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UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION
OF INTELLECTUAL PROPERTY (BIRPI).

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Intellectual property Conference of Stockholm, 1967

- Vol.2 -

Documents S/15 - S/199
(English)

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POUR LA PROTECTION DE LA
PROPRIÉTÉ INTELLECTUELLE
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INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

Observations of Governments
on the Proposals for
Revising the Administrative Provisions
and the Final Clauses
of all Conventions and Agreements

and

for Establishing the
International Intellectual Property Organization

(Documents S/3 to S/10)

received as at April 30, 1967

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N.B. – In view of the fact that many of the observations relate to several documents, it was not found practical to attempt to prepare an analysis, by subject matter, of these observations.

CZECHOSLOVAKIA

Permanent Mission
of the
Czechoslovak Socialist Republic

Geneva, February 15, 1967

I have the honor to refer to your Circular No.1005, dated September 22, 1966, and to forward the preliminary observations of the competent Czechoslovak Authorities on preparatory Documents S/3, S/9 and S/10.

S/3, Article 13bis(8)(c)

It is suggested that the simple majority be changed to a qualified two-thirds majority.

S/3, Article 13bis(9)

S/9, Article 21bis(9)

The Czechoslovak authorities are of the opinion that the rights of observers at the meetings should be stipulated, as is done in Document S/10, Article 8.

S/9, Article 20bis

If the Protocol Regarding Developing Countries is to serve as an effective aid to those countries for which it is intended, it must become, without exception, an integral part of the Stockholm Act. It is not considered adequate to adopt a solution according to which States should have the possibility, when ratifying the Convention or acceding thereto, of excluding all the substantive provisions, or the provisions of Article 21 to 23 pertaining to the organs of the Union, finances, and amendments to articles dealing with such questions. Should the Stockholm Conference nevertheless adopt the principle of a twofold system, that is, exclusion of unanimity of countries of the Union in pursuance of Article 23, paragraphs (2) and (3), and observance of the provisions of Article 25(1)(b), provisions of Article 20bis -- as well as the Protocol

Czechoslovakia

should form an integral part of the text, which a State, when ratifying the Stockholm Act or acceding thereto, would be obliged to accept without exception. To a certain extent, the new proposal in document S/9 Corr. 1 to delete Article 25quater corresponds to the Czechoslovak conception. In order to attain the objective sought by the consequential changes, as explained in paragraph 8 of the said document, it would seem to be more logical to have Article 20bis precede Article 24 and to delete from paragraph (2) of Article 20bis the words : "subject to the provisions of Article 25(1)(b)(i) and (c)." Article 25 (1)(b)(i) would then read : "to Articles 1 to 20, or . . .", the words "bis and the Protocol" being likewise deleted from Article 25(2)(a).

S/3, Article 13ter(2)

S/9, Article 21ter(2)

The wording of this provision regarding the obligation for States "promptly" to communicate to the International Bureau all new laws and official texts concerning the protection of industrial property and copyright is too severe for those States whose language is not an official language of the Union. It is therefore recommended that "promptly" should be changed to "within a reasonable period of time" or "as soon as possible."

S/9, Article 27bis

The responsible Czechoslovak authorities propose the adoption of Alternatives C or D, as they are in line with the generally accepted legal principles, governing the free choice of the means of seeking a peaceful solution of international disputes.

Alternative C corresponds to Article 36 of the Statutes of the International Court of Justice. Alternative D has become common practice, during the past few years, in the negotiation of international multilateral treaties (Vienna Conventions on diplomatic and consular relations, Conventions on maritime law, etc.).

Czechoslovakia

S/10, Article 3(2)(vi) and (vii)

It is suggested that more importance should be given to items(vi) and (vii) by moving them to the head of the list and numbering them (i) and (ii).

Future activity within the framework of the development of measures calculated to protect intellectual property and the offer of effective cooperation to States requesting legal-technical assistance in the field of intellectual property are the main reasons behind the proposals for establishing a new organization. It would consequently be advisable to stress the importance of these objectives and functions of the Organization by placing them at the top of the list rather than at the foot, as is done in the draft.

S/10, Article 4

The Czechoslovak authorities suggest that the IVth Alternative, "C", should be adopted because the Convention involves matters that are of interest to all States. It would be contradictory to the principle of sovereign equality of States if some of them were to be prevented from acceding to a Convention of this sort.

S/10, Article 8(6)(a)

It is proposed that the simple majority be changed to a qualified two-thirds majority.

Concerning the Contractual Obligations of Member States of the Union as regards Earlier Texts

In the opinion of the Czechoslovak authorities, it is not fully apparent from the texts of the Conventions, including those of Stockholm whether contracting parties for whom a given text is not equally valid are contractually bound by reciprocity. The Czechoslovak authorities presume, therefore, that careful attention is still to be given to this question and, if need be, Czechoslovakia will put forward proposals.

In making these observations and proposals, the Czechoslovak authorities reserve the right to present any further observations and proposals that may be deemed necessary. By doing so, they hope to contribute, to the best of their ability, to the preparation of the documents for the Diplomatic Conference of Stockholm on the protection of intellecutal property.

(Original : French)

FINLAND

Ministry for
Foreign Affairs

Helsinki, February 13, 1967

With reference to the circular letter No. 1005 of the United International Bureaux for the Protection of Intellectual Property of September 22, 1966 concerning the preparatory documents for the Intellectual Property Conference of Stockholm I have the honour on behalf of the Finnish Government to make the following comments.

It is obvious that the need for the protection of intellectual property has strongly grown as a result of the continuing development of international cooperation. Therefore the Finnish Government deem it necessary to have the relevant existing conventions revised not only in order to ensure the development in this field but also in order to contribute both towards the centralization of the activities and towards the delegation of the responsibility for the activities to the States Parties to the Conventions. Furthermore, the accession of States not Parties to the existing Conventions to the conventions dealing with questions of intellectual property is in this way being facilitated. The representatives of Finland have, as a matter of fact, at the preliminary congresses supported these views. The proposed changes to the Berne and Paris Conventions as well as the draft Convention of a new international organization of intellectual property aim all at achieving the afore-mentioned goals. The Finnish Government fully support all these proposals and do not either have any remarks in principle to make on the proposed administrative and organizational changes and arrangements.

(Original: English)

FRANCE

Ministry for
Foreign Affairs

Paris, February 6, 1967

By circular No. 1005, you were kind enough to send me copies of three Preparatory Documents for the Intellectual Property Conference of Stockholm, 1967, namely:

S/3 Paris Convention for the Protection of Industrial Property : Proposals for Revising the Administrative Provisions and the Final Clauses (Articles 13 to 20).

S/9 Berne Convention for the Protection of Literary and Artistic Works : Proposals for Revising the Administrative Provisions and the Final Clauses (Articles 20bis to 32).

S/10 Convention Establishing the International Intellectual Property Organization : Proposals for Establishing the Organization.

I have the honour to enclose herewith the observations and comments of the French Government on these three Documents.

These observations relate only to substance. The French Delegation reserves its right to formulate, during the Diplomatic Conference, such observations on drafting questions as it considers useful.

Observations on Document S/3

Article 13(2)(ii) and (xi), Article 13bis(6)(a)(vi) and (7)(b), Article 13quater(1), Article 14(1), and Article 20(2), call for the same observations and the same proposals as those made in connection with document S/9 concerning Article 21(2)(ii) and (xi), Article 21bis(6)(a)(vi) and (7)(b), Article 22(1), Article 24(1), and Article 32(2).

France

Observations on Document S/9

Article 20bis : Protocol Regarding Developing Countries

The present wording is unsatisfactory, as the references contained in the Article do not make clear, in spite of the commentary, the practical application of all the provisions concerned.

It would be advisable to re-examine Articles 20bis(2), 25(1)(b)(i) and (c), and 25quater, as a whole, to try to clarify the enumeration of the said Articles.

Article 21 : Assembly

Paragraph (2)

Item (ii): The conferences of revision are also of interest to member countries which, under Article 25(1)(b), may have declared that their ratification or accession did not apply to Articles 21 to 23 and which would therefore not have a seat on the Assembly after the expiration of the period of five years provided for in Article 32. It would be advisable for the Assembly to take account of the views which these countries might express. For that purpose, it is proposed that the following phrase should be added at the end of this item :

" . . ., having regard to the observations which might be made by member countries of the Union not bound by Articles 21 to 23."

Item (xi): The present wording is too vague. It would seem necessary, either to list the other functions allocated to the Assembly in other provisions of the Act or in the provisions of the Convention establishing the Organization, or at least to make express reference to these provisions.

France

Article 21bis : Executive Committee

Paragraph (6)(a)(vi)

The wording calls for the same comments as Article 21(2)(xi). It would be advisable either to list the other functions provided for in other provisions or to make express reference to these provisions.

Paragraph (7)(b)

It is suggested that the words "at the request of its Chairman ..." should be added after "upon convocation of the Director General."

Article 22 : Finances

Paragraph (1)

The text would require to be reviewed in the light of the wording which will have been adopted for Article 10(1) of the Convention establishing the Organization, and having regard to the principle of the financial autonomy of each of the Unions.

Article 24 : Revision of the Provisions of the Convention other than Articles 21 to 23

Paragraph (1)

The term "system" is not a satisfactory one. It was acceptable in the text of the Brussels Act where it covered all the provisions of the Berne Convention, both substantive and administrative.

In the present draft, amendments to the administrative provisions are governed by the procedure provided for in Article 23.

Future Conferences of revision will therefore deal essentially with substantive clauses.

Consequently, it would be preferable to say:

" . . . amendments designed to improve the system of protection established by the Union."

France

Article 27bis : Settlement of Disputes

The French Government considers it essential to maintain a provision on the settlement of disputes which might arise between two or more countries of the Union concerning the interpretation or application of the Convention.

At the same time, it is aware of the difficulties which the text of Article 27bis has caused for certain States, as indicated in paragraph 174 of the Commentary.

The French Government would therefore be willing to envisage the solution mentioned in paragraph 178 of the Commentary, which suggests the possibility of substituting for the present jurisdictional clause a clause on arbitration similar to that appearing in Article 38 of the Convention of December 2, 1961, for the Protection of New Varieties of Plants.

Article 31 : Signature, etc.

The French Government is in favor of maintaining in paragraph (1) the text at present in force, which does not appear to have given rise to any difficulties as regards its application and which it does not therefore seem necessary to modify.

Article 32 : Transitional Provisions

Paragraph (2)

The rights which may be exercised are those provided under Articles 21 to 23 of the Act and not the rights provided under the Convention establishing the Organization. It would therefore be more appropriate to say : " ... until five years after the entry into force of the present Act, exercise . . . "

France

Observations on Document S/10

I. PRELIMINARY OBSERVATIONS

The proposal for an International Intellectual Property Organization has a twofold purpose: to modernize and render more efficient the administration of the Intellectual Property Unions; and to promote the protection of intellectual property throughout the world.

The French Government shares and approves these aspirations. Its Delegation to the Committee of Governmental Experts in May 1966 made this clear when it gave its approval to the establishment of the proposed inter-Union organs (General Assembly and Coordination Committee), to the creation of a Conference open to States not yet members of any of the Unions, and to the implementation of a program of legal-technical assistance for developing countries. The Delegation of France pointed out, however, that the purposes to be achieved could be attained without placing the Unions as a whole within the framework of an international organization whose usefulness and desirability were not apparent and whose structure did not exclude the possibility of a threat to the autonomy and the role of the various Unions. It had therefore not been able to accept the very principle of an organization such as was envisaged in the document submitted to the Committee.

The French Government has noted, however, that, on the one hand, this draft has been considerably improved and, on the other hand, the establishment of an International Intellectual Property Organization seems to answer the wishes of a large number of Union countries.

Under these conditions, while continuing to be of the opinion that it is perfectly possible to satisfy the legitimate aspirations of Union countries without having to resort to the creation of a new organization, the French Government is willing to consider the draft now submitted, but believes that a number of amendments are necessary.

France

The amendments proposed are shown below. They are dictated primarily by the desire:

(a) to guarantee the system of protection of intellectual property progressively established by the Paris Union and the Berne Union, a protection which it believes to be essential to the economic and cultural progress of all countries, whatever the stage of their development;

(b) to ensure that the independence and the special role of each Union and, hence, the equality of all the Unions, are fully respected;

(c) to make a clear distinction, as to their fulfilment, between the two roles of the Organization (administrative coordination among the various Unions, spreading the protection of intellectual property throughout the world), roles that might, if confused, endanger the fundamental objective which is, and must remain, to defend and promote the protection of intellectual property.

II. AMENDMENTS PROPOSED

Article 2 : Definitions

In item (vi), it is proposed to make the following change : ". . . and any other international agreement for the promotion of the protection of intellectual property whose administration . . ." It seems obvious, in fact, that only international agreements whose purpose is such that it coincides with that of the Organization could be assumed by the latter, expecially as the countries parties to these agreements would be called upon to sit in the General Assembly (Article 6(2)).

Article 3 : Objective and Functions

Paragraph (1)

It is proposed that paragraph (1) should be divided into two subparagraphs.

France

In order to distinguish more clearly the two objectives of the Organization, it is suggested that the greater part of the text of the Preamble, which admirably fills the purpose, should be transferred to paragraph (1)(on the understanding that certain changes would have to be made to the present wording of the Preamble). The text of paragraph (1) would therefore read as follows:

"(1) The objective of the Organization is:

(i) to modernize and render more efficient the administration of the Intellectual Property Unions through the establishment of common administrative organs which fully respect the autonomy of each of the various Unions;

(ii) to promote the protection of intellectual property throughout the world by encouraging cooperation to that end among States members of the Unions and Third States."

The text of the new paragraph (2) would contain a list of the various fields to which such protection would apply. This list should not be restrictive, however, as it is now in document S/10, in order not to limit it to fields to which the said protection applies at present; it should rather be possible, by inserting an expression such as "in particular," to include fields to which it might apply in the future. In this connection, the French Government reserves the right to make certain observations and proposals concerning this list, at the Stockholm Conference.

Paragraph (2)

Item(i): It is proposed to make the following substitution: "shall provide the Paris Union . . . with the administrative services necessary to each"; this change is intended to show more clearly that the Unions, as such, are not integrated to the Organization.

Item(ii) : For the reasons given above in connection with Article 2, it is proposed to make the following substitution:

France

" . . . other existing international agreements for the promotion of the protection of intellectual property, on the request .

Item (iii) : For the same reasons, it is proposed to substitute : "shall encourage the conclusion of new international agreements, where appropriate, with a view to the promotion of the protection of intellectual property, and may . . .

Item (vi) : It is proposed to substitute in fine, in the French text, the words "à cette fin" instead of "dans ce domaine".

Article 4 : Membership

The proposal appearing under I, which expresses satisfactorily the duality of the objectives of the Organization, as specified in paragraph 15 of the Introduction, is the one preferred by the French Government.

Article 6 : General Assembly

Paragraph (2)

A new wording is proposed for this paragraph in the light of the considerations expressed above under (a), (b), and (c), of paragraph I of the preliminary observations . The principal amendment requested by the French Government-and one to which it attaches the greatest importance - is that the General Assembly, and not the Conference, would adopt the budget of the Organization, while respecting the proper competence and responsibilities of the Conference.

The new wording proposed is the following:

"The General Assembly shall:

(i) adopt the triennial budget of the Organization on the proposal of the Coordination Committee, within the

France

limits of the decisions taken respectively by the Paris and Berne Unions and the Conference with regard, on the one hand, to their participation in the program of legal-technical assistance of the Organization, and subject, on the other hand, to approval by each of the Unions and the Conference of the share in the common expenses attributed to them respectively.

In reviewing that part of the budget relating to the of legal-technical assistance of the Organization, the General Assembly s al a so take account o the proposals of the Conference concerning that program and its implementation.

(ii) review and approve the reports and activities of the Coordination Committee and of the Director General on administrative and financial questions of common interest to two or more Unions, and give them the necessary instructions;

(iii) appoint the Director General upon nomination by the Coordination Committee;

(iv) pronounce upon the arrangements proposed by the Director General concerning the administration of the international agreements referred to in Article 3(2)(ii) and iii ;

(v) determine the languages which, in addition to English and French, shall be the working languages of the Secretariat;

(vi) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(vii) approve the amendments to this Convention, as provided in Article 13, with due regard to the advice of the Conference concerning amendments to Article 7 of the Convention;

(viii) make proposals for the promotion of the protection of intellectual property;

France

(ix) approve the Headquarters Agreement concluded with the State on the territory of which the Organization has its headquarters;

(x) approve the financial regulations provided in Article 10.

Paragraph (3)(g)

The following wording is proposed, to safeguard the independence of each of the Unions and their equality:

"(g) The required majority must be attained not only among the States represented in the General Assembly but also among the States members of each Union which are members of that Assembly.

However, for the transfer of headquarters (Article 5), the appointment of the Director General (paragraph (2)(ii)), the confirmation of arrangements proposed by the Director General concerning the administration of international agreements (paragraph (2)(iii)), the adoption of amendments to this Convention (Article 13), and the approval of the Headquarters Agreement (paragraph (2)(ix)), the required majority must be attained not only in the General Assembly but also within each Union."

Article 7 : Conference

The creation of a Conference serves the second of the Organization's purposes : to promote the protection of intellectual property throughout the world and to encourage to that end discussion and cooperation between States members of one or more of the Unions and States which are not yet members of any of the Unions. It follows from the Commentary in document S/10 and from the preparatory work that the Conference would provide a forum for the discussion of questions of general interest concerning the promotion of the protection of intellectual property throughout the world and, in particular, in the developing countries. Its role would primarily be advisory.

France

The French Government agrees with this conception of the Conference but observes that the provisions of Article 7, as proposed, go too far and imply, at least tacitly, a threat of indirect interference in the affairs of the Unions by States outside these Unions.

Paragraph (1)

The Delegation of France at the Committee of Governmental Experts in May 1966 recommended the creation of a Conference for the Paris Union and another Conference for the Berne Union; it considered, in fact, that in view of the independence and the special role of each Union, on the one hand, and the very different nature of the problems connected with the protection of industrial property and those connected with the protection of literary and artistic property, on the other hand, a forum would only be truly useful and constructive if there were one for each of the two Unions. The French Government has no intention, however, of insisting on this point and it is prepared to accept the present text of paragraph (1).

Paragraph (2)(a)

Item (i) : It is proposed to substitute : "discuss matters of general interest relating to the promotion of the protection of intellectual property throughout the world and may . . . ."

Item (ii) : The present wording implies that the Conference alone would be competent to fix the amount of the expenses appearing in the budget of the Organization, whereas, in fact, except for that part of the expenses of the Conference which is borne by the Associate Members, they are paid almost entirely by the Unions, whether it be the proper expenses of the General Assembly and the Coordination Committee, other common expenses, or expenses in connection with the program of legal-technical assistance. Such a state of affairs would be contrary to one of the fundamental principles of the Organization, which is respect for the autonomy of each of the Unions.

Furthermore, the very principle of the adoption of the budget of the Organization by the Conference is in contradiction to the primarily advisory role of the latter and to its fundamental purpose, which is to provide a world forum for the promotion of the protection of intellectual property throughout the world. For these reasons, it is the General Assembly and not the Conference which ought to adopt the budget of the Organization, having regard both to the contributions decided by the Unions and--as pointed out above in connection with Article 6--to the proposals of the Conference, as well as, possibly, to the budget adopted by the latter.

For the above reasons, the French Government is unable to accept the present wording of item (ii). The text should be replaced by another wording, such as : "The Conference shall adopt its own triennial budget, which shall include provision for the expenses of its sessions."

Item (iii): If it is accepted that the budget of the Organization be adopted by the General Assembly, the present text of item (iii) could be maintained. The item deals with the apportionment and allocation of the voluntary contributions made within the framework of that budget by each Union to the program of legal-technical assistance, supplemented possibly by the contributions of Associate Members of the Organization.

To enable the Conference to express its views on the future program of legal-technical assistance of the Organization before discussion by the Assembly of each of the Unions of the latter's budget and subsequent discussion by the General Assembly of the budget of the Organization, an additional item worded as follows could be inserted before the present item (iii):

> "The Conference shall make proposals regarding the future triennial program of legal-technical assistance of the Organization and the implementation thereof."

France

Item (v) : It is difficult to see what other functions are meant and by whom they would be allocated to the Conference. If, as it seems, the functions intended are those provided for in other provisions of the Convention, it would be advisable to make express reference to these provisions.

The amendments thus proposed for paragraph (2) would result in the following wording:

"(2)(a) The Conference shall:

(i) discuss matters of general interest relating to the promotion of the protection of intellectual property throughout the world and may adopt resolutions and recommendations relating to such matters ;

(ii) adopt its own triennial budget, which shall include provision for the expenses of its session and its participation in the common expenses of the Organization;

(iii) make proposals regarding the future triennial program of legal-technical assistance of the Organization and the implementation thereof;

(iv) within the limits of the budget of the Organization, establish the triennial program of legal-technical assistance;

(v) express its opinion on the proposals for amending Article 7 of this Convention;

(vi) appoint, from among the Associate Members of the Organization, its representatives in the Coordination Committee, when the latter considers matters relating to the agenda and the budget of the Conference, and to the program of legal-technical assistance of the Organization."

Paragraph (3)(d)

As a result of the amendments proposed for paragraph (2), it would be necessary to make the following change : "Adoption of that part of the budget of the Conference which is financed from contributions of Associate Members shall require at least two-thirds of the votes cast by such Members to the extent that the budget would increase their financial obligations."

France

Article 8 : Coordination Committee

Paragraph (1)(a)

The wording proposed in order to avoid too great a lack of balance in the composition of the Coordination Committee seems excessively complicated.

As this Committee would be composed of members of the Executive Committees of the Paris and Berne Unions, it would be advisable, in order to ensure the equality of the Unions, to provide that the required majority in the Coordination Committee be attained from among the members of the Executive Committee of the Paris Union and from among the members of the Executive Committee of the Berne Union.

Paragraph (1)(a) would therefore be limited to the following text:

"There shall be a Coordination Committee consisting of States, party to this Convention, which are members of the Executive Committee of the Paris Union and those which are members of the Executive Committee of the Berne Union."

The text of paragraph (6)(b) would then be amended as follows :

"The required majority must be obtained not only among the States members of the Coordination Committee, but among the States members of the Executive Committee of the Paris Union, among the States members of the Executive Committee of the Berne Union, and, in the cases provided for in paragraph (1)(c) and paragraph (2) respectively, among the representatives of the Conference and among the representatives of other Unions whose administrative services are provided by the International Bureau of the Organization."

Paragraph (1)(c)

The word "direct" being subject to a variety of interpretations, it would be desirable to define more precisely the cases where representatives of the Associate Members of the Organization would participate in the Coordination Committee with the same rights as the other members of that Committee. The text might be the following :

France

"Whenever the Coordination Committee considers matters relating to the agenda and budget of the Conference, and to the program of legal-technical assistance of the Organization . . .

Paragraph (3) - Items (i), (ii), (iii), and (iv)

As a result of the amendments proposed for Articles 6 and 7, on the one hand, and those proposed above, on the other hand, items (i), (ii), (iii), and (iv), should be modified as follows:

(i) The competence of the inter-Union organs being exclusively limited to "administrative and financial" matters of common interest, it would be advisable to delete the words "and other matters". The end of the sentence should read : " . . . and in particular on the apportionment of the common expenses among the budgets of the various Unions and the budget of the Conference";

"(ii) prepare the draft agenda of the General Assembly and the draft budget of the Organization;

(iii) prepare the draft agenda and budget of the Conference, and the draft program of legal-technical assistance of the Organization;

(iv) within the limits of the triennial budget and program of the Organization, establish the annual budgets of the Organization, by applying the sharing formula fixed by the General Assembly, and the annual programs of the Organization."

Item (vii) : This item calls for the same remark as Article 7 (2)(a)(v) and Article 6(2)(vi).

Paragraph (6)

If the text proposed above for paragraph (6)(b) is accepted, the present wording of paragraph (6)(a) could be maintained (see observations relating to paragraph (1)(a)).

France

Article 9 : International Bureau

In the course of the preparatory work, the French experts had suggested that the Director General should compulsorily be a national of a State member of both the Berne and Paris Unions, and, secondly, that one of the Deputy Directors General should represent the Paris Union and another the Berne Union.

The objection was made to this suggestion that such a separation of jurisdiction, instead of encouraging collaboration, could lead to division and rivalry within the Secretariat. The French Government does not insist on this point.

It was also pointed out, with regard to the first suggestion, that it was essentially on the ground of his competence and not his nationality that the Director General should be chosen by member States of the Unions. The French Government is entirely in agreement with this principle which, in its view, does not run counter to the suggestion made by its experts but in fact answers the object which inspired it, namely, that the appointment of a candidate who is a national of a State member of both Unions--bearing in mind established practice in international organizations--would make for a better balance between the said Unions.

The French Government persists, therefore, in its belief that it would be preferable to introduce in Article 9 the principle that the Director General should be a national of a State member of both the Paris and Berne Unions.

Paragraph (5)

The words "of the Assemblies" and "of the Executive Committees" should be deleted. The participation of the Director General or of a staff member designated by him in meetings of the Assemblies of the Paris and Berne Unions and of their Executive Committees should normally be mentioned in the administrative provisions of the Paris and Berne Conventions.

France

Article 10 : Finances

As a result of the amendments proposed on the subject of financial matters in Articles 6, 7, and 8, subparagraphs (a), (b), and (c), could be clarified or amended as follows:

"(1)(a) The Organization shall have a budget. It shall be separate from the budgets of the Unions and the budget of the Conference.

(b) The budget of the Organization shall include:

(i) provision for the common expenses;

(ii) provision for the expenses of the program of legal-technical assistance of the Organization.

(c) Common expenses are expenses which are not borne exclusively by a given Union or exclusively by the Conference. They shall be apportioned, on the proposal of the Coordination Committee, by the General Assembly, in the conditions provided in Article 6(2)(i), among the budgets of the various Unions and the budget of the Conference, according to a sharing formula which shall be fixed by the General Assembly and which the latter may modify where necessary. The fixing of this formula and any modifications thereto shall require the agreement of each of the Unions and of the Conference."

Paragraph (3)(a)

Similarly, in order to avoid any doubts concerning the autonomy of each of the Unions, item (i) of paragraph (3)(a) could be worded as follows:

"(i) sums allocated to such budget by the Paris, Berne and other Unions, and the Conference, in their respective budgets;"

France

Item (ii) should be drafted as follows:

"(ii) possible contributions of Associate Members to the program of legal-technical assistance of the Organization."

It would also be desirable to insert after paragraph (3) a new paragraph, numbered provisionally (3)bis and worded as follows:

"(3)bis(a) The budget of the Conference shall include provision for the expenses of its sessions, and for its participation in the common expenses of the Organization.

(b) The budget of the Conference shall be financed from the following sources:

(i) sums allocated to such budget by the Paris and Berne Unions in their respective budgets;

(ii) contributions of Associate Members."

Paragraph (4)(a)

Having regard to the amendments suggested elsewhere, the text should be amended to read:

"(4)(a) For the purpose of establishing its contribution, each Associate Member shall belong to a class; it shall pay its annual contribution on the basis . . ."

Paragraph (4)(c)

For the same reasons as in paragraph (4)(a), it would be necessary to delete from the proposed text the words "to the budget of the Organization."

Paragraph (5)(a)

Since Associate Members are not members of the General Assembly, and members of the Coordination Committee represent other States, there is reason to modify the first sentence of this paragraph as follows:

"Any Full Member State which is in arrears in the payment of its contributions to any of the Unions shall have no vote in the General Assembly and the Conference, if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two full years. The same holds good, as regards the vote in the Conference, for any Associate Member State which is in arrears in the payment of its contributions within the terms of paragraph (4)(d) of this Article."

Article 11 : Legal Capacity; Privileges and Immunities

Paragraph (4)

It would be advisable to distinguish between the agreements referred to in paragraph (3) and the Headquarters Agreement which, in the view of the French Government, ought, by reason of its importance, to be approved by the General Assembly, as suggested in the amendments relating to Article 6(2)(ix).

The following wording is therefore proposed for paragraph (4), which would consist of two subparagraphs:

"(4)(a) The Director General shall be authorized to negotiate, in cooperation with the Coordination Committee, and to conclude, with the approval of the General Assembly, as provided in Article 6(2)(ix), the Headquarters Agreement referred to in paragraph (2) of this Article.

(b) The Director General shall be authorized to negotiate and conclude, with the approval of the Coordination Committee, the agreements referred to in paragraph (3)."

Article 12 : Relations with Other Organizations

Paragraph(1)

The word "general" should be deleted. Any working agreement with other intergovernmental organizations ought, in fact, to be approved by the Coordination Committee.

France

Article 13 : Amendments

The following wording is proposed:

"(1) Proposals for the amendment of this Convention shall be communicated by the Director General to the Member States of the Organization at least six months in advance of their consideration by the General Assembly, and by the Conference when the proposals for amendment concern Article 7.

(2) Amendments shall be adopted by the General Assembly. Adoption shall require a simple majority of the votes cast, provided that the General Assembly shall vote only on such proposals for amendments as have previously been adopted by the Paris Union and the Berne Union according to the rules applicable in each of them regarding the adoption of amendments to the administrative provisions of the Paris and Berne Conventions, and by the Conference regarding proposals for the amendment of Article 7.

(3) Amendments shall enter into force one month after written notification of acceptance . . . ."

Article 14 : Becoming Party to the Convention; Entry into Force of the Convention

Paragraph (1)(b)

The wording of paragraph (1)(b) may be ambiguous, whereas the commentary is clear.

It would be desirable to word the text along the following lines, for example:

"Notwithstanding . . . . . .

either the Stockholm Act of the Paris Convention in its entirety, or onl the administrative ro-visions of that Act Articles 13 to 1 quinquies , as provided in Article 1 1 b thereof,

France

or the Stockholm Act of the Berne Convention in its entirety, or only the administrative provisions of that Act (Articles 21 to 23), as provided in Article 25(1)(b) thereof."

This is purely a drafting change.

Amendment of the Paris and Berne Conventions, including their administrative provisions, requires unanimity of the votes cast.

But, after the Stockholm Conference, a simple or more or less qualified majority will be substituted for the requirement of unanimity in the case of amendments to the administrative provisions of the Paris and Berne Conventions and to those of the Convention establishing IPO.

For that reason, it seems hardly conceivable that the new system could enter into force when some ten or twelve per cent only of Union countries would be bound by the Convention establishing the said system and the great majority of these countries would be parties only to texts earlier than the Stockholm Act.

Certainly, various texts will continue to coexist as far as the substantive clauses of both the Paris and Berne Conventions are concerned; but, when it is a question of organization, the coexistence of two very different systems would be likely to create an awkward situation in so far as the entry into force of the new system would not be based on the consensus of a substantial number of Union countries.

The French Government proposes, therefore, to make the entry into force of the Convention conditional upon the fact that thirty States members of the Paris Union and twenty States members of the Berne Union have taken action as provided in paragraph (1)(a), instead of ten and seven States, respectively, as envisaged.

France

Article 16 : Notifications

The Organization being established by this Convention, the Director General cannot, at least until the Convention enters into force, assume the tasks of notification and other similar administrative formalities in respect of this international instrument.

The text of Article 16 should consequently read as follows:

"(1) The Government of Sweden shall notify the Governments of all the Member States of:

(i) the date of entry into force of the Convention,

(ii) signatures and deposits of instruments of ratification or accession, prior to the entry into force of the Convention.

(2) The Director General shall notify the Governments of all Member States of:

(i) signatures and deposits of instruments of ratification or accession subsequent to the entry into force of the Convention,

(ii) acceptances of an amendment to this Convention, and the date upon which the amendment enters into force,

(iii) denunciations of this Convention."

Article 18 : Final Provisions

Paragraph (1)(a)

As a result of the amendment suggested for Article 16, the text of paragraph (1)(a) should be completed by the words". . . which, after its entry into force, shall transmit it to the Director General."

(Original: French)

FEDERAL REPUBLIC OF GERMANY

Permanent Delegation
of the
Federal Republic of Germany

Geneva, March 7, 1967

With reference to your Circular No. 1005, dated September 22, 1966, I have the honour to forward the observations of my Government on the substance of Documents S/3, S/9 and S/10 prepared by BIRPI for the Conference of Stockholm. These documents deal with the proposals for revising the Administrative Provisions and the Final Clauses of the Paris and Berne Conventions, as well as with the proposals for establishing the International Intellectual Property Organization.

General Observations

The German Government welcomes the proposal of a modernization of the administrative structures of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works and of a simultaneous establishment of an international organization for the protection of intellectual property. As in the case of other large unions of nations that have meanwhile modernized their many-decades-old administrative structures and adapted them to the new requirements of a progressed international law situation, so the time seems to have come also for the Paris and Berne Conventions to reform their structures, which date back as far as the last century, and to adjust them to the modern development that intergovernmental organizations are undergoing.

Apart from this, the German Government believes that a change in the administrative structure of the present Conventions and the establishment of the proposed new Organization will satisfy an existing need which arises from the growing interlacement of the cultural and trade relations of the nations of the world. This development makes it expedient for an organization to be established that will devote itself to the protection of intellectual property on a worldwide basis and will be particularly well suited for this objective. Such an organization will become the crystallization

point of all efforts made in this regard; it will encourage and promote the collaboration of nations in the cultural and technical fields and make it easier for them to understand each other. It will also become a forum where countries of unequal technical development may meet and discuss the problems arising out of this difference between them.

The German Government also considers it useful for the new Organization to be developed from the Unions of Paris and Berne, since these look back on a long tradition and have proved themselves successful in the past. This will ensure that previous achievements will be carried on and consistently developed and it will prevent the danger of an unproductive simultaneous existence of many different institutions all serving the same or a similar purpose.

On the other side, however, the German Government takes the view that the International Organization for the Protection of Intellectual Property as now presenting itself in the draft submitted for an IPO Convention is but a minimum solution. The German Government would have preferred a solution, rather on the lines of the draft of 1964, giving the new organization more independence of action and incorporating the present Unions into it more strongly. But in the interest of a conference result that will be acceptable to all countries concerned and in view of the fact that at the several conferences held in preparation of this one, the views expressed on this question varied greatly, the German Government is prepared, in principle, to accept the solution now proposed, as a compromise.

The German Government does not wish to comment on every single detail of the proposals. It reserves for itself the right to revert at a later date to certain specific points, such as, for instance, the wording of the accession clauses in the Conventions.

Federal Republic of Germany

Observations on Document S/10

Article 6

a) A former version of Article 6, Paragraph 2(ii), provided that there should be no restrictions of the General Assembly's power of appointing the Director General. According to the present proposal, however, the General Assembly, when appointing the Director General, is confined in its choice to the candidate nominated by the Coordination Committee. All it can do is appoint the candidate or reject him, but it cannot elect any other candidate. This, in the German government's view, constitutes a restriction of the General Assembly's sovereignty, which is difficult to justify. Not only would the procedure of appointment be seriously complicated in cases where the General Assembly is unwilling to follow the Coordination Committee's proposal; it might even mean that the General Assembly, for the mere reason of avoiding practical difficulties and delays, can hardly do otherwise but appoint the candidate proposed by the Coordination Committee, unless there are very serious objections against his person. The Conference of Experts of May 1966, it is true, was in favour of this solution after shortly discussing Article 8, Paragraph 3(v). But in the German Government's opinion, its actual suitability should be re-examined. If it is intended to uphold it in principle, there should at least be a provision that as a rule the Coordination Committee shall propose several candidates to the General Assembly for the office of the Director General.

b) The fact that a quorum shall be required for the General Assembly's decisions (Article 6, Paragraph 3(b)), must be welcomed. But it might be recommendable, in cases where a decision cannot be adjourned, to provide that those decisions also shall be effective which were made when, strictly speaking, no quorum was present, provided a sufficient number of States not represented at the time will give their agreement in writing subsequently.

c) The former version of Article 6, Paragraph 3(h), provided that each State may not vote only for itself. The present version of Article 6, Paragraph 3(i), provides that

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each delegate may represent, and vote in the name of, one State only. This wording might easily give rise to doubt, since under Paragraph 1(b) of Article 6 each State may be represented by one or more delegates. The view might be taken that if a delegation consisted of several members, individual members of the delegation could represent also another State or vote in its name. In order to exclude such an interpretation right from the beginning, it is suggested that there should be a provision declaring a transfer of vote to be inadmissible.

Article 7

a) According to a former version of Article 7, Paragraph 2, not the Organization as such, but only the Conference was to have a budget. Accordingly, the Conference was to decide on the budget.

The revised Draft IPO Convention does not provide for a special Conference budget, but instead of this, for a separate budget of the Organization (Article 10, Paragraph 1(a)). The German Government welcomes this alteration for the reason that a budget of its own will give the Organization at least a certain amount of independence. The German Government, however, would like the question to be considered whether it will be consistent with the nature of compromise inherent in the entire conception now proposed, to confer the function of deciding on the budget not to the General Assembly, but to the Conference. If those States which are parties neither to the Paris Convention nor to the Berne Convention are admitted to the new organization merely as Associated Members, as is done by the present proposals, it would be more in keeping with this solution to restrict their powers of deciding on the budget. It is true, the Associated States, which shall be liable to pay contributions, should not be excluded from taking part in the decisions on the budget. But the German Government inclines to the view that it should, on the other hand, not be possible for the Conference to decide a budget to which the majority of the Full Members is opposed.

b) The German Government, on the other hand, sees no reason why the Conference should be refused all participation in the election of the Director General. Therefore, in the

German Government's view, the provision contained in a former version and not taken over into the present proposals, according to which the Conference was to be entitled to be heard on the question of the Director General's appointment, should be re-introduced into the text. The German Government, however, does not consider it necessary for the Conference to be given a full vote in the appointment of the Director General. But in its view, the status and significance of the Conference would not be done justice to, if the Conference were not even heard in the matter.

c) As regards the wording of the provision of Article 7, Paragraph 3(f), concerning the prohibition of a transfer of vote, reference may be made to the observations concerning Article 6, under c).

Article 8

a) The German Government welcomes the proposal to let the Associated Members participate not only in budget deliberations of the Coordination Committee, but also in the deliberations of certain other matters (Paragraph 1(c)). It is in doubt, however, as to whether the formula "matters of direct interest to the Conference" will constitute a clear enough demarcation. So, for instance, the nomination of a candidate for the post of Director General of the Organization must be considered a matter "of direct interest" for the Conference, since the Director General is of decisive importance in the preparation of the programme and the budget of the Conference and for the practical functioning of its sessions and the carrying through of its decisions and resolutions. Yet, to all intents and purposes such a far-reaching participation on the part of the Conference is not considered since, on the contrary, it is the very intention, as appears from the present proposals, not to confer on the Conference the right to participate or even to be heard in the matter of the appointment of the Director General. The German Government may, therefore, be allowed to suggest that it should be attempted to determine the conditions requisite for a participation of the Conference in the deliberations of the Coordination Committee more precisely.

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b) As regards the procedure for nominating a candidate for the post of the Director General provided by Article 8, Paragraph 3(v), reference may be made to the observations concerning Article 6, under a).

c) Under Article 12 of the proposed IPO Convention, it shall be one of the functions of the Coordination Committee to approve the agreements concluded by the Director General with inter-governmental or international non-governmental organizations. As in certain individual cases such agreements may be of very considerable importance, the German Government considers it expedient that, for the decisions of the Coordination Committee, a qualified majority should be provided in Paragraph 6(a) and (b). In the view of the German Government, a two-thirds majority appears to be appropriate.

d) As regards the wording of Paragraph 5(c) of Article 8 (no transfer of vote), reference is made to the observations concerning Article 6, under c).

Article 10

a) The German Government welcomes the proposal that the new Organization shall have a budget of its own. (Article 10, Paragraph 1(a)). The German Government believes that this will serve to lend the new Organization more weight and greater effectiveness within the meaning of the original concept than would have been the case according to the resolutions of the last Conference of Experts in May 1966.

b) Under Paragraph 6 of Article 10, the Director General shall have the function of establishing the amount of the charges due for services rendered by the International Bureau in the field of legal-technical assistance. The amount of these charges shall be merely reported to the Coordination Committee by him. In the German Government's view, the question should be examined whether the Coordination Committee should, in addition to this, not be given the right to vary the amounts of the charges established by the Director General.

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Article 13

As, according to the proposals, the new Organization may assume the administration also of Unions not depending on the Paris Convention or the Berne Convention (Article 2 (vii) read in conjunction with Article 3, Paragraph 2(ii)), the German Government takes the liberty of suggesting a consideration of the question whether this possibility should be taken into account already at this stage when wording Article 13, Paragraph 2. A similar question may arise in connection with Article 6, Paragraph 3(g) and Article 14.

