

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

(Geneva, December 12 to 15, 1967)

and

**Ninth Session of the Intergovernmental
Copyright Committee**

(Geneva, December 12 to 15, 1967)



**United International Bureaux
for the Protection of Intellectual Property (BIRPI)**

GENEVA 1968

**BUREAUX INTERNATIONAUX REUNIS
POUR LA PROTECTION DE LA
PROPRIÉTÉ INTELLECTUELLE**

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**Thirteenth Session
of the Permanent Committee
of the International Union for the Protection
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(Berne Union)**

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I. Report

First Part

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) held its thirteenth ordinary session at Geneva from December 12 to 15, 1967.

The twelve member States of the Permanent Committee were represented, namely: Belgium, Brazil, Denmark, France, Germany (Federal Republic), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom. Representatives of the following States, members of the Berne Union or party to the Universal Copyright Convention, attended as observers: Argentina, Austria, Canada, Congo-Kinshasa, Czechoslovakia, Ecuador, Finland, Ghana, Greece, Guatemala, Holy See, Hungary, Ireland, Israel, Japan, Kenya, Lebanon, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Niger, Pakistan, Philippines, South Africa, Sweden, Turkey, United States of America, Venezuela. In addition, three intergovernmental organizations and sixteen non-governmental international

organizations sent observers. The list of participants is attached as an annex to this report.

The Permanent Committee held some of its meetings jointly with the Intergovernmental Copyright Committee, which was holding its ninth session at the same time and place. This was done in the case of the inaugural and final meetings and meetings at which matters of common interest were discussed. The report on these meetings has been drawn up separately.

Because of the death of the Chairman, Mr. Henry Puget (France), and the resignation of the Vice-Chairman, Mr. Mascarenhas da Silva (Brazil), the Permanent Committee had to elect a temporary Chairman in conformity with Article 9 (1) of its Rules of Procedure. On the proposal of the Director of BIRPI, Mr. Hans Morf, Head of the Swiss Delegation, was chosen for this office. In that capacity, he opened the thirteenth session of the Permanent Committee.

Following the inaugural meeting, the Permanent Committee elected its Officers in accordance with Article 7 of the Rules of Procedure. On the proposal of the Delegation of France, seconded by the Delegation of India, Ambassador T. A. Cippico, Head of the Delegation of Italy, was unanimously elected Chairman. On the proposal of the Delegation of the United Kingdom, Mr. Jorge Carlos Ribeiro (Brazil) was unanimously elected Vice-Chairman.

In accordance with Article 7 (3) of the Permanent Committee's Rules of Procedure, the International Bureau of the Berne Union was responsible for the secretariat of the debates and Mr. Claude Masouyé, Counsellor, Head of the Copyright Division of BIRPI, was accordingly appointed Secretary of the Permanent Committee.

A drafting committee, chaired by Mr. William Wallace (United Kingdom) and composed of representatives from Brazil, Denmark, France, Germany (Federal Republic), India, Rumania and Spain, prepared the draft resolutions submitted to the Permanent Committee for approval.

The Secretary of the Permanent Committee was requested to draft the present report.

With regard to its composition, the Permanent Committee noted that, as there had been no resignations, the membership remained unchanged.

It then adopted its agenda, which included the following items of concern to the Permanent Committee only.

1. The Stockholm revision of the Berne Convention

The Secretary of the Permanent Committee presented a report (document CP/XIII/2) which simply outlined the new substantive provisions of the Berne Convention as adopted by the Stockholm Conference.

Mr. Gae, speaking in the name of the Delegation of India, called to mind the special needs of the developing countries as regards the education of the masses and the raising of living standards, and stressed how very important it was for those countries to be able to profit as rapidly as possible from the measures included for their benefit in the Berne Convention, particularly in the matter of the translation and reproduction of works. He also reminded the delegates that an understanding of the problems facing the developing countries had enabled the Stockholm Conference to agree unanimously to the establishment of a special Protocol, and he particularly emphasized the need for developing countries to be informed of the developed countries' attitude towards the Protocol. He therefore suggested that an inquiry be undertaken by BIRPI so that the developed countries' intentions regarding the implementation of the provisions of the Protocol could be ascertained within a very short period of time.

Mr. Gae (India) referred, furthermore, to Article 5 of the Protocol which allows the latter to be accepted before the substantive clauses of the Berne Convention have been ratified, and raised the question whether the expression "as from the signature of this Convention" meant the signature

by the interested country or the signature of the Stockholm Act as a whole. He pointed out that, if the first interpretation were accepted, then a country which had not signed within the specified time limit could not file a declaration of application of the Protocol.

The Director of BIRPI indicated that, in his opinion, the cited expression should be interpreted as referring to the date of the signature of the Convention, namely, July 14, 1967, at Stockholm. Otherwise, a country which had not signed the Convention would be obliged to accede to the substantive clauses thereof in order to admit the application of the Protocol in respect of that country, and this would be contrary to Article 5 itself, which expressly provides for the possibility of accepting the Protocol "at any time" before becoming bound by the substantive clauses of the Convention. Furthermore, the text drawn up at Stockholm does not say "its" signature but "the" signature of this Convention. The same expression is found in Article 7 (7) of the Convention.

Mr. Ulmer (Federal Republic of Germany), Mr. Wallace (United Kingdom) and Mr. Stanescu (Rumania) expressed their agreement with the interpretation of the Director of BIRPI.

Mr. Kerever (France), analyzing the results of the Stockholm revision, considered that, owing to the circumstances, the revision had not been able to maintain the advance of copyright. It appeared to him that there was no question but that the economic and social conditions of developing countries were scarcely compatible with the level of protection established by the Berne Convention. Nevertheless, the Protocol, which had been drawn up for a transitional period pending recognition of full protection, should permit them to co-exist within the framework of the Berne Union with the other countries. Lastly, in the name of the Delegation of France, he considered that such temporary technical assistance should not exceed the strict minimum required.

A discussion followed concerning the conditions in which the inquiry suggested by the Delegation of India might be undertaken.

Mr. Wallace (United Kingdom) observed that his Government had no present intention of signing the Stockholm Act of the Berne Convention and that, furthermore, his Delegation was not in a position to make any promises whatsoever regarding the implementation of the Protocol by the United Kingdom.

Mr. Ulmer (Federal Republic of Germany) reminded the delegates that, in many countries, the question of accepting the Protocol was within the province of the legislature and that the inquiry to be addressed to the executive would have to be restricted to the intentions of the latter. He felt, however, that it was in the interests of all member States of the Berne Union to know what turn events were likely to take in this connection.

Mr. Morf (Switzerland), Mr. Weincke (Denmark), Mr. de San (Belgium), and Mr. De Sanctis (Italy) emphasized, in turn, that it was impossible to require States to make a final decision on the matter within a specific period of time; they could, however, be consulted as to their intentions.

Mr. Raya Mario (Spain) voiced the opinion that the inquiry might lead to evasive or indefinite answers, inasmuch as many countries would no doubt reply that the matter was under consideration.

Mr. Stanescu (Rumania) pointed out that, as certain formalities had to be complied with before an international convention could be ratified, it would be difficult to know in advance the dates on which instruments of ratification or accession would be deposited. He suggested that the inquiry should deal with the progress of the procedure under way and that it should call attention to the desire of the developing countries to be informed as soon as possible.

Mr. Strnad (Observer from Czechoslovakia) suggested that the inquiry should be addressed to all States members of the Berne Union and not only to the developed countries.

Mr. Adachi (Japan) was of the opinion that the inquiry should pertain to the conditions in which the matter was being investigated and, moreover, should concern the Stockholm Act as a whole.

Mr. Kerever (France), reminding the delegates that application of the Protocol was subject to certain provisions of domestic legislation which would have to be instituted in the developing countries, hoped that the inquiry would also enable the measures envisaged for that purpose to become known.

At the close of the discussion, the Permanent Committee adopted Resolution No. 1, reproduced in an annex to this report.

