was acting contrary to the law of that country. He emphasized that culture collections wished to see a notification which did not only set out certain facts, but also laid down under which conditions the sample could not be released.

1271. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) fully shared the opinion expressed by the Representative of WFCC. The depositors were safeguarded if the general procedures set out were followed. The Representative of CNIPA stated that he was in favor of the proposal made by the Delegation of the Federal Republic of Germany (document DMO/DC/21), to which he suggested a slight amendment, namely that the words "on the basis of the conditions" be replaced by "on the basis of any condition."

1272. Mr. BOGSCH (Director General of WIPO) wished to ask the Delegate of the Federal Republic of Germany a question before a decision was taken on Rule 11.3(c) and on the proposal of the Delegate of the United States of America. Rule 11.3(c)(i) of the draft (document DMO/DC/4) provided that "...such date may not precede the date of publication by the said office for the purposes of patent procedure." He wondered whether that sentence would be subject to the list of exceptions or whether, when having recourse to an exception--that was to say, access to the

sample before publication--the procedure under Rule 11.3(a) could alone be used. In other words, the provisions of Rule 11.3(a) would apply in difficult cases where there was need for individual treatment and the provisions of Rule 11.3(c), providing for more general treatment, would only apply to the simpler cases. Otherwise, another proposal to amend the sentence under discussion would be required.

1273. Mr. DEITERS (Federal Republic of Germany) wondered whether there were not two separate procedures and whether it would be necessary to amend the wording of Rule 11.3(c).

1274. Mr. BOGSCH (Director General of WIPO) asked how the date mentioned in the first sentence of Rule 11.3(c)(i) would be communicated if, in the same rule, exceptions were made since in that case the date was not relevant.

1275. Mr. HALLMANN (Federal Republic of Germany) thought that the Director General of WIPO was quite correct: in exceptional cases, the date of publication was not applicable.

1276. Mr. BOGSCH (Director General of WIPO) said that, in that case, the solutions provided under the provisions of Rule 11.3(a) and Rule 11.3(c) were cumulative, which was a fundamental change.

1277. The CHAIRMAN acknowledged that he felt somewhat lost and he summarized the situation. In the procedure provided under the provision of Rule 11.3(a) as amended, there was always a declaration by the patent office which indicated, if necessary, the date from which the sample could be released, whether it was the date of the grant of the patent or publication or any other date which could be justified under national law. In the so-called "alternative" procedure, based on the provisions of Rule 11.3(c), there was a general abstract communication from the patent office to the international depositary authority holding the sample, setting down a date from which any third party fulfilling the conditions and signing the form submitted could have access to the sample. He wondered whether it was possible to envisage any other date than that of the publication or grant of the patent.

1278. Mr. BOGSCH (Director General of WIPO) indicated that, at least at first sight, Rule 11.3(a) provided a more complicated procedure than that of Rule 11.3(c) or that of the proposal made by the Delegation of the United States of America. Taking the Federal Republic of Germany as an example, he cited a figure of approximately 100 deposits which would be affected by the problem under discussion and he wondered whether it was not possible to adopt a single procedure from among those proposed until the system had been tested. More satisfactory procedures could subsequently be added when the Budapest Treaty had entered into force, when the European Patent Office had started to function and when greater experience of the whole had been gained. He emphasized, however, that the Conference Secretariat was of course ready to draw up the two proposals which had been submitted with the necessary amendments.

1279. Mr. HÜNI (Switzerland) observed that, in the European Patent Convention, Article 128 gave the right in certain cases to inspection of the file before the date of publication of an application, whereas Rule 28.3 of the Regulations of that Convention specifically stated that the patent application was only accessible from the date of publication. Apparently, that slight contradiction had not prevented the European Patent Convention from being signed. He therefore wondered whether, in the case under discussion, the same could not be done.

1280. Mr. WERNER (European Federation of Agents of Industry in Industrial Property (FEMIPI)) asked the Delegation of the Federal Republic of Germany whether the problem it had raised could not be solved by inserting in the English text of Rule 11.3(a)(ii), after the word "publication," the words "for inspection of the files to a legally entitled party." Such wording would broaden the meaning of the word "publication" by including the specific case which was of so much concern to the Delegation of the Federal Republic of Germany.

1281. The CHAIRMAN wondered whether the formulation could not be inserted in the provisions of Rule 11.3(a) since it was the office which had to certify the date, the facts and the conditions. He considered, however, that it could not be taken into account in Rule 11.3(c). He asked the Conference Secretariat at least to set out the provisions of Rule 11.3(a) for the following day. With regard to Rule 11.3(c), he said that discussion was still at the stage of proposals and no decision on the principle had been taken. The Chairman asked the Delegation of the Federal Republic of Germany to prepare a proposal acceptable to the future international depositary authorities so that it would not constitute an excessive burden for them from the point of view of the responsibility they might incur through release or non-release of a sample following a specific request. In conclusion, he informed the delegations that the following day's discussions would continue to deal with the question of principle, together with the proposals which had not yet been included in the discussion, namely those of the Delegations of Romania and Czechoslovakia.

1282. Mr. CRESPI (Union of Industries of the European Community (UNICE)) asked whether it was the Chairman's intention to also take up the proposal of the Delegation of the Netherlands on Rule 11.3, taking into account the views of the interested parties.

1283. The CHAIRMAN, in reply to the Representative of UNICE, said that the proposal of the Delegation of the Netherlands was implicitly contained in the proposal he had submitted with regard to procedure concerning the request for a sample. He indicated that the Delegation of the Netherlands had already submitted a first draft of the proposal to the Conference Secretariat.

Eleventh Meeting
Thursday, April 21, 1977
Morning

Rule 11: Release of Samples (in the text as signed, Rule 11: Furnishing of Samples) (continued from paragraph 1283)

1284. The CHAIRMAN opened the meeting and briefly summarized the discussion on Rule 11. He emphasized that the text of Rules 11.1 and 11.2 had been finalized without too many problems, whereas Rule 11.3 had given rise to a long, involved discussion, at the conclusion of which a certain number of principles had nevertheless been clarified, thus enabling the Conference Secretariat to prepare a proposal (document DMO/DC/37). The Chairman thanked the Director General of WIPO and his staff for the work accomplished and he suggested that the proposal should be discussed after the break in order to allow delegates time to familiarize themselves with it. He noted that former Rule 11.3(b) was included in the new text of Rule 11.3(a) and pointed out that the Delegations of France and Switzerland had spoken against the principle of retaining Rule 11.3(c). He added that if the latter Rule were deleted, Rule 11.3(d) and 11.3(e) would also be deleted. On the other hand, should Rule 11.3(c) be maintained, the proposals for its amendment which had been submitted would have to be discussed. The Chairman then suggested that once the discussion on the principle of Rule 11.3(a), (b) and (c) had been concluded, the proposal submitted by the Delegation of Romania (document DMO/DC/24), which was, in his view, independent of the others, should be discussed. He gave the floor to the Delegation of the United States of America which wished to make a statement on Rule 11.3.

1285. Mr. SCHLOSSER (United States of America) recalled that the previous day his Delegation had submitted a proposal for an addition to Rule 11.3 (document DMO/DC/26)--a proposal which had a certain number of advantages at the same time as a number of difficulties. The Delegation of the United States of America had carefully studied the problem and declared its readiness to withdraw its proposal in order to further the work of the Conference and to develop the simplest possible system compatible with the needs of all interested parties. In withdrawing its proposal, the Delegation of the United States of America wished to underline the necessity for the establishment of two kinds of systems for the release of samples. One of those systems should be that of certification as proposed in document DMO/DC/37 under Rule 11.3(a) prepared by the Secretariat. The United States of America, and perhaps other countries, had a system whereby the release of a sample could be authorized to any person without any conditions being attached and his country wished to see the patent office given the opportunity of notifying the international depositary authority upon issuance of a patent that release of a sample could be made without any conditions to any third party requesting it. For special deposits, in his view, one certification was necessary, namely that informing the international depositary authority that a patent had been issued and that the release of the sample of the microorganism which was the subject of the international deposit was possible. It seemed to

the Delegation of the United States of America that the proposal on certified release implied that every request for the purposes of the release of a sample entailed the need for certification by the patent office to the international depositary authority every time, and that would mean expenses for the office itself for the preparation of the certification and, for the international depositary authority, the responsibility of examining the certification and filing it. The Delegate of the United States of America hoped that the interpretation of the system of certification whereby the first certification sufficed to permit subsequent release of samples to any third party would be mentioned in the Records of the Budapest Diplomatic Conference, without the need to further complicate Rule 11.3(a).

1286. The proposal of the United States of America having been withdrawm it was decided that the remarks made by that Delegation would be taken up once more when the debate on Rule 11 resumed (continued at paragraph 1352).

Rules 3 to 5

1287. The CHAIRMAN returned to Rules 3 to 5, which had already been adopted (see paragraphs 867 to 1015) and for which the Secretariat had prepared the editorial changes resulting from the decision taken on international organizations (document DMO/DC/32). He noted that there were no observations.

1288. Rules 3, 4 and 5, as amended in conformity with the proposals contained in document DMO/DC/32, were adopted.

Rule 6: Making the Original Deposit or New Deposit

1289.1 The CHAIRMAN turned to Rule 6. He recalled that Rule 6.1(a) had been adopted with one amendment resulting from the proposal made by the Delegation of the Soviet Union (see paragraph 1033), and that the latter had been requested to specify the provisions of Rule 6.1(a)(iii), also including the conditions under which the microorganism should be stored and, if necessary, the conditions for testing the viability.

1289.2 The Chairman asked the Representative of CNIPA whether the proposal for amendment he wished to submit on Rule 6.1(a)(iii) concerned a substantive or a drafting change and he stated that only in the latter case could he give him the the floor.

1290. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) replied that, according to his notes, discussion on Rule 6.1(a)(iii) had not been concluded. The question which gave him concern was that of mixtures and checking the presence of various components of a mixture. He thought that it was technically impossible. He wished to change the wording so that the description of the components of the mixture was only necessary insofar as it was possible.

1291. Mr. BOGSCH (Director General of WIPO) regretted that he was not sufficiently familiar with the problems concerning microorganisms to confirm whether the statement made by the Representative of CNIPA was factually correct. If it were, then, in the English text, he proposed that the word "any" be inserted before the word "methods" in Rule 6.1(a)(iii).

1292. The CHAIRMAN asked the Representatives of WFCC for their opinions on the objection which had just been made, which appeared to be of a scientific character.

1293. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) replied that, if he had understood the Representative of CNIPA correctly, his statement concerned contamination of what was alleged to be a single strain, rather than a mixture where two or more components were necessary for the application of the invention. If that were the case, then, in his view, Rule 6.1(a)(iii) did not apply. He reminded the Main Committee that the reason for the provision of Rule 6.1(a)(iii) was very simple. If there were two elements one of which was dead and the other living, the culture still grew and a statement with regard to the viability of the culture could be challenged at a later date. He appreciated that, in certain cases, the description of the components of a mixture could be difficult. The only reason for the provision was at least to protect the validity of the viability statement.

1294. The CHAIRMAN asked the Main Committee whether it considered it necessary to amend Rule 6.1(a)(iii) and, if that were the case, whether the amendment proposed by the Director General of WIPO would suffice.

1295. Mr. BOGSCH (Director General of WIPO) thought that the question was important and he wished to have a clear reply. He asked the Representative of WFCC whether his statement that the description of the components was frequently very difficult did not mean that it was absolutely impossible. He again suggested that, in Rule 6.1(a)(iii), the word "toutes" should be inserted in the French text before the word "méthodes" and the word "any" before the word "methods" in the English version.

1296. Mr. DONOVICK (World Federation for Culture Collections (WFCC) thought that the word "any" ("toutes") would be very helpful. Where very similar mixtures of organisms were concerned, it would be necessary to use highly technical methods to separate the components and it would be very impractical. If a person wished to deposit a mixture and had a method for separating the components, that person should submit the method to enable easier testing of the viability of each of them.

1297. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) said that the proposal made by the Director General of WIPO could be very helpful. With regard to the expression "descriptions of the components of the mixture," in Rule 6.1(a)(iii), he suggested that before the word "components" the word "essential" be added since it might be a useful definition, in particular, where yeasts were concerned.

1298. Mr. TAK (Netherlands) supported the proposal made by the Director General of WIPO to insert the word "any" before the word "methods." As a further precaution, he remarked that it was senseless to make a deposit of a mixture whose composition could not be checked.

1299. Mr. VILLALPANDO (Spain) stated that the last statement made by the Director General of WIPO had dispelled the doubts of his Delegation.

1300. Mr. BOGSCH (Director General of WIPO) drew the attention of the Main Committee to another technical problem: should the word "essential" precede the word "components"? He confessed that he was absolutely unable to say whether it was always possible to enumerate all the components and he asked the Representative of WFCC and other interested circles to give their opinions on the question.

1301. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) was opposed to insertion of the word "essential" in Rule 6.1(a)(iii) since, in his view, it implied the existence of other minor components. How was it possible to decide which was the essential component and which the minor? He thought that it went too far and wondered whether it was not possible to reach a compromise by adding, for example, at the end of Rule 6.1(a)(iii) the following words: "as far as is scientifically feasible." He considered that the problem of mixtures should be taken into consideration in that Rule because of the validity of the viability statement of the microorganism. He added that the discussion should rather take place within a small group of delegates.

1302.1 The CHAIRMAN remarked that no governmental delegation had taken up the proposal made by the Representative of CNIPA (see paragraph 1297). With regard to the addition proposed by the Representative of WFCC (see previous paragraph), in his view, it went without saying since nothing impossible was being demanded of international depositary authorities.

1302.2 He turned to Rule 6.1(b) and said that four delegations had submitted proposals for its amendment, namely, the Delegations of Czechoslovakia (document DMO/DC/22), Romania (document DMO/DC/24), Japan (document DMO/DC/25), and Italy (document DMO/DC/27). He then gave details concerning the tenor of the proposals. The proposals made by the Delegations of Romania and Italy coincided since they both proposed that the statement of the scientific description and/or taxonomic designation be obligatory. The proposal of the Delegation of Czechoslovakia concerned the addition of a provision obliging depositors to indicate the dangerous properties of the deposited microorganism and it was linked to part of the proposal made by the Delegation of the Soviet Union (document DMO/DC/29) (see paragraph 1032). Finally, the proposal of the Delegation of Japan gave national offices or national law in general the possibility of laying down certain conditions which the depositor must fulfill in order that the microorganisms to be deposited could be accepted.

1303. Mr. IANCU (Romania) considered that the written statement accompanying the microorganism transmitted by the depositor to the international depositary authority should be obligatory. In his view, Rule 6.1(b) of the draft only provided that it was strongly recommended that the written statement mentioned in Rule 6.1(a) also contain the scientific description and/or taxonomic designation and that the actual wording of Rule 11.3(b) was quite sufficient to make the description obligatory. He remarked that Rule 6.1(b) was in keeping with Rule 6.2(a)(iii) and that the proposal submitted by his Delegation was similar to that submitted by the Delegation of Italy.

1304. Mr. TROTTA (Italy) explained that the reason why his Delegation had made its proposal was that it considered that the draft Treaty was primarily destined to guarantee the correct deposit of microorganisms and to safeguard, as far as possible, the interests of the pharmaceutical industry. In his view, it was not possible to make a deposit without specifically indicating what it was, together with all the details required to indentify the subject of the deposit. If it were possible to make a new deposit, it should be possible to compare the initial statement with that accompanying the second deposit. It was true that the patent application under which the deposit had been made should contain the description of the microorganism in order to be valid. But, apart from the fact that such a principle was not clearly established in all national laws or in the legislation of all States, one should also be able to verify whether the description agreed with that which had been submitted to the depositary authority when the original deposit had been made. In conclusion, he supported the proposal made by the Delegation of Romania, which was very close to that submitted by his Delegation.

1305. The CHAIRMAN, for information, recalled that the question had been discussed at length in the Committee of Experts and he explained why the experts had only proposed a recommendation. The inventor might not be in a position to give a description or a complete and scientifically valid designation of the microorganism in every case. In particular, it had been pointed out by those States participating in the Budapest Diplomatic Conference which represented the future States party to the European Patent Convention that Rule 28 of the Regulations of that Convention required that the properties and characteristics of the microorganism which were known to the depositor at the time of deposit be mentioned in the description in the patent application. It would thus appear difficult to require more from a document accompanying the deposit of the microorganism than from a document constituting the filing of a patent application.

1306. Mr. SCHLOSSER (United States of America) thought that the text of the draft should be retained and that a written statement should not be required of the depositor. In his view, the correct place for a more detailed description and for the taxonomic designation of the microorganism was in the patent application itself. If that description were to be found in another document, it would risk creating adverse legal consequences--that was to say a discrepancy between the prior written description deposited with the international depositary authority and the description to be found in the patent application. The Delegate of the United States of America expressed his disagreement with the proposals submitted by the Delegation of Romania and Italy.

1307. Mr. DAVIS (United Kingdom) remarked that a distinction should be drawn between the "taxonomic description" and the "taxonomic designation." The taxonomic description required the disclosure of all features relevant to taxonomic matters. It was therefore in the interests of the depositor and future patentee to give the maximum details and information possible. The taxonomic designation concerned the general scope of the disclosure. It could have a limiting effect and be detrimental to the interests of the future patentee. He emphasized that the basic idea was to provide a description sufficient for the purposes of reproducing and using the invention. He added that, in many areas of taxonomy, there were considerable uncertainties and it was undesirable that the depositor should have to choose between conflicting systems. The Delegate of the United Kingdom recalled that the Committee of Experts which had studied the question had considered that a taxonomic designation implied an obligation on the depositor to amend his application each time and as soon as he had knowledge of a fault or a new concept which would be more appropriate. He concluded by stating that, in the view of his Delegation, the text of the draft (document DMO/DC/4) satisfied all legal requirements.

1308. Mr. IWATA (Japan) shared the point of view expressed by the Delegation of the United Kingdom.

1309. Mr. JACOBSSON (Sweden) concurred with the opinion expressed by the Delegate of the United Kingdom.

1310. Mr. IANCU (Romania) said that he was, in principle, in agreement with the statements made by previous speakers. Nevertheless, he wished to make a few remarks. He recalled that, for technical inventions, the requirements were extensive: the descriptions had to be very complete and be accompanied by drawings, etc. However, concessions were to be made with regard to inventions concerning microorganisms. In his view, the requirements should be the same in both cases. Since it was an international treaty, he added that it would be more appropriate to use other wording because the words "it is strongly recommended," in his opinion, could not be used within the legal framework of the Treaty. He indicated that the tenor of Rule 6.1(b) was not entirely in keeping with that of Rule 6.2(a)(iii).

1311. The CHAIRMAN remarked that Rule 6.2(a)(iii) had not yet been discussed and the discrepancy pointed out by the Delegate of Romania would be corrected in due course.

1312. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) considered that Rule 6 only concerned the deposit of the microorganism and not the patent application. Without entering into a discussion on whether the taxonomy was correct, he thought that the international depositary authority itself did not need a description of the organism. The important aspect was Rule 6.2(a)(iii) where details of the culture were given whereas the taxonomic designation was related to claims in a patent and was of little use to the depositary authority.

1313. Mr. TAK (Netherlands) shared the point of view expressed by the Delegation of the United States of America. In his opinion, it was the contents of the test tube and not the label which was really important. He stated that the legislation of the Netherlands required that, as far as possible, the description of a new microorganism be included in the description comprising part of the patent application.

1314. Mr. HALLMANN (Federal Republic of Germany) said that, in the light of the explanations given by the Chairman at the beginning of the discussion, he supported the text of Rule 6.1(a)(iii) appearing in the draft (document DMO/DC/4), with the slight amendment made by the Delegation of the United States of America.

1315. Mr. KÄMPF (Switzerland) said that, while his Delegation had sympathy with the proposals made by the Delegations of Italy and Romania, the discussions which had taken place during the meetings of the Committee of Experts had shown that it was impossible to find a more appropriate formula than a recommendation. For that reason, the Delegation of Switzerland proposed that the text remain as it was in the draft with the slight amendment proposed by the Delegation of the United States of America.

1316. Mr. IANCU (Romania), taking into account the views just put forward by delegates, said that his Delegation withdrew its proposal (document DMO/DC/24), but it nevertheless hoped that it would figure in the Records of the Budapest Diplomatic Conference.

1317. The CHAIRMAN noted that the Delegation of Italy also withdrew its proposal (document DMO/DC/27). He asked the Delegate of the United States of America to define his proposal for amendment, which had been supported by several delegations.

1318. Mr. SCHLOSSER (United States of America) underlined the difference between Rule 6.1(b), which contained a recommendation, and Rule 6.2(a)(iii), which contained a requirement. He proposed that in both cases it be a requirement.

1319. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)), referring to the English text of the proposal made by the Delegation of Romania (document DMO/DC/24), drew attention to the insertion of the word "proposed" before the words "scientific description" (in the French text, the word "proposée" after the words "désignation taxonomique"), expressed the opinion that the inclusion of this formula was desirable.

1320. Mr. IANCU (Romania) stated that, in his view, the question should be referred to the Drafting Committee.

1321. The CHAIRMAN indicated that the proposal of the Delegation of Czechoslovakia (document DMO/DC/22) was to add the following sentence to Rule 6.1: "The depositor must indicate the properties of the microorganism dangerous to health or environment if any" and he added that the proposal was along the lines of that already put forward by the Delegation of the Soviet Union.

1322. Mr. CÍRMAN (Czechoslovakia) said that the proposed sentence was intended as a warning to the personnel of the international depositary authority of eventual risks and thus to protect its health. The decision on where to insert the sentence was left to the Drafting Committee which could, for example, make it into a new subparagraph. He proposed other wording for his proposal, which would then read as follows: "The depositor shall indicate the unforeseen properties of the microorganism dangerous to health or environment, if any, especially in the case of new species."

1323. The CHAIRMAN recalled that the proposal made by the Delegation of Czechoslovakia was implicitly contained in the statement made by the Delegate of the Soviet Union on his proposal (see paragraph 1032) and he concluded that it could be considered as having being seconded.

1324. Mr. KÄMPF (Switzerland) supported the proposal of the Delegation of Czechoslovakia, with one slight restriction; he proposed that the text of the sentence be the following: "The depositor shall indicate, insofar as he has knowledge of them, the properties...." He wondered whether such information should not also be given to those requesting samples.

1325. Mr. DAVIS (United Kingdom) supported the proposal of the Delegation of Czechoslovakia. He felt that the concept of health and environment was broad enough to encompass any possibility and there was no need to put further emphasis upon new species.

1326. Mr. HALLMANN (Federal Republic of Germany) also supported the proposal made by the Delegation of Czechoslovakia. He fully shared the point of view of the Delegation of Switzerland that an indication should be made stating that the depositor should mention the dangerous properties to the extent that they were known to him.

1327. Mr. IANCU (Romania) also supported the proposal made by the Delegation of Czechoslovakia with the amendment proposed by the Delegation of Switzerland.

1328. Mr. de BOER (Netherlands) asked what would be the legal consequences if the proposal of the Delegation of Czechoslovakia, as amended by the Delegate of Switzerland, were adopted: would it mean that recognition should not be obligatory in cases where it could be proved that, at the time of making the deposit, the depositor knew or should have known that the deposited microorganism had dangerous properties?

1329. Mr. HÜNI (Switzerland) emphasized that it was not necessary to state "should have known"; it was sufficient to say that the depositor knew of the dangerous properties of the microorganism.

1330. The CHAIRMAN asked whether any delegations were opposed to the proposal.

1331. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) said that he was not quite certain which of the proposed amendments was being discussed. He returned to the question of the word "species." He remembered that during meetings of the Committee of Experts it had been decided not to use words such as "species," "strain," etc, but only the word "microorganism."

1332. Mr. BOGSCH (Director General of WIPO) considered that the second text submitted by the Delegation of Czechoslovakia and the text proposed orally by the Delegate of Switzerland contained several good features which the Drafting Committee could take into account when submitting a full text. He stated that the word "species" would not be used.

1333. The CHAIRMAN noted that no delegation opposed the principle of the obligation to indicate the dangerous properties of the deposited microorganism.

1334. The proposal of the Delegation of Czechoslovakia, as amended by the Delegation of Switzerland, was adopted and referred to the Drafting Committee.

1335. The CHAIRMAN turned to the last proposal concerning Rule 6.1, which was that of the Delegation of Japan (document DMO/DC/25).

1336. Mr. IWATA (Japan) said that, if Article 3 as proposed in document DMO/DC/14 were adopted, another provision should be added to Rule 6.1(c) with the following wording: "The international depositary authority may require the depositor to fulfill the conditions necessary for the acceptability of the microorganisms to be deposited." Article 3(2) as proposed in document DMO/DC/14 prohibited any Contracting Party from requiring "compliance with requirements different from or additional to those which are provided in this Treaty and the Regulations." According to the Delegate of Japan it was probable that the Fermentation Industrial Research Institute, which was a national organ in Japan, would become an international depositary authority. That Institute--which represented the Contracting State--could not request of the depositor anything which was not laid down in the Treaty or the Regulations. However, he thought that an international depositary authority might need to ask the depositor to furnish it with a certain number of samples. In cases where the international depositary authority was a private entity, there should be no difficulty since Article 3(2) only bound the "Contracting Parties." But if the international depositary authority were a national organ, it could find it impossible to ask the depositor to fulfill the necessary conditions for the acceptance of the microorganisms. For that reason, he hoped that the proposal put forward by his Delegation would be accepted.

1337. The CHAIRMAN, before opening the debate on the proposal of the Delegation of Japan which concerned international depositary authorities, asked, by way of an exception, for the opinion of the Representative of WFCC.

1338. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) replied that, if the Delegate of Japan had correctly stated the problem, he would willingly see the provision included in Rule 6.1.

1339. Mr. BOGSCH (Director General of WIPO) was of the opinion that the proposal of the Delegation of Japan was a little too broad since it gave complete freedom to the depositary authority. He wondered whether a wording could not be found which stated that the microorganism must be transmitted in the form and quantity required by the international depositary authority and also be accompanied by a special form required by the international depositary authority. He considered that the three elements mentioned by the Delegate of Japan could not be confused with those of Article 3 of the draft, which concerned States. It was a question of nothing other than knowing whether the deposit made was accepted or refused because it did or did not comply with the scientific habits of the international depositary authority. The Director General of WIPO suggested that the Drafting Committee be asked to insert a provision stating that the microorganism to be transmitted must comply with the requirements of the depositary authority as to quality, preparation and the information which must be given.

1340. The CHAIRMAN stated that the proposal made by the Delegation of Japan corresponded to a real need of future depositary authorities. It would therefore be necessary to meet that need in the draft Regulations.

1341. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) in principle approved the proposal of the Delegation of Japan. He thought that the reason why the Delegation of Japan had submitted such a proposal was to allow its official depositary authorities to continue to function in their customary manner.

1342. Mr. HALLMANN (Federal Republic of Germany) thought that such a provision was superfluous and, in certain cases, it might also be dangerous to lay down certain conditions to be fulfilled by the depositor.

1343. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) was not convinced that anything on that question needed to be included in the Regulations, unless the point raised by the Delegation of Japan was correct. He recalled that, for all the deposits registered by a depositary institution in one year, 3 or 4% were related to patents; the remainder were scientific deposits. Depositary institutes had their own system for treating the deposits they accepted. He expressed the view that the future depositary authorities should be able to ask persons depositing microorganisms for the purposes of patent procedure to fulfill the conditions normally demanded of any scientist.

1344. Mr. JACOBSSON (Sweden) thought that, in principle, such a solution might be superfluous and dangerous. When certain conditions were laid down, there was always the risk of an a contrario interpretation: indeed, it could subsequently prove necessary to lay down other conditions and such a provision might lead to the view that such conditions could not be required.

1345. Mr. KÄMPF (Switzerland) said that the views put forward by the Delegation of Sweden had convinced him that the statement made by the Delegation of the Federal Republic of Germany was well founded.

1346. The CHAIRMAN proposed that a vote be taken on the principle of inserting a rule allowing the international depositary authority to lay down certain conditions concerning the deposit.

1347. Mr. BOGSCH (Director General of WIPO) apologized for interrupting the voting procedure, but he thought that the problem under discussion was a serious one and he wished to ask the Delegate of the Federal Republic of Germany a question before voting took place. If a depositary authority designated by the Federal Republic of Germany required depositors to fill in a form when they deposited microorganisms, would that be different or in addition to what was mentioned in the text under discussion? If the said authority stated that the quantity of microorganisms deposited was insufficient, would that depositary authority be violating the Treaty? He expressed the opinion that nothing in the draft Regulations permitted the international depositary authority to make such requirements.

1348. Mr. HALLMANN (Federal Republic of Germany) did not think that, in such a case, the Treaty would be violated.

1349. Mr. BOGSCH (Director General of WIPO) recalled the basic obligation of the international depositary authority to accept any deposit corresponding to the requirements of the Regulations and he asked whether there would be a violation in cases where the authority stated that it could not accept a deposit without the form. In his view, nothing else could be required other than conditions laid down in the Regulations. He asked the Delegate of the Federal Republic of Germany and the Representative of WFCC what was the basis for their assumption that depositary authorities could continue their customary scientific practices.

1350. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) agreed that he had been too optimistic in assuming that the normal practice of WFCC, which had nothing to do with patents, would be accepted. He hoped that the Treaty would include a provision authorizing WFCC to act as it did at present where the procedure had nothing whatsoever to do with the validity of the deposit but was intended to facilitate technical and administrative problems.

1351. The CHAIRMAN shared the view that it was always dangerous to vote on a principle. He withdrew his proposal for a vote and asked the Director General of WIPO to contact the Delegation of Japan and the Representative of WFCC in order to prepare a draft additional rule for the following day (continued at paragraph 1530).

[Suspension]

Rule 11: Release of Samples (in the text as signed, Rule 11: Furnishing of Samples) (continued from paragraph 1286)

1352. The CHAIRMAN resumed the meeting and the discussion on Rule 11.3(a)--the new version prepared by the Director General of WIPO (document DMO/DC/37).

1353.1 Mr. BOGSCH (Director General of WIPO) indicated that during the drafting of the provision of what was at present the second sentence of Rule 11.3(a)(iii), he had been tempted to make the enumeration advocated by certain delegations and to more or less copy Article 128 of the European Patent Convention and the proposal of the Federal Republic of Germany. It had been noted that, by proceeding on that basis, it was possible to obtain provisions which could be applied by the Patent Offices of the United States of America and the Federal Republic of Germany, as well as by the European Patent Office. However, he wondered what would happen if other laws and regulations (for example, those in force in Japan) had to be taken into account; he very much doubted whether it would be possible to do so. That was why it had been decided to proceed differently and to insert a more general formula in the provisions of Rule 11.3(a)(iii).