Article 14

It appears from the commentary on Article 14, Paragraph 1(b), that countries members of the Paris or Berne Unions shall be allowed to accede to the proposed IPO Convention only if at the same time they accede to the Stockholm version of the Paris and Berne Conventions at least to the extent that the administrative provisions are concerned (Articles 13 to 13quinquies of the Paris Convention, Articles 21 to 23 of the Berne Convention). The German Government fully approves of this objective. But in order to realize it, reference should be made, in Article 14, Paragraph 1(b), to item (i) of both Article 16, Paragraph 1(b), of the Paris Convention and Article 25, Paragraph 1(b), of the Berne Convention, in the Stockholm version in either case. Otherwise it would also be possible to accede to the IPO Convention by a mere accession to the provisions of substantive law of the Stockholm versions of these Conventions.

Article 15

Contrary to a former version, the new wording of this Article no longer provides that membership in the Organization may be denounced by members of the Unions only if they have already given up, or concurrently give up, their membership in the Unions. This shows that a denunciation of membership in the new Organization is not intended to affect membership in the Paris and Berne Unions. This solution constitutes a considerable risk for the Organization. In the German

Government's view, the former version was more useful, according to which it was not to be possible to denounce the IPO Convention without simultaneously denouncing membership in the Paris and Berne Unions.

Article 19

If, contrary to the German Government's proposal, the present version of Article 15 were upheld, Article 19, Paragraph 3, would, in its view, have to be deleted or varied. Article 19, Paragraph 3, presupposes that some day in the future, all States parties to the Paris and Berne Conventions will have acceded to the new Organization and will be unable to leave it again unless they denounce the Paris and Berne Conventions at the same time. In the opinion of the German Government, such an assumption is not justified with absolute certainty if Article 15 will be worded as has now been proposed.

Observations on Document S/3

The German Government welcomes the proposal that the new administrative provisions of the Paris Convention shall not be grouped in a separate protocol, as had originally been planned, but that they shall be incorporated into the text of the Convention itself.

Article 13

The observations relating to Document S/9, Article 6, under c) (no transfer of vote), also apply to Article 13, Paragraph 3(g).

Article 13(quinquies)

The German Government agrees, in principle, with the solution provided in Paragraph 2 of this Article with regard to the adoption of amendments to Articles 13 to 13quinquies.

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But in concurrence with the opinion expressed by BIRPI in No. 119 of the Commentary on Article 13quinquies, it takes the view that it is neither customary nor necessary for the provisions concerning the Assembly of the Union (Article 13) and those concerning the voting majorities (Article 13quinquies, Paragraph 2) to be governed by the principle of unanimity. The German Government appreciates the consideration that the requirements for amending the provisions concerning the Assembly of the Union, its most essential organ, should be very strict; but it believes that it would be inadvisable to subject the entire procedure for amending Article 13 to the principle of unrestricted veto. Article 13 contains provisions which go into great detail, in particular those on the various functions of this organ of the Union. In view of the diversity of the matters dealt with in this Article, it is easily conceivable that, in the course of time, a need for its amendment or supplementation may arise. In that case, an absolute veto would appear to the German Government to be too great an impediment, by means of which the States Members in the Union would obstruct for themselves all reasonable progress. In the German Government's view, the considerations leading to the proposal of an unrestricted veto in the Draft would have been fully complied with if a specifically qualified majority were required in this instance, a majority that, in view of the significance of Article 13, might even go beyond the three-quarters majority required in other cases. The German Government believes that, like the nine-tenth majority required under Article 6, Paragraph 3(f), of the Draft IPO Convention for a matter of similarly outstanding importance, i.e., that of converting the new Organization into a special agency of the United Nations, also in the case of Article 13, such a majority might serve, on the one hand, to make amendments as difficult as is necessary, without on the other, preventing all amendment altogether. In that case, the majority provided in this connection in Article 13quinquies, Paragraph 2, would have to be fixed accordingly.

Article 16

The German Government is of the opinion that it would be desirable if not only countries outside the Union (Article 16bis), but also the States Members of the Union, were not allowed accession to the Stockholm version of the Paris Convention unless acceding to it in its entirety. As several

versions of this Convention are already in force and further revisions and amendments of it must be expected in the future, the splitting up of the Stockholm Act in two parts, each capable of being acceded to independently, will constitute a complication liable to make it very difficult for the legal relations of the Member States amongst each other, and between themselves and the Unions, to be overlooked. But, in spite of this, the German Government agrees, though not without hesitation, to the solution provided in this regard in Article 16, Paragraph 1.

The German Government does not consider it expedient, however, to allow accession also to the new Administrative Provisions of the Paris Convention without a simultaneous accession to the new Organization for the Protection of Intellectual Property. Apart from the transfer to the Assembly of the Paris Union of the control at present exercised by the Swiss Government, the administrative reform of the present Conventions will obtain the significance it is intended to have, only in connection with the establishment of the new Organization.

For that reason, it is the view of the German Government that this question should be re-examined.

Article 20

As regards any comments on Article 20, Paragraph 4, reference is made to the observations contained in the previous paragraph and to those relating to Document S/10, Article 19.

Observations on Document S/9

As regards the proposals for a reform of the provisions respecting the administration of the Berne Union and the Final Clauses of the Convention underlying this Union, reference is made by the German Government to the observations relating to Document S/3.

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Observations on Documents S/4 to S/8

In view of the fact that the proposals for a reform of these Special Agreements are essentially consequences of the proposed reform of the Paris Convention (Document S/3), the German Government will probably not make any separate comments on Documents S/4 to S/8.

The observations on Document S/3 also apply to the Documents S/4 to S/8, mutatis mutandis.

(Original: English)

IRELAND

Office of the Minister
for External Affairs

Dublin, February 6, 1967

The Minister for External Affairs of Ireland presents his compliments to the Director of the United International Bureaux for the Protection of Intellectual Property, and has the honour to forward copies of Ireland's observations on Articles 20 bis to 32 of the International Convention for the Protection of Literary and Artistic Works (document S/9), and Ireland's observations on the Draft Convention Establishing the International Property Organisation (document S/10), as requested in the Director's Circular 1005 of the 22nd September, 1966.

Observations on Document S/9

Ireland generally accepts the proposals for revision of the Administrative Provisions as proposed in Documents S/9 and S/9/ Corr. 1. Pending further study of the final clauses it is desired to reserve comments except to observe that the proposals regarding reservations in Article 25(1)(b) do not appear to be desirable and that Alternative A is favoured for Article 27 bis.

Observations on Document S/10

Ireland generally accepts the proposals for establishing an International Intellectual Property Organisation as prepared by BIRPI at the request of the Government of Sweden.

(Original: English)

ISRAEL

Permanent Mission of
Israel

Geneva, February 16, 1967

We have the honour to transmit to you, herewith, three copies of the observations of the Government of Israel on drafts S/3, S/9 et S/10.

Observations of the Government of Israel on the Proposals for the Revision of the Berne Convention (Articles 20bis to 32) and the Proposals for the Revision of the Paris Convention (Articles 13 to 20)
- Documents S/3 and S/9 -

1. The Government of Israel has the honour to submit its comments and observations on the proposals for the revision of the administrative provisions and final clauses of the Berne Convention set out in Document S/9 of September 16, 1966 (further to its memorandum on Document S/1 of May 15, 1966) as well as those of the Paris Convention set out in Document S/3 of September 16, 1966.

2. The Government of Israel must as before reserve its right to make additional comments and suggestions on Documents S/9 and S/3 and revise its views and position in the light of further reflection, the comments and suggestions of other members of the Conference and such corrigenda as may hereafter be prepared and circulated by B.I.R.P.I. at the request of the Government of Sweden.

3. The Government of Israel feels that the Proposals contained in Documents S/3 and S/9, as those in Document S/1, might require some redrafting.

Israel

4. The following detailed comments and suggestions are respectfully advanced in respect of the Proposals in Documents S/3 and S/9.* They are made, it is to be noted, on the assumption that amendments to the Berne and Paris Conventions will take effect before the Convention establishing the I.P.O.

B Article 20 bis

The Government of Israel suggests that this Article shall be deleted and the substance of its provisions included in Article 30 as an additional paragraph. The reason for this suggestion is that the Protocol as an "optional" provision of the proposed Act is more properly to be mentioned in the Article dealing with Domestic Implementation. This will render it clearer that the countries concerned may adhere fully to the Convention although under their domestic legislation they afford a different level of protection. The suggested amendment, however, still does not solve the problem of the developing countries, i.e. to ensure that immediatly upon the signing of the Stockholm Act they should be in a position immediately to enjoy the benefits and advantages of the Protocol whether under that Act or any other Act, and this particularly in view of Document S/9/Corr.1. Accordingly the Government of Israel reserves its right subsequently to express its considered views on this problem and to advance in due course such suggestions for a special Article as may appear to it to be desirable and requisite for dealing with this point.

P Article 13

B Article 21

Sub-paragraph (1)(a). In order to render clear beyond all doubt the "confined" composition of the Assembly, the Government of Israel suggests that in place of the words "Articles 13 to 13 quinquies" [("Articles 21 to 23")] the following should appear "the Administrative Provisions of this Convention".

* Reference to Documents S/9 and S/3 are prefixed by the letters B and P respectively.

Israel

Item (2)(a)(ix): The immediately foregoing remark applies here.

Sub-paragraph (3)(b). The quorum necessary for the Executive Committee is one-half, whereas for the Assembly it is only one-third. The difference in treatment is not understood. If anything, the Assembly as the more important of the two organs should be required to have at least a similar quorum, if not a higher one. The Government of Israel, therefore, proposes that the quorum of the Assembly shall be one-half.

Sub-paragraph (3)(c). The Government of Israel suggests that, in addition to votes cast "in person" at meetings, the opportunity should be given for voting to be carried out by correspondence on postal circulation of resolutions to Member Countries which may for some reason or other not be represented by a delegation.

Sub-paragraph (3)(e). Comparison of the instant provision with the end of Article 13 quinquies (3) [Article 23(3)] suggests that considerable uncertainty may arise, engendering perhaps an impossible situation. Whereas under the present provision a two-thirds majority vote on the Budget as such, which increases a member's financial obligations, binds that member whether or not it voted for the adoption of the Budget, an increase in the financial obligations of countries achieved by an amendment of the Articles under the other provisions mentioned must be expressly accepted by a member before it becomes binding, notwithstanding that in the latter case the amendment has received the larger majority of three-fourths. For good measure, any country that finds a particular increase too great a burden can always fall back on the provisions of Article 13 quater (4)(b) [Article 22 (4)(b)]. It would be better to remove this discordance by choosing between the unanimity or the majority principle.

Israel

Sub-paragraph (4)(a). In view of the suggestions made in this regard by the Government of Israel with respect to the I.P.O. Convention, the meeting of the Assembly of each of the Unions should be linked with that of the Assembly of the other. Accordingly, in place of the words "General Assembly of the Organisation", there should be substituted the words "Assembly of the Berne [Paris] Union".

A further provision which appears to be desirable is one to enable the Assemblies of the Unions to meet together for the purposes of discussing and coordinating matters of common interest. Such provision is also important in view of the fact that the General Assembly under the I.P.O. Convention is constituted also of non-Union Members.

Paragraph (5). For reasons above indicated, the words "subject to this Convention" should be inserted between the word "shall" and the word "adopt".

P Article 13 bis

B Article 21 bis

Paragraph (4). Here, as in all other provisions of the Convention where the term appears (e.g. sub-paragraph (5)(a)), it is suggested that the words "a balanced geographical distribution" should be replaced by "the social, economic and cultural character of member countries".

Sub-paragraph (5)(b). It is suggested that the election rules should in the interests of justice, provide equal opportunity for all member countries to be elected from time to time to the Executive Committee. A distinct substantive provision to this end should be incorporated in the Convention or the power of the Assembly to establish election rules should be expressly qualified accordingly.

Item (6)(a)(vi): It is understood that the "other functions" of the Executive Committee are those things which will be allocated to it by the Assembly of the Union or in pursuance of the I.P.O. Convention, and with regard to the latter the Executive Committee will have the duty to vote at the Coordination Committee of the I.P.O.

The Government of Israel suggests the following text:

"(vi) perform such other functions as are allocated to it by the Assembly or in pursuance of the Convention of the Organization ;

"(vii) participate in the meetings of the Coordination Committee of the Organization and cast their votes at such meetings in accordance with the instructions of the Assembly and otherwise having regard for the legitimate interests of the Union."

Sub-paragraph (7)(a). As with Article 13(4)(a) [Article 21(4)(a)], in place of "Coordination Committee of the Organization" the following should be inserted: "Executive Committee of the Paris Union".

Paragraph (9). Two questions arise here. The first is whether countries of the Union, which have not accepted the Administrative Provisions of the Convention after the five year transitional period, continue to possess the right to be admitted as observers at meetings of the Executive Committee. The second, does the right of admission comprehend also the right to take part in debates? These questions require clarification. The Government of Israel takes the view that after the five year transitional period, any country which has not by then adhered to the Administrative Provisions should not be excluded, and that the right of admission should include the right to speak but clearly not the right to vote, as is the case with the Coordination Committee under the I.P.O. Convention.

Israel

Paragraph (10). For reasons set out above the Executive Committee's power to adopt its own rules of procedure should once again be made "subject to this Convention".

P Article 13 ter

B Article 21 ter

Paragraph (9). The words "by the Assembly" should be added at the end.

P Article 13 quinquies

B Article 23

Paragraph (1). To render these provisions as full as possible, after the words "the present Article" the words "as well as for the other matters of an administrative nature," should be inserted.

Paragraph (4). It is suggested that the present wording should be replaced by "Subject to this Article, the revision of this Convention is governed by Article 14 [Article 24]". The reasons for this is to avoid the possibly confusing and unnecessary references to other Articles and to dispose of the vexed question whether all the Final Clauses as such can in fact be amended or revised. It may be observed that in respect of the Berne Convention, the Final Clauses have always in the various Acts been entirely drafted de novo.

P Article 14

B Article 24

Hitherto the word "shall" in paragraph (1), with its obligatory connotation, has always been used, mainly because no forum existed to take care of continuity and to consider the various developments that were taking place in the different areas of activity. The position is now

Israel

radically different with the establishment of an Assembly and the far more rapid pace of development. The Assembly will inevitably in the course of carrying out its functions review when necessary the question of revision and take such steps in this direction as may be required. There appears no need, therefore, to stipulate that special conferences should be held for this purpose. The matter of revision should be left to the discretion of the Assembly.

P Article 16

B Article 25

Item (1)(b)(i): By way of consequential amendment to what has already been suggested this item in B should read simply "(i) to Articles 1 to 20".

In essence, it is not a question of applying the Protocol but allowing developing countries to take advantage thereof, as will be set out in B Article 30.

Item (1)(b)(ii): It is suggested that the words "the Administrative Provisions of this Convention" should take the place of the present version.

Sub-paragraph (2)(c). This sub-paragraph should be deleted. In the nature of things, Final Clauses become operative forthwith upon the signing of the Convention. The suggested deletion will also contribute to make it clear that the special benefits and advantages accruing to developing countries under B Article 30, as elaborated in the Protocol, will come into effect from the date that the Convention is signed. All subsequent reference to this sub-paragraph would consequentially require deletion.

P Article 16 ter

B Article 25 ter

The Government of Israel is of the opinion that the following three matters require clarification:

Israel

Paragraph (10). For reasons set out above the Executive Committee's power to adopt its own rules of procedure should once again be made "subject to this Convention".

P Article 13 ter

B Article 21 ter

Paragraph (9). The words "by the Assembly" should be added at the end.

P Article 13 quinquies

B Article 23

Paragraph (1). To render these provisions as full as possible, after the words "the present Article" the words "as well as for the other matters of an administrative nature," should be inserted.

Paragraph (4). It is suggested that the present wording should be replaced by "Subject to this Article, the revision of this Convention is governed by Article 14 [Article 24]". The reasons for this is to avoid the possibly confusing and unnecessary references to other Articles and to dispose of the vexed question whether all the Final Clauses as such can in fact be amended or revised. It may be observed that in respect of the Berne Convention, the Final Clauses have always in the various Acts been entirely drafted de novo.

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Hitherto the word "shall" in paragraph (1), with its obligatory connotation, has always been used, mainly because no forum existed to take care of continuity and to consider the various developments that were taking place in the different areas of activity. The position is now

radically different with the establishment of an Assembly and the far more rapid pace of development. The Assembly will inevitably in the course of carrying out its functions review when necessary the question of revision and take such steps in this direction as may be required. There appears no need, therefore, to stipulate that special conferences should be held for this purpose. The matter of revision should be left to the discretion of the Assembly.

P Article 16

B Article 25

Item (1)(b)(i): By way of consequential amendment to what has already been suggested this item in B should read simply "(i) to Articles 1 to 20".

In essence, it is not a question of applying the Protocol but allowing developing countries to take advantage thereof, as will be set out in B Article 30.

Item (1)(b)(ii): It is suggested that the words "the Administrative Provisions of this Convention" should take the place of the present version.

Sub-paragraph (2)(c). This sub-paragraph should be deleted. In the nature of things, Final Clauses become operative forthwith upon the signing of the Convention. The suggested deletion will also contribute to make it clear that the special benefits and advantages accruing to developing countries under B Article 30, as elaborated in the Protocol, will come into effect from the date that the Convention is signed. All subsequent reference to this sub-paragraph would consequentially require deletion.

P Article 16 ter

B Article 25 ter

The Government of Israel is of the opinion that the following three matters require clarification:

(a) That the basic rule should be one analogous to P Article 16 ter, i.e. ratification or accession admits of no reservations.

(b) That partial acceptance under P Article 16 (1)(b) or B Article 25(1)(b) is admissible but is not deemed to be a reservation in the technical sense.

(c) That "acquired" rights under previous Acts should continue to be maintained and recognized provided that a State has not ratified or acceded to the substantive provisions of the Stockholm Act.

Whether these matters are adequately covered by the present terms of the proposed Article remains still to be considered.

B Article 25 quater

The Government of Israel notes Document S/9/Corr.1, but reserves its right to make observations thereon when as hereinbefore mentioned it comes to present its particular views on the Protocol and the whole question of developing countries.

P Article 16 quater

B Article 28

The Government of Israel notes with satisfaction the amendments proposed in Document S/3/Corr.1 and Document S/9/Corr.1.

P Article 18

B Article 27

The Government of Israel notes Document S/3/Corr.1 and Document S/9/Corr.1. It does not appreciate why the amendment proposed to B Article 27(1) is not likewise proposed for P Article 18(1) with the consequential deletion of paragraph (2). The proposal to omit paragraph (3) is welcomed.

Israel

B Article 30

In view of what has been said above in respect of B Article 20 bis, the Government of Israel suggests the addition of the following new paragraph:

"(3) Any developing country which ratifies or accedes to this Convention may at the date of ratification or accession by a notification deposited in accordance with Article 25(1)(a) declare that it will avail itself of the provisions of the "Protocol Regarding Developing Countries" (annexed to and forming an integral part of this Convention) according in all respects to the terms thereof, in place of undertaking to adopt in accordance with its Constitution the measures necessary to ensure the application of the parallel provisions of this Convention."

A paragraph in this form puts a somewhat different complexion on to the Protocol. A developing country availing itself of the Protocol will not strictly be undertaking different or lesser obligations but merely obtaining temporary exemption from the relevant provisions of the Convention, thereby stressing the transitional nature of the benefits and advantages contained in the Protocol.

B Article 31

Sub-paragraph (1)(c). Unless a clear choice is made between the French and the English texts, this sub-paragraph is not only unnecessary but likely to lead to confusion and difficulties.

P Article 20

B Article 32

Paragraph (3). This paragraph is not really in the nature of a transitional provision. In the opinion of the Government of Israel, the provisions of the paragraph are more properly achieved by resolution or in the Final Act.

ISRAEL

Observations of the Government of Israel on the Proposals for Establishing the International Intellectual Property Organization
- Document S/10 -

1. The Government of Israel has the honour to submit its comments and suggestions on the proposals for establishing the International Intellectual Property Organization set out in Document S/10 of September 16, 1966. The Government of Israel wishes to express its sincere appreciation of the manner in which the most difficult task of drafting a Convention for the establishment of the I.P.O. has been executed.

2. The Government of Israel is fully aware of the difficulties which attend such an undertaking when several other international Unions and Organizations are already in being and active in carrying out certain defined tasks in the field of intellectual property. The Government of Israel is, in this regard, particularly conscious of the challenge that faces countries, members of the relevant Unions, in their relation to other users and producers of intellectual property, who are not as yet formally associated with such Unions and, or alternatively, are members of other Organizations which deal with the problems of the utilization of rights in such property and are concerned with the social and economic effects thereof.

3. With these sentiments in mind, the Government of Israel welcomes the proposals for the modernization of the administration of the Unions, the introduction of coordinating machinery and the concept of establishing a forum in which general questions concerning intellectual property can be formulated, discussed and elucidated.

4. While believing in the need for rendering more pliant the rules currently prevailing among members of the Unions with regard to the level of protection of intellectual property, taking into account the new needs and the development of technology, and kindred matters, the Government of

Israel

Israel is of the opinion that the smooth functional and autonomous operation of each of the Unions as a constituent of the new organization is in and by itself a positive requirement of the utmost value and importance, ranking first in precedence, for any further development in this area of activity. In the sequel, it is requisite to avoid the possibility of structural innovations and reorganization creating operational difficulties and, more positively, to ensure that the new organization provides a viable and workable system of consultation and coordination, dispensing with such administrative arrangements as might prejudice the possibilities of prospective development.

5. Bearing in mind the foregoing considerations, the Government of Israel is in principle in favour of the establishment by way of international convention of a body providing common services for and controlled by the Unions acting in coordination among themselves through a Coordination Committee. The foundation of a new organization may possibly be the proper means for achieving the purpose of an extension of activities, but it is felt that the primary tasks should be inter-organizational cooperation and correlation of the Unions, on the one hand, and the working out of measures to enable those countries which now stand outside the frame of international cooperation through the Unions to associate themselves in the protection of intellectual property, on the other hand. Thereafter, the considered creation of conditions conducive to a progressive encouragement of the international flow of information and knowledge might be undertaken.

For these reasons the Government of Israel envisages the building up of a broad consultative system and apparatus, in which the various elements involved in promoting these objectives will participate. It does not object in principle to consultation at the widest level, and intergovernmental consultation in particular, being effected by setting up - in addition to a Coordination Committee of Union members which together with the Bureau would remain the main operational and administrative organs of the new organization - a General Assembly having, apart from over-all control of the administrative organs and the final decision on all common matters, a consultative function to facilitate in particular collaboration of

those States which might at this stage feel for reasons internal to themselves and otherwise unable to join more intimately or organically in the work of the Unions.

6. In the opinion of the Government of Israel, the complexity at all levels of the problems accompanying the protection of intellectual property and kindred matters renders it preferable, if not inevitable, to proceed by way of a gradual elaboration of operational machinery and devices. It should, however, also be borne in mind that the success of any programme of development and expansion hinges upon the promotion of assistance to the developing countries and the flexibility of the system of protection.

7. As will hereafter appear, the Government of Israel prefers the adoption of Alternative B of the 1965 Committee to Article 4 to govern the question of membership of the Organization. Since Alternative B envisages no distinction between full and associate membership, it would follow that there is no reason or no justification for a four-tier structure of the Organization, comprising a General Assembly, a Conference, a Coordination Committee and the International Bureau. The number can be reduced to three by merging the General Assembly and the Conference into a single body. The Government of Israel is, however, fully aware of the desire and the need to preserve the autonomy of the various Unions and, whilst propounding the foregoing suggestion, will advance certain other suggestions in furtherance of this purpose when commenting on the relevant Articles.

8. In the interests of clarity, the Government of Israel also offers the suggestion that the proposed Convention could profitably be recast in some such manner as is set out in the schedule annexed to these Observations and Comments.

9. In view of the novelty of the situation, of the radical problems which it raises and of its possible and probable repercussions, the Government of Israel clearly cannot in general commit itself in advance and must reserve the right to make additional or alternative observations, both before and during the deliberations of the Conference, upon further reflection on the present Proposals and consideration of the comments and suggestions submitted by other Governments. For the same reasons, the Government of Israel desires to note that such of the present Proposals on which no comment is made or suggestion offered in this memorandum are not to be presumed as fully acceptable to it either in substance or in form.

10. Subject to the foregoing, the Government of Israel wishes to make the following more detailed comments and suggestions on the Proposals contained in Document S/10.

Preamble

It is felt that the Preamble should be phrased in wholly general terms without reference to matters which have their proper place in the substantive parts of the proposed Convention. Accordingly, it is suggested that all the words after "the various Unions" should be deleted and replaced by the simple statement "and to establish and promote further cooperation in the protection of intellectual property and legal-technical assistance".

Article 1

In consequence of what has already been said in paragraph 7 above, the Government of Israel suggests the deletion of the words "a Conference".

The Government of Israel prefers the retention of the word "International" in the name of the Bureau.

Article 2

Item (ii): The words "that is, the Secretariat of the Organization" belong properly to Article 9 where the composition, functions and powers of the International Bureau are otherwise dealt with in full. These words should, therefore, be deleted from the present item, a step which would also render it parallel with the definition in item (i).

Items (iii) and (iv): The Paris and Berne Conventions are not mentioned elsewhere in the proposed Convention other than in items (v) and (vi) of this Article. Items (iii) and (iv) could be conveniently incorporated in items (v) and (vi) respectively, with consequential renumbering, as follows:

"(iii) "Paris Union" shall mean the International Union established by the Convention for the Protection of Industrial Property signed on March 20, 1883, and any of its revisions;

"(iv)"Berne Union" shall mean the International Union established by the Convention for the Protection of Literary and Artistic Works signed on September 9, 1886, and any of its revisions."

Item (vii) (now Item (v)). Since the possible expansion of the Organization is contemplated by the adhesion of other Unions and organizations with rights of representation on some or all of the constituent organs comprising the Organization, the Government of Israel suggests the insertion of the words "other unions or organizations" between the words "the Berne Union" and the words "and any other convention".

Israel

Article 3

Paragraph (1) The Organization can by its very nature operate only through and under the Convention. It, therefore, appears expedient to put this at the forefront of its objective.

Moreover, as the Government of Israel understands the situation, cooperation is not intended to be confined "among States" alone nor would it be advisable or desirable so to confine it.

Again, protection of intellectual property can be achieved either by regulating the rights of owners with countervailing protection of consumer rights, or by regulating the rights attached to the different kinds of intellectual property as between owners and consumers, and in both cases in the national and intra-national areas. The former is the current form of protection and whilst the Government of Israel adheres thereto, it wishes to suggest some modification in the opening terms of the paragraph so as to indicate that the items which follow are not exhaustive and thereby allow for the like protection of other owners who may in the light of scientific, technical and industrial progress require the same.

The comments and suggestions which are hereafter advanced in respect of items (i) to (vi) are based on the following considerations:

(a) in view of its origins and in order not to create possible complications of interpretation, the proposed Convention should, so far as may be, not depart too radically from the texts of the Conventions under which the Unions function but stick to broad terms, eschewing partial definitions; and

(b) since legal-technical assistance is avowed in the Preamble to be one of the desiderata of the Contracting Parties and forms an intrinsic part of protection, it should be expressly mentioned as being one of the essential elements.

Items (ii) and (iii): These provisions are correlative but rightly listed separately. Item (iii) seems to mark a radical extension of protection. The "expression" of a discovery may now, it appears, acquire a form of copyright or even patent protection. In view of this prevailing tendency to expand into new areas, inevitable as already suggested, it may be asked why "know-how" is not to be similarly protected and how generally, in the absence of any provision therefor in the Conventions of the various Unions, such enlarged protection is to be afforded.

The foregoing observations on paragraph (1) involve a number of drafting changes. The following is suggested:

"(1) The objective of the Organization is to promote through administrative cooperation among the Unions and by other appropriate means set out in the present Convention cooperation in the field of protection for intellectual and industrial property, including protection of:

(i) authors of literary and artistic works;

(ii) inventors of industrial property;

(iii) scientists in respect of their scientific discoveries;

(iv) persons in trade and industry in respect of their know-how;

(v) creators of works of applied art and industrial designs;

(vi) owners of trade and service marks and other commercial designations;

(vii) performing artists, producers of phonograms and broadcasting organizations;

(viii) consumers and traders against unfair practices and acts contrary to honest trade;

(ix) parties to the inter-state flow of intellectual property."

Israël

Paragraph (2) Since the Organization cannot operate except through its appropriate organs, it seems redundant to mention the same

The term "Unions" has already been defined and there is no need to particularize the same in item (i).

Since the objective of the Organization goes beyond the protection of intellectual property alone, it seems advisable to allow for this in item (iii); in view of what has been said above, it is suggested that reference should be made to the International Bureau.

To distinguish item (vi) from item (iii) and avoid any possible conflict with it, the former needs slight amendment.

Item (vii). It would appear that this item could very well be deleted and provision made for the point in item (vi).

As the heading to Article 3 and the substance of paragraph (1) indicate, there is only one objective. We propose, therefore, that in item (viii) and throughout the Convention the word remain in the singular.

Paragraph (2) should on the foregoing observations appear in the following form:

"(2) To this end, the Organization shall, subject to the competence of each of the Unions, take all necessary action to attain the objective of the Organization, and in particular

(a) generally

(i) encourage the conclusion of new conventions, agreements or treaties where appropriate in the fields pertinent to the attainment of the objective of the Organization, and to this end provide legal technical assistance to States requesting the same;

(ii) consult and establish relations with intergovernmental and international non-governmental organizations active or interested in the fields pertinent to the attainment of the objective of the Organization:

(b) through the International Bureau

(i) carry out the administrative tasks of the Unions as allocated to it by such Unions respectively;

(ii) assume or participate in the administration of other existing intellectual property conventions, agreements and treaties, on the request of and in agreement with the competent organs established by such conventions, agreements or treaties;

(iii) assemble information concerning the protection of intellectual property, promote and carry out studies in this field, and disseminate the information assembled and the results of the studies;

(iv) maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in the field of intellectual property and the publication of the data concerning the registrations;

(v) assist in the development of measures calculated to facilitate the efficient national protection of intellectual property throughout the world and to harmonize national legislations."

Article 4

The argument for two classes of membership is not acceptable to the Government of Israel for the following reasons. The new Organization is planned as a separate and independent organization and accordingly there seems to be no justification for distinguishing between full and associate members. The Organization has its own par-

ticular objective and functions. All its members should, therefore, possess equal rights in all matters that concern the Organization as a whole. Nevertheless, in as far as the Organization is also concerned with the various Unions and may take decisions within its prescribed powers solely or exclusively affecting the internal affairs or obligations or relations of any of the constituent Unions, it would be right and proper that no such decision should be taken by the Organization without the concurrent decision of those concerned.

Accordingly, the Government of Israel prefers Alternative "B" of the 1965 Committee, subject to the above qualification which may here be expressed in general terms by the addition of the following general words at the end:

> "with such rights and obligations hereinafter in this Convention set out".

When dealing with the subsequent articles provisions will be suggested to give effect to the said qualification.

Articles 6 and 7

In view of the preference expressed for Alternative "B" to Article 4, it appears proper for the new Organization to possess one central organ to be called the General Assembly or General Conference. In the opinion of the Government of Israel, any over-elaboration of administrative changes and machinery would tend to obscure and hamper the main and substantive function of the Organization to attain its objective.

The Government of Israel is opposed to weakening the real connection that should exist between the various Unions and the Organization, and granted this connection finds it desirable and necessary to uphold the independence of the former. Such independence can be secured by an appropriate provision that the central organ of the Organization shall only act in concurrence or in agreement with the Unions in any matter which is not exclusive to it as such but also involves the tasks and interests of such Unions. Incidentally, the meetings of the General Assembly of the Organization should be linked to that of the Assemblies of the Paris and Berne Unions

and not the other way round. Accordingly it is suggested that in place of Articles 6 and 7 a new Article be drafted, which shall combine the relevant provisions of these Articles in one whole, subject to the observations and suggestions hereinafter set out.

For the reasons given in paragraph 7 above, all references to Full and Associate Members are to be deleted.

Sub-paragraphs (1)(b), (3)(a), (b), (h), and (i) in each of Articles 6 and 7 are essentially procedural matters and should be collected together with all other points of procedure now to be found elsewhere in the proposed Convention and those that may be hereafter suggested or proposed.

Owing to the participation of the various Unions, each with its own separate budget, and in the light of Article 10(1)(b), it appears to be advisable to indicate expressly in item (2)(a)(ii) of Article 7 that the budget referred to is that of the Organization itself.

To avoid all doubts as to the intention to give the Organization a continuing existence, it is suggested that the word "program" in item (2)(a) (iii) of Article 7 should be in the plural.

As presently drafted, item (2)(iv) of Article 7 might be understood as making it incumbent upon the Conference to adopt amendments proposed in accordance with Article 13. To avoid any misapprehension on this score, it is suggested to replace the wordscc adopt amendments" by "decide upon the adoption of amendments".

Item (2)(vi) of Article 6 and its parallel, item (2)(v) of Article 7, are left, so to speak, hanging in the air by not indicating who is to allocate the "other functions" or how the same is to be done. It is, therefore, suggested that the words "subject to this Convention" should be added at the appropriate point.

Israel

It is proposed wholly to delete sub-paragraph (2)(b) of Article 7, since its retention makes it appear, at least theoretically, that the Organization is divided into or composed of subsidiary Organizations, which is clearly not the case. Within the Organization itself, matters of common interest to all members must be dealt with by the central organ as a whole. In any event, each Union will itself discuss and determine in its own Assembly such matters as lie within its competence and where these impinge upon the common interest of the Organization will present its determinations to the General Assembly.

Sub-paragraph (3)(g) of Article 6 is a provision of special importance and requires to be "isolated" from the rest of paragraph (3).

In view of the foregoing suggestions, the Government of Israel submits the following as the new Article 6 in place of the present Articles 6 and 7. Subsequent Articles would need in consequence to be renumbered.

"Article 6 : General Assembly

"(1) The General Assembly shall consist of the States party to this Convention whether or not members of any of the Unions.

"(2) The General Assembly shall:

(i) discuss matters of general interest in the field of intellectual property and may adopt resolutions and recommendations relating to such matters;

(ii) act on the reports and activities of the Coordination Committee;

(iii) appoint the Director General upon nomination by the Coordination Committee;

(iv) pronounce upon the arrangements proposed by the Director General concerning the administration of the conventions, agreements and treaties referred to in Article 3(2) (ii) and (iii);

(v) adopt the triennal budget of the Organization as such and within the limits thereof establish triennal programs of legal-technical assistance;

(vi) decide upon the adoption of amendments to this Convention as provided in Article 13;

(vii) determine the languages which, in addition to English and French, shall be the working languages of the Secretariat;

(viii) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) exercise such other functions as are allocated to it in accordance with this Convention.

"(3) (a) The Government of each State shall be represented by one or more delegates who may be assisted by alternate delegates, advisors and experts.

(b) One third of the States shall constitute a quorum.

(c) Each State shall have one vote in the General Assembly.

(d) Abstentions shall not be considered as votes.

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

"(4) (a) Subject to the provisions of the following subparagraphs and Article 13 [12], the General Assembly shall make its decision by a simple majority of the votes cast.

(b) The following shall require at least two-thirds of the votes cast.

(i) invitations addressed to a State to become a Member of the Organization (Article 4(3));

(ii) decisions concerning the transfer of the headquarters of the Organization (Article 5);

(iii) invitations addressed to States not Members of the Organization and to intergovernmental and international non-governmental organizations to attend meetings as observers (paragraph (2) (ix));

(iv) decisions on the budget which would increase the financial obligation of the Members of the Organization.

(c) The confirmation of arrangements concerning the administration of conventions, agreements and treaties, referred to in Article 3(2) (ii) and (iii), shall require at least three-fourths of the votes cast.

(d) The approval of an agreement with the United Nations under Articles 57 and 63 of the Charter of the United Nations shall require at least nine-tenths of the votes cast.

"(5) All decisions of the Organization, other than those which are of procedural nature or are not within the competence of any of the Unions, shall require the due concurrent agreement of the Unions.

"(6) (a) The General 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 Assemblies of the Paris and Berne Unions.

(b) The General Assembly shall meet in extraordinary session, upon convocation by the Director General, at the request of the Coordination Committee, or at the request of one-fourth of the States constituting the General Assembly.

(c) Meetings shall be held at the headquarters of the Organization.

"(7) The General Assembly shall subject to this Convention adopt its own rules of procedure."

Article 8(now Article 7)

Sub-paragraph (1)(a). In the third line, the word "or" should be replaced by the word "and" in order to make it quite clear that both Unions are to be represented on the Coordination Committee.

Sub-paragraph (1)(c). Since, in view of the suggestions above made, Membership of the Organization will now be unitary, this sub-paragraph requires recasting in the following manner:

"(c) Whenever the Coordination Committee considers matters of direct interest to the Organization as such, it shall further include one-fourth of those States party to this Convention, which are not members of the Unions, with the right, subject to sub-paragraph (6)(b), to vote and otherwise participate equally with other members of the Coordination Committee in the work thereof. Such one fourth shall be elected at each ordinary session of the General Assembly by all States party to this Convention, which are not members of the Unions."

Paragraph (2) The Government of Israel wonders whether the word "appointed" in the third line is not perhaps indicative of a certain status not provided for in the proposed Convention nor in any other authoritative instrument.

Israel

Item 3(i). In view of the suggestion to dispense with the Conference, the word "and" is to be inserted between the words "Unions" and "the" in the first line. In the second line the words "and the Conference" require to be deleted; in the fifth line in place of the word "Conference" the words "General Assembly" should be inserted.

It is observed that whilst Member States which are members of the Unions are covered by Article 10(3)(a)(i), no provision exists for the right of other Member States to fix their aggregate contribution parallel to the rights of the Unions.

Paragraph (4) For reasons already set out above, the second sentence should be deleted and the following added as a continuation of the first sentence: "preferably during the same period and at the same place as the Executive Committees of the Paris and Berne Unions."

Article 9 (now Article 8)

Paragraph (5) The words "the Conference" require to be deleted.

In view of the suggestions made under Article 2(ii), it is necessary to add a sub-paragraph setting out the functions and duties of the International Bureau. The following is suggested:

> "(2) the International Bureau shall serve as the Secretariat of the Organization and exercise such other administrative functions as may be allocated to it by the Unions."

Article 10 (now Article 9)

The overall aim must be to keep the Budget as small as possible, consonant with the objective and functions of the Organization. In particular, the contributions of the Unions must be kept down to the very minimum. It is, therefore, desirable to provide expressly that Members pay their own expenses when attending meetings of the General Assembly and the Coordination Committee and the same should not fall upon the Budget as they will might under the terms of sub-paragraph (1)(b) as at present

drafted. That sub-paragraph also requires amendment, in light of the suggestions made above, by replacing the word "Conference" by the word "General Assembly".

In item (3)(a)(ii), for similar reasons, the words "Member States not being members of the Unions" should replace the words "Associate Members". It would be appropriate here to provide how the aggregate contribution of such Members is to be determined.

In sub-paragraphs (4)(a), (b), (c); (5)(a); (8)(a), (c), likewise the words "Member States not being Members of the Unions" should replace the words "Associate Members" or "Associate Member States". In sub-paragraph (5)(a), the words "Full Member State" should be replaced by the words "Member State being a member of any of the Unions".

In sub-paragraph (9)(a) the word "Member" towards the end is out of place and should be deleted.

The following new paragraph should be inserted before paragraph (10):

> "(10) The expenses of each Delegation to the General Assembly and to the Coordination Committee respectively shall be borne by the Government which has appointed it."

Present paragraph (10) requires renumbering in consequence.

Article 11 (now Article 10)

Paragraph (3) The Government of Israel, aware of certain attitudes, will have to insist that the word "all" be inserted between the words "representatives of" and the word "Member" in the fourth line. No uncertainty may be admitted in this connection. The Government of Israel understands that before any meetings of the Organization are convened the agreements referred to will so far as may be necessary be concluded.

Israel

Article 13 (now Article 12)

In paragraphs (1) and (2), the words "General Assembly" must, in consequence of what has been suggested before, replace the word "Conference".

In paragraph (2), the first sentence would better read: "Amendments shall be subject to adoption by the General Assembly." Amendment of the Convention is such a basic matter that it obviously requires not a simple but a two-thirds majority, which would incidentally tend to secure more speedy and ready acceptance by three-fourths of the Member States under paragraph (3).

Article 14 (now Article 13)

Sub-paragraph (1)(b) To avoid formal inflexibility, it is suggested that in the fourth line the words "previously or" should be inserted between the words "only if" and the word "concurrently."

Sub-paragraph (3)(b) The right of the States affected to attend as observers should be expressly retained. Accordingly the words "the right to attend as observers but with" should be inserted between the words "shall have" and the words "no right." Consequently as above, the last three words should be deleted and the word "or" inserted between "the General Assembly" and "the Coordination Committee."

Schedule

[See paragraph 8 above]

Suggested rearrangement of the provisions of the proposed Convention.

Preamble

Chapter I: The Establishment of the Organization

Article 1: The Organization (1)*

*The figures in brackets indicate the numbers of the parallel existing Articles.