2. Action to be taken on the resolution adopted by the Permanent Committee at its extraordinary session in March 1967

The Secretary of the Permanent Committee presented the report of the Director of BIRPI on this matter (document CP/XIII/3). The problems involved were those posed by a possible revision of Article XVII of the Universal Copyright Convention and the Appendix Declaration relating thereto, problems which affected the development and general functioning of the Berne Union.

Mr. De Sanctis (Italy) drew the Committee's attention to the need for waiting a certain number of years before the real position regarding the application of the Protocol could be known. It seemed to him that, in the circumstances, the Permanent Committee could not indefinitely postpone the adoption of a definite position on the subject.

Mr. Ulmer (Federal Republic of Germany) underlined the importance of the safeguard clause for the future of the Berne Union and also indicated that it would be premature to take a decision on its amendment before knowing how the

Protocol would be implemented. In view of the fact that other questions had been raised in connection with a possible revision of the Universal Convention, he suggested that all of the problems should be discussed in general at a joint meeting of the Permanent Committee and the Intergovernmental Committee, in an attempt to arrive at a joint solution.

Mr. Mas (France) thought that the results of the Stockholm Conference should permit the problem to be seen as a whole and that, in view of those results, there was no longer any reason to contemplate a revision of the Universal Convention at this time.

Mr. Raya Mario (Spain) supported the proposal of Mr. Ulmer and expressed the opinion that harmony and agreement should be sought in the joint discussions of the two Committees.

After Mr. Ulmer had pointed out that a joint meeting could only provide a forum for an exchange of views, since the decision remained within the province of each Committee, the Permanent Committee accepted his proposal.

3. Other items

The other items included in the Permanent Committee's agenda were examined in joint meetings with the Intergovernmental Copyright Committee.

Second Part

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) and the Intergovernmental Copyright Committee, meeting at Geneva from December 12 to 15, 1967, for their thirteenth and ninth sessions respectively, opened these sessions at a joint meeting.

Professor G. H. C. Bodenhausen, Director of BIRPI, welcomed the representatives of States and observers and expressed the hope that the meetings would be entirely successful. He paid tribute to the memory of Mr. Henry Puget,

Chairman of the two Committees, who had died in 1966. Recalling the spirit of international cooperation and mutual understanding of the interests at stake which had prevailed at the meetings of the Stockholm Conference, he hoped that the work of the two Committees would be inspired by the same sentiments.

Mr. Saba, Assistant Director-General of Unesco for International Standards and Legal Affairs, cordially welcomed the States and observers in the name of Mr. Maheu, Director-General. He observed that the present session of the Intergovernmental Committee was of special importance because it was being held not only after the Stockholm Conference but also after the General Conference of Unesco had raised the question of revising the Universal Copyright Convention. Furthermore, he reminded the delegates that Unesco, which was the United Nations organization responsible for implementing Article 27 of the Universal Declaration of Human Rights defining the right to culture, has the duty to protect intellectual creation and also to promote the dissemination of culture and facilitate access to it. He finally underlined the importance which the various organs of Unesco attached to the suggestions of the Intergovernmental Committee. In concluding, the representative of the Director-General of Unesco again saluted the memory of the Committees' former Chairman, Mr. Henry Puget.

After examining separately the questions within their own jurisdiction, the Committees considered in joint meetings the following items on their agenda.

1. Photographic reproduction of copyrighted works by or for libraries, documentation centres and scientific institutions

The Secretariats had submitted a report (document CP/XIII/4-IGC/IX/4) to which were attached two studies of existing practices in this field, one dealing with the Federal Republic of Germany and the other with the United Kingdom.

A number of delegations, in turn, congratulated the consultants on the work accomplished.

Mr. Kaminstein (United States of America), stressing the importance of the problems posed by the use of electronic computers and the new technical processes of reproduction, expressed the hope that the Secretariats would collect information on the subject and declared his willingness to furnish information on existing practices in the United States of America.

Mr. Ulmer (Federal Republic of Germany) considered that it was premature to provide for solutions at the international level and hoped that further studies would be made on the subject, including the question of computers.

Mr. Rohmer (France), Mr. Wallace (United Kingdom), Mr. Weincke (Denmark), Mr. Strnad (Czechoslovakia), Mr. De Sanctis (Italy), and Mr. Raya Mario (Spain), also considered it advisable to continue the studies in the matter, in an attempt to discover the principles on which international policy in this field could be based.

At the close of the discussion, each of the Committees adopted Resolution No. 2 attached to this report.

2. Development of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

The Secretariats informed the Committees of the number of ratifications and accessions in respect of this Convention, and of the forthcoming session of the Intergovernmental Committee provided for by Article 32 of the Convention (document CP/XIII/5-IGC/IX/5). The Committees took note of this information.

3. Assistance to States in developing their national copyright legislation

The Secretariats reported on the outcome of the following meetings: Hispano-American Legal Seminar on Copyright

(Madrid, May 30-June 5, 1966), organized at the Hispanic Cultural Institute under the auspices and with the cooperation of BIRPI; Inter-American Meeting of Copyright Experts (Rio de Janeiro, July 4-9, 1966), convened by Unesco with the cooperation of the International Confederation of Societies of Authors and Composers; East-Asian Seminar on Copyright (New Delhi, January 23-30, 1967), convened by BIRPI. The Committees took note of the information communicated to them on those meetings (document CP/XIII/6-IGC/IX/6).

With regard to the fellowships awarded in the field of copyright to competent officials in developing countries, the Secretariat of the Intergovernmental Copyright Committee informed the Committees that under the ordinary programme a fellowship had been awarded to an official of the Republic of China (Taiwan) and that, under the Programme of Participation in the Activities of Member States, the Director-General had decided to allocate fellowships to one national of Morocco, two nationals of the Malagasy Republic, and one national of the Philippines. The Director-General of Unesco had further granted the assistance of an expert to the Republic of the Congo-Brazzaville in order to help that State to draft its domestic legislation on copyright.

The Secretary of the Permanent Committee pointed out that, owing to the preparations for the Stockholm Conference, the procedure for the granting of fellowships in the field of copyright had suffered some delay. However, BIRPI had provided assistance to a number of African States (Morocco, Senegal, Tunisia) in drafting their domestic legislation on copyright.

4. Possible revision of the Universal Copyright Convention

Mr. Saba (Unesco) explained that the Committees had to deal with two distinct questions: on the one hand, the information given by the Secretariat of Unesco on Resolution 5.122 of the General Conference of Unesco concerning the

possible revision of Article XVII of the Universal Copyright Convention and, on the other hand, the proposal of the Government of India to instruct a working group to submit a report on the revisions that might be necessary in the Universal Convention.

Mr. Gae (India) was of the opinion that the safeguard clause in respect of the Berne Union, contained in Article XVII of the Universal Copyright Convention, was no longer necessary. He said, furthermore, that if the developed countries did not accept the application of the Protocol adopted at Stockholm, developing countries might be obliged to leave the Berne Union, and also denounce the Universal Copyright Convention, should Article XVII be maintained. Consequently, India supported Resolution 5.122 of the General Conference of Unesco. He also expressed the opinion that a revision of other articles of the Universal Convention might be necessary and proposed, to that end, that a working group be set up, in which developing countries would be adequately represented, in order to study the question.

Mr. Kaminstein (United States of America), after reminding the meeting of the current revision of the American copyright legislation tending towards a *rapprochement* with the Berne Union, pointed out that the new provisions inserted at Stockholm in the Berne Convention in the form of the Protocol Regarding Developing Countries made accession to that Convention by the United States impossible in the foreseeable future. He stated that revisions of the Universal Convention aimed at raising the level of protection while at the same time taking account of the legitimate needs of developing countries could well be considered. He further intimated that the United States of America was not in favor of deleting the safeguard clause. He considered that application of the Protocol would result in a weakening of copyright without satisfying the needs of the developing countries in the field of education. He expressed the opinion that an international system should be established to meet the requirements of

developing countries while maintaining the protection of copyright. He recalled in this connection the recommendation of the Stockholm Conference concerning the creation of an international fund. It seemed to him that a joint study programme should be worked out before going any further, in order to avoid the erosion of international copyright, to consider the possibilities of revising the Berne Convention and the Universal Copyright Convention or any other solution, and to draw up an international programme which would satisfy the needs of developing countries and, at the same time, safeguard the fundamental principles of copyright. He suggested that a working group should be set up as rapidly as possible, to analyse the position of international copyright in the light of the Stockholm results and to formulate appropriate recommendations.