1353.2 The Director General of WIPO realized that the application of a more general formula constituted a step towards deletion of Rule 11.3(a)(ii): if it were provided first of all that the release of samples was only allowed after publication and then went on to state that it was permitted before publication when allowed by the national legislation, in his view, it more or less became a "hocus-pocus." The text of the new draft was correct, even though it only gave an optical impression. The most simple solution would be to delete the provision of Rule 11.3(a)(ii).

1354. Mr. GUERIN (France) reaffirmed the position adopted by his Delegation the previous day with regard to the question under discussion, namely that it was preferable to make a simple referral to national law; nevertheless, the last proposal made by the Director General of WIPO was acceptable since it appeared to cover all the cases which had been raised during the discussion. However, if national laws were likely to be changed, that would necessarily imply the amendment of Rule 11. He hoped nevertheless that Rule 11.3(a)(ii) was sufficiently broad to allow it to be interpreted without changing the Regulations. The Delegate of France indicated that in due course he would submit certain drafting changes to the proposal.

1355. The CHAIRMAN asked the Delegate of France to submit his drafting proposal directly to the Conference Secretariat.

1356. Mr. JACOBSSON (Sweden) shared the opinion expressed by the Director General of WIPO that the Main Committee was on its way to deleting the provision stipulating the need for publication as a condition for the release of a sample. He recalled that, at the meeting the previous day, his Delegation had stated that it would not favor such deletion (see paragraph 1239).

1357. Mr. DAVIS (United Kingdom) expressed his admiration for the great efforts made by the Secretariat to find a suitable wording for a well nigh insoluble matter. It was obvious that when the requirement of publication had been inserted in the draft one had gone beyond the field of the deposit of microorganisms to that of the regulation of substantive law in different countries. He agreed with the Director General of WIPO on the "optical effect." He felt that Rule 11.3(a)(iii) depended on the goodwill of the State applying it and it could almost totally undermine Rule 11.3(a)(ii); therefore, the point had been reached where either Rule 11.3(a)(ii) must be abandoned or specific cases must be thought of. The Delegate of the United Kingdom wondered whether an exception applicable in cases of litigation should be mentioned and he arrived at the conclusion that Rule 11.3(a)(ii) might as well be abandoned.

1358. Mr. KÄMPF (Switzerland) said that his Delegation could accept the proposal prepared by the Conference Secretariat. With regard to the provisions of Rule 11.3(a)(ii), he proposed that they be retained, despite the fact that the last sentence of Rule 11.3(a)(iii) was an exception to that principle. The Delegation of Switzerland would prefer to delete the second sentence of Rule 11.3(a)(iii), unless it would cause serious problems for other delegations.

1359. The CHAIRMAN suggested that the proposal should be discussed point by point.

1360. Mr. de BOER (Netherlands) asked for clarification of the first seven lines of the provision. He wished to know whether it meant that the requesting party should first of all go to the industrial property office.

1361. Mr. BOGSCH (Director General of WIPO) replied that two signatures were required but the order in which they were obtained was left to be decided individually by each requesting party.

1362. The CHAIRMAN confirmed the interpretation given by the Director General of WIPO.

1363. Mr. SCHLOSSER (United States of America) referred to the request, which must be made on a form issued by the International Bureau. He wished to know whether the International Bureau would prepare the forms and then send them to the industrial property offices or whether it was necessary to write to the International Bureau to request them. His preference was for the first interpretation.

1364. Mr. BOGSCH (Director General of WIPO) indicated that a form would be drawn up and approved by the Assembly of the Union set up by the Treaty. A large number of such forms would be at the disposal of each office, but they could then be reprinted in the United States of America and the other countries. He suggested that, instead of the wording proposed in document DMO/DC/37, the following wording could be used: "...is made on a form whose contents are decided by the Assembly...."

1365. Mr. von PECHMANN (Union of European Patent Attorneys and Other Representatives Before the European Patent Office (UNEPA)) recalled that the proposal to have an international form was contained in a resolution of IAPIP and was the result of the statements made by the Representative of UNEPA and the Delegate of the Federal Republic of Germany. He thought that the international form system could function very well in practice. The third party making the request would fill in a form putting down the name of the international depositary authority, the accession number of the deposit of the microorganism and the address of the person or laboratory to whom or which the sample of the micro-organism requested should be sent. The requesting party would then make the specific declarations and undertakings required by national law in conformity with Rule 11.3 of the Regulations. Those undertakings in respect of the depositor or patentee could perhaps appear in a special annex to the international form, which would have to be signed in three copies: one copy for the industrial property office, another for the international depositary authority and the third for the depositor himself. If the industrial property office found that all the conditions had been fulfilled, it would countersign the International form and would send a copy to the international depositary authority and the depositor, the third remaining in the file of the patent application or the patent itself; the international depositary authority would then only have to send the sample to the address indicated, after having received the fee. The depositor would have a signed declaration containing the commitments which would enable him to take action against the requesting party should the latter not respect them.

1366. The CHAIRMAN noted the proposals made by the Representative of UNEPA, and said that they would be transmitted to the Interim Consultative Committee which would prepare both the form in question and the specific procedure to be followed. He held the view that it was not necessary to set out all the details in the Regulations.

1367. Mr. DEITERS (Federal Republic of Germany) said that his Delegation was prepared to accept the provisions of Rule 11.3(a)(i) in its new wording and that, at the appropriate time, it would submit proposals on Rule 11.3(a)(ii) and (iii).

1368. Mr. DAVIS (United Kingdom) wondered why the industrial property office had itself to certify all the information destined for the international depositary authority and whether it did not suffice for the office, which had to verify that the conditions had been fulfilled, simply to tell the depositary authority to release the sample. In his view, the wording should be along the following lines: "The international depositary authority shall release the sample on the request of the industrial property office. Such a request shall not be made unless the conditions...are fulfilled." That result would be to exclude culture collections from checking the certification. In his opinion, it would be preferable that the matter be the sole responsibility of the industrial property office.

1369. The CHAIRMAN said that he had understood that it was necessary to specifically mention the conditions in the request form and to have it signed by the requesting party since a copy of that form was to be transmitted to the depositor--the patent applicant or the patentee--to inform him that a third party had requested and received a sample under the conditions provided for. Whether the conditions had been fulfilled or not did not interest the depositary authority, but it could interest the patentee.

1370. Mr. DAVIS (United Kingdom) deferred to the view of the Chairman. However, it was his opinion that, where an obligation was imposed on the industrial property office to state whether the conditions had been fulfilled, then at the same time, the form might as well be signed by the depositor.

1371. Rule 11.3(a)(i), as proposed in document DMO/DC/37, was adopted.

1372. Mr. HALLMANN (Federal Republic of Germany) said that the proposal made by the International Bureau, for which his Delegation was very grateful, at least solved one of the problems raised by Rule 11.3. He expressed the view that Rule 11.3(a)(ii) was not necessary. However, if the exception to that Rule mentioned in the second sentence of Rule 11.3(a)(iii) was maintained, it should instead be inserted in Rule 11.3(a)(ii). He proposed simpler wording: "...or the inspection of files to a legally entitled party been granted," which would mean that release prior to publication was an exception to the principle of publication; he stated that, if the Main Committee so desired, his Delegation could give the proposal in writing to the Conference Secretariat.

1373. Mr. BOGSCH (Director General of WIPO) considered that the "optical effect" would be lost if the exception to the Rule were mentioned in the same provision as the Rule itself. He wished to hear the views of the Main Committee on the question.

1374. The CHAIRMAN said that first of all it should be ascertained whether the Main Committee considered that the provision of Rule 11.3(a)(ii) should be retained with the exceptions which, at present, appeared in Rule 11.3(a)(iii), or whether it should be deleted together with the exceptions in question, and simply replaced by a referral to national law.

1375. Mr. SCHLOSSER (United States of America) agreed with the opinion that the problem of publication was a very difficult one. In principle, the Delegation of the United States of America thought that the recommendation made by the Committee of Experts that the sample could not be released before publication should be maintained, with the exception of certain specific instances. He wished to make a proposal, although he had not had time to reflect on it at length. It would be to remove the exceptions from Rule 11.3 and to amend Rule 11.2 by inserting the provisions of Rule 11.1(iii) and (iv). He realized that his proposal was somewhat complicated, but it could solve the problem and at the same time maintain the principle of publication. He recalled that, at the previous

day's meeting, the Director General of WIPO had felt some uncertainty with regard to the inclusion of the principle of publication in Rule 11.2 since it could constitute a kind of authorization given by the depositor under duress (see paragraph 1123).

1376. Mr. JACOBSSON (Sweden) assumed that it would be no surprise that his Delegation favored maintaining the principle in Rule 11.3(a)(ii). In any case, he considered that it was too soon to take a decision on the point since the list of exceptions had not yet been finalized by the Main Committee.

1377. Mr. KÄMPF (Switzerland) recalled that his Delegation had already spoken in favor of maintaining the principle of publication.

1378.1 The CHAIRMAN noted that no delegations were opposed to maintaining the provisions of Rule 11.3(a)(ii) and that it was therefore maintained. He then turned to Rule 11.3(a)(iii) and proposed that the first part of the provision should be discussed first. He noted that there was no objection to the principle that "...the certified party has a right to a sample of the microorganism under the law governing patent procedure before that office." He reiterated the exceptions, namely: (1) where the law governing patent procedure made the right to the sample dependent on certain conditions, the office certified that they had been fulfilled; (2) where the law permitted the right to the sample to be dependent upon certain conditions, the office certified that they had been set and fulfilled, and (3) where the law allowed the release of samples before publication.

1378.2 The CHAIRMAN said that, as there were no remarks concerning the first exception, he would take up the second.

1379. Mr. JACOBSSON (Sweden) emphasized that his Delegation was seriously concerned at the wording of the last part of the sentence, which undermined the whole value of the Treaty.

1380. Mr. DAVIS (United Kingdom) referred to the words following "where the certified party..." in Rule 11.3(a)(iii) down to the end. He considered that they were superfluous, the first part of the Rule seeming to include all that followed.

1381. Mr. BOGSCH (Director General of WIPO) agreed that the Delegate of the United Kingdom was absolutely right from a legal point of view, but he thought it necessary to recall the history of the drafting of that Rule. During meetings of the Committee of Experts, it appeared that, according to the laws of certain countries, the requesting party had to sign a declaration stating that he undertook not to use the microorganism for commercial purposes, not to export it, etc. It was felt that industrial property offices should be reminded that they were responsible for verifying whether the conditions in question were fulfilled since it was particularly important that the task of asking for such declarations should

not be given to international depositary authorities, otherwise, it could be thought that the depositary authorities were responsible for ensuring that the declarations had been made. For them it would be a legal task which would be almost impossible to carry out.

1382. The CHAIRMAN added that one of the cases taken into account by the Committee of Experts had been that provided for in Rule 28 of the Regulations of the European Patent Convention: it provided that, at a particular stage of the procedure, namely between the publication of the European application and the issuance of the European patent, any person requesting a sample must undertake certain obligations.

1383. Mr. BOGSCH (Director General of WIPO), referring to the statement by the Delegate of Sweden (see paragraph 1379), attempted once more to give him some assurance concerning the last part of Rule 11.3(a)(iii). In his view, the choice was a basic one: would the Treaty influence national laws or not? If release were only possible after publication, without any exception, then national laws were obliged not to allow any exception whatsoever. Unfortunately, the European Patent Convention already provided for an exception in respect of procedure. Thus, either the Convention had to be changed--which was unlikely--in order to be in conformity with the Budapest Treaty, or the latter had to yield to the European Patent Convention. The Director General of WIPO did not see how the problem could be solved otherwise than by yielding, which would mean that the release of a sample would be possible before publication.

1384. The CHAIRMAN reminded the delegates that the States represented in the Committee of Experts had almost unanimously expressed the view that, as far as Rule 11 "Release of Samples" was concerned, none of them wished to be obliged to change their national law in any way whatsoever in order to be able to approve the Treaty.

1385. Mr. JACOBSSON (Sweden) first of all apologized for his statement, which he made at the wrong moment, and he said that the analysis made by the Director General of WIPO was correct, as was customary. At the previous day's meeting, he had advocated an exception in the spirit of the provisions of Article 128(2) of the European Patent Convention. However, complete freedom was given to national law and it was that aspect which worried the Delegation of Sweden. His idea was not that it would surely undermine the Treaty, but that, if the doors were thus left open, depositors could be afraid to use the mechanism of the Treaty. He said that, if his Delegation's proposal were not seconded, it would not insist on it. It wished, however, to see the following statement reproduced in the Records of the Diplomatic Conference: "The Swedish Delegation is not in favor of the text of Rule 11.3(a) proposed in document DMO/DC/37. In the view of the Swedish Delegation, third parties should in principle not be entitled to have access to a sample of any microorganism deposited under the Treaty before a patent application referring to a deposit of that microorganism has been published, unless authorized thereto by the depositor. The proposed wording of the

last sentence of Rule 11.3(a)(iii) would, however, have the effect that the principle of 'no access before publication' is in reality abandoned, in spite of the provision under (ii). The Delegation of Sweden is of the opinion that the Contracting States should be permitted to make exceptions from that principle only in specific, clearly defined cases, where there are strong reasons for giving third parties access to the deposit before the patent application is published."

1386. The CHAIRMAN said that the statement made by the Delegate of Sweden would be included in the Records of the Budapest Diplomatic Conference. He noted that, on the one hand, if a list were made, it was possible to forget something, in particular, the question of those States which were not represented at the present Conference and which, because of their national laws, might need other exceptions. On the other hand, a fairly general formula, such as the one proposed, allowed Contracting States to establish additional exceptions once they had approved the Treaty.

1387. Mr. CRESPI (Union of Industries of the European Community (UNICE)), also speaking on behalf of the European Federation of Agents of Industry in Industrial Property (FEMIPI), confirmed that he could accept those exceptions to the principle of non-release before publication. He was convinced that there would be very few exceptions and only under very specific legal conditions. He could therefore accept the wording, as well as that proposed by the Delegation of the Federal Republic of Germany.

1388. Mr. ANTONY (International Federation of Pharmaceutical Manufacturers Associations (IFPMA)) agreed with the preceding speaker, but he proposed that the words "under exceptional circumstances" be inserted after the semicolon to make it clear that it applied to very specific situations only.

1389. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) said that CNIPA could accept the principle underlying the last part of Rule 11.3(a)(ii: However, he had doubts on the question of whether the wording was in keeping with the legislation of the United Kingdom: the United Kingdom draft law provided that the Patent Office could refuse to deal with the question and could leave it to a court. The proposed wording of the Rule seemed to indicate that there would be no patent procedure before the office. It was a question which needed to be studied.

1390. The CHAIRMAN noted that no delegation was opposed to the proposed text in principle and that, subject to certain drafting remarks by the Delegation of the Federal Republic of Germany on the possibility of including the exception in Rule 11.3(a)(ii) rather than in Rule 11.3(a)(iii), the whole of Rule 11.3(a) was adopted.

1391. Mr. SCHLOSSER (United States of America) wished it to be mentioned in the Records of the Budapest Diplomatic Conference that, in those States where the legislation did not lay down conditions for the release of samples, one certification would be sufficient, that was to say, the second person submitting a new request would not have to ask for a new certification (see also paragraph 1285).

1392. Mr. BOGSCH (Director General of WIPO) thought that such interpretation of Rule 11.3(a) was hardly possible, but that an appropriate amendment might be made to Rule 11.3(c) or a special new provision could be provided. In his view, it could be provided that, when the patent was issued, the office would establish an omnibus declaration certifying that the microorganism which had been deposited had become accessible to any person, or it could be provided that, once the sample had been released for one person, it could be released for any other person. In his opinion, the question should be dealt with under Rule 11.3(c).

1393. Mr. SCHLOSSER (United States of America) stated that the Director General of WIPO had dealt with approximately three-fourths of the situation that his Delegation wished to cover. He pointed out that there still remained the case of publication for the purposes of patent procedure other than the publication which took place upon the issuance of a patent, and that case could be included in Rule 11.3(a).

1394. The CHAIRMAN recalled that the first part of the provision of Rule 11.3(a)(iii) merely stated that "the certified party has a right to a sample," and that was the case in which the right was not dependent on specific conditions, excepting that of publication.

1395. Mr. DEITERS (Federal Republic of Germany) stated that his Delegation was prepared to accept the new wording of Rule 11.3(a)(iii). However, in order to simplify the situation, it envisaged the possibility of abandoning Rule 11.3(c), on the condition that an alternative solution for the certificate was added to Rule 11.3(a)(iii). His Delegation could submit the new wording of that provision as amended.

1396. The CHAIRMAN asked the Delegation of the Federal Republic of Germany to submit the wording to the Main Committee.

1397. Mr. HALLMANN (Federal Republic of Germany) thought that the alternative solution to be inserted in Rule 11.3(a)(iii) after the words "actually been fulfilled" should have the following wording: "or the certified party has signed a form for that office and that with the signature of such a form, the conditions for release of a sample according to the law governing patent procedure before that office are fulfilled."

1398. The CHAIRMAN asked delegates to reflect on the proposal before the afternoon meeting and said that, if it were seconded, it would be put up for discussion.

Twelfth Meeting
Thursday, April 21, 1977
Afternoon

Rule 11: Release of Samples (in the text as signed, Rule 11: Furnishing of Samples) (continued from paragraph 1398)

1399. The CHAIRMAN resumed the discussion on Rule 11.3. He recalled that the Main Committee had, in principle, adopted Rule 11.3(a) as proposed by the Conference Secretariat in document DMO/DC/37, subject to certain drafting changes, and that it had also taken note of an oral proposal made by the Delegation of the Federal Republic of Germany. Before opening the discussion on that proposal, he asked delegates whether there were any further remarks on Rule 11.3(a).

1400. Mr. HÜNI (Switzerland) was not sure that the conditions of Rule 11.3(a)(i) and (ii) also applied to the last sentence of Rule 11.3(a)(iii). The Delegation of Switzerland wished it to be specifically mentioned that, in that case as well, the conditions laid down in Rule 11.3(a)(i) and (ii) applied, which would mean that the restrictions expressed in the first part of Rule 11.3(a)(iii) would be added to the last part, after the semicolon.

1401.1 The CHAIRMAN said that he understood the statement made by the Delegate of Switzerland in the following manner: in the last sentence of Rule 11.3(a)(iii), after the semicolon, the issue was the "certification." It was correct to assume that when "certification" was mentioned it also included the indications provided in Rule 11.3(a)(i) and in Rule 11.3(a)(iii). The certification in Rule 11.3(a)(ii) was obviously not necessary since it was a special case in which there was no publication. The Chairman asked whether the Main Committee agreed with his interpretation and he noted that such was the case; he requested the Secretariat to ensure that the interpretation was included in the Records of the Budapest Diplomatic Conference.

1401.2 The Chairman asked the Delegate of the Federal Republic of Germany to explain the proposal submitted orally by his Delegation at the previous meeting (see paragraph 1397).

1402. Mr. DEITERS (Federal Republic of Germany) explained that, in the view of his Delegation, it was necessary to have a procedure which did not include a decision by the patent office and for that reason his Delegation had proposed that the procedure provided in Rule 11.3(c) be replaced by another solution. The certificate of the patent office would state, in a general part, that the person who had signed the form had fulfilled all the conditions and, in a special part, would state that the depositor had signed, if applicable.

1403. Mr. KÄMPF (Switzerland) said that, if he had understood correctly, the proposal made by the Delegation of the Federal Republic of Germany was aimed at avoiding the application of the procedure under Rule 11.3(c). He recalled that his Delegation had already proposed that that provision be deleted and he therefore supported the proposal put forward by the Delegation of the Federal Republic of Germany.

1404. The CHAIRMAN noted that the proposal made by the Delegation of the Federal Republic of Germany was seconded and it was therefore up for discussion.

1405. Mr. GUERIN (France) also supported the proposal of the Delegation of the Federal Republic of Germany for exactly the same reasons which had just been given by the Delegation of Switzerland.

1406.1 The CHAIRMAN said that no delegation had opposed the proposed addition formulated by the Delegation of the Federal Republic of Germany and he therefore concluded that it was accepted; its exact wording would be subject to any changes which the Drafting Committee might wish to make.

1406.2 He turned to the next point--a supplementary proposal submitted by the Delegation of the United States of America, contained in document DMO/DC/40.

1407. Mr. TOCKMAN (United States of America) emphasized that the proposal contained in document DMO/DC/40 was a continuation of the idea previously submitted by his Delegation in document DMO/DC/26. Its objective was to provide for cases of automatic release of the microorganism from the time the patent was issued. He underlined the fact that the procedure was not mandatory--the release of the sample depended on the willingness of the industrial property office. It was therefore a system which industrial property offices could adopt voluntarily. The Delegation of the United States of America was, however, prepared to accept a draft taking into account any other suggestion on ways to make the question clearer--if that were necessary.

1408. Mr. UTERMANN (Federal Republic of Germany) perfectly well understood the reason for which the Delegation of the United States of America had submitted the proposal and he fully supported it, provided that the optional character of the provision was made clear either by an explanation to be given by the Director General of WIPO or by an amendment which could be submitted.

1409. Mr. HÜNI (Switzerland) shared the point of view expressed by the Delegate of the Federal Republic of Germany and he added that, in the view of his Delegation, the new provision should only apply to those countries where, when a patent was granted, the release was possible without any restrictions. He would like to ask the interested circles whether such a procedure did not place too heavy a burden on the future depositary authorities since, when a requesting party submitted a patent for the purposes of release of a given sample, they would have to decide whether release of the sample was possible under that particular patent.

1410. The CHAIRMAN drew the attention of the Delegate of Switzerland to the fact that, according to the proposal made by the Delegation of the United States of America, the national industrial property office indicated that a deposited microorganism relating to a patent was at the disposal of the public without restriction: it was, as it were, an entirely general authorization of the availability of a specifically indicated and identified deposit of a microorganism.

1411. Mr. TOCKMAN (United States of America) confirmed that the statement was correct.

1412. Mr. IANCU (Romania) unreservedly supported the proposal made by the Delegation of the United States of America.

1413. Mr. CRESPI (Union of Industries of the European Community (UNICE)) asked the Delegation of the United States of America whether it meant that the requesting party asking for a sample did not have to identify itself so that no one would later know who had received the sample.

1414. Mr. TOCKMAN (United States of America) assumed that Rule 11.4(d) still applied.

1415. The CHAIRMAN said that if Rule 11.4(d) still applied, it would mean that the international depositary authority had to inform the depositor of the name and address of the person who had received the sample. In accordance with the suggestion made by the Delegate of Switzerland, he asked the Representative of WFCC for his views on the proposal made by the Delegation of the United States of America.

1416. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) emphasized that if the accession number of the patent were not known, Rule 11.4(d) could not be applied. For that reason, he would prefer the provision of Rule 11.4(d) not to appear in the Treaty.

1417. The CHAIRMAN remarked that when reading Rule 11.4(d), at least in the French text, it appeared that the international depositary authority which had released the sample would inform the depositor of the microorganism of that fact. Therefore, if the patentee were to change in the meantime, the international depositary authority would still know the name and address of the depositor of the microorganism.

1418. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) stated that it was both impossible to discover the original depositor solely on the basis of the accession number and also to find out who had subsequently acquired the patent.

1419. Mr. BOGSCH (Director General of WIPO) pointed out that, under Rule 11.4(d), the depositary authority did not inform the patentee of the release of a sample, but the depositor.

1420. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC)) remarked that it was precisely a point which he had wished to raise when discussion on Rule 11.4(d) took place. WFCC wished to emphasize that it was the patent office which was responsible for notifying the depcsitor and not the international depositary authority. He wondered how that requirement, if it were taken up and accepted, would affect the proposal of the United States of America appearing in document DMO/DC/40.

1421. Mr. BOGSCH (Director General of WIPO) said that that point would be dealt with when the Main Committee discussed Rule 11.4(d). He himself had serious reservations on the subject.

1422. Mr. BECKER (Council of European Industrial Federations (CEIF)) was not sure that the proposal submitted by the Delegate of the United States of America was in keeping with Rule 28 of the Regulations of the European Patent Convention since, in accordance with the proposal, the release of the sample would be made without imposing any restrictions.

1423. The CHAIRMAN reminded the Representative of CEIF that the Delegate of the United States of America had clearly emphasized that it was an alternative which depended solely on the willingness of the patent office. It was therefore the office which decided whether it did or did not wish to make that communication. If the proposal were not in conformity with Rule 28 of the Regulations of the European Patent Convention, as had been suggested by the Representative of CEIF, then the European Patent Office could not make that communication.

1424. Mr. UTERMANN (Federal Republic of Germany) said that he had not fully understood whether the proposed proposition was mandatory or optional. He considered that the point should be clarified and the text proposed by the Delegation of the United States of America (document DMO/DC/40) should be defined by adding, after the words "Notwithstanding paragraph (a)," the words "and in case an issued patent gives the right to unrestricted release of the microorganism referred to in that patent." In that way, it would become obvious to all countries which did not permit release without restriction after issuance of the patent that the provision did not apply in their case.

1425. The CHAIRMAN said that it was a question of drafting and that Rule 11.3(b) could also read: "Notwithstanding paragraph (a), any industrial property office of a State in which, after the issuance of a patent, the release of samples of deposited microorganisms is not subject to restrictions, may make a communication to the depositary authority informing it ...."

1426. Mr. BOGSCH (Director General of WIPO) wondered whether it was really necessary to describe what the national law laid down. For that reason, he preferred the following wording: "any industrial property office may, in cases where the patent is already issued...."

1427. The CHAIRMAN asked whether the drafting proposal made by the Director General of WIPO satisfied the Delegations of the Federal Republic of Germany and Switzerland. He noted that it was so and that there was no objection on the part of other delegations.

1428. Rule 11.3(b) was adopted with the drafting proposed in paragraph 1426.

1429. The CHAIRMAN opened the discussion on Rule 11.3(c) as appearing in the draft. He suggested that the proposal made by the Delegation of Switzerland and the Delegation of France to delete the provision should be discussed first and he recalled that the Delegation of the Federal Republic of Germany had already implicitly stated that it would not oppose deletion.

1430. Mr. de BOER (Netherlands) supported the proposal to delete Rule 11.3(c).

1431. Mr. FICHTE (Austria) also supported the proposal to delete Rule 11.3(c). He thought that the Rule would lay a heavy burden on depositors and patent offices and, should no sample be requested by a third party, it would be a superfluous task to be undertaken. Furthermore, it unduly complicated the procedure for the release of samples.

1432. The CHAIRMAN asked whether any delegations were opposed to deletion of Rule 11.3(c).

1433. Mr. DAVIS (United Kingdom) wished for some clarification on what had been proposed before he decided. He asked whether he should understand that the procedure provided in Rule 28 of the Regulations of the European Patent Convention, for which Rule 11.3(c) had specifically been drafted, was no longer taken into account or whether he should conclude that it had already been taken into account in one way or another.

1434. Mr. GUERIN (France) thought that the Delegate of the United Kingdom wished to allude to Rule 28(c) of the Regulations of the European Patent Convention. He indicated that, in the view of the Delegation of France, the provision could be interpreted as meaning that the request addressed to the culture collection had to be certified by the patent office. In his opinion, that was a result of Rule 28(8) under which the President of the European Patent Office concluded agreements with the culture collections, in particular, concerning the avallability to the public of samples; such agreements should govern the manner in which the sample was made available to the public, for example, with the certificate of the patent office, as had been envisaged by the Main Committee in new Rule 11 as amended, in conformity with the proposal made by the Director General of WIPO.

1435. Mr. KÄMPF (Switzerland) stated that his Delegation shared the view expressed by the Delegate of France.

1436. Mr. DAVIS (United Kingdom) declared himself satisfied with the explanations given by the Delegate of France.

1437. The CHAIRMAN noted that there was no opposition to the deletion of Rule 11.3(c) of the draft and he pointed out that the deletion of that provision automatically entailed deletion of the provisions of Rule 11.3(d) and (e).

1438. It was decided to delete Rule 11.3(c) and, consequently, Rule 11.3(d) and (e).

1439. The CHAIRMAN recalled that the Delegation of Romania had proposed that Rule 11.3 be completed by a new text contained in document DMO/DC/24 and he asked the Delegation if its proposal was in conformity with what had just been decided.

1440. Mr. IANCU (Romania) considered that his Delegation's proposal was still valid.

1441 The CHAIRMAN asked the Delegate of Romania whether the proposal could be worded positively, which would give the Main Committee a better understanding of it.

1442. Mr. IANCU (Romania) said that his Delegation's proposal aimed at also dealing with the possibility of the release of samples of microorganisms to any authority or any natural person or legal entity when the patent was no longer in force, that was to say when the patent had fallen into the public domain. In view of the observation made by the Chairman, he proposed new wording for the provision: "The international depositary authority shall release a sample of any deposited microorganism to any authority or any interested natural person or legal entity, upon request by the latter, insofar as the request is accompanied by a declaration bearing the signature of the industrial property office of a Contracting State certifying that the patent is no longer in force."

1443. Mr. MARTIN (International Chamber of Commerce (ICC)) expressed the view that it would not be equitable to release the microorganism before the application had been published.

1444. The CHAIRMAN thought that the statement of the Representative of ICC was not to the point since it was obvious from the proposal of the Delegation of Romania that not only had the patent been published, but also issued.

1445. Mr. IANCU (Romania) said that the Chairman had understood correctly.

1446. Mr. TOCKMAN (United States of America) supported the proposal in principle, subject to the drafting changes mentioned. He agreed that there should be an alternative simplified procedure for release of a microorganism when the patent was no longer in force.

1447. Mr. KÄMPF (Switzerland) was, in principle, in agreement with the proposal, but he wondered whether it was necessary since the validity of a patent was not a condition for access to the microorganism.

1448. The CHAIRMAN thought that the proposal basically aimed at simplifying the procedure after the patent had expired.

1449. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) declared that, for his part, he had no objections to the proposal of the Delegation of Romania. He wished for some clarification. In at least two countries, namely Spain and Switzerland, the mere act of the issuance of a patent did not entail publication. If it were understood that release was not only subject to issuance but also to publication of the specification, he would be satisfied.

1450. The CHAIRMAN remarked that, to his knowledge, the revised Swiss law did not provide that patents issued not be published.