Schedule (Continued)

Article 2:	Definitions	(2)
Article 3:	Purposes	(3)
Sec.(1):	Objectives	
Sec.(2):	Functions	
Article 4:	Headquarters	(5)
Article 5:	Legal Capacity etc.	(11)
Article 6:	Relations with other organizations	(12)
Chapter II:	The Structure of the Organization	
Article 1:	Membership	(4)
Article 2:	The General Assembly	(6 and 7)
Sec.(1):	Composition	
Sec.(2):	Powers	
Sec.(3):	Meetings	
Sec.(4):	Voting	
Sec.(5):	Procedure	
Article 3:	The Coordination Committee	(8)
Sec.(1):	Composition	
Sec.(2):	Powers	
Sec.(3):	Meetings	
Sec.(4):	Voting	
Sec.(5):	Procedure	
Article 4:	The International Bureau	(9)
Sec.(1):	General	
Sec.(2):	The Director General	
Sec.(3):	Powers and Duties	
Sec.(4):	Responsibility	
Article 5:	Finances	(10)
Sec.(1):	Budget	
Sec.(2):	Sources of Income	

Schedule (Continued)

Sec.(3): Contributions
Sec.(4): Working Capital
Sec.(5): Advances
Sec.(6): Auditing

Chapter III: Adhesion to the Organization

Article 1: Becoming a Member (14)
Article 2: Reservations (17)
Article 3: Entry in Force of the Convention (14)
Article 4: Denunciation (15)
Article 5: Notifications (16)

Chapter IV: Miscellaneous

Article 1: Amendments (13)
Article 2: Final Provisions (18)
Article 3: Transitional (19)

(Original : English)

ITALY

Italian Delegation
to the
Intellectual Property Agreements

Rome, March 11, 1967

The Italian Delegate to the Intellectual Property Agreements presents his compliments to the Director of BIRPI and, with reference to his circular No. 1005 of September 22, 1966, has the honor to send him herewith a few observations which the Italian Administration - after having consulted the competent authorities from the offices of the Council of Ministers-has made on certain items in the Proposals for Revising the Administrative Provisions and the Final Clauses of the Berne Convention for the Protection of Literary and Artistic Works, prepared by the Swedish Government with the collaboration of BIRPI (doc. BIRPI S/9 and S/9 corr.1).

Observations

After having considered the text of document S/9, as modified by document S/9 corr.1, the Italian Administration wishes to put forward the following observations.

Article 20bis: Protocol Regarding Developing Countries.

Inasmuch as there could be some doubt about the advisability of deleting Article 25quater, for the reasons stated hereinafter in connection with the said Article 25quater, we are of the opinion that the original wording of Article 20bis should be maintained.

Italy

Article 21 and the following Articles

Regarding in general the administrative clauses contained in Article 21 and the following Articles, we trust that the final wording of these clauses will consistently ensure the administrative autonomy of each Union.

Article 21: Assembly

- Paragraph (3)(b)

It is felt that the quorum of the Assembly should consist of not less than half of the member countries.

Article 21bis: Executive Committee

- Paragraph (8)(b)

In view of the fact that the Executive Committee is composed of a limited number of member countries, it is suggested that the quorum should be raised to two-thirds.

Article 23: Amendments to Articles 21 to 23

- Paragraph (1)

We wonder whether the text should not give some indication regarding the power of initiating any proposals for amendment provided for in this paragraph.

- Paragraph (2).

Inasmuch as the administrative provisions will now be included in the text of the Convention itself, we wonder if it would not be wise to reconsider the question of whether the qualified majority indicated in this paragraph is the most satisfactory.

Article 25: Ratification, Accession, and Entry into Force

- Paragraph (2),Subparagraphs (a)and (b)

In view of the importance of Articles 1 to 20bis and the Protocol,mentioned in subparagraph (a), it might be advisable to consider requiring, for entry into force thereof, that the same number of instruments of ratification and accession be deposited as is stipulated in subparagraph (b). If this modification is made, the text

of subparagraph (c) will have to be altered accordingly, as will any other provision referring to the entry into force contained in the proposed Convention.

Article 25quater : Admission of the Application of Reservations Made under the Protocol Regarding Developing Countries

The Italian Administration feels that it would be better to retain Article 25quater (Document S/9, page 51), with the consequences this will have for the other provisions of the Draft, because it ensures complete freedom of decision to countries of the Union which are not yet bound by Articles 1 to 20 of the Stockholm Act and by the Protocol regarding developing countries.

In the opinion of the Italian Administration, the Diplomatic Conference of Stockholm should consider this question very carefully and endeavor to find reasonable solutions which preserve the basic principles of the System of the Union.

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Italy

Italian Delegation
to the
Intellectual Property Agreements

Rome, February 27, 1967

The Italian Delegate to the Intellectual Property Agreements presents his compliments to the Director of BIRPI and, with reference to his circular No. 1005 of September 22, 1966, has the honor to send him herewith a few observations which the Italian Administration - after having consulted the competent authorities from the offices of the Council of Ministers and the Ministry of Industry, Commerce and Crafts - has made on certain items in the Proposals for Establishing the International Intellectual Property Organization, prepared by the Swedish Government with the collaboration of BIRPI (doc. BIRPI S/10).

General Observations

The Italian Administration considers it would be well to recall that, when the proposal to set up the International Intellectual Property Organization (IPO) was being discussed, certain delegations - including the Italian Delegation - were somewhat disturbed about the complexity of such an Organization. As a matter of fact, it was not clearly apparent that it would be advisable to set up a new international organization especially for the purpose of achieving such precise finalities as those specified in the Resolution passed by the 1962 Interunion Committee, and it was felt that it might be possible to achieve the said finalities by simpler and less costly instruments.

Italy

At the same time, we think there could be reason to wonder whether, despite all formal precautions taken, the establishment of the new Organization might not affect, in some way, the full autonomy of the two Unions, which autonomy is required by all of the member countries. Furthermore, even if the primarily administrative tasks of the two Unions are brought close together within the framework of a single organ, one might ask whether it would not be possible that the two distinct forms of protection would tend to interfere with each other, either on the legal or the administrative plane. It must not be forgotten that these two forms of protection differ greatly as a result of the very diverse, yet equally important, rights and private interests relating thereto.

Observations Relating to the Preamble and to Certain Articles of the Draft

Preamble

The use of the expression "Intellectual Property Unions" in the Preamble could lead one to think that, to a certain degree, the principle of uniting industrial property and literary and artistic property had been accepted.

It therefore seems necessary to replace it by the following, more precise expression: "Unions in the field of industrial property and the protection of literary and artistic works," while maintaining the expression "intellectual property" in the second part of the Preamble and in the text of the Convention.

Article 2

We suggest adding here a definition of the expression "intellectual property," in the sense indicated in paragraph 34 of the Commentary on Article 1 (doc. S/10, page 10).

Article 3

- Paragraph 1

The excessively detailed enumeration in this paragraph makes the text read awkwardly as a whole, and yet

Italy

It does not appear to be comprehensive enough. It would consequently seem better to synthesize the wording and to stress the two primary objectives of the Organization, namely administrative cooperation among the Unions and protection of intellectual property throughout the world. We would accordingly suggest that the following text be substituted for the text of the Draft:

"(1) The objective of the Organization is:

(a) to encourage administrative cooperation among the various Unions administered by the Organization;

(b) to endeavor to promote the protection of intellectual property throughout the world through collaboration between the States and, where necessary, by collaborating with any other international organization."

- Paragraph 2

As a result of the proposed modification of paragraph (1), paragraph 2(vi) would have to be amended as follows:

"shall assist in harmonizing national legislation in the field of intellectual property."

Article 4

The Italian Administration approves the spirit in which BIRPI's new proposal concerning Members of the Organization has been made.

Article 6

- Paragraph 3

The Italian Administration is of the opinion that the quorum appearing in subparagraph (b) should consist of not less than half of the States members of the General Assembly.

In addition, with reference to subparagraph (d), the Italian Administration considers that it would be advisable to require a qualified majority for the adoption of the General Assembly's rules of procedure.

Italy

Article 7

We feel that the drafting of the financial clauses in this Article will have to be reviewed at a later date so as to coordinate them better with the other financial provisions governing the Organization and with the new administrative clauses of the various Unions.

In particular, it would appear desirable to consider the possibility of reserving to the General Assembly the task of approving the budget of the Organization, except for the part of that budget which is within the competence of the Conference.

- Paragraph 3(b)

It would seem advisable to stipulate that the quorum should consist of not less than half of the Full Members and half of the Associate Members.

- Paragraph 6

We repeat here the suggestion already made regarding the majority required for approval of the General Assembly's rules of procedure.

Article 8

- Paragraph 3, subparagraph (iv)

It would seem desirable to alter the wording of this subparagraph to make it more readily understandable.

- Paragraph 8

We repeat here the suggestion already made regarding paragraph 6 of Article 7.

Article 9

- Paragraph 1

We believe it would be wise to consider the possibility of redrafting this paragraph eventually so that it will better reflect the necessity of preserving the autonomy of the Unions and of ensuring the proper functioning of the new Organization.

Italy

Article 13

- Paragraph 1

We wonder whether it might not be worth while to have the text include a few details regarding the powers of initiating any proposals for the amendment of the Convention.

Article 14

- Paragraph 2(a)

In view of the vastness of the administrative reform represented by the new Organization, we think that the participation of an even greater number of Member States than is proposed in the text should be required in order for IFO to enter into force.

(Original: French)

JAPAN

Permanent Delegation
of Japan

Geneva, February 22, 1967

The Permanent Delegate of Japan to the International Organizations in Geneva presents his compliments to the Director of the United International Bureaux for the Protection of Intellectual Property and with reference to the latter's Circular No. 1005 of October 4, 1966, has the honour to transmit herewith, under instructions from his Government, the Proposals and Comments of Japan on the Draft Convention Establishing the International Intellectual Property Organization and on the Proposals for Revising the Administrative Provisions and the Final Clauses of the Paris Convention and the Berne Convention (documents S/10, S/3 and S/9).

1. General Comments

(1) The Draft Convention establishing the International Intellectual Property Organization (S/10) intends to create, on the basis of fully respecting the autonomy of each of the existing intellectual property Unions, a new inter-governmental Organization which aims to modernize and make more coordinated the administration of the intellectual property Unions through the establishment of administrative organs common to them and to promote on a world-wide basis the protection of intellectual property through the establishment of a forum in which member countries of any of the existing Unions as well as states not affiliated with any of these Unions, particularly developing countries, participate.

Japan is of the opinion that there is a need for creating such an Organization and has no objection to accepting, as a basis for discussion in the Stockholm Conference, the Draft Convention establishing the Organization (S/10), Proposals for Revising the Administrative Provisions and Final Clauses of the Paris Convention (S/3), Proposals for Revising the Administrative Provisions and Final Clauses of the Berne Convention (S/9) etc.

Japan

(2) It is to be noted, however, that in the field of the international protection of copyright, UNESCO has played a considerable role as administrative organ of the Universal Copyright Convention; Japan wishes, therefore, to express a hope that utmost efforts should be made in future for the coordination of the functions between the new Organization and UNESCO.

2. Draft Convention establishing the International Intellectual Property Organization (S/10)

(1) Article 4 : Membership

Japan supports the proposed Article, but subject to the following modification;

Following examples of international conventions concluded in conferences convened by UN specialized Agencies, Paragraph (3)(i) should be amended to read "it is a Member of the United Nations or any of the Specialized Agencies brought into relationship with the United Nations or the International Atomic Energy Agency or" (the underlined words added).

(2) Article 6 : General Assembly

With regard to the functions of the General Assembly referred to in paragraph (2)(i) to (vi), Japan considers that they are appropriate. However, with regard to the appointment of the Director General referred to in (ii) of paragraph (2), see the Japanese proposal relating to paragraph (1)(c) of Article 8.

(3) Article 8 : Coordination Committee

In principle, Japan has no objection to the functions of the Coordination Committee referred to in Paragraph (3) (i) to (vii). However, as far as the appointment of the Director General is concerned, Japan considers that the Associate Members should also be given a voice, though evidently smaller than that of the Full Members. Therefore, Japan proposes to amend

Paragraph (1)(c) as follows (the underlined words added): "Whenever the Coordination Committee considers matters of direct interest to the Conference and matters referred to in Paragraph (3)(v) and (vi) of the present Article, one-fourth of the Associate Members shall participate in the Coordination Committee with the same rights as the members of that Committee. This one-fourth shall be elected by and at each ordinary session of the Conference."

(4) Article 14 : Becoming Party to the Convention; Entry into Force of the Convention

In the present Draft Convention, the legal links between the IPO Convention on the one hand and the Berne Convention and Paris Convention on the other, which had been formulated in Article 14 of the Draft Convention for the 1966 Committee (A/III/12), has been abolished.

With regard to the advisability of abolishing such legal links, Japan, being desirous to study it further, wishes to reserve its position on the proposed Article and other related Articles until the Stockholm Conference.

(5) Article Concerning Settlement of Disputes

The present Articles 18 (Final Provisions) and 19 (Transitional Provisions) should be renumbered as Articles 19 and 20 respectively. As in many constitutional instruments of UN Specialized Agencies, there should be in the Convention an article concerning the settlement of disputes.

So it is suggested that the following should be added as Article 18:

"Any dispute between two or more member States of the Organization concerning the interpretation and application of this Convention not settled by negotiation, or by the General Assembly, shall be brought before the International Court of Justice for determination by it, unless the member States concerned agree on some other method of settlement. The member State requesting that the dispute should be brought before the Court shall

inform the International Bureau; the Bureau shall bring the matter to the attention of the other member States".

3. Proposals for Revising the Administrative Provisions and the Final Clauses of the Berne Convention (S/9)

(1) Article 25 : Ratification and Accession by Countries of the Union; Entry into Force

Article 25bis : Accession by Countries outside the Union; Entry into Force

In the present Proposals, the legal links between the IPO Convention and the Berne Convention, which had been formulated in Articles 25ter and 25quater of the Draft Text of the Berne Convention Final Clauses for the 1966 Committee (AA/III/3, Berne Addendum), have been abolished. With regard to the advisability of abolishing such legal links, Japan, being desirous to study it further, wishes to reserve its position on these Articles and other related Articles until the Stockholm Conference.

(2) Article 25ter : Reservations

Japan opposes the proposed Paragraph (2) which does not allow countries of the Union not making the declaration permitted by Article 25 (1)(b)(i) to retain the benefit of the reservations they have previously formulated. The countries of the Union which accept or accede to the Stockholm Act should have the free choice of whether or not they abandon the benefit of the reservations they have previously formulated.

(3) Article 27bis : Settlement of Disputes

Japan supports Alternative A, that is to say, the maintenance of the existing Article (Article 27bis of the Brussels Act).

Japan

4. Proposals for Revising the Administrative Provisions and the Final Clauses of the Paris Convention (S/3)

(1) Article 16 : Ratification and Accession by Countries of the Union; Entry into Force

Article 16bis : Accession by Countries outside the Union; Entry into Force

In the present Proposals, the legal links between the IPO Convention and the Paris Convention which had been formulated in Article 16ter and 16quater of the Draft Text of the Paris Convention Final Clauses (AA/III/3, Paris Addendum) for the 1966 Committee, have been abolished. With regard to the advisability of abolishing such legal links, Japan, being desirous to study it further, wishes to reserve its position on these Articles and other related Articles until the Stockholm Conference.

(2) Articles on Settlement of Disputes

The proposed Articles 19 and 20 should be renumbered as Articles 20 and 21 respectively and it is suggested the following article concerning the settlement of disputes should be added as Article 19:

"Any dispute between two or more countries of the Union concerning the application of this Convention, not settled by negotiation, shall be brought before the International Court of Justice for determination by it, unless the countries concerned agree on some other method of settlement. The country requesting that the dispute should be brought before the Court shall inform the International Bureau; the Bureau shall bring the matter to the attention of the other countries of the Union".

(Original: English)

LUXEMBOURG

Ministry for
Foreign Affairs

Luxembourg, February 10, 1967

With reference to your Circular No. 1005 of September 22, 1966, I have the honor to attach hereto the views of the Luxembourg Administration in respect of Document S/3 containing the proposals for revising the International Convention for the Protection of Industrial Property.

A. General Observations

By participating in the meetings of the 1965 and 1966 Committees of Experts, the Luxembourg Government indicated its interest in the proposed administrative and structural reforms to be effected in the Paris and Berne Unions and in the other Unions administered by BIRPI.

Considering that, with one exception, the provisions proposed in document S/3 follow the views expressed by the 1966 Committee of Experts, the observations and counter-proposals of the Luxembourg Administration concern only a very limited number of points.

The Luxembourg Administration, after having re-examined the question, maintains its positive attitude towards the proposed reform. It is convinced that it will prove beneficial to the various Unions since the member countries will participate more directly in the administration of these Unions and BIRPI will have the appropriate means to develop its field of activity and accomplish its various tasks more efficiently.

Luxembourg

B. Observations on the Proposed Texts

Article 13

Paragraph (1)(c) According to this provision, the expenses of each Delegation would be borne by the Government which has appointed it. The Luxembourg Administration agrees to this proposal, and to its insertion in Article 13 of the Convention, although it is of the opinion that such a provision should normally appear in the internal rules of procedure of the Assembly.

Paragraph (3)(b) The question which arises is that of the procedure to be followed when the quorum is not reached. This question is particularly important in view of the fact that the Assembly must adopt the triennial budget and that normally it meets only once every three years. To cover such an eventuality, should there not be provision for the convening of another meeting within a relatively short period of time and with the same agenda? The new meeting should then be able to deliberate validly, regardless of the number of delegates present. This provision would have to be brought to the attention of the delegates.

Article 13bis

Paragraph (2)(c) The comment made in connection with Article 13(1)(c) also applies to Article 13bis(2)(c).

Paragraph (4) This paragraph stipulates the need for countries members of the Special Unions established in relation with the Union to be among the countries constituting the Executive Committee. The proposed text could be understood to mean that all countries belonging to the Special Unions should be among the countries of the Committee, which is obviously not what was intended. For the sake of clarity, the following wording is suggested: ". . . and to the need for countries members of the Special Unions established in relation with the Union to have their interests represented by one or more of the countries constituting the Executive Committee."

Luxembourg

Article 13ter

Paragraph (2) For the sake of completeness, it is suggested that the words "all new laws" in the second sentence be replaced by "all new texts of laws or regulations."

Article 13quater

Paragraph (3)(ii) It is suggested that the word "dues" in French be replaced by "perçues".

Paragraph (4)(a) The Luxembourg Administration supports the proposal whereby a seventh class, having one unit, would be added to the six existing contribution classes. Nevertheless, it wonders whether this change--although it does represent some progress--makes sufficient allowance for the financial means of the various categories of countries. It is true that the present contributions of States are still rather modest. This question would, however, become more important if, for one reason or another, the expenditure of the Union were to be sharply increased. In such a case, it might be useful to have contributions spread over ten classes.

Article 14

Article 14 concerns revisions of the provisions of the Convention other than Articles 13 to 13quinquies, yet the term used in connection with Articles 13 to 13quinquies is not "revisions" but "amendments". In order to take this distinction in terminology into account, it is proposed that the title should read:

"Article 14 : Revision of the Provisions of Articles 1 to 12 and 14 to 20 of the Convention."

Paragraph (1) The question which arises is whether the first paragraph should not mention the various articles of the Convention to be submitted to periodical revision. The text would then be worded as follows:

"Articles 1 to 12 and 14 to 20 of the present Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union."

Luxembourg

Adoption of the above-mentioned new text would appear to make it possible for paragraph (3) of Article 14 to be deleted. Paragraph (4) of Article 13quinquies could also be deleted.

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Luxembourg

Ministry of Foreign Affairs

Luxembourg, February 13, 1967

With reference to your circular No. 1005 of September 22, 1966, I have the honor to attach hereto the observations of the Luxembourg authorities in respect of Document S/9 concerning the Berne Convention for the Protection of Literary and Artistic Works: Proposals for Revising the Administrative Provisions and the Final Clauses (Articles 20bis to 32).

Observations of the Luxembourg Administration

Regarding the proposals for revising the administrative provisions, reference is made to the observations which will be submitted in connection with the other Unions.

As the administrative organization of these other Unions will be similar to that of the Berne Union, the comments on document S/3 also apply to the present document.

The final proposals, appearing in Articles 23 to 32, give rise to the following observations.

Article 23

Article 23 governs the procedure for modifying the administrative provisions. Amendments are adopted by a three-fourths majority of the votes cast. Amendments of Article 21 and Article 23(2) require a unanimous vote.

This system of requiring unanimity for matters of great importance is acceptable.

Luxembourg

Articles 25 and 25bis

The provisions of Articles 25 and 25bis deal with the accession of countries to the Stockholm Act and do not call for any general observations. There is, however, one comment to be made.

Acceptance of the Stockholm Act by the countries of the Union will not necessarily imply acceptance of both the new substantive provisions and the new administrative provisions. The countries will have the option of accepting only the new substantive provisions or only the new administrative provisions. Although there are certain practical advantages in allowing this option, it will not tend to simplify relations between the member States. Harmonizing international copyright would, in fact, require that all countries of the Union be bound by the same Act.

Article 27bis (Settlement of Disputes)

The present Article 27bis, added when the Convention was last revised, provides that the jurisdiction of the International Court of Justice shall be compulsory.

As certain countries have not accepted this provision, it would seem that Alternative C, making this jurisdiction of the Court optional, should be retained. It would, in fact, be unfortunate if certain countries should be prevented from ratifying the Stockholm Act or acceding to it because the present clause is maintained.

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Luxembourg

Ministry of Foreign Affairs

Luxembourg, February 10, 1967

With reference to your circular No. 1005 of September 22, 1966, I have the honor to attach hereto the views of the Luxembourg Administration in respect of Document S/10 containing the proposals for establishing the International Intellectual Property Organization.

A. General Observations

At the 1965 and 1966 meetings of the Committees of Experts, the Luxembourg Administration adopted a favorable attitude toward the plan to establish a new International Intellectual Property Organization. To date, we see no reason why this attitude should be changed. We are convinced that the new Organization will be called upon to play an important role in the sense that it will provide a coordinated and rational administration of the various intellectual property Unions and will promote the circulation and harmonization of the general principles governing the protection of intellectual property in all States of the world and particularly in the developing countries. It is moreover interesting to note that, according to the Draft Convention, the new Organization will be called upon to act only in matters of common interest to the different Unions and that the latter will retain their full independence, especially as regards establishing and carrying out their programs of activity. Concerning the budgets of the Unions, the introductory note points out that approval thereof lies fully within the competence of each Union's Assembly. The Luxembourg Administration would merely like to call attention to the fact that staff costs, which would normally represent the largest item of a Union's total expenses, are determined by applying the staff regulations.

According to Article 9 of the Draft Convention, however, the staff regulations are to be approved by the Coordination Committee on the proposal of the Director General, which means that the establishment and approval of these regulations are not within the competence of the Assemblies of the various Unions. It must therefore be concluded that the Assemblies, when called upon to approve their budgets, will be more or less obliged to allow for commitments made by virtue of a decision taken by an organ external to the individual Unions. Consequently, the independence of the Assembly will be merely relative.

B. Observations on the Text of the Draft Convention

Article 1

Regarding the suggested alternative for the title of the new Organization, Luxembourg would like to put off taking a position until the time of the Conference.

Article 4

Concerning the proposed alternatives in respect of the conditions to be met in order for States to become Members of the Organization, Luxembourg will take a decision once the issue has been debated at the Conference. We wish to state at this time, however, that we share the opinion of the Swedish Government and BIRPI that the Stockholm Conference, which is to deal with matters of a primarily technical nature, is not the appropriate forum for solving a purely political issue.

Article 8

Paragraph (3) of Article 8 lists the functions of the Coordination Committee. This list does not, however, mention the important duty of approving the staff regulations. Although item (vii) does stipulate that the Committee shall perform such other functions as are allocated to it, it would seem, in view of the financial consequences involved, that approval of the staff regulations should be explictly mentioned.

Luxembourg

Article 9

ad (6) Under the heading "General," we have already drawn attention to the problem raised by the proposal to entrust the function of approving staff regulations to the Coordination Committee. In short, this proposal is contrary to the general idea of ensuring the independence of the different Unions. Considering this drawback, the Luxembourg Administration wonders whether it would not be better to assign the task of approving the staff regulations to the General Assembly, in which all countries members of the different Unions are represented, and to authorize the Coordination Committee to make modifications required in certain specific cases (such as periodically adapting salaries to changes in cost of living). For the time being, the Luxembourg Administration merely wishes to raise the question, without offering a concrete counter-proposal.

Article 10

ad (4) (a) For purposes of achieving harmony, should the same number of classes not be provided as for the other Unions? Obviously, it is more than likely that, at the beginning, the contributions to be paid to the Organization by Associate Members will still be rather modest and a greater number of classes will not be required in the near future. It is difficult, however, to predict how the activities of the Organization will develop and what its longer-range financial needs will be.

(Original: French)

AFRICAN AND MALAGASY INDUSTRIAL PROPERTY OFFICE (OAMPI)
and
CAMEROON, CENTRAL AFRICAN REPUBLIC, CHAD, CONGO (Brazzaville),
DAHOMEY, GABON, IVORY COAST, MADAGASCAR, MAURITANIA
NIGER, SENEGAL, UPPER VOLTA

African and Malagasy
Industrial Property Office
(OAMPI)

Yaoundé, March 8, 1967

Further to your letter No.(36) - 312, of February 2, 1967, I have the honor to enclose, on behalf of the States members of OAMPI, the amendments which the OAMPI Governing Body, meeting in Brazzaville from January 30 to February 6, 1967, requested the countries of the Libreville Agreement to propose to the organizers of the Stockholm Conference.

These are, therefore, the official proposals made by the States members of OAMPI. The Governments of each of these States will confirm this shortly through the usual channels.

These proposals pertain solely to questions of representation and voting and are intended to complete the work of regional regrouping of which the Africano-Malagasy Office is the instrument. The effort being made within the framework of the Libreville Agreement to achieve harmony and uniformity is in line with the ideas of the United Nations. I am convinced that it will also meet with your understanding and with that of the members of the Paris and Berne Unions.

OAMPI and the twelve States members of OAMPI

PRELIMINARY OBSERVATIONS

The States members of the African and Malagasy Industrial Property Office (OAMPI) have studied documents S/1 to S/12, as well as documents S/3/Corr.1, S/4/Corr.1, S/7/Corr.1, S/8/Corr.1 and S/9/Corr.1, prepared by the Government of Sweden with the collaboration of the United International Bureaux for the Protection of Intellectual Property (BIRPI) for the purposes of the Diplomatic Conference to be held in Stockholm, from June 12 to July 14.

The conclusions arrived at as a result of this study were submitted to the OAMPI Governing Body for consideration at its sixth session, held in Brazzaville from January 30 to February 6, 1967.

The Governing Body decided to submit certain conclusions to the organizers of the Stockholm Conference in the form of proposed amendments to some of the provisions contained in documents S/3 and S/10.

These proposed amendments relate to Articles 13 (Assembly) and 13bis (Executive Committee) of document S/3 (Paris Union) and Articles 6 (General Assembly), 7 (Conference) and 8 (Coordination Committee) of Document S/10 (International Intellectual Property Organization, IPO).

The matters concerned have to do with representation and voting. The proposed amendments are given below.

PARIS UNION (Document S/3)

Article 13: Assembly

(1) In paragraph (1), insert a subparagraph (c) between subparagraph (b) and the present subparagraph (c), the latter subparagraph then becoming subparagraph (d). The following wording is proposed for the new subparagraph (c):

OAMPI and the twelve States members of OAMPI

"(c) A plurality of countries, members of one or more Unions and grouped together in a single Office under the terms of an international agreement, may be represented by a single delegation or by their common organ which shall have as many votes as the said Office has member States."

(2) Add the following reservation to paragraph (3)(a):

"... subject to the application of the provisions of paragraph (...)(c) above."

(3) Add the same reservation to subparagraph (3)(g).

Article 13bis: Executive Committee

(1) Add the following reservation to subparagraph (2)(b):

"... subject to the application of the provisions of Article 13(1)(c)."

(2) Add the same reservation to subparagraphs (8)(a) and (8)(

INTERNATIONAL INTELLECTUAL PROPERTY ORGANIZATION
(Document S/10)

Article 6: General Assembly

(1) In paragraph (1), add a subparagraph (c) worded as follows:

"(c) A plurality of countries, members of one or more Unions and grouped together in a single Office under the terms of an international agreement, may be represented by a single delegation or by their common organ which shall have as many votes as the said Office has member States."

(2) Add the following reservation to paragraph (3), subparagraph (a):

OAMPI and the twelve States members of OAMPI

"... subject to the application of the provisions of paragraph (1)(c) above."

(3) Add the same reservation to subparagraph (3)(i).

Article 7: Conference

(1) Add the following reservation to subparagraph (1)(b):

"... subject to the application of the provisions of Article 6(1)(c)."

(2) Add the same reservation to subparagraphs (3)(a) and (3)(g).

Article 8: Coordination Committee

(1) Add the following reservation to subparagraph (1)(b):

"... subject to the application of the provisions of Article 6(1)(c)."

(2) Add the same reservation to subparagraphs (5)(a) and (5)(c).

COMMENTS

These are the amendments which the States of the African and Malagasy Industrial Property Office suggest should be added to certain of the provisions of documents S/3 and S/10. What are the reasons for proposing these amendments?

The basic objectives of the proposals for revision, drawn up for the purposes of the Stockholm Conference, can be summarized under two main headings:

- modernization of the international conventions for the protection of intellectual property rights, in particular with a view to having the member States play an effective part in the management of those conventions;

- universalization of intellectual property by the establishment of a world forum - the International Intellectual Property Organization, and especially the Conference thereof - through which countries not members of the Unions can benefit from international cooperation in this field and, by becoming familiar with intellectual property matters, can accede to the Unions.

In the preparatory documents, however, there is no mention of the idea of regional grouping. The purpose of the OAMPI amendments is to introduce this idea.

The importance of regional integration is, in fact, receiving wider and wider recognition, and this is equally true in the field of intellectual property.

As regards industrial property, OAMPI represents the first, and practically the only, concrete achievement in the pursuit of such integration. It has therefore been internationally sanctioned, and was analyzed in the 1964 report of the Secretary-General of the United Nations on "the role of patents in the transfer of technology to developing countries." This report states in particular: "While the Paris Union and the other conventions mentioned earlier did not purport to bring about uniformity in national legislation, they have advanced the idea of harmonizing and coordinating the functioning of national patent systems." (In this connection, see also Article 15 of the Paris Convention.) "There have since been efforts, in connection with the drive towards regional economic integration, to obtain greater uniformity in the granting and administration of patents. These efforts have resulted in several plans for the granting of a uniform regional patent...," of which only the African and Malagasy proposal has thus far been implemented ..... the potentialities of a central patent office serving the needs of an entire region are of considerable interest."

In addition, more and more thought is being given to the idea of a universal patent. A report on the patent system, drawn up by a commission appointed by the President of the United States of America, thus concludes that the formation of

regional patent system groups should be encouraged as an intermediate stage in the establishment of a universal patent system.

Thirdly, paragraph 2(a)(x) of the Resolution constituting the United Nations Industrial Development Organization (UNIDO) recognizes regional groupings in the field of industrial property by assigning UNIDO the task of "Proposing, in cooperation with the international bodies or intergovernmental regional bodies concerned with industrial property, measures for the improvement of the international system of industrial property, with a view to accelerating the transfer of technical know-how to developing countries and to strengthening the role of patents consistent with national interests as an incentive to industrial innovations."

To adopt the OAMPI amendments would therefore be to support the effort being made to achieve cooperation and solidarity among the countries of this regional group, and this effort would then be raised to the international level. The adoption of these amendments would, in particular, permit those countries to overcome both the disadvantage of having too few or, as is the case in many OAMPI States, no specialists in industrial property matters, and the handicap of not having the wherewithal to organize international conferences or participate in them.

The proposed amendment furthermore represents a compromise, for it says that "a plurality of countries...may..." Each State having the means to do so may consequently be represented; the amendment only applies to States unable to secure their own representation.

(Original: French)

SOUTH AFRICA

Permanent South African
Mission

Geneva, January 30, 1967

I have the honour to refer to your circular No 1005 and to enclose herewith the comments of the Government of the Republic of South Africa on Documents S/3, S/9 and S/10.

Comments on document S/3
by the Registrar of Patents

The powers of the Assembly are specified in paragraph 2(a). It is significant that no power is given to the Assembly to implement the provisions of Article 6(3)(g) of the proposed International Intellectual Property Organisation which provides for approval by both the Paris and Berne Unions in regard to certain matters such as the transfer of headquarters or appointment of the Director-General. These should be provided for in paragraph (2)(a)(xi) of Article 13. The Assembly must have the power to consider and vote on such matters and to report the result to the I.P.O.

ARTICLE 13 ter

Paragraph (1)(c) provides that the Director-General "shall represent the Union". It is not clear what is meant by this. His powers and duties are specified in the Convention and he performs the duties entrusted or vested in him by the Union. If he is to "represent" the Union he will have very wide powers and it may be claimed that he can take decisions on behalf of the Union without consultation.

South Africa

ARTICLE 13 quater

(1) Paragraph (4)(a) now provides for a new class VII which involves a contribution of ± 1600 Swiss Francs. This is really an insignificent amount and merely amounts to the support by other countries of those electing to adopt class VII.

(2) Paragraph (8) which permits external auditors should be limited to audit by the Swiss Government as in the past.

Comments on document S/9
by the Registrar of Patents

ARTICLE 20 bis

In view of the attitude adopted by a group of States in that they have requested the United Nations Organisation to investigate the creation of separate Unions in respect of Industrial Property and Copyright, the question arises as to whether much progress will be made at Stockholm insofar as the Berne Convention is to be amended to cater for developing countries. Much will depend on the attitude adopted at Stockholm and the reaction of the members of Berne. South Africa, at this stage, must reserve its final decision.

In this respect comments on the Berne Final Clauses were sent by the Registrar of Patents to BIRPI on the 29th April, 1966. However, since that date the document S/9 has come to hand.

It is noted that the position as regards acceptance of the amended substantive clauses (1-20) is still dependent on acceptance of clause 20 bis so that no country may adopt the revised substantive clauses without being bound by the Protocol relating to developing countries.

There may be countries which are quite prepared to adopt the revised substantive provisions but they may wish to reserve their position as regards 20 bis. Why should they not be afforded the opportunity to be bound by Articles 1-20 only? It is not suggested that South Africa will wish to exclude 20 bis but there may be countries which would elect to do so. If this suggestion is adopted an amendment to Article 25 would be necessary.

ARTICLE 21

The proposed International Intellectual Property Organisation contains in Article 6(3)(g) a requirement for the separate approval of both the Berne and Paris Unions in regard to certain matters such as the transfer of headquarters or appointment of the Director-General. These matters should be specifically provided for under Article 21(2)(a)(xi). Provision must be made for the assembly to consider and vote on such matters and to report the result to the I.P.O. These are very important matters and should be specifically dealt with.

ARTICLE 27 bis

South Africa would be disposed to accept alternative B in terms of which this Article is to be omitted. There never has been recourse to the International Court and no similar provision exists in the Paris Convention. If alternative B is not favoured either alternative C or D would be acceptable.

ARTICLE 31

Paragraph (1)(c). South Africa would be happy to accept this provision but if there are objections these may be met by providing that a country when ratifying the convention may elect to adopt either the English or French text.

South Africa

Comments on document S/10
by the Registrar of Patents

General Observations

1. Since this document was compiled it has come to the notice of BIRPI that representations have been made by a group of States at the United Nations calling for an investigation to be made as to the possibility of the establishment of separate conventions to cater for Industrial Property Rights and Copyright. Most of the States making these representations fall in the category of developing countries.

2. We are aware that efforts are being made to cater for such States in the Copyright programme at Stockholm and the States concerned, notwithstanding, have seen fit to approach United Nations for what appears to be a breakaway from Paris and Berne. The motive for such representation is not clear, but it would appear that they are dissatisfied with what Stockholm proposes to offer them.

3. The proposed establishment of the I.P.O. whose main object is to attract non-members to the Berne and Paris Unions and to finance legal-technical assistance to developing countries, is, by this approach to United Nations, rejected by such countries, which will, if they succeed in their approach to United Nations , no doubt establish their own Unions rather on the lines of the Universal Copyright Union.

4. In these circumstances the creation of the I.P.O. is not likely to achieve its main object. It is felt moreover that this proposed organisation is not the proper forum to raise funds for legal-technical assistance as provision for such purposes is provided by States without an obligation to do so in terms of a convention.

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South Africa

Comments relating to the text of the proposed Convention

ARTICLE 2

Para. (vii) : If the approach to United Nations succeeds in the promotion of new Unions to cater for the developing countries, such Unions would qualify for full membership and would include members of the Universal Copyright Convention. Is this really the intention? Why should those outside members not join Paris or Berne?

If these outside members are admitted they could dominate the proceedings in the General Assembly as well as the Conference. This is not acceptable and South Africa would reserve its position.

ARTICLE 4

Para. 2) : It is felt that full membership should be restricted to members of Paris and Berne. (See comments under Article 2).

ARTICLE 6

Para. 2) : If the I.P.O. is dominated by States (non-members of Paris and Berne) they will have the say in the appointment of the Director-General. This is not acceptable. Members of Paris and Berne should have this right. It is also felt that the words "Upon nomination by the Co-ordination Committee" should be deleted as this will tie the hands of the General Assembly. The fact that paragraph (3)(g) requires approval separately by Berne and Paris does not give the right to appoint - only a right to veto. A Deputy-Director-General should also be provided for by the General Assembly.

South Africa

Para. 3(d) : It is felt that this paragraph should also provide for a two-thirds majority insofar as the transfer of headquarters and appointment of the Director-General are concerned.

ARTICLE 8

Para. 3)(v) : The General Assembly should decide this without a nomination by the Co-ordination Committee.

Para. 3)(vi) : This temporary appointment may be for three years. It would be better to provide for a Deputy-Director-General to act and this to be automatic in the absence of the Director-General.

ARTICLE 9

Para. 6) : There should be one Deputy-Director-General appointed by the Assembly who would automatically act in the absence of the Director-General.

ARTICLE 15

What will the position be if a State joins and denounces within the five year period. Will the rights under 14(3)(a) be revived ? This requires consideration.

(Original:: English)

UNITED KINGDOM

Secretary of State for
Foreign Affairs

London, February 27, 1967

Her Majesty's Principal Secretary of State for Foreign Affairs presents his compliments to the Director of the United International Bureaux for the Protection of Intellectual Property and, with reference to Circulars No. 1005, 1010 and 1014, has the honour to forward the observations of Her Majesty's Government in the United Kingdom on the Proposals annexed to these Circulars.

Observations on Document S/3

The United Kingdom agrees in principle with the proposals as they relate to the future structure of the Union and the Secretariat. We have the following specific points :-

Article 13ter(7)

In order to bring this into line with the Proposals establishing the Organisation (Document S/10), insert "normally" before "participate".

Articles 16quater and 18

We agree with the wording of Article 16quater proposed in document S/3/Corr.1. Omission of Article 18(3) would, however result in the position that a new country of Union would legally be bound to give Convention treatment only to nationals of countries which have ratified or acceded to the Stockholm Act. We consider this should be avoided and therefore suggest that Article 18(3) should read as follows:

United Kingdom

"(3) Countries outside the Union which accede to the present Act shall apply the present Act in their relations with all other countries of the Union."

Article 16(2) and (3)

Article 16bis(2) and (3)

Article 16quinquies 3(a)

Substitute "three months" for "one month" wherever this appears.

It is necessary, at least in countries in which the Convention is not self-applying, to make an order in respect of each new country joining the Convention. Since communications through diplomatic channels take time, and some administrative delay is inevitable in the making of an order, one month is scarcely enough for this purpose and there is consequent risk that we may not meet our obligations.

Article 19(1)

We are not clear as to the significance of the reference to "Authoritative texts" and would prefer to refer to "Official texts". There is a difference between a text which has been agreed by all the member countries at a Diplomatic Conference and one which has been agreed only by the countries interested in the language in question, and the Director General.

Article 19(5)

This should be amended so as to require the Director-General to notify, in addition, the classes to which countries belong for subscription purposes and any changes in such classes.

United Kingdom

Observations on Document S/5

In spite of what is said in paragraph 9 of the commentary, the United Kingdom is not convinced of the necessity to add an Additional Act, rather than to amend the Agreement itself as is proposed for the other Agreements. It is, however, content to abide by the wishes of the majority on this point.

Observations on Document S/7

The United Kingdom agrees in principle with the proposals. We have the following specific points:-

Article 5bis(2)

In order to bring this into line with the Proposals establishing the organisation (Document S/10), insert "normally" before "participate".

Article 7

This should be cancelled, as being redundant upon Article 9(1).

Article 8

The following new sub-paragraph should be added:

"(3) Amendments to Articles 5 to 5quater are governed by Article 5quater."

Article 11(1)(b)

We would prefer the words "Authoritative texts" to be amended to read "Official texts" (see observations on Document S/3).