Mr. Ulmer (Federal Republic of Germany) stressed the importance of the development of international copyright at the present time and expressed the need to study all aspects of the question together, that is to say, the relations with developing countries, on the one hand, and the relations between the two existing Conventions (Berne and Universal Copyright), on the other hand. Considering that the satisfactory method was to set up a joint study group of the two Committees, he supported the suggestion submitted by the Delegation of the United States but observed that any action undertaken in this field should be conducted with prudence. He expressed the view that any antagonism between the two Conventions should be avoided in the relations with developing countries, as that would be contrary to their purpose and their mission. As far as the possible revision of the safeguard clause was concerned, he declared that, because of the adoption of the Protocol at Stockholm, he was opposed to any amendment of that provision.

Mr. Coward (Kenya) and Mr. Kumih (Ghana) supported the proposals put forward by the Delegations of India and the United States of America.

Mr. Adachi (Japan), Mr. Morf (Switzerland), and Mr. De Sanctis (Italy) approved the principle of setting up a study group.

Mr. Wallace (United Kingdom) pointed out his neutral position as regards the possible revision of the safeguard clause.

Mr. Mas (France) considered that the disappearance of the safeguard clause was no longer justified after the adoption of the Stockholm Protocol. He felt that, since the Permanent Committee had entrusted to BIRPI the task of instituting an inquiry into the application of that Protocol, the results of that inquiry should be awaited before undertaking any study.

Mr. Laurelli (Argentina) thought that, in order to ensure that governments would be prepared to adopt a definite and permanent attitude, it was essential to avoid mistakes by approaching the situation cautiously and refusing to allow psychological or political considerations to compel them to take hasty steps whose unfortunate consequences would be revealed only with the passing of time. He therefore approved the proposal to set up, in accordance with the established procedure, a study group, which would have to be precisely informed of its purposes and terms of reference. He pointed out that, in accordance with Article XI of the Universal Convention, the report should be communicated to the Intergovernmental Committee, which alone was competent to convene and make preparation for a conference for the revision of the Convention.

Mr. Ulmer (Federal Republic of Germany), Mr. De Sanctis (Italy), and Mr. de San (Belgium) agreed with the suggestion of the Delegate of France, considering it advisable for the study group to await the results of the inquiries undertaken by the Director-General of Unesco, on the one hand, as regards the proposal for a revision of Article XVII of the Universal Convention, and by the Director of BIRPI, on the other hand, on the subject of the application of the Protocol to the Berne Convention.

Mr. Strnad (Czechoslovakia) and Mr. Ribeiro (Brazil) declared themselves in favor of a revision of Article XVII of the Universal Copyright Convention along the lines proposed in Resolution 5.122 of the General Conference of Unesco.

Mr. Gae (India), supporting this view, added that, if ten countries wanted a revision conference, it would have to be convened under Article XII of the Universal Copyright Convention, and that it would be appropriate to try to utilize the occasion for amending any clause also. For this purpose, he suggested the setting up of a study group in which developing countries should be duly represented.

Mr. De Sanctis (Italy) stated that his Government was in favor of a revision of the Universal Copyright Convention, to the extent that the revision was limited to Article XVII.

Mr. Strnad (Czechoslovakia) drew the meeting's attention to the fact that developing countries, by virtue of their sovereignty, are entirely free to cut off all legal relations in the field of international copyright. Noting the case of developing countries which had acceded to neither of the two Conventions, he considered that maintenance of Article XVII of the Universal Convention could constitute an obstacle to their accession to one of the international instruments existing in that field. He expressed the wish that the level of protection would be appreciably the same in countries which were at similar social and economic levels. In conclusion he expressed the view that, since the preparation of a large-scale revision of the Universal Copyright Convention would require several years, it would be advisable to prepare as soon as possible a revision of that instrument restricted to Articles XI and XVII thereof.

Mr. Straschnov (Monaco) emphasized that the United States proposal implied a study on a large scale with a view to achieving a more or less uniform system. As far as Article XVII of the Universal Convention was concerned, he recalled that its institution in 1952 had been perfectly logical but that to maintain such a provision at the present time was no longer

necessary as regards the developing countries. He considered that, if some of the larger countries did not accept the application of the Stockholm Protocol, the developing countries might leave the Berne Union even if Article XVII of the Universal Convention were maintained. He felt, consequently, that revision of that Article was not the main problem. Comparing the provisions of the Stockholm Protocol and those of the Universal Convention, he noted that the only essential difference concerned the right of translation, and that revision of the Universal Convention should be directed to that particular question. Supporting the remark by Mr. Ulmer (Federal Republic of Germany), he felt, like him, that any such revision should deal at the same time with other provisions of the Convention, such as the definition of the concept of publication. He finally declared himself in favor of setting up a study group whose terms of reference should be limited to revision of the Universal Convention, having regard to the needs of developing countries.

Mr. El Bassiouni (Observer of URTNA), stressing the urgent needs of the developing countries, drew the attention of the Committees to the necessity for setting up as rapidly as possible a study group to examine the problems of those countries.

Mr. Gae (India) again emphasized that the problems arising concerned, on the one hand, the revision of Article XVII of the Universal Convention and, on the other hand, the revision of the substantive clauses.

In this connection, Mr. Saba (Unesco) stated that, once the inquiry in progress concerning the advisability of revising Article XVII of the Universal Convention had been completed, an extraordinary session of the Intergovernmental Committee could be convened with a view to preparing, in conformity with Article XII of the Universal Convention, a revision conference. The need for such an extraordinary session could not be affected in any way by the decisions which

the Committees might make in connection with the work of the proposed study group.

The Director of BIRPI asked what majority of member States would be required for revision of Article XVII of the Universal Convention: Would it require a unanimous vote, a qualified majority, or a simple majority, and what, in the latter cases, would be the legal position of States which had not voted for the revision? Would they nevertheless be bound by the revision? He drew the meeting's attention to the fact that, if the reply to the last of those questions was in the negative, any revision voted by some only of the States — for example, States which had already expressed themselves in favor of such a revision — would not solve the problem but would in fact lead to a rather chaotic situation.

Mr. Saba (Unesco) replied that the revision of the Universal Convention was not subject to any unanimity and that the revision conference could decide on the majority required. He added that, in view of the present tendency of international jurisprudence, it was probable that different legal relations would be established among States parties to the Convention, according to their having or not ratified the revised text.

At the close of their deliberations, the Committees expressed themselves in favor of the principle of setting up a joint study group, which should not begin its work, however, until the results of the inquiries mentioned above were known, and whose terms of reference would be determined later in the light of those results.

The Committees each adopted, respectively, Resolution No. 3 attached to this report.

After the adoption of the resolution, some delegations wished to make their attitude quite clear.

Mr. Gae (India) pointed out that, if ten States requested a revision conference to deal with Articles XI and XVII of the Universal Copyright Convention, the resolution in question could not prevent the convening of such a conference.

Mr. Ulmer (Federal Republic of Germany) stressed that it was obviously the task of the Intergovernmental Committee to prepare the revision if such a revision were requested by ten States; however, in view of the fact that Article XVII of the Universal Copyright Convention dealt with relations with the Berne Convention, it would be advisable that the two Committees should hold a joint meeting to consider the problem together.

Mr. Saba (Unesco) pointed out that the resolution under consideration could in no way delay the convening of an extraordinary session of the Intergovernmental Committee, which alone was competent to make preparation for a conference for the revision of the Convention if ten States so requested. He stated that only the Intergovernmental Committee was competent to take a decision concerning the convening of a conference for revision, and that, from the legal standpoint, it would not be correct to refer to a joint meeting of the two Committees, as some speakers had done.