1451. Mr. KÄMPF (Switzerland) confirmed the statement of the Chairman.

1452. The CHAIRMAN noted that the observations of the Representative of CNIPA were not correct since in Switzerland there were no patents issued which were not published.

1453. Mr. de BOER (Netherlands) said that after the adoption of Rule 11.3(b) (new text), he had certain doubts concerning the necessity of the proposal of the Delegation of Romania. In his view, when it had been decided to do all that was possible to simplify the procedure once the patent had been issued, that should also be done in the case of an expired patent.

1454. Mr. BOGSCH (Director General of WIPO) said that the problem was very close to that raised by the Delegation of the United States of America, but it was not exactly the same. The proposal of the latter Delegation constituted a possibility for certain countries, whereas the proposal of the Delegation of Romania was a rule to be applied to all countries; once the protection afforded by the patent ceased, the release of the sample would be possible on the sole basis of an affirmation that the patent was no longer valid. In other words, each national office would be obliged to certify that the patent was no longer valid, upon request by the interested party or, if a parallel were drawn with Rule 11.3(b), each country would have to furnish a list of expired patents from time to time. He thought that the Delegation of Romania favored the first idea.

1455. Mr. von PECHMANN (Union of European Patent Attorneys and Other Representatives Before the European Patent Office (UNEPA)) envisaged a situation where there were ten patents in ten different countries and the patent had expired in one country. Would it mean that any person in the world had the possibility of obtaining a sample of the microorganism in all the countries on the basis of the declaration of one country?

1456. The CHAIRMAN remarked that the same question could be raised in respect of Rule 11.3(a) as adopted. Any person could address himself to the Patent Office of the United States of America if an American patent had been issued and published and could obtain the authorization provided under Rule 11.3(b). It was not a problem specific to the proposal of the Delegation of Romania.

1457. Mr. IWATA (Japan) said that his Delegation did not share the point of view of the Delegation of Romania since, in conformity with Rule 9, the international depositary authority must store the microorganism for at least 30 years and, in that case, the depositor must pay for those 30 years. He wondered how long the depositor would have to pay the expenses if the proposal of the Delegation of Romania were taken into account.

1458. Mr. TROTTA (Italy) stated that, following the correction made by the Director General of WIPO, his Delegation was in agreement with the proposal of the Delegation of Romania to simplify the procedure.

1459. Mr. DAVIS (United Kingdom) was of the opinion that it was a question of little importance since it was conceivable that once a patent was no longer in force, the office would not be concerned by the release of a sample. According to the legislation of the United Kingdom, the Office undertook to release the sample and that was not exactly the same thing as simply providing a certificate. In conclusion, he wished to ask a question: was the national legislation free to provide for the furnishing of a certificate or was it bound to do so?

1460. Mr. BOGSCH (Director General of WIPO) wished first of all to reply to the Delegate of Japan. The proposal of the Delegation of Romania did not state that once the patent had expired, the depositary authority could throw away the microorganism or return it to the depositor; it had to store it for 30 years. The only question was whether the certificate which had to be furnished by the patent office could be made simpler. He said that something had to be done to break the deadlock. Under the Treaty, the depositary authority had received a legal deposit and, as long as it was in possession of that deposit, it had to act in conformity with the instructions of some authority. It could itself neither note the expiry of the patent nor take the word of a third party that the patent had expired. Therefore, even after the expiration of a patent, someone had to take the responsibility for declaring that a third party had the right to a given sample and that was implicitly contained in Rule 11.3(a). He suggested that it should either be affirmed in the Records of the Budapest Diplomatic Conference or be the subject of a specific provision, as had been proposed by the Delegation of Romania.

1461. Mr. HÜNI (Switzerland) expressed the view that the question raised by the Delegation of Romania, namely, whether the expiry of a patent made further restrictions impossible, came under the competence of national law.

1462. The CHAIRMAN noted that delegations were somewhat divided on the advisability of the addition proposed by the Delegation of Romania. He therefore wished the delegations to express their views in order to clarify their positions before taking a vote.

1463. Mr. BOGSCH (Director General of WIPO) addressed himself to the Delegation of Romania and those delegations that had supported it. He asked whether it could not simply be stated in the Records of the Budapest Diplomatic Conference that the provisions of Rule 11.3(a) already covered the situation in question.

1464. Mr. JACOBSSON (Sweden) said that his Delegation shared the point of view expressed that the proposal of the Delegation of Romania was probably unnecessary. With regard to the question of what happened when a single patent had expired, he thought it would be difficult to introduce the solution envisaged by the proposal of the Delegation of Romania in Rule 28 of the Regulations of the European Patent Convention, where it was understood that certain obligations could still be required of a party requesting a sample. He declared himself opposed to the introduction of a clause such as that proposed by the Delegation of Romania.

1465. The CHAIRMAN also held the view that, in the case of a regional patent, which was in itself a single patent but in fact corresponded to a number of national patents, problems could arise. He asked the Delegate of Romania whether the proposal made by the Director General of WIPO to include the necessary explanations in the Records of the Budapest Diplomatic Conference would enable him to withdraw the proposed formal addition to the Rule.

1466. Mr. IANCU (Romania) said that, in view of the situation, his Delegation agreed to the proposal submitted by the Director General of WIPO.

1467.1 The CHAIRMAN requested that the discussion be very clearly reflected in the Records of the Budapest Diplomatic Conference and said that the proposal made by the Delegation of Romania could be considered as withdrawn.

1467.2 He turned to Rule 11.4 and first of all asked the Drafting Committee and the Conference Secretariat to take into account the amendments made to Rule 11.3. He enumerated the proposals made on Rule 11.4, namely those of the Delegations of the Federal Republic of Germany (document DMO/DC/21), Czechoslovakia (document DMO/DC/22), the United States of America (document DMO/DC/26) and Hungary (document DMO/DC/28).

1467.3 The Chairman proposed that the discussion begin with the proposal of the Delegation of Hungary on Rule 11.4(a). He indicated that the Delegate of Hungary had discovered an omission in the text of the draft.

1468. Mrs. PARRAGH (Hungary) emphasized that the remarks she had had were only concerned with drafting but, as the whole formulation had been changed in relation to Rule 11.3, part of her remarks were no longer pertinent.

1469. Mr. KOMAROV (Soviet Union) pointed out that, when listing the proposals for amendment of Rule 11.4, the Chairman had omitted his Delegation's proposal to refer to the possibility of using the Russian language.

1470. The CHAIRMAN said that, in document DMO/DC/29, he could find no reference to Rule 11.4, but only to Rule 11.3(c)(i), which had been deleted.

1471. Mr. KOMAROV (Soviet Union) apologized to the Chairman for the fact that a mistake had been made in document DMO/DC/29, namely, the observation made in item 3 concerned Rule 11.4(a) and not Rule 11.3(c)(i).

1472.1 The CHAIRMAN declared that he would take the remarks of the Soviet Union on Rule 11.4(a) into account.

1472.2 He suggested that the proposal of the Delegation of Hungary (document DMO/DC/28) be referred to the Drafting Committee.

1472.3 The Chairman turned to the proposal of the Delegation of Czechoslovakia (document DMO/DC/22) and indicated that it first of all proposed that a general rule be added requesting States to adopt more detailed rules on the release of microorganisms and, secondly, that a new subparagraph (v) be added to Rule 11.4(a) laying down a certain number of undertakings to be assumed by the person requesting a sample with regard to the use of the microorganism, its transmittal to third parties, and compensation for damages resulting from the use of the microorganism.

1473. Mr. CÍRMAN (Czechoslovakia) did not wish to repeat the reasoning set forth in the proposal of his Delegation (document DMO/DC/22); he only wished to underline the fact that the decisive part of the proposal to insert a new Rule 11.4(a)(v) was the undertaking of the requesting party in order to prevent misuse of the released sample.

1474. The CHAIRMAN said that, if he had correctly understood the proposal, the fact that it was inserted in Rule 11.4 meant that it would apply to all situations, including that mentioned in Rule 11.2, namely when the depositor himself asked for a sample. The Chairman confessed that he could not see how the depositor could make such an undertaking.

1475. Mr. CIRMAN (Czechoslovakia) emphasized that his Delegation's proposal consisted of placing an additional condition on the requesting party: the latter would be obliged to make a written undertaking that the sample would not be used

for any industrial or commercial purposes or transmitted to any other natural person or legal entity. The undertaking would also include an obligation to compensate any damage resulting from failure to observe the undertaking.

1476. Mr. BOGSCH (Director General of WIPO) emphasized that the provision constituted an important limitation of national law, which would be required to conform to it in practice. However, in many countries, for instance, the United States of America, it was not necessary to make such undertakings before requesting a sample. It appeared to him that the situation was somewhat similar to that existing under the PCT and the TRT: if the depositor were not satisfied with the laws of a given country, he would not make a deposit in that country; if an inventor desirous of filing an invention containing a microorganism considered that the very liberal conditions governing the release of samples in the United States of America was a danger for him, the only way of avoiding the danger was not to file in the United States of America. That was in the nature of things and it would be very difficult at present to convince countries that they should accept certain conditions for the release of samples.

1477. Mr. CÍRMAN (Czechoslovakia) said that he withdrew his proposal, but he suggested that a statement or recommendation on the question should be included in the Records of the Budapest Diplomatic Conference.

1478. The CHAIRMAN took note of the withdrawal of the proposal of the Delegate of Czechoslovakia and assured him that the Records of the Budapest Diplomatic Conference would reflect the discussion which had taken place on the proposal as well as the statement made by the Delegate of Czechoslovakia.

1479. Mr. ANTONY (International Federation of Pharmaceutical Manufacturers Associations (IFPMA)) said that he would have welcomed the adoption of the proposal made by the Delegation of Czechoslovakia.

1480.1 The CHAIRMAN said that the proposal of the Delegation of Czechoslovakia having been withdrawn, there was no further cause for discussion.

1480.2 He turned to the proposal submitted by the Delegation of the Soviet Union (item 3 of document DMO/DC/29).

1481. Mr. KOMAROV (Soviet Union) suggested that any request, declaration and form mentioned in Rule 11.4(a) could also be drawn up in the Russian language. He considered that the obstacles mentioned by certain delegations for not accepting the proposals of the Delegation of the Soviet Union, such as the lack of full powers, technical problems in establishing an authentic text in Russian, did not seem to him to be convincing. He saw no reason why any texts appearing in the receipt mentioned under Rule 7.2, as well as any request mentioned in Rule 11.4, could not also be drafted in Russian.

1482. The CHAIRMAN, before suspending the meeting, reiterated to the Main Committee that the Delegation of the Soviet Union had proposed that the words "established at least in English or in French" in Rule 11.4(a) be replaced by the words "established in English, French or Russian."

[Suspension]

1483.1 The CHAIRMAN resumed the discussion on the proposal of the Delegation of the Soviet Union (document DMO/DC/29 as corrected).

1483.2 He first of all recalled that in the first few lines of Rule 11.4(a), it was necessary to make the changes resulting from the amendments to Rule 11.3.

1484. Mr. PETROV (Bulgaria) supported the proposal made by the Delegation of the Soviet Union, underlining the role played by the Russian language in the field of industrial property.

1485. Mr. CÍRMAN (Czechoslovakia) supported the proposal made by the Delegation of the Soviet Union.

1486. Mr. BUDEWITZ (German Democratic Republic) also supported the proposal made by the Delegation of the Soviet Union.

1487. Mr. TOCKMAN (United States of America) said that the proposal made by the Delegation of the Soviet Union had implications which he had not had time to study before the Conference and it posed serious administrative problems for the Patent Office of the United States of America. Since he did not yet know the financial implications of such a solution, he preferred the text of the draft (document DMO/DC/4).

1488. Mr. DAVIS (United Kingdom) said that his position was identical to that of the Delegation of the United States of America.

1489. Mr. van WEEL (Netherlands) shared the opinion of the Delegation of the United States of America.

1490. Mr. DEITERS (Federal Republic of Germany) also supported that position.

1491. Mr. KÄMPF (Switzerland) asked that the text be left as it appeared in the Draft.

1492. Mr. IWATA (Japan) shared the opinion expressed by the preceding speakers.

1493. Mr. HENSHILWOOD (Australia) preferred the text appearing in the draft.

1494. The CHAIRMAN asked those delegations which had supported the position of the Delegation of the United States of America whether they would have sufficient time to study the proposal of the Delegation of the Soviet Union more fully if a decision on it were postponed until the following morning.

1495. Mr. BOGSCH (Director General of WIPO) wished to summarize the situation in order to facilitate resolution of the debate. The proposal made by the Delegation of the Soviet Union (document DMO/DC/29) raised the question of language at two points. One was related to Rule 7.2(b) and the Director General of WIPO said that he held a slightly different opinion on that point and he would come back to it when the Main Committee resumed discussion on Rule 7.2(b). The second point, of which he had just been apprised, was in respect of Rule 11.4(a). He reviewed the situations in which the problem of language arose. The words "request" and "declaration" first of all appeared in Rule 11.1, which stipulated that "Any international depositary authority shall release a sample of any deposited micro-organism to the industrial property office of any Contracting Party, upon the request of the latter, provided that the request shall be accompanied by a declaration...," the latter also emanating from the national office. In other words, the question was whether the Patent Office of the United States of America had to issue a document in the Russian language. At first sight, it appeared to the Director General of WIPO that such was the case in the situation which he was describing at the present moment. The question of language also arose when, under Rule 11.2, the request was submitted either by the depositor (Rule 11.2(i)), or by a third party and the depositor (Rule 11.2(ii)). Finally, under the amended Rule 11.3(a) (document DMO/DC/37), which had just been adopted, there was a common form in which the national industrial property office and a third party expressed themselves. Thus, declarations made by the depositor and/or a third party and/or the national office are all involved.

1496. Mr. KOMAROV (Soviet Union) recalled that the question of using Russian had been discussed during previous debates, but in respect of other items. He had been taken aback by the statement of the Director General of WIPO who--if his statement had been interpreted correctly--was surprised that the Delegation of the Soviet Union should have raised such a question in the Main Committee. He emphasized that he had already raised it during meetings of the Committee of Experts. The same difficulties arose for all those countries which used the Russian language and which had supported the proposal of the Delegation of the Soviet Union. The Delegate of the Soviet Union underlined the fact that the Treaty comprised a whole series of compromises--on far more complicated questions than the one he had raised--in order to achieve cooperation at the international level. He expressed his surprise that, under those circumstances, such a Treaty should not be made accessible to those countries for which the use of the Russian language was convenient. It would mean that the depositary authorities, the depositors and third parties would be obliged to use other languages, when the use of Russian was the most rational and economical for them. In his view, such a situation was not justified and he hoped that, despite everything, the problem would be taken into account.

1497. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC)) spoke as one to whom all languages, except for English, were a closed book. He imagined the position of a depositary authority, whether it was in the United Kingdom, the United States of America, France, the Soviet Union or Bulgaria, if it received an authorization or a form which it could not understand because of the language problem. It could hardly take the initiative of translating the document and thus risk not correctly fulfilling the required conditions.

1498. Mr. KOMAROV (Soviet Union) apologized for once more taking the floor, but he feared that during his previous statement he had not clearly expressed his ideas. He wished to assure the Main Committee that it was not his intention to compel anyone to use Russian. He merely wished to have the right to use Russian when it was convenient for the depositary authority, the depositary and the third party who used or knew that language, in particular, in relations in the field of patents between countries neighboring the Soviet Union.

1499. The CHAIRMAN acknowledged that, due to an error which had slipped into document DMO/DC/29, he had understood that the original proposal of the Delegation of the Soviet Union--considered as being in relation to Rule 11.3(c)--had concerned only the possibility for the patent office of the Soviet Union to submit the declaration provided for in Rule 11.3(c) in Russian. The error having been corrected, the situation became completely different. For that reason, the Chairman proposed that further reflection be given to the proposal and he suggested that the discussion should continue on Rule 11.4 since all the other proposals submitted were entirely separate from the presence or absence of a reference to the Russian language.

1500. Rule 11.4(a) and (b) was adopted, subject to drafting changes to that Rule in order to adapt it to the changes made to Rule 11.3 and the decision to be taken on the proposal made by the Delegation of the Soviet Union (continued at paragraph 1840).

1501. The CHAIRMAN turned to the proposal submitted by the Delegation of the Federal Republic of Germany (document DMO/DC/21) which added the mention of the copy of the receipt to Rule 11.4(c).

1502. Mr. HALLMANN (Federal Republic of Germany) explained that, in the view of his Delegation, in the case of a new deposit it was necessary for third parties to have knowledge thereof. It was not a question of prejudicing their conclusions and decisions, but merely of drawing attention to the fact that the sample of a microorganism which had been released to them came from a new deposit.

1503. The CHAIRMAN thought that it was a qualification rather than a substantive change.

1504. Mr. BEHAN (United States of America) supported the proposal of the Delegation of the Federal Republic of Germany and considered that it was a worthwhile idea.

1505. The CHAIRMAN noted that the proposal of the Delegation of the Federal Republic of Germany had been seconded and that no delegations were opposed to it.

1506. Rule 11.4(c), as amended by the proposal of the Delegation of the Federal Republic of Germany, was adopted, subject to final drafting.

1507. The CHAIRMAN turned to Rule 11.4(d) and recalled that two proposals relative thereto had been submitted, namely: the proposal of the Delegation of Hungary (document DMO/DC/28 which concerned drafting, and the proposal of the Delegation of the United States of America (document DMO/DC/26). He suggested that the first proposal be referred to the Drafting Committee.

1508. It was decided to refer the proposal of the Delegation of Hungary to the Drafting Committee.

1509. Mr. SCHLOSSER (United States of America) stated that, under Rule 11.4(d) of the draft, the depositary authority was required to notify the depositor every time that a sample was released. In his view, that notification laid an administrative burden of minor importance on the international depositary authority; however, in certain cases, the depositor himself was not concerned by the notification. Therefore, the Delegation of the United States of America suggested that the notification be optional, that was to say that it should only be made when the depositor requested it. In his view, it would be sufficient to insert before the words "The international depositary authority" at the beginning of Rule 11.4(d) the words "If requested,...authority...."

1510. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) said that he hoped that the notification would only be made on request. He nevertheless wished to correct the Delegate of the United States of America, who had expressed the view that the notification constituted a minor task for the international depositary authority. The more popular a patent was, the more onerous became the task. It could even become a heavy burden for culture collections, especially if the latter were required to notify the depositor each time that the release of a sample took place. He thought that a compromise solution could be found: for example, every month, the international depositary authority could send the depositor a letter containing a list of all the releases made in order to avoid having to undertake such a task upon each release of a sample.

1511. Mr. SCHLOSSER (United States of America) concluded that, if the Representative of WFCC considered it to be an important question, his proposal should be taken into account.

1512. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) regretted that, with regard to the tasks allotted to the depositary authorities, a trend had developed in the Conference to burden those authorities with apparently minor tasks, such as that of "shuttling" documents all over the world, and they

ended by becoming a nuisance. He reminded the Main Committee of his statement made on behalf of his organization at the beginning of the discussions when he had said that the business of culture collections was to preserve and distribute microorganisms. He considered that patent offices should deal with the documents, particularly in cases where such documents were of no interest to depositary authorities.

1513. The CHAIRMAN remarked that he understood the proposal of the Delegation of the United States of America to be aimed at reducing the number of documents to be dealt with since the international depositary authority would make such a notification solely upon request.

1514. Mr. GUERIN (France) shared the opinion of the Chairman that the proposal of the Delegation of the United States of America would rather tend to lighten the burden of international depositary authorities. If he had correctly understood the proposal of the Delegation of the United States of America, the depositary authority would only make the notification when the depositor specifically asked for it. However, in that case, in his view, Rule 6 would also have to be changed to specify that the depositor must also indicate at the time of deposit whether he wished the depositary authority to make the notification or not.

1515. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) emphasized that the objection he had made only concerned the observation made by the Delegate of the United States of America that the notification of release by the international depositary authority was a minor task.

1516. The CHAIRMAN noted that the proposal of the Delegation of the United States of America (document DMO/DC/26) was seconded and he opened the debate.

1517. Mr. DAVIS (United Kingdom) declared that, if the culture collections agreed to such action, he had no objection, but he wished to emphasize that, in his experience, automatic procedures worked better than procedures in which a decision had to be taken since they saved administrative burdens.

1518. Mr. TAK (Netherlands) supported the proposal made by the Delegation of the United States of America, which was a practical proposal and would reduce the number of official documents exchanged with the depositary authorities.

1519. Mr. JACOBSSON (Sweden) shared the point of view expressed by the Delegate of the United Kingdom. Should the proposal of the Delegate of the United States of America be accepted, he considered that it should be very clearly indicated that it applied in general to every release of the sample. He pointed out that his point of view concurred with that just expressed by the Delegate of France.

1520. Mr. WERNER (European Federation of Agents of Industry in Industrial Property (FEMIPI)), on behalf of his organization, supported the proposal made by the Delegation of the United States of America since the depositor might also no longer wish to receive documents of that nature when he had no further interest in the deposit. Therefore, such a possibility should be foreseen in the Regulations.

1521. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) confessed that he supported the point of view of the Delegate of the United Kingdom in order to ensure the protection of the depositor. The proposal of the Delegation of the United States of America would probably cause more difficulties for culture collections.

1522. The CHAIRMAN noted that opinions were divided and asked whether, before voting, anyone else wished to speak.

1523. Mr. ESPEJO (Philippines) stated that his Delegation was participating in the present Diplomatic Conference in conformity with Article 7(1) of the Rules of Procedure. In the case of a vote, the Delegation of the Philippines would act in pursuance of Article 50 of the Rules of Procedure.

1524. Mr. GUERIN (France) thought that it was a question of interpreting the proposal of the Delegation of the United States of America. His Delegation interpreted the proposal to mean that, at the time of deposit, the depositor should indicate whether or not he wished a notification. In his view, that decision was final and the depositor could not change it thereafter, because, in that case, there would be administrative complications.

1525. The CHAIRMAN thanked the Delegate of France for his clarification which helped to make the matter more precise before voting and he asked for the opinion of the Delegation of the United States of America.

1526. Mr. SCHLOSSER (United States of America) confirmed the interpretation of his Delegation's proposal made by the Delegate of France.

1527. The CHAIRMAN reiterated that the proposal of the Delegation of the United States of America was based on an option to be exercised at the time of deposit by the person depositing the microorganism, that it was final and that Rule 6 would have to be changed along those lines. He put the proposal of the Delegation of the United States of America to the vote.

1528. The proposal of the Delegation of the United States of America was rejected by 10 votes to 9, with 3 abstentions.

1529. Rule 11.4 was adopted as appearing in the draft (document DMO/DC/4), subject to the proposal of the Delegation of Hungary (document DMO/DC/28), referred to the Drafting Committee, and the proposal of the Delegation of the Soviet Union (document DMO/DC/29).

Rule 6: Making the Original Deposit or New Deposit (continued from paragraph 1351)

1530.1 The CHAIRMAN noted that the Main Committee had concluded the discussion on Rule 11, with the exception of the proposal of the Delegation of the Soviet Union (see paragraph 1500), and that it constituted one of the most difficult tasks to be accomplished during the Conference.

1530.2 He proposed returning to Rule 6, indicating that the Conference Secretariat had prepared a proposal (document DMO/DC/39) which provided a new text for Rule 6.3 based on the proposal of the Delegation of Japan (document DMO/DC/25). He asked the Delegate of Japan whether he supported the proposal set out in document DMO/DC/39.

1531. Mr. IWATA (Japan) declared that his Delegation fully agreed with the proposal for Rule 6.3 submitted by the Conference Secretariat in document DMO/DC/39.

1532. Mr. KÄMPF (Switzerland), addressing himself to the drafter of the text of the document, asked whether, in the French text, the word "nombre" meant "quantité."

1533. Mr. BOGSCH (Director General of WIPO) said that, unfortunately, the French translation was not correct. The English text used the word "quantity" and therefore in French the word "quantité" should be used.

1534. Mr. JACOBSSON (Sweden) was not opposed to the principle on which Rule 6.3 was based. He only wished to point out that its wording was somewhat ambiguous. He hoped that the Drafting Committee would take his remark into account and would make the necessary change in order to clarify the provision.

1535. Mr. BOGSCH (Director General of WIPO) suggested that the wording of Rule 6.3 could be changed immediately in order to determine whether the change met the wishes of the Delegation of Sweden and he proposed the following wording: "... and quantity necessary for the purposes of the Treaty."

1536. The CHAIRMAN asked whether the Main Committee agreed with the proposal made in document DMO/DC/39 as corrected by the Director General of WIPO and noted that such was the case.

1537. Rule 6.3 as proposed in document DMO/DC/39 and corrected by the Director General of WIPO was adopted.

1538.1 The CHAIRMAN took up Rule 6.2 and recalled that the Delegations of Italy and the United States of America had submitted proposals in respect of Rule 6.2(a)(iii) (documents DMO/DC/27 and DMO/DC/26, respectively).

1538.2 The Chairman noted that, since the proposal of the Delegation of Italy on Rule 6.1(b) had not been adopted, its proposal on Rule 6.2(a)(iii) was no longer pertinent.

1538.3 The Chairman turned to the proposal of the United States of America to include the words "it is strongly recommended that..." in Rule 6.2(a)(iii). He asked the Delegate of the United States of America to introduce the proposal.

1539. Mr. BEHAN (United States of America) stated that, in the view of his Delegation, there was a contradiction between Rule 6.1(b) and Rule 6.2(a)(iii). The former recommended that the scientific description should be provided, whereas in Rule 6.2(a)(iii) (document DMO/DC/4) such a description was obligatory. He wished to remove that inconsistency.

1540. The CHAIRMAN recalled that the Main Committee had decided to maintain the optional aspect of the scientific description and taxonomic designation in Rule 6.1(b). As he understood it, in Rule 6.2(a)(iii) the scientific description and/or taxonomic designation was not optional where, at the time of the original deposit, there was such a description and/or designation--which was optional; therefore, for the new deposit it was obligatory also to make a scientific description and/or taxonomic designation. The Chairman thought that what had been desired to avoid here was simply that there would be a first description at the time of the original deposit and that the new deposit would not include any. He asked whether that interpretation met with the wishes of the Main Committee and added that, in case of need, it was possible to entrust the Drafting Committee with the task of expressing it more clearly.

1541. Mr. BEHAN (United States of America) affirmed his agreement with the statement made by the Chairman.

1542. The CHAIRMAN asked whether the Main Committee shared his view that, when the depositor chose to include the description with the first deposit, he was likewise obliged to include it with the new deposit. He noted that such was the case and suggested that the Drafting Committee finalize the text to that end.

1543. Rule 6.2(a)(iii) was adopted, subject to the clarifications to be made by the Drafting Committee.

Rule 7: Receipt

1544. The CHAIRMAN indicated that no proposal had been submitted on Rule 7.1.

1545. Rule 7.1 was adopted as appearing in the draft.

1546. The CHAIRMAN turned to Rule 7.2 and recalled that the Delegation of the Soviet Union had proposed the addition of the Russian language to Rule 7.2(b). The wording of the first sentence of Rule 7.2(b) would then read: "Any text matter in the receipt shall be in English, French or Russian."

1547. Mr. KOMAROV (Soviet Union) indicated that the reasons for which his Delegation had submitted the proposal were the same as those given in the case of Rule 11.4(a) (see paragraph 1481).

1548. The CHAIRMAN recalled that the Director General of WIPO had envisaged making a statement on the subject of that proposal (see paragraph 1495).

1549. Mr. BOGSCH (Director General of WIPO) wished to arrive at a compromise. He had even prepared a compromise solution for Rule 11.4(a), which was the following. If a document was deposited with an office whose official language was Russian or which decided, by notification addressed to the Director General of WIPO, to receive the documents in Russian--the Director General of WIPO was thinking there of countries whose mother tongue was not Russian, but which were more familiar with Russian than with English or French--the office could then request a translation in the Russian language. In Rule 7.2(b), which speaks of the receipt issued by the international depositary authority, if it were a depositary authority situated on the territory of the Soviet Union, for example, the same solution as that envisaged for Rule 11.4(a) could be used, that was to say that the receipt would be issued in Russian and in another language--in English or in French--or would be issued only in Russian and the translation would be made by the International Bureau. The Director General of WIPO emphasized that a distinction should be drawn between Rule 7.2(b) and Rule 11.4(a). In his view, Rule 7.2(b) did not entail a great deal of work, neither from the point of view of the number of documents nor from that of texts to be translated: he foresaw that a few dozen receipts, comprising about one hundred lines in all, would perhaps be issued by a depositary authority in the Soviet Union or in the Socialist countries of Eastern Europe and he considered that, in view of the limited amount involved in translation expenses (approximately 1,000 US dollars per year), the International Bureau could render that service to those countries.

1550. The CHAIRMAN, for his personal information and that of the delegations, wished to ask the Delegation of the Soviet Union a question concerning Rule 7.2(b). The receipt for the deposit of a microorganism, which must be given to the various national offices in which a patent application mentioning the microorganism has been filed, constituted one of the elements of the patent application in each of the States concerned. He would personally tend to compare the receipt with the other documents which could also be drafted in other languages. As an example, he cited the case of an applicant domiciled in the Soviet Union who claimed the priority of an earlier filing in the Soviet Union and who filed in another country. He would provide a priority document, a certified copy of the first filing in the Russian language. That was perfectly admissible in the different countries of the Paris Union, but there were national provisions (for example, those in Switzerland) which allowed national offices to subsequently request a translation of those documents. The Chairman asked the Delegation of the Soviet Union whether, in the event that the receipt were permitted in Russian, it would agree that national laws providing for translation also applied to the receipt.

1551. Mr. KOMAROV (Soviet Union) declared that the mechanism provided in the proposal of his Delegation was the same for all three languages. The proposal of the Director General of WIPO gave rise to an entirely new situation. He therefore wished to have time to reflect on the problem and he asked the Chairman to allow him to not immediately give a reply to his question.

1552. Mr. KÄMPF (Switzerland) shared the opinion of the Chairman on the question of receipts. He thought that in the laws of many countries, there was a similar provision to that of the legislation of Switzerland, which provided that a request had to be submitted in one of the official languages of the country. A receipt could be accepted in any language of the international depositary authority, subject to the right to request the depositor to provide a translation in an official language of the country.

1553. Mr. GUERIN (France) esteemed that it was a question of interpretation of Rule 7.2, which stated that the receipt was established on a form to be drawn up by the Director General of WIPO and which would therefore be a printed form. He wished to know whether, when speaking of the text of the receipt, it concerned both the printed text of the receipt and the indications mentioned under Rule 7.3 or solely the printed form.