United Kingdom

Observations on Document S/9

The United Kingdom agrees in principle with the proposals as they relate to the future structure of the Union and the Secretariat. It does not, however, agree with the proposals dealing with the rights and obligations of countries of the Union which are parties to different convention texts - in particular Article 27. The revised proposals in S/9/Corr. 1 are an improvement but they do not go far enough.

The present situation in practice is that a country which has become a party to the Brussels text gives to the works of all other countries of the Union the protection demanded by that text. It expects in return that in each country of the Union its works will receive the protection demanded by the latest text to which that country has become a party. Article 27(1) of the Brussels text, with its reference to "countries of the Union", reinforces this practice.

Under the scheme as proposed in Document S/9, the relations between any two countries of the Union would have been governed exclusively by the latest text to which both were parties. Thus, the obligations of a country which had ratified the Stockholm text towards Union works would have differed country by country and would have changed each time there was a new ratification. In a country such as the United Kingdom, where conventions are not self-applying and legislation is required to meet convention obligations, such a system is administratively impossible. The United Kingdom agrees with what is said in para. 7(i) and (ii) of document S/9/Corr.1. The new proposals for Article 27 do not go far enough to achieve this object. In particular the words "between the countries of the Union", which appear in the Brussels text, are not repeated. It is desirable that the convention be clear on this point. We therefore suggest that for Article 27 there should be substituted:-

"(1) The obligations of a country ratifying or acceding to this Act shall, as regards all other countries of the Union, be governed by those provisions of this Act by which, in accordance with Article 25, it is bound.

(2) The obligations of a country of the Union to which the present Act does not apply or, in accordance with Article 25, does not apply in its entirety shall, as regards all other countries of the Union, continue to be governed by the most recent Act to which it is a party to the extent that they are not replaced by provisions of this Act accepted by that country."

In addition we have the following observations and suggestions:-

Article 21ter(2)

In both sentences after "copyright" insert "and related rights".

Article 21ter(7)

In order to bring this into line with the Proposals establishing the Organisation, (Document S/10) insert "normally" before "participate".

Article 25(2) and(3)

Article 25bis(2) and (3)

Article 26(3)(a)

Substitute "three months" for "one month" wherever this appears.

It is necessary, at least in countries in which the Convention is not self-applying, to make an order to protect the works of each new country joining the Convention. Since communications through diplomatic channels take time and some administrative delay is inevitable in the making of an order, one month is scarcely enough for this purpose and there is consequent risk that we may not meet our obligations.

United Kingdom

Article 25ter(1)

In our observations on Document S/1, we suggested that the Convention should make it clear that member countries are free to exercise control over monopoly situations which might lead to abuse. It is fundamental that we should retain the right to have a Tribunal with power to control the monopoly exercise of performing rights. If, therefore, our proposed amendment to Article 17 is not acceptable we shall have to retain the advantage of the reservation made in Brussels as regards Article 11 of that text, in which case this paragraph will be unacceptable in its present form.

Article 25quater

We agree with document S/9/Corr.1 that this Article becomes unnecessary.

Article 27

See first paragraph of these Observations.

Article 27bis

We prefer Alternative A.

Article 28

See also first paragraph of these Observations.

Article 31(1)

We are not clear as to the significance of the reference to "Authoritative texts" and would prefer to refer to "Official texts". There is a difference between a text which has been agreed by all the member countries at a Diplomatic Conference and one which has been agreed only by the countries interested in the language in question, and the Director General.

United Kingdom

Article 31(5)

This should be amended so as to require the Director General to notify, in addition, the classes to which countries belong for subscription purposes and any changes in such classes.

Article 32(4)

Should not "international bureau" be replaced by "organisation"? Compare Article 20(4) of the Paris proposals (S/3) and Article 19(3)(b) of the Proposals establishing the Organisation (S/10). In the above Article 19(3) the word "property" also appears. Should not all these Articles be consistent?

United Kingdom

Observations on Document S/10

The United Kingdom is in favour of:-

(a) modernising the administrative provisions of the Berne and Paris Conventions;

(b) creating a specialist international forum in which all forms of intellectual property can be discussed and to which all countries can come and make their views and needs known. It is however important that, subject to the requirements of co-ordination, the autonomy of the Paris and Berne Unions should, so far as possible, be maintained.

The United Kingdom is therefore in agreement in principle with the proposals in this draft Convention. We have the following specific points:

Article 1

It is conceivable that the use of the term "General Assembly" might lead to confusion with the General Assembly of the United Nations, the only other Organisation in which this expression appears. We therefore suggest that consideration might be given to using the term "General Council" whenever the expression "General Assembly" appears.

Article 3(1)

It is not clear why item (i) singles out "scientific" works for special mention but does not mention music, dramatic works, films, etc. This item might therefore read:

"(i) Authors of literary and artistic works within the meaning of Article 2 of the Berne Convention as revised at Stockholm".

Article 4

The United Kingdom finds the idea of full and associate membership acceptable. However, it is considered that the B.I.R.P.I. proposal for Article 4 and also Alternatives A, B and C of the 1965 Committee have the defect that these proposals carry the danger of converting the General Assembly from a technical forum into a political forum. As is

well known, there are certain areas of the world whose status is not a matter of general agreement. In the view of the United Kingdom it is entirely inappropriate that the General Assembly should be required to take a difficult and controversial decision of a political nature, as to whether or not a particular entity is a "State" and so, entitled to become a member of the Organisation. It is suggested therefore that Article 4 should read as follows:

"(1) Membership of the Organisation shall be open to all States Members of the United Nations or any of the specialised agencies or Parties to the Statute of the International Court of Justice.

(2) Full membership shall be accorded to any such State which is also a member of any of the Unions.

(3) Associate membership shall be accorded to any such State which is not a member of any of the Unions".

Articles 6, 7 and 8

It should be stated explicitly as in the Paris and Berne proposals, that "The expenses of each Delegation shall be borne by the Government which has appointed it".

Article 7(2)(b)

The meaning of this sub-paragraph is not understood. If the intention is to exclude from the "copyright conference" countries which have joined Paris but not Berne (while admitting countries which have joined neither) it is illogical. We suggest it be deleted.

Article 7(3)(b)

There might be occasions on which insufficient Associate Members or Full Members (as the case may be) would be interested enough to attend, and hence no action could be taken for lack of a quorum. We suggest:

"(b) one-third of those entitled to be present shall constitute a quorum".

United Kingdom

Article 8(1)(c)

The expression "matters of direct interest to the conference" is not sufficiently clear. We suggest substituting "the budget of the Organisation".

Article 10(6)

We are not clear why this is mentioned specifically.

Article 11

We recommend that the words "bilateral or" be deleted from paragraph (3). Freedom for the organisation to negotiate bilaterally, and seriatim, with Member States would not be in harmony with the general principle, which we support, that the organisation should enjoy the same status in the matter of privileges and immunities in all the Member States. We consider that the present needs of the Organisation are likely to be met by a bilateral agreement with the host State, and paragraph (2) of the present Article allows for this. Should it prove, however, that the Organisation requires privileges and immunities in other Member States because, for example it wishes to establish regional offices there, then we consider that the Member States have a general interest in according this by means of a multilateral agreement which would give each member a voice in the level of privileges and immunities to be accorded.

Article 16

Add new item:

"(v) The subscription classes to which Associate Members belong (Article 10(4)) and any changes in such classes".

United Kingdom

Article 18

We are not clear as to the significance of the reference to "Authoritative texts" and would prefer to refer to "Official texts" (see observations on Document S/3).

Article 18(3)

Amendments are adopted by the Conference not by the General Assembly (see Article 7(2)(a)(iv) and Article 13(2)). Therefore delete "General Assembly" in line 3 and substitute "Conference".

(Original: English)

UNITED STATES OF AMERICA

United States Mission
to International Organizations

Geneva, March 23, 1967

Enclosed are the comments of the United States Government on BIRPI Documents S/3 and S/10.

General Observations

The proposals for revising the administrative and final clauses of the Paris Convention (S/3) and the proposals for establishing the International Intellectual Property Organization (S/10) are considered generally acceptable and desirable both in substance and in formulation.

In offering the following preliminary comments on certain provisions of the proposals, the United States reserves the privilege of making additional comments or proposals.

Comments on Proposals for Revising the Administrative and Final Clauses of the Paris Convention (Doc.S/3)

Article 13bis: Executive Committee

It is suggested that consideration be given to the desirability of including provisions for intergovernmental and international non-governmental organizations to attend meetings of the Executive Committee as observers.

United States of America

Article 13ter: International Bureau

With reference to paragraph (8), it is proposed that present subparagraph (b) be changed to (c) and that the following provision be inserted as subparagraph (b):

"(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision."

Article 13quinquies: Amendments to Articles 13 to 13quinquies

It is suggested that the Article specify who may initiate proposals for amendments. Any contracting party, the Executive Committee, and the Director General should each have this privilege.

Article 18: Application of Earlier Acts

It is proposed that the provisions of paragraph 2 be deleted as unnecessary. Paragraph (2) is simply a partial detailing of the effect of Paragraph (1). If any provision is to be included, it would be preferable to pattern it, with a clarifying addition, on the change proposed in S/9/Corr.1 for paragraph (4) of Article 27 of the Berne Convention. The substitute paragraph (2) would read as follows:

> "The Acts previously in force shall continue to be applicable, in their eitirety or to the extent that the present Act does not replace them by virtue of the preceding paragraph, in relations with countries which do not ratify or accede to this Act, or which limit the effects of their ratifications or accessions pursuant to subparagraph (1)(b) of Article 16 of this Act."

United States of America

Article 19: Signature

It is proposed that the Act be signed in the English as well as the French language, each equally authentic.

Comments on the Proposals for Establishing the International Intellectual Property Organization (Doc. S/10)

General

The United States is agreeable to the establishment of two types of membership, designated in the draft as "Full Members" and "Associate Members"; however, it is proposed that the term "Member" be substituted for the term "Full Member." As a consequence of such change the words "States party to this Convention" should be substituted for the word "Member" appearing alone in the draft whenever a reference to both types of members is intended.

Further, we understand that certain delegations are concerned about the procedure with respect to the approval of the budget of the Organization by the Conference. They believe that the budget of the Organization should be adopted by the General Assembly rather than by the Conference. The United States is prepared to give the fullest consideration to specific proposals regarding this matter.

Article 8: Coordination Committee

It is suggested that consideration be given to the desirability of including provisions for intergovernmental and international non-governmental organizations to attend meetings of the Coordination Committee as observers.

Article 13: Amendments

It is proposed that the Article specify who may initiate proposals for amendments. Any contracting party, the Coordination Committee, and the Director General should each have this privilege.

(Original: English)

8

WESTERN SAMOA

New Zealand
Permanent Mission

Geneva, January 30, 1967

I have the honour, on behalf of the Government of Western Samoa, to refer to your Circular No. 1005 of September 22, 1966, with which you forwarded copies of three preparatory documents, S/3, S/9 and S/10, for the Intellectual Property Conference of Stockholm.

I have been requested to inform you that the Government of Western Samoa has no observations or counterproposals to make concerning these documents.

(Original: English)

ADDENDUM

Observations received
between March 31 and April 30, 1967

ISRAEL

Permanent Mission of
Israel to the Office of the
United Nations and
International Organizations
in Geneva

Geneva, April 18, 1967

Observations on Document S/5

1. The Government of Israel has the honour to submit its comment on the proposals for the conclusion of an additional Act to the Madrid Agreement set out in Document S/5 of November 22, 1966.

2. The Government of Israel sees no necessity for the formulation and acceptance of an additional Act, the main, if not the sole, purpose of which is to provide for the depository functions of the International Bureau consequent upon the prospective establishment of I.P.O. at Stockholm. The necessary change could be sufficiently achieved by relatively simple amendments of the Madrid Agreement, which would also incidentally avoid any possible complications arising from the requirement to ratify and accede to the additional Act and matters incidental thereto.

Observations on Documents S/7 and S/8

1. The Government of Israel has the honour to submit its comments and observations on the proposals for revising the administrative provisions and final clauses of the Nice Convention set out in Document S/7, and of the Lisbon Convention set out in Document S/8, both of December 13, 1966.

2. The Government must reserve its right to make additional comments and suggestions on Documents S/7 and S/8 in the light of further consideration thereof.

3. The following comments and suggestions are respectfully offered in respect of the proposals in the said Documents*.

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* Reference to Documents S/7 and S/8 are prefixed by the letters N and L respectively.

Israel

N.Article 5

The Nice Convention provides for Regulations in Article 3. In order to complete the picture, such Regulations should be modifiable by the Assembly (as in the case of L. Article 9(2)(a)(iii).) See also item (3)(e).

N.Article 5

L.Article 9

N Item (2)(a)(x); L Item (2)(a)(ix). Since the Assembly is the supreme body of the Special Union, it cannot strictly be allocated other functions by anyone, but may assume them.

Subparagraph (3)(b). As has been suggested for the Paris and Berne Conventions, the quorum should be fixed at one half.

Subparagraph (3)(c). The suggestion made with respect to the parallel item in the Paris and Berne Conventions as regards postal voting is repeated here.

Subparagraph (3)(e). The comments made upon the parallel subparagraph in the Paris and Berne Conventions as regards financial obligations are repeated here.

Subparagraph (4)(a). Provision should be made that meetings of the Assembly should be linked with the meetings of the Paris and Berne Assemblies in line with the suggestions previously made in regard to Documents S/3 and S/9. See also N. Article 8 and L.Article 10.

Paragraph (5). The words "subject to this Convention" should be inserted between the word "shall" and the word "adopt".

Israel

N.Article 5bis
L.Article 9bis The International Bureau could be given the additional task of assembling and publishing relevant information etc., as in the Paris and Berne Conventions.

Paragraph (4). The other tasks must be assigned to the International Bureau by the Assembly.

N.Article 9.

Paragraph (1). This paragraph seems to be superfluous in view of Article 7.

(Original: English)

ITALY

Italian Delegation
to the Agreements on
Intellectual Property

Rome, April 11, 1967

The Italian Delegate to the Agreements on Intellectual Property presents his compliments to the Director of BIRPI and, with reference to his Circular No. 1005 of September 22, 1966, has the honor to transmit to him herewith some observations which the Italian Administration wishes to make on certain points of the Proposals for Revising the Administrative Provisions and the Final Clauses of the International Convention for the Protection of Industrial Property, prepared by the Government of Sweden with the assistance of BIRPI (BIRPI Document S/3 of September 16, 1966, and Corrigendum 1 of January 13, 1967).

Observations

After having considered the text of document S/3, the Italian Administration wishes to make the following observations:

1) Article 13 and following Articles.

Considering as a whole the administrative clauses contained in Article 13 and the following Articles, it is hoped that their final wording can consistently ensure the administrative autonomy of each Union.

2) Article 13: Assembly

Paragraph (3)(b)

It is felt that the quorum for the Assembly should not be less than half of the member countries.

3) Article 13bis: Executive Committee

Paragraph (8)(b)

Inasmuch as the Executive Committee is composed of a limited number of member countries, it is suggested that the quorum be raised to two-thirds.

Italy

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4) Article 13 quinquies: Amendments to Articles 13 to 13quinquies

Paragraph (1)

The Italian Administration wonders whether it would not be worth while to have the text include some indication regarding the power of initiative for all amendment proposals concerned in this paragraph.

Paragraph (2)

Inasmuch as the administrative provisions are now given in the text of the Convention itself, it seems that it might be desirable to reconsider the question whether the majority provided for in this paragraph is the most satisfactory one.

5) Article 16: Ratification, Accession, and Entry into Force

Paragraph (2), subparagraphs (a) and (b)

In view of the importance of Articles 1 to 12 mentioned in subparagraph (a), one might consider the advisability of requiring, for their entry into force, that the same number of instruments of ratification or accession be deposited as is indicated in subparagraph (b). If this is done, the text of subparagraph (c), as well as any other provision in the draft Convention relating to entry into force, would have to be modified accordingly.

(Original: French)

Italy

Italian Delegation
to the Agreements on
Intellectual Property

Rome, April 11, 1967

The Italian Delegate to the Agreements on Intellectual Property presents his compliments to the Director of BIRPI and, with reference to his Circulars No. 1010 of November 22, 1966, and No. 1014 of December 13, 1966, has the honor to transmit to him herewith some observations which the Italian Administration wishes to make on certain points of the proposals:

(1) for revising the administrative provisions and the final clauses of the Madrid Agreement Concerning the International Registration of Trademarks (BIRPI Document S/4 of November 22, 1966, and Corrigendum 1 of January 13, 1967);

(2) for the conclusion of an Additional Act to the Madrid Agreement for the Repression of False or Deceptive Indications of Source (BIRPI Document S/5 of November 22, 1966);

(3) for the conclusion of a Complementary Act to the Agreements of London and The Hague Concerning the International Deposit of Industrial Designs (BIRPI Document S/6 of December 13, 1966);

(4) for revising the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Trademarks and Service Marks (BIRPI Document S/7 of December 13, 1966, and Corrigendum 1 of January 13, 1967);

(5) for revising the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (BIRPI Document S/8 of December 13, 1966, and Corrigendum 1 of January 13, 1967).

Italy

Observations

I. - Assembly

Document S/4: Article 10, paragraph (3)(b)
" S/6: Article 2, paragraph (3)(b)
" S/7: Article 5, paragraph (3)(b)
" S/8: Article 9, paragraph (3)(b)

It is felt that the quorum for the Assemblies should not be less than half of the member countries.

II. - Proposals for Modifying Certain Articles - Power of Initiative

Document S/4: Article 10quater, paragraph (1)
" S/6: Article 5, paragraph (1)
" S/7: Article 5quater, paragraph (1)
" S/8: Article 9quater, paragraph (1)

The Italian Administration wonders whether it would not be worth while to have the texts include some indication regarding the power of initiative for all amendment proposals concerned in these paragraphs.

III. - Proposals for Modifying Certain Articles - Quorum

Document S/4: Article 10quater, paragraph (2)
" S/6: Article 5, paragraph (2)
" S/7: Article 5quater, paragraph (2)
" S/8: Article 9quater, paragraph (2)

As regards the qualified majorities mentioned in the above paragraphs, reference is made to the comments already made by the Italian Delegation in connection with Article 23, paragraph (2), of the text of the administrative and final provisions of the Berne Convention (BIRPI Document S/9).

IV. - Proposals for the Conclusion of an Additional Act to the Madrid Agreement for the Repression of False or Deceptive Indications of Source

Document S/5

The proposals made in the above document are approved, in principle.

Italy

V. - Proposals for the Conclusion of a Complementary Act to the Agreements of London and The Hague Concerning the International Deposit of Industrial Designs.

Document S/6

The proposals contained in document S/6 are approved, in principle.

(Original: French)

SPAIN

Ministry of Commerce
Industrial Property
Registration Office

Madrid, March 11, 1967

Observations on Document S/3

Proposal for the addition of an item (i)bis to paragraph 3 of Article 13quater on "Finances"

An examination of the text of the draft confirms the continuation of the existing situation, i.e., the sources of revenue for the budget of the General Union are still based primarily on contributions from the member States of that Union, since the other revenues provided for cannot be expected to solve the serious financial problems confronting the Union which have come to the foreground over the past few years as a result of the rise in the cost of all services, the compulsory improvements made in staff benefits, and, especially, the unanimous acknowledgement of the need of a vaster program of technical assistance to all countries and, in general, of ever-increasing activities.

We feel that, despite the present greater number of States and the important financial contribution of some of them, it is obvious to all those who follow and are familiar with the financial problems of the Paris Union that the contributions of the States are not adequate to enable the Union to undertake the programs it is now committed to carry out. This means that a large and substantial increase in the contributions from States will be inevitable.

But, before the imminent (although subsequent to the Conference) fact of having to decide on a considerable increase in the contributions of the respective States, it should be recognized that, of the 74 countries belonging to the Paris Union, only half a dozen would, at the beginning of the year, be in a position to give a clearly affirmative reply.

Spain

Nevertheless, we believe that the time has come to find out whether there is not some way of resolving the financial problem of the Union definitively--which will have to be done in any event--apart from increasing the contributions from States. We would reply that within the Organization itself there are Special Unions (international trademark registry, etc.) that offer a clear example of what the financial support of the direct beneficiaries can represent, inasmuch as in the General Union, and on the basis of each country's recognition of the priority right, there are obvious benefits for the parties concerned.

Many reasons and advantages, from various points of view, could be given in support of the introduction of a fee for the priority claimed; there is no doubt but that they will be present in everyone's mind and, consequently, we do not think it necessary to dwell on them. We do feel, however, that advantage should be taken of the opportunity now offered by the Diplomatic Conference of Stockholm to establish a new source of revenue, the surpassing importance of which can entirely change the financial picture of the Union and its possibilities of action.

It is therefore specifically proposed that an item (i)bis be added to paragraph 3 of Article 13quater indicated above; this item could be worded as follows:-

> "fees collected by the International Bureau through the national Offices for each patent application or other transaction where the right of priority established by this Convention is invoked."

(Original: Spanish)

SWITZERLAND

Federal Bureau of
Intellectual Property

Berne, April 17, 1967

Observations on Documents S/3 to S/12

We have the honor to inform you that the Swiss Federal Authorities approve, in principle, the proposals appearing in preparatory documents S/3 to S/12. They nevertheless reserve the right to present proposals and observations, through their Delegation to Stockholm, at the Diplomatic Conference itself.

(Original: French)

BIRPI

UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY

Subject (Union):
Original: English
Translation(s):
Filed by:
Intended for:
Date: March 23, 1967

Number: S/16 131

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

REPORT BY THE DIRECTOR OF BIRPI ON THE MARCH 1967 EXTRAORDINARY SESSION OF THE BERNE UNION PERMANENT COMMITTEE

1. Document S/1 contains proposals of the Government of Sweden--which constitute the basis for discussions at the Stockholm Conference--for the establishment of a protocol regarding developing countries, protocol which would be attached to the Berne Convention as to be revised at that Conference. The proposed protocol would allow developing countries to depart from the minima otherwise prescribed by the Berne Convention for the duration of protection and for the rights of reproduction, translation, and broadcasting. The protocol would also allow developing countries to restrict any kinds of rights otherwise guaranteed, if the use of the works is for exclusively educational, scientific, or scholastic purposes.

2. These proposals are intended to make it easier for certain developing countries to adhere to the Berne Convention since these countries, believed to be more "consumers" of foreign works than "producers" of national works, may find it in the interest of their cultural development to restrict the rights of authors and their assignees or licensees.

3. The proposals of the Swedish Government are to be considered also in the light of some recent events. The purpose of the present document is to report on these events in order to allow the countries invited to the Stockholm Conference to take cognizance of them, consider them in preparing for the Stockholm Conference, and keep them in mind at that Conference.

4. The events alluded to are three and took place in November 1966, December 1966, and March 1967, respectively.

5. In November 1966, the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted a resolution (No. 5122) which contemplates the possibility of suspending, in the case of developing countries parties to the Universal Copyright Convention, the application of those provisions of the Appendix Declaration relating to Article XVII of the Universal Copyright Convention which are commonly referred to as the "safeguard clause for the Berne Convention." Such suspension would require that the Universal Copyright Convention be amended in a revision conference according to the procedure provided for in Article XI of the Universal Copyright Convention.

6. In December 1966, the Acting Director-General of UNESCO has addressed a circular (No. DG/6/126/397) to the States parties to the Universal Copyright Convention inviting them to let the Secretariat of UNESCO know, if possible by May 1, 1967, whether they wish a revision conference of the Universal Copyright Convention to be convened. He also informed those States members of UNESCO which are not parties to the Universal Copyright Convention.

7. The question is of the first importance to the future development of the international protection of literary and artistic works in general, and to the interests defended by the Member States of the Berne Union in particular. The inscription of the safeguard clause in the Universal Copyright Convention in 1952 was a conditio sine qua non for the acceptance of that Convention for most of the Member States of the Berne Union; any plan or proposal for the possible revision or suspension of the safeguard clause would create an entirely new situation, and the desirability of any such revision or suspension requires a most careful examination.

8. (a) It is for these reasons that, in March 1967, the Permanent Committee of the Berne Union met in extraordinary session. The only question on its agenda was the consideration of the possible repercussions of the UNESCO circular on the Berne Convention. In view of the proximity of the Stockholm Conference (June 12 to July 14, 1967) and the possible impact

of the proposed Berne Union protocol regarding developing countries, the Permanent Committee did not deal with the substance of the question. It decided to consider the substance of the question after the Stockholm Conference, in its next ordinary session (December 1967), possibly after joint discussions with the Committee established by the Universal Copyright Convention which is the only competent body to make preparation for possible revisions of that Convention.

(b) But the extraordinary session of the Berne Union Permanent Committee did deal with the question raised in UNESCO's circular and unanimously adopted a resolution suggesting to the Governments of the Member States of the Berne Union:

> "that they consider the advisability of expressing their views on the question of a possible revision of the provisions in the Universal Copyright Convention dealing with the Berne Convention only after the December 1967 session of the Permanent Committee" [emphasis added] (see BIRPI document DA/25/6, paragraph 32, point 6).

9. (a) The text of the report of the Director of BIRPI to the extraordinary session of the Permanent Committee and the text of the report of that Committee are attached to the present document (BIRPI documents DA/25/2 and 6).

(b) The first of these reports retraces the history of the safeguard clause, explains its raison d'être and its relations to the Stockholm Conference. It also quotes the UNESCO resolution and the relevant parts of the UNESCO circular.

(c) The report of the Permanent Committee relates the discussions in the extraordinary session, quotes in full the text of the resolution adopted by that session, and contains the list of participants in that session. These included all the members of the Committee--Belgium, Brazil, Denmark, France, Germany (Federal Republic), India, Italy,

Portugal, Rumania, Spain, Sweden (ex officio), Switzerland, United Kingdom of Great Britain and Northern Ireland--and the following States as observers: Austria, Canada, Ceylon, Congo (Democratic Republic), Czechoslovakia, Finland, Ireland, Japan, Morocco, Norway, Pakistan, Poland, Tunisia, Turkey.

Annexes: BIRPI document DA/25/2 of February 8, 1967
BIRPI document DA/25/6 of March 22, 1967.

DA/25/2 135
ORIGINAL: English/French
February 8, 1967

BUREAUX INTERNATIONAUX
RÉUNIS POUR LA PROTECTION
DE LA PROPRIÉTÉ INTELLECTUELLE
GENÈVE, SUISSE

BIRPI

UNITED INTERNATIONAL
BUREAUX FOR THE PROTECTION
OF INTELLECTUAL PROPERTY
GENEVA, SWITZERLAND

UNION DE BERNE
Comité Permanent · Session extraordinaire
BERNE UNION
Permanent Committee · Extraordinary Session

(Genève, 14-17 mars 1967)
(Geneva, March 14 to 17, 1967)

REPORT BY THE DIRECTOR OF BIRPI TO THE PERMANENT COMMITTEE

Background

1. There are two multilateral copyright treaties which are open for accession by any country of the world: the Berne Convention for the Protection of Literary and Artistic Works of 1886, and the Universal Copyright Convention of 1952.

2. One of the questions most carefully considered during the preparatory work and at the Geneva Conference of 1952, establishing the Universal Copyright Convention, was the question of the possible impact of that Convention on the Berne Union. The result of these deliberations was Article XVII of the Universal Convention, together with the Appendix

Declaration relating to that Article, and the association of the Director of BIRPI, in an advisory capacity, in the work of the Inter-governmental Copyright Committee (Article XI of the Universal Convention). The preparation of any revision of the Universal Convention is one of the tasks of that Committee (Article XI(1)(b) of the Universal Convention).

3. The General Conference of UNESCO, in its 14th session (October 25 - November 30, 1966), adopted a resolution which contemplates the possibility of revising Article XVII of the Universal Convention and the Appendix Declaration relating thereto, provisions which directly concern the Berne Convention.

4. Consequently, the matter is of concern both to the Permanent Committee of the Berne Union which "shall advise the International Bureau /BIRPI/ on questions concerning the development and general functioning of the /Berne/ Union" (Rule 5 of the Statute of the Permanent Committee) and to the Director of BIRPI, in case the Inter-governmental Copyright Committee--whose meetings he attends in an advisory capacity--is convened in order to consider the advisability of revising some of the provisions of the Universal Convention which deal with the Berne Convention.

5. Thus, the reason for which the Permanent Committee of the Berne Union has been convened in extraordinary session, from March 14 to 17, 1967, is to examine the significance of the resolution of the General Conference of UNESCO for the development and general functioning of the Berne Union, and to assist the Director of BIRPI in formulating the advice which he might be called upon to furnish, if and when the Inter-governmental Copyright Committee meets.

The UNESCO Resolution

6. The full text of Resolution 5.122 of the 14th session of the General Conference of UNESCO is reproduced in Annex I to this document. It expresses the opinion that "Article XVII of the Universal Convention and the appendix declaration relating thereto have consequences which are prejudicial to the interests of the States acceding to that Convention" and invites the Director-General of UNESCO "to submit this matter as soon as possible to the competent bodies to examine the possibility of revising the Universal Convention along the lines indicated in the present resolution." These lines do not seem to be made explicit in the resolution. However, a circular dated December 30, 1966, from the Acting Director-General of UNESCO contains an interpretation. The circular states that "the purpose of this resolution is to suspend, in the case of works which have as their country of origin a developing State, the sanctions provided for in sub-paragraph (a) of the Appendix Declaration relating to Article XVII of the said /Universal Copyright/ Convention in the event of the accession thereto by a State which has withdrawn from the Berne Union." The circular of the Secretariat of UNESCO also states the aim which the contemplated revision would try to achieve. It states that aim in the following terms: "The proposed change is intended to enable developing countries to enjoy unrestrictedly the protection guaranteed by the Universal Convention which ensures minimum rights for authors, while permitting a wide dissemination of culture." The circular ends by inviting the States parties to the Universal Convention to let the Secretariat of UNESCO know, if possible by May 1, 1967, whether they wish a revision conference of the

Universal Convention to be convened. It is to be noted in this connection that a revision conference may be convened either at the request of ten Contracting States or by decision of the Inter-governmental Copyright Committee (Article XII of the Universal Convention).

The Significance for the Berne Convention of Article XVII and the Appendix Declaration of the Universal Convention

7. Turning now to the question of the significance--for international cooperation in the field of copyright in general and the Berne Convention in particular--of Article XVII of the Universal Convention and the Appendix Declaration relating thereto, it might be useful to recall some of the basic features and objectives of the two Conventions.

8. Both the Berne and the Universal Conventions prescribe that each contracting country has to grant the same protection to literary and artistic works originating in the other contracting countries as it does to works of which it is the country of origin ("national treatment" or "assimilation" principle). It is obvious that such a provision, in itself, contains no assurances that foreign authors will be entitled to a meaningful protection because, if the protection given to domestic authors is very limited, the national treatment (or assimilation) principle will result in equally limited protection for foreign authors.

9. Recognizing this truth, both Conventions contain provisions which, in effect, limit the otherwise complete freedom of each contracting country to provide for as little or as much protection as it desires.

10. However, these minimal requirements of protection--commonly called "minima"--written into the two Conventions are very different, as they were intended to satisfy very different needs in very different circumstances.

11. The Universal Convention was negotiated just after the Second World War with the principal aim in mind to establish treaty links between the Berne Union countries and most countries of the western hemisphere. (At that time, out of the present 39 African countries--to which the UNESCO Resolution seems to be addressed principally--only five were independent and the very concept of "developing countries" was unknown.) The reason for which it was found desirable to establish a convention distinct from the Berne Convention was not that the American countries did not have laws generally compatible with the Berne Convention. They did as far as the definition of the works protected and the exclusive rights to be granted are concerned, since this definition generally coincided with or even exceeded the requirements of the Berne Convention. This is the reason why--subject only to three exceptions-- the drafters of the Universal Convention did not find it necessary to write, and did not write, minima into that Convention. The three exceptions were the following. One was the question of duration, which was given a solution solely to satisfy the requirements of the law of the United States. The second was the question of formalities, which resulted in a compromise provision acceptable to the United States. The third was the question of the right of translation, where a solution was found mainly to accommodate the wishes of Argentina, Mexico, and other Latin American countries not members of the Berne Union.

12. Thus, if considered in its historical context, the Universal Convention satisfied a need which existed--and still exists--with respect to certain countries at a certain point in the development of their copyright laws.

13. On the other hand, the Berne Convention, in its long history of more than eighty years, is so constructed that the adequacy of the national laws should not only be a fact, not guaranteed because independent of the Convention, but should be a legal requirement, inherent in the Convention. Naturally, views on what is adequate, and on what should be required, are subject to constant change. The minima prescribed in the Berne Convention grew both in number and scope until the revision conference of Brussels in 1948. At that Conference, they continued to grow on certain points but on others (e.g., the new provision on ephemeral recordings) more flexibility was provided for national laws. The proposals of the Government of Sweden--which will constitute the basis for discussions at the Stockholm Conference next summer--continue the trend started at Brussels: on certain points, they provide for new minima; on others, they allow exceptions from existing minima. The proposed protocol regarding developing countries would, in effect, allow such countries to depart to the extent defined in the protocol from the minima otherwise prescribed for the duration of protection and for the rights of reproduction, translation, and broadcasting. The protocol would also allow developing countries to restrict any kinds of rights otherwise guaranteed, if the use of the works is for exclusively educational, scientific, or scholastic, purposes.

14. Notwithstanding these proposed exceptions devised for

the benefit of African and any other developing countries, the Berne Convention continues to differ from the Universal Convention in that it (the Berne Convention) specifically requires the protection of the usual types of works and the usual types of rights--and not only of the right of translation--as minima. Thereby, the Berne Convention fulfils its historic role of fostering a significant degree of similarity among national legislations so that each country acceding to it be assured that, in exchange for giving protection to foreign works, it will receive a comparable, meaningful protection in the other countries for the works of its own nationals. This, by the way, is of course true for all countries, whether developed or developing.

15. The countries of the Berne Union which participated in the establishment of the Universal Convention had in mind--as evidenced by the declarations their delegations made at the Geneva Conference of 1952 (see Annex II to this document)--this role of the Berne Convention when they made their acceptance of the Universal Convention conditional upon the incorporation, in the Universal Convention, of the provisions of Article XVII and the Appendix Declaration.

16. The reason underlying these provisions was a strong belief that countries which, through their membership in the Berne Union, were the architects and guardians of a certain level of meaningful international protection should continue, together, the task of evolving such protection. That such evolution may, for certain countries or in certain circumstances, result in reducing the requirements of minimum protection--as evidenced by the Brussels revision and some of the proposals

for the Stockholm revision--shows that the members of the Berne Union are not unmindful of the changing needs resulting from changing circumstances and that, on the contrary, the Berne Convention is flexible in its requirements and thus continued adherence puts no unreasonable burden on the countries parties to it.

17. It is in the light of these considerations that the question of maintaining Article XVII of the Universal Convention and the Appendix Declaration relating thereto should, it is suggested, be considered.

End

Attached: Annexes I, II, and III (extracts of the Universal Copyright Convention) and the text of the Berne (Brussels) Convention

Resolution 5.122 of the 14th Session of the General Conference of UNESCO.

"The General Conference,

Referring to the recommendation adopted by the African Study Meeting on Copyright, held at Brazzaville (5-10 August 1963) under the joint auspices of UNESCO and BIRPI, to the effect that the utilization of the works of the mind is an essential factor in the human fulfilment of the peoples of the developing countries and in their effective contribution to the establishment of mutual understanding among nations,

Recalling the spirit of Article 27 of the Universal Declaration of Human Rights,

Considering that the conventions at present governing international relations in the matter of copyright should be partially revised to take account of the economic, social and cultural conditions obtaining in the developing countries, which are essentially importers of works of the mind, while ensuring that authors enjoy a legitimate minimum degree of protection calculated to meet with the broadest and most general approval,

Considering that this would facilitate the free flow of ideas and the adherence of all countries to an adequate and universal system of protection,

Considering that every possible effort should be made to ensure the universality of copyright,

Considering that Africa, as an integral part of the world community, should be able to benefit from existing conventions by calling for their revision through constructive and sustained action,

Referring to the recommendation of the Committee of African Experts on the study of a Draft Model Copyright Law (Geneva, 30 November-4 December 1964), addressed to the African States which have acceded to the Universal Convention, that they should request modification of Article XI and the relevant resolution, so as to enable Africans to become members of the Inter-governmental Copyright Committee,

Considering that, in order to continue to assist African Member States, at their request, in the matter of copyright, UNESCO should, as authorized by the General Conference at its thirteenth

session, facilitate the accession of those States to the Universal Copyright Convention, so as to guarantee a minimum degree of protection to authors of works of the mind while allowing a broad dissemination of culture,

Being of the opinion that Article XVII of the Universal Convention and the Appendix Declaration relating thereto have consequences that are prejudicial to the interests of the States acceding to that Convention, since it is stipulated therein that works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the said Convention, after 1 January 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union,

Having noted the proposals concerning the application of the Appendix Declaration relating to Article XVII of the Universal Convention to works originating in a developing country, as defined by the Economic and Social Council (Resolution 2029(XX) of the United Nations General Assembly),*)

Invites the Director-General to submit this matter as soon as possible to the competent bodies to examine the possibility of revising the Universal Convention along the lines indicated in the present resolution."

*)Note: In application of the criterion contained in this Resolution 2029(XX), out of the 55 member States of the Berne Union the following 24 States should be considered as "developing countries": Brazil, Cameroon, Ceylon, Congo (Brazzaville), Congo (Kinshasa), Cyprus, Dahomey, Gabon, India, Israel, Ivory Coast, Lebanon, Madagascar, Mali, Morocco, Niger, Pakistan, Philippines, Senegal, Thailand, Tunisia, Turkey, Upper Volta, Yugoslavia.

Extracts from the Records
of the Inter-governmental Copyright Conference
(Geneva. August 18 to September 6, 1962)

Report of the Rapporteur-General

"The chief delegate of Italy opened the general discussion... He was most happy at the prospect of a universal convention, provided that such a convention in no way threatened or impaired the Berne Union, that is to say, provided that Article XV and Protocol of the programme text were, in substance, adopted" (p. 72).

"When the Main Commission discussed the Article relating to the Berne Convention (XV of the programme text and XVII finally) and the associated Protocol, many delegations of leading countries of the Berne Union declared that this provision to the effect that the Berne Convention must prevail for countries of the Union was in their view essential, and several made it clear that they could neither sign nor ratify the Convention if the Protocol were omitted" (p. 90).

Minutes: Plenary Sessions

Mr. Thomas (UNESCO Secretariat):

"....It would be erroneous to believe that the protection, lesser on certain points, provided in the preliminary draft of the Universal Convention, could endanger the conquests achieved in the field of copyright and especially those achieved by the Berne Convention. Article XV of the draft provides for and ensures the integral maintenance of the results of the Berne Convention" (p. 119).

Mr. Pennetta (Italy):

"....There is one thing I should like to say at the outset: the Italian Government is very glad to see that there is a provision, in Article XV of the draft Convention, safeguarding the Berne Union. I have to make a very plain statement, as I have received very clear instructions. I could not, on behalf of the Italian Government, accept anything prejudicial to the Berne Union or even anything likely to become so.... The Italian delegation declares that it attaches importance to the retention of this provision in the Convention that we hope to sign" (p. 119).

Sir John Blake (United Kingdom)

"....With those two things, that is, the abandonment of formalities and the safeguarding of the Berne Union by means of Article XV and the Protocol, a very great advance

in the general international law of copyright will have been made" (p. 124).

Mr. Vaniliou (Greece):

"....The Greek Government continues to attach great importance to the standards laid down in the Berne Convention and particularly to Article XV and the relevant protocol" (p. 124).

Mr. Evans (United States of America):

"....Certainly, as far as I know, no one has ever had any intention of injuring the Berne system of copyright and it seems to me that the safeguards which Berne has put in the draft Convention are adequate to prevent such unintended results" (p. 125).

Mr. Morf (Switzerland):

"....A compromise must and can be reached without detriment to the results so far achieved by the Berne Union. In this connexion, it /the Swiss delegation/ heartily subscribes to the statements already made by several delegates, notably by the distinguished Head of the Italian delegation" (p. 126).

Mr. Plaisant (France):

"....We shall take a stand extremely favourable to the idea of a universal convention, provided that this in no way weakens the principles underlying the Berne Convention. I am glad that, in saying this, I am echoing the opinions already expressed by the honourable delegates of Italy and the United States of America, the Director of the Berne Bureau and the delegate of the United Kingdom, all of whom hold the view that any text that we may adopt must in no way weaken the previous achievements of international law. I therefore wish to state, on behalf of my Government, that we are willing to approve Article XV of the preliminary draft, on the understanding that the Protocol forms an integral part of it...." (p. 126).

Mr. Lokur (India):

"....Since the present draft Convention was an attempt to reconcile two conflicting systems of copyright protection, it could not claim to be a comprehensive document dwelling upon all aspects of copyright; hence it was impossible to scrap international instruments which had evolved over a long period of years and covered the ground in great detail" (p. 178).

Extracts of the Universal Copyright Convention

Article XVII

1. This Convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works or membership in the Union created by that Convention.