The Director of BIRPI expressed the opinion that, in making preparation for the conference that might be requested for the revision of the Universal Copyright Convention, the Intergovernmental Committee could enlarge the programme of the conference. Suggestions had already been made along those lines, for example, in connection with Article XI. He recalled that, in March 1967, the Permanent Committee had thought it necessary to await the results of the Stockholm Conference. Those results existed, to be sure, in the form of texts, but not yet in the field of application. The programme of revision might be prepared in such a way as to take account of those results and their actual application.

Mr. De Sanctis (Italy) stressed the fact that certain delegations, while adopting the proposed resolution, considered that it should not have the effect of preventing the convening of a conference for the revision of the Universal Convention, even if the revision were limited to certain articles of the Convention.

Mr. Strnad (Czechoslovakia) supported that statement.

Mr. Mas (France) thought that excessive haste was to be avoided, and that it might be advisable first of all to outline a universal copyright policy.

Mr. Wallace (United Kingdom) emphasized that, in the opinion of some delegations, the fact that ten countries requested the revision of Article XVII of the Universal Convention did not exclude the possibility of revising other provisions.

5. Decisions adopted by international organizations in the field of copyright or which may affect copyright

The Committees took note of the information furnished on this subject by the Secretariats (document CP/XIII/7-IGC/IX/7).

6. Date and place of the next regular sessions

The Committees each left it to the Secretariats to fix the date and place of their next regular sessions which, in the absence of a formal invitation from a member State, will be held in the autumn of 1969 at Unesco Headquarters in Paris.

7. Closing of the sessions

Mr. Kaminstein (United States of America) congratulated the two Secretariats on their co-operation and hoped it would become even closer. He said that the results of the present session might be regarded as the beginning of a constructive period for the future of international copyright. He emphasized that the Berne Convention and the Universal Convention were closely connected, and that any change made in the one might affect the other. On behalf of the delegations, he expressed his keen appreciation of the patience and dignity which the Chairman had shown in directing the discussions.

Mr. Gae (India) and Mr. Raya Mario (Spain) joined in the congratulations expressed to the Chairman.

The Chairman of the Committees thanked the participants for the work they had accomplished and the Secretariats for preparing and organizing the meetings. He expressed his gratitude to the Committees for the confidence they had placed in him.

II. Resolutions

RESOLUTION N° 1

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union),

Noting the revision of the substantive provisions of the Berne Convention concluded at Stockholm,

Having debated the proposal of the Indian Delegation to find out the intentions of the member States of the Berne Union on the bringing into force of the Protocol Regarding Developing Countries,

Considering that it is in the interests of all the member countries of the Berne Union to be fully informed of each other's intentions on this point,

Requests BIRPI to conduct an inquiry among all States which, having recalled this general interest and underlined the desire made known by some developing countries to be able to benefit as soon as possible from the provisions inserted in their favor in the Protocol to the Berne Convention, would cover the following points:

1. In respect of developed countries:

- (a) the procedure, Parliamentary or otherwise, for the acceptance of the application of the Protocol to works of which they are the country of origin;
- (b) the present state of the procedure for acceptance of the Protocol in accordance with Article 5, ratification or accession to the Protocol or the steps envisaged for this purpose;

2. In respect of developing countries:

- (a) on what points and to what extent they propose to make use of the reservations provided for in the Protocol;
- (b) the provisions which they expect to introduce to this effect in their national legislation, and in particular as to the remuneration of authors and the conditions on which the licenses envisaged by the Protocol will be granted;

Considers that a reasonable time limit should be allowed to reply to this inquiry and that thereafter BIRPI should inform member States.

RESOLUTION N° 2

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) sitting with the Intergovernmental Copyright Committee,

Having noted with interest the report presented by the Secretariats on the existing practices in the Federal Republic of Germany and in the United Kingdom in the matter of reproduction by photographic processes or by processes analogous to photography of works protected by copyright, either by or for libraries, documentation centres and scientific institutions, or by or for commercial enterprises or for commercial purposes,

Congratulates the consultants who assisted the Secretariats in the preparation of this report;

Recommends that the Secretariats pursue their studies on this subject;

Has noted that, in implementation of the resolutions adopted by the Permanent Committee and the Intergovernmental Copyright Committee in their preceding sessions, a Committee of Experts chosen in consultation with the Governments concerned, charged with examining the problems posed and formulating suggestions for possible solutions, will be convened jointly by the Director-General of Unesco and the Director of the United International Bureaux for the Protection of Intellectual Property during 1968;

Requests the Secretariats to assemble information on the problems arising from the utilization of electronic computers and other technological equipment.

RESOLUTION N° 3

The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) sitting with the Intergovernmental Copyright Committee,

Considering the increasing complexity of international copyright problems associated with the various multilateral copyright conventions and the need for analysis and clarification of their effects and inter-relationships,

Considering the continuing and urgent needs of developing countries for the use of literary and artistic works, essential to their educational, scientific and cultural development,

Considering the importance of adequate and effective copyright protection, which is necessary for the continuing creation and dissemination of such works,

Considering the proposals for changes in the provisions of the Universal Copyright Convention with respect to its relationship to the Berne Convention and for examining the possibility of revision of the substantive provisions of the Universal Copyright Convention,

Expresses the wish that, as soon as possible after the replies requested by the Director-General of Unesco to his circular letter dated December 30, 1966, on the question of revising Article XVII of the Universal Copyright Convention, and after the replies requested by the Director of BIRPI to the inquiry concerning the attitude of member States of the Berne Union towards the Protocol Regarding Developing Countries are received, a joint group for the study of matters referred to in the Preamble to this Resolution be established;

Suggests that it might be appropriate that the composition and terms of reference of such a study group should be considered at an extraordinary joint session of the Intergovernmental Copyright Committee and the Permanent Committee of the Berne Union.

III. List of Participants

I. Member States of the Permanent Committee

Belgium

Mr. Gérard L. de San, Director-General and Legal Counsellor,
Ministry of National Education and Culture.

Brazil

Mr. Jorge Carlos Ribeiro, Secretary of Embassy, Permanent
Delegation of Brazil, Geneva.

Denmark

Mr. Willi Weincke, Head of Department, Ministry of Cultural Affairs.
Mr. Torben Lund, Professor, University of Aarhus.

France

Mr. Yves Mas, Counsellor of Embassy, Ministry of Foreign Affairs.
Mr. André Kerever, Maître des requêtes, Council of State, Cabinet of
the Minister of State for Cultural Affairs.
Mr. Charles Rohmer, Head of the Copyright Office, Ministry of State
for Cultural Affairs.

Germany (Fed. Rep.)

Mr. Eugen Ulmer, Professor, University of Munich.

Mr. H. J. Mangold, Minister Counsellor, Permanent Delegation of the Federal Republic, of Germany, Geneva.

Mr. Peter Schönfeld, First Secretary, Permanent Delegation of the Federal Republic of Germany, Geneva.

Mrs. Elsa von Kotzebue, First Secretary, Permanent Delegation of the Federal Republic of Germany, Geneva.

India

Mr. R. S. Gae, Secretary to the Government of India, Ministry of Law.

Mr. T. S. Krishnamurti, Deputy Secretary to the Government of India, Registrar of Copyrights, Ministry of Education.

Italy

H. E. Tristram Alvisè Cippico, Ambassador; Delegate for Intellectual Property Treaties, Ministry of Foreign Affairs.

Mr. Gino Galtieri, Head of the Literary and Artistic Property Office, Presidency of the Council of Ministers.

Mr. Giuseppe Trotta, Legal Counsellor, Italian Delegation for Intellectual Property Treaties, Ministry of Foreign Affairs.

Mr. Valerio De Sanctis, Attorney-at-Law.

Portugal

Mr. José de Oliveira Ascensão, Professor, Faculty of Law, University of Lisbon.

Rumania

H. E. Constantin Stanescu, Ambassador, Ministry of Foreign Affairs.

Mr. Marcel Popesco, Second Secretary, Permanent Mission of Rumania, Geneva.

Spain

Mr. José Raya Mario, Secretary-General of Archives and Libraries.

Switzerland

Mr. Hans Morf, Former Director, Federal Bureau of Intellectual Property.