1554. Mr. BOGSCH (Director General of WIPO) first of all spoke on the proposal of the Delegation of Switzerland, which went far beyond the problem raised by the Delegation of the Soviet Union. If he had understood the proposal of the Delegation of Switzerland correctly, if the receipt was in English, in Switzerland, its translation into Italian, French or German would be requested. He said that if that were the wish of the Delegation of Switzerland, it should submit a proposal for amendment to that end. The meaning of the Rule at present was that the receipt established in English or French was valid throughout the world. He did not think, for example, that the Delegation of the Federal Republic of Germany had ever asked for a translation into German of a receipt in French or English. He asked the Chairman to clarify the problem.

1555. The CHAIRMAN recalled that there were no similar provisions in the Paris Convention with regard to priority documents. States were free to request translations. He asked for the opinion of the Main Committee on the question raised by the Director General of WIPO. Under the Treaty, did States have the right to ask for a translation of the receipt drafted in English, French, Russian or any other languages provided for in national law for a procedure before their patent offices?

1556. Mr. von PECHMANN (Union of European Patent Attorneys and Other Representatives Before the European Patent Office (UNEPA)) considered that the requirement of a translation was a burden for depositors. For that reason, he proposed that each receipt be established in two of the three languages proposed: French, English and Russian. In that manner, the patent office would not need a translation since it could surely read at least one of the two languages in which the receipt was established.

1557. The CHAIRMAN observed that the problem mentioned by the Representative of UNEPA was not exactly the same as that raised by the Delegation of the Soviet Union and that it did not concern the same documents, but he thought it would be wiser to link the problems and to also adjourn the decision on that point until the following day.

1558. It was so decided.

1559. Subject to the decision to be taken with regard to the Russian language, Rule 7.2 was adopted as appearing in the draft.

1560. The CHAIRMAN indicated that the Delegation of Czechoslovakia had submitted a proposal on Rule 7.3(i) (document DMO/DC/22) requesting that the receipt not only include the name and address of the international depositary authority, but also a declaration specifically stating that it had the status of international depositary authority.

1561. Mr. CÍRMAN (Czechoslovakia) indicated that the statement proposed by his Delegation could be included in the heading of the printed forms. The reason for the proposal was a practical one; its intention was to save the time of patent examiners who would not have to verify whether a given depositary authority really had the status of international depositary authority, except where they had doubts.

1562. The CHAIRMAN asked whether any delegation seconded the proposal of the Delegation of Czechoslovakia.

1563. Mr. KOMAROV (Soviet Union) seconded the proposal of the Delegation of Czechoslovakia.

1564. Mr. UTERMANN (Federal Republic of Germany) also supported the proposal.

1565. The CHAIRMAN noted that no delegation was opposed to the proposal.

1566. The proposal of the Delegation of Czechoslovakia with regard to Rule 7.3(c) was adopted, subject to final drafting.

1567. The CHAIRMAN indicated that the proposals of the Delegations of Italy (document DMO/DC/27) and Romania (document DMO/DC/24) concerned Rule 7.3(vi) and stated that since the Main Committee had decided that the scientific description was optional, the two proposals were no longer relevant. He noted that both Delegations were in agreement.

1568. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC)) wished to make a comment on the inclusion of the optional scientific description in the receipt. As had been mentioned at the previous meeting, the scientific descrip-

tion could cover several pages. At various points, the Regulations required several copies of the receipt. If the scientific description constituted a part of the receipt, then, by definition, copies of the scientific description were also required. In accordance with the amendment to Rule 11.4(c) proposed by the Delegation of the Federal Republic of Germany, the description would be sent with each sample since a copy of the original receipt was required in the case of a new deposit. He gave a further example. The receipt issued for a new deposit and containing the scientific description must be accompanied by a copy of the original receipt, which also contained the description. Therefore, he concluded that if the description were optional, what was the purpose of maintaining it in the receipt?

1569. The CHAIRMAN wondered whether it were possible to lighten the heavy administrative burden of the future international depositary authorities and to provide, for example, that the receipt should mention the existence of a scientific description and/or taxonomic designation and that, on the specific request of the person receiving the receipt, a copy of that description and/or designation would be provided against payment of expenses.

1570. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) saw the problem from a technical standpoint and noted that, if a culture collection were obliged to add another collection's description to a receipt, it would be forced to state that it was an unauthenticated description. There would therefore have to be an exception.

1571. The CHAIRMAN asked for the opinion of the delegations on the problem raised by the Representative of WFCC.

1572. Mr. TAK (Netherlands) stated that his Delegation considered that the copy of the written statement in the receipt was not necessary, at least for the Patent Office of the Netherlands.

1573. The CHAIRMAN asked the Delegate of the Netherlands whether he therefore proposed that the provision of Rule 7.3(vi) be deleted and noted that such was the case.

1574. Mr. JACOBSSON (Sweden) recalled that during the meetings of the Committee of Experts, his Delegation had been opposed to Rule 7.3(vi). It therefore supported the proposal to delete that Rule.

1575. Mr. KÄMPF (Switzerland) was also in favor of deleting the provision.

1576. Mr. LOSSIUS (Norway) supported the proposal to delete Rule 7.3(vi).

1577. Mr. PAPINI (Italy) was likewise in favor of deleting Rule 7.3(vi).

1578. Mr. HALLMANN (Federal Republic of Germany) had no objection to deleting Rule 7.3(vi), provided that, upon request, a scientific description would be given to the depositor and that the patent office had the right to obtain it.

1579. The CHAIRMAN was convinced that depositary authorities would not refuse such a request, if necessary, against payment of expenses. He proposed that the provision of Rule 7.3(vi) be deleted.

1580. Mr. DAVIS (United Kingdom) observed that if the requirement of the description were removed from the receipt, it would be necessary to make a provision whereby patent offices could request a copy of the description. The difficulty was that it formed part of the problem of evidence, especially in relation to new deposits. If the description appeared in the receipt, there was no problem as it was at the disposal of patent offices. However, in the opposite case, the problem could arise since the Delegate of the United Kingdom was not sure that the description could be obtained. He thought that it was not sufficient to leave the question up to the goodwill of the depositary authority. He therefore proposed that a provision be inserted specifying that, in case of need, the industrial property offices could obtain the scientific description.

1581. The CHAIRMAN pointed out that the obligatory character of the description for a new deposit was provided for if it had been joined to the original deposit. He wondered whether it was possible to insert the proposal of the Delegate of the United Kingdom in Rule 7.4.

1582. Mr. DAVIS (United Kingdom) pointed out that it was not only a question of the new deposit, but also a question of evidence as to what the original deposit was. If the description was annexed to the original deposit, at least the industrial property office would possess that description.

1583. The CHAIRMAN asked the Delegation of the United Kingdom whether he was making a specific proposal to add or change anything in Rule 7.3.

1584. Mr. DAVIS (United Kingdom) replied that he had hoped that someone would tell him he was wrong.

1585. Mr. IWATA (Japan) supported the proposal made by the Delegation of the United Kingdom.

1586. Mr. BOGSCH (Director General of WIPO) thought that it was possible to formulate the practical solution made by the Delegate of the United Kingdom in a more legal fashion by stating that, upon specific request, the international depositary authority would communicate the scientific description such as it had received it.

1587. The CHAIRMAN asked the Delegate of the United Kingdom whether the proposal made by the Director General of WIPO satisfied him.

1588. Mr. DAVIS (United Kingdom) replied in the affirmative.

1589. The CHAIRMAN asked whether those delegations which had strongly supported deletion of the provision of Rule 7.3(vi) agreed to replace it by a provision worded in the following manner: "upon specific request, the international depositary authority shall provide the scientific description and/or the taxonomic designation submitted by the depositor."

1590. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC)) was not certain that he had fully understood the situation. If the patent office needed a copy of the scientific description as evidence, why did it not obtain it from the depositor? He asked whether it meant that an endorsed copy of the description should be returned to the depositor. If that were the case, the depositor could send two copies, one of which would be sent back bearing a stamp certifying their receipt.

1591. The CHAIRMAN felt that, as far as national offices were concerned, they wished to obtain a copy of what had originally been deposited with the microorganism. If the depositor were asked for a description at a later stage in the procedure, it would always be extremely difficult to know at what moment it had been established.

1592. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) fully understood the problems faced by the WFCC and thought that at the time of the filing of a patent application, the scientific description which could be produced appeared to be only of a preliminary nature and not of much assistance from the point of view of evidence.

1593. The CHAIRMAN proposed that the discussion be resumed the following morning. He sincerely hoped that it would be possible to conclude the discussion on the Regulations at the next meeting and to give the Conference Secretariat reasonable time to prepare the documents.

Thirteenth Meeting
Friday, April 22, 1977
Morning

Rule 7: Receipt (continued from paragraph 1593)

1594.1 The CHAIRMAN opened the meeting and first of all very warmly thanked those who had organized the brilliant reception offered the previous evening to the participants in the Budapest Diplomatic Conference by the Patentbüro Danubia and the Patent and Law Office for International Affairs.

1594.2 He resumed the discussion on Rule 7 and recalled that the Main Committee had decided to delete Rule 7.3(vi) and that it had to discuss the proposals which provided for the possibility of obtaining a copy of the scientific description and/or taxonomic designation upon specific request. The description was optional and supply of a copy would also be optional. He proposed that Rule 7.3(vi) be replaced by another provision stating that "the receipt shall mention the presence or absence of such a description," in order to know whether a description had been deposited. He opened the discussion on the suggestion.

1595. Mr. PAPINI (Italy) supported the suggestion of the Chairman.

1596. Mr. DAVIS (United Kingdom) was not quite sure that the Chairman's proposal met the concern he had expressed the previous day. He had stated that, insofar as a taxonomic designation had been filed, its purpose was to assist in identifying the sample in case of dispute. Therefore, he thought that it was not sufficient for the receipt simply to mention that a taxonomic designation existed, but industrial property offices must be given the right to ask for the taxonomic designation.

1597. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC)) had no objection to that suggestion, provided that the competent authorities were prepared to pay the expenses entailed in supplying the scientific description.

1598.1 The CHAIRMAN noted that there were no further remarks and concluded that the text of Rule 7.3 should be maintained as adopted at the previous meeting, that was to say without the provision of Rule 7.3(vi).

1598.2 He turned to Rules 7.4 and 7.5 and indicated that there were no proposals thereon.

1599. Rules 7.4 and 7.5 were adopted as appearing in the draft.

Rule 8: Later Indication or Amendment of the Scientific Description and/or Proposed Taxonomic Designation

1600. The CHAIRMAN took up Rule 8.1. He thought that the proposals submitted by the Delegations of Italy (document DMO/DC/27) and Romania (document DMO/DC/24), to the extent that they were based on the obligatory nature of the description, were no longer relevant. However, he found it difficult to judge whether the remainder of the proposal of the Delegation of Romania should be taken up; he asked the latter Delegation whether it intended to maintain the other part of the said proposal.

1601. Mr. IANCU (Romania) replied that, in view of the amendments made to Articles 6 and 7, his Delegation considered that its proposal was no longer pertinent.

1602. The CHAIRMAN concluded that the same was true of the proposal submitted by the Delegation of Italy (document DMO/DC/27).

1603. Rule 8.1 was adopted as appearing in the draft, subject to necessary drafting changes.

1604. The CHAIRMAN turned to Rule 8.2.

1605. Mr. SCHLOSSER (United States of America) apologized for making a statement at that particular moment on Rule 8 as a whole. His Delegation understood that, under that Rule, no legal implications were attached to the scientific description other than those appearing in patent applications. It wished to know whether that was a correct understanding.

1606. Mr. BOGSCH (Director General of WIPO) confirmed that the understanding of the Delegate of the United States of America was correct.

1607. Mr. SCHLOSSER (United States of America) hoped that the reply would be included in the Records of the Budapest Diplomatic Conference.

1608. The CHAIRMAN assured the Delegate of the United States of America that his question and the reply given by the Director General of WIPO would appear in the Records of the Budapest Diplomatic Conference.

1609. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC)) apologized for returning to the question of the description. Under Rule 8.2, the attestation must give the information mentioned in Rule 8.1(b)(i) to (iv). That meant, in practice, that the international depositary authority must send the depositor an endorsed copy of the new description and an endorsed copy of the previous description. However, the depositor already had the previous description since it was his own description. In other words, the depositor twice sent a copy of the original description to the depositary authority, which twice sent back a copy to the depositor. He wondered whether it was really necessary and asked for clarification on the question.

1610. The CHAIRMAN wondered whether the fact that the information was contained in the document in the form of an attestation by the international depositary authority did not confer on it a character of authenticity and guarantee that it was a copy of the documents as they had originally been deposited.

1611. Mr. BOGSCH (Director General of WIPO) remarked that the depositor did not ask for the attestation because he did not know what he had said, but because he needed it for evidence.

1612. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) was sorry to have to bring up the problem again with regard to Rule 12. If the description contained photographs which required reproduction, the procedure would necessitate

considerable expense. Where the description was contained on one page, there would be no cost entailed. However, certain descriptions, for example, those of fungi, covered several pages and were accompanied by photographs. He asked the Main Committee to take that problem into account and to consider the fees which would be entailed in making copies.

1613. Mr. BOGSCH (Director General of WIPO) proposed that the words "without charging a fee" be replaced by the words "against payment of an appropriate fee."

1614. The CHAIRMAN asked whether the last statement made by the Director General of WIPO met the concern expressed by the Representative of WFCC and whether the delegations were prepared to accept the amendment. He noted that there were no objections.

1615. Rule 8.2 was adopted with the amendment set out in paragraph 1613.

Rule 9: Storage of Microorganisms

1616. The CHAIRMAN took up Rule 9 and indicated that there was a whole series of proposals for amendment. On Rule 9.1, there were basically two proposals submitted by the Delegations of the United Kingdom (document DMO/DC/5) and the United States of America (document DMO/DC/26). The latter proposal was to specify that the period of 30 years was to be calculated from the date of the filing of the patent application and not from the date of the deposit of the sample of the microorganism. As it concerned a detail, the Chairman proposed that it be studied first.

1617. Mr. SCHLOSSER (United States of America) stated that, after reflection, his Delegation had decided to withdraw its proposal.

1618. The CHAIRMAN asked the Delegation of the United Kingdom to explain its proposal, which covered a basic point.

1619. Mr. DAVIS (United Kingdom) thought that his Delegation's proposal was self-explanatory and that it called for a decision which was, in principle, very simple. It was extremely important for the depositor that the microorganism be preserved alive. The Delegation of the United Kingdom proposed that the international depositary authority store the microorganism for a period of 25 years--instead of the 30 years laid down in the draft--subject to the payment of the necessary fees, which would leave the depositary authority free, in fact, to ask for payment of fees during that period, for example, every five years. He pointed out that this amendment also involved changing Rule 12, for which his Delegation had proposed the relevant amendment (document DMO/DC/5).

1620. The CHAIRMAN asked the Delegate of the United Kingdom whether he wished his proposal to be discussed as a whole or whether the Main Committee could first of all discuss the principle of fees and then the question of the period.

1621. Mr. DAVIS (United Kingdom) said that the question of the period was of little importance, what was important was the principle of the fees.

1622. The CHAIRMAN proposed that the discussion start with the problem of the periodic payment of fees for the storage of deposited microorganisms. He asked whether any delegation seconded the proposal of the Delegation of the United Kingdom.

1623. Mr. GUERIN (France) asked the Delegation of the United Kingdom what penalty it thought should be imposed when the fees were not paid. Did it mean that the sample would be available to the public or destroyed?

1624. Mr. DAVIS (United Kingdom) agreed that the question was relevant. He said that his Delegation had considered that the sanction should be loss of patent rights, but it had not thought of the future of the deposited microorganism itself.

1625. Mr. BOGSCH (Director General of WIPO) emphasized that, whatever the sanction, it would probably be unsatisfactory. If the microorganism were destroyed, it would then be impossible to have later access to the file. If the microorganism were made available to the public, the sanction would be too harsh. On the other hand, if there were no sanctions, then the whole system would not make much sense. The collection of fees was a heavy administrative burden for the depositary authority and for the depositor, whether it was every year or every five years. It would be simpler to calculate the fee to include all the expenses entailed in storing the microorganism for 25 or 30 years.

1626. The CHAIRMAN asked once again whether any delegation seconded the proposal made by the Delegation of the United Kingdom.

1627. Mr. IWATA (Japan) seconded the proposal made by the Delegation of the United Kingdom, with the reason being that in Japan the microorganism was considered to be the property of the depositor and his own responsibility.

1628. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) supported the point of view expressed by the Director General of WIPO. Present practice was that if a person wished to abandon a patent, he could stop payment of the fee and the microorganism would be returned to him. However, under the Treaty that possibility no longer existed. The international depositary authority was responsible for the viability of the microorganism for a period of 30 years. It was important to realize that, if the payment of the fee were made annually or every five years, the depositary authority had no means by which it could rid itself of the burden. Furthermore, it would transform culture collections into

tax offices. Certain organizations were not very prompt in paying. Then, speaking on behalf of the American Type Culture Collection (ATCC), Mr. Donovick said that deposits had already been made with that organization for a period of 30 years and the fees levied for that period of 30 years were the same as for a period of four or five years. To return to a system of annual fees would not save any money since it was a far more costly procedure.

1629. Mr. WERNER (European Federation of Agents of Industry in Industrial Property (FEMIPI)) observed that other culture collections had already decided to adopt a system of annual fees. He pointed out that Rule 12.1(b) would make such a practice impossible for culture collections. He wondered whether it were not therefore possible to amend Rule 12.1(b) by replacing the words "shall be" by the words "may be collected." Thus, each depositary authority would be free to decide, in view of their legal, economic or other status, whether it would collect a fee for the storage of microorganisms for a period of 30 years (as in the case of ATCC or Japan) or whether it would continue to collect annual fees. In the latter case, if the depositor forgot to pay the annual fee, it could then, in accordance with its regulations, make the microorganism available to the public. The microorganism would be stored for several years (at least 30 years) in the public collection. The depositor would then be responsible for choosing the culture collection and the system of fees which he preferred. The Representative of FEMIPI considered that if Rule 12.1(b) could be amended as he had proposed, it would solve many problems and would be to the advantage of the various culture collections.

1630. Mr. IWATA (Japan) wished to add something to the point of view he had previously expressed (see paragraph 1627). The draft Treaty recommended a lump sum fee and, in accordance with Rules 9.1 and 12.1(b), the depositor must pay a fee for the storage of the microorganism for a period of 30 years at the time of deposit. However, during those 30 years, the cost of storage could increase from year to year. Therefore, the system of payment in a lump sum did not correspond to the actual expenses of the depositary authority. For that reason, he preferred an annual fee.

1631. Mr. BOGSCH (Director General of WIPO) indicated that, before getting involved in a discussion of the technical details mentioned by the Delegate of Japan, the basic principle of withdrawal of the microorganism by the depositor should be studied. That was what the proposal of the Delegation of the United Kingdom amounted to; it was a roundabout way of saying that the deposited microorganism would be stored for as long as the depositor so wished. He could withdraw it. Once a decision had been taken on the basic principle, the technical details could be considered, namely, the mode of payment of the fees.

1632. Mr. HALLMANN (Federal Republic of Germany) said that the problem under discussion was of special interest to his Delegation since, in his country, it had always been understood that when a patent application had been published,

the depositor of the microorganism and the patent applicant no longer had the right to withdraw the deposited sample since, from that moment, the sample constituted part of the prior art and had to be kept independently of whether the fee was paid or not.

1633. Mr. JACOBSSON (Sweden) said that, in view of the analysis made by the Director General of WIPO and the statement of the Delegation of the Federal Republic of Germany, his Delegation could no longer support the proposal made by the Delegation of the United Kingdom.

1634. Mr. van WEEL (Netherlands) stated that all he wished to say had been contained in the statement of the Delegation of the Federal Republic of Germany.

1635. Mr. GUERIN (France) declared that, in view of all that had been said previously, he could also no longer support the proposal of the Delegation of the United Kingdom.

1636. Mr. SCHLOSSER (United States of America) was also opposed to the proposal of the Delegation of the United Kingdom.

1637. Mr. FICHTE (Austria) fully shared the point of view expressed by the Delegation of the Federal Republic of Germany.

1638. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) recalled that the wording of Rule 9.1 had been the subject of many discussions during the preparatory meetings. However, the fact that when a patent expired it remained a source of public information seemed to have been overlooked. The purpose of the patent system was to enable an invention to be used by other persons after the expiry of a specified period of protection. If it were possible for the deposit to be inaccessible after expiry of the patent or to be withdrawn, or if it were necessary for the depositor of the microorganism to pay a fee after his patent had expired, then--in the view of the Representative of CNIPA--the aim of the patent system, which is to disseminate information which could eventually be used, would not be achieved.

1639. The CHAIRMAN noted that six delegations had clearly spoken against the principle of the possibility of withdrawing the deposit and, therefore, against the principle of annual fees. He asked the Delegates of the United Kingdom and Japan whether they wished a vote to be taken.

1640. Mr. DAVIS (United Kingdom) said that, subject to the statement by the Delegation of Japan, his Delegation would withdraw its proposal.

1641. Mr. IWATA (Japan) indicated that he would not insist on a vote.

1642. The CHAIRMAN asked the Delegate of the United Kingdom whether he insisted that the period of storage of microorganisms should be 25 rather than 30 years.

1643. Mr. DAVIS (United Kingdom) pointed out that he had already emphasized that it was a question of little importance.

1644. The two proposals having been withdrawn, Rule 9.1 was adopted as appearing in the draft.

1645. The CHAIRMAN turned to Rule 9.2 and recalled the drafting proposal contained in document DMO/DC/32, which resulted from the decisions taken concerning intergovernmental organizations.

1646. The proposed drafting change mentioned in the preceding paragraph was adopted.

1647. The CHAIRMAN indicated that the Delegation of Japan had proposed the insertion of a new rule between Rules 9.1 and 9.2 of the draft (document DMO/DC/15).

1648. Mr. IWATA (Japan) said that his Delegation proposed the insertion of a new Rule 9.2 and renumbering the present Rule 9.2 to become Rule 9.3. The new Rule, entitled "Return or Destruction of the Deposited Microorganism," would state: "As long as no publication for the purposes of patent procedure has occurred, the depositor may request the international depositary authority to return to him the deposited microorganism or to destroy it, and the said authority shall promptly comply with the request." The Delegation of Japan held the view that deposited microorganisms were the property of the depositor. It appeared to him to be meaningless to keep a microorganism for 30 years for which no publication for the purposes of patent procedure had been made and for which no samples could be released. Therefore, provisions should be included in the Regulations to cover the case of the return of the microorganism to the depositor or of its destruction.

1649. The CHAIRMAN pointed out that the proposal of the Delegation of Japan concerned the possibility for the depositor of the microorganism to request that the microorganism either be returned to him or destroyed, provided that there had not yet been any publication of the patent application. He recalled that the Main Committee had just taken a decision on the principle of the withdrawal of the microorganism, based on the statement made by the Delegation of the Federal Republic of Germany and supported by the point of view that the microorganism was part of the prior art once the patent application had been published. In the view of the Chairman, the decision taken on that question did not automatically preclude a decision on the proposal of the Delegation of Japan because the latter concerned an unpublished patent application. He asked whether the proposal was seconded by a governmental delegation.

1650. Mr. TUULI (Finland) supported the proposal of the Delegation of Japan.

1651. The CHAIRMAN opened the discussion on the proposal.

1652. Mr. KÄMPF (Switzerland), addressing himself to the authors of the proposal, asked for clarification concerning the meaning of the words "no publication... has occurred." Was it final--that was to say there had been no publication and there would be none in the future?

1653. The CHAIRMAN pointed out that the question arose for a whole series of patent applications based on the same deposit.

1654. Mr. BOGSCH (Director General of WIPO) asked the Delegation of Japan how the depositary authority would know whether publication had taken place. Did it only take into account the statement of the depositor? If that were so and the depositor had not spoken the truth in stating that there had been no publication, what sanction would be taken?

1655. Mr. IWATA (Japan), replying to the question of the Director General of WIPO, said that, in his view, there should be a system requiring the depositor to inform the international depositary authority that he had withdrawn his patent application. He acknowledged that without such a system there would be a certain number of problems.

1656. Mr. HALLMANN (Federal Republic of Germany) did not think that the proposal made by the Delegation of Japan was a very practical one and he preferred the text appearing in the draft (document DMO/DC/4). His Delegation could, however, accept the proposal if it were amended by the insertion of the following words at the end of new Rule 9.2: "...unless the national law otherwise provides."

1657. The CHAIRMAN asked the Delegate of the Federal Republic of Germany whether, in that case, the international depositary authority would be responsible for verifying that the withdrawal or return of the microorganism was in accordance with the national law. He doubted whether that would be possible.

1658. Mr. JACOBSSON (Sweden) said that his Delegation did not support the proposal of the Delegation of Japan. He agreed with the Director General of WIPO that the task of verifying in what countries a given patent application had been deposited and afterwards whether publication had occurred would be an excessively heavy burden on international depositary authorities. In addition, for the Delegation of Sweden, it was a question of principle. A patent application which was withdrawn before publication nevertheless remained in the archives of the patent office. The applicant did not have the right to withdraw the file of the application and destroy it. Since the deposit was considered as forming part of the description and, consequently, part of the application, the same treatment should apply to a deposit, which could not be withdrawn even if the application were not published.

1659. Mr. van WEEL (Netherlands) had the same reservations as the Delegate of Sweden. He considered that it was a rather dangerous proposal for the reasons which had been put forward by the Director General of WIPO. It would completely change the established system as the international depositary authority would have to be informed of each deposit in the various countries. Therefore, the Delegation of the Netherlands could not accept the proposal made by the Delegation of Japan.

1660. Mr. MARTIN (International Chamber of Commerce (ICC)) asked the Delegate of Sweden what was the sense of keeping the deposit of a microorganism secret for 30 years, which unnecessarily placed a burden on the international depositary authority.

1661. Mr. KOMAROV (Soviet Union) was in favor of keeping the text which appeared in the draft.

1662. Mr. JACOBSSON (Sweden) considered that the question of the Representative of the ICC could be put as follows: "Why keep unpublished patent applications in the files of the patent office?" He pointed out that keeping patent applications in the archives of the patent office took up considerably more space than the storage of small samples with international depositary authorities. In order to keep complete files of patent applications, even those which had been withdrawn, the deposited microorganisms should also be kept.

1663. Mr. SCHLOSSER (United States of America) was in favor of maintaining the text appearing in the draft (document DMO/DC/4) for the reasons put forward by the Delegation of Sweden and the other delegations which had spoken to that end.

1664. Mr. TROTTA (Italy) spoke in favor of maintaining the text of the draft. He emphasized that there was a certain logic and a certain similarity between the filing of a patent application and the deposit of a microorganism and he thought that it should be kept in view of its use for prior art. He feared that if another formula were adopted, it would raise problems of a practical nature.

1665. The CHAIRMAN noted that six delegations had spoken against the proposal of the Delegation of Japan and he asked the latter whether it wished a vote to be taken.

1666. Mr. IWATA (Japan) answered the Chairman in the affirmative.

1667. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)) thought that the proposal of the Delegation of Japan was necessary, if only to comply with Article 4C(4) of the Paris Convention. He recalled that the latter Article permitted withdrawal of an application for all purposes and the filing of a new application which could, at least in some countries, form the basis for a priority claim. If an application were withdrawn for all purposes and that

fact was certified by the patent office, as in the United Kingdom, for example, it would also mean the withdrawal for all purposes of the reference in that application to the deposit made with the culture collection. He thought that it should be made clear that the depositor had the right to withdraw his application simply because he wished to do so. The Representative of CNIPA did not see any problem in the fact that a patent office certified that a patent application had not been published or would not be published before a specified date. Such a certificate would serve to provide the necessary information to the international depositary authority so that the microorganism could be returned or destroyed.

1668. The CHAIRMAN put the proposal of the Delegation of Japan to the vote.

1669. The proposal made by the Delegation of Japan was rejected by 21 votes to 2.

1670.1 The CHAIRMAN returned to Rule 9.2 of the draft, in respect of which the drafting change concerning intergovernmental organizations (document DMO/DC/32) had already been accepted (see paragraph 1646).

1670.2 He pointed out that the Delegation of France had submitted a proposal for amendment concerning the drafting (document DMO/DC/6) and he proposed that it be referred to the Drafting Committee.

1671. It was so decided.

1672. The CHAIRMAN indicated that another proposal for amendment had been submitted, namely that of the Delegation of Japan (document DMO/DC/15), which proposed that the words between square brackets be retained.

1673. Mr. BOGSCH (Director General of WIPO) emphasized that he was fully in agreement with the Delegate of Japan since keeping the words in square brackets would add to the clarity.

1674. Mr. HÜNI (Switzerland) supported the proposal of the Delegation of Japan, on condition that the "Contracting Party" was that with whose office the patent application had been filed.

1675. Mr. KOMAROV (Soviet Union) supported the proposal of the Delegation of Japan.

1676. Mr. SCHLOSSER (United States of America) also supported the proposal of the Delegation of Japan.

1677. Mr. GUERIN (France) said that he could only support the proposal of the Delegation of Japan if the amendment proposed by Switzerland were added.

1678. Mr. TAK (Netherlands) was opposed to maintaining the words between square brackets, firstly, because they were superfluous for the reasons given in the footnote to document DMO/DC/4 and, secondly, because any industrial property office could obtain information, even if no patent application concerning a given microorganism had been filed with the patent office. On the other hand, the international depositary authority did not know where the patent application had been filed and where it had not been filed.

1679. Mr. JACOBSSON (Sweden) said that he could support the proposal of the Delegation of Japan as amended by the Delegate of Switzerland. If the amendment proposed by the latter Delegation were not accepted, he would prefer the deletion of the words in square brackets.

1680. Mr. DEITERS (Federal Republic of Germany) indicated that his Delegation could, in principle, accept the proposal of the Delegation of Japan. He confessed that he had not fully understood the amendment proposed by the Delegation of Switzerland and he asked the latter to explain it.

1681. Mr. BÜNI (Switzerland) repeated his proposal for amendment. The "Contracting Party" should be qualified in the same way as "Contracting Party" was qualified in Rule 11.1(i), which stated that: "an application referring to the deposit of that microorganism has been filed with that office." He hoped the Drafting Committee would alter the wording of Rule 9.2 accordingly.

1682. The CHAIRMAN asked the Delegate of Switzerland whether he was in a position to make a specific proposal on the amended text of the Rule.