2. In application of the foregoing paragraph, a Declaration has been annexed to the present article. This Declaration is an integral part of this Convention for the States bound by the Berne Convention on January 1, 1951, or which have or may become bound to it at a later date. The signature of this Convention by such States shall also constitute signature of the said Declaration, and ratification, acceptance or accession by such States shall include the Declaration as well as the Convention.

Appendix Declaration relating to Article XVII

The States which are members of the International Union for the Protection of Literary and Artistic Works, and which are signatories to the Universal Copyright Convention,

Desiring to reinforce their mutual relations on the basis of the said Union and to avoid any conflict which might result from the co-existence of the Convention of Berne and the Universal Convention,

Have, by common agreement, accepted the terms of the following declaration:

a) Works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the International Union created by the said Convention, after January 1, 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union;

b) The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union insofar as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the International Union created by the said Convention.

DA/25/ 6
ORIGINAL: French
March 22, 1967

BUREAUX INTERNATIONAUX
RÉUNIS POUR LA PROTECTION
DE LA PROPRÉTÉ INTELLECTUELLE
GENÈVE, SUISSE

BIRPI

UNITED INTERNATIONAL
BUREAUX FOR THE PROTECTION
OF INTELLECTUAL PROPERTY
GENEVA, SWITZERLAND

[Annex to document S/16]

UNION DE BERNE

Comité Permanent - Session extraordinaire

BERNE UNION

Permanent Committee - Extraordinary Session

(Genève, 14-17 mars 1967)
(Geneva, March 14 to 17, 1967)

R E P O R T

1. The Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) met in extraordinary session from March 14 to 16, 1967, in Geneva, at the headquarters of BIRPI. The twelve member States of the Permanent Committee were represented: Belgium, Brazil, Denmark, France, Germany (Federal Republic), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom, and Sweden as ex-officio member.

2. The following States members of the Berne Union had delegated observers: Austria, Canada, Ceylon, Congo (Democratic Republic), Czechoslovakia, Finland, Ireland, Japan, Morocco, Norway, Pakistan, Poland, Tunisia, Turkey.

3. Two international intergovernmental organizations were present in the capacity of observers: the International Labour Office and Unesco.

4. The list of participants appears in an annex to this report.

5. This extraordinary session was convened at the request of the Director of BIRPI, in pursuance of Rule 6(1) of the Rules of Procedure of the Permanent Committee.

6. The session was motivated by the urgent necessity for the Director of BIRPI to have the advice of the Committee on the attitude to be adopted towards the problems posed by the possibility of a revision of the Universal Copyright Convention, which would affect in particular the conditions governing the application of Article XVII of that Convention and of the Appendix Declaration relating thereto (the so-called Berne Union safeguarding clause), as envisaged in Resolution No. 5122 passed by the General Conference of Unesco at its 14th session (October 25 to November 30, 1966).

7. As these matters concern the development and general functioning of the Berne Union, the Committee is empowered, under Rule 5 of its Rules of Procedure, to advise the Director of BIRPI. Furthermore, as any revision of the Universal Convention requires, in pursuance of Article XI of the Convention, the intervention of the Intergovernmental Copyright Committee, whose meetings may be attended by the Director of BIRPI in an advisory capacity, the Permanent Committee is called upon to assist the latter in forming the opinion which he might wish to express if and when the said Intergovernmental Copyright Committee meets.

8. The Permanent Committee had before it the working documents prepared by BIRPI, which provided the secretariat of the meeting, in conformity with Rule 7 of the Committee's Rules of Procedure.

9. This extraordinary session was opened by the Vice-Chairman of the Permanent Committee, Professor Ildefonso Mascarenhas da Silva, who paid a moving tribute to the late Chairman, Mr. Puget. He took this opportunity to recall the highlights of the career of Mr. Puget and reminded the meeting of his outstanding qualities and the services which he had rendered, particularly in the field of international copyright. The Committee observed a minute's silence in memory of Mr. Puget.

10. The Committee then adopted its agenda and proceeded to examine the report which was presented by the Director of BIRPI (document DA/25/2).

11. In the ensuing full discussion, the member States of the Committee and some of the observers expressed in turn their various points of view.

12. It emerged from the declarations made that there was a unanimous desire to give due consideration to the special position of the developing countries and to assist these countries to solve their difficulties of a legal, economic and practical nature in the field of copyright.

13. It was also apparent that the unanimous feeling of the meeting was that, in view of the fact that the official proposals submitted to the forthcoming Revision Conference of the Berne Convention, scheduled for June 1967, included special provisions for the benefit of developing countries, it would be advisable to await the results of that Conference before expressing an opinion on the problems raised.

14. This was the feeling expressed, in particular, by the Delegations of the following countries: Belgium, Denmark, France, Germany (Federal Republic), India, Italy, Spain, Sweden, Switzerland and the United Kingdom, as well as by the Observers of Ceylon, Czechoslovakia, Japan, and Poland.

15. The Observer of Unesco declared that the outcome and conclusions of the Stockholm Conference could be a determining factor, for States which were parties to the Universal Copyright Convention, in the substantive decision to be taken concerning the revision of that Convention.

16. A number of additional considerations were mentioned by certain delegations.

17. The Delegation of Germany (Federal Republic) pointed out that the proposed revision was not intended to facilitate accession to the Universal Copyright Convention but to make it easy for developing countries to denounce the Berne Convention, since Article XVII and the Appendix Declaration relating thereto apply only in the case of countries leaving the Berne Union. The Delegation also indicated that the proposals submitted to the Stockholm Conference (Protocol Regarding Developing Countries), on the one hand, and a possible revision of the Universal Convention along the lines envisaged, on the other hand, represented two possible ways of satisfying the requirements of developing countries. It expressed the opinion that it would be advisable to allow these countries to remain members of the Berne Union by facilitating, in certain respects, the exercise of the rights recognized by the Berne Convention.

18. The Delegation of France, after reaffirming the attachment of France to the Berne Union, declared that the problem of the developing countries should be resolved within the Berne Union for countries members of that Union, in order to encourage them to remain members, and that the solution adopted should serve as an example to countries not yet members and be an incitement to them to join the Union. It also expressed the opinion that the settlement of this problem should, for the time being, be worked out within the Berne Union itself, by trying to find solutions which would be acceptable to all. It reminded the meeting that France had participated in the drafting of the resolution adopted by the General Conference of Unesco, but that it had always considered that the problem should first be discussed within the framework of the Berne Convention and that the outcome of the Stockholm Conference would then make it possible to estimate the attitude to be adopted towards the said resolution.

19. The Delegation of Spain observed that it seemed undesirable to go too deeply into the question at the moment, in view of the proposals that had been made for the Stockholm revision in order to satisfy the needs of the developing countries within the framework of the Berne Union.

20. The Delegation of Denmark declared that it was not opposed to the idea of a revision of the Universal Convention but that any such revision should be undertaken at a suitable time, that is to say, in the light of the provisions which would be adopted at the Stockholm Conference for the benefit of developing countries.

21. The Delegation of Italy, recalling that the Italian Delegates at the General Conference of Unesco had been among those who had associated themselves with the resolution adopted by that Conference, stressed the need to avoid any conflict between the two international Organizations.

22. The Delegation of the United Kingdom, after observing that common sense required that nothing should be done before the results of the Stockholm Conference were known, pointed out the difficulties which States consulted by Unesco would have in adopting a position by May 1, 1967, and said that, if the United Kingdom Government were obliged to reply immediately, it would have to declare that it was opposed to a revision of the Universal Convention.

23. The Delegation of India hoped that, in view of the Stockholm Conference, Unesco would extend the time limit given to States for making known their opinions. It further declared that India had no desire to leave the Berne Union, which had been performing a very useful task for the last 80 years, and it expressed the hope that the two Conventions would be able to continue to develop and strive together with a view to interesting countries not yet parties to either Convention in the protection of copyright.

24. The Observer of Unesco, after recalling the reasons which had led the General Conference of his Organization to adopt Resolution No. 5122, defined the scope of the proposed revision. He stated that the date of May 1, 1967, fixed at the time of the consultation of States by Unesco, was not a deadline and that in all probability, after May 1, 1967, States which had not yet replied would be consulted again. He also stated that it was not proposed to put the question of a possible revision of the Universal Convention to the Intergovernmental Copyright Committee before next autumn.

25. The Delegation of Germany (Federal Republic) observed that, as far as procedure was concerned, it seemed preferable to it that Governments should be invited to express their opinions after the meeting of the Intergovernmental Committee and it expressed the hope that, as the matter concerned both Conventions, the two Committees (Intergovernmental and Permanent) would have an opportunity to discuss it at joint sessions.

26. The Observer of Tunisia, after affirming the attachment of his country to the Berne Union, expressed the opinion that the multilateral copyright Conventions ought to evolve with a view to reaching solutions aimed at satisfying the needs of developing countries. He also expressed the hope that a universality of copyright would be achieved which would reconcile both the respect for the rights of authors and the special position of certain countries, mainly at the economic level.

27. The Observer of Czechoslovakia noted that it was not possible, in the immediate future, to express an opinion on the inadvisability of a revision of the Universal Convention in the event that the Stockholm Conference would satisfy the requirements of developing countries, because it depended, on the one hand, on the results of that Conference and, on the other hand, on the opinion of the States concerning the scope of these results. As far as procedure was concerned, he agreed with the declarations of the Delegation of Germany (Federal Republic).

28. The Observer of Japan also agreed with the view expressed by the Delegation of Germany (Federal Republic) and hoped that all the States concerned would be informed of the opinion expressed by the Committee.

29. The Delegation of Belgium shared this view.

30. At the close of the general discussion, the Permanent Committee entrusted to a drafting committee, composed of Professor Ulmer (Federal Republic of Germany), and Mr. Mas (France), Mr. Krishnamurti (India) and Mr. Wallace (United Kingdom), the task of drafting, with the assistance of the Secretariat, a resolution on the basis of the declarations made and the considerations expressed.

31. As pointed out by its Chairman, Professor Ulmer, the resolution presented by the Drafting Committee confined itself to questions of procedure, without entering into the details of the problems raised.

32. The Committee unanimously adopted the said resolution, couched in the following terms:

"1. Considering

(a) that the Universal Copyright Convention contains provisions concerning the consequences of denunciation of the Berne Convention for the Protection of Literary and Artistic Works,

(b) that the General Conference of UNESCO adopted, in November 1966, a resolution (No. 5122) inviting a study of the possibility of revising the said provisions of the Universal Copyright Convention in relation to developing countries,

(c) that the Director General of UNESCO invited, in December 1966, the States parties to the Universal Copyright Convention to let the Secretariat of UNESCO know, if possible by May 1, 1967, whether they wished a revision Conference of the Universal Copyright Convention to be convened,

(d) that the Representative of UNESCO has stated that replies arriving after May 1, 1967, will also be taken into consideration,

(e) that the Berne Convention is going to be revised in July 1967 at the Stockholm Conference and that the results of that revision will have an important bearing on the question of a possible revision of the Universal Copyright Convention, having regard to the fact that the official proposals for that Conference include special provisions relating to developing countries,

the Permanent Committee of the Berne Union, in extraordinary session assembled at Geneva from March 14 to 16, 1967,

2. Expresses the opinion that it would be premature to take a final position, by May 1, 1967, on the question of a possible revision of the provisions of the Universal Copyright Convention dealing with the Berne Convention;

3. Decides to re-examine the question, after the Stockholm Conference, in its next ordinary session scheduled for December 12 to 15, 1967;

4. Invites the Director of BIRPI to make a detailed report to that session and to draw the attention of all those member States of the Berne Union which are not members of the Permanent Committee to the desirability of being represented by observers;

5. Invites the Director of BIRPI to propose to the Chairman of the Intergovernmental Copyright Committee that, subject to the competence of that Committee, the matter also be discussed in its next joint meetings with the Permanent Committee;

6. Suggests to the Governments of the member States of the Berne Union that they consider the advisability of expressing their views on the question of a possible revision of the provisions in the Universal Copyright Convention dealing with the Berne Convention only after the December 1967 session of the Permanent Committee."

33. In the course of the deliberations of the Committee which preceded the adoption of this resolution, a number of observations were made.

34. The Observer of Unesco remarked that item (d) of the preamble should be taken to mean that May 1, 1967, was not a deadline. As regards item (e) of the preamble, he stressed,

while recognizing the bearing which the results of the Stockholm Conference might have on the question, that the effect to be given to the resolution of the General Conference of Unesco was not necessarily subject to that event. With regard to paragraph 5 of the resolution adopted by the Permanent Committee, he expressed certain reservations, for constitutional reasons, and drew attention to the need to respect the competence of the Intergovernmental Copyright Committee in the fulfilment of the role expressly entrusted to it by the Universal Convention. He pointed out that, in his opinion, there could only be an exchange of views on the occasion of joint sessions.

35. The Observer of Czechoslovakia, in this last connection, recalled that it was only the deliberations of the two Committees (Intergovernmental and Permanent) that were joint, for certain matters of common interest, but that the decisions were made separately.

36. The Delegation of Italy stressed that the bearing on the question mentioned in item (e) of the resolution concerned more especially the attitude of States members of the Berne Union which were also parties to the Universal Convention. It further endorsed the opinions of the Delegation of Germany (Federal Republic) on questions of procedure.

37. The Delegation of Germany (Federal Republic) observed that the question was of interest to all States members of the Berne Union, whether or not they were parties to the Universal Convention.

38. The Delegation of the United Kingdom, noting the convocation in Geneva, at the headquarters of the ILO, from April 10 to 12, 1967, of the Intergovernmental Committee set up by the Rome Convention on neighbouring rights, asked whether, in conformity with Article 32, paragraph (6), of that Convention, the States members of the said Committee had been consulted on the advisability of such a meeting. It also recalled that the Permanent Committee had expressed the wish, at its 12th session in Paris, in 1965, that for convenience sake, the possibility should be studied of

convening on the same date and at the same place the said Intergovernmental Committee and the Permanent Committee of the Berne Union and the Intergovernmental Copyright Committee.

39. The Director of BIRPI declared that, for its part, BIRPI had asked that prior consultation be undertaken.

40. Adopting the views of the Delegation of the United Kingdom, supported by the Delegation of Germany (Federal Republic) and the Observer of Czechoslovakia, the Permanent Committee asked the Director of BIRPI to get in touch immediately with the Directors General of the ILO and Unesco, with a view to studying the possibility of postponing the holding of the meeting of the Intergovernmental Committee of the Rome Convention until December 1967 in Geneva, at the time of the sessions of the Intergovernmental Copyright Committee and the Permanent Committee of the Berne Union.

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41. At the close of its deliberations, the Committee heard a declaration by the Observer of Tunisia, who had some general remarks to make on the subject of the Stockholm Conference. He first recalled that the discussion of the official proposals for revision of the Berne Convention would doubtless permit jurists and diplomats to work out solutions by a method of synthesis. He pointed out, however, that the main problem would be the establishment of the protocol regarding developing countries, including provisions capable of satisfying these countries to a considerable extent. Such countries relied on the universal humanism and the spirit of synthesis which, at all times, had prevailed at international assemblies. He reaffirmed that those who considered developing countries to be opposed to the protection of copyright showed in fact a complete ignorance of the economic, social and cultural aspects of the problem. In conclusion, he urged the delegates present at the session of the Committee to defend a noble cause, the improvement of the human lot within the framework of a normal development of the texts governing copyright.

42. The Committee unanimously adopted this report.

43. The Delegation of France congratulated the Chairman, Professor Mascarenhas, for the brilliant and distinguished manner in which he had conducted the proceedings and had permitted the Committee to bring its work to a successful conclusion. These congratulations were unanimously endorsed by the Committee.

44. The Chairman of the Committee thanked the representatives of the States members of the Committee and the observers for their contribution to the debates. He expressed his gratitude to the Secretariat for the quality of the preparatory documentation and the excellence of the work accomplished. In the name of the Delegation of Brazil, he recalled his country's concern for the protection of copyright, a concern which was borne out by the fact that Brazil was the only country which had acceded to all the multilateral Conventions on the subject. Stressing the Berne Convention's role of pioneer, he expressed the hope that its application would extend throughout the world, ensuring an ever-increasing protection of authors' works, on a universal scale. He then declared the extraordinary session of the Permanent Committee closed.

DA/25/6
ANNEX

LIST OF PARTICIPANTS

I. STATES MEMBERS OF THE PERMANENT COMMITTEE

Belgium

Mr. G.L. de SAN
Director-General - Legal Adviser,
Ministry of National Education, Brussels.

Brazil

Mr. Ildefonso MASCARENHAS da SILVA
Professor at the University of Brazil,
Rio de Janeiro.

Mr. Jorge Carlos RIBEIRO
Secretary of Embassy,
Permanent Mission of Brazil, Geneva.

Mr. Sergio CALDAS MERCADOR ABI-SAD
Secretary of Embassy,
Ministry of Foreign Affairs, Rio de Janeiro.

Denmark

Mr. Willi WEINCKE
Head of Division,
Ministry for Cultural Affairs, Copenhagen.

Mr. Edvard JEPPESEN
Assistant Head of Section,
Ministry for Cultural Affairs, Copenhagen.

France

Mr. Yves MAS
Counsellor of Embassy,
Ministry of Foreign Affairs, Paris.

Mr. Charles ROHMER
Head, Copyright Office,
Ministry of Cultural Affairs, Paris.

Mr. André KEREVER
Maître des Requêtes at the Council of State,
Paris.

Mr. Bernard de MENTHON
Ambassador, Paris (Observer).

Germany (Fed. Rep.)

Dr. Eugen ULMER
Professor at the University of Munich.

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

India	Mr. B.N. LOKUR Special Secretary and Member, Law Commission, Chairman, Copyright Board, New Delhi.
	Dr. K. KRISHNA RAO Joint Secretary and Legal Adviser, Ministry of External Affairs, New Delhi.
	Mr. T.S. KRISHNAMURTI Deputy Secretary and Registrar of Copyrights, Ministry of Education, New Delhi.
Italy	Mr. T.A. CIPPICO Ambassador, Italian Delegate to the Agreements concerning Intellectual Property, Ministry of Foreign Affairs, Rome.
	Mr. Giuseppe TROTTA Legal Adviser, Ministry of Foreign Affairs, Rome.
	Mr. Valerio DE SANCTIS Lawyer, Rome.
	Mr. Antonio DE ROSA Director, Office of Literary, Artistic and Scientific Property, Rome.
	Mr. Vincenzo GALLINARI Office of Literary, Artistic and Scientific Property, Rome.
Portugal	Dr. José DE OLIVEIRA ASCENSAO Professor at the Faculty of Law, Lisbon.
Rumania	Mr. Costel MITRAN Second Secretary, Permanent Mission of the Socialist Republic of Rumania.
Spain	Mr. Fernando BENITO MESTRE Assistant Permanent Delegate of Spain, Geneva.
Switzerland	Mr. Hans MORF Former Director of the Federal Office of Intellectual Property, Berne.
	Mr. Jean-Louis MARRO Head of the Copyright Section, Federal Office of Intellectual Property, Berne.
United Kingdom	Mr. William WALLACE, C.M.G. Assistant Comptroller, Industrial Property Department, Patent Office, London.

Ex officio:

Sweden — Mr. Ulf K. NORDENSON
Head of Division,
Ministry of Justice, Stockholm.

Mr. Svante BERGSTRÖM
Professor at the University of Uppsala.

II. OBSERVERS

1. Member States of the Berne Union

Austria — Mr. Peter ANGST
Federal Ministry of Justice, Vienna.

Canada — Mr. Jacques CORBEIL
Secretary and Vice-Consul,
Permanent Mission of Canada, Geneva.

Ceylon — Mr. Rex C.S. KOELMEYER
Permanent Representative of Ceylon, Geneva.

Mr. W. PERERA
Permanent Mission of Ceylon, Geneva.

Mr. Gustave MULENDA
First Secretary, Permanent Mission of the Republic of the Congo, Berne.

Czechoslovakia — Dr. Vojtech STRNAD
Legal Adviser of the Ministry of Culture and Education, Prague.

Finland — Mr. Ragnar MEINANDER
Head of Section,
Ministry of Education, Helsinki.

Ireland — Dr. J.J. LENNON
Controller of Patents, Designs and Trade Marks, Dublin.

Mr. Kenji ADACHI
Deputy Director, Cultural Affairs Bureau,
Ministry of Education, Tokyo.

Morocco	Mr. Abdelaziz CHERRAT Director at the Cabinet of the Minister of Information, Rabat. Mr. Abderrahim H'SSAÏNE Director, Copyright Office of Morocco, Rabat.
Norway	Mr. Leif Chr. HARTSANG First Secretary, Ministry of Foreign Affairs, Oslo.
Pakistan	Mr. S.A.D. BUKHARI Counsellor, Permanent Mission of Pakistan, Geneva.
Poland	Mr. Slawomir DABROWA Second Secretary, Permanent Delegation of the Polish People's Republic, Geneva.
Tunisia	Mr. Mustapha FERSI President Director-General of SATPEC, Tunis.
Turkey	Mr. Erten KAYALIBAY Second Secretary, Permanent Delegation of Turkey, Geneva.

2. International Intergovernmental Organizations

International Labour Office	Mr. Edward THOMPSON Chief, Non-Manual Workers' Section.
UNESCO	Mr. Hanna SABA Legal Adviser Miss Marie-Claude DOCK Acting Head, Copyright Division.

III. BIRPI

Professor G.H.C. BODENHAUSEN, Director

Mr. Charles-L. MAGNIN, Deputy Director

Mr. Claude MASOUYÉ, Counsellor, Head of the Copyright Division

Mr. Mihailo STOJANOVIC, Legal Assistant, Copyright Division.

BIRPI

UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION OF
INTELLECTUAL PROPERTY

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INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

OBSERVATIONS OF GOVERNMENTS ON THE PROPOSALS FOR REVISING THE SUBSTANTIVE COPYRIGHT PROVISIONS (DOCUMENT S/1) received as at March 31, 1967

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BULGARIA

PERMANENT DELEGATION OF
THE PEOPLE'S REPUBLIC OF BULGARIA TO THE
EUROPEAN OFFICE OF THE UNITED NATIONS AND THE
INTERNATIONAL ORGANIZATIONS

Geneva, January 13, 1967

The Permanent Delegation of the People's Republic of Bulgaria to the Office of the United Nations and the International Organizations in Geneva presents its compliments to the Director of the United International Bureaux for the Protection of Intellectual Property and, with reference to his circular letter No. 1002 of June 13, 1966, has the honour to communicate to him herein the observations of the competent Bulgarian authorities on the proposals for revising Articles 1-20 of the International Convention for the Protection of Literary and Artistic Works (Berne Convention).

The Competent Bulgarian authorities are highly appreciative of the efforts put forth by the Swedish Government and BIRPI to ensure the study of, and consultations on, the proposals for revising the International Convention for the Protection of Literary and Artistic Works and are aware of the numerous difficulties which have had to be met.

The attempts to extend the scope of this very old Convention in the field of copyright are greatly appreciated and they offer the possibility, in the event of their reaching fulfilment, of a greater number of countries acceding to it.

If this trend is to be pursued with greater success, it seems necessary to be more respectful of national legislations.

The adoption of wording which would oblige countries to amend their internal legislation has hitherto presented an obstacle to many countries as regards acceding to the Convention as worded at Brussels. If this tendency

were continued in the Act of Stockholm it would not encourage the desired universalization of the Convention.

The period of fifty years after the death of the author for the extinction of copyright as provided for in Article 7 is unacceptable, and Bulgaria would welcome the reintroduction of Article 7, paragraph (2) of the Rome wording in the new wording of paragraph (7), namely: "In all cases the term shall be governed by the law of the country where protection is claimed. It follows that the countries of the Union are bound to enforce the foregoing paragraphs to the extent that their national legislation permits. However, unless the legislation of such a country provides otherwise, the term shall not exceed that fixed in the country of origin of the work."

The universality of the Convention would be enhanced if the question of the protection of authors who are not nationals of a member country of the Union but are domiciled in such a country were settled according to national legislation. The new Article 4, paragraph (2), should therefore be worded as follows :

"Unless the legislation of the country where protection is claimed provides otherwise, authors who are not nationals of one of the countries of the Union but are domiciled in one of them shall, for the purpose of this Convention, be assimilated to the nationals of that country."

The improved wording of Article 6 bis, paragraph (1), of the Convention meets with the approval of the Bulgarian authorities. It is considered that for cultural and political reasons no distortion, mutilation or modification of authors' works or any derogatory action in relation to them can be permitted. This requirement serves the interests not only of the author and his heirs but also of world culture. The Bulgarian Government therefore proposes the abolition of the term of protection defined in Article 6 bis, paragraph (2), in the words "until the expiry of the economic rights." Such a term is even less acceptable in relation to the author, whose authorship is inalienable and not limited by any period of time.

Bulgaria

As regards Annex II - Protocol regarding developing countries, Bulgaria's observations are as follows :

Certain member countries of the Berne Union do not accept the Brussels wording of the Convention for economic, social or cultural reasons of their own, on account of the fact that the wording in question does not offer sufficient possibilities for formulating reservations concerning certain clauses. The majority of the clauses concerned are those regarding which provision is now made for formulating reservations, but solely on the part of developing countries.

If all countries wishing to make reservations are not assured of such a possibility, many will abstain from ratifying the Act of Stockholm, because although they are prepared to accept the majority of its clauses they are not disposed to accept some of them. In order to ensure that more countries subscribe to the new Stockholm wording of the Convention, all the member countries of the Berne Union should be given the possibility, when ratifying the Stockholm wording of the substantive provisions of the Convention (Articles 1-20), of formulating the reservations now provided for in the Protocol regarding developing countries. If for simplicity's sake it is agreed that the wording of the reservations as incorporated in the Convention should not appear in the Convention itself, it could form part of an additional Protocol like the Protocol regarding developing countries but with the word "developing" deleted from Article 1 and with the title "Protocol of reservations by countries ratifying or acceding to the Act of Stockholm".

The duration of the reservations should not be limited to a fixed term, and it should be made possible for them to be valid until further consideration of their opportuneness on the occasion of a subsequent revision of the Convention. Bulgaria therefore proposes the deletion from Articles 1 and 2 of the Protocol of the words "for a period of the first ten years during which it is a party thereto".

Bulgaria

It would be preferable to replace the complicated translations procedure provided for in paragraph (a) of the Protocol by the possibility of making a reservation such as that contained in Article 25, paragraph (3), of the Rome and Brussels texts of the Convention.

In the event of acceptance of the proposed amendment to Article 7, paragraph (7) of the Convention, as referred to above, paragraph (b) of the Protocol would be unnecessary and should be deleted.

(Original : French)

LUXEMBOURG

Ministry for
Foreign Affairs

Luxembourg, January 31, 1967

I refer to your letter No. 1002 of June 13, 1966, and have the honour to enclose herewith the observations of the Luxembourg Government on document S/1 containing the proposals for revising Articles 1-20 of the International Convention for the Protection of Literary and Artistic Works.

Observations of the Luxembourg Government on document S/1 of the United International Bureaux for the Protection of Intellectual Property

(Stockholm Conference)

The following proposed alterations call for comment:

Article 2, paragraph (1)

The proposed revision abolishes the stipulation regarding the fixation in writing or otherwise of choreographic works and entertainments in dumb show.

It is nevertheless desirable that this stipulation should be retained in the Convention. The countries of the Union may also introduce the requirement of fixation into their national legislation, for example as regards the method of proof, and document S/1 states in this respect that "there is good reason to believe that provisions of this sort are not contrary to the Convention."

Luxembourg

Article 2, paragraph (2)

An additional provision is introduced in Article 2. It is worded as follows :

"For the purpose of this Convention, works expressed by a process producing visual effects analogous to those of cinematography and fixed in some material form shall be considered to be cinematographic works."

This mainly concerns television works. A similar provision covers photographic works.

These new provisions are acceptable. The general report to be submitted on the Stockholm Convention should note that States can extend the rules governing cinematographic works to unfixed works producing analogous visual effects, and should state the time at which fixation must take place and the person by whom it must be effected for the work to be considered cinematographic.

Article 2bis

Paragraph (2) of this Article provides that countries of the Union shall have the right to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press. It was suggested at the preparatory meetings that the same right of reproduction should be stipulated for broadcasting and wire diffusion. This point of view is justified, and the right of reproduction should be extended to these methods of dissemination in Article 2bis.

Article 4, paragraph (5)

In order to emphasize the generality of the scope of the first sentence of Article 4, paragraph (5), it is proposed that it should be worded as follows :

"The expression 'published work' means works lawfully published, whatever may be the means of manufacture of the copies thereof, provided that the copies are made available in sufficient quantity to render the work accessible to the public."

Luxembourg

The wording proposed in the document is equally acceptable, however, provided one agrees with the drafters that the definition of "published works" applies to works of all kinds.

Article 9

The proposed wording introduces rules on the general right of reproduction. This is a fundamental right of the author and obviously deserves to be specified.

Certain provisions of the Convention stipulating or permitting a restriction of this right remain intact.

On the other hand, the provisions on newspaper articles (paragraph (1)) are deleted, since a rule on the general right of reproduction is introduced.

The International Federation of Journalists has proposed the deletion of paragraph (2), the present wording of which grants to the press the right freely to reproduce articles on current economic, political or religious topics, unless the reproduction thereof is expressly reserved.

The commentary on this provision states that "in our day it can hardly be compatible with the moral principles recognized by the press to reproduce an article published in another newspaper without having first obtained the author's permission." The commentators note that there is nevertheless a need to report articles on economic, political or religious topics freely and to a fairly general extent. They consider that no legal obstacle exists to reviewing protected works. Reference is also made to the right of quotation, dealt with in Article 10.

These considerations emphasize the fact that the protection of newspaper articles does not lead to excessively strict rules. Too much restriction would certainly be inadvisable.

Luxembourg

In principle, therefore, the solutions proposed for the Stockholm Conference can be accepted.

The last paragraph of this Article rightly refuses protection to news of the day or miscellaneous information having the character of mere items of news.

Article 10bis

This Article deals with the right to use protected works in the reporting of current events.

The commentary points out that the existing provisions are not entirely satisfactory from the practical point of view.

The new wording drafted by the experts seems acceptable.

Should the occasion arise, the text could nevertheless be worded more precisely.

Article 11bis, paragraph (3)

This paragraph, the last sentence of which enables regulations for ephemeral recordings to be laid down in national legislation, has not been altered.

The conditions enumerated in the text and required to be complied with by the national legislator no longer correspond to the actual conditions of television working.

The words "by means of its own facilities" in the second sentence of Article 11bis, paragraph (3), should be deleted and replaced by "made by or for broadcasting organizations".

Article 14

An important innovation has been proposed as regards cinematographic works. As a compromise between the system known as "film copyright", whereby the copyright is vested in the maker of the film, and the system granting the right to the intellectual creators

of the film, the Study Groups have proposed the introduction of presumptions whereby certain rights in the film are granted to its maker in the absence of agreement to the contrary.

This solution deserves acceptance.

The words "in the manner prescribed by the legislation of the country of origin of the cinematographic work" should be deleted, because a film frequently has its world première in a country other that that in which it was made.

Since the hiring of films to cinemas generally constitutes publication, is not the country of origin of the film the country in which it is first distributed rather than the country in which it is made and in which all the agreements are signed ? If this interpretation is justifiable, can such agreements be required to comply with the legislation of the country in which the film is going to be released, which may be decided on after the film is made ?

The deletion of the second sub-paragraph of Article 14, paragraph (4), also seems desirable.

The right granted to the countries of the Union to provide that the authorization or undertaking shall be given by a written agreement or something having the same force seems to signify that a country can, in applying the new system of the rule of interpretation, require the authorization of cinematographic adaptation and reproduction always to be the object of written agreements or something having the same force, even if this requirement does not exist in the law of the country of origin. Such a requirement seems excessive. In paragraph (6) of the same Article special provisions are introduced for composers whose works are used in cinematographic works. Such an author can prevent any exploitation of the cinematographic work if he refuses the necessary authorization. He would therefore have an arbitrary power liable to entail substantial and prejudicial economic consequences for the other authors of the work.

Luxembourg

Paragraph (7) of the same Article allows countries of the Union not to apply the rule of interpretation to pre-existing works. This provision distorts the new system in such a way as to endanger the entire structure built up by the experts. The paragraph should be deleted.

As regards moral rights in the field of cinematography, the document states that it appeared in the end that the problem should not be dealt with within the framework of the Convention. Although the question of moral rights is extremely complex, the following provision, which is intended to simplify relations between those exploiting a work and authors, could appear in the Convention as a further paragraph to Article 14 :

"Authors referred to in paragraph (4) above may not, subject to the application of Article 6bis and in the absence of any contrary or special stipulation, oppose the modifications which are indispensable to the exploitation of the cinematographic work".

The following remarks are called for on the Protocol regarding developing countries.

The experts propose to enable developing countries to make certain reservations of limited duration concerning the right of translation, the term of protection, the right of radiodiffusion , the right of use etc., of intellectual works for educational purposes.

This flexibility of the Convention in favour of developing countries seems necessary. The strict application of the Convention might constitute an obstacle to the wide dissemination of intellectual works. The clauses drafted by the experts are worth being taken as a basis for discussion at the Stockholm Conference.

Luxembourg

ANNEX

Luxembourg, February 13, 1967

With reference to your circular No. 1002 of May 20, 1966, I have the honour to transmit to you herewith the observations of the Luxembourg authorities concerning Document S/1, Annex IV regarding the protection of publications of international organizations.

* * * * * * *

Document S/1 contains an Annex entitled : "Additional Protocol to the Berne Convention as revised at Stockholm on July . ., 1967, concerning the application of that Convention to the works of certain international organizations."

By virtue of Article 1 of this Draft Protocol, the provisions of Articles 4,5 and 6 of the Convention shall apply to works first published by the United Nations and by the Specialized Agencies in relationship therewith.

Articles 4,5 and 6 of the Convention, referred to in the Protocol, contain the most important substantive provisions warranting copyright in the territories of Member States of the Union.

The field of application of this provision, which gives protection to works published by the United Nations and its Specialized Agencies only, seems to be too limited and arbitrary.

Luxembourg

The European Communities and other European international organizations take a great interest in the publications of their works being protected in conformity with the provisions of the Berne Convention.

On the other hand, the adoption of the Additional Protocol in its present version would constitute a discrimination against the said communities and other international organizations as compared to the United Nations and their Specialized Agencies.

To conclude, the above-mentioned text ld provide for the protecti n of intellectual works published by intergovernmental organizations.

(Original French)

SWITZERLAND

Federal Bureau
for Intellectual Property

Berne, March 16, 1967

In reference to your circular No. 1002, dated May 20, 1966, we have the honour to advise you of the comments and proposals of the Swiss federal authorities concerning the programme for the revision of Articles 1 to 20 of the Berne Convention contained in document S/1.

Article 2

paragraph 1 and new paragraph 2

Since television productions do not derive their character of intellectual works from being fixed in some material form, we suggest that this attribute should not be made a condition of granting protection to this category of works. The phrase "and fixed in some material form" could therefore be deleted from Article 2, new paragraph 2.

paragraph 7

News of the day and miscellaneous facts, which the programme proposes to transfer from Article 9, paragraph (3), of the Brussels text to Article 2, paragraph (7), are not in themselves works within the meaning of the Berne Convention. Hence the rule that these items are not protected by the Convention is self-evident. While there might have been some justification for it in the context of a provision dealing with articles in the press, there is no longer any raison d'être for it in Article 2. We consider that the forthcoming revision of the Convention will provide a favourable opportunity for removing this provision from the said Convention. In order to ensure that this deletion will not be construed as extending the protection of the Convention to these items, the reasons for the deletion might be set out in the general report.

Switzerland

Article 2bis

paragraph 2

It would be advisable for the diplomatic conference to consider whether States should not also be given the right to allow the communication of the works mentioned in this provision by radio and television organizations.

Article 4

paragraph 1

While agreeing that the system of protection under the Convention should be extended to the works of authors belonging to a country of the Union which are first published outside the Union, the Swiss Government would accept a solution under which the scope of the principle of author's nationality would be still further widened and the country of the Union of which the author is a national would become the sole country of origin of all his works, whether published or not, in whatever country they may have been first published. If this standard were adopted, publication would be retained as a criterion of association with the Union solely in the case of works of authors not belonging to or domiciled in a country of the Union.

A rule of this kind would have the advantage, as compared with the proposal contained in the programme, of conferring the same legal status on all the works of an author belonging to a country of the Union, before and after their publication. This would make for greater simplicity in applying the Convention, by comparison with the rule proposed in the programme, under which it would be necessary to find out in which country of the Union each work had been first published, taking into account the relatively complex rules of Article 4, paragraph (4) (new).

If this rule were added, some of the provisions set out in the programme would have to be amended, including Article 4, paragraph (4), which might perhaps be reduced to a single rule, under which the country of the Union of which the author is a national would become the country of origin for his works, whether published or not. Such a rule would also render the existing Article 5 superfluous.

Switzerland

"..... provided that they are compatible with fair practice and to the extent that they serve as an explanation, reference or illustration in the context in which they are used, including quotations from newspaper articles ....."

Article 10bis

We suggest that, in the last part of the provision, the words "communicate to the public" should be replaced by a wider term which would include all the processes by which the work is made accessible to the public.

Article 11ter

Article 11 gives the authors of dramatic, dramatico-musical and musical works the right to authorize communication to the public. Provision is made for granting this right to the authors of cinematographic works and the authors of works which have been adapted for the cinema. It therefore seems to us only fair that the authors of literary works should have the right to authorize the communication of recitations of their works to the public by wire.

Article 14

paragraph 4

sub-paragraph 1

(a) Under the provision proposed in paragraph (4), sub-paragraph 1, the Berne Convention would oblige States to accept an interpretative clause in a sphere - that of contracts - which, by its very nature, is solely within the competence of national authorities. We therefore consider that this interference by international legislation in the legislations of the States of the Union, which occurs nowhere else in the Berne Convention, should be studied with great care at the revision conference.

(b) As it is now drafted, the interpretative clause appears to give rise to some uncertainty as to its legal effects.

This clause does not assign to the maker the rights of the authors of a cinematographic work. It merely has the effect of preventing those authors who have not made any contrary or special stipulation with the maker from exercising their right to forbid the exploitation of the cinematographic work.

The text which is proposed does not state whether the interpretative clause applies only to the maker or whether authors must also renounce the exercise of their rights vis-à-vis third parties, in particular cinemas and television organizations. If the clause can be invoked only in favour of the maker, the authors will still be free to oppose the exploitation of the cinematographic work by cinemas or television organizations, even though these may have been authorized by the maker to exhibit it. A situation of this kind is obviously unsatisfactory for the maker, since he would have no guarantee of being able peacefully to exploit the cinematographic work. If, on the other hand, the interpretative clause applies also to third parties, in that it obliges authors to tolerate the exploitation of the work not only by the maker but also by third parties, the provision to this effect should be explicit; in this case, it should specify those third parties which are the beneficiaries of the clause.

Moreover, as the authors retain their rights in the cinematographic work, they alone are entitled to institute proceedings against third parties using the work without themselves enjoying the protection of the interpretative clause. As for the maker, he has not acquired the authors' rights and hence he has no means of taking direct action against third parties contravening the law. He can only request the authors to safeguard their interests, when these are affected, by instituting proceedings for infringement of authors' rights. However, unless they have entered into engagements with the maker, the authors will be under no obligation to take action, even if the maker's interests are seriously threatened or affected.

A further question appears to arise in connection with paragraph (4), sub-paragraph 1. An author who has not received the agreed payment from the producer can in principle claim the sequestration of the original negative of the film and its copies, in his capacity as creditor of an outstanding debt. In so doing, he will impede the exploitation of the cinematographic work by the maker. In a case where there is no

Switzerland

stipulation allowing the author to prevent such exploitation, would this sequestration be compatible with the interpretative clause?

In our view, the questions raised under (b) should be carefully examined by the diplomatic conference.

paragraph 5

The rule contained in this provision appears to us to be superfluous. In our view, States have in any case entire freedom to provide, for the benefit of the authors, a certain form of remuneration consisting of participation in the receipts resulting from the exploitation of their work.

new paragraph (moral rights)

We consider it desirable to introduce into the Berne Convention, preferably in Article 14 in proximity to paragraph (4), a provision laying down certain limits to the exercise by authors of their moral rights in a cinematographic work. Disputes arising in this field centre mainly round the right to modify a work. We propose the following clause dealing with the exercise of this right by the authors of a cinematographic work:

> "The authors referred to in paragraph (4), sub-paragraph 1, may not, in the absence of any contrary or special stipulation, object to such modifications of the cinematographic work as may be essential to its production and exploitation, provided that such modifications are compatible with Article 6bis, paragraph (1)".

The reference to Article 6bis means that the proposed provision will not affect the rights of the authors of a cinematographic work to object to any modifications of the work which would be prejudicial to their honour or reputation.

The Swiss federal authorities reserve the right to amend or supplement the above proposals through their delegation during the course of the diplomatic conference.