Mr. Joseph Voyame, Director, Federal Bureau of Intellectual Property.

United Kingdom

Mr. William Wallace, C. M. G., Assistant Comptroller, Industrial Property and Copyright Department, Board of Trade.

Mr. Ronald Bowen, Principal Examiner, Industrial Property and Copyright Department, Board of Trade.

2. Observers

a) States not Members of the Permanent Committee

Argentina

Mr. Luis Maria Laurelli, Third Secretary, Permanent Mission of Argentina, Geneva.

Austria

Mr. Helmuth Tades, Sektionsrat, Federal Ministry of Justice.

Canada

Mr. F. W. Simons, Assistant Commissioner of Patents, Patent Office.

Mr. Richard McKinnon, First Secretary, Permanent Mission of Canada, Geneva.

Mr. Jacques Corbeil, Third Secretary, Permanent Mission of Canada, Geneva.

Congo-Kinshasa

Mr. Edmond Witahnkenge, Director, Head of the Literary Property Section, Ministry of Culture and Tourism.

Czechoslovakia

Mr. Vojtěch Strnad, Legal Counsellor, Ministry of Culture and Information.

Ecuador

Mr. José Nájera, Counsellor, Deputy Permanent Delegate, Permanent Mission of Ecuador, Geneva.

Finland

Mr. Ragnar Meinander, Head of Section, Ministry of Education.

Ghana

Mr. E. Y. Kumih, Assistant Secretary, Ministry of Information.

Mr. N. K. Adzakey, Editor.

Greece

Mr. Georges Pilavachi, Legal Adviser, Permanent Delegation of Greece, Geneva.

Mr. Tassos Ioannou, Attorney-at-Law, Supreme Court.

Guatemala

H. E. Eduardo Palomo, Ambassador, Permanent Delegate of Guatemala, Geneva.

Holy See

Rev. Henri de Riedmatten, O. P., Permanent Observer to the United Nations, Geneva.

Hungary

Mr. Jenó Nagy, Chargé d'Affaires, Permanent Mission of Hungary, Geneva.

Ireland

Mr. M. J. Quinn, Controller of Patents, Industrial and Commercial Property Registration Office.

Israel

Mr. Ze'ev Sher, Registrar of Patents, Designs and Trade Marks, Ministry of Justice.

Mr. Joël Alon, Second Secretary, Permanent Mission of Israel, Geneva.

Japan

Mr. Kenji Adachi, Director, Cultural Affairs Bureau, Ministry of Education.

Mr. Kichimasa Soda, Deputy Permanent Delegate of Japan to Unesco, Paris.

Kenya

Mr. David J. Coward, Registrar General.

Lebanon

Mrs. Rubi Homsy, First Secretary, Permanent Mission of Lebanon, Geneva.

Luxembourg

Mr. Eugène Emringer, Governmental Counsellor, Ministry of National Economy.

Mexico

Mr. Héctor Cárdenas Rodríguez, Third Secretary, Permanent Delegation of Mexico, Geneva.

Monaco

Mr. Georges Straschnov, Director of Legal Affairs, European Broadcasting Union, Geneva.

Morocco

Mr. Abderrahim H'ssaine, Director-General, Copyright Office.

Netherlands

Mr. J. A. W. Schwan, Division of Legislation on Private Law, Ministry of Justice.

Mr. Diedrich Wechgelaer, Senior Official, Legal Section, Ministry of Cultural Affairs.

Niger

Mr. Mohamadou Seydou, First Secretary, Embassy of Niger, Paris.

Pakistan

Mr. S. A. D. Bukhari, Counsellor, Permanent Mission of Pakistan, Geneva.

Philippines

Mr. Venancio L. Yaneza, Technical Assistant, Office of the President of the Philippines.

Mr. Maxie S. Aguillon, Attaché, Permanent Mission of the Philippines, Geneva.

South Africa

Mr. Heinrich Heese, Third Secretary, Permanent Mission of South Africa, Geneva.

Mr. A. J. W. Roodt, Third Secretary (Economic), Permanent Mission of South Africa, Geneva.

Sweden

Mr. Torwald Hesser, Justice of the Supreme Court.

Turkey

Mr. Vahdi Hatay, Cultural Attaché, Embassy of Turkey, Berne.

United States of America

Mr. Abraham L. Kaminstein, Register of Copyrights, Library of Congress.

Mr. Harvey J. Winter, Assistant Chief, Business Practices Division, Bureau of Economic Affairs, State Department.

Miss Barbara A. Ringer, Assistant Register of Copyrights, Library of Congress.

Venezuela

Mr. José Cordero Ceballos, First Secretary, Permanent Delegation of Venezuela, Geneva.

b) Intergovernmental Organizations

International Labour Office (ILO)

Miss Anna Fidler, Non-Manual Workers' Section.

United Nations Educational, Scientific and Cultural Organization (Unesco)

Mr. H. Saba, Assistant Director-General for International Standards and Legal Affairs.

Mr. S. Tucker, Head, Copyright Division.

Miss M.-C. Dock, Copyright Division.

International Institute for the Unification of Private Law (UNIDROIT)

Mr. Pierre Lalive, Professor, Dean of the Faculty of Law, University of Geneva.

Organization of American States (OAS)

Mr. Joseph S. Dubin, Pan American Union, General Secretariat of OAS.

c) International Non-Governmental Organizations

European Broadcasting Union (EBU)

Mrs. Madeleine Larrue, Assistant to the Director of Legal Affairs.

International Alliance for Diffusion by Wire (AID)

Mr. Willem H. Metz, President.

International Confederation of Societies of Authors and Composers (CISAC)

Mr. Léon Malaplate, Secretary-General.

Mr. Jean-Alexis Ziegler, Deputy Secretary-General.

International Federation of Actors (IFA)

International Federation of Musicians (FIM)

International Federation of Variety Artistes (IFVA)

Mr. Rudolf Leuzinger, Secretary-General of FIM.

International Federation of Film Distributors' Associations (FIAD)

Mr. Gontrand Schwaller, Secretary-General.

International Federation of Film Producers' Associations (IFFPA)

Mr. Massimo Ferrara Santamaria, Attorney-at-Law.

International Federation of the Phonographic Industry (IFPI)

Mr. S. M. Stewart, Director-General.

Mr. H. H. von Rauscher auf Weeg, Legal Adviser.

International Federation of Translators (IFT)

Mr. Pierre Malinverni, Chairman of the Copyright Committee.

Mrs. Henriette Malinverni.

Internationale Gesellschaft für Urheberrecht (INTERGU)

Mr. Walter Jost, Delegate for France.

International Literary and Artistic Association (ALAI)

Mr. Henri Desbois, Professor at the Faculty of Law, University of Paris, Permanent Secretary.

International Publishers Association (IPA)

Mr. Hjalmar Pehrsson, Secretary-General.

Mr. André Géranton, Head, Legal Section, French Publishers Association.

International Union of Cinematograph Exhibitors (UIEC)

Mr. Josef Handl, Legad Adviser.

International Writers Guild (IWG)

Mr. Roger Fernay, President, International Copyright Commission.

Union of National Radio and Television Organizations of Africa (URTNA)

Mr. Mohammed El Bassiouni, Secretary-General.

Mr. Germain Tanoah, Radiodiffusion Télévision Ivoirienne.

Mr. B. Zerrouki, Deputy Director-General, Radiodiffusion Télévision Algérienne.

d) National Organizations

American Book Publishers Council

American Educational Textbook Institute

Mr. Leo N. Albert, President, Prentice Hall International, Inc.

American Educational Publishers Institute

Mrs. Bella L. Linden, Attorney.

Authors League of America (U. S. A.)

Mr. Irwin Karp, Counsel.

Canadian Copyright Institute

Mr. Roy C. Sharp, Executive Director.

3. BIRPI

Professor G. H. C. Bodenhausen, Director.

Mr. Claude Masouyé, Counsellor, Head, Copyright Division.

Mr. Mihailo Stojanović, Legal Assistant, Copyright Division.