1683. Mr. BÜNI (Switzerland) replied in the negative.

1684. Mr. TUULI (Finland) supported the proposal of the Delegation of Japan as amended by the Delegation of Switzerland.

1685. Mr. SCHLOSSER (United States of America) recalled that he had supported the proposal of the Delegation of Japan. At present, he also supported the amendment made by the Delegation of Switzerland to that proposal.

1686. Mr. TROTTA (Italy) likewise supported the proposal of the Delegation of Japan with the amendment proposed by the Delegation of Switzerland.

1687. Mr. KOMAROV (Soviet Union) asked whether the Delegation of Japan agreed with the proposal of the Delegation of Switzerland.

1688. The CHAIRMAN asked the Delegation of Japan to express its opinion on the proposal made by the Delegation of Switzerland.

1689. Mr. IWATA (Japan) replied that he had not fully understood the proposal made by the Delegation of Switzerland.

1690. The CHAIRMAN suggested that, during the break, the Delegation of Switzerland should meet the Delegation of Japan in order to explain the problem and he suspended the meeting.

[Suspension]

1691. The CHAIRMAN resumed the debate on the proposal made by the Delegation of Japan and asked the Delegate of Switzerland to submit the new text of Rule 9.2 drafted in the meantime.

1692. Mr. HÜNI (Switzerland) proposed that the last words "of a Contracting Party" in Rule 9.2 be replaced by the following words: "of a Contracting State or of an intergovernmental industrial property organization and if that office declares that a patent application referring to such deposit has been filed with it."

1693. The CHAIRMAN asked the Main Committee whether it agreed with the drafting, which had been approved by the Delegation of Japan.

1694. Mr. GUERIN (France) thought that a simple statement by the industrial property office that a patent application referring to a given deposit had been submitted to it would not be sufficient. The word "proves" should perhaps be used instead of "declares." He stated that his Delegation continued to support the amended proposal, although it still had some doubts as to its real utility since, in any case, it was almost certain that, even if there were no such provision, a depositary authority could give such information.

1695. The CHAIRMAN recalled that the proposal under discussion concerned the words appearing in square brackets in the draft (document DMO/DC/4). It therefore concerned the information requested by an office. In his view, if the office declared that the information related to a patent application filed with it, the proof requested by the Delegate of France was not necessary.

1696. Mr. GUERIN (France) pointed out that it concerned the information necessary in order to identify the sample in question.

1697. The CHAIRMAN proposed that the question be referred to the Drafting Committee.

1698. Mr. DAVIS (United Kingdom) asked for clarification. Rule 9.2 required that the deposit be kept secret for as long as publication had not occurred. He presumed that the principle was the same for all contracting countries. It appeared to him that the international depositary authority had no way of knowing when publication had occurred so long as there was no request for the purposes of furnishing a sample. If a request for a sample were submitted, then the request

would obviously contain an attestation that publication had occurred. In his understanding, the depositary authority must keep the deposit secret indefinitely until a request for a sample was submitted. He asked whether that interpretation was correct.

1699. The CHAIRMAN wondered whether the Rule should not be considered to mean that as long as it had not been proved that publication had occurred, the deposit was kept secret.

1700. Mr. BOGSCH (Director General of WIPO) said that he had not wished to speak on the Rule because it contained a fundamental defect. What did the word "information" mean? He recalled that, even after publication, certain proof was necessary--in conformity with Rule 11.1(i)--in order to have access to the sample. He thought that the Rule meant that the depositary authority could give the same sort of information without furnishing the sample. But, in his view, it was not clearly brought out in the Rule. The Director General of WIPO stated that if he had drafted Rule 9.2 he would have said that, subject to the provisions of Rule 11, any information concerning the deposited microorganism must be kept secret. Obviously, the effect of the publication was of no relevance in that situation and the question posed by the Delegate of the United Kingdom introduced a great element of uncertainty. At the beginning, Rule 9.2 was intended to strengthen what was already contained in Rule 11: if Rule 11 were not involved, the international depositary authority did not have the right to do anything. The Director General of WIPO therefore proposed that Rule 9.2 be amended to read "the international depositary authority is obliged to secrecy, subject to Rule 11.1."

1701. Mr. TAK (Netherlands) said that, notwithstanding what had previously been said (see paragraph 1678), his Delegation preferred the wording proposed by the Director General of WIPO since in its simplicity it covered all the possibilities.

1702. Mr. TROTTA (Italy) supported the proposal of the Director General of WIPO.

1703. Mr. DAVIS (United Kingdom) also supported the proposal of the Director General of WIPO.

1704. The CHAIRMAN noted that three delegations had supported the simplified wording of Rule 9.2 submitted by the Director General of WIPO and that no delegations were opposed to that proposal. He suggested that the Drafting Committee be entrusted with the task of finalizing the wording of the Rule.

1705. It was so decided (continued at paragraph 1769).

Rule 10: Viability Test and Statement

1706. The CHAIRMAN turned to Rule 10 and indicated that the Delegation of Sweden had submitted a proposal concerning the various provisions of Rule 10 (document DMO/DC/18).

1707. Mrs. WALLES (Sweden) emphasized that the changes proposed to Rules 10.1(i) and 10.2(a)(i) were drafting amendments. They had been submitted in order to make it clear that Rule 10 covered new deposits as well as original deposits. The amendments proposed to Rule 10.2(b) and Rule 10.2(e)(vi) had been submitted to ensure that all the elements to be contained in the viability statement would be mentioned together in Rule 10.2(e), either by using the wording proposed in document DMO/DC/18, or by simply moving (b) to (e). The Delegation of Sweden proposed that the words "and that the results of the test were negative" be deleted at the end of Rule 10.2(e)(vi) since it considered that it could be interesting and even important to know under what conditions the viability test had been made, even in cases where the results were positive. The Delegate of Sweden hoped that the interested circles would give their opinion on the latter question.

1708. The CHAIRMAN suggested that the proposals submitted by the Delegation of Sweden be examined one after the other. He started with the proposal concerning Rule 10.1(i) and, noting that it concerned drafting, proposed that it be referred to the Drafting Committee.

1709. It was so decided.

1710. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC)) said that his organization had noticed a practical problem concerning the interpretation of the word "promptly" in Rule 10.1(i). WFCC interpreted the word as meaning that when a microorganism was deposited, the depositary authority must, as soon as possible, test its viability and send the results to the depositor. However, according to Rule 5.1, which mentioned "any transfer," if an international depositary authority permanently ceased to carry out the tasks incumbent upon it and if all the deposits were transferred to another authority, there could be several hundred different deposits. In that case, what was the meaning of the word "promptly"? The substitute authority could not abandon all its other activities and devote itself entirely to testing the viability of those hundreds of deposits. He hoped that the drafting would be amended to state, for example, "as soon as possible" instead of "promptly."

1711.1 The CHAIRMAN remarked that the words "à bref délai" in French meant in as short a time as possible. He did not think it was necessary to amend Rule 10.1(i), especially if the statement of the Representative of WFCC appeared in the Records of the Budapest Diplomatic Conference and could be used to interpret that proposal.

1711.2 The Chairman recalled that the Delegation of the United States of America had proposed to delete the provision of Rule 10.1(ii) (document DMO/DC/33).

1712. Mr. ALLAN (United States of America) pointed out that under the wording of Rule 10.1(ii) as it appeared in the draft (document DMO/DC/4), it was not possible to determine when the viability test should be carried out and which microorganisms would be subject to testing. The Rule was vague and difficult, if not impossible to apply in practice. The Delegate of the United States of America considered that such a provision was not really necessary. Any designated international depositary authority would carry out its tasks satisfactorily whatever the procedures necessary for safe storage of its deposits. He indicated that, in fact, Rules 2.2(ii) and 9.1 already required depositary authorities to provide the necessary means and care for the storage of microorganisms in order to ensure their viability and he cited the text of Rule 9.1 as an example.

1713. Mr. TAK (Netherlands) entirely subscribed to the reasoning underlying the proposal of the Delegation of the United States of America.

1714. The CHAIRMAN asked whether any delegations were opposed to the proposal of the Delegation of the United States of America.

1715. Mr. DAVIS (United Kingdom), while specifying that he was not opposed to the proposal of the Delegation of the United States of America, considered that the question was closely linked to the problem of new deposits: if checking were carried out regularly, it would limit the period of uncertainty before the test of the viability of the microorganism.

1716. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC)) informed the Main Committee that, in the case of certain microorganisms, a regular check could be carried out every 20 years.

1717. Mr. HALLMANN (Federal Republic of Germany) preferred the text of the draft. He could agree to replacing the word "regular" by the word "reasonable."

1718. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC)) expressed the view that in the case of certain microorganisms, an interval of 20 years between each check was in fact a reasonable interval.

1719. The CHAIRMAN suggested that the question should be decided by a vote on the proposal of the Delegation of the United States of America.

1720. The proposal of the Delegation of the United States of America to delete the provision of Rule 10.1(ii) referring to the regular testing of the viability was rejected by 10 votes to 8, with 5 abstentions.

1721. The CHAIRMAN then asked the Delegation of the Federal Republic of Germany to make a concrete proposal for the replacement of the word "regular" in that Rule.

1722. Mr. HALLMANN (Federal Republic of Germany) reaffirmed his proposal to replace the word "regular" by the word "reasonable."

1723. Mr. HÜNI (Switzerland) supported the proposal made by the Delegation of the Federal Republic of Germany.

1724. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC)) considered that the words "regular" and "reasonable" were purely subjective. He asked whether it were not possible to merely state "at certain intervals depending on the kind of microorganism" or even "when necessary."

1725. The CHAIRMAN asked whether any delegations were opposed to the proposal of the Federal Republic of Germany and he noted that such was not the case.

1726. Rule 10.1 was adopted with the amendment mentioned in paragraph 1722.

1727. The CHAIRMAN turned to Rule 10.2 and indicated that the Delegation of Sweden had submitted a drafting proposal concerning Rule 10.2(a)(i) (document DMO/DC/18) and he proposed that it be referred to the Drafting Committee.

1728. It was so decided.

1729. Rule 10.2(a) was adopted, subject to the amendment mentioned in paragraph 1727.

1730. The CHAIRMAN said that the Delegation of Sweden, in document DMO/DC/18, had also proposed the deletion of the provision of Rule 10.2(b).

1731. Mr. HÜNI (Switzerland) supported the proposal of the Delegation of Sweden which, in his view, was dependent on the insertion of a new point (vi) in Rule 10.2(e).

1732. The CHAIRMAN noted that the two proposals of the Delegation of Sweden concerning Rule 10.2 were linked to each other; they consisted in deleting the provision of Rule 10.2(b) and inserting it as a new Rule 10.2(e)(vi), former Rule 10.2(e)(vi) of the draft becoming Rule 10.2(e)(vii). The Main Committee was therefore obliged to discuss them together.

1733. Mr. DEITERS (Federal Republic of Germany) declared that he had finally understood the meaning of the proposal of the Delegation of Sweden and that he could accept it.

1734. Mr. TAK (Netherlands) said that, in his view, the proposal of the Delegation of Sweden did not concern the same matter. In the draft, it was stipulated that the viability statement would indicate whether the microorganism was viable or whether it was no longer so. It was an indication resulting from one sort of viability test. However, according to the Delegate of the Netherlands, there were two sorts of viability test. The first was a qualitative test which answered

the question of whether there were any latent microorganisms in the sample. The reply was simply "yes" or "no." The second was a far more complex quantitative test to determine the percentage of living and dead microorganisms. He thought it should be clearly mentioned that it was a qualitative test and not a quantitative test--which would not be the case if it were only required to mention the results of the viability test, as had been proposed by the Delegation of Sweden for Rule 10.2(e)(vi).

1735. Mrs. WALLES (Sweden) said that if it would give rise to misunderstandings, her Delegation agreed to remove the wording from subparagraph (b) to subparagraph (e).

1736. The CHAIRMAN asked whether it were not possible to refer that particular question to the Drafting Committee, requesting it to take into account the remarks of the Delegation of the Netherlands and to facilitate the discussion by deciding simply to delete the provision of Rule 10.2(b) and to add the provision of new Rule 10.2(e)(vi).

1737. It was so decided.

1738. The CHAIRMAN said that the last proposal made by the Delegation of Sweden on Rule 10.2 was to delete the last words "and that the results of the test were negative" in the provision of Rule 10.2(e)(vi) of the draft, which were going to become Rule 10.2(e)(vii); he added that the proposal was similar to that made by the Delegation of the United States of America (document DMO/DC/26).

1739. Mrs. WALLES (Sweden) stated that the present wording of Rule 10.2(e)(vi) of the draft indicated that it only concerned information with regard to negative results of the viability test. In her view, it would be extremely interesting and important to know under what conditions the test had had positive results.

1740. Mr. SCHLOSSER (United States of America) confirmed that his Delegation had submitted a similar proposal on Rule 10.2(e)(vi) of the draft (document DMO/DC/4). He thought that persons interested in the viability test would like to know the conditions under which the test had been made regardless of whether the results were negative or positive. It was possible that a test giving positive results had been carried out improperly. It was precisely that kind of information which persons would wish to have when studying the results of viability tests.

1741. Mr. TAK (Netherlands) expressed the view that the text of Rule 10.2(e)(vi) appearing in the draft was perfectly logical and that it should not be changed. If a test result were positive, it did not matter much how the test had been carried out. He could not imagine how a positive result could be obtained if the viability test had not been carried out correctly. But, on the other hand, if the result were negative, the depositary authority might be asked how the test that had led to a negative result had been carried out.

1742. Mr. SCHLOSSER (United States of America) emphasized that if the results were positive at the conclusion of a test which had not been carried out correctly, it could very well be that the microorganism was dead. If the results were negative at the conclusion of a test which had not been carried out correctly, it could very well be that the microorganism was alive. Therefore, he considered that any person interested in the viability statement should know the way in which the test had been carried out and that constituted a vital part of the information.

1743. Mr. BOUSFIELD (World Federation for Culture Collections (WFCC) stated that he was in complete agreement with the Delegate of the Netherlands. In reply to the statement made by the Delegate of the United States of America, he said that he did not understand how, if the test were not carried out correctly, it could be proven that the microorganism was alive. But, on the other hand, it was possible that, at the conclusion of a test which had not been carried out under the right conditions, it could be proven that the microorganism was dead whereas, in fact, it was alive. He returned to the proposal of the Delegation of Sweden, which had considered that the information given on the positive result and the conditions under which the viability test had been carried out could be "interesting." International depositary authorities agreed to carry out the tasks which were essential for the Treaty, but absolutely refused to be obliged to give "interesting" information. Therefore, the Representative of WFCC asked the Delegation of Sweden whether its proposal was really essential.

1744. Mr. BOGSCH (Director General of WIPO) thought that when a State gave assurances that a given depositary institution was of high repute, it was to be hoped that viability statements given by it were reliable.

1745. Mr. WATSON (Committee of National Institutes of Patent Agents (CNIPA)), while accepting to a large extent the point of view of the Representative of WFCC, felt that he must support the proposal of the Delegation of Sweden, for the reasons so ably explained by the Delegate of the United States of America. He mentioned a recent experience which he had had. A patent specification mentioned a deposit made in two well-known depositary institutions. Samples were requested from those two institutions. The first stated that the sample was available and proved its viability. The second declared that it could not furnish the sample because the microorganism was not viable. In the latter case, the conditions under which the second institution had carried out the viability test were not known.

1746. Mr. HÜNI (Switzerland) supported the proposal of the Delegation of Sweden.

1747. The CHAIRMAN asked whether any delegation still wished to speak on the subject and noted that such was not the case. He put to the vote the proposal of the Delegation of Sweden and the Delegation of the United States of America.

1748. The proposal of the Delegation of Sweden and the Delegation of the United States of America was rejected by 9 votes to 4, with 10 abstentions.

1749. Rule 10.2(a)(vi) was adopted as appearing in the draft.

1750. The CHAIRMAN took up Rule 10.2(f) and recalled the proposal for a drafting amendment contained in document DMO/DC/32 concerning intergovernmental industrial property organizations.

1751. The proposal mentioned in the preceding paragraph was adopted.

1752. The CHAIRMAN indicated that in document DMO/DC/15, the Delegation of Japan had proposed that the second sentence of Rule 10.2(f) be deleted.

1753. Mr. IWATA (Japan) said that, in the view of the Delegation of Japan, the second sentence of Rule 10.2(f), which concerned the fees due for any other viability statement, was not necessary since it was a minor problem which could be dealt with in national law.

1754.1 The CHAIRMAN noted that the proposal was not seconded by another delegation and that it could not be put up for discussion.

1754.2 The Chairman drew attention to the last proposal concerning Rule 10.2, submitted by the Delegation of the Federal Republic of Germany (document DMO/DC/12), which proposed the addition of a further subparagraph.

1755. Mr. HALLMANN (Federal Republic of Germany) said that the reason for which his Delegation had proposed the addition was to ensure that, should a challenge be made to the allegation of the depositor, any person receiving the viability statement should be made aware of the fact.

1756. The CHAIRMAN pointed out that there was no link between the proposal of the Delegation of the Federal Republic of Germany on Article 4.1, subsequently withdrawn, and that on Rule 10.2. In the first case, it concerned a challenge with regard to the identity between a new deposit and the original deposit, whereas in the second, the viability was challenged.

1757. Mr. JACOBSSON (Sweden) thought that Article 4 of the Treaty did not expressly stipulate in what situations such a challenge could take place. It could be made before the courts during an action for infringement or in the case of a revocation. He was not sure that the international depositary authority would always know of such a challenge and, therefore, the persons receiving the viability statement would not know whether the depositor's allegation had been contested or not. He therefore asked the Delegation of the Federal Republic of Germany whether the provision it proposed was really of use.

1758. The CHAIRMAN considered that the problem under discussion was sufficiently complex to warrant further reflection. He proposed that the meeting be adjourned and asked the Delegation of Sweden, in the meantime, to discuss the question with the Delegation of the Federal Republic of Germany (continued at paragraph 1762).

Fourteenth Meeting
Friday, April 22, 1977
Afternoon

Rule 9: Storage of Microorganisms (continued from paragraph 1705)

1759. The CHAIRMAN opened the meeting and indicated that the Conference Secretariat had prepared the new text of Rule 9.2 resulting from the decisions on principle taken by the Main Committee during the previous meeting (document DMO/DC/42). He asked the Director General of WIPO to give a few words of explanation.

1760. Mr. BOGSCH (Director General of WIPO) said that the Secretariat had attempted to base the text on two principles: firstly, the fact that a deposit had occurred was secret and, secondly, if the deposit had occurred, information could only be given to those persons who were entitled under Rule 11. He emphasized that it concerned information given at the time the sample was furnished--the conditions mentioned in Rules 11.1, 11.2 and 11.3 applied. In Rule 11.1, when a national industrial property office had examined the request, it must declare that it had received a patent application mentioning the deposit of a microorganism--that was the essence of the proposal made by the Delegation of Switzerland; in Rule 11.2, the information was given upon request by the depositor or upon request by any authority or person authorized by the depositor; in Rule 11.3 the information was given to a third party whose right thereto was certified by the industrial property office concerned (Rule 11.3(a)) or resulted from the fact that the patent had already been published and the accession number communicated--in accordance with the proposal of the Delegation of the United States of America.

1761. Rule 9.2 was adopted as appearing in document DMO/DC/42.

Rule 10: Viability Test and Statement (continued from paragraph 1758)

1762. The CHAIRMAN resumed the discussion on Rule 10.2 and, in particular, the proposal made by the Delegation of the Federal Republic of Germany (document DMO/DC/12) to add a subparagraph (g).

1763. Mr. HALLMANN (Federal Republic of Germany) said that, after some consideration, his Delegation withdrew its proposal.

1764. The discussion on Rule 10 was concluded.

Rule 11: Release of Samples (in the text as signed, Rule 11: Furnishing of Samples) (continued from paragraph 1529)

1765. The CHAIRMAN said that the discussion on the substance of the problems contained in Rule 11 was, in principle, concluded. However, at the request of the Director General of WIPO, he asked the Main Committee to discuss, and possibly adopt, a slightly different wording for Rule 11.3(b) than that approved during the twelfth meeting (see paragraph 1428). He recalled that the latest wording stemmed from a proposal by the Delegation of the United States of America, which essentially provided a form of automatic mechanism by which, when a patent had been issued and published, the national or regional office could communicate the accession number mentioned in the patent granted to the international depositary authority and could declare that the deposited microorganism was thereafter freely available without conditions (see paragraph 1407). The Conference Secretariat, especially the Director General of WIPO, had attempted to revise the wording of the provision, which had been more or less improvised. It had appeared that it was much easier to state positively what the office did and how it did it: the result was the text contained in document DMO/DC/41, which essentially reflected exactly the proposal made by the Delegation of the United States of America and adopted the previous day, but in a more explicit manner.

1766. The new wording of Rule 11.3(b) (document DMO/DC/41) was adopted.

Rule 12: Fees

1767.1 The CHAIRMAN turned to Rule 12 and indicated that the Delegation of the United Kingdom had submitted a proposal (document DMO/DC/5) concerning the provisions of Rule 12.1(a) and (b). He thought that, in view of the decision on principle which had been taken during the previous meeting with regard to the withdrawal of the deposited microorganism and the problem of annual fees (see paragraph 1644), the proposal was no longer relevant and could be considered as having been withdrawn.

1767.2 The Chairman said that the second proposal for amendment of Rule 12 had been submitted by the Delegation of the United States of America (document DMO/DC/26) and concerned the addition of a new provision as Rule 12.1(a)(i) and the renumbering of the provisions of Rule 12.1(a)(i) and (ii) of the draft as 12.1(a)(ii) and (iii), respectively.

1768. Mr. SCHLOSSER (United States of America) explained that the proposal provided for the imposition of a fee by international depositary authorities for notice of the release of samples. Upon reflection, his Delegation had decided to withdraw the proposal since the fee could be covered by those fixed under Rule 12.1(a)(iii).

1769. The CHAIRMAN noted that, in view of the withdrawal of the proposal of the Delegation of the United States of America, there were no more proposals for amendment concerning Rule 12.

1770. Mr. CÍRMAN (Czechoslovakia) asked what would be the consequences if a depositor ceased to pay the fees, because he did not see any provision covering that eventuality.

1771. The CHAIRMAN replied that if the fee were not paid, the deposit would be refused and there would be no receipt. It would not be a valid deposit according to the Treaty. With regard to the furnishing of samples, the Chairman thought that, if the fee were not paid, the sample would not be furnished.

1772. Mr. CÍRMAN (Czechoslovakia) emphasized that he had spoken of the case in which the depositor ceased to pay the fees.

1773. Mr. BOGSCH (Director General of WIPO) recalled that the system of annual payment had been rejected and that it had been decided that the fees would be paid in a lump sum.

1774. The CHAIRMAN concluded that as long as the fee was not paid, the deposit was not considered as valid and the depositary authority would not issue a receipt. The same applied in the case of the furnishing of samples.

1775. Mr. JACOBSSON (Sweden) said that the question addressed to the Director General of WIPO by the Delegate of Czechoslovakia had led him to consider the interpretation of the last sentence after the semicolon in Rule 10.2(f), which provided that when a request for a viability statement was submitted by an industrial property office, the fee was chargeable to the depositor. He wondered what would happen if the depositor did not pay. No provision covered that particular case. As it was unable to receive the statement, the industrial property office would be blocked. On the other hand, if no sanctions were envisaged, the Delegate of Sweden wondered how it was legally possible to charge the fee to the depositor.

1776. Mr. BOGSCH (Director General of WIPO) said that he had asked the Secretary General of the Conference to verify whether there were any provisions containing an answer to that question. The Director General of WIPO suggested that in cases where the viability statement was requested by an industrial property office, the issuance of such a statement should be free of charge. He then wondered what was the meaning of the words "free of charge" in the first sentence of Rule 10.2(f) and added that the wording at the beginning of Rule 10.2(f) should rather be the following: "The viability statement mentioned in paragraph (a)(i) and any viability test requested by an industrial property office shall be free of charge."

1777. Mr. DONOVICK (World Federation for Culture Collections (WFCC)) pointed out that although he could accept that bacterial, and perhaps fungal, cultures should be free of charge since the expenses in those cases were of little importance, he hesitated to apply it to virus cultures for which the viability test was not an insignificant matter. He hoped that there would be some restrictions on the type of viability tests required.

1778. Mr. BOGSCH (Director General of WIPO) predicted that there would be very few cases in which such viability tests would be requested by national offices. He pointed out--should his prognosis not be correct--that the depositary authorities could increase their fees, which was their right after the first two or three years of operation.

1779. The CHAIRMAN added that it was impossible to envisage all the cases and to draw up an absolutely perfect text and, for that reason, it had been provided that the Regulations could be amended.

1780. Mr. CÍRMAN (Czechoslovakia), referring to Rule 9.1: "Duration of the Storage," asked what influence the nonpayment of fees would have on the duration of storage. In his view, the international depositary authority would store the microorganism free of charge in that case.

1781. The CHAIRMAN drew attention to the fact that, the proposal of the Delegation of the United Kingdom having been withdrawn (see paragraph 1767), Rule 12.1(b) appearing in the draft remained valid and, therefore, the storage fee, which was included in the fee paid at the time of deposit, concerned the whole period during which the international depositary authority was obliged to store the deposited microorganism.

1782. Mr. DAVIS (United Kingdom) confirmed that, in order to assist the Main Committee to find a solution, his Delegation withdrew its proposal concerning Rule 12 (document DMO/DC/5), which was closely linked to Rule 9.

1783. Mr. UTERMANN (Federal Republic of Germany) explained that, under Rule 12.1(b), if a depositary authority required a fee, it must charge the fee for the whole period of storage. Referring to the English text of Rule 12.1(b), his Delegation proposed that the word "shall" be replaced by the word "may."

1784. The CHAIRMAN could not find the equivalent of the word "shall" in the French text, the latter merely stated "la taxe est valable."

1785. Mr. BOGSCH (Director General of WIPO) asked what would happen if the international depositary authority chose to receive payment by installments and one of the installments was not paid.

1786. Mr. UTERMANN (Federal Republic of Germany) first of all asked the Representatives of WFCC what would be the amount of advance payment of a storage fee for a period of 30 years.

1787. The CHAIRMAN asked the Representatives of WFCC whether they could give an indication of what the storage fee might be.

1788. Mr. DONOVICK (World Federation for Culture Collections (WFCC)), basing himself on the practical experience of the American Type Culture Collection (ATCC), explained that the latter had calculated that between the time of deposit and the time the patent was issued approximately four years passed. Therefore, the storage fee at that time was for only four years until issuance of the patent and was 115 US dollars per year, that was to say 460 US dollars for the four years, after which there was no fee to pay. At present, arrangements had been made with certain depositors wishing a duration of 30 years and they paid a fee of 500 US dollars in a lump dum. He emphasized that the greatest expense was in respect of the original deposit and the administrative work entailed therein.

1789. Mr. UTERMANN (Federal Republic of Germany) said that the Representative of WFCC had given him a very clear answer. It meant that, in accordance with the provision, a depositor would have to pay at least 500 US dollars. The only other point on which he wished clarification was the amount involved in Rule 12.1(b).

1790. Mr. BOUSFIELD (World Federation for Culture Collections ((WFCC)) remarked that his colleague Mr. Donovick had referred to the ATCC and not to culture collections in general. It was not possible to predict what other culture collections would charge until they had calculated exactly the expenses involved. The fee depended on whether the culture collection was a private organization which had to pay all its own expenses or whether it was a government supported organization. For example, the National Collection of Industrial Bacteria of Great Britain did not charge any fee. The expenses were covered by the sale of samples.

1791. Mr. DAVIS (United Kingdom) confessed to a certain amount of confusion. When his Delegation had submitted its proposal on Rule 9 (see paragraph 1619) at the previous meeting, it had been explained that the fee would be paid in a lump sum at the time of deposit, that after publication of the patent application the deposit constituted a part of the prior art and that it was a duty to the public to store it for 30 years. In that case, he did not think that it was possible at present to introduce in Rule 12.1(b) the option of payment by installments since it would immediately allow for the possibility that the deposit did not constitute a part of the state of the art. Furthermore, the Delegate of the United Kingdom drew attention to a certain inconsistency in the position of the Delegation of the Federal Republic of Germany since, according to the latter it was not obligatory to make a new deposit. If it were admitted that the deposit, once it had been made, constituted part of the state of the art and that it should remain so, the obligatory new deposit was necessary otherwise the state of the

art disappeared. The Delegate of the United Kingdom did not think that, in view of the decision taken on Rule 9 (see paragraph 1644), it was possible to replace the word "shall" by the word "may" in Rule 12.1(b).

1792. Mr. JACOBSSON (Sweden) said that his Delegation also considered that, after the decision taken at the previous meeting, it was not possible to return to payment by installments.

1793. Mr. SCHLOSSER (United States of America) was opposed to changing the text on which the Main Committee had agreed during the previous meeting.

1794. Mr. WERNER (Union of Industries of the European Community (UNICE)) spoke in favor of amending Rule 12.1(b) by replacing the word "shall" by the word "may," provided that the international depositary authority undertook to transfer the deposit to the public part making it available for a period of 30 years. At present, the depositary institution of the Federal Republic of Germany charged a fee of 80 Deutsche Marks per year and, if the depositor was no longer willing to pay, after a period of six months it transferred the deposit to the public part without any fee and undertook to store it for 30 years. Such a practice was in accordance with the requirements of all patent offices and was also in the interests of the depositors. Certain patent applications comprised 40 or more strains. The deposit fee for a single patent application would amount to 20,000 US dollars under the second system, the amount to be paid would be considerably lower. It would be up to the patent applicant to decide whether he would deposit the microorganism with an institution which charged a lump sum at the time of deposit or with an institution requiring an annual payment of the fee. He concluded that if Rule 12.1(b) were amended by replacing the word "shall" by the word "may," subject to the undertaking by the depositary authority to store the deposit for 30 years, it would meet all the interests.

1795. The CHAIRMAN pointed out that the Regulations provided that all the fees would be known and published. Therefore, if present circumstances prevailed, the institution represented by WFCC would have a greater success than that mentioned by the Representative of UNICE.

1796. Rule 12.1 was adopted as appearing in the draft, subject to drafting changes.

1797. The CHAIRMAN turned to Rule 12.2 and recalled that the drafting changes concerning intergovernmental organizations would have to be adopted first (document DMO/DC/32). He added that the proposal originally submitted by the Delegation of the United Kingdom in document DMO/DC/5 concerning Rule 12.2 was at present not relevant and could be considered as having been withdrawn.