(Original: French)

TURKEY

Turkish Permanent Delegation
to the
United Nations Office at Geneva

Geneva, January 26, 1967

Further to my letter No 924 of December 28, 1966 and with reference to the documents published containing the proposals made by the Swedish Government for consideration at the forthcoming Intellectual Property Conference in Stockholm, I have the honour to submit to you hereunder the preliminary views of my Government on the proposals made for the revision of some of the provisions of the International Convention for the Protection of Literary and Artistic Works (Bern Convention) as included in document S/I.

The proposals in section IV of S/I concerning the special provisions proposed in favour of the developing countries with regard to the translation rights, duration of literary protection, newspaper articles, radio broadcasts and etc., and in particular concerning the publications made exclusively for educational, scientific and trining purposes are considered to be a positive and forward step.

Although expressing its preference to include the said provisions in the Bern Convention itself as an additional Article 25bis, as already proposed by the Study Group and the Committee of Experts which consecutively met in 1963 and 1965, my Government does not consider to oppose any move to include them in a separate Protocol to be annexed in the Stockholm Act.

On the other hand, the Turkish Government shares the views that the text which the Developing Countries will be allowed to substitute for Article 8 of the Stockholm Draft should be that recommended by the Study Group and the 1963 Committee of Experts. Thus it will be possible

for the countries who have made reservations to the provisions on the translation period in accordance with the last sentence of Article 25(3)of the Bern Convention when adhering to it as revised by the Brussels Act.

However, if the text proposed by the Swedish Government which maintains the same line as in Article V of the Universal Copyright Convention would receive the approval of the Conference, my Government will find itself unable to sign and approve the Articles I to 20 bis of the Stockholm Act, as well as its integral part, the Protocol Regarding Developing Countries.

Therefore, it is considered to be essential to revise Article I(a) of the Draft Protocol as to enable the application of the provisions of Article 5 of the 1896 Convention or in case this meets objection to add a clause to the Protocol to enable the Developing Countries make their choice for the 1896 Convention or the Universal Convention.

It is the opinion of my Government that it should be born in mind when revising the Bern Convention that the main objective should be to enable as many countries as possible to sign and approve or adhere to the Convention. Therefore, close attention should be paid to the reservations made by the Developing Countries to the provisions of the current Conventions. Furthermore, an interruption of the legal relations arising from copyright matters between the countries who would be accepting the Articles I to 2o bis of the Stockholm Act and those who are parties to the Brussels Act or are to the more ancient ones (Rome, Berlin) would be avoided.

These points and the other proposals will be further elaborated by my Government and I shall be pleased to convey them to your attention.

(Original : English)

BIRPI

UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY

—

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SUMMARY OF OBSERVATIONS OF GOVERNMENTS ON THE PROPOSALS FOR REVISING THE SUBSTANTIVE COPYRIGHT PROVISIONS (Document S/1)

(see Documents S/13 and S/17)

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I N T R O D U C T I O N

The following summary has been prepared on the basis of the observations of member countries of the Berne Union contained in documents S/13 and S/17*). In its preparation, the following rules have been observed.

The material is set forth, Article by Article and paragraph by paragraph, in the order of the texts which are submitted for revision (Articles 1 to 20 of the Berne Convention). In the analysis, no mention is made of those countries that have raised no objection or that have explicitly given their support to the proposals put forward in document S/1. This implies that the countries in question can be considered as having declared themselves in agreement with the proposed texts.

As regards the observations mentioned in the present document, account has been taken mainly of those which contain definite proposals and of those which offer a point of view differing clearly from that expressed in the proposals for revision (document S/1). In the interest of conciseness, some remarks of a purely drafting nature have been omitted.

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*) As at March 31,1967, observations had been received from the following eighteen countries: Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Ireland, Israel, Italy, Japan, Luxembourg, Madagascar, Portugal, South Africa, Switzerland, Turkey, United Kingdom.

G E N E R A L O B S E R V A T I O N S

Before taking up the particular questions dealt with in the various Articles, some member countries made a few general observations, the main points of which are given below:

Belgium

The Belgian Government wonders whether it is sufficient to interpret terms of some importance in the statement of reasons.

Bulgaria

The Bulgarian Government considers that, if the trend towards the accession of a larger number of countries is to be pursued with greater success, it seems necessary to be more respectful of national legislations.

Denmark

The Danish Government shares the view put forward by the United Kingdom of Great Britain and Northern Ireland, to the effect that "a complete recasting of the Convention should be undertaken". However, it is agreed that such a review of the formal structure and formulation of the Convention would be very difficult to carry out at the present juncture. Under these circumstances, isolated alterations should not be effected, such as changing of the designation of Article 2bis to Article 3.

Israel

The Israeli Government urges the desirability of a technical redrafting of the Convention and a systematic rearrangement of its Articles. The need for redrafting is increased by the existence of serious discrepancies in language, as is revealed by a comparison of the French and English texts.

The Government also reserves its right to submit additional observations.

South Africa

The South African Government points out that the authors of document S/1 have in some cases elected to depart from the decisions given at the meeting held at Geneva in 1965.

Turkey

In the view of the Turkish Government, the main objective of the revision should be to enable as many countries as possible to sign and ratify the Convention or to accede to it.

United Kingdom

The United Kingdom Government considers it desirable to change the expression "literary, scientific and artistic works," wherever it appears, to "literary and artistic works," since the latter expression is defined in Article 2(1).

In regard to the reservations made in the text of the Convention, the Government suggests a general formula such as:

> "Where an Article provides for exceptions to, or limitations of, a right given by another Article, the former Article shall be taken as governing all cases with which it deals."

ARTICLE 1

No observations.

ARTICLE 2

Paragraph (1)

Choreographic works and entertainments in dumb show

Denmark has not committed itself in regard to the general question whether the Convention prevents countries from introducing national legislation requiring fixation.

The following countries consider that it would be preferable to maintain the phrase "the acting form of which is fixed in writing or otherwise": Belgium, France, Ireland, Israel, Italy, Japan, Luxembourg, Portugal, United Kingdom.

Television works

Czechoslovakia and Italy are of the opinion that television works should also be expressly mentioned, after cinematographic works, in the list contained in paragraph (1).

Paragraph (2)

Television works

Some countries have made observations which may be summarized as follows:

Austria: It should be mentioned in the General Report of the Conference that television recordings only enjoy protection to the extent that they constitute creative works.

/Article 2, paragraph 2 - continued/

However, recordings of images or of images and sounds, prepared by a broadcasting body as a mere technical means exclusively for the use of the broadcasting to be done with permission, should not be considered to be cinematographic works in view of their purpose of use.

Luxembourg: It should be noted in the General Report of the Conference that States can extend the rules governing cinematographic works to works producing analogous visual effects, but not fixed; and it should be stated at what time and by whom the fixation must be effected for the work to be considered cinematographic.

Portugal : (a) It is necessary to determine what is meant by fixation.

(b) It is necessary to clarify the situation by the addition of a sentence stating that "the countries of the Union shall have the right to protect works thus expressed which are not fixed in some material form."

Five countries (Czechoslovakia, Germany (Fed. Rep.), Israel, Italy, Switzerland) have declared against fixation in some material form as a condition for considering television works to be cinematographic works. Germany (Fed. Rep.) has proposed the following wording:

"(2) For the purposes of this Convention, works expressed by a process producing visual effects analogous to cinematography shall be considered to be cinematographic works. There shall however be no obligation to protect, as a cinematographic work, a series of visual images which is not recorded on some material support."

Photographic works

Portugal has observed that the second sub-paragraph of this paragraph, concerning photographic works, should constitute a separate paragraph (3).

/Article 2, paragraph 2 - continued/

In the opinion of the United Kingdom, this sub-paragraph should read:

> "For the purpose of this Convention, works expressed by a process analogous to photography and fixed in some material form shall be considered to be photographic works."

Paragraph (3)

The only observation on this paragraph has been made by Germany (Fed. Rep.), which has suggested an extension of the provision contained in the second sentence so as to reserve to the legislation of the countries of the Union the right to determine also the protection to be granted to official texts themselves. Moreover, translations of these texts should only be subject to the limitation provided if they have been made by an official service itself. Consequently, Germany (Fed. Rep.) proposes that the sentence in question be worded as follows:

> "It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts."

Paragraphs (4) and (5)

No observations.

Paragraph (6)

Denmark is of the opinion that this paragraph should be deleted in its entirety.

Germany (Fed. Rep.) thinks that the text of this provision is not entirely clear, and therefore suggests that it be stated (in the Records of the Conference or, if necessary, by means of an alteration in the wording) that protection can only be limited, in the other countries of the Union, to the protection granted to designs and models if the laws of the countries in question recognize such protection.

/Article 2, paragraph 6 - continued/

Israel, considering that the question of designs and models appears to be outside the scope of copyright, has proposed the following text:

> "(6)(a) Subject to the obligation to provide a minimum term of protection under the provisions of Article 7, paragraph (4), of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art as well as the conditions under which such works shall be protected.
>
> (b) Works of applied art protected in the country of origin solely as designs and models and not as works of applied art shall be entitled in other countries of the Union only to such protection as shall be granted to designs and models in such countries and not to the rights granted under this Convention."

Paragraph (7)

Most of the Governments which sent in replies have made no remarks concerning the proposed transfer of this provision from the present Article 9(3).

However, with regard to the English text, Israel doubts whether it would not be better to retain Article 9(3) in its present version as the text of Article 2(7).

Portugal does not approve the transfer of this text from Article 9, because it is not in agreement with the changes proposed in that Article.

For its part, the United Kingdom would prefer this paragraph to read:

> "The protection of this Convention shall not apply to the facts constituting news of the day or having the character of mere news items."

Lastly, Switzerland considers that this provision should be deleted, news of the day and miscellaneous facts being not works within the meaning of the Convention.

ARTICLE 2(bis)

Paragraph (1)

No observations.

Paragraph (2)

Eight countries (Germany (Fed. Rep.), Ireland, Israel, Luxembourg, Portugal, South Africa, Switzerland, United Kingdom) see no sufficient reason why the rights granted to the press should not be extended to other media of communication. In this connection, three different formulae have been suggested, as a phrase to be added at the end of this paragraph:

Germany (Fed. Rep.) : "and, when they refer to news, may be broadcast by radio or communicated by wire to the public."

Israel : "or recorded, reproduced and communicated to the public by broadcasting or communication to the public by wire or other means of radio diffusion in the course and for the purpose of reporting current events."

United Kingdom: "or broadcast."

Paragraph (3)

No observations.

ARTICLE 4

Paragraph (1)

The only observation on the subject of this paragraph has been made by Portugal, which has stated that it cannot agree to such a generalization if the present situation continues.

On the other hand, Switzerland has proposed that the scope of the principle of author's nationality should be still further widened, by making the country of the Union of which the author is a national the sole country of origin of all his works, whether published or not, in whatever country they may have been first published.

Paragraph (2)

Observations have been made by the following countries:

Austria : suggests the insertion in a suitable place of the rule concerning domicile contained in Article 1, paragraph (3), of the Convention on conflicts of laws with regard to the form of testamentary dispositions.

Belgium : suggests replacing the concept of domicile by that of "habitual residence."

Bulgaria: proposes the addition, at the beginning of the paragraph, of the words "Unless the legislation of the country where protection is claimed provides otherwise, ..."

Israel : proposes the following text:

"(2) Authors who are not nationals of one of the countries of the Union, including stateless persons, and having habitual residence in one of them shall, for the purpose of this Convention, be assimilated to the nationals of that country. A legal entity shall be treated as a national of the country in which it has its headquarters."

/Article 4, paragraph 2 - continued/

Portugal: does not accept the proposed amendment, for the same reasons as those invoked in respect of paragraph (1).

Lastly, South Africa proposes the addition of the following sentence:

"The rights of authors who are stateless or who are refugees and who have their habitual residence in one of the countries of the Union will be dependent on the adoption by the country in which they reside of the protocol determining their status."

Paragraph (3)

No observations.

Paragraph (4)

The provisions contained in this paragraph have given rise to observations from only four countries:

France considers it preferable that the provisions concerning the maker of cinematographic works should be disjoined (see also the observation relating to Article 6, paragraph (2)).

Israel proposes the following text for sub-paragraph (c):

"(c) in the case of unpublished works or of works first published outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:

(i) where the works are cinematographic works, the maker of which is a national of a country of the Union, the country of origin shall be that country and

(ii) where the works are works of architecture erected in a country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union, that country."

/Article 4, paragraph 4 - continued/

Portugal agrees with the proposed system, to the extent that it is not prejudiced by the rejection of the two previous paragraphs ((1) and (2)), and subject to the Portuguese observations concerning cinematographic works. With regard to the latter, the Portuguese Government suggests that they be dealt with separately, in a paragraph which might be worded as follows:

> "The country of origin of cinematographic works shall be considered to be the country of the Union in which the maker has his domicile or headquarters or, if this hypothesis does not apply, the country of the Union of which the author is a national."

In the view of the Portuguese Government, the definition of simultaneous publication should constitute a new paragraph (5).

Switzerland considers that the amendment proposed by it in paragraph (1) would involve an amendment of paragraph (4), which might perhaps be reduced to a single rule, under which the country of the Union of which the author is a national would become the country of origin of his works, whether published or not.

Paragraph (5)

Various observations have been made by the following countries:

Belgium cannot easily support the interpretation given to the terms "public" and "in sufficient quantities" (document S/1, p. 26).

In the opinion of Denmark, publication must probably be regarded as having taken place in all cases where a film is available for showing in cinemas when copies of the film have been delivered for such showing (that is to say, also in cases where a cinema is under direct control of the film producer).

/Article 4, paragraph 5 - continued/

France holds the view that it is most desirable that the concept of publication of cinematographic and television works should be defined. The French Government has reserved the right to propose a new definition.

Owing to serious differences between the French and English texts, Israel has proposed that this paragraph should read as follows:

> "(5) For the purposes of this Convention, a work shall be deemed to have been published if copies thereof have been lawfully issued and made available in sufficient quantities to the public... ."

Luxembourg and South Africa would support the definition proposed by the European Broadcasting Union, which is:

> "The expression 'published works' means works lawfully published, whatever may be the means of manufacture of the copies, provided that the availability of such copies is sufficient to render the work accessible to the public."

Portugal considers that the proposed definition is not very apt, especially the requirement that publication shall be lawful. The Portuguese Government can only agree to this addition if the problem to which it gives rise are solved.

Switzerland would prefer a more liberal definition, under which a work would be regarded as published when it has been lawfully published in a sufficient number of copies to be made available to the public.

The United Kingdom has proposed the substitution of the words "published with the consent of their authors" for the words "lawfully published."

Paragraph (6)

Czechoslovakia does not consider the proposed definition to be satisfactory and suggests that it be either deleted or redrafted, while to Germany (Fed. Rep.) and Italy this definition does not seem to be essential.

/Article 4, paragraph 6 - continued/

In addition, two countries have proposed formulae which seem to them to be preferable, namely:

Portugal : "The maker is the person or entity that undertakes and organizes the making of the work, assuming entire responsibility for its production, whether from the technical or the financial aspect" (Article 125 of the Portuguese Copyright Code).

United Kingdom: "The maker is the person or body corporate by whom the arrangements necessary for the making of the film are undertaken."

ARTICLE 5

Portugal has stated that it supports the proposed change, inasmuch as it is unable to agree to the proposed changes in Article 4.

Israel does not consider this Article to be comprehensive enough, and has therefore proposed the following text:

> "Authors who are nationals of one of the countries of the Union shall enjoy in the country of origin of their work the same rights as national authors even if they are not nationals of that country."

Switzerland considers that the amendments proposed by it in Article 4, paragraphs (1) and (4), would render the existing Article 5 superfluous.

ARTICLE 6

Paragraph (1)

No observations.

Paragraph (2)

Portugal has stated that it cannot agree to this proposal.

Some remarks have been made by the following countries:

Belgium: suggests replacing the concept of domicile by that of "habitual residence" (see also the identical observation made with regard to Article 4, paragraph (2)).

France : considers it preferable that the provisions concerning the maker of cinematographic works should be disjoined (see also the observation relating to Article 4, paragraph (4)).

Ireland: considers that the new provisions should allow the maker to be regarded as author.

In order to clarify the text, Israel has proposed the following wording:

"(2) Authors who are not nationals of one of the countries of the Union shall enjoy for their cinematographic works which are unpublished or if published are not entitled to enjoy any right for such works under this Convention by virtue of that publication, but the maker of which is a national of one of the countries of the Union, the same rights in that country as national authors and, in the other countries of the Union, the rights granted by this Convention."

In the opinion of the United Kingdom, it is necessary to add:

"Any country of the Union shall be free to treat the maker of a cinematographic work as its author."

/Article 6 - continued/

Paragraph (3)

Only one substantial observation has been made, by Ireland, which sees no need to make the proposed extension for the protection of works of architecture obligatory.

Paragraphs (4) to (6)

No observations.

ARTICLE 6bis

Paragraph (1)

Two countries have declared against this proposal:

Ireland, because moral rights are protected in that country under the common law; and

the United Kingdom, which sees no need to extend these controversial rights beyond the life of the author.

Paragraph (2)

Bulgaria has proposed the abolition of the term of protection defined by the words "at least until the expiry of the economic rights."

Portugal does not consider the wording of this paragraph to be entirely satisfactory, and has therefore proposed the following text:

> "After the death of the author, these rights shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed at least until the expiry of the economic rights."

Paragraph (3)

Portugal has proposed that this paragraph should provide that national legislation may exclude pecuniary compensation.

ARTICLE 7

Paragraph (1)

Bulgaria does not agree with the proposed term (see the suggestion made in that connection by Bulgaria under Article 7, paragraph (7)).

Similarly, Czechoslovakia has proposed that the term of fifty years should not be fixed in a mandatory manner in respect of all the categories of works protected.

On the other hand, Germany (Fed. Rep.) has adopted the suggestions for the determination of the extension of the term of protection by a special arrangement between the countries concerned.

Paragraph (2)

The proposed term seems to Portugal to be inadmissible; it has therefore suggested the following wording:

> "The term of protection for cinematographic works shall be fixed by national legislation in such a way as to allow a fair return on the investment made. This term shall begin from the first publication, public performance or visual broadcast, or, if these take place more than five years after the making of the work, from the making."

On the other hand, the United Kingdom would prefer to replace the words "after the first publication, public performance or broadcast" by the words "after the work has been made available to the public with the consent of the author."

Paragraph (3)

Israel has proposed that the second and third sentences be replaced by the following:

> "When the pseudonym adopted by the author leaves no doubt as to his identity or if the identity of the author of an anonymous or pseudonymous work is disclosed, the term of protection shall be that provided in paragraph (1)."

/Article 7, paragraph 3 - continued/

Portugal has pointed out that the formula "made available to the public" is too complicated, and has proposed that it be replaced by the words "divulged" or "communicated."

The United Kingdom has proposed that the words "lawfully made available to the public" be replaced by "made available to the public with the consent of the author."

New paragraph (3A)

The United Kingdom has proposed the addition, after paragraph (3), of a new paragraph to be worded as follows:

> "In respect of the collective works mentioned in Article 2(4), the term of protection shall be 50 years from the death of the author of such works."

Paragraph (4)

Denmark desires the deletion of the phrase "and that of works of applied arts in so far as they are protected as artistic works" - in accordance with the conception that works of applied art should be accorded the same legal status as other artistic works (see observations relating to Article 2, paragraph (6)).

Three countries have made observations concerning the term of protection:

Ireland considers that States should not be required to protect works of applied art for so long a term as that proposed.

Portugal takes the view that the term of 25 years is unduly long, and it proposes the same term (10 years) as that allowed under the Universal Copyright Convention.

The United Kingdom has proposed that the final phrase be replaced by the following:

> "However this term shall last at least
>
> (a) in respect of photographs, for 50 years from the making of the photograph,
>
> (b) in respect of works of applied art, for 15 years from the making of the work."

/Article 7 - continued/

Paragraph (5)

No observations.

Paragraph (5)(Brussels text)

Portugal is of the opinion that this paragraph should be maintained, with some changes in the wording if necessary.

Paragraph (6) and (7)

Israel has proposed combining these two paragraphs; the combined text would read:

> "The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs and that term shall be applied whenever protection is claimed in such country. However, such a country may provide that the term of protection for any work shall not exceed the term fixed in the country of origin of that work."

Paragraph (7)

Bulgaria has proposed a new wording, based on Article 7, paragraph (2), of the Rome text:

> "In all cases the term shall be governed by the law of the country where protection is claimed. It follows that the countries of the Union are bound to enforce the foregoing paragraphs to the extent that their national legislation permits. However, unless the legislation of such a country provides otherwise, the term shall not exceed that fixed in the country of origin of the work."

Another wording has been formulated by Switzerland, which has proposed the following text:

> "In any case, the term shall be governed by the law of the country where protection is claimed; however, this latter country may provide that the term shall not exceed the term fixed in the country of origin of the work."

ARTICLE 7bis

Israel considers that the present text is to be preferred.

South Africa has proposed the addition of the following clause: "provided he is a national of a country of the Union."

ARTICLE 8

Israel has suggested that the following be added at the end of the text:

> "Translation shall be authorized in all cases where reproduction of the works is permitted under this Convention to the extent and for the purposes of such reproduction."

Portugal has proposed that the provision contained in Article V of the Universal Copyright Convention, which is reproduced in sub-paragraph (a) of Article 1 of the Draft Protocol Regarding Developing Countries, should be included in the actual text of Article 8.

ARTICLE 9

Paragraph (1)

Austria thinks that it would be advisable to define "reproduction" in the sense of Article 28 of the French law of 1957.

Belgium considers that it would be desirable to insert a provision maintaining the application of the reservations stipulated in Articles 2bis, 10, 10bis, 11bis, paragraph (3), and 13, paragraph (2).

Germany (Fed. Rep.) has proposed the insertion, after the words "their works" of the following phrase: "including the recording of such works by instruments capable of reproducing them mechanically."

It is the understanding of Israel that "reproduction" includes reproduction by the various mechanical means available.

Italy considers that the reference to the right of reproduction should be accompanied by a reference to the right of distribution.

South Africa has proposed the insertion of the words "subject to the other provisions of this Convention."

The United Kingdom has proposed that this paragraph be amended to read as follows:

> "Authors of literary and artistic works shall have the exclusive right of authorizing the reproduction of such works, or any substantial parts thereof, in any manner or form."

On the other hand, the Governments of Ireland and Portugal have stated that they cannot agree to the proposed text.

Paragraph (2)

Belgium considers that a more restrictive formula should be sought for sub-paragraph (c).

/Article 9, paragraph (2) - continued/

Czechoslovakia recommends that the draft Convention should include again Article 3, which would specify the rights mentioned in the Convention in respect of which private use is permitted beside the rights of reproduction.

Denmark is prepared to support proposals which would lead to a more precise formulation and a restriction of the exceptions provided for under (a) and (b).

In the opinion of Germany (Fed. Rep.), it would be desirable to delimit the reservation concerning private use (sub-paragraph (a)) so as to avoid too great an interference with the interests of the author. In the event of doubts being expressed with regard to the interpretation of the reservation provided in sub-paragraph (c) as far as its compatibility with the German law is concerned, Germany (Fed. Rep.) would like to see the text of that provision clarified by the following wording:

> "(c) in certain particular cases where the permission does not conflict with a normal exploitation of the work or with the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority, and where the permission is not contrary to the legitimate interests of the author."

In the event of this point of view not being approved, the Government of the Federal Republic of Germany would find itself obliged to oppose the deletion of the present Article 9(2).

Israel has suggested that a general provision should replace sub-paragraphs (a), (b) and (c) in the following form:

> "It shall be a matter for legislation in the countries of the Union to permit reproduction, if the reproduction is not contrary to or in conflict with the normal exploitation of the work by the author in the country concerned provided that where normal exploitation is restricted by administrative regulation, the user of the copyright material should be under the duty to make compensation to the author."

Italy has suggested that in sub-paragraph (a) the term "private use" should be replaced by "personal use," and that in sub-paragraph (c) "special cases" should be replaced by "exceptional cases."

/Article 9, paragraph (2) - continued/

Japan agrees to the proposal concerning the general right of reproduction, on the understanding that proposed paragraph (2) does not reject the possibility of allowing various exceptions already recognized in domestic laws.

South Africa considers that the use of words attached to a musical work should also be subject to a compulsory licence, or that local legislation should be permitted to provide for it.

The United Kingdom has proposed that this paragraph be amended to read:

> "It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works or substantial parts thereof in certain special cases where the reproduction does not unreasonably prejudice the legitimate interests of the author and does not conflict with a normal exploitation of the work."

Lastly, Ireland and Portugal have stated that they cannot agree to the proposed change.

New paragraph (3)

Austria considers it desirable to add to Article 9 a paragraph (3), proposed by the International Federation of Musicians, namely:

> "It shall also be a matter for legislation in the countries of the Union to subject the exercise of that right to conditions ensuring that, when a musical or dramatico-musical work has been published with the authorization of the author thereof, the graphic copies of the work be made accessible to the public without improper restrictions."

ARTICLES 9 and 10 (common observation)

France has proposed, for Articles 9 and 10, the following wording:

Article 9

"Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form."

Article 10

"(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works:

(a) for individual or family use;

(b) for judicial or administrative purposes;

(c) in certain particular cases where the reproduction is not contrary to the legitimate interests of the author and does not conflict with a normal exploitation of the work.

(2) It shall be permissible to make short quotations from a work which has already been lawfully made available to the public, provided that they are compatible with fair practice, and to the extent justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(3) It shall be a matter for legislation in the countries of the Union, and for special Agreements existing or to be concluded between them, to permit, to the extent justified by the purpose, borrowings from literary or artistic works for use in publications intended for teaching or having a scientific character or in chrestomathies.

(4) Quotations and borrowings shall be accompanied by an acknowledgement of the source and by the name of the author, if his name appears thereon."

ARTICLE 10

Paragraph (1)

Israel feels that it is not clear whether the retention of the existing words at the end of the sentence in this paragraph is intended to extend the scope of the provision beyond that which is already covered by the words proposed to be added.

Italy considers that, if it is decided to delete the word "short", there should at least be an express indication of the purposes.

In the view of Japan, if the present provisions are to be amended as proposed, the last phrase "including quotations from newspaper articles and periodicals in the form of press summaries" should be deleted as unnecessary.

Switzerland considers that the condition expressed in the words "to the extent justified by the purpose".is not sufficiently restrictive, and has proposed the following wording:

> ".... provided that they are compatible with fair practice and to the extent that they serve as an explanation, reference or illustration in the context in which they are used, including quotations from newspaper articles....".

Paragraph (2)

The three following countries have made remarks concerning the present text of this paragraph:

Israel has proposed that the paragraph be worded as follows:

> "It shall be a matter for legislation in the countries of the Union to permit or to regulate, to the extent justified by the purpose, borrowings from literary or artistic works for use in publications intended for teaching or having a scientific character or in chrestomathies."

/Article 10, paragraph (2) - continued/

Japan has suggested that the following provision (amended text of present Article 9(2)) be added to it:

"Articles on current economic, political or religious topics may be reproduced by the press or be broadcast unless the reproduction or the broadcasting thereof is expressly reserved; nevertheless, the source must always be clearly indicated. The legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed."

The United Kingdom has proposed that, in the English text, the word "borrowings" be replaced by the word "excerpts".

Paragraph (3)

No observations.

ARTICLE 10bis

Two observations of a general nature have been made by Ireland and Luxembourg, which feel that the wording of this Article needs clarification.

Switzerland has suggested that the words "communicate to the public" should be replaced by a wider term which would include all the processes by which the work is made accessible to the public.

ARTICLE 11

Paragraph (1)

Germany (Fed. Rep.) proposes to add, under (i):

"including the public performance of such works by means of instruments capable of reproducing them mechanically".

Portugal, on the other hand, has proposed that the present text be maintained in full.

Paragraph (2)

Only one observation has been made on the subject of this paragraph - by Germany (Fed. Rep.), which considers this provision to be superfluous since it merely contains a ruling which takes up a general principle already established in Article 8.

ARTICLES 11 and 11bis (common observation)

Israel holds the view that these two Articles must be made subject to the proviso that nothing therein contained shall prejudice the right of any country to control and regulate trade restrictive and monopoly practices.

ARTICLE 11bis

Paragraph (1)

Only one country - the United Kingdom - has made an observation regarding this paragraph; it has proposed that sub-paragraph (ii) be amended to read:

> "any communication to the public by wire or by rebroadcasting of the broadcast of a work, when this communication is made (a) in a country of the Union other than that in which the broadcast was made, (b) by a body other than that which broadcast the work, and (c) to an audience not contemplated by the body which broadcast the work".

Paragraph (2)

No observations.

Paragraph (3)

Five countries (Ireland, Japan, Luxembourg, Portugal and the United Kingdom) have made observations to the effect that national legislation should not be prevented by the Convention from allowing broadcasting organizations to employ others to make their ephemeral recordings.

Japan has proposed that the words "by means of its own facilities and used for its own broadcasts" be replaced by the words "as a mere technical means for the use of the broadcasts made with permission".

Luxembourg has suggested the following formula: "made by or for broadcasting organizations".

In the opinion of Portugal, it might be said that the recordings could be made "for their own broadcasts and those of analogous organizations, existing in the same country, with which they co-operate".

/Article 11bis, paragraph (3) - continued/

The United Kingdom has proposed that the first two sentences be replaced by the following:

> "In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to reproduce, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the conditions under which ephemeral recordings may be made by or at the request of a broadcasting organization for use in its own broadcasts, when, for technical or other reasons, the broadcast cannot be made at the time of the performance of the work."

ARTICLE 11ter

An observation has been made by Germany (Fed. Rep.), which has proposed the following wording:

"Subject to the provisions of Article 11bis, the authors of literary works shall enjoy the exclusive right of authorizing:

(i) the public recitation of their works including the public recitation of these works by means of instruments capable of reproducing them mechanically;

(ii) any communication to the public of the recitation of their works."

Similarly, Switzerland is of the opinion that it would be only fair that the authors of literary works should have the right to authorize the communication of recitations of their works to the public by wire.

ARTICLE 12

The only observation - made by Germany (Fed. Rep.) - bears on a point of drafting: it is proposed to delete the word "scientific".

ARTICLE 13

Paragraph (1)

Four countries (Austria, Belgium, Germany (Fed. Rep.) and the United Kingdom) have expressed the opinion that there is a need for clarification in regard to musical works with or without words. Germany (Fed. Rep.) has proposed the addition of the words "with or without words" after the words "authors of musical works". Moreover, the United Kingdom has proposed that the words "of authorizing the recording of such works by instruments capable of reproducing them mechanically" be replaced by:

> "of authorizing the reproduction of such works including any words intended by their author to be performed with them, on instruments by means of which they can be performed".

Czechoslovakia is of the opinion that it would be more effectual if Article 9 dealt specially with publication by means of printing and Article 13 with the recording of protected works and the multiplication of such mechanical recordings - expressly covering literary works as well.

Israel considers that the provisions of this paragraph should extend to "all works usually recorded" or to the other categories of works mentioned in Article 11(1).

South Africa has reserved its position in regard to the performance of the works in question.

Lastly, two countries have refused to agree to the proposed text :

Japan has suggested retaining the present provisions (Brussels text), subject to the deletion of point (ii).

Portugal agrees neither to the deletion of present paragraph (1) nor to the proposed alterations in the wording.

Paragraph (2)

Three observations have been made concerning this paragraph.

Austria proposes that the limit for the transitional period be set at 31 December 1970.

/Article 13, paragraph (2) - continued/

Germany (Fed. Rep.) considers it necessary to extend this provision likewise to words accompanying musical works. It is therefore proposed that this paragraph be worded as follows:

> "(2) Recordings of musical works with or without words made in a country of the Union in accordance with Article 13, paragraph (3), of the Convention signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of these works until December 31, 19..."

Israel is of the opinion that this paragraph should appear among the transitional provisions.

Paragraph (3)

Belgium considers that this paragraph should undoubtedly be amplified, so as to cover not only recordings but, as in the first two paragraphs, reproductions as well.

Israel has proposed that the words "where they are treated as infringing recordings" be replaced by the words "which does not exercise its powers under paragraph (1)".

South Africa has suggested that the words "where they are treated as infringing recordings shall be liable to seizure" be replaced by:

> "where they are not lawfully introduced shall be treated as infringing copies and liable to seizure".

ARTICLE 14

Czechoslovakia has stated that the position finally adopted by it will be submitted by the Czechoslovak Delegation at Stockholm.

Paragraph (1)

Four countries have made observations concerning the scope and wording of this paragraph.

/Article 14, paragraph (1) - continued/

Austria considers that the word "scientific", at the beginning of the first phrase, should be deleted.

In the opinion of Belgium, it would be advisable to stipulate that the exclusive right of authorizing the cinematographic adaptation and reproduction of works is not subject to the reservations and conditions referred to in Article 13, paragraph (1), as proposed; on the other hand, it must be clearly understood that this right remains subject to the reservations and conditions provided for in Article 11bis.

Germany (Fed. Rep.) has proposed the following wording:

"Authors of literary or artistic works shall have the exclusive right of authorizing:

(i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;

(ii) the public performance, communication to the public by wire, broadcasting, and any other communication to the public, of the works thus adapted or reproduced.

The provisions of Article 11bis, paragraph (2), and of Article 13, paragraph (1), shall not apply; however, the application of Article 11bis, paragraph (3), shall be reserved."

To the Government of Israel it seems necessary to make this paragraph subject to the provisions of Article 10bis.

On the other hand, Portugal is in favour of maintaining the present paragraph (4).

Paragraph (2)

Austria takes the view that, in accepting the proposals for revision, it will have the right to maintain the regulation obtaining under Austrian law, according to which the rights of utilization of cinematographic works made professionally belong to the head of the undertaking - that is to say, to the maker of the film.

/Article 14, paragraph (2) - continued/

Israel has suggested that it be left to the country in which protection is sought to determine according to its own legal principles whether the "author" or the "maker", as the case may be, has copyright. This paragraph would accordingly read as follows:

> "The maker of the cinematographic work shall be considered as the author thereof. Countries of the Union may, however, by their own legislation provide that the copyright in the cinematographic work shall be vested in other authors who have participated and contributed in the creation of the cinematographic work provided that such provision shall apply only in such countries and to cinematographic works of which the country of origin also so provides."

Paragraph (3)

Israel observes that it is unnecessary to include the word "scientific" in this paragraph.

Paragraph (4)

Belgium, Germany (Fed. Rep.) and Portugal propose the deletion of the words (in the first sub-paragraph) "fixed in some material form".

Belgium, Luxembourg, Portugal and South Africa are of the opinion that the words "in the manner prescribed by the legislation of the country of origin of the cinematographic work" should also be deleted, because they are superfluous.

Austria points out that these provisions would seem to constitute a source of difficulty, as the member State which will be the country of origin by virtue of publication is not fixed beforehand and as, moreover, the country of origin will generally change.

Israel considers that, to be consistent with the suggestion in respect of paragraph (2), this paragraph should be introduced by the words:

> "Where under the legislation of the country in which protection is sought the maker is not considered the author of the work then the following rules shall apply... (followed by the terms of the proposed paragraph)."

/Article 14, paragraph (4) - continued/

With regard to the second sub-paragraph, Belgium, Luxembourg and South Africa are of the opinion that it should be omitted.

On the other hand, France takes the view that a written instrument is indispensable in the common interest of the authors and the maker. The French Government, after stating that it is unable to accept the proposed wording, has proposed that paragraph (4) be worded as follows:

> "However, and on condition that a written agreement exists between the maker and the authors authorizing the adaptation and reproduction of the pre-existing work or undertaking to bring literary or artistic contributions to the making of the cinematographic work in accordance with the legislation of the country of origin, such authors may not, in the absence of any contrary or special stipulation, object to its cinematographic and televisual exploitation by wire or by broadcasting, provided that the conditions specified in such agreements are complied with in full.
>
> By 'contrary or special stipulation' is meant any restrictive condition agreed between the maker and the persons mentioned above."

Germany (Fed. Rep.) gives the following interpretation:

The right granted to the countries of the Union by virtue of the second sub-paragraph to provide that the authorization or undertaking referred to in the first sub-paragraph shall be given by a written agreement or something having the same force, should, in the view of the German Government, relate solely to cinematographic works of which the country in question is the country of origin.

Japan has stated that it is not agreable for it, in spite of the proposed provisions of paragraph (7), that such rule of interpretation should be made in the Convention concerning agreements between the authors who authorize to make a cinematographic adaptation and reproduction of their pre-existing works and the makers of cinematographic works.

Lastly, Switzerland considers that this interference by international legislation in the legislations of the States of the Union, which occurs nowhere else in the Berne Convention, should be studied with great care at the revision conference.

/Article 14, paragraph (4) - continued/...

Furthermore, the interpretative clause, such as it is now drafted, appears to it to give rise to some uncertainty as to its legal effects.

Paragraph (5)

Four countries (Belgium, Portugal, South Africa and Switzerland) have expressed the opinion that this paragraph should be deleted, as being superfluous.

Paragraph (6)

Belgium thinks that it would be useful to provide for the case in which the rights in a musical work are handled by the composer himself (and not by a society - which justifies the preferential treatment accorded to the authors of musical works).

Israel considers that, in respect of musical works, the rights must be limited to the matter of royalties which the authors are entitled to receive; an impossible situation may otherwise be created. The Israeli Government has therefore proposed that this paragraph should be in the following form:

> "Unless national legislation provides otherwise, the provisions of this Article shall not exclude the right of the author of musical works to receive equitable remuneration for the public performance, communication to the public by wire, broadcasting, any other communication to the public, of such musical works, with or without words, used in the cinematographic work, to be determined by mutual agreement with the maker or author of the cinematographic work or, failing such agreement, by a competent authority."

On the other hand, Luxembourg, Portugal and South Africa take the view that this paragraph should be deleted. The Portuguese Government expresses the opinion that it would seem preferable to insert a rule similar to that contained in Article 132 of the Portuguese Copyright Code, namely:

> "The authors of the literary part and the musical part of a cinematographic work may reproduce them and use

/Article 14, paragraph (6) - continued/

them separately in any manner, so long as this is not prejudicial to the exploitation of the work as a whole."

Paragraph (7)

Belgium points out that this paragraph will be the object of severe criticism in that it implies that pre-existing works are subject to the rule of interpretation. In its view, the difficulty arises from the fact that scenarios and dialogues are intended to be regarded as pre-existing works. A solution would be to specify in the Convention that scenarios and dialogues are to be considered as modern works. On this understanding, pre-existing works could be excluded from the operation of the rule of interpretation.

Germany (Fed. Rep.) has suggested the deletion, in the first sub-paragraph, of the word "scientific".

Israel considers this paragraph to be superfluous, in view of the previous proposals made by the Israeli Government.

Three countries (Italy, Japan and the United Kingdom) have raised doubts regarding the need to create any presumption whatsoever in favour of the maker of a cinematographic work in countries which apply the "film copyright" or the "legal assignment" system.

Italy thinks it necessary to reproduce the provision contained in Alternative B, paragraph (7), of the draft prepared by the 1965 Committee of Governmental Experts.

Japan likewise considers that there should be an express provision in the Convention that the rule of interpretation in this Convention shall not preclude countries which apply the systems of film copyright and legal assignment from retaining these systems (for example, provisions similar to paragraphs (6) and (7) of Article 14 of Alternative B, proposed by the Study Group).

/Article 14, paragraph (7) - continued/

The United Kingdom has proposed that this paragraph be amended to read:

> "The provisions of paragraph (4) of this Article shall not apply in countries whose laws grant copyright in a cinematographic work to its maker."

It has added that it cannot agree that its law should contain any presumptions in favour of film makers.

Lastly, Luxembourg and Portugal have pointed out that the right granted by this paragraph deprives of security a system which has been proposed precisely for reasons of security, and endangers the entire structure built up by the experts; consequently, the paragraph should be deleted.

New paragraph (8)

Luxembourg and South Africa have proposed the addition of a new paragraph (8), the text of which would be that already suggested by the European Broadcasting Union:

> "Without prejudice to Article 6bis and in the absence of any contrary stipulation, the authors referred to in paragraph (4) above may not oppose alterations that are indispensable to the exploitation of the cinematographic work."

Their opinion is shared by Switzerland, which has proposed to introduce the following provision, preferably in proximity to paragraph (4):

> "The authors referred to in paragraph (4), sub-paragraph 1, may not, in the absence of any contrary or special stipulation, object to such modifications of the cinematographic work as may be essential to its production and exploitation, provided that such modifications are compatible with Article 6bis, paragraph (1)".

ARTICLE 14bis

Paragraph (1)

No observations.

Paragraph (2)

Germany (Fed. Rep.) has suggested that domicile should also be considered as a criterion of eligibility, and that this provision should be worded as follows:

"(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country of which the author is a national or in which he has his domicile so permits, and to the extent permitted by the country where this protection is claimed."

Paragraph (3)

No observations.

ARTICLE 15

Paragraphs (1) and (2)

No observations.