4. Officers of the Permanent Committee (1967-1969)

Chairman: Mr. Tristram Alvise Cippico (Italy)

Vice-Chairman: Mr. Jorge Carlos Ribeiro (Brazil)

Secretary: Mr. Claude Masouyé (BIRPI)

Ninth Session of the Intergovernmental Copyright Committee

(Geneva, December 12 to 15, 1967)

I. Report

The Intergovernmental Copyright Committee, established by Article XI of the Universal Copyright Convention, held its ninth ordinary session at Geneva, at the Headquarters of the International Telecommunication Union, from December 12 to 15, 1967.

The twelve member States of the Intergovernmental Copyright Committee (Argentina, Brazil, France, Federal Republic of Germany, India, Italy, Japan, Mexico, Spain, Switzerland, United Kingdom, United States of America) were represented at the ninth session.

The following States, parties to the Universal Copyright Convention or members of the United Nations or of the United Nations Educational, Scientific and Cultural Organization, were represented by observers: Austria, Belgium, Canada, Congo (Kinshasa), Czechoslovakia, Denmark, Ecuador, Finland, Ghana, Greece, Guatemala, Holy See, Hungary, Ireland, Israel, Kenya, Lebanon, Luxembourg, Monaco, Morocco, Netherlands, Niger, Pakistan, Philippines, Portugal, Republic of South Africa, Rumania, Sweden, Turkey, Venezuela.

The representatives of four intergovernmental organizations and sixteen non-governmental international organiza-

tions, and five non-governmental national organizations attended the meeting as observers. The list of participants is given as an annex to this report¹).

The Intergovernmental Committee held some of its meetings jointly with the Permanent Committee of the International Union for the Protection of Literary and Artistic Works, which was holding its thirteenth session. This was the case in the inaugural and final meetings and the meetings at which matters of common interest were discussed. The report on these meetings has been drawn up separately²).

1. Opening of the ninth ordinary session

In opening the ninth ordinary session of the Intergovernmental Copyright Committee, Mr. Morf (Switzerland), temporary Chairman of the Committee, paid tribute to the memory of Mr. Henry Puget, Chairman of the Committee from 1956 to 1957 and since 1965. He reminded the delegates of Mr. Puget's eminent rôle on the international level as delegate of France to all meetings concerned with intellectual property. The Intergovernmental Committee observed a moment of silence in memory of Mr. Henry Puget.

2. Election of officers

The Intergovernmental Committee elected its officers. On the proposal of the delegation of France, Ambassador T. A. Cippico, Head of the delegation of Italy, was unanimously elected Chairman. On the proposal of the delegation of the United States of America, Mr. J. C. Ribeiro (Brazil) was unanimously elected Vice-Chairman.

1) See above, p. 22, the list of participants of the Permanent Committee of the Berne Union. The persons mentioned in this list are the same as the participants of the Intergovernmental Copyright Committee, subject, as regards the States concerned, to the membership of both Committees.

2) See above, p. 7, the second part of the Report of the Permanent Committee of the Berne Union.

A drafting committee, chaired by Mr. William Wallace (United Kingdom) and composed of representatives from Argentina, France, India, Japan, and the United States of America, prepared the draft resolutions for submission to the Intergovernmental Committee.

The drafting of this report was entrusted to the Secretariat of the Committee, which, in accordance with Article 17 of the Rules of Procedure, is provided by the United Nations Educational, Scientific and Cultural Organization.

3. Adoption of the definitive agenda

At the request of Mr. Ulmer (Federal Republic of Germany), seconded by Mr. Kaminstein (United States of America), the Committee decided to examine, at the meetings held jointly with the Permanent Committee of the International Union for the Protection of Literary and Artistic Works, item 6 of the provisional agenda concerning the proposal forwarded by the Government of India to form a working group, in which the developing countries would be adequately represented, to present, before the next General Conference of Unesco, a report on the revisions which might have to be made in the Universal Copyright Convention.

The Intergovernmental Committee consequently adopted the following agenda:

- (a)* application of the Universal Copyright Convention;
- (b)* amendment of the Rules of Procedure with respect to the renewal of the Committee;
- (c)* partial renewal of the Committee.

4. Application of the Universal Copyright Convention

The Secretariat of the Committee submitted the report on this matter (document IGC/IX/2) and gave an account of the new accessions between the eighth and ninth sessions of the Committee. Four new States (Kenya, Netherlands, Venezuela, Yugoslavia) deposited with the Director-General of Unesco

their instruments of ratification of the Convention and its annexed Protocols 1, 2 and 3, or their instruments of accession thereto, and one State (Italy), party to the Convention and to Protocols 2 and 3, deposited its instrument of ratification of annexed Protocol 1. The countries which have deposited instruments of ratification or of accession now number 55. The Committee took note of the report.

5. Amendment of the Rules of Procedure with respect to the renewal of the Committee

At the eighth session of the Committee, held at Paris from November 15 to 18, 1965, the delegation of the United Kingdom had put forward a proposal to the effect that Articles 2 and 29 of the Rules of Procedure should be amended so as to ensure that membership in the Committee would be rotated among the States parties to the Universal Copyright Convention.

As a result of the ensuing debates on the matter, the Intergovernmental Committee had recognized the necessity of amending certain of the rules concerning renewal of the Committee and had decided to postpone the study of this question until the next session. The Committee furthermore requested the Secretariat of the Committee to consult with the States parties to the Universal Convention and to submit a report on the matter to the Committee at its next session.

On implementation of these decisions, the Secretariat of the Committee in a letter dated January 20, 1967, consulted each State party to the Universal Convention on the amendments that should be made to the Rules of Procedure in order to improve the renewal of the Committee's members.

The Secretariat of the Committee communicated the results of this inquiry, to which the following 20 States sent replies: Argentina, Austria, Belgium, Denmark, Finland, Federal Republic of Germany, Guatemala, Ireland, Israel, Japan, Kenya, Liberia, Nicaragua, Nigeria, Panama, Sweden,

Switzerland, United States of America, Venezuela, and Zambia.

From the replies that came to the Secretariat (documents IGC/IX/3, 3 Add. 1 and 3 Add. 2), it appeared that the States considered it necessary to restrict the number of States that could be immediately re-elected, and that various procedures could be envisaged for the election or re-election to vacant seats.

Mr. Laurelli (Argentina) pointed out that the proposals of Argentina contained in document IGC/IX/3 corresponded to the practice generally followed by international organizations.

Mr. Saba (Unesco) requested that any proposals made by the delegations be submitted as amendments in writing.

Mr. Ulmer (Federal Republic of Germany) observed that the matter under discussion was very complex. According to the proposal of the United Kingdom, only three of the four outgoing States could be re-elected. But the procedure remained to be determined.

Mr. Laurelli (Argentina) asked whether it would not be possible before proceeding to vote on the amendments to the Rules of Procedure, for the Drafting Committee to submit an amended text based on the proposal made by the United Kingdom.

Mr. Rohmer (France) seconded the statements made by the delegate of the German Federal Republic. The matter is too complex for a direct vote to be taken on the amendments to be made to the Rules of Procedure. The desired objective is to ensure, in the membership of the Intergovernmental Committee, an equitable geographic distribution among the States parties to the Universal Copyright Convention. Several systems have been suggested in order to achieve that objective: that of the United Kingdom, that of Argentina which consisted in drawing lots to determine which country's mandate would not be immediately renewable, and that of Israel which envisaged the possibility of increasing the number of States that are members of the Committee.

Mr. Saba (Unesco) remarked that it would be desirable to increase the number of the Committee's members, but that this could be envisaged only within the framework of a conference of revision of the Universal Copyright Convention, since the number of the Committee's members is specified in Article XI.

Mr. Raya Mario (Spain) asked whether the amendments to the Rules of Procedure adopted by the present session of the Committee would take immediate effect or whether it would be possible for the delegates first to consult their respective governments.

Mr. Saba (Unesco) answered that the amendments to the Rules of Procedure would take immediate effect. He reminded the delegates that the previous session of the Intergovernmental Committee had postponed examination of the matter until the present session so as to enable the representatives of the States to consult their governments.

Mr. Raya Mario (Spain) remarked that the governments had been consulted only on the proposals of the United Kingdom and not on the consequences of applying those proposals.