1798. Rule 12.2 as amended was adopted.

Rule 13: The Gazette (in the text as signed, Rule 13: Publication by the International Bureau)

1799. The CHAIRMAN turned to Rule 13 and recalled that the Main Committee had in principle taken a favorable view of the idea of replacing the gazette, which would be peculiar to the Union set up under the Treaty, by an organ which already existed, namely Industrial Property. Therefore, the wording of Rule 13 would have to be changed to take that decision of principle into account. He said that the Delegation of Czechoslovakia had submitted a proposal along the same lines (document DMO/DC/22). Since the Main Committee had already accepted the principle, he did not think it was necessary to discuss the proposal in detail.

1800. Mr. CÍRMAN (Czechoslovakia) agreed that his Delegation would not insist on its proposal being discussed in detail.

1801. The CHAIRMAN asked the Main Committee whether the transposition of the decision of principle into the text of Rule 13 could be considered a question of drafting.

1802. Mr. TAK (Netherlands) suggested that any changes in the conditions laid down by international depositary authorities concerning the quality and quantity of deposited microorganisms be added to the list of information to be published.

1803. The CHAIRMAN thanked the Delegate of the Netherlands for having raised that question. He recalled that the Main Committee had adopted a new rule permitting international depositary authorities to lay down conditions concerning the quality, presentation, etc., and he considered that it would be wise also to mention those conditions in Rule 13.

1804. Mr. TAK (Netherlands) apologized for speaking at that particular moment in the debate, but he would prefer to see the conditions mentioned in Rule 3.

1805. The CHAIRMAN wished first of all to deal with the first problem raised by the Delegate of the Netherlands. He proposed that the Director General of WIPO and the Drafting Committee be requested to add a provision to the new text of Rule 13 providing that the amendments made under Rule 6.3 should also be published in Industrial Property.

1806. It was so decided.

Rule 3: Acquisition of the Status of International Depositary Authority (continued from paragraph 1288)

1807. Mr. TAK (Netherlands) returned to his proposal on Rule 3 and pointed out that it provided that at the time of acquisition of the status of international depositary authority, a communication should be addressed to the Director General

of WIPO. In Rule 3.1(iv) it was stated that the communication should indicate the amount of any fees. In his view, the conditions of the deposit were as important as the fees. Therefore, it would be useful if the depositor could know in advance what were the requirements of the various depositary authorities, in Japan, in the United States of America or in the Netherlands, without specially having to request the information when he intended to deposit a microorganism.

1808. The CHAIRMAN recalled that the communication made by States giving the necessary assurances for a depositary authority to become an international depositary authority was generally sent to the Director General of WIPO through diplomatic channels. He was not sure that the latter would be prepared to take responsibility for all the details. Furthermore, he wondered whether all the details concerning the conditions to be fulfilled at the time of depcsit (for example, the color of the label, the number of samples to be deposited) really needed to appear in the official communication: in his view, that went too far.

1809. Mr. TAK (Netherlands) withdrew his proposal.

Rule 13: The Gazette (in the text as signed, Rule 13: Publication by the International Bureau)

Rule 14: Expenses of Delegations

Rule 15: Absence of Quorum in the Assembly

1810. The CHAIRMAN returned to Rule 13 and recalled that the proposals on Rule 13.1 submitted by the Delegation of the United Kingdom were no longer relevant. He indicated that there were no observations concerning Rules 13.2, 14 and 15.

1811. Rules 13, 14 and 15 were adopted.

Rule 7: Receipt (continued from paragraph 1599)

1812.1 The CHAIRMAN stated that the Main Committee had concluded the discussion on the draft Regulations, with the exception of two questions, namely the problem of languages, which had been raised, on the one hand, with regard to Rule 7.2(b) and, on the other hand, concerning Rule 11.4(a). He proposed that the two proposals thereon be dealt with separately.

1812.2 The Chairman recalled that the proposal made by the Delegation of the Soviet Union concerned Rule 7.2(b) and was contained in document DMO/DC/29. The Delegation of the Soviet Union had suggested that the text of the receipt issued

by the international depositary authority could be drawn up not only in English or French, but also in Russian. A certain number of questions had been raised in connection with that proposal, for example, whether the national office receiving the receipt could or could not, under the Treaty, request a translation when it judged it to be necessary. The Delegation of the Soviet Union, having listened to an exposé of the problem, had asked for time to reflect on it (see paragraph 1551). The Chairman asked whether the Delegation had been able to find a solution.

1813. Mr. DEMENTIEV (Soviet Union) said that the solution was to be found in the observations on Article 6.2(vi) of the draft Treaty (document DMO/DC/3), where it was stated, among other things, that: "It is understood that the national or regional law may require the person applying for a patent to provide a translation of any document submitted in support of the patent application, including the receipt."

1814. The CHAIRMAN thanked the Delegate of the Soviet Union for having drawn attention to the said observations.

1815. Mr. KÄMPF (Switzerland) said that he had listened with great interest to the comments of the Delegation of the Soviet Union on Article 6 of the Treaty. He noted that the reference to the observation on Article 6 of the Treaty corresponded exactly to the philosophy of the Swiss law which considered the deposited microorganism to be part of the specification of the patent application. In the patent application, the receipt replaced the deposited microorganism. The provisions concerning the specification in the patent application therefore applied to the deposit of the microorganism and the receipt. That fact enabled the Delegate of Switzerland to return to his previous suggestion (see paragraph 1552) and to formulate it in the nature of a proposal on Rule 7.2, namely: the provision of Rule 7.2(a) would not be changed and that of Rule 7.2(b) could read approximately as follows: "Any text matter appearing in the receipt shall be in the language of the international depositary authority. It may also appear in another language." The provision of Rule 7.2(c) would remain unchanged. In order to complete his proposal, the Delegate of Switzerland suggested that it be mentioned in the Records of the Budapest Diplomatic Conference that the right of Contracting States to require a translation in the language of the patent application mentioning the deposit of the microorganism would be reserved and that the Interim Consultative Committee envisaged in the draft Resolution could study the possibility of drawing up an international form for the receipt, as provided for in Rule 7.2(a), drafted in one, several or even all the languages of the international depositary authorities, thus avoiding the large number of translations which might be required by Contracting States.

1816. The CHAIRMAN asked the Delegate of Switzerland whether, when speaking of the text drawn up in several languages, he referred to the printed text on the form to be established by the Director General of WIPO under Rule 7.2(a), in other words, the different headings to be filled in: the date on which the

deposit had been made, the accession number allotted to it, etc. The text written under the corresponding heading would of course be in the language of the depositary authority.

1817. Mr. KÄMPF (Switzerland) replied in the affirmative.

1818. Mr. GUERIN (France) supported the proposal submitted by the Delegation of Switzerland, but with certain changes. He considered that it was necessary to define what was printed in the receipt, that was to say, the form. All the indications priuted in the receipt could effectively be not only in English and French, but also in other languages. However, in his view, for practical reasons, the number of languages should be limited. He then observed that the particulars to be written on the receipt, as at present laid down in Rule 7.3, were only of a bibliographical nature and they did not, in principle, necessitate translation. Nevertheless, it could be admltted that all the particulars figuring on the receipt could appear in any language, provided that a provision were made in that Rule, for example, similar to that in Rule 4.16 of the PCT, concerning the transliteration and translation of certain words.

1819. The CHAIRMAN proposed that the problems raised by speakers be studied in order. He first of all asked the Main Committee whether it shared the point of view of the Delegation of the Soviet Union, according to which the observation accompanying the draft Treaty stated that national offices could ask for translations of documents deposited in support of a patent application, including the receipt. He noted that such was the case and suggested that it be mentioned very clearly in the Records of the Budapest Diplomatic Conference. The logical consequence of that interpretation was that a provision concerning a particular language for the receipt was no longer relevant.

1820. Mr. de BOER (Netherlands) referred to the Chairman's question as to whether the Main Committee considered that, in accordance with the draft Treaty, a translation could be requested from national offices. While he thought it would be desirable to have such a possibility, he nevertheless wondered whether the new text of Article 3(2) allowed it.

1821. The CHAIRMAN gave his personal opinion. The new text of Article 3(2) stemmed from a proposal by the Delegation of the United Kingdom and it was based on a corresponding provision in the Regulations of the PCT which concerned the "international" phase only. In the national phase, under the PCT, States receiving an international application had the right to request all the translations they required.

1822. Mr. BOGSCH (Director General of WIPO) pointed out that, under the PCT, it was possible to ask for the translation of any text except the international search report, which roughly corresponded to the case under discussion. The Director General of WIPO shared the point of view expressed by the Delegate of

the Netherlands. If the first part of the proposal made by the Delegation of Switzerland were adopted--under which the receipt must be translated into the national tongue of any or all the countries in which it was used--that should be stated in the Regulations and not in the observations since it was an additional requirement which was excluded under the new text of Article 3(2).

1823. Mr. GUERIN (France), in order to avoid any misunderstanding, said that in the proposal made by his Delegation it would not be necessary to ask for translations. The text of the printed receipt in one of the authorized languages and the text of the particulars to be included in the receipt would not require the submission of translations in view of the analogical application of Rule 4.16 of the PCT.

1824. The CHAIRMAN summarized the proposal of the Delegation of France, which had proposed that the form for the receipt be established by the Director General of WIPO in several languages, but that it would be filled in in the sole language used by the depositary authority. He asked the Delegation of Switzerland whether it was prepared to accept that proposal.

1825. Mr. KÄMPF (Switzerland) replied in the affirmative.

1826. Mr. KOMAROV (Soviet Union) supported the proposal made by the Delegation of France, which he considered to be both logical and practical.

1827. Mr. PAPINI (Italy) supported the proposal made by the Delegation of France.

1828. Mr. IANCU (Romania) also supported the proposal made by the Delegation of France.

1829. The CHAIRMAN noted that no delegation opposed the proposal which, with regard to its principle, could be considered as adopted. He asked the Director General of WIPO whether the wording of the proposal gave him any problem.

1830. Mr. BOGSCH (Director General of WIPO) wished first of all to repeat certain points contained in the proposal of the Delegation of France as he had understood them. In Rule 7.2(a), it would be provided that the receipt would be established on a form called the "international form," a model of which would be drawn up by the Director General of WIPO in the languages stipulated by the Assembly. The Director General of WIPO predicted that those languages would be many. In Rule 7.2(b), it would be stated that any text matter requiring transliteration into the Latin alphabet would be transliterated. That was the essence of the Rule in the PCT which the Delegate of France had cited. The text would therefore appear in the original language and in transliterated form (for example, an address in Moscow would appear in the Cyrillic alphabet and in the transliterated form). He concluded that in that way it would not be necessary to mention anything whatsoever concerning the problem of translation in the Records of the Conference.

1831. The CHAIRMAN once again summarized the proposal of the Delegation of France on Rule 7.2 as defined by the Director General of WIPO.

1832. Mr. DAVIS (United Kingdom) apologized for holding up the debate, but he wished for clarification. He had understood that WIPO would make the transliteration of the name and address of the depositor. In his view, it would be better to let the national offices request transliteration if they so wished. In the majority of cases, they would not so request.

1833. The CHAIRMAN recalled that the proposal was based on Rule 4.16 of the PCT and, in the PCT, it was not the International Bureau of WIPO which made the transliteration.

1834. Mr. BOGSCH (Director General of WIPO) said that the transliteration would be made by the international depositary authority itself. He presumed that depositary institutions in Japan as well as in the Soviet Union would be able to write a name and address in the Latin alphabet.

1835. The CHAIRMAN noted that there were no further comments on Rule 7.2.

1836. Rule 7.2 was adopted in an amended form, based on the proposal made by the Delegation of France and defined by the Director General of WIPO.

Rule 11: Release of Samples (in the text as signed, Rule 11: Furnishing of Samples) (continued from paragraph 1529)

1837. The CHAIRMAN took up the last problem facing the Main Committee, namely the proposal of the Delegation of the Soviet Union on Rule 11.4(a), as it resulted from document DMO/DC/29 amended by the Delegation of the Soviet Union the previous day. The error had been that the proposal mentioned Rule 11.3 rather than Rule 11.4.

1838. Mr. KOMAROV (Soviet Union) recalled that his Delegation, in document DMO/DC/29, had proposed that reference be made in Rule 11.4(a) to the possibility of using the Russian language. Following the statement made by the Director General of WIPO during the meeting the previous day (see paragraph 1549), the Delegation of the Soviet Union had asked that the debate on that question be adjourned in order to allow it time for reflection. Referring to the situation mentioned by the Director General of WIPO in which the depositor, the depositary authority and the patent office used the Russian language, the Delegate of the Soviet Union stated that it would be most unusual if all three used two specified languages. He would like to hear the opinion of the Director General of WIPO on the question.

1839. Mr. BOGSCH (Director General of WIPO) said that, before turning to his proposal, he would like to analyze the situation. He wondered first of all what kind of communications were involved. There were the requests for the furnishing of a sample, which contained the statement of a depositary authority, the depositor or a third party, and there was the declaration emanating from the industrial property office. Thus, the particular difficulty was that not only was a private person concerned but--with the exception of the United States of America if it followed Rule 11.3(b)--there was also a certification, which was a complex text, which had to be drafted in a specified language. Documents were always addressed to an international depositary authority in a given country and, except in a few rare cases, those documents did not constitute part of the patent application. If they were revealed to be necessary for the file or before a court--which, in the view of the Director General of WIPO, would only happen very rarely--then, under the general rules, a translation would be requested. They were in fact communications made by the depositor, a third party or a national industrial property office and addressed to the international depositary authority. The most usual case according to the Director General of WIPO was when the request was made in the national language. He imagined what would happen when a Hungarian depositor deposited a microorganism with a Hungarian depositary authority and requested that authority to furnish a sample either to himself or to a third party who was also Hungarian. Why could he not therefore make his request in the Hungarian language? In that particular case, no one else was involved. Three Hungarians were concerned: the Hungarian Office, the Hungarian depositor and the Hungarian depositary authority. The problem arose--and it was the aim of the Treaty to offer a solution--when the party addressing a request for the furnishing of a sample was a foreign third party or a foreign patent office. In the case of the Hungarian depositary authority, in what language should the request be addressed to that authority? He proposed the following solution for Rule 11.4(a):

"Any request, declaration, certification or communication referred to in Rules 11.1, 11.2 and 11.3 shall be:

(i) in English, French, Russian or Spanish where it is addressed to an international depositary authority whose official language is or whose official languages include English, French, Russian, or Spanish, respectively, provided that, where it must be in Russian or Spanish, it may be filed in English or French and the International Bureau shall, on the request of the requesting party or the international depositary authority and free of charge, promptly prepare a certified Russian or Spanish translation;

(ii) in all other cases, it shall be in English or French, provided that it may be, instead, in the official language or one of the official languages of the international depositary authority."

1840. The CHAIRMAN asked the Secretary General of the Conference to read once again the proposal made by the Director General of WIPO so that the delegates could take it down.

1841. Mr. BAEUMER (Secretary General of the Conference) read out the English text of the proposal made by the Director General of WIPO on Rule 11.4(a).

1842. Mr. DAVIS (United Kingdom), referring to the English text of the proposal, considered that the word "respectively" in the provision of Rule 11.4(a)(i) was not appropriate.

1843. Mr. BOGSCH (Director General of WIPO) replied that the word "respectively" meant that the document must be in the language which was the official language of the international depositary authority. He added that the plural used ("... the official languages...") meant that if, for example, a Hungarian depositary authority had Hungarian and Russian as official languages, the documents could be in either Hungarian or Russian.

1844. The CHAIRMAN asked delegations to state their views on the proposal submitted by the Director General of WIPO.

1845.1 Mr. DEMENTIEV (Soviet Union) said that the first part of the proposal made by the Director General of WIPO (Rule 11.4(a)(i)) covered the majority of cases which might arise in practice with regard to the release of samples of micro-organisms. On that point, the Delegation of the Soviet Union had no comments.

1845.2 With regard to the second part of the proposal made by the Director General of WIPO (Rule 11.4(a)(ii)), the Delegate of the Soviet Union considered that it would be logical to extend the list of languages which could be used for the requests, declarations, certifications or communications referred to in Rules 11.1, 11.2 and 11.3 to cover the languages mentioned in the provision of Rule 11.4(a)(i). In the light of the proposal made by the Director General of WIPO, the Delegate of the Soviet Union analyzed the problem of the languages to be used by a depositor resident in France and not being of Spanish nationality, who made a request to the Spanish Industrial Property Registry on the basis of a deposit made with a Japanese depositary authority. He concluded that the declaration of the Spanish Industrial Property Registry to the depositary authority would be in Spanish, French or Japanese; under the provision of Rule 11.4(a)(ii), it could be in Japanese, but then the Spanish Industrial Property Registry would have to submit its statement in Japanese and examine the request in Japanese. He urged that his suggestion not be considered as a counter-proposal but rather as an improvement on the proposal of the Director General of WIPO. In his view, the beginning of Ruie 11.4(a)(ii) should have the following wording: "(ii) in all other cases, it shall be in one of the languages referred to under (i); however, it may be in an official language ...."

1846. Mr. VILLALPANDO (Spain) said that his Delegation strongly supported the proposal submitted by the Director General of WIPO.

1847. Mr. DAVIS (United Kingdom) stated that the proposal made by the Director General of WIPO gave his Delegation no problems, but he could not say the same for the amended proposal made by the Delegation of the Soviet Union. In his view, the fact of stating in Rule 11.4(a)(i) that the International Bureau would, if necessary, translate from English or French into Russian or Spanish seemed to imply a difficulty. If the International Bureau had to prepare a translation into one of the official languages of the international depositary authority in the case of Russian and Spanish, why would it not do so for the other languages?

1848. Mr. IVANOV (Bulgaria) supported the proposal made by the Director General of WIPO as amended by the Delegation of the Soviet Union.

1849. Mr. GUERIN (France) asked whether, in view of the necessity of obtaining a translation from the International Bureau, the international depositary authority receiving a notification or request in a language which had to be translated would be obliged to wait for the translation before dealing with the request.

1850. Mr. BOGSCH (Director General of WIPO) replied in the affirmative, but he did not think it would be very serious because if the request came from a private person who was in a hurry, it could be submitted in Russian or in Spanish. If the request came from a national office, the translation would be made "promptly" and, even taking into account the time for mail delivery, the International Bureau would need about ten days, which was reasonable in a patent procedure which lasted on average four or five years.

1851. Mr. GUERIN (France) stated that he was in favor of the proposal of the Director General of WIPO as submitted, without any amendment.

1852. Mr. DEITERS (Federal Republic of Germany) was also in favor of the proposal of the Director General of WIPO without amendment.

1853. Mr. HENSHILWOOD (Australia) said that his Delegation also favored the proposal as submitted by the Director General of WIPO. He added that the proposal in the form submitted by the Delegation of the Soviet Union seemed to go too far and would not be limited to one of the official languages of the international depositary authority.

1854. Mr. WINTER (United States of America) said that, in a spirit of compromise, his Delegation was prepared to accept the proposal of the Director General of WIPO.

1855. The CHAIRMAN saw no other solution than a vote in order to solve such an essentially technical problem. He asked whether any delegation wished to speak before the vote.

1856.1 Mr. DEMENTIEV (Soviet Union) recalled that he had previously cited a complex case in which the question of languages could occur (see paragraph 1845). In his view, all the solutions proposed, by giving preference to certain languages, were extremely complicated and could lead to situations where the patent office would bear the burden of unjustified expense such as, for example, the case in which third parties, having seen the specification of a patent, wished to obtain a sample of the deposited microorganism when the patent office had long since terminated the procedure concerning that patent. It seemed to him that it was unjust to oblige patent offices which did not directly use English or French to bear the expenses resulting from requests by third parties. In his view, such expenses were only justified if the sample were required by the patent office itself for the purposes of patent procedure before that office. When considering the Treaty, it could be thought that one of its aims, among others, was to prevent patent offices from having to bear expenses related to the deposit of microorganisms: in fact, it was stated elsewhere that the offices did not have to pay for the viability certificates they required. However, it was at present stated that, even when it was not at all necessary for the offices, they would have the burden of the expenses resulting from correspondence to comply with the requests for samples made by third parties for scientific or commercial purposes. The Delegation of the Soviet Union noted that the Main Committee had found a solution to the complex problem of languages in Rule 7.2(b) and wondered whether it were not possible also to find a solution for Rule 11.4.

1856.2 The Delegate of the Soviet Union then analyzed three possible cases of release of samples. In the first instance, it was the patent office which requested a sample; the solution was to be found in Rule 11.4(b) which stated that the patent office and the international depositary authority could make an agreement stipulating that they would work in a language other than English or French. The second case, governed by Rule 11.2, was that of release of a sample to the depositor or with the permission of the depositor, which involved a bilateral contact in which the patent office had no part. According to the Delegation of the Soviet Union, the case of a depositor who wished a sample of his own microorganism for his personal use, for example, did not concern the patent procedure and was not within the framework of the Treaty under discussion. The third case, governed by Rule 11.3, brought together three parties: the requesting party, the international depositary authority and the patent office. In his Delegation's view, it was not necessary to decide in what language the correspondence would be carried on. The requesting party must address itself to the patent office in the latter's language, particularly if reference were made to the second part of the Secretariat's proposal. The question of the language in which the depositor must address himself to the international depositary authority depended on the relations between the depositor, the requesting party and the authority. If the requesting party had received the declaration from the patent office in the latter's language and that language did not suit the depositary

authority, it was the responsibility of the requesting party to provide the necessary translation. Finally, if the request for a sample was linked to a commercial transaction, the Delegation of the Soviet Union did not see why the burden of expenses should, even in part, be laid on the patent offices rather than on the interested parties.

1857. The CHAIRMAN thanked the Delegate of the Soviet Union for his analysis of Rule 11.

1858. Mr. BOGSCH (Director General of WIPO) wished to avoid a vote and made a suggestion which would perhaps permit a step in the direction desired by the Delegation of the Soviet Union. What the Delegation of the Soviet Union feared appeared to be the situation in which the patent office of the Soviet Union, in accordance with Rule 11.1, which provided that a national office could ask for a sample upon submission of a request to a foreign international depositary authority, would not be able to submit that request in the Russian language. If a Soviet citizen made such a request, the office of the Soviet Union would be obliged to charge the Soviet citizen a fee to cover the expenses. But if it were its own request? The Director General of WIPO proposed that it be stated that if a request submitted in conformity with Rule 11.1 came from an industrial property office whose official language was Russian or Spanish, such a request could be established in the Russian or Spanish languages, respectively, and the International Bureau would promptly and without charge prepare a translation into English or French. That would add 500 US dollars to the 1,000 US dollars mentioned the previous day by the Director General of WIPO (see paragraph 1549).

1859. Mr. DEMENTIEV (Soviet Union) remarked that, in his statement, the Director General of WIPO had referred to Rule 11.1, which concerned a request made by an industrial property office. He recalled that his Delegation had already emphasized that that case gave less cause for concern since the request came from an industrial property office and fulfilled the needs of that office which, consequently could bear certain expenses. What particularly worried the Delegation of the Soviet Union was the situation in which the requesting party was a private person or an organization and not the industrial property office.

1860. The CHAIRMAN expressed the view that a vote should be taken.

1861. Mr. BOGSCH (Director General of WIPO) wondered whether it would not be advisable to suspend the meeting for a few minutes since he wished to avoid the necessity for a vote.

1862. The CHAIRMAN suspended the meeting.

[Suspension]

1863. The CHAIRMAN resumed the meeting and urged the delegations to find a compromise solution.

1864. Mr. DEMENTIEV (Soviet Union) asked whether the last solution envisaged by the Director General of WIPO (see paragraph 1858) could include the case mentioned in Rule 11.1 and that in which the International Bureau of WIPO would, if necessary, prepare a translation at its own expense.

1865. Mr. BOGSCH (Director General of WIPO) agreed to that solution.

1866. Mr. KOMAROV (Soviet Union) indicated that, in that event, the Delegation of the Soviet Union withdrew its proposal concerning the beginning of Rule 11.4(a)(ii).

1867. The CHAIRMAN summarized the situation and declared that the amended solution proposed by the Director General of WIPO at present included three cases. The first case was that mentioned in Rule 11.4(a)(i) originally proposed by the Director General of WIPO (see paragraph 1839); the second case was that which had just been raised and which provided that in case of a request under Rule 11.1, the International Bureau would, if necessary, make a translation without charge; the third case was that provided in Rule 11.4(a)(ii) originally proposed by the Director General of WIPO (see paragraph 1839) and which would become Rule 11.4(a)(iii). The Chairman asked the delegations for their views on the amended proposal and, in particular, those delegations which had supported the original proposal of the Director General of WIPO.

1868. Mr. HENSHILWOOD (Australia) asked whether it would be possible to read out the third part of the proposal made by the Director General of WIPO so that his Delegation could note it down.

1869. Mr. BOGSCH (Director General of WIPO read out the text of his proposal: "Where the request made under Rule 11.1 comes from an industrial property office whose official language is Russian or Spanish, such a request may be established in Russian or Spanish, respectively, and the International Bureau shall, on the request of such office, prepare free of charge and promptly a certified English or French translation."

1870. Mr. WINTER (United States of America) asked for a suspension of the meeting in order to study the new proposal.

1871. The CHAIRMAN suspended the meeting.

[Suspension]

1872. The CHAIRMAN resumed the discussion and asked the Delegate of the United States of America whether he wished to make a statement.

1873. Mr. WINTER (United States of America) said that it was not desirable for the Budapest Diplomatic Conference to conclude by a vote on a controversial matter. Therefore, in a spirit of compromise, the Delegation of the United States of America was prepared to accept the proposal made by the Director General of WIPO to add a new provision as Rule 11.4(a)(iii).

1874. Mr. DAVIS (United Kingdom) said that his Delegation fully shared the opinion of the Delegation of the United States of America.

1875. Mr. GUERIN (France) supported the final version of the proposal of the Director General of WIPO.

1876. Mr. HENSHILWOOD (Australia) also supported the final version of the amendment proposed by the Director General of WIPO.

1877. Mr. IWATA (Japan) supported the amended proposal made by the Director General of WIPO.

1878. The Chairman noted that no delegations had opposed the proposal.

1879. The amended proposal made by the Director General of WIPO on Rule 11.4(a) was adopted, subject to drafting changes which might be necessary with a view to its insertion in the text of the Treaty.

1880. The CHAIRMAN declared that the substantive discussion on the draft Regulations had been concluded.

Communication Addressed to the Main Committee

1881. Mr. DAVIS (United Kingdom) informed the Main Committee that Mr. Szabo, member of the Delegation of the United Kingdom, wished to make a communication concerning Mr. Watson, Representative of CNIPA.

1882. Mr. SZABO (United Kingdom) said that he had visited the hospital in which Mr. Watson was being treated and he was in a very critical condition. Following a cerebral hemorrhage, he was in a deep coma. However, the doctor had stated that there was some hope.

1883. The CHAIRMAN said how upset he was to learn of the accident concerning a person who, on several occasions that morning, had spoken and made extremely pertinent observations. He expressed his sincere wishes for Mr. Watson's full recovery.

Resolution

1884. The CHAIRMAN suggested that the Main Committee quickly discuss the draft Resolution (document DMO/DC/38). He recalled that between the signature and its entry into force, a whole series of preparatory work had to be accomplished. The International Bureau of WIPO would undertake a large part of that work but it wished to have the views of interested countries. For that reason, he

proposed that, as had been done for the PCT and other treaties, a Resolution be adopted requesting the Executive Committee of the Paris Union to set up an interim committee which could set to work and prepare the implementation of the Treaty.

1885. Mr. BOGSCH (Director General of WIPO) thought that it would cost approximately 3,000 US dollars per year.

1886. The CHAIRMAN indicated that the sum would be taken from the budget of the Paris Union.

1887. Mr. WINTER (United States of America) considered that it would be highly desirable if, after having negotiated the Treaty, the Conference decided on the establishment of an interim committee to prepare the entry into force of the Treaty.

1888. Mr. GUERIN (France) supported the proposal on the Resolution.

1889. Mr. VILLALPANDO (Spain) said that his Delegation likewise supported the draft Resolution.

1890. The Resolution (document DMC/DC/38) was unanimously adopted.

Organization of Work

1891. Mr. BOGSCH (Director General of WIPO) recalled that the members of the Drafting Committee, namely the Delegates of Czechoslovakia, France, Germany (Federal Republic of), Mexico, the Netherlands, Poland, Senegal, the United Kingdom and the United States of America, would meet the following morning to draw up the final texts of the Treaty and the Regulations.

1892. The CHAIRMAN gave certain details concerning the organization of work during the following few days.

Fifteenth Meeting
Tuesday, April 26, 1977
Afternoon

Communication Addressed to the Main Committee

1893. The CHAIRMAN announced the death of Mr. Watson who, during the Budapest Diplomatic Conference, had represented the Committee of National Institutes of

Patent Agents (CNIPA). He recalled that Mr. Watson had taken an important part in the preparatory work for the Treaty and had spoken very pertinently on several occasions during meetings of the Main Committee. The Chairman asked the Delegation of the United Kingdom, and, in particular, Mr. Szabo, to be kind enough to transmit to Mrs. Watson and to CNIPA, which Mr. Watson represented at Budapest, the deepest sympathy of the participants. He asked the Main Committee to observe a minute's silence in memory of Mr. Watson.

Consideration and Adoption of the Texts Submitted by the Drafting Committee

1894. The CHAIRMAN asked the Secretary of the Main Committee to briefly list the texts prepared, on the one hand, by the Drafting Committee and, on the other hand, by the Conference Secretariat.

1895. Mr. CURCHOD (Secretary of the Main Committee) gave details concerning documents 43 to 46 in the main series DMO/DC and documents 7 and 8 of the information series DMO/DC/INF.

Budapest Treaty

1896.1 The CHAIRMAN turned to the last item on the agenda: consideration and adoption of the texts submitted by the Drafting Committee.

1896.2 He drew the attention of the Main Committee to document DMO/DC/45 containing certain additional amendments deemed necessary by the Conference Secretariat and approved by Mr. Davis, Chairman of the Drafting Committee, and by the Chairman of the Main Committee himself. Those amendments would be discussed as the debate took place with regard to the corresponding provisions. The Chairman recalled that the Rules of Procedure provided that substantive discussion could not be reopened on any item except by decision of the Main Committee taken by a two-thirds majority and he added that the delegations could not only make remarks on the text submitted, but could also make proposals for amendment.

1896.3 The Chairman put up for discussion document DMO/DC/43, "Draft Treaty," prepared by the Drafting Committee. With regard to the title of the Treaty, he indicated that before the word "Treaty" the word "Budapest" had been added, which enabled Budapest Union to be used in the WIPO nomenclature. He noted that there were no remarks concerning the title and Article 1.