ARTICLE 16

Paragraphs (1) to (3)

No observations.

ARTICLE 17

The United Kingdom considers that, in this Article, the position should be clarified by the deletion of the words "to permit".

It has also proposed the insertion in the Article of a new paragraph in the following terms:

> "(2) Each country of the Union is free to enact such legislation as is necessary to prevent or deal with any abuse, by persons or organizations exercising one or more of the rights in a substantial number of different copyright works, of the monopoly position they enjoy."

ARTICLE 18

Paragraphs (1) to (4)

No observations.

ARTICLE 19

No observations.

ARTICLE 20

No observations.

PROTOCOL REGARDING DEVELOPING COUNTRIES

General observations

France agrees to the principle of a Protocol but feels that this would only be conceivable in the conditions specified hereafter.

In its view, the system of protection should on the whole be on an appreciably higher level than that of the Universal Copyright Convention.

Ireland has stated that it is unable to put forward a final view at this stage.

Portugal, having declared in favour of the deletion of sub-paragraphs (a) and (c) (see the observations made by Portugal on Article 8 and 9), does not understand why the remaining three sub-paragraphs have their place in a separate Protocol.

South Africa has reserved its position and stated that it will formulate its views after the discussions at Stockholm.

The United Kingdom has stated that, if it is the wish of the great majority of the member countries to provide for the possibility of membership of the Berne Union by developing countries on less onerous terms than those accepted by existing members, it would be prepared to assist in formulating a Protocol which makes this possible. It believes, however, that the terms of the Protocol now proposed go too far in some respects; it accordingly suggests the amendments specified hereafter.

The United Kingdom Government is also of the opinion that, if a Protocol is adopted, it should be made clear, in Article 20, that, in considering whether any given provision in a special Agreement is "contrary to this Convention", the Protocol shall be disregarded.

Article 1, preamble

Bulgaria considers that all the member countries of the Union should be allowed the possibility, when ratifying the substantive provisions of the Convention (Articles 1 to 20), of making the reservations now provided in the Protocol Regarding Developing Countries.

With regard to the duration of the reservations, the Bulgarian Government has proposed the deletion of the phrase "for a period of the first ten years during which it is a party thereto".

Czechoslovakia also feels that the proposed period of ten years is too short.

France considers that the developing countries should be defined; the following criterion is suggested: "Any developing country which, as an independent and sovereign State, has acceded to the Union or has confirmed its accession thereto since the 1st July 1951."

Italy has likewise suggested the adoption of objective criteria for uniformly determining the countries entitled to avail themselves of the reservations provided in the Protocol.

The United Kingdom has proposed substitution by the following:

> "Any developing country which, having regard to the state of its cultural and economic needs, does not consider it is in a position to make provision for the protection of all the rights provided for in this Act, may, with the prior agreement of the Executive Committee of the Berne Union, notify (etc.)."

Article 1 (a)

Three countries (Bulgaria, Czechoslovakia, Turkey) feel that the system proposed is less advantageous than that provided by Article 25, paragraph (3), of the Brussels text. The Turkish Government considers it essential to allow the countries in question at least to choose between the two systems.

Denmark has proposed the insertion, in the fourth sub-paragraph, after the words "The original title", of the words "the year of the first publication".

In the opinion of France, it would be preferable to increase the period mentioned of seven years to ten.

Portugal has proposed the deletion of this paragraph (see its observation on Article 8).

Article 1 (b)

Bulgaria considers that, in the event of its proposed amendment to Article 7, paragraph (7), being accepted, this paragraph of the Protocol should be deleted, as being unnecessary.

In the opinion of France, it would be preferable to increase the period mentioned of 25 years to 30.

Article 1 (c)

Japan considers that this paragraph of the Protocol should be deleted, as a consequence of its proposal to retain a provision similar to the existing provision of Article 9, paragraph (2), of the Brussels Act (see the observation made by the Japanese Government concerning Article 10, paragraph (2)).

Portugal has likewise proposed the deletion of this paragraph (see its observations on Article 9).

Article 1 (d)

The United Kingdom has proposed that the following be added, at the end:

> "This paragraph shall not apply so as to permit the performance in public for profit-making purposes, otherwise than on payment of equitable remuneration, fixed, in the absence of agreement, by competent authority, of broadcasts of literary and artistic works."

Article 1 (c) and (d)

Israel has brought forward a technical suggestion, namely that the terms of the relevant paragraphs mentioned in Article 1 (c) and (d) of the Protocol should be reproduced in full or in such other manner as to obviate the need to refer back to two other documents.

Article 1 (e)

France could not in any case accept the reservation proposed in this paragraph; it might possibly consider maintaining in the Protocol a reservation couched in the following terms:

> "(e) reserve the right to restrict, to the extent justified by the purpose, the protection of literary and artistic works when their utilization is intended for the exclusive use of scholastic or educational institutions in connection with their pedagogical activities."

The United Kingdom suggests that this paragraph be deleted.

Article 2

Bulgaria has proposed the deletion of the mention, made in this Article, of the period of ten years.

Czechoslovakia likewise considers that the period mentioned is too short.

ADDITIONAL PROTOCOL CONCERNING THE
PROTECTION OF THE WORKS OF
STATELESS PERSONS AND REFUGEES

The only country that has made an observation concerning this Protocol is Portugal, which refuses to admit this new extension of the field of application of the Convention.

ADDITIONAL PROTOCOL CONCERNING THE APPLICATION OF THE CONVENTION TO THE WORKS OF CERTAIN INTERNATIONAL ORGANIZATIONS

Germany (Fed. Rep.) considers that a general reference to the provisions of Articles 4, 5 and 6 of the Convention is lacking in clarity, and suggests that the proposed text be revised.

The observations made by three countries relate to the question of the extension of the protection provided by this Protocol to international organizations other than the United Nations and its Specialized Agencies.

Belgium considers that the Protocol should be made applicable to works first published by the Council of Europe.

In the view of France, it seems difficult to consider extending the protection of literary works to all international organizations.

It therefore appears to it desirable:

(1) to determine the criteria according to which this right would be conferred on such organizations;

(2) to specify the works to which the protection would apply;

(3) to study the possible effects in this connection of the immunity from jurisdiction which is enjoyed by the majority of international organizations.

In view of the complexity of the question, the French Government considers that the proposed text should be the subject of a detailed examination, which might be entrusted by the Stockholm Conference to a special committee whose proposals would be submitted to the next Revision Conference.

Italy, for its part, requests that the further consideration of the draft Protocol should not be limited solely to the case of the United Nations and the Specialized Agencies but should cover all international organizations, and in particular EEC, EURATOM and ECSC.

Luxembourg has made an observation to the same effect, specifying that the Protocol should provide for the protection of works published by the intergovernmental organizations, including in particular the European Communities and other European international organizations.

Lastly, Portugal refuses to admit this new extension of the field of application of the Convention.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/19
Subject (Union): All Unions
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INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PORTUGAL

REPLIES OF THE PORTUGUESE GOVERNMENT TO THE PROPOSALS CONTAINED IN DOCUMENTS S/9, S/10 AND S/11

The Portuguese Government, having considered attentively the proposals presented by BIRPI in the above-mentioned documents, ventures to express some apprehension with regard to them.

The BERNE UNION, like the other Unions administered by BIRPI, is at present an administrative union of the conventional type. It has a rudimentary organization which must be improved, but which, nevertheless, has hitherto functioned satisfactorily. The proposals now submitted are intended to replace it, without any necessity for this, by a structure which is sometimes very complex, whose objectives are over-ambitious, and which might become far more costly. The Portuguese Government thinks that this radical transformation is not justified.

We shall begin by analysing document S/10.

DOCUMENT S/10

The Portuguese Government cannot agree to the proposal to set up a new international organization.

Article 3 (1) of the Proposed Convention indicates the persons who would be protected by this Organization. The inclusion among such persons of "scientists having made discoveries" and "performing artists, producers of phonograms and broadcasting organizations" immediately gives rise to reservations. Such persons have hitherto been outside the Unions; as regards the second category, it must be pointed out that their interests differ quite frequently from those of authors. What guarantees of authenticity are given by a protection which broadcasting organizations, for example, do not claim, and which is to be given concrete form to a very large extent through the Unions, that is to say, through entities with very different aims?

If, after aims, we consider the functions enumerated in Article 3 (2), we think we can discern the following picture:

(1) The Organization is entrusted with the administrative tasks of the existing Unions and may assume the administration of similar bodies ((i) and (ii)).

(2) The Organization is to promote the protection of intellectual property throughout the world ((iii) to (viii)).

As regards the first objective, the intervention of the Organization seems to us quite unnecessary. The administration of the Unions needs some adjustments, in particular to establish co-ordination between them and to ensure more active intervention of Members; we shall speak of these adjustments with reference to document S/9, but we may say here and now that they can be achieved in full without the institution of the Organization.

The objectives relating to the promotion of the protection of "intellectual property," were not foreign to the Unions, but their extent was limited; it may be supposed that action can be extended by improving the structure of the Unions. This is one thing, but it is quite another to want to set up a World Organization with ambitious aims competing with existing Organizations and which will certainly be very costly. The traditional framework of the Conventions will thus be disturbed without there being any pressing necessity that we can see for setting up such an institution.

The Portuguese Government also has to express most serious reservations with regard to financing.

It is proposed that the principal source of income be the "voluntary contributions" of the Paris and Berne Unions (document S/12, paragraph (7)).

The Portuguese Government cannot fail to draw attention to the illegality of such a proposal. The receipts of the Union must be used for carrying out the objectives of the Unions and not for sometimes very different purposes, as those of the Organization would be. It has been stressed that each country of the Union would accede to the Organization only if it so desired; it has also been specified that the last ties between membership of the Union and membership of the Organization (document S/9, paragraph (14)) were severed -- but in reality one is taking on one side in order to give on another, by making those who have not acceded to the Organization pay for its functioning. The only position which seems satisfactory is to apportion the liabilities of the Organization among the countries which have acceded to it.

Turning to another general question, the Portuguese Government wishes to make the following comments in regard to the status of Associate Members:

The intention is obviously to attract new countries, even where the legislation of those countries does not provide adequate protection for copyright; there would seem to be a tendency, if we may say so, toward a kind of formal integration of those countries in the Union. Thus, they are even being given the right to vote in the Organization. In order to minimize the ill effects of such a solution, it has been suggested that a distinction should be drawn between Full Members and Associate Members, at the cost of duplicating the central organs of the new institution.

The Portuguese Government considers that this idea, ingenious though it is, is not satisfactory. It is undesirable, in order to attract new countries, to give them the right to vote and to duplicate the organs of the institution. A more satisfactory solution would be to take account of the circumstances of these countries by making the Convention sufficiently flexible to enable them to accede to it. An attempt has been made to do this, though only hesitantly, in the case of the Protocol regarding developing countries.

The Portuguese Government considers that if a decision is reached, after all, on the establishment of the Organization, the status of "Associate Members" should then at least be revised. An organization in which some members, who are not required to protect the institutions with which the organization is concerned, still have the right not only to receive technical assistance, but also to take part in discussions and to vote, must be regarded as an anomaly. Associate Members ought rather to be placed in the category of simple observers, although the title of Associate Members might be maintained. They would then be permanent observers, entitled to take part in the discussion of some or all subjects, but without the right to vote. In this way, it would be made easier for them to be associated with the Convention, without this forming any obstacle to their receiving full technical assistance. In addition, it should be expressly provided that assistance could be given to countries outside the Unions and the Organization.

Thus, the point to which reference has just been made would blur the distinction between the General Assembly and the Conference; we should be left with only a General Assembly.

But even supposing that there were no objection to the Organization's being set up with this duality in its governing organs, it would not be acceptable to give to the Conference the extensive voting rights which are suggested, particularly in regard to the preparation of the program of assistance and the adoption of the budget (see Article 7 (2) (a) (ii) and (iii)).

Such, then, are the reasons which make it impossible for the Portuguese Government to approve the proposal for the establishment of a new Organization. In spite of the position which it has adopted, the Portuguese Government submits certain very brief observations on the specific points set out below.

PREAMBLE

The Portuguese Government merely wishes to refer to the objective: "to promote the protection of intellectual property throughout the world." There is a danger that this phrase may set the seal of approval on an ambiguity which may well have been the cause of certain difficulties in the past. When States join together in a Union, they do so with the intention of giving protection, without discrimination, to those persons who have rights in intellectual assets and those who make use of these assets, since the object is to promote the improvement of international regulations concerning rights in intellectual assets and not merely the protection of intellectual property; this conclusion is not adeequately expressed in the phrase mentioned above.

ARTICLE 1

Establishment and Organs

The Portuguese Government has reservations to make with regard to the expression "Intellectual Property" included in the title of the Organization. There is at present considerable dispute as to whether these rights can be described as "property", and the expression is not in universal usage (see paragraph 34 of the Commentary); it would therefore seem that this description should be rejected. The Portuguese Government is aware of the difficulty of finding a new expression but thinks that it would be preferable to try to insist on the use of a term which is technically correct, for instance, by speaking of an "International Organization for Rights in Intellectual Assets". or, quite simply, of an "Intellectual Right" or "Intellectual Rights".

ARTICLE 6

General Assembly

The Portuguese Government fears that the quorum of one-third of the Members (paragraph (3) (b)) is too small and considers that a quorum of at least one-half which is customary in other international organizations would afford greater security, especially in cases where a qualified majority is required.

No reason is seen for requiring a qualified majority of two-thirds for such a routine matter as the invitation of observers (paragraph (3) (d) (iii)).

The Portuguese Government suggests that the Assembly should meet in ordinary session once in every fourth calendar year, as a shorter interval does not appear necessary, and it is also suggested that the term of appointment of the Director General should coincide with this period of four years.

We shall return to these points in our observations regarding the General Assembly of the Berne Union.

ARTICLE 7

Conference

Apart from what was said at the beginning, it appears to the Portuguese Government inconsistent to entrust essentially the task of "promoting the protection of intellectual property throughout the world" to an organ the members of which (Associate Members) are not committed to the protection of intellectual property.

The distinction (paragraph (2) (b)) between an "Industrial Property Conference" and a "Copyright Conference" would not only be pointless but would also complicate further a structure which is already too complex.

As regards the quorum (paragraph (3) (b)) and invitations to observers (paragraph (3) (e)), reference is made to what was said on this subject concerning the General Assembly.

ARTICLE 8

Coordination Committee

The Portuguese Government fears that the composition of the organ referred to here is insufficient and considers that it might perhaps be appropriate to establish a maximum number of representatives from every source.

It would also be appropriate to clarify paragraph (2) so as to remove all doubts regarding the impossibility of increasing the number of members of the Co-ordination Committee by this means.

ARTICLE 9

International Bureau

The Portuguese Government considers that the length of the term of appointment of the Director General is anomalous, in spite of the explanations given in paragraph 78 of the Commentary. It is not, in fact, very well understood for what reason this initial period of appointment, which should be of an experimental character, should be for a fixed term of not less than six years while the other periods could be of shorter duration. It would perhaps be desirable that the period of appointment should always be four years, so that it would correspond to the proposed frequency of ordinary

meetings of the Assembly which elects the Director General. Such a solution would presuppose the existence of a rule for the temporary occupation of the post whenever it became vacant, as has already been contemplated in Article 8 (3).

Paragraph (6) does not make it clear what is meant by the "approval" of the Coordination Committee necessary for the appointment of Deputy Directors General. It would, therefore, be necessary to know whether it is a question of a ratification of an appointment already made or a condition of such appointment. In the latter case, recourse might be had, mutatis mutandis, to the system provided in Article 8 (3) (v).

ARTICLE 10

Finances

The criteria governing the apportionment of expenses and income as specified in paragraphs (1) (c) and (3) (b) are so vague as to make differences in interpretation and application inevitable. The apportionment criterion should at least be indicated in the case where the interest of these two bodies is identical. Otherwise reference is made to the observations of the Portuguese Government regarding the proposed Article 22 of the Berne Convention.

ARTICLE 11

Legal Capacity, Privileges, and Immunities

The wording of paragraph (1) is not particularly felicitous, as the expression "on the territory of each Member State" might be interpreted as a quality of sovereignty or extra-territoriality where simply legal capacity is involved. The Portuguese Government proposes the following wording: "Each Member State shall afford the Organization, in accordance with its own laws, legal capacity, etc.".

It would be preferable that the Headquarters Agreement should, in view of its importance, be submitted to the Assembly and not to the Coordination Committee (paragraph (4)).

ARTICLE 13

Amendments

The Portuguese Government considers that the simple majority for amendments to the Convention is unjustified. In actual fact, this rule, although modified by the requirement that such amendments should previously have been adopted by the Assemblies of the Paris Union and the Berne Union nevertheless allows the most important provisions, such as that governing the objectives of the Organization and the statutes of its Members or organs, to remain at the mercy of contingent majorities.

ARTICLE 14

Becoming party to the Convention;
Entry into force of the Convention

The Portuguese Government does not consider it logical that a State party to the Paris Convention, the Berne Convention, or both, may become a party to the present Convention only if it concurrently ratifies or accedes to either the Stockholm Act of the Paris Convention or of the Berne Convention, whereas the other States, even if intellectual rights are not protected under their legislation, may become party to this Convention without any restriction.

ARTICLE 18

Final Provisions

The Portuguese Government requests that immediate provision be made for the establishment of a text in Portuguese. This request is justified by the fact that Portuguese is a more international language and is spoken by more people in the world than some of the languages specified in paragraphs (1) and (2). It will also be recalled that Portuguese is included in Article 31 of the Berne Convention and therefore no reason exists to justify its omission from an instrument which, like the present Convention, is intended to be of a universal character.

ARTICLE 19

Transitional Provisions

There is one point in the text which is not very clear. It is not very well understood why, as regards the Bureau of the Paris Union, the rights, obligations, and property should devolve on the International Bureau, while in the case of the Bureau of the Berne Union only the rights and obligations so devolve.

DOCUMENT S/9

In relation to the Proposals for Revising the Administrative Provisions and the Final Clauses of the Berne Convention, the Portuguese Government is in agreement in principle with the need for administrative and structural modifications. Nevertheless, the desire to simplify the structure created as far as possible, without detriment to its functional utility, leads it to raise certain objections, the chief of which is that concerning the existence of an Executive Committee as proposed in Article 21bis.

The justification which has been given is based on the custom and practice of intergovernmental organizations to set up a smaller organ to deal with urgent matters and matters of lesser importance.

Nevertheless, having examined the functions of the Executive Committee as provided in paragraph (6)(a) of document S/9, the Portuguese Government was struck by the uselessness of such a Committee, which appears to be either a duplication of the Bureau or a useless letter-box between the Assembly and the Bureau.

In actual fact,

(i) the draft agenda of the Assembly should be prepared by the Bureau;

(ii) and (iv) the intervention of the Committee is pointless;

(v) and (vi) not of practical significance.

In particular, the intervention of the Executive Committee in the preparation of revision conferences (Article 21ter. (8)(a)) should be replaced by that of a committee specifically set up for that purpose in accordance with Article 21(2)(a)(vii).

The only significant item is (iii): the Executive Committee, whose meetings would be annual, is to establish, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General.

Having reached that point, it would appear that such needs do not necessitate the creation of a new organ. As regards the program, it should be noted that it depends more on normal functions than on outside activities, in contrast to the situation in other international bodies, and for that reason annual approval would appear to be superfluous.

As regards the budget, since it is a question of allocating a proportion of the total budget to each year, it would seem reasonable to request that its approval should remain a responsibilit of the Swiss Government; which would amount to continuing, to a limited degree, the present situation. In reality, even the proposals that have been presented to us continue to accord a special position to the Swiss Government in its capacity as the headquarters country. It might also be considered that one or two other countries apart from the Swiss might carry out this role of financial supervision of the activities of the Bureau.

The Portuguese Government therefore proposes that the Executive Committee should be omitted; the most that could be envisaged would be to make provision in Article 21 for the Assembly to set up an Executive Committee if that should prove necessary.

The Portuguese Government is, however, associating this attitude with its suggestion that a simpler method of work that has already proved itself in the international sphere should be adopted, namely written consultation of the members of the Union.

Provision should be made for the Bureau to use that type of consultation whenever a problem arises between meetings of the Assembly. That method of written consultation could be combined with the possibility of convening an Extraordinary Assembly whenever such an Assembly should prove necessary.

Since, apart from these matters, the Portuguese Government is in agreement with the approach adopted in document S/9, we shall pass immediately to article by article consideration of the proposals presented. All references to the Organization contained in these proposals (see document S/9 paragraph (17)(vi)) should be considered as affected by our comments on document S/10.

Reference will also be made to the subject of the essential coordination with the other Unions.

ARTICLE 20bis

Protocol Regarding Developing Countries

The Portuguese Government, for the reasons outlined in the comments on document S/1, does not accept that the Protocol and the text of the Convention should be separately presented, and considers such separation pointless.

This Article should therefore be deleted.

ARTICLE 21

Assembly

The Portuguese Government agrees to the setting up of this supreme organ of the Union, although it cannot approve of the total transfer of the powers at present exercised by the Swiss Government, to which reference is made in paragraph 62 of the Commentary.

In relation to references to the International Bureau, the Executive Committee and the Coordination Committee, our comments concerning the respective articles may be regarded as reproduced here.

Ordinary meetings: provision is made in the proposed paragraph (4)(a) that meetings should be triennial. However, document S/12 paragraphs 13 and 63-65 suggests, arising from a report of the United Nations, that meetings should be biennial.

This preoccupation with parallelism would not seem to the Portuguese Government to be justified. In practice it is difficult to imagine that the quantity of subjects to be dealt with would be so large that a frequency of that nature would become necessary. Four-yearly meetings would seem rather to be indicated, the more so if that frequency coincides with that subsequently proposed for the term of office of the Director of the Bureau.

Moreover, it should also be stipulated not that meetings should be held "preferably during the same period and at the same place as the General Assembly of the Organization", but categorically that meetings should be held during the same period and at the same place as the meetings of the General Assemblies of the other Unions administered by BIRPI, with a view to the coordination that is foreseen in the future.

Extraordinary meetings: the Portuguese Government considers this to be a case where written consultation will make it possible to obtain results that would seem to be far more appropriate than those that would stem from the proposed paragraph (4)(b). We would suggest the following wording: "the Assembly shall meet in extraordinary session after written consultation of the Director General with the countries of the Union on his initiative or at the request of one of the countries, as soon as one-half of them shall have given their agreement to the said meeting."

Amendments to the administrative provisions of the Convention: see our comments on Article 23.

Majority: the Portuguese Government agrees that the Assembly shall take decisions by simple majority, although in certain cases a qualified majority may be required. It proposes, however, that the qualified majority should always be three-fourths. Such is the majority required in Article 23(2) for the amendment of the Administrative Provisions of the Convention, and uniformity would appear to be very advantageous.

Nevertheless, the Portuguese Government finds it strange that this qualified majority should be required for a decision as devoid of importance as that of admitting observers to the meetings (paragraph (3)(d)).

Quorum: the Portuguese Government fears that a quorum of one-third may be too small. If that quorum is combined with the proposed majority rule, it follows that two-ninths of the members could take decisions binding on all the others, which would seem excessive. It would seem that a quorum of at least 50 per cent might be more adequate.

Provision could, however, be made for the fixing of an increased quorum for certain discussions.

Joint meetings with the Assemblies of the other Unions; the Portuguese Government proposes that here (or in another article) provision should be made for the possibility of holding joint meetings of the Assembly with the Assemblies of the other Unions; it is also proposed that such joint meetings should be regarded as obligatory whenever their subject calls for concordant decisions by more than one Assembly, as for example;

(1) transfer of the headquarters;

(2) confirmation of provisions relating to the administration by the Bureau of other conventions, agreements and treaties;

(3) appointment of the Director General.

As it is not a question of a new organ, but of joint meetings of existing organs, voting would necessarily have to be separate.

The Portuguese Government also proposes that the provisions relating to these matters referred to in document S/10 should, mutatis mutandis, be reproduced here (as they should also be reproduced in the text relating to the Assemblies of the Paris Union and the special Unions established in relation with it).

Although it is equally true that the same results could be achieved by means of the simple coordination of decisions, the Portuguese Government is of the opinion that a joint discussion would be more rewarding.

ARTICLE 21bis

Executive Committee

The Portuguese Government has already indicated the reasons that have led it to state its reservations on the institution of this Committee.

Apart from that, the Portuguese Government would like to make three comments on the subject of the proposed Article 21bis:

(1) It is perhaps to be feared that this Committee might have too many members; one-fifth of the countries Members of the Assembly would be a more suitable proportion;

(2) More effective assurance should be given of the possible access of all members to the Committee, for example, by compulsorily reserving some places for countries which have not yet served on the Committee and which submit their candidature;

(3) The Committee should serve for four years until a new ordinary meeting of the Assembly.

ARTICLE 21ter.

Bureau

The Portuguese Government is in agreement with the characteristics attributed to the Bureau of the Union.

It would be desirable that references to the "protection of copyright" should be replaced here, as in other places, by more neutral expressions such as the "system of copyright" in order not to give an impression of one-sidedness.

It is stated in paragraph 107 of the Commentary that the present paragraph (6) is based on Article 22(1) of the Brussels Act. It is equally true that there has been considerable expansion, if only because that article referred only to studies of interest to the Union. Nevertheless the Portuguese Government is in agreement with that expansion, which moreover confirms the pointlessness of setting up the International Organization.

Having regard to the reasons outlined at the beginning of our comments on document S/9, the reference in paragraph (8)(a) to the cooperation of the Executive Committee in the preparation of Revision Conferences should be replaced by a reference to the special committees that might possibly be set up for that purpose by the Assembly.

ARTICLE 22

Finance

It follows from what we have said above that the Union's contribution to the Organization should be suppressed, even if the Organization were in fact established.

The Portuguese Government wishes to point out that the increase in the contribution in a year's time, together with the future contribution to the working capital fund, will become too burdensome. It would therefore prefer a less burdensome arrangement. It will not, however, take the initiative in raising objections.

It would also be possible to postpone the entry into force of each of these increases. In regard to the working capital fund, in particular, paragraph (6)(c) could be amended to read: "The proportion, the date and the terms of payment ...". In this way the Assembly would be able to choose the best time to constitute the working capital fund.

In regard to paragraph (7), the Portuguese Government's only comment is that it would welcome the retention of the existing system. If this system is linked to a supervisory function, it should be remembered that we have previously proposed that the Swiss Government should retain this function in part. Hence, a change in the existing situation could only be brought about by a change in the position of the Swiss Government.

The same applies a fortiori to the auditing of the accounts (paragraph 8). Here it should be emphasized that the BIRPI proposals provide for one or more countries to assume a special position. There is therefore no reason in principle why such a special position should not be assumed by the Swiss Government.

ARTICLE 23

Amendments to Articles 21 to 23

The Portuguese Government welcomes not only the proposal to submit to the Assembly amendments to the administrative provisions of the Convention, but also the deletion of the rule of unanimity; it therefore supports the proposed Article 23.

Paragraph (4) appears to be completely unnecessary in view of what has been laid down in previous paragraphs and of the complete clarity of Article 24. We therefore propose its deletion.

ARTICLE 24

Revision

In view of the reasons put forward previously, the Portuguese Government requests the deletion of the reference to the Protocol Regarding Developing Countries.

ARTICLE 25

Ratification and Accession by Countries of the Union; Entry into Force

Here again, reference to the Protocol Regarding Developing Countries should be deleted.

The Portuguese Government is in some doubt about the substantive proposal (exclusion from ratification or accession of the substantive or administrative provisions, paragraph (1)(b). On the one hand, it recognizes the validity of the reasons put forward in paragraph 33 of document S/9, but on the other hand it is apprehensive about the divisions which a proposal of this kind will undoubtedly produce within the Union and also about the insecurity which such divisions will inevitably produce in the relations between member countries.

The Portuguese Government wonders whether the entry into force of the administrative provisions is of such urgency as to justify such an orthodox system, under which the administrative provisions would enter into force before the substantive provisions.

The deletion of paragraph 1(c) will involve a change not merely in the numbering of paragraphs but also in the text of subparagraph (d), where a reference to "the preceding subparagraph" will become necessary.

ARTICLE 25bis

Accession by countries outside the Union

In the view of the Portuguese Government, it is undesirable to make provision for accession to the Stockholm Act by countries outside the Union before the date of entry into force of this Act. Paragraph (2)(a) provides that during the interim period before the entry into force of such provisions, and in substitution therefor, such countries shall be bound by the provisions of the earlier Acts. A consequence of this kind, although it can be avoided, might in some cases prove disadvantageous to these countries.

If the difference in treatment of the substantive and administrative provisions is to be retained, it is difficult to understand why accession to the Stockholm Act should be allowed before the entry into force of the substantive provisions (which are essential), if only because countries outside the Union can always acquire membership by acceding to earlier Acts (Article 28). Such accession might perhaps be allowable if the substantive provisions alone were in force, but it could never be allowed if the administrative provisions alone were in force.

ARTICLE 25ter

Reservations

The Portuguese Government welcomes the proposal, apart from the reference to the Protocol Regarding Developing Countries, the deletion of which is requested for reasons which have already been given.

This provision should logically be interchanged with Article 26, provided that the declarations or notifications mentioned in the latter can also be accompanied by reservations.

We also accept the deletion of the proposed Article 25quater, in view of the arguments adduced in paragraph 8 of document S/9/Corr.1.

ARTICLE 26

Territories

The Portuguese Government considers that in this connexion the definition of territories contained in the existing Article 26(1) of the Brussels Act is clearer than the definition proposed here.

ARTICLE 27

Application of earlier Acts

Bearing in mind the discussion provoked by the proposed Article 27, the Portuguese Government accepts the new wording suggested in the corrigendum. It wishes to point out, however, that in adopting this attitude it is seeking to maintain the status quo in regard to the definition of the relations between countries bound by different versions of the Convention; without thereby considering itself bound by the interpretation referred to in paragraph 7 of the corrigendum.

ARTICLE 27bis

Settlement of Disputes

The Portuguese Government favors the retention of the present system of referring disputes to the jurisdiction of the International Court of Justice. Nevertheless, if it should be found that the objections mentioned in paragraph 174 are substantiated, we should be prepared to accept another solution designed to make the obligations under the Convention as effective as possible. The proposed alternative "D" appears to meet these requirements, in so far as it transfers this question to a separate Protocol.

ARTICLE 28

Accession to earlier Acts

The Portuguese Government has some hesitations about accepting the new version. The wording of this new version appears to be based on one of the possible interpretations of Article 27. In fact, however, this Article was drafted in such a way as to give no definite ruling on the problem of relations between countries which are bound by different Acts. The Portuguese Government would prefer to see it laid down that accession to Article 28 implies accession to the earlier Acts unless a declaration is made to the contrary. If that approach has to be rejected, another possibility might be to adopt a neutral formula such as the following: "After the entry into force of this Act in its entirety a country outside the Union may accede to it only in accordance with the terms of Article 25bis;" in other words by accession to the Stockholm Act.

The Portuguese Government proposes that the first step should be to state explicitly that countries outside the Union can accede to the Brussels Act pending the entry into force of the Stockholm Act, as was done in the present Article 28(3), unless this point is already made quite clear from Article 25bis.

ARTICLE 29

Denunciation

The principle that the denunciation of the last Act shall also constitute denunciation of all earlier Acts was not inherent in Article 29 of the Brussels Act according to what appears to be the correct interpretation. The Portuguese Government entertains some doubts as to the advisability of establishing this principle.

ARTICLE 30

Implementation by Domestic Law

The Portuguese Government welcomes the introduction of this principle, as it represents what should be an obvious consequence of the imperative character of the Convention.

One reservation is made, however, namely that this Article 30 might be interpreted as involving an obligation for domestic law to be in material conformity with the Stockholm Act, which was obviously not included in Article 21(1) of the Brussels Act. Such an obligation would have been unacceptable insofar as it was opposed to the tradition of the Berne Convention. Article 30 should, therefore, be clarified so as to avoid such an interpretation.

ARTICLE 31

Signature, etc.

The Portuguese Government has no objections to the proposed text.

ARTICLE 32

Transitional Provisions

These provisions are to a large extent affected by the attitude adopted by the Portuguese Government towards the proposed Organization As regards paragraph (2), the Portuguese Government suggests that provision should be made for all States Members of the Union to participate with full rights in the first meeting of the General Assembly.

DOCUMENT S/11

The Portuguese Government considers that the proposals for resolutions on transitional measures are in general affected by the stand that it has already taken with regard to documents S/9 and S/10.

Since the Portuguese Government is not in favour of the International Organization, it cannot therefore accept the resolution in accordance with which that Organization would commence to function, to some extent, from January 1, 1968, with all the member countries of the Paris and Berne Unions.

That is the sense of the proposed resolution, although powers of decision have been withdrawn from the organs referred to during the transitional period.

Since the Portuguese Government questions the advantage of the existence of an Executive Committee in the Berne Union, it cannot approve its provisional functioning.

There only remains what concerns the Assembly. Actually no essential advantage could result from the immediate functioning of that organ with purely consultative functions. The reasons referred to in paragraph (13) do not seem to us to be very convincing. It is not apparent why the present system could not be maintained.

In addition to these remarks, which are based on the position adopted by the Portuguese Government with regard to points prejudicial to those that are now under discussion, it does not seem to the Portuguese Government that an acceptable approach is being followed, to the extent that an attempt is being made to apply a convention before it enters into force, that is to say, to create a sort of de facto functioning before the de jure functioning.

For these reasons, the Portuguese Government finds itself obliged to reject the proposed resolutions in their totality, and their detailed discussion is therefore pointless.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 12, 1967 N° S/20
Subject (Union): All Unions
Original: English
Distribution: General

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSALS PRESENTED BY THE SWEDISH DELEGATION

In accordance with Rule 44 of the draft Rules of Procedure (Document S/Misc/1) which reads: "The delegation of the host Government may propose a list of candidates for all positions to which elections is to be voted upon by Plenaries", the Swedish delegation submits the following proposals:

I. Conference

President:
First Vice-President:
19 Vice-Presidents: Algeria, Argentina, Brazil, Congo (Brazzaville), Congo (Dem. rep), Finland, France, Greece, India, Iran, Italy, Japan, Kenya, Morocco, Philippines, Poland, UK, USA, USSR

II. Plenaries

Berne Union

President of the Plenary: United Kingdom
Vice-President of the Plenary: Belgium
Members of the Credentials Committee: Bulgaria, Ireland
Chairman of Main Committee I: Fed. Republic of Germany
Vice-Chairman of Main Committee I: Tunisia
Rapporteur of Main Committee I: Prof. Bergström (Sweden)
Chairman of Main Committee II: India
Vice-Chairman of Main Committee II: Denmark
Rapporteur of Main Committee II: Dr. Strnad (Czechoslovakia)

Paris Union

President of the Plenary: USSR
Vice-President of the Plenary: Austria
Members of the Credentials Committee: USA, USSR
Chairman of Main Committee III: Rumania
Vice-Chairman of Main Committee III: Netherlands
Rapporteur of Main Committee III: Mr. King (Australia)

Madrid Union (TM)

President of the Plenary: Hungary
Vice-President of the Plenary: Portugal
Member of the Credentials Committee: France

Madrid Agreement (FIS)

President of the Plenary: Japan
Vice-President of the Plenary: Turkey
Member of the Credentials Committee: Japan

Hague Union

President of the Plenary: United Arab Republic
Vice-President of the Plenary: Monaco
Member of the Credentials Committee: Netherlands

Nice Union

President of the Plenary: Spain
Vice-President of the Plenary: Norway
Member of the Credentials Committee: Italy

Lisbon Union

President of the Plenary: Mexico
Vice-President of the Plenary: Israel
Member of the Credentials Committee: Mexico

Berne Union, Paris Union, Madrid Union (TM), Madrid Agreement (FIS), Hague Union, Nice Union, Lisbon Union

Chairman of Main Committee IV: France
Vice-Chairman of Main Committee IV: Uganda
Rapporteur of Main Committee IV: M. de Sanctis (Italy)

IPO

President of the Plenary: Switzerland
Vice-President of the Plenary: Canada
Member of the Credentials Committee: Venezuela
Chairman of Main Committee V: USA
Vice-Chairman of Main Committee V: Cameroon
Rapporteur of Main Committee V: M. Voyame (Switzerland)

Notes

1. With the exception of the Rapporteurs, who are specifically mentioned in their individual capacity in these proposals, the head of each delegation concerned shall designate the person to fill the relevant function, should he not undertake it himself.

2. No proposals have been submitted for the Chairmen and Vice-Chairmen of the Credentials Committee, the General Drafting Committee and other Drafting Committees, because these bodies elect their own chairmen and vice-chairmen from amongst their members, according to Rule 15, para.5. of the Draft Rules of Procedure.

3. The draft Rules of Procedure provide that Sweden and Switzerland shall be ex officio members of the Credentials Committee.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 12, 1967 N° S/21
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INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

AUSTRIA

Observations of the Republic of Austria on document S/10 and on questions of structure dealt with therein and on document S/12

Observations on document S/10 and on questions of structure dealt with therein

Preamble

The first part deals with the administrative and structural reorganization of the Unions, and the second with the establishment of a World Intellectual Property Organization, to be concerned primarily with technical assistance.

The objection concerning the word "modernize" referred to in the footnote on page 5 seems justified. That term is obviously intended to refer to the establishment of organs of the Unions (Assemblies and Executive Committees). This modernization will not, however, be brought about by the treaty dealing with the new Organization but by the revision of the administrative provisions of the treaties of the various Unions. There is no need to set up a new Organization for that purpose, as each Union can undertake such modernization on its own account by revising its treaty accordingly. The only points which make it necessary to establish an "umbrella" organization for the Unions are the transfer of administrative tasks to a Secretariat common to the various Unions and the consequent need for coordination by organs common to the Unions (General Assembly, Coordination Committee). This purpose is more precisely defined in the explanations contained in paragraph 15 (document S/10, page 6) than in the text of the preamble.

General observations on the financial and administrative s stem (Articles 6 to 10 of the treaty establishing the Organization, Articles 13 to 13quater of the Paris Convention, and Articles 21 to 22 of the Berne Convention):

A

The present ceilings laid down by the Conventions for the expenses of the Bureau are to be abolished. They are to be replaced by provisions under which a budget will be adopted at certain intervals by the organs of the Unions. As regards those States which are members of the Unions the obligations relating to certain fixed amounts will therefore be replaced by an obligation relating to a share of the budgetary expenses adopted.

There should be a corresponding obligation - but this is not expressly mentioned in the drafts - to ensure that the expenses of the Secretariat do not exceed the amounts contemplated in the budget which is adopted.

It is, however, conceivable that for various reasons it may prove impossible to adopt the budget in time. Provision should therefore be made for a provisional budget which

(1) would oblige the contracting States to continue to pay contributions, for example on the basis of the total expenditure of the preceding financial year, and

(2) would authorize the Secretariat to incur expenses on the same basis.

In this connection, it may be noted that in the drafts which have been submitted no mention is made of the principle that the Director General must be bound by the budget; no provision is made for sanctions in case the budget is exceeded.

B

The organs possessing powers to make decisions in financial matters namely the Conference of the Organization and the Assemblies of each Union respectively will adopt budgets for a comparatively long period covering several financial years (three years according to the proposal and two years according to document S/12, page 22).

Control of annual programs and final accounts is the concern of the Coordination Committee of the Organization and of the Executive Committees of each Union respectively. In view of the fact that these organs do not possess any power of decision as regards the financial obligations of the Member States, they have only to verify whether the annual programs of BIRPI remain within the framework of the triennial or biennial programs adopted, and whether the final accounts correspond to the respective triennial or biennial budget concerned.

In this connection it should be noted that the following points arise on these proposals:

(1) The wording of the corresponding provisions for IPO (Article 8(3)(iv)) differs from the wording of the same provisions for each Union Convention (Paris, Article 13bis(6)(iii); Berne, Article 21bis(6)(iii)). The wording which appears in the Union Conventions ("within the limits") is preferable, because of its greater clarity, to the terms used in the IPO draft ("on the basis").

Furthermore, that part of the sentence, starting with the words "within the limits ..." should be transposed, inasmuch as the present wording may create the impression that the Executive Committee would not have to express an opinion on the various elements of the annual budget outside the framework of the triennial budget.

The following text is therefore proposed:
"... establish the annual programs and budgets prepared by the Director General within the limits of the triennial program and budget".

(2) Article 13(2)(iii) and Article 13bis(6)(iv) of the proposals for revising the Paris Convention, and Article 21(2)(a)(iv) of the Berne Convention contain rules regarding the approval of final accounts. It is proposed that similar provisions be inserted in Article 7(2) and Article 8(3) of the IPO Convention.

C

As regards the General Assembly, the Conference and the Coordination Committee, Articles 6(2)(vi), 7(2)(a)(v) and 8(3)(vii) contain the expression "exercise such other functions as are allocated to it". This power seems to be too vague; it is therefore proposed to complete this part of the sentence by the words "by the present Convention."