Mr. Morf (Switzerland) wished to raise a point of procedure. He felt that a formal presentation by each delegation of its proposals was too complicated a procedure.

Mr. Saba (Unesco) said that each delegation had to formulate the amendments it wanted to submit.

Mr. Ulmer (Federal Republic of Germany) noted that there were in fact only two proposals, namely that of the United Kingdom according to which only three States would again be eligible and that of Switzerland according to which only two States would again be eligible.

The Committee could make its decision on this basis and then discuss the procedure for re-election.

Mr. Morf (Switzerland) pointed out that Austria had also suggested that re-election should be possible for only two States.

Mr. Tades (Austria) reminded the delegates that his Government felt that the possibility of immediately renewing the mandate of an outgoing State should be restricted, but that there should be no question of entirely suppressing this possibility so that Member States carrying particular weight will be able to have a permanent seat. Moreover, the Austrian Government had suggested that in the event of a revision of the Universal Copyright Convention, the number of States on the Committee should be increased.

The Chairman considered that the Committee should first decide on the number of countries that can be re-elected and then on the manner of election or re-election. He observed that there were two proposals before the Committee: that of the United Kingdom and that of Switzerland.

Mr. Adachi (Japan) stated that he approved the idea behind the United Kingdom proposal, which was to facilitate rotation of Committee membership among the States. He noted, however, that from the practical point of view the United Kingdom proposal raised complex questions, especially as concerns determining which State cannot be re-elected. Japan felt that the solution would be to increase the number of the Committee's members, and therefore to amend Article XI of the Universal Copyright Convention. Such a revision would require a certain amount of time, but the situation has changed considerably since the fourteenth session of the General Conference of Unesco and the Stockholm Conference, and no one now considers a revision of the Universal Copyright Convention premature. During the transitional period, the establishment of associate membership might be envisaged. He suggested that there could be two associate members and that these members should be African States. The associate members would not have the right to vote, but their opinions would receive great respect. The Term of their mandate would be the same as that of the Committee member's mandate. Lastly, this associate membership would be abolished once membership of the Committee was increased.

proposal.

Mr. De Sanctis (Italy) concurred in the United Kingdom

to the Convention should be in a ratio of 1 to 4. that the representation in the Committee of the States parties session onward. Moreover, Canada, supported Israel's proposal Rules of Procedure should be respected from the present He recommended that the amendments to be made to the among the States of the same continent should be assured. and that an equitable geographic distribution and a rotation He felt, however, that only two States should again be eligible, general principle on which the British proposal was based. Mr. Simons (Canada) said that he was in favour of the number of State members of the Committee.

ported the Japanese proposal with a view to increasing the African countries should also have two seats. Ghana sup- tion. The Asian countries should have two seats, and the- scope so as to ensure a more equitable geographic distribu- opinion that the projected amendment should have a wider proposal was viewed with favour by Ghana. He voiced the Mr. Kumih (Ghana) declared that the United Kingdom

democratic. slovakia approved the Swiss proposal, which was the most Committee no longer corresponded to actualities. Czecho- distribution, and pointed out that the composition of the the Committee had to represent an equitable geographic States. He reminded the delegates that the membership of of the Committee was a matter also of interest to observer Mr. Strnad (Czechoslovakia) remarked that the renewal

session of the Intergovernmental Committee. already been put forward by the United States at the seventh support the Japanese proposal, the principle of which had that proposal not be accepted, the United States would also States supported the proposal of the United Kingdom; should of increasing the membership of the Committee. The United that the United States of America had always been in favour Mr. Kaminstein (United States of America) pointed out

Mr. Rohmer (France) recalled that at the seventh session of the Intergovernmental Committee the idea had come up of adding an unofficial committee to the official Committee. Despite the difficulties of a legal nature that this proposal might involve, France felt that it was an admissible temporary solution from a pragmatic and practical point of view. The United Kingdom had later proposed a solution which, legally, was more coherent and France had approved it. The question might arise, however, whether it would not be possible to attach the Japanese solution to the United Kingdom solution; the former could complete the English proposal for want of something better.

Mr. Coward (Kenya) supported the United Kingdom proposal, which was the first step toward a more equitable geographic distribution.

The Chairman raised the question of the amount of time that might be required for a revision of Article XI of the Universal Copyright Convention.

Mr. Saba (Unesco) pointed out that, although a revision might be estimated in terms of months, the entry into force of the revised texts would require several years. He therefore felt that a temporary solution was necessary. He went on to say that the notion of associate members, as presented by the delegation from Japan, was not included in the Convention, but that its acceptance would not be incompatible with the text of the Convention. Nevertheless, Mr. Saba thought that the difference in status between associate members and observers, who have the right to make written or oral statements, would be rather slight, and that this temporary solution should not become a substitute for the United Kingdom proposal. He felt that the time had come to ask the Committee whether the principle was accepted that not all outgoing States should be immediately eligible. The Committee could then decide on the number of States (one or two) which would not be again eligible. He read a proposal formulated by the Swiss delegation. According to the proposal, not more

than two of the States whose mandates have terminated would be immediately eligible for a further six-year period, at the end of which they could no longer be re-elected; States whose mandates were not renewed would again be eligible only after an interruption of six years.

Mr. El Bassiouni (observer from URTNA) said that the discussion of this item of the agenda had been most interesting, especially in regard to the idea of associate members. He pointed out that observers and associate members had participated in the work of the last URTNA General Assembly and that the question of the difference in status between the observers and the associate members had come up. He concurred with the statements made on the subject by the representative of the Director-General of Unesco. He felt, moreover, that the most appropriate solution would be a revision of Article XI.

Mr. Kaminstein (United States of America) observed that the Swiss proposal deviated very little from the United Kingdom proposal, except on one point; namely, that six years must elapse before the State or States not immediately eligible can again be elected. This solution seemed somewhat irrational to Mr. Kaminstein, who hoped that the period of non-eligibility would be reduced to a single period between elections.

The Chairman noted that a unanimous opinion seemed to be emerging that there was an urgent need to change the rhythm of renewals of States that are members of the Intergovernmental Committee. He observed that several proposals had been submitted: that of the United Kingdom, that of Switzerland, that of Japan, and that consisting in the revision of Article XI of the Convention. He felt that the proposal of the United Kingdom constituted the first step and suggested that a vote be taken.

Mr. Kaminstein (United States of America) asked the Swiss delegation whether it insisted on the six-year period or whether it would accept an amendment to that period.

Mr. Voyame (Switzerland) thought that this question should not yet be put to a vote but that the Committee should vote only on the number of States that could be re-elected.

Mr. Wallace (United Kingdom) believed that it was the procedure provided for in Article 35 (2) of the Rules of Procedure that was applicable, so that the proposal could be adopted by six votes in favour.

Mr. Ulmer (Federal Republic of Germany) suggested that a vote should first be taken on the Swiss proposal, which deviated the most from the provisions of the Rules of Procedure.

Mr. Saba (Unesco) pointed out that, since the vote was not on amendments, the order did not matter, but that the proposal of the representative of the Federal Republic of Germany was a good one and that it would be fitting first to vote on the proposal most deviating from the Rules of Procedure.

Mr. Kumih (Ghana) wanted to know, before the question was put to a vote, the list of States that are members of the Intergovernmental Committee.

The Secretariat of the Committee read the list of States that are members of the Committee.

The Chairman consecutively put to vote the proposals of Switzerland and the United Kingdom.

The United Kingdom proposal was adopted by nine votes.

Mr. Saba (Unesco) noted that the period during which the States would not be eligible still remained to be discussed.

Mr. Voyame (Switzerland), recalling that the idea behind the amendments to the Rules of Procedure is to ensure rotation among the States, felt that an interruption of six years was of great importance in view of the results of the voting which had just taken place.

Mr. De Sanctis (Italy) concurred in the proposal of the United Kingdom and United States of America which allows

States to re-elect outgoing States after an interruption of two years.

Mr. Strnad (Czechoslovakia), for his part, felt that the freedom of the States should be restricted and that the Convention should be applied to the letter.