1897. The title of the Treaty and Article 1 were adopted.

1898. The CHAIRMAN turned to Article 2 and stated that in document DMO/DC/45 there was an explanatory note stating that, in view of the fact that the words "competent body" were rarely used, it was proposed to delete its definitions. He noted that there was no objection.

1899. Article 2 as amended was adopted.

1900. The CHAIRMAN indicated that the amendments to be made in Article 3, namely deletion of the references to "competent bodies," had to be looked on in the light of the explanations appearing in document DMO/DC/45.

1901. Article 3 as amended was adopted.

1902. The CHAIRMAN recalled that the Drafting Committee had been requested to study the question of whether, in Article 4(2), the words "and that authority is in a position to furnish samples of such microorganism" were necessary. A very careful study of the problem had led to the conclusion that by replacing the words "and that" by "as long as" and keeping the remainder of the text submitted within square brackets, the problem could be solved. The proposal of the Conference Secretariat, supported by the Chairmen of the Drafting Committee and the Main Committee, was therefore to maintain Article 4(2) in the form proposed, including the words between square brackets.

1903. Article 4 as amended was adopted.

1904. The CHAIRMAN noted that there were no remarks concerning Articles 5, 6 and 7.

1905. Articles 5, 6 and 7 were adopted.

1906. The CHAIRMAN, referring to Article 8(1)(a), drew the attention of the Main Committee to item III of document DMO/DC/45, which stated that the exception provided in that Article had been expressed in a separate sentence for the sake of clarity. The amendment obviously was solely a drafting one, but it had not been possible for the Drafting Committee to specifically adopt it because it was only subsequently that the necessity to clarify the point had been noted.

1907. Article 8 was adopted in its new version.

1908. The CHAIRMAN turned to new Article 9, and pointed out that, in previous documents, it had been numbered 8bis.

1909. (New) Article 9 was adopted.

1910. The CHAIRMAN turned to Chapter II--Administrative Provisions--Article 10.

1911. Mr. TROTTA (Italy) asked the Chairman why Article 10(1)(c) mentioned "special observers."

1912. The CHAIRMAN, for insertion in the Records of the Budapest Diplomatic Conference, recalled that by the words "special observers" it had been envisaged to create a status of observer which was distinct from the customary status by

the fact that it was automatic. An intergovernmental organization which participated in the implementation of the Treaty would automatically have the opportunity of being represented at the Assembly, as well as at a committee or working group set up by the Assembly. On the other hand, the status of ordinary observer was one for which a decision concerning participation in a body set up by the Assembly would have to be taken case by case.

1913. Article 10 was adopted.

1914. Articles 11 to 20 were adopted.

1915. The CHAIRMAN said that the Main Committee had thus adopted the text of the Treaty in its entirety. He asked whether there were any additional remarks concerning the Treaty itself.

1916. Mr. DAVIS (United Kingdom) made a remark concerning the territorial clause which had caused much controversy at other diplomatic conferences. He pointed out that his country had not sought a territorial clause since, in view of the character of the Treaty, it did not envisage its application outside the metropolitan territory. The Delegate of the United Kingdom asked whether a statement to that effect could appear in the Records of the Conference.

1917.1 The CHAIRMAN assured the Delegate of the United Kingdom that the statement would be included in the Records of the Budapest Diplomatic Conference.

1917.2 He noted that there were no further remarks concerning the text of the Treaty, which was adopted without discussion in the version proposed in document DMO/DC/43, and that it could now be transmitted to the Conference itself.

1918. It was so decided.

Regulations

1919.1 The CHAIRMAN proposed that the discussion be resumed on the Regulations on the basis of document DMO/DC/44, prepared by the Drafting Committee.

1919.2 He noted that there were no observations concerning the title and Rules 1 to 4.

1920. The title of the Regulations and Rules 1 to 4 were adopted.

1921.1 Mr. CURCHOD (Secretary of the Main Committee), on behalf of the Conference Secretariat, apologized for submitting a drafting proposal at that stage. It concerned Rule 5.1(b) and was the result of a decision taken by the Drafting Committee on Rule 5.2(b). The latter provided for prompt publication by the International

Bureau of two notifications: on the one hand, the notification made by the Director General of WIPO to Contracting States and intergovernmental industrial property organizations and, on the other hand, the notification that the Director General himself received in application of paragraph (a). The Secretary of the Main Committee pointed out that the same provision was also to be found in Rule 12.2(b) concerning the problem of changes in the amount of fees. With regard to Rule 5.1 concerning the discontinuance of the performance of functions by an international depositary authority, it would seem appropriate to adopt the same principle and the same wording for paragraph (b) as had been used in two other similar cases; that was to say, in the French text, the word "et" following the words "de l'alinéa a)iv)" would be replaced by a semicolon and the text would continue as follows: "la notification faite par le Directeur général et la notification qu'il a reçue sont publiées à bref délai par le Bureau international."

1921.2 The Secretary of the Main Committee then read out the English text of the proposal. The word "and" following the words "under paragraph (a)(iv)" would be replaced by a semicolon and the text would continue as follows: "the notification of the Director General and the notification received by him shall be promptly published by the International Bureau.

1922.1 The CHAIRMAN briefly summarized the proposal, pointing out that the Regulations provided for similar solutions in several other places. He considered that the amendment was simply clarification of what had always actually been done in other unions.

1922.2 He noted that there were no objections to the proposal.

1923. Rule 5 as amended was adopted.

1924. Mr. JONSON (Sweden), referring to Rule 6.1(a)(v), recalled that during previous debates it had been decided that such an indication need only be given to the extent that the depositor was aware of the properties of the microorganism. He wondered simply whether that detail had been deleted for some reason he did not know.

1925. The CHAIRMAN said that it was clearly understood that the depositor making a certain deposit could obviously only indicate the properties of which he himself was aware. He could not be required to envisage what he did not know nor indicate what he was not aware of. Furthermore, in the Rule itself it was specified that the depositor only had to indicate the properties which the depositary authority was not assumed to be aware of. Reference had been made to the case in which the deposited microorganism to which the patent application related was a mutant of a known microorganism. In such a case, at first sight it did not seem necessary to state the already known properties of the microorganism, which the depositary authority as a specialized authority was assumed to know. On the other hand, the mutant could have entirely specific properties which the depositor must indicate if he had knowledge of them.

1926. Mr. JONSON (Sweden) said that he could accept the explanation given and that he did not wish to make any amendment.

1927. Rule 6 was adopted, taking into account the explanation given in reply to the statement made by the Delegation of Sweden.

1928. Rules 7 to 10 were adopted.

1929. The CHAIRMAN turned to Rule 11 which had been the subject of very long discussions and drew attention to two corrections in Rule 11.1(iii) and (iv) which both concerned wording to replace the words "competent body."

1930. Rule 11 as amended was adopted.

1931. Mr. LOSSIUS (Norway) wondered whether in Rule 12.1, a reference should not be made to Rule 8.2 where fees were mentioned.

1932. Mr. BAEUMER (Secretary General of the Conference) pointed out that in Rule 8.2 of the draft Regulations fees were not mentioned, whereas they were mentioned in the text proposed in document DMO/DC/45. Therefore, it would perhaps be appropriate to include a reference to Rule 8.2 in Rule 12, which contained a list of all the fees to be charged under the Regulations.

1933. The CHAIRMAN recalled that during the discussion on Rule 8.2, it had been explicitly decided in the Main Committee that the attestation referred to would only be delivered on payment of a fee (see paragraph 1615). He therefore considered that logically a supplementary paragraph should be added to Rule 12.1 referring to the fee provided for in Rule 8.2. He asked the Secretariat to formulate the proposal.

1934. Mr. BAEUMER (Secretary General of the Conference) replied that the new provision of Rule 12.1(a)(ii) to be inserted after the provision of present Rule 12.1(a)(i) could be worded as follows in English: "(ii) for the attestation referred to in Rule 8.2." The provision of Rule 12.1(a)(ii) would then be renumbered 12.1(a)(iii), etc.

1935. The CHAIRMAN asked the Secretary of the Main Committee to read out the French version of the proposal.

1936.1 Mr. CURCHOD (Secretary of the Main Committee) proposed the following text: "ii) pour la délivrance de l'attestation visée à la règle 8.2," Rule 12.1(a)(ii) and (iii) being renumbered 12.1(a)(iii) and (iv), respectively.

1936.2 He pointed out that if the proposal were adopted, it would be necessary to replace the reference to Rule 12.1(a)(iii) in Rule 11.4(h) by a reference to Rule 12.1(a)(iv).

1937. Mr. GUERIN (France) recalled that during discussion on Rule 8.2, it had been decided that when the depositary authority delivered an attestation upon payment of a fee, it was in fact an obligation for the authority to require such a fee. However, Rule 12 stated that the authority "may charge" the fees provided under the provisions of that Rule. He asked whether there was not a slight discrepancy.

1938. Mr. DAVIS (United Kingdom) shared the opinion expressed by the Delegate of France and doubted whether Rule 8.2 really contained an obligation on the depositary authority to charge a fee if it did not wish to do so. Referring to the English text of Rule 8.2, he thought that the whole problem stemmed from the unfortunate use of the word "shall," which regulated at the same time both the payment of the fee and the attestation. In his view, the word should only concern payment of the fee.

1939. Mr. BOGSCH (Director General of WIPO), referring to the English text of Rule 8.2, proposed that the words "against payment of a fee" be deleted, a semicolon inserted and the following words inserted after the word "communication": "it may charge a fee for such an attestation."

1940. Mr. CURCHOD (Secretary of the Main Committee) read out the French version of the proposal, namely: in Rule 8.2, after the words "lui délivre," the comma and the words "moyennant paiement d'une taxe" should be deleted, the full stop at the end of the sentence being replaced by a semicolon to be followed by the following phrase: "elle peut percevoir une taxe pour la délivrance de cette attestation."

1941. The CHAIRMAN asked the Main Committee whether it accepted the new proposal made by the Director General of WIPO.

1942. Mr. DAVIS (United Kingdom) said that the proposal was perfectly acceptable, but it was nevertheless unnecessary. In his view, it would be sufficient to delete the words "against payment of a fee."

1943. Mr. GUERIN (France) supported the proposal of the Delegation of the United Kingdom.

1944. The CHAIRMAN noted that no delegation opposed the amendment to Rule 8.2 proposed by the Delegation of the United Kingdom and seconded by the Delegation of France and he read out the Rule.

1945. Rule 8.2 as amended was adopted.

1946. Mr. BOGSCH (Director General of WIPO) drew attention to another consequence of the amendment, namely the need to amend Rule 10.2(e) where reference should be made to Rule 12.1(a)(iii) and not to Rule 12.1(a)(ii).

1947. It was so decided.

1948. The CHAIRMAN asked the Conference Secretariat to once again repeat the addition which had been made to Rule 12.1.

1949. Mr. CURCHOD (Secretary of the Main Committee) read out the French text of the new version of Rule 12.1.

1950. Mr. BAEUMER (Secretary General of the Conference) read out the English text of the new version of Rule 12.1.

1951. Mr. ALLAN (United States of America) recalled that it would also be necessary to replace the reference to Rule 12.1(a)(iii) in Rule 11.4(h) by a reference to Rule 12.1(a)(iv).

1952. It was so decided.

1953. The CHAIRMAN returned to Rule 12 and asked whether there were any further comments.

1954. Mr. IWATA (Japan) asked a question concerning Rule 12.1. The storage fees during 30 years would be subject to increases. He presumed that the depositary authority could, during the 30 years, ask the depositor to pay an additional fee over and above the lump sum paid at the time of the deposit of the microorganism in order to cover the increased expenses.

1955. Mr. BOGSCH (Director General of WIPO) replied that, unfortunately, the interpretation made by the Delegate of Japan was not in conformity with Rule 12.1(b), which stated that the storage fee would be paid for the whole period of storage of the microorganism.

1956. The CHAIRMAN recalled that a detailed discussion had taken place on the question of the fee to be paid in a lump sum or by installments and that the Main Committee had clearly decided in favor of the lump sum.

1957. Rule 12 as amended was adopted.

1958. Rules 13 to 15 were adopted.

1959. The draft Regulations were adopted in their entirety in the form proposed and with the amendments agreed.

1960. The CHAIRMAN pointed out that document DMO/DC/46 contained the statements to be included in the Records of the Budapest Diplomatic Conference. In the document the Conference Secretariat had assembled all the statements which had been made clarifying the interpretation of certain provisions. He noted that there were no remarks on items 1, 2 and 3 of the document.

1961. The statements under items 1, 2 and 3 of document DMO/DC/46 concerning Articles 3(1)(a), 4(1)(c) and 6, respectively, were adopted.

1962. Mr. ALLAN (United States of America) wished to make a remark concerning the statement on Rule 11 contained in item 4 of document DMO/DC/46. According to his understanding, the intent of that statement was that, when a patent in which a microorganism was mentioned expired, the samples of that microorganism were then available without restriction. However, the present wording of the statement in document DMO/DC/46 did not convey the same meaning. Furthermore, it did not appear to take account of the direct effect which the expiration of a patent had on the release of a sample. He asked whether his interpretation was correct.

1963. Mr. STOENESCU (Romania) recalled that the Delegation of Romania had asked that a rule be added to the case mentioned under Rule 11 stating that, after expiration of the patent, samples could be freely released. That proposal had been withdrawn due to lack of support from other delegations (see paragraph 1466). The statement in question was necessary, in his view, in order not to interpret Rule 11 as meaning that once the patent had expired it was no longer possible to release a sample. The statement made by the Delegate of the United States of America, in fact, repeated the idea already put forward by the Delegation of Romania.

1964. Mr. BOGSCH (Director General of WIPO) observed that after the debate which had taken place on the proposal of the Delegation of Romania, the interpretation of the Main Committee had been that the expiration of the patent did not affect the rules for the depositary authority. The expiration could and, in the majority of cases, would affect the conditions required for certification. If a certification were required, it would probably be delivered automatically without going into details. He emphasized that the certification must be delivered because it had been recognized that the depositary authority could not be required to take note officially of the fact that a patent had expired. It would be too much to require the depositary authority to undertake the task of verifying the statement of any person saying that such and such a patent had expired because, for example, the fees had not been paid. How could a depositary authority know whether such a statement was correct or not? The problem of a State such as the United States of America did not even arise because, if a State used the procedure provided under Rule 11.3(b)--that was to say, from the moment the patent was issued, a general authorization could not be amended when the patent expired --it would be just as correct, effective and general as it had been during the period of validity of the patent. The Director General of WIPO said that if the Main Committee so desired, the statement under item 4 of document DMO/DC/46 could be amended by drawing a distinction between the two authorities concerned and by making it more explicit. He reiterated that the expiration of the patent did not affect the rules which the international depositary authority must respect with regard to the furnishing of samples. If the conditions for certification changed, it only concerned the industrial property office and not the depositary authority.

1965. Mr. DAVIS (United Kingdom) considered that the proposal made by the Director General of WIPO was a great improvement since the word "entitlement" was, in his view, wrong. If the entitlement to the furnishing of samples could change upon expiration of the patent, the conditions under which the sample could be furnished by the international depositary authority did not change.

1966. The CHAIRMAN asked whether an amendment along the general lines of the proposal made by the Director General of WIPO would alleviate the concern of the Delegations of the United States of America and Romania.

1967. Mr. ALLAN (United States of America) considered that the amendment proposed by the Director General of WIPO would do much to clarify item 4 of document DMO/DC/46.

1968. Mr. STOENESCU (Romania) held the same opinion.

1969. The CHAIRMAN thought it was necessary to finalize the statement which would then be sent to the Conference for approval. He asked the Director General of WIPO to be good enough to repeat his proposal.

1970. Mr. BOGSCH (Director General of WIPO) read out the English text of his proposal: "When adopting the provisions of Rules 11.1, 11.2 and 11.3, the Diplomatic Conference understood that the expiration of the patent referring to the deposited microorganism does not alter the rules which the international depositary authority and the requesting party must follow in connection with the furnishing of samples; it was however noted that the conditions which allow an industrial property office to give the required certification may be different before and after the expiration of the patent."

1971. Mr. CURCHOD (Secretary of the Main Committee) read out the French text of the proposal made by the Director General of WIPO.

1972. The CHAIRMAN noted that the proposal had been supported, at least with regard to its tenor, by the Delegations of the United Kingdom, Romania and the United States of America, and that no delegation was opposed to the amendment.

1973. The statement concerning Rule 11 contained in item 4 of document DMO/DC/46, as amended according to the proposal made by the Director General of WIPO, was adopted.

1974. The CHAIRMAN asked whether delegations had further comments on any of the documents to be transmitted to the Conference.

1975. Mr. OREDSSON (Sweden) stated that the Main Committee had at present accomplished its work by establishing the text of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. As had been the case in all diplomatic conferences, the bulk of the

work had been carried out in the Main Committee. He emphasized that the Main Committee had been successful due to the friendly atmosphere in the wonderful city of Budapest and to the excellent working conditions which had enabled constructive solutions to be found for the problems raised. The other reason for the success of the Conference was the magnificent work of the Director General of WIPO and his staff, the invaluable assistance of the interpreters and, above all, the qualities of the Chairman of the Main Committee, Mr. Comte, who had performed his duties with brilliance, intellectual sharpness, friendliness and wit. On behalf of the participants in the work of the Main Committee, the Delegate of Sweden expressed his profound gratitude and admiration for the manner in which the Chairman had performed his duties.

1976.1 The CHAIRMAN first of all thanked those delegates who had been particularly active during the debates and who, according to the Conference Secretariat, had even beaten all records in respect of the number of documents produced during the Conference. He underlined their steadfast determination throughout the work of the Main Committee to achieve a solution through united efforts. The fact that not one point of order had been raised was also a very clear indication of the spirit of cooperation which had prevailed. The Chairman then sincerely thanked the Delegate of Sweden, Mr. Oredsson, for the kind words addressed to him, Dr. Bogsch, Director General of WIPO, for his invaluable assistance in guiding the debates of the Main Committee and all his staff who had so largely contributed to the success of the Diplomatic Conference. In conclusion, the Chairman thanked the Drafting Committee and its Chairman, Mr. Davis, for preparing the documents with their customary efficiency and, in particular, the Delegation of Hungary, and through it, the Hungarian Government, the Hungarian National Office of Inventions and all who had created the right atmosphere for the work of the Conference.

1976.2 The Chairman recalled that the Plenary Assembly would meet the following morning to discuss and adopt definitively the drafts prepared and transmitted by the Main Committee and declared the work of the Committee to be concluded.

PARTICIPANTS IN THE CONFERENCE

LIST OF PARTICIPANTS

I. MEMBER STATES

AUSTRALIA

Head of the Delegation

Mr. G. HENSHILWOOD, Acting Commissioner of Patents, Canberra

AUSTRIA

Head of the Delegation

Mr. O. LEBERL, President, Austrian Patent Office, Vienna

Alternate Head of the Delegation

Mr. J. FICHTE, Head, Documentation Section, Austrian Patent Office, Vienna

Delegates

Mr. H. WIESNER, First Secretary, Austrian Embassy, Budapest

Mr. H. PAWLOY, Patent Attorney, Vienna

BULGARIA

Head of the Delegation

Mr. I. VALTSCHANOV IVANOV, Director of the Institute for Inventions and Rationalizations, Sofia

Delegates

Mr. A. CHRISTOV PETROV, First Secretary, Embassy of Bulgaria, Budapest

Mrs. M. CHRISTOVA ZHELEVA, Head of Culture Collection, State Institute of Control of Medical Preparation, Sofia

CZECHOSLOVAKIA

Head of the Delegation

Mr. V. VANIŠ, Deputy-President, Office for Inventions and Discoveries, Prague

Alternate Head of the Delegation

Mr. Z. CÍRMAN, Primary Examiner-Specialist, Office for Inventions and Discoveries, Prague

DENMARK

Head of the Delegation

Mr. K. SKJØDT, Director, Danish Patent and Trade Mark Office, Copenhagen

Deputy Head of the Delegation

Mrs. D. SIMONSEN, Head of Department, Danish Patent and Trade Mark Office, Copenhagen

Delegate

Mrs. G. LÜTKEN, Chief, Organic Chemical Department, Danish Patent and Trade Mark Office, Copenhagen

EGYPT

Head of the Delegation

Mr. A. HABIB, Minister Plenipotentiary, Embassy of Egypt, Budapest

Alternate

Mr. M. ABDEL AAL, Cultural Attaché, Embassy of Egypt, Budapest

Advisors

Mr. A. EL ESAWI, Assistant Professor, Faculty of Sciences, El Zakazik University, Egypt

Mr. A. MAHMOUD, Lecturer, Faculty of Agriculture, Cairo University, Cairo

FINLAND

Head of the Delegation

Mr. E. TUULI, Director General, Central Board of Patents and Registration, Helsinki

Delegates

Mr. R. SALMI, Counsellor, Ministry for Foreign Affairs, Helsinki

Mrs. H. LOMMI, Senior Examiner, Central Board of Patents and Registration, Helsinki

Mr. A. RISKU, Patent Attorney, The Finnish Society for the Protection of Industrial Property, Helsinki

FRANCE

Head of the Delegation

Mr. G. VIANÈS, Director, National Institute of Industrial Property, Paris

[France, continued]

Deputy Head of the Delegation

Mr. P. FRESSONNET, Deputy Director, National Institute of Industrial Property, Paris

Delegates

Miss D. DARMON, *Chef de bureau*, National Institute of Industrial Property Paris

Mr. P. GUERIN, *Attaché de direction*, National Institute of Industrial Property, Paris

GERMAN DEMOCRATIC REPUBLIC

Head of the Delegation

Mr. G. BUDEWITZ, Vice-President, Office for Inventions and Patents of the German Democratic Republic, Berlin

Delegates

Mr. F. JONKISCH, Head of Divislon, Office for Inventions and Patents of the German Democratic Republic, Berlin

Mr. K. WOYTH, Interpreter, Berlin

GERMANY (FEDERAL REPUBLIC OF)

Head of the Delegation

Mr. H. KERSTING, Ambassador of the Federal Republic of Germany, Budapest

Alternate Head of the Delegation

Mr. M. DEITERS, Head of Subdivision for Commercial and Economic Law, Federal Ministry of Justice, Bonn

Delegates

Mr. H. GRAEVE, Counsellor, Federal Foreign Office, Bonn

Mr. A. STEIN, Head of Section, Federal Ministry of Justice, Bonn

Mr. U. HALLMANN, Head, Legal Section, German Patent Office, Munich

Advisor

Mr. J. UTERMANN, Director, Patent Department, Bayer AG, Leverkusen

HUNGARY

Head of the Delegation

Mr. E. TASNÁDI, President, National Office of Inventions, Budapest

Alternate Head of Delegation

Mr. G. PUSZTAI, Head of Department, National Office of Inventions, Budapest

[Hungary, continued]

Delegates

Mr. G. BÁNRÉVY, Deputy Head of Department, Ministry of Foreign Trade, Budapest

Mr. A. BOTYÁNSZKI, Deputy Head of Department, Ministry of Health, Budapest

Mrs. E. KONRÁD, Deputy Head of Department, Ministry of Foreign Affairs, Budapest

Mrs. E. PARRAGH, Deputy Head of Section, National Office of Inventions, Budapest

Mr. S. TURI, Counsellor, Ministry of Heavy Industry, Budapest

Mr. G. VÉKÁS, Head of Section, National Office of Inventions, Budapest

Advisors

Mr. B. KENDE, Partner of the Patent and Law Office for International Affairs (Head of Office), Budapest

Mr. A. SZENTPÉTERI, Manager, Patent and Law Office for International Affairs, Budapest

Mr. R. SIKOS, Director, Patentbüro DANUBIA, Budapest

Mr. B. KARÁCSONYI, Vice-Director, Patentbüro DANUBIA, Budapest

INDONESIA

Mr. A. PAREANG, First Secretary, Embassy of Indonesia, Budapest

ITALY

Head of the Delegation

Mr. I. PAPINI, Minister Plenipotentiary, *Délégué aux accords pour la propriété intellectuelle*, Ministry of Foreign Affairs, Rome

Deputy Head of the Delegation

Mr. G. TROTTA, Magistrate, Court of Cassation, Ministry of Foreign Affairs, Rome

Delegate

Mr. M. BELLENGHI, Director, Patent Department, Gruppo Lepetit S.p.A., Milan

JAPAN

Head of the Delegation

Mr. H. IWATA, Director-General, Fourth Examination Department, Japanese Patent Office, Ministry of International Trade and Industry, Tokyo

Delegate

Mr. K. HIROOKA, Counsellor, Embassy of Japan, Budapest

Advisor

Mr. K. HATAKANA, Officer, Japan Trade Center, Dusseldorf

MEXICO

Mr. M. TORRES-SERRANO, First Secretary, Embassy of Mexico, Budapest (Observer)

NETHERLANDS

Head of the Delegation

Mr. E. van WEEL, Vice-Chairman of the Patent Office, Rijswijk

Deputy Head of the Delegation

Mr. J.D. TAK, Member of the Patent Office, Rijswijk

Delegates

Mr. P. MARS, Chief Patent Counsel, Gist-Brocades N.V., Delft

Mr. W. de BOER, Officer, Legislation and Other Legal Affairs Department, Ministry of Economic Affairs, The Hague

NORWAY

Head of the Delegation

Mr. L. NORDSTRAND, Director General, Norwegian Patent Office, Oslo

Deputy Head of the Delegation

Mr. P. LOSSIUS, Head of Division, Norwegian Patent Office, Oslo

Delegate

Mr. H. SVENDSEN, Principal Examiner, Norwegian Patent Office, Oslo

PHILIPPINES

Mr. C. ESPEJO, Attaché, Permanent Mission of the Philippines, Geneva (Observer)

POLAND

Head of the Delegation

Mr. R. FARFAL, Vice-President, Patent Office, Warsaw

Deputy Head of the Delegation

Mr. T. NIEDZIALEK, Director, Second Patent Search Department, Patent Office, Warsaw

Delegates

Mr. W. MATYSIAK, Legal Counsellor, Legal and Treaty Department, Ministry of Foreign Affairs, Warsaw

Mr. B. ROKICKI, Counsellor, International Cooperation Section, Patent Office, Warsaw

PORTUGAL

Mr. A. MALHEIRO, Counsellor, Embassy of Portugal, Budapest (Observer)

ROMANIA

Head of the Delegation

Mr. V. BOLOJAN, Ambassador of Romania, Budapest

Alternate Head of the Delegation

Mr. V. IANCU, Legal Counsellor, National Council for Science and Technology, Bucharest

Delegates

Mr. D. STOENESCU, First Secretary, Ministry of Foreign Affairs, Bucharest

Mr. A. OANCEA, Second Secretary, Embassy of Romania, Budapest

SENEGAL

Head of the Delegation

Mr. M. MBENGUE, Ambassador of Senegal, Moscow

Delegate

Mr. P. DIA, Second Secretary, Embassy of Senegal, Moscow

SOVIET UNION

Head of the Delegation

Mr. L. KOMAROV, Deputy Chairman, State Committee for Inventions and Discoveries of the USSR Council of Ministers, Moscow

Delegates

Mr. G. GUDKOV, Chief of Department, State Committee for Inventions and Discoveries of the USSR Council of Ministers, Moscow

Mr. V. MOUJJEVLEV, Expert, State Committee for Inventions and Discoveries of the USSR Council of Ministers, Moscow

Mr. V. DEMENTIEV, Chief of Department, The Institute of Patent Examination, State Committee for Inventions and Discoveries of the USSR Council of Ministers, Moscow

Mr. O. RUDAKOV, Chief of the Department of Type Cultures of Microorganisms, Institute of Microbiology, USSR Academy of Sciences, Moscow

Mr. A. ZAITSEV, Counsellor of the Permanent Mission of the USSR to the United Nations, Geneva

SPAIN

Head of the Delegation

Mr. S. GARCÍA DE PRUNEDA Y LEDESMA, Ambassador of Spain, Budapest

Delegates

Mr. A. VILLALPANDO, Director, Registry of Industrial Property, Madrid

Mr. J. DELICADO MONTERO-RÍOS, Head, *Servicio de Invenciones y Creaciones de Forma*, Registry of Industrial Property,

Mr. L. STAMPA PIÑEIRO, Secretary of Embassy, Embassy of Spain, Budapest

Mrs. R. VASQUEZ DE PARGA Y PRADO, *Asesor del Gabinete de Estudios y Relaciones Internacionales*, Registry of Industrial Property, Madrid

Advisor

Mr. J. LOPEZ TELLO, *Vocal de la Sociedad Española de Microbiología*, Madrid

SWEDEN

Head of the Delegation

Mr. G. BORGGÅRD, Director General, Royal Patent and Registration Office, Stockholm

Delegates

Mr. L. JONSON, Director of Legal Affairs, Ministry of Trade, Stockholm

Mr. T. OREDSSON, Member of the Board of Appeals, Royal Patent and Registration Office, Stockholm

Mr. M. JACOBSSON, Legal Adviser, Ministry of Justice, Stockholm

Advisor

Mrs. R. WALLES, Senior Examiner, Royal Patent and Registration Office, Stockholm

SWITZERLAND

Head of the Delegation

Mr. P. BRAENDLI, Director, Federal Intellectual Property Office, Berne

Alternate

Mr. J.-L. COMTE, Deputy Director, Federal Intellectual Property Office, Berne

Delegates

Mr. R. KÄMPF, Head, Patents and Designs Section, Federal Intellectual Property Office, Berne

Mr. A. HÜNI, Head, Patent Service, CIBA-GEIGY SA, Basel

Mr. P. DIETSCHI, Counsellor, Embassy of Switzerland, Budapest

UNITED KINGDOM

Head of the Delegation

Mr. I. Davis, Assistant Comptroller, Patent Office, London

Delegate

Mr. A. NEEDS, Principal Examiner, Patent Office, London

Advisor

Mr. G. SZABO, Manager, Patents Department, The Wellcome Foundation Ltd., London

UNITED STATES OF AMERICA

Head of the Delegation

Mr. H. WINTER, Director, Office of Business Practices, Department of State, Washington, D.C.

Alternate

Mr. S. SCHLOSSER, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce, Washington, D.C.

Advisors

Mr. L. ALLAN, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State, Washington, D.C.