Mr. Ulmer (Federal Republic of Germany) noted that there were two proposals at hand: one coming from Switzerland and providing a period of six years before a State can be re-elected; the other coming from the United States of America and providing that an outgoing State cannot be immediately re-elected, which means that a period of two years must elapse before its re-election.

Mr. Rohmer (France) declared that the French delegation joined in the basic principles of the British proposal. He left open the question of the way to adopt until after further discussions.

Mr. Kaminstein (United States of America) pointed out that it is not necessary to specify the approach of the United States because it results automatically from the fact that the outgoing State will be re-eligible at the next session.

Mr. Ascensão (Portugal) seconded the statements made by the representatives of Switzerland and Czechoslovakia. He was of the opinion that the only effective way of allocating vacant seats to States which have not yet been members of the Committee is to provide a period of six years before an outgoing State can be re-elected.

The Chairman put the proposal of Switzerland to a vote.

The Swiss proposal was rejected by a vote of seven to one. The representatives of France and the United Kingdom abstained.

Mr. Wallace (United Kingdom) asked whether it could be surmised from the votes that had taken place that the United Kingdom proposal was accepted as a whole.

Mr. Rohmer (France) thought that the votes showed that the United Kingdom proposal was accepted as a whole, including the provision for a secret vote.

Mr. De Sanctis (Italy) pointed out that Italy, in voting for the United Kingdom proposal, did not believe that the voting procedure was included. He felt that the non-eligible State should be designated by drawing lots.

Mr. Laurelli (Argentina) asked for further details as to the consequences of the United Kingdom proposal as regards geographic distribution.

Mr. Kaminstein (United States of America) supported the United Kingdom in its entirety.

Mr. Laurelli (Argentina) thought that the procedure by which the non-eligible State would be designated and the question of geographic distribution were closely linked together.

Mr. Wallace (United Kingdom) explained that his delegation's proposal was intended to permit all outgoing States and all States parties to the Convention to be elected members of the Committee. Considering that, for psychological reasons, it would be difficult to have an open ballot on the re-election or non-re-election of a given State, the United Kingdom delegation was in favour of a secret ballot.

Mr. Adachi (Japan) seconded the United Kingdom's proposal concerning the secret ballot.

Mr. Strnad (Czechoslovakia) wondered how, under the system proposed by the United Kingdom, the non-eligible State would be designated if votes were divided.

Mr. Ulmer (Federal Republic of Germany) shared the concern of the observer from Czechoslovakia. He said that the Committee was faced with two proposals: that of the United Kingdom providing for secret ballot, and that of Italy in favour of drawing lots. Mr. Ulmer seconded in principle the proposal of a secret ballot which he proposed to complete by drawing lots in case of tie vote.

Mr. Laurelli (Argentina) wanted again to raise the question of which geographical area would lose membership in the Committee in order to enable a representative of an African State to come in.

Mr. Kaminstein (United States of America) felt that the Committee should proceed in stages and determine first of all the procedure to be followed in designating the non-eligible State. A working group could then shape up the amendments to be made to the Rules of Procedure.

Mr. Rohmer (France) said that the working group should know on what to base its discussion. It seemed to him that the possibility of an open vote was eliminated, thus leaving the possibilities of secret ballot or drawing lots. In either case, further problems would present themselves, which the working group would have to solve.

Mr. Ulmer (Federal Republic of Germany) supported the United Kingdom delegation. The Committee would have to decide on secret ballot or drawing lots. The working group could then take up its work.

Mr. Laurelli (Argentina) shared the views of the United Kingdom's delegate.

The principle of drawing lots was adopted by six votes (with France abstaining).

Mr. Kumih (Ghana) thought that the question of geographic distribution should not be entrusted to a working group but discussed at a plenary meeting.

Mr. Saba (Unesco) said that it was essential to have a working group to formulate the text of amendments to be made to the Rules of Procedure. He pointed out that, in general, the principle of equitable distribution was implicit, without being formally stipulated. He thought that being short of time this question should be left up to the conscience of the Committee which should not exclude the possibility of submitting formal and precise proposals at the next session.

Mr. Winter (United States of America) supported the statements of Mr. Saba.

It was decided to set up a working group, composed of representatives from Argentina, Federal Republic of Ger-

many, India, Spain, United Kingdom, and United States of America, entrusted with drawing up the amendments to the Committee's Rules of Procedure. The working group met under the Chairmanship of Mr. Ulmer (Federal Republic of Germany).

As a result of the amendments proposed by the working group and adopted by the Committee, the text of Rules 2, 3(a) and 29 of the Rules of Procedure has been amended to read as follows:

Rule 2. For the final sentence substitute the following:

“Not more than three of the four retiring States may be re-elected. If necessary, the State which is not eligible for re-election shall be determined by drawing lots.”

Rule 3. Paragraph 1, sub-paragraph (a) should be revised to read as follows:

“(a) In the course of the regular session at the end of which the term of office of a State expires by virtue of Rule 2 or Rule 37, the Committee, subject to the preceding provisions, shall, unless it renews the term of office of such State, designate another Contracting State as a member of the Committee.”

Rule 29. Add a paragraph as follows:

“2. Nevertheless, when, in accordance with Rules 2 and 3, voting is necessary to decide which States shall be elected or re-elected to fill vacancies on the Committee, the Secretariat will prepare a list of the States parties to the Convention who are eligible for election. It will give one copy of the list to each delegation. Each delegation shall mark on its copy the names of as many States as there are vacancies to be filled. The States which receive the greatest number of votes are elected. In case of a tie vote, a new vote will, if necessary, be taken, limited to the States receiving the same number of votes. In case of a second tie vote, lots will be drawn. The Chairman will announce the names of the States elected. The votes of the individual States will not be recorded.”

In addition, to take into account the observations made by a number of delegations on the subject of the geographic distribution of the States that are members of the Committee, the Committee adopted Resolution No. 57 (IX), which is given as an annex to this report.

Mr. Laurelli (Argentina), seconded by Mr. Ribeiro (Brazil), again expressed his fear that the geographic equilibrium would be jeopardized in 1969 and 1971. He insisted that a solution should be found to the problem at the present session of the Committee and recalled the terms of his Government's reply to the letter from the Director-General of Unesco, namely that a European country designated by drawing lots should not be re-elected in 1967, the same compromise being applicable in 1969 to an American State.

Mr. Adachi (Japan) stated that he did not understand the import of the intervention by the delegate of Brazil.

The Chairman proceeded to draw lots to designate the State whose mandate could not be immediately renewed. The State drawn was Argentina.

The Committee, having then taken a vote on the seats to be filled, France was re-elected by eleven votes, Italy and the United Kingdom by nine votes each, and Kenya elected by eight votes.

As a result of this vote, Mr. Laurelli (Argentina) asked that the following statement appear in the report, the inclusion of which the Committee unanimously approved:

"It has been established that Resolution No. 57 (IX) has been approved, as a matter of exception, and that, in the election of 1969, the Intergovernmental Committee will not apply the letter of the new wording of Rule 2 of the Rules of Procedure and will proceed to elect a country from the same geographical region as the outgoing State. Moreover, so as to respect the principles laid down in paragraph 2 of Article XI of the Universal Copyright Convention as regards geographic distribution, and inasmuch as the membership of the Committee cannot be increased by 1971, a European country should give up its seat to assure the said equitable geographic distribution."

6. Other questions

The other questions on the agenda of the Intergovernmental Copyright Committee were considered at joint meetings with the Permanent Committee of the Berne Union.

II. Resolutions

Resolution 57 (IX)

The Intergovernmental Copyright Committee

Recalling that, according to Article XI, paragraph 2 of the Universal Copyright Convention, the members of the Committee should be selected with due consideration to fair geographical representation,

Desiring to assure the full application of this provision and to achieve a balanced participation in the composition of the Committee, of all continents,

Hopes that an African State will be elected as a member of the Committee during the present session.

Resolutions 58 (IX) and 59 (IX)³⁾

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³⁾ See above, p. 20 and 21, the text of Resolutions Nos. 2 and 3.