Mr. J. BEHAN, Pharmaceutical Manufacturers Association, Washington, D.C.; Assistant Director of Patents, Merck & Co., Inc., Rahway, New Jersey

Mr. A. TOCKMAN, American Patent Law Association, Washington, D.C.; Corporate Patent Counsel, G.D. Searle & Co., Chicago, Illinois

YUGOSLAVIA

Head of the Delegation

Mr. V. DJUKIĆ, First Secretary, Embassy of Yugoslavia, Budapest

II. OBSERVER STATES

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Head of the Delegation

Mr. C. KIM, Ambassador of the Democratic People's Republic of Korea, Budapest

Delegate

Mr. M. PAK, Member of Secretariat, Embassy of the Democratic People's Republic of Korea, Budapest

PAKISTAN

Mr. Z. KHAN, Pakistan Trade Commission, Budapest

III. INTERGOVERNMENTAL ORGANIZATION

INTERIM COMMITTEE OF THE EUROPEAN PATENT ORGANISATION (EPO)

Mr. D. BERNECKER, Member of the Planning Group of the Interim Committee, Munich

IV. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

COMMITTEE OF NATIONAL INSTITUTES OF PATENT AGENTS (CNIPA)

Mr. G. WATSON, Chartered Patent Agent, London

Mr. H. PAWLOY, Patent Attorney, Vienna

COUNCIL OF EUROPEAN INDUSTRIAL FEDERATIONS (CEIF)

Mr. H. BECKER, Patent Department, Hoechst AG, Frankfurt

EUROPEAN FEDERATION OF AGENTS OF INDUSTRY IN INDUSTRIAL PROPERTY (FEMIPI)

Mr. B. MARTIN, Hoffmann-La Roche, Basel

Mr. H.-K. WERNER, Director, Patent Department, Boehringer Mannheim GmbH, Mannheim

Mr. G. TASSET, Manager, Patent Department, R.I.T., Genval

INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (IAPIP)

Mr. T. PALÁGYI, Secretary General of the Hungarian Group of IAPIP, Patent Attorney, Budapest

Mr. F. ANTONY, Director, Manager of International Patents, Scherico Ltd., Lucerne

INTERNATIONAL CHAMBER OF COMMERCE (ICC)

Mr. B. MARTIN, Hoffman-La Roche, Basel

INTERNATIONAL FEDERATION OF PATENT AGENTS (FICPI)

Mr. C. DAVIDSON, Member of the Council of FICPI, Patent Agent, The Hague

Mr. H. PAWLOY, Patent Attorney, Vienna

INTERNATIONAL FEDERATION OF PHARMACEUTICAL MANUFACTURERS ASSOCIATIONS (IFPMA)

Mr. F. ANTONY, Director, Manager of International Patents, Scherico Ltd., Lucerne

PACIFIC INDUSTRIAL PROPERTY ASSOCIATION (PIPA)

Mr. I. HAYASHI, Manager, Patent and Licensing Department, Ajinomoto Co., Inc., Tokyo

UNION OF EUROPEAN PATENT ATTORNEYS AND OTHER REPRESENTATIVES BEFORE THE EUROPEAN PATENT OFFICE (UNEPA)

Mr. E. von PECHMANN, Member of the Executive Committee of UNEPA, Patent Attorney, Munich

Mr. M. de BRABANTER, Patent Attorney, Brussels

UNION OF INDUSTRIES OF THE EUROPEAN COMMUNITY (UNICE)

Mr. H.-K. WERNER, Director, Patent Department, Boehringer Mannheim GmbH, Mannheim

Mr. R.S. CRESPI, Patents Controller, National Research Development Corporation, London

WORLD FEDERATION FOR CULTURE COLLECTIONS (WFCC)

Mr. R. DONOVICK, Chairman, Subcommittee on Patent Microorganisms of WFCC, Director, American Type Culture Collection, Rockville

Mr. I.J. BOUSFIELD, Secretary, Subcommittee on Patent Microorganisms of WFCC, National Collection of Industrial Bacteria, Aberdeen

V. INTERNATIONAL BUREAU OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Dr. A. BOGSCH, Director General

Mr. K. PFANNER, Deputy Director General

Mr. L. BAEUMER, Director, Industrial Property Division

Mr. G. LEDAKIS, Legal Counsel

Mr. F. CURCHOD, Head, Special Projects Section, Industrial Property Division

International Bureau of the World Intellectual Property Organization, continued

Mr. A. ILARDI, Legal Officer, Special Projects Section, Industrial Property Division

Mr. M. QAYOOM, Head, Conferences and Common Services Section, Administrative Division

Mr. H. ROSSIER, Head, Mail and Documents Section, Administrative Division

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Chairman:	Mr. I. DAVIS (United Kingdom)
Vice-Chairmen:	Mr. P. FRESSONNET (France) Mr. R. FARFAL (Poland)
Secretary:	Mr. [illegible] (WIPO)

POST - CONFERENCE DOCUMENTS

LIST OF THE POST-CONFERENCE DOCUMENTS "BP/PCD"

(BP/PCD/1 to BP/PCD/4)

Document Number	Submitted by	Subject
1	The International Bureau of WIPO	Texts of the Treaty and of the Regulations as Adopted by the Budapest Diplomatic Conference and as Opened for Signature on April 28, 1977
2	The International Bureau of WIPO	Summary and Main Advantages of the Budapest Treaty. Memorandum Prepared by the International Bureau
3	The International Bureau of WIPO	Provisional Verbatim Minutes of the Meetings of the Plenary of the Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
4	The International Bureau of WIPO	Provisional Summary Minutes of the Meetings of the Main Committee of the Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

TEXT OF THE POST-CONFERENCE DOCUMENTS "BP/PCD"
(BP/PCD/1 to BP/PCD/4)

BP/PCD/1 May 31, 1977 (Original: English/French)
THE INTERNATIONAL BUREAU OF WIPO

Texts of the Treaty and of the Regulations as Adopted by the Budapest Diplomatic Conference and as Opened for Signature on April 28, 1977

Editor's Note: This document contains the texts of the Budapest Treaty and of the Regulations as adopted by the Budapest Diplomatic Conference and as opened for signature on April 28, 1977. It is not reproduced here. The adopted texts of the Budapest Treaty and of the Regulations are reproduced on the odd numbered pages from page 11 to page 87 of these Records.

BP/PCD/2.Rev. June 15, 1977 (Original: English)
THE INTERNATIONAL BUREAU OF WIPO

Summary and Main Advantages of the Budapest Treaty. Memorandum Prepared by the International Bureau

Background

1. Disclosure of the invention is a generally recognized requirement for the grant of patents. Normally, an invention is disclosed by means of a written description. Where an invention involves a microorganism, or the use of a microorganism, which is not available to the public, such a description is not sufficient for disclosure. That is why in the patent procedure of an increasing number of countries it is necessary not only to file a written description but also to deposit, with a specialized institution, a sample of the microorganism. Patent offices are not equipped to handle microorganisms, whose preservation requires special expertise and equipment to keep them viable, to protect them from contamination and to protect health or the environment from contamination. Such preservation is costly. The furnishing of samples also requires specialized expertise and equipment.

2. When protection is sought in several countries for an invention involving a microorganism or the use of a microorganism, the complex and costly procedures of the deposit of the microorganism might have to be repeated in each of those countries. It was in order to eliminate or reduce such multiplication of deposits that the United Kingdom proposed, in 1973, that the World Intellectual Property Organization (WIPO) should study the possibilities of one deposit serving the purposes of all the deposits which would otherwise be needed. The proposal was adopted by the Executive Committee of the Paris Union for the Protection of Industrial Property (Paris Union) at its 1973 session. Thereafter, the Director General of WIPO convened a Committee of Experts, which held three sessions, in 1974, 1975 and 1976. In the first session of the Committee of Experts, the matter was thoroughly discussed and the general outlines of a solution emerged; moreover, the Committee of Experts found that the solution required the conclusion of a treaty. In its second session, the Committee of Experts examined the first draft, prepared by the International Bureau of WIPO, of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, and of Regulations thereunder. In its third session, the Committee of Experts examined a second draft of the said Treaty and Regulations, also prepared by the International Bureau of WIPO.

3. The third draft of the said Treaty and Regulations was prepared by the International Bureau on the basis of the conclusions reached by the Committee of Experts at its third session. It was published on October 14, 1976, and served as a basis for the deliberations of the Diplomatic Conference which, under the title of the "Budapest Diplomatic Conference for the conlusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure," was convened by the Director General of WIPO, organized by him in cooperation with the Government of Hungary, and held in Budapest from April 14 to 28, 1977.

4. All States members of the Paris Union were invited to the Budapest Diplomatic Conference with the right to vote; the following 29 were represented: Australia, Austria, Bulgaria, Czechoslovakia, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Indonesia, Italy, Japan, Mexico, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Senegal, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America, Yugoslavia. Several States not members of the Paris Union, which showed an interest in the preparatory work, were invited to be represented by observers; two of them--the Democratic People's Republic of Korea and Pakistan--were so represented. The Interim Committee of the European Patent Organisation (EPO) was represented by an observer.

5. Several non-governmental organizations interested in the subject matter of the Budapest Diplomatic Conference were invited as observers and the following eleven were represented: Committee of National Institutes of Patent Agents (CNIPA), European Federation of Agents of Industry in Industrial Property (FEMIPI), Council of European Industrial Federations (CEIF), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Federation of Patent Agents (FICPI), International Federation of Pharmaceutical Manufacturers Associations (IFPMA), Pacific Industrial Property Association (PIPA), Union of European Patent Attorneys and Other Representatives Before the European Patent Office (UNEPA), Union of Industries of the European Community (UNICE), World Federation for Culture Collections (WFCC).

6. The Budapest Diplomatic Conference adopted a treaty consisting of 20 Articles under the title of the "Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure" (hereinafter referred to as "the Treaty") on April 27, 1977. It bears the date of April 28, 1977, the day on which it was opened for signature. The said Conference also adopted Regulations consisting of 15 Rules under the title of "Regulations under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure" (hereinafter referred to as "the Regulations"). They are annexed to the Treaty.

Summary of the Treaty and the Regulations

7. Substantive Provisions. The main feature of the Treaty is that a Contracting State which allows or requires the deposit of microorganisms for the purposes of patent* procedure must recognize, for such purposes, the deposit of a microorganism with any "international depositary authority" (see Article 3(1)(a)), irrespective of whether such authority is on or outside the territory of the said State. In other words, one deposit, with one international depositary authority, will suffice for the purposes of patent procedure before the national patent offices (called "industrial property offices" in the Treaty) of all of the Contracting States and before any regional patent office (e.g., the future European Patent Office) if such a regional office declares that it recognizes the effects of the Treaty (see Article 9(1)).

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* All references in this paper to patents are to be understood as references also to inventors' certificates.

8. What the Treaty calls an "international depositary authority" is a scientific institution--typically a "culture collection"--which is capable of storing microorganisms. Such an institution acquires the status of "international depositary authority" through the furnishing by one of the Contracting States of assurances to the Director General of WIPO to the effect that the said institution complies and will continue to comply with certain requirements (see Article 6(1)), including, in particular, the fact that it will be available, for the purposes of the deposit of microorganisms, to any "depositor" (person, firm, etc.), that it will accept and store the deposited microorganisms and that it will furnish samples thereof to anyone entitled to such samples but to no one else. The said assurances may be furnished also by certain intergovernmental industrial property organizations (see Article 9(1)(a)); the future European Patent Organisation could qualify as such an organization.

9. The Regulations contain detailed provisions (see Rule 11) on who is entitled--and when--to receive samples of the deposited microorganism. The depositor himself has a right to a sample at any time (see Rule 11.2(i)). He may authorize any third party (authority, natural person, legal entity) to ask for a sample and such a third party will receive a sample upon producing such an authorization (see Rule 11.2(ii)). Any "interested" industrial property office to which the Treaty applies may ask for a sample and will receive one; an industrial property office will mainly be regarded as "interested" where the microorganism is needed for the purposes of patent procedure before the said office (see Rule 11.1). Any other party may obtain a sample if, roughly stated, an industrial property office to which the Treaty applies certifies that, under the applicable law, such a party has the right to a sample of the given microorganism; the elements of the certification are provided for in detail to ensure that the maximum extent of caution will be exercised by the industrial property office before it issues a certification (see Rule 11.3(a)). An alternative to this certification procedure consists in the industrial property office communicating, from time to time, to the international depositary authorities lists of the accession numbers of those microorganisms which are referred to in patents granted by them, the effect of such communication being that the said authorities may furnish samples of such microorganisms to anyone; it is to be noted that it follows from the above that this alternative is <u>not</u> available before the grant and publication of the patent (see Rule 11.3(b)).

10. The Treaty and the Regulations also contain provisions allowing for what is called a "new" deposit where no samples of the originally deposited microorganisms can be furnished (see Article 4); permitting the termination or limitation of the status of international depositary authority at the will of the Contracting States where the said authority does not, or does not fully, comply with its assumed duties (see Article 8); requiring that all microorganisms deposited with an international depositary authority be transferred to another such authority if the former is about to cease functioning as such (see Rule 5.1); regulating the content of the receipt that each international depositary authority is required to give to the depositor for the deposited microorganism (see Rule 7); providing for the testing of the viability of the deposited microorganisms and the issuance of viability statements (see Rule 10); allowing the international depositary authority to charge a fee for each deposit, the fee covering the minimum 30 years during which the deposited microorganism must be stored (see Rules 9 and 12); providing for a special status and a special role for certain intergovernmental organizations (see Article 9).

11. <u>Administrative Provisions</u>. The States party to the Treaty constitute a Union (see Article 1) ("the Budapest Union"). Only States members of the Paris Union may become members of the Budapest Union (see Article 15(1)). The Budapest Union has an Assembly consisting of the States members of the said Union, the main tasks of the Assembly being to deal with all matters concerning the maintenance and development of the Union and the implementation of the Treaty (see Article 10(2)), including the power to amend certain provisions of the Treaty (see Article 14), to amend the Regulations (see Article 12(3)) and to take away or limit the status of any given international depositary authority (see Article 8(1)). Certain administrative tasks are entrusted to the International Bureau of WIPO (see Article 11). The possibility of amending the Treaty in revision conferences is also provided for (see Article 13).

12. It is to be noted that the Treaty contains no financial provisions. No State can be asked to pay contributions to the International Bureau of WIPO, or for any other purpose, on account of its membership in the Budapest Union. (The very small costs of the International Bureau connected with the Budapest Union are part of the budget of the Paris Union.)

13. Final Provisions. As already stated, only States members of the Paris Union may become members of the Budapest Union (see Article 15(1)). To become a member of the latter, any State which has signed the Treaty must deposit an instrument "of ratification"; those which have not signed must deposit an instrument "of accession"; such instruments must be deposited with the Director General of WIPO (see Article 15). Entry into force of the Treaty requires the deposit of five instruments of ratification or accession (see Article 16). The Treaty contains the usual provisions on denunciation (see Article 17) and notifications (see Article 20).

Main Advantages of the Treaty

14. The Treaty is primarily advantageous to the depositor who is an applicant for patents in several countries; the deposit of a microorganism under the procedures provided for in the Treaty will save him money and strengthen his security. It will save him money because, instead of depositing the microorganism in each and every country in which he files a patent application referring to that microorganism, he will have to deposit it only once, with one depositary, with the consequence that in all but one of the countries in which he seeks protection he will save the fees and costs that deposits would otherwise entail. In most cases, there will be at least one international depositary authority in the country of the depositor, which means that he will deal with an authority which is close to him, with which he can deal in his own language, to which he can pay the fees in his own currency and which he may even know from personal experience; in other words, he will be able to avoid dealing with distant authorities, in foreign currencies and in foreign languages. He will probably have a natural trust in that the authority will carefully preserve the viability of the deposited microorganism and that it will furnish samples only to those to whom it is supposed to furnish them.

15. The security of the depositor is increased by the fact that, for an institution to become an international depositary authority, solemn assurances as to the seriousness and continued existence of that institution must be given; such assurances must be given by a State or by an intergovernmental organization and they are addressed to all the member States of the Budapest Union. Consequently, it may be expected that the assurances will be strictly respected, all the more so since, if they are not so respected, the member States may take away from the defaulting institution the status of international depositary authority.

16. Finally, it is to be noted, as indicated in paragraph 12, above, that adherence to the Treaty entails no financial burden or obligations for any Government. In some countries, this may mean that ratification of the Treaty does not require a decision by the legislative authority but that a decision by the Government (the executive authority) suffices.

BP/PCD/3 October 15, 1979 (Original: English/French)

INTERNATIONAL BUREAU OF WIPO

Provisional Verbatim Minutes of the Meetings of the Plenary of the Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

Editor's Note: This document has not been reproduced here since it contains the provisional verbatim minutes of the Plenary of the Diplomatic Conference of Budapest which are reproduced, with a few amendments proposed by the participants, on pages 177 to 198 above.

BP/PCD/4 October 15, 1979 (Original: English/French)

INTERNATIONAL BUREAU OF WIPO

Provisional Summary Minutes of the Meetings of the Main Committee of the Budapest Diplomatic Conference for the Conclusion of a Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

Editor's Note: This document has not been reproduced here since it contains the provisional summary minutes of the Main Committee of the Diplomatic Conference of Budapest which are reproduced, with a few amendments proposed by the participants, on pages 199 to 460 above.

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NOTE CONCERNING THE USE OF THE INDEXES

These Records contain five indexes: two indexes to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, to the Regulations under the Treaty, to the Resolution and to the Agreed Statements; one index to the States which were represented at the Conference and/or were signatories of the Treaty or the Final Act; one index to the Organizations represented at the Conference; and one index to the participants in the Conference.

The first of the two indexes to the Treaty and Regulations thereunder lists all the provisions as well as references to the Resolution and to the Agreed Statements concerning the interpretation of certain provisions; the second is a catchword (subject matter) index. These two indexes refer to the provisions by their numbers as found in the final texts. The numbers of the provisions in the drafts submitted to the Conference are also indicated. Anyone using these two indexes may refer either directly to a particular provision as found in the first index or may consult the second index with a catchword or subject matter indication to determine the relevant provision citations to be used in consulting the first index.

Throughout the indexes with the exception of the Catchword Index, which cites the provisions, all the underlined numbers refer to the pages of these Records and the numbers which are not underlined refer to the paragraphs of the verbatim or summary minutes.

INDEX TO THE BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

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Resolution

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B. CATCHWORD INDEX TO THE BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE AND THE REGULATIONS UNDER THE TREATY

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INTERNATIONAL (PARIS) UNION FOR THE PROTECTION OF INDUSTRIAL PROPERTY
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Signatory of the Treaty: 45

CRESPI, R.S. (Union of Industries of the European Community (UNICE))
Observer: 473
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CURCHOD, F. (World Intellectual Property Organization (WIPO))
Head, Special Projects Section, Industrial Property Division: 473
Secretary of the Main Committee: 475
Minutes: 216, 220, 526, 743, 1895, 1921, 1936, 1940, 1949, 1971

DARMON, D. (Miss) (France)
Delegate: 465

DAVIDSON, C. (International Federation of Patent Agents (FICPI))
Observer: 472

DAVIS, I. (United Kingdom)
Head of the Delegation: 470
Chairman of the Drafting Committee: 475
Minutes: 26, 72, 98, 138, 177, 181, 204, 223, 231, 253, 255, 287, 290, 300, 321, 323, 352, 375, 382, 398, 401, 413, 479, 484, 514, 516, 519, 549, 557, 567, 577, 580, 610, 615, 695, 697, 758, 820, 868, 870, 872, 877, 892, 918, 925, 938, 942, 945, 973, 1053, 1097, 1103, 1153, 1181, 1203, 1225, 1252, 1255, 1307, 1325, 1357, 1368, 1370, 1380, 1433, 1436, 1459, 1488, 1517, 1580, 1582, 1584, 1588, 1596, 1619, 1621, 1624, 1640, 1643, 1698, 1703, 1715, 1782, 1791, 1832, 1842, 1847, 1874, 1881, 1916, 1938, 1942, 1965
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Signatory of the Final Act: 95

DEITERS, M. (Germany (Federal Republic of))
Alternate Head of the Delegation: 465
Minutes: 40, 174, 203, 264, 276, 280, 292, 355, 393, 444, 450, 488, 490, 504, 532, 536, 561, 568, 612, 706, 714, 724, 749, 815, 818, 842, 1035, 1055, 1062, 1201, 1204, 1206, 1238, 1251, 1254, 1256, 1273, 1367, 1395, 1402, 1490, 1680, 1733, 1852
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DELICADO MONTERO-RÍOS, J. (Spain)
Delegate: 469
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DEMENTIEV, V. (Soviet Union)
Delegate: 468
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DIA, P. (Senegal)
Delegate: 468
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DIETSCHI, P. (Switzerland)
Delegate: 469

DJUKIĆ, V. (Yugoslavia)
Head of the Delegation: 470
Vice-Chairman of the Main Committee: 475

DONOVICK, R. (World Federation for Culture Collections (WFCC))
Observer: 473
Minutes: 305, 307, 501, 884, 940, 1199, 1270, 1293, 1296, 1301, 1312, 1338, 1343, 1350, 1416, 1418, 1510, 1512, 1515, 1570, 1612, 1628, 1777, 1788

EL ESAWI, A. (Egypt)
Advisor: 464

ESPEJO, C. (Philippines)
Observer: 467
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FARFAL, R. (Poland)
Head of the Delegation: 467
Vice-Chairman of the Drafting Committee: 475
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FICHTE, J. (Austria)
Alternate Head of the Delegation: 463
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FRESSONNET, P. (France)
Deputy Head of the Delegation: 465
Vice-Chairman of the Drafting Committee: 475
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GARCÍA DE PRUNEDA Y LEDESMA, S. (Spain)
Head of the Delegation: 469
Vice-Chairman of the Credentials Committee: 475
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GRAEVE, H. (Germany (Federal Republic of))
Delegate: 465

GUDKOV, F. (Soviet Union)
Delegate: 468
Chairman of the Credentials Committee: 475
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GUERIN, P. (France)
Delegate: 465
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HABIB, A. (Egypt)
Head of the Delegation: 464
Vice-President of the Plenary: 475
Minutes: 825, 1058, 1071

HALLMANN, U. (Germany (Federal Republic of))
Delegate: 465
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HATAKAWA, K. (Japan)
Advisor: 466

HAYASHI, I. (Pacific Industrial Property Association (PIPA))
Observer: 473

HENSHILWOOD, G. (Australia)
Head of the Delegation: 463
Vice-President of the Plenary: 475
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HIROOKA, K. (Japan)
Delegate: 466
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HÜNI, A. (Switzerland)
Delegate: 469
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IANCU, V. (Romania)
Alternate Head of the Delegation: 468
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ILARDI, A. (World Intellectual Property Organization (WIPO))
Legal Officer, Special Projects Section, Industrial Property Division: 474
Secretary of the Drafting Committee: 475

IVANOV, I. (VALTSCHANOV) (Bulgaria)
Head of the Delegation: 463
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IWATA, H. (Japan)
Head of the Delegation: 466
Vice-President of the Plenary: 475
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JACOBSSON, M. (Sweden)
Delegate: 469
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JONKISCH, F. (German Democratic Republic)
Delegate: 465
Minutes: 116, 342, 596, 752
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JONSON, L. (Sweden)
Delegate: 469
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KARÁCSONYI, B. (Hungary)
Advisor: 466

KÄMPF, R. (Switzerland)
Delegate: 469
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KENDE, B. (Hungary)
Advisor: 466

KERSTING, H. (Germany (Federal Republic of))
Head of the Delegation: 465
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KHAN, Z. (Pakistan)
Observer: 471

KIM, C. (Democratic People's Republic of Korea)
Observer: 471

KOMAROV, L. (Soviet Union)
Head of the Delegation: 468
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KONRÁD, E. (Mrs.) (Hungary)
Delegate: 466
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LEBERL, O. (Austria)
Head of the Delegation: 463
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LEDAKIS, G.A. (World Intellectual Property Organization (WIPO))
Legal Counsel: 473
Assistant Secretary General of the Plenary: 475
Secretary of the Credentials Committee: 475

LOMMI, H. (Mrs.) (Finland)
Delegate: 464

LOPEZ TELLO, J. (Spain)
Advisor: 469

LOSSIUS, P. (Norway)
Deputy Head of the Delegation: 467
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LÜTKEN, G. (Mrs.) (Denmark)
Delegate: 464

MAHMOUD, A. (Egypt)
Advisor: 464

MALHEIRO, A. (Portugal)
Observer: 468

MARTIN, B.
Observer for the International Chamber of Commerce (ICC): 472
Observer for the European Federation of Agents of Industry in Industrial Property (FEMIPI): 472
Minutes: 1443, 1660

MARS, P. (Netherlands)
Delegate: 467

MATYSIAK, W. (Poland)
Delegate: 467

MBENGUE, M. (Senegal)
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MOUJJEVLEV, V. (Soviet Union)
Delegate: 468

NEEDS, A. (United Kingdom)
Delegate: 470
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NIEDZIALEK, T. (Poland)
Deputy Head of the Delegation: 467

NORDSTRAND, L. (Norway)
Head of the Delegation: 467
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OANCEA, A. (Romania)
Delegate: 468

OREDSSON, T. (Sweden)
Delegate: 469
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PAK, M. (Democratic People's Republic of Korea)
Observer: 471

PALÁGYI, T. (International Association for the Protection of Industrial Property (IAPIP))
Observer: 472
Minutes: 1176

PAPINI, I. (Italy)
Head of the Delegation: 466
Minutes: 36, 1036, 1577, 1595, 1827
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PAREANG, A. (Indonesia)
Head of the Delegation: 466
Vice-Chairman of the Credentials Committee: 475

PARRAGH, E. (Mrs.) (Hungary)
Delegate: 466
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PAWLOY, H. (Austria)
Delegate: 463
Observer for the Committee of National Institutes of Patent Agents (CNIPA): 472
Observer for the International Federation of Patent Agents (FICPI): 472

PECHMAN, E., von (Union of European Patent Attorneys and Other Representatives Before the European Patent Office (UNEPA))
Observer: 473
Minutes: 518, 1007, 1175, 1198, 1365, 1455, 1556

PETROV, A. (CHRISTOV) (Bulgaria)
Delegate: 463
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PFANNER, K. (World Intellectual Property Organization (WIPO))
Deputy Director General: 473

PUSZTAI, G. (Hungary)
Alternate Head of the Delegation: 465
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QAYOOM, M. (World Intellectual Property Organization (WIPO))
Head, Conference and Common Services Section, Administrative Division: 474

RISKU, A. (Finland)
Delegate: 464

ROKICKI, B. (Poland)
Delegate: 467
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ROSSIER, H. (World Intellectual Property Organization (WIPO))
Head, Mail and Documents Section, Administrative Division: 474

RUDAKOV, O. (Soviet Union)
Delegate: 468

SALMI, R. (Finland)
Delegate: 464

SCHLOSSER, S. (United States of America)
Alternate Head of the Delegation: 470
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SCHULTHEISZ, E. (Minister of Health, Hungary)
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SIKOS, R. (Hungary)
Adviser: 466

SIMONSEN, D. (Mrs.) (Denmark)
Deputy Head of the Delegation: 464
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SKJØDT, F. (Denmark)
Head of the Delegation: 464
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STAMPA PIÑEIRO, L. (Spain)
Delegate: 469

STEIN, A. (Germany (Federal Republic of))
Delegate: 465
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STOENESCU, D. (Romania)
Delegate: 468
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SVENDSEN, H. (Norway)
Delegate: 467

SZABO, G. (United Kingdom)
Advisor: 470
Minutes: 1021, 1023, 1882

SZÉPVÖLGYI, Z. (President of the Budapest Metropolitan Council, Hungary)
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SZENTPETÉRI, A. (Hungary)
Advisor: 466

TAK, J.D. (Netherlands)
Deputy Head of the Delegation: 467
Minutes: 265, 288, 386, 389, 1028, 1089, 1142, 1156, 1179, 1183, 1209, 1247, 1298, 1313, 1518, 1572, 1678, 1701, 1713, 1734, 1741, 1802, 1804, 1807, 1809

TASNÁDI, E. (Hungary)
Head of the Delegation: 465
President of the Plenary: 475
Minutes: 13, 15, 17, 19, 21, 22, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59
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TASSET, G. (European Federation of Agents of Industry in Industrial Property (FEMIPI))
Observer: 472

TOCKMAN, A. (United States of America)
Advisor: 470
Minutes: 1113, 1167, 1407, 1411, 1414, 1446, 1487

TORRES-SERRANO, M. (Mexico)
Observer: 467

TROTTA, G. (Italy)
Deputy Head of the Delegation: 466
Minutes: 1226, 1248, 1304, 1458, 1664, 1686, 1702, 1911

TURI, S. (Hungary)
Delegate: 469

TUULI, E. (Finland)
Head of the Delegation: 464
Vice-President of the Plenary: 475
Minutes: 46, 71, 601, 1650, 1684
Signatory of the Treaty: 45
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UTERMANN, J. (Germany (Federal Republic of))
Advisor: 465
Minutes: 1408, 1424, 1564, 1783, 1786, 1789

VANIŠ, V. (Czechoslovakia)
Head of the Delegation: 463

VAZQUEZ DE PARGA Y PRADO, R. (Mrs.) (Spain)
Delegate: 469

VÉKÁS, G. (Hungary)
Delegate: 466

VIANÈS, G. (France)
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VILLALPANDO, A. (Spain)
Delegate: 469
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WALLES, R. (Mrs.) (Sweden)
Advisor: 469
Minutes: 1707, 1735, 1739

WATSON, G. (Committee of National Institutes of Patent Agents (CNIPA))
Observer: 472
Minutes: 582, 640, 704, 826, 929, 1008, 1014, 1088, 1104, 1116, 1177, 1197, 1271, 1290, 1297, 1319, 1331, 1341, 1389, 1449, 1521, 1592, 1638, 1667, 1745

WEEL, E., van (Netherlands)
Head of the Delegation: 467
Minutes: 48, 76, 162, 166, 277, 332, 384, 406, 457, 487, 599, 754, 876, 1489, 1634, 1659

WERNER, H.K.
Observer for the European Federation of Agents of Industry in Industrial Property (FEMIPI): 472
Observer for the Union of Industries of the European Community (UNICE): 473
Minutes: 423, 437, 823, 1280, 1520, 1629, 1794

WIESNER, H. (Austria)
Delegate: 463

WINTER, H. (United States of America)
Head of the Delegation: 470
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WOYTH, K. (German Democratic Republic)
Delegate: 465

ZAITSEV, A. (Soviet Union)
Delegate: 468

ZHELEVA, M. (CHRISTOVA) (Mrs.) (Bulgaria)
Delegate: 463