The same proposal is presented as regards the similar provisions of the Paris Convention (Article 13(2)(a)(xi), Article 13bis(6)(a)(vi)) and of the Berne Convention (Article 21(2)(a)(xi), Article 21bis(6)(a)(vi)).

D

Furthermore, the powers granted to the International Bureau by Article 13ter.(9) of the Paris Convention and by Article 21ter.(9) of the Berne Convention seem too vague. It is therefore proposed that the words "by the present Convention or by the organs of the Union" should be added to these articles as well.

E

It is furthermore proposed, in relation to the deliberations of the Assembly and the Executive Committee of the Paris Union, and in relation to those of the Coordination Committee, that the following provision should be inserted in the provisions relating to voting in the organs and committees of the Organization and the Unions: "A secret ballot shall be held if requested by at least three members."

DETAILED COMMENTS

In addition to the preceding general comments, the following remarks may be made on the various proposals in document S/10:

ARTICLE 6

Paragraph 2(i) subordinates the activities of the Coordination Committee to the control and authorization of the General Assembly. In accordance with Article 7(2)(a)(ii), it is the Conference that is competent to adopt the triennial budget of the Organization. To avoid any doubt as to the respective competence of these two organs, the scope of these two provisions should be clearly defined.

The provisions of Article 9(6) (Staff Regulations) and of Articles 11(4) and 12(2) would appear to constitute exceptions to the general rule incorporated in Article 6(2)(i).

ARTICLE 8

In paragraph (1)(c) the phrase "matters of direct interest to the Conference" seems not to be sufficiently precise; it should be replaced by the words "questions with which the Conference is competent to deal in accordance with the provisions of Article 7."

ARTICLE 9

The principle of the continuity of the International Bureau is approved; nevertheless some doubt may arise with respect to the formulation of the provisions relating to it. The formulation to be found in the Conventions (Article 13ter.(1)(a) of the Paris Convention; Article 21ter.(1)(a) of the Berne Convention) "the International Bureau ... is a continuation of the Bureau of the Union ..." appears preferable to the formulation in Article 9(1) of the BIRPI draft: "the International Bureaux ... shall continue as the International Bureau ..."

Moreover, some contradiction exists between the formulation of Article 9(1), which states that the Bureaux of the Unions shall continue and the text of Article 19(3) which states that the Bureaux of the Unions shall cease to exist.

In paragraph (5), the words "of the Organization or of the Unions" should be added after the words "working group" at the end of line 5; otherwise it would be advisable that the scope of paragraph (5) should be restricted to the organs of the Organization, since the corresponding powers are stipulated in the Conventions (Article 13ter.(7) of the Paris Convention; Article 21ter.(7) of the Berne Convention).

ARTICLE 10

Paragraph (2) contains two different elements, namely coordination inasmuch as it is one of the two tasks of the Organization, and the contributions of the Unions inasmuch as they constitute one of the two principal sources of revenue of the Organization. It would seem appropriate, having regard to paragraph (3), to delete the words "and the contributions of the various Unions."

It would perhaps be advisable to insert in paragraph (4)(b) a provision that would enable a State changing to a lower class to be automatically classified in a particular class (for example, the last) to avoid difficulties in the calculation of contributions up to the time that that change of class takes effect.

Paragraph (10) does not contain any provision indicating which organ is empowered to adopt the financial regulations. It would appear appropriate to entrust this power to the General Assembly or to the Conference through the Coordination Committee.

ARTICLE 13

The distinction between amendments increasing financial obligations and other amendments will probably give rise to difficulties, since the financial consequences of amendments cannot always be assessed in advance or cannot always be assessed by each Member State. The application of this provision could give rise at the very least to uncertainties. Provisions should therefore be inserted in the Convention to the effect either that the organs of the Organization or of the Unions should formally establish whether a given amendment would involve an increase in financial obligations, or that States rejecting an amendment should adopt a position that would bind them within a certain period if, in a given case, the amendment involved an increase in their financial obligations.

Moreover, it should be noted that Article 24 of the Berne Convention does not stipulate clearly that the decisions of Revision Conferences must be ratified by the Member States before coming into effect.

ARTICLE 14

The text of paragraph (1)(b) is not in complete accord with the explanations relating to it (paragraph 100). According to those explanations, one of the conditions precedent to the accession of a State of the Paris Union or the Berne Union is that that State must at least have acceded to the administrative provisions of the Stockholm Act. According to the text of paragraph (1)(b), the Member States of the Union would be able to accede to the Stockholm Act without at the same time acceding to the new administrative provisions.

DOCUMENT S/12

The draft Resolution concerning the raising of the contributions of the Paris Union is based on the text of the Lisbon Convention. Since Austria has still not ratified the Lisbon text, the legal basis needed for the participation of Austria in that Resolution is lacking.

Austria has no objection to the proposal to replace the triennial period by a biennial one. Nevertheless, the question arises whether, in that case, there would still be economic justification for the system proposed for the establishment and acceptance of budgets and for final accounts, which was designed for a long period, and which would be entrusted to the plenary organs of the Organization and the Unions, and for the system proposed for the control of annual budgets prepared in that context and for final accounts, which would be entrusted to the executive organs. The proposals could be considerably simplified by grouping the period covered by the programs and budgets, and the accounting period; it would not then be necessary to convene the executive organs for matters relating to budgets and accounts.

Granting that the proposal of Spain (page 23) merits detailed study Austria has no objection to the draft Resolution concerning the creation of a new source of revenue for the Paris Union.

COMMENTS ON DOCUMENT S/4

The comments of Austria concerning the Agreements reached within the framework of the Paris Convention are restricted to the proposals for the revision of the Madrid Agreement on Trademarks, since Austria is at present only a member of that special Agreement.

It should firstly be noted that Austria's general comments on the preceding documents are equally applicable to the corresponding proposals in document S/4, in view of the necessary coordination of the various Conventions.

In addition to the foregoing general comments, the following comments have also been formulated in relation to the various Articles of the proposals for revising the Madrid Agreement on Trademarks.

ARTICLE 8

The proposal to omit paragraphs (7), (8) and (9) and to incorporate their contents in the Regulations gives rise to doubts.

These proposals do not concern only the amount of the fees provided for in the Agreement (paragraph (2)), but also the question of the term of protection. That question should be dealt with in the Agreement itself. Paragraphs (7), (8) and (9) should therefore stand, even if determination of the amount of the fees for a protection of ten years can be relegated to the Regulations.

ARTICLE 10

Paragraph (2)(a)(iv) does not decide the question of whether the International Bureau should present its final accounts for the triennial period only or whether it should do so each year.

ARTICLE 10bis

It is proposed that paragraph (4) should be augmented by addition of the words "by the present Agreement or by the organs of the Special Union."

ARTICLE 10ter.

Paragraph (4)(a), although modelled on Article 10(4)(a) of the Nice text of the Madrid Agreement, raises the question of whether the amount of fees can be determined by the Assembly only on the proposal of the Director General. If that were not the case, this provision would merely be a repetition of the competence provided for in Article 10(2)(a)(iii).

The principle incorporated in paragraph (4)(b), according to which the amounts of such fees shall be so fixed as to be "at least" sufficient to cover the expenses of the International Bureau in the matter would seem to be at variance with Article 8, paragraphs (4)-(6), which provide for a distribution of surplus receipts among the Member States. It may also be recalled that, in accordance with Article 8, paragraph (1), Member States can collect a national fee only on trademarks of which they are the country of origin. Expenses relating to all other marks would not therefore be covered by fees.

Austria is unable for expressreasons to accept paragraph (5). The fact that the amount of fees no longer appears in the Agreement, but will henceforward be fixed by a majority decision taken by an organ of the Union, contrary to the principle of unanimity which has prevailed hitherto, and that this amount could now be fixed against the wish of any Member State, constitutes a fundamental change. Austria could not approve the acceptance of even greater powers by reason of its rules of domestic law. Moreover, it should be noted that the drafting does not make it possible to decide precisely what fees are referred to. In short, all fees relate to the subject of the Agreement, that is to say, to the international registration of trademarks.

Since, moreover, in view of present practice, it is to be feared that the justified proposals of the Director of the International Bur may not be taken into consideration, Austria proposes that the fixing fees should be entrusted to the Assembly.

Furthermore, consideration should be given to the provisi Article 28, paragraph (15) of the Regulations of the Madrid Agreement.

Paragraph (8) deals with the financial regulations. It is not stipulated which is the competent organ to adopt these regulations. It is proposed that competence should be vested in the Assembly. The question arises, moreover, whether the Madrid Union can adopt autonomou financial regulations or whether the financial rules should not at les be harmonized with the financial regulations of the parent Union (the Paris Union) and of the Organization.

BIRPI

UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 12, 1967 N° S/22
Subject (Union): Main Committee I
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL MADE BY THE AUSTRIAN DELEGATION

The following new Article should be inserted in a suitable place in the Berne Convention:

"The question whether a person has a domicile in a given place is governed by the law of that same place".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 12, 1967 N° S/23
Subject (Union): Main Committee III
Original: English
Distribution: Main Committee III

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL BY THE UNITED KINGDOM DELEGATION

that, in Article 1(2) of the Convention, the words "inventors' certificates" be inserted after the word "patents."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: 12.6.67 N° S/24
Subject (Union): Paris Union
Original: french
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF AUSTRIA

Proposals for changes in document S/3:

PARIS CONVENTION, ARTICLE 13: Assembly

1. paragraph (2) (a): new item (for instance, between (iii) and (iv)): "adopt the financial regulations of the Union".

2. paragraph (2)(a)(xi): either replace the proposed text by a precise list of other tasks, or complete the text as follows: "exercise such other functions as are allocated to it by the present Convention"

3. paragraph (3)(f): proposed wording of item (g) without alteration.

4. paragraph (3)(g): proposed wording of item (f) without alteration.

5. paragraph (3)(h): "A secret vote shall be taken if it is requested by at least (three) members."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 12, 1967 N° S/25
Subject (Union): Berne Union
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF AUSTRIA

Proposals for changes in document S/9:

BERNE CONVENTION, Article 21: Assembly

paragraph (2)(a): new item (for instance, between (iii) and (iv)): "adopt the financial regulations of the Union".

paragraph (2)(a)(xi): either replace the proposed text by a precise list of other tasks, or complete the text as follows: "exercise such other functions as are allocated to it by the present Convention"

paragraph (3)(f): proposed wording of item (g) without alteration.

paragraph (3)(g): proposed wording of item (f) without alteration.

paragraph (3)(h): "A secret vote shall be taken if it is requested by at least (three) members."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: 12 June, 1967 N° S/26
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

(DOCUMENT S/1)

PROPOSAL OF THE FRENCH DELEGATION

Article 4, paragraph (2) (BIRPI draft)

Substitute the words "effectively domiciled" for the word "domiciled" that appears in the wording of the BIRPI draft.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: 13 June, 1967 N° S/27
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

(DOCUMENT S/1)

PROPOSAL BY THE FRENCH DELEGATION

Article 4 (BIRPI Proposals)

(1) Paragraph 4(c)(i) of this article to be deleted.

(2) Paragraph 5 to be amended as follows:

(5) The expression "published works" means works lawfully published, copies of which have been issued and made available in sufficient quantities to the public, whatever may be the means of manufacture of the copies. A cinematographic work shall be considered as having been published as from the date on which one or more copies of the work were distributed with a view to public performance, on condition that such performance effectively took place.

The performance of a dramatic, dramatico-musical, (...) work, etc (the rest unchanged).

(3) Paragraph (6) shall be deleted.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: 13 June, 1967 N° S/28
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

(DOCUMENT S/1)

PROPOSAL BY THE FRENCH DELEGATION

Article 6 (BIRPI draft)

Delete paragraph 2.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: 13 June, 1967 N° S/29
Subject (Union): Berne Union
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

(PARIS CONVENTION)

(DOCUMENT S/9)

ADMINISTRATIVE PROVISIONS AND FINAL CLAUSES :

PROPOSALS BY THE FRENCH DELEGATION

Article 21: (Assembly)

- Paragraph (2)(a)(ii):

At the end of this item add the following phrase:

"... due account being taken of any comments by Member States of the Union which are not bound by Articles 21 to 23".

Item (xi): The present wording is too vague. It would be advisable either to enumerate the additional functions allocated to the Assembly in other provisions of the relevant Act or in the provisions of the Convention establishing the Organization, or at least to refer expressly to such provisions.

Article 21bis: (Executive Committee)

- Paragraph (6)(a)(vi)

The wording here calls for the same comments as Article

21(2)(xi). It would be advisable either to enumerate the additional functions referred to in other provisions or to refer expressly to such provisions.

- Paragraph (7)(b)

It is suggested that the words "at the request of its Chairman" be added after "of the Director General."

Article 24:

- Paragraph (1)

Write: "... amendments designed to improve the system of protection established by the Union."

Article 32: (Transitional clauses)

- Paragraph (2)

Write: "... until five years after the entry into force of the present Act, exercise ..."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/30
Subject (Union): Paris Union
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PARIS CONVENTION

(DOCUMENT S/3)

PROPOSAL BY THE AUSTRIAN DELEGATION

Article 13bis - Executive Committee

1. Paragraph (6)(a)

(iii) Amend to read as follows:

"establish the programs and adopt the specific yearly budgets prepared by the Director General, within the limits of the program and the biennial budget;"

(vi) either list the other functions or amend the text to read as follows:

"perform such other functions as are allocated to it by the present Convention or by the Assembly."

2. Paragraph (7)(b)

"The Executive Committee shall meet in extraordinary session upon convocation of the Director General, acting on his own initiative, or at the request of one-fourth of the countries members of the Executive Committee."

3. Paragraph (8)

Add a new subparagraph:

"(f) A secret ballot shall be held if requested by at least (three) members."

Article 13ter - International Bureau

Paragraph 9

Amend the paragraph to read as follows:

"The International Bureau shall carry out any other tasks assigned to it by the present Convention or by the organs of the Union."

Article 13quater - Finances

Paragraph 4

"(f) Should the competent organ have been unable to adopt a budget before the beginning of a new financial period, the countries of the Union shall be required to pay their contributions within the limits of the previous budget, and the International Bureau shall be authorized to incur such expenditure as may be necessary for the functioning of the Union and its administrative services within the limits of the previous budget."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/31
Subject (Union): Berne Union
Original: French
Distribution: Main Comittee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

(DOCUMENT S/9)

PROPOSAL BY THE AUSTRIAN DELEGATION

Article 21ter, paragraph (9) (BIRPI draft)

Amend the paragraph to read as follows:

"The International Bureau shall carry out any other tasks assigned to it by the present Convention or by the organs of the Union."

Article 22, paragraph (4) (BIRPI draft)

Add a new subparagraph:

"(f) Should the competent organ have been unable to adopt a budget before the beginning of a new financial period, the countries of the Union shall be required to pay their contributions within the limits of the previous budget, and the International Bureau shall be authorized to incur such expenditure as may be necessary for the functioning of the Union and its administrative services within the limits of the previous budget."

Article 21bis (BIRPI draft)

1. Paragraph (6)(a)

(iii) Amend to read as follows:

"establish the programs and adopt the specific yearly budgets prepared by the Director General, within the limits of the program and the biennial budget;"

(vi) either list the other functions or amend the text to read as follows:

"perform such other functions as are allocated to it by the present Convention or by the Assembly."

Paragraph (7)(b)

"The Executive Committee shall meet in extraordinary session upon convocation of the Director General, acting on his own initiative, or at the request of one-fourth of the countries members of the Executive Committee."

Paragraph (8)

Add a new subparagraph:

"(f) A secret ballot shall be held if requested by at least (three) members."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/31/Rev.
Subject (Union): Berne Union
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

(Document S/9)

PROPOSAL BY THE AUSTRIAN DELEGATION

Article 21bis (BIRPI draft)

1. Paragraph (6)(a)

(iii) Amend to read as follows:

"establish the programs and adopt the specific yearly budgets prepared by the Director General, within the limits of the program and the biennial budget;"

(vi) either list the other functions or amend the text to read as follows:

"perform such other functions as are allocated to it by the present Convention or by the Assembly."

2. Paragraph (7)(b)

"The Executive Committee shall meet in extraordinary session upon convocation of the Director General, acting on his own initiative, or at the request of one-fourth of the countries members of the Executive Committee."

3. Paragraph (8)

Add a new subparagraph:

"(f) A secret ballot shall be held if requested by at least (three) members."

Article 21ter, paragraph (9)(BIRPI draft)

Amend the paragraph to read as follows:

"The International Bureau shall carry out any other tasks assigned to it by the present Convention or by the organs of the Union."

Article 22, paragraph (4)(BIRPI draft)

Add new subparagraph:

"(f) Should the competent organ have been unable to adopt a budget before the beginning of a new financial period, the countries of the Union shall be required to pay their contributions within the limits of the previous budget, and International Bureau shall be authorized to incur such expenditure as may be necessary for the functioning of the Union and its administrative services within the limits of t previous budget."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/32
Subject (Union): Paris Union
Original: English
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

PARIS (S/3)

Article 13 ter: International Bureau

It is proposed that present subparagraph (b) be changed to (c) and that the following provision be inserted as subparagraph (b):

"(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: 13 June, 1967 N° S/33
Subject (Union): Paris and Berne Unions
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE PARIS AND BERNE CONVENTIONS (DOCUMENTS S/3 AND S/9) BY THE DELEGATION OF SWITZERLAND

In regard to Article 13 of the Paris Convention and Article 21 of the Berne Convention:

It should be expressly mentioned that the Assembly has the power:

(a) to appoint the Director General of BIRPI,

(b) to determine the location of the Headquarters of the Organization,

(c) to administer the Convention,

(d) to appoint the Auditors (transfer the contents of Article 13quater (8)(Paris) and Article 22(8)(Berne)).

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: 13 June, 1067 N° S/34
Subject (Union):
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PARIS CONVENTION

(DOCUMENT S/3)

ADMINISTRATIVE PROVISIONS AND FINAL CLAUSES

Article 16quinquies (Territories)

The Polish Delegation proposes that Article 16quinquies be deleted from the proposed administrative provisions and final clauses of the Paris Convention.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/35
Subject (Union): Paris Union
Original: English
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSALS FOR AMENDMENT

German Delegation

PARIS CONVENTION
(Doc.S/3)

1. Replace Article 13, paragraph 3(g) of the Paris Convention by the following text:

   13(3)(g) "A delegation may represent, and vote in the name of, its own country only".

2. Article 13quinquies, paragraph (2), sentence 2 of the Paris Convention: Replace the words "the unanimity" by the words "four-fifths".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/36
Subject (Union): Berne Union
Original: English
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSALS FOR AMENDMENT

German Delegation

BERNE CONVENTION
(Doc.S/9)

1. Article 21, paragraph (3)(g) of the Berne Convention: replace by the following text: 21(3)(g) "A delegation may represent, and vote in the name of, its own country only."

2. Article 23, paragraph (2), sentence 2 of the Berne Convention: Replace the words "the unanimity" by the words "four-fifths."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: 13 June, 1967 N° S/37
Subject (Union): Paris Union
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE PARIS CONVENTION (DOCUMENT S/3) BY THE MALAGASY DELEGATION

Article 13 (Assembly)

1. Insert a sub-paragraph (c) between sub-paragraph (b) and present sub-paragraph (c) of paragraph (1), and renumber (d) the present sub-paragraph (c). The following wording is proposed for new sub-paragraph (c): "A plurality of countries, members of one or more Unions and grouped together in a single Office under the terms of an international agreement, may be represented by a single delegation or by their common organ which shall have as many votes as the said Office has Member States."

2. Complete paragraph (3)(a) by adding the expression "subject to the application of the provisions of paragraph (1)(c) above."

3. Add the same expression to paragraph (3)(g).

Article 13bis (Executive Committee)

1. Complete paragraph 2(b) by adding the reservation: "subject to the application of the provisions of Article 13(1)(c)."

2. Add the same reservation to paragraphs 8(a) and 8(e).

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/38
Subject (Union): Berne Union
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

(DOC. S/1)

PROPOSAL OF THE DELEGATION OF AUSTRIA

To Article 9, paragraph (1), should be added the following sentences:

"Reproduction shall consist in the material fixation of the work by all methods that permit of indirect communication to the public. It can be accomplished, in particular, by printing, drawing, engraving, photographing, carting and all processes of the graphic and plastic arts, and by mechanical, cinematographic, or magnetic recording. In the case of architectural works, reproduction shall also consist in the repeated execution of a plan or standard draft."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/39
Subject (Union): Paris and Berne
Original: English and French
Distribution: General

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSALS FOR AMENDMENT of Documents S/3 & S/9

AUSTRIAN DELEGATION

Article 13(2) (Paris Convention - S/3):

Article 21(2) (Berne Convention - S/9):

1. (xi) should read as follows:
"exercise such other functions as are allocated to it by this Convention".

2. Add new (xii):
"exercise such rights that are given to it in the IPO Convention".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: N° S/40
Subject (Union): Berne Union
Original: English
Distribution: Main Committee II

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

OBSERVATIONS OF THE GOVERNMENT OF ISRAEL ON THE PROTOCOL REGARDING DEVELOPING COUNTRIES

Annex II of the Revision of the Berne Convention

In its observations on Document S/1 of 15 May, 1966, the Government of Israel expressed its approval of the principle of incorporating, in an appropriate instrument, specific provisions to meet the special needs of the developing countries in matters of copyright, so as to enable such countries fully to adhere to the Convention and derive all the assistance possible in this regard.

* * *

Several developments have meanwhile taken place both on the international and national level and the time has come, so the Government of Israel believes, to present a comprehensive analysis of the problem how to achieve what should be the main purpose in this matter - the formulation of rules which will enable developing countries to provide for their vital interests within the framework of a system of international protection of intellectual property rights, and the elaboration of machinery for applying these rules which must be freely accessible and operative immediately and unconditionally upon adoption at the Stockholm Conference, and irrespective of other measures. The fashioning of an Optional Protocol of independent status must therefore become the primary task of the Stockholm Conference.

It must be recognized that the prevailing interplay of several international systems of protection is not helpful since it leads to or encourages postponement of debate and decision. It is the considered conviction of the Government of Israel that this is not a path which commends itself. Aware that the Stockholm Conference is the nearest

major international conference of competence authoritatively to deal with this matter, the Government of Israel favours that this gathering of delegates with plenipotentiary powers be entrusted with the task and that further postponements be avoided. In its submissions to UNESCO (see Annexes to the present document), the Government of Israel has made it clear that it desires UNESCO to intervene only in case no satisfactory decision is reached at Stockholm, or in so far as certain matters, not yet the subject matter of the Berne Convention, are not dealt with at Stockholm, or may properly be dealt with within the framework of UNESCO; and that such intervention should be made as soon as possible under the full authority of UNESCO's terms of reference. The problem itself is urgent, and it cannot be permitted that harm be caused by further delay. In this context it may also be noted that the Government of Israel is ready to consider any proposal which may facilitate the merger of the two Conventions into one real world-wide regime. At the same time it supports the needs of the developing countries, i.e. to provide within the regime of the Berne Union that any member of the UCC being a developing country may join the Union, and shall be deemed to fulfil its obligations under the Berne Convention if it complies with the UCC as modified by the Protocol as hereinafter described, such provision to be completed by a proper declaration of the Members of the UCC in approval and confirmation thereof.

Of course, if such a proposal is adopted, adequate steps will have to be taken in order to merge the organs of the two Conventions and ensure UNESCO's participation in the day-to-day work of the Bureau of the Berne Convention.

* * *

The questions involved in the treatment of the developing countries are matters both of substance and of form. It is clear that any legal instrument of the kind proposed must be regarded as being for the major part a "self-denying ordinance" by the developed countries. Without relaxing in principle the long-established norms governing the standards and measure of protection under the Berne Convention but maintaining them in full vigour, permissive provisions are to be introduced in this regard for the benefit of developing countries, which the latter in their present economic, social and cultural circumstances require. The Government of Israel takes the view that this object is to be achieved by a generalized universal legal order. The permissive provisions are understood to be temporary in duration and should not be so formulated as to impede the creation of an all-embracing world legal regime by lowering the standards of protection on the one hand or by making full participation of developing countries in the regime of the Convention difficult or unattractive on the other hand. Whilst meeting the legitimate needs of developing countries, the provisions must operate equitably with regards to authors and other owners of the rights protected by or under the Convention.

In general, as already indicated, the Government of Israel agrees with the proposals that have thus far been made but would like to suggest certain modifications and additions (a) to facilitate translations for educational and other needs of developing countries, (b) to regulate importations etc. for free use of copyright material, (c) to establish an equitable system for spreading the burden of royalties and (d) to protect the folklore of all and specifically of developing countries. Suggestions on some of these matters have contemporaneously been submitted to the attention of UNESCO (see Annexes).

(a) Translations into the vernacular clearly constitute a potent force in accelerating the course of development. If for no other reason, it should be encouraged in order to reduce the period in which the permissive provisions of the Protocol will be required. Instead, therefore, of a waiting period of seven years provided for in the existing proposals, translations should be permitted as soon as possible after publication. In any event, a period of seven years is or may be far too long in view of the increasingly rapid advances which technology and science (in the broadest sense) in particular are today undergoing in all fields. Knowledge of such advances receives fairly speedy publication. Its reproduction in translation is essential for pedagogical purposes generally, if the developing countries are not to be forever behind in the race. It is clear that this suggestion goes beyond the provisions of the UCC but it is called for by reason of the special needs involved.

In this context attention should be drawn to the proposal made by the Government of Israel in its observation on Document S/1, with regard to Article 8 of the Berne Convention, that to the proposed text the following should be added ... "Translation shall ..."

(b) The problem which arises in connection with the importation and local printing and publication of books is mainly economic in nature. To promote the establishment of local printing industries would be of great economic benefit to developing countries, but their operation must be regulated under the general regime of copyright, not to encourage infringement of copyright nor to further the interests of countries which are not members of the Union, an outcome which ultimately would not help the developing countries. In this regard, Article 1(e) of the Protocol in its present form is a provision of crucial importance and directly and vitally relevant to the maintenance of the norms of the Convention. Its pivotal terms, therefore, should be strictly defined in order to avoid conflicting constructions and to ensure that it is applied equitably to and by the parties concerned. In order to eliminate certain malpractices which ultimately benefit no-one and may in the last resort be harmful to the social and cultural progress of the developing countries themselves, provision should be made that no developing country shall export any copyright material imported or printed in its territory except to other developing countries in the Berne Union acting under the Protocol. The Government of Israel thinks that it would be just and

proper to ask developing countries to accept in their turn such a self-denying measure. The encouragement of a local printing and publishing industry on the economic side and of local authors and other talents on the cultural and educational side are of foremost importance to developing countries. The depreciation of standards of protection whilst possibly it may in the short run yield certain advantages will ultimately not advance the real progress of the developing countries. The needs of producer and consumer alike are better served by reasonable and fair regulation of the exploitation of copyright work, which takes account of the legitimate interests of all concerned, than by any purely self-regarding practice.

(c) The economic aspects of copyright protection are central to the problems confronting the developing countries. From its own experience the Government of Israel is fully conscious of the difficulties that are involved. Whilst almost any method that balances fairly and justly the requirements and resources of developing countries with the proper rights and interests of authors and others concerned in copyright protection is to be welcomed, it should be emphasized that any undue invasion or depreciation of such rights and interests however applied may by reaction create a feeling of ill-treatment and resentment which could in turn lead to the adoption of counter-protective measures. Such an outcome would be most unfortunate and might well defeat or confuse the purposes which all developed and developing countries alike desire to achieve. The Government of Israel, therefore, urges that its suggestions on the problem of payment of royalties to authors for use of their works in developing countries, which has been placed before UNESCO, should be given serious consideration in Stockholm. (See Annex.) Although this particular aspect is not formally due to be dealt with at the Stockholm Conference, it should be borne in mind when drafting the Protocol so that if the suggested or some other like method of financing the copyright needs of the developing countries is adopted, it will fit into the pattern of the provisions of the Protocol. It is, however, important to avoid unilateral action of any kind and from any direction, if the matter is so to be regulated for the benefit of all. If, however, a developed country should refrain for one reason or another from operating the suggested scheme, it could enter into bilateral agreements upon the matter, but such agreements must again always be within the framework of the Protocol and consonant both with its provisions and those of the Convention generally.

If, however, a proposal or suggestion of the same nature will be proposed at Stockholm then the Government of Israel is ready and willing to suggest that the above-mentioned proposal shall also be considered with the addition of the following provisions:

"(1) The rights granted in the Protocol shall be exercised only with regard to works, the country of origin of which is a country which has established a compensation fund or has waived its right to do so by notice given to the Director General of BIRPI and the Director General of UNESCO;

(2) Paragraph (1) shall not apply as long as countries not having declared themselves to be developing countries have set up, by an international document, machinery for the establishment and operation of such compensation fund."

A serious omission in the Convention and Protocol is the absence of any provisions dealing with folklore as such. The protection of folklore at an international level is a matter of importance to the developing countries which are probably nowadays its major source. The terms of Article 7 of the Berne Convention either in its present or in its proposed form are not entirely adequate for this purpose. The special legal-technical and other questions that are involved and their possible solutions have been discussed at the recent East Asian Seminar on copyright. A number of suggestions were there made in connection with Article 7. It appears to the Government of Israel most desirable that the matter should be dealt with at Stockholm within the context of the Convention itself rather than that of the Protocol and in such a manner that those States from which folklore emanates shall over a given period derive some benefit from its publication. Folklore must not be treated as being in the public domain, but the rights therein must belong to the States aforesaid. On the other hand, such States should not be empowered to prevent the collection, recording and publication of their folklore but be entitled to receive a reasonable fee in respect thereof.

* * *

The formal aspects of the Protocol are, in the opinion of the Government of Israel, of radical importance in achieving its over-all purpose. The following suggestions are made.

(a) The entry into force and the operation of the permissive provisions should not be tied to ratification of or accession to, or otherwise be conditional upon, the fate of the Stockholm text or any other instrument. It will be recalled that briefly the Government of Israel suggested in its observations on Document S/9 to add a paragraph to Article 30 of the Convention (dealing with the domestic implementation of the Convention) to enable any developing country to declare at the date of its ratification or accession to the Convention that it will avail itself of the provisions of the Protocol in place of the parallel provisions of the Convention. For those who become parties to the Stockholm Act by ratification or accession, Article 30 in the form suggested by the Government of Israel, will govern the situation. Every other developing country which is a member of the Union or currently a member of the UCC will be at liberty to enter into a formal Declaration to the effect that being a developing country it is not bound to implement Article 30 provided that it abides by the provisions of the Protocol which will be set out in substance, or was a member of the UCC before the date of the signing of the Stockholm Act. This will be complemented by a declaration of all members of the Union at Stockholm that such a procedure is acceptable.

(b) The term of 10 years proposed as the firm initial period for the duration of the permissive provisions might turn out to be unrealistic, notwithstanding the open-end provisions of Article 2 of the Protocol. By leaving the situation too vague, this Article could stultify the attainment of the over-all objective, for the pace of development of the developing countries may very well be uneven both absolutely for each of them and relatively as among themselves. What is, therefore, ideally required is not a rigidly uniform period of initial duration with a problematic power of extension, but an arrangement dependent upon objective factors. The Government of Israel has no concluded views on this particular matter but believes that the period must be foreseeably realistic and allow for clear, reasonable and equitable extensions in the light of prevailing circumstances. The Government of Israel suggests that 15 years (half a generation) would be most suitable for the initial period. Extension should be subject to a resolution of the General Assembly, passed by a majority of two-thirds, for a fixed but shorter period for all developing countries, or for such as the General Assembly may by definition in its resolution indicate. This sort of arrangement would help to "untie" extension from any Revision Conference, which may be long delayed or too imminent, as well as provide for the position of States which enter into the Declaration suggested in paragraph (a) above. In the event, however, of no decision as to extension being made by the General Assembly, the initial period would automatically lapse at the date of the Revision Conference next thereafter but the opportunity would still remain at such Conference to decide upon a further extension or some other arrangement the circumstances may require.

* * *

From the foregoing it emerges that what the Government of Israel suggests is:

(a) Merger for developing countries of the regimes of the Berne Convention and the UCC, under a joint legal system, leadership and administration;

(b) Permission of translation into the vernacular after a relative short period, and in all cases where reproduction is permitted;

(c) Permission of use of copyright material for educational purposes only if its origin is in a Berne Union or UCC country;

(d) Establishment of a compensation fund for use of copyright material in developing countries;

(e) Provisions for the protection of folklore within the regime of the Berne Union;

(f) Provisions for the implementation of the special concessions for the developing countries immediately upon the closing of the Stockholm Conference by way of a declaration of the conference.

The Government of Israel feels strongly that notwithstanding, or rather because of, the diversity of economic, social and cultural development among the nations it is vitally essential for the satisfaction and protection of the requirements and rights of all concerned in the encouragement and dissemination of intellectual, creative and other works to fashion a common legal regime and administrative structure, and with this overriding object in mind trusts that the different efforts now being made in this area of activity and the arrangements in which they are embodied will come together and be organically united for the benefit of the totality of mankind.

A N N E X E S

MEMORANDUM OF THE GOVERNMENT OF ISRAEL

Payment of royalties to authors for use of their works in developing countries

The Problem

The developing countries properly require the right to enjoy in their national languages the benefits of literary works published throughout the world, for educational and cultural purposes without the economic burden of the cost involved in payment of royalties to authors.

The existing Conventions prohibit the translation of works into a foreign language, without the authors' permission, for the relatively lengthy period of seven years, whilst it is the interest of the developing countries to bring certain publications to the attention of their people, and in their own language, as soon after appearance as possible.

The solution at present suggested by way of amendment of the Berne Convention to be dealt with at the Stockholm Conference, or in the proposals of the General Conference of UNESCO, is to permit the developing countries, although members of the organizations for the protection of copyright, to dispense with the requirements of a protection granted to authors by the Copyright Conventions during the period of their development.

The basic grounds for opposition to such a proposal are that authors will thereunder be deprived of their just and lawful rights, and that those States which will agree to the proposal, will in fact be imposing a form of taxation upon a particular group of their citizens which is economically productive and intellectually creative.

The Suggestion

In order to avoid the above-mentioned negative effect, but without prejudicing the needs of the developing countries, it is suggested that copy-right fees should be paid by the generality of users of copyright material in the developed countries themselves for works which are used in the developing countries.

Every State, which is defined as developed according to the criteria hereafter set out, shall render it obligatory for all publishers and other producers of copyright material to attach to every copy of the books etc. published etc. by them in that State a stamp to the value of 10 cents or of

such other appropriate sum as may be agreed upon. The collection of this "duty" shall be coordinated and centralized by a national association of publishers and other producers themselves, to form a fund from which those authors etc., whose works are sold to, or otherwise distributed in, the developing countries, or are printed or translated or broadcast there, shall be paid a fee suitably calculated according to returns made by the association of authors or some other like body of the developing countries concerned. A system such as this would be one means of correcting the disequilibrium which at present exists between popular mass literature and literature of quality.

The definition of a developed country for this purpose can be based upon one or more of the following criteria - the number of books etc. published in relation to population; the number of literates in relation to population; the number of persons receiving some form of education in relation to schools and to population; or in some other manner - and should be drawn up by a committee established by UNESCO for this purpose.

International control can be exercized by a joint committee set up by UNESCO together with the International Associations of Writers and like associations, which are already active in the collection of royalties throughout the world.

Implementation

It appears that the first step towards the implementation of the scheme above-outlined is necessarily the formation of a committee of UNESCO with the participation of representatives of a number of international non-governmental organizations to examine the problem in its entirety and to devise such practical measures as the solution thereof as above-outlined may require.

The matter is of some urgency and it is proper and fitting that it should be clarified before the Stockholm Conference takes place, since its adoption may involve a change of attitude towards the Protocol regarding the Developing Countries, which has been proposed for discussion there.

* * *

Observations of the State of Israel upon Resolution 5.122 of the fourteenth session of the General Conference of UNESCO

1. The Government of Israel welcomes all international action which would enable the developing countries to be embraced in the arrangements for the protection of copyright, with due attention to the special needs of such countries.

2. The Government of Israel regards it essential to secure the special needs of the developing countries in matters of copyright, but takes the view that this could be achieved by a union of the organizations which are at present concerned with copyright protection. The Government of Israel shares the aspiration that in matters of copyright there should be one legal regime applicable to all nations, and views with regretful concern that different organizations vie among themselves. Such a situation would in the nature of things and in view of existing developments be pregnant of danger. The Government of Israel is of the opinion that one of the means for attaining this object is to broaden the application of the Protocol to the Berne Convention, which is shortly to be discussed at the Diplomatic Conference in Stockholm.

3. The Government of Israel will therefore consider sympathetically a proposal within the scope of the discussions at the Stockholm Conference which will enable a developing country that is a member of the Universal Copyright Convention to join the Union of the Berne Convention without the necessity of taking legislative measures for such period as it may decide in order to comply with the relevant provisions of the Berne Conventions.

If indeed such a proposal is adopted there will no longer be any need for the changes mentioned in Resolution 5.122 since those developing countries which such changes affect will be in the same position as they would have been had these changes been made, and furthermore the necessity will not arise for them to leave the Union of the Berne Convention.

4. In the light of what transpires at Stockholm, and for the purpose of constructive cooperation the Government of Israel suggests that it would be proper for UNESCO to re-examine together with BIRPI the Universal Copyright Convention in order to determine whether indeed all its provisions are compatible with the promotion of the requirements of the developing countries.

In the opinion of the Government of Israel there is in fact occasion to introduce certain changes in this Convention, touching among others the following matters:

(a) The right of the free use of works for teaching and training requirements.

(b) The right of immediate translation where the translation is devoted to use for pedagogical purposes or for educational and scholastic activities.

(c) The protection of folklore at an international level, in such a manner that those States in which the folklore is collected or which is the source thereof shall enjoy for a defined period part of the benefits which the collector, the adaptor or the user thereof derives from the copyright he possesses during that period in such collection, adaptation etc.

5. The Government of Israel also hopes that in the course of the discussions that are to take place in the future, a way will be found to couple together the respective administrative establishments of the two existing Conventions and fortify cooperation among the organizations concerned.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/41
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSALS BY INDIA

MAIN COMMITTEE I

(1) In Article 4, for paragraph (4), substitute one of the following alternatives, namely:

Alternative 'A'	Alternative 'B'
S 4(4):	
Substitute the following:	
(4) The country of origin shall considered to be:	
(a) the country of the Union of which the author is a national;	(a) in the case of works made lawfully available to the public, the country of the Union of which the author is a national;
(b) in the case of a work first or simultaneously published in one or more countries of the Union, to which the provision at (a) above does not apply, the country of publication which grants the shortest term of protection;	
(c) in the case of a work simultaneously published in a country of the Union and a country outside the Union, to	

Alternative 'A'	Alternative 'B'
which the provision at (a) above does not apply, the former country, provided that the first publication takes place in that country and all the copies of the work published subsequently outside the Union indicate the country of the Union where first publication took place, the name and address of the publisher and the year date of publication, placed in such manner and location as to give reasonable notice of copyright. Provided further that protection shall be available only in the country of the Union in which the work is first published.	
(d) In the case of cinematographic work the maker of which is a national of a country of the Union or has his domicile or headquarters therein, that country;	Same as (d) in Alternative A.
(e) in the case of a work of architecture erected in the country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union, that country;	Same as at (e) of Alternative A.

Alternative 'A'	Alternative 'B'
The work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within 30 days of its first publication.	
All works made lawfully available to the public shall as far as possible, contain the names, addresses and nationalities of the authors and the publishers or such other agents through whom the works are made lawfully available to the public and the year dates and places at which such incidents took place.	Same

Note: Alternative B proceeds on the presumption that protection should start from date of which a work was lawfully made available to the public. This would make it unnecessary to have a stilted definition of 'publication'. For instance, Article 4(5) imposes different treatments for (1) TV films exchanged by two TV organizations; (2) musical scores hired even once and (3) films shown even many times in theatres owned by the maker.

It also assumes that perpetual protection for literary and artistic works will not arise. They will all go with the public domain after the post-mortem period prescribed.

The next assumption is that only authors of the Union should be protected. Where a non-Union author publishes in a Union country, he will not get protection, though, as now, the domestic legislation may protect the publisher in that country. The adoption of this course would obviate the need for retaliatory clauses (in Article 6) and back-door entries.

Alternative A is self-evident. Paragraphs (b) and (c) are not necessary logically. But, if this is too drastic, they may be retained. However, such back-door entry and protection should hold good only for the country of publication.

The only other change of substance is that for simultaneous publication, the first publication must be in the Union.

(2) For paragraph (5) of Article 4, substitute the following, namely:

"The expression 'published works' means works lawfully reproduced in tangible form and made available to the public in copies from which it can be read or otherwise visually perceived. The performance of a dramatic, dramatics-musical, cinematographic or musical work, the public recitation of a literary work, the communication by voice or the broadcasting of literary or artistic works, the exhibition of a work of art, the construction of a work of architecture, the issue of records recording a literary or artistic work and the issue of photographs or paintings or engravings of architectural or other three-dimensional works shall not constitute publication."

Explanation: The issue of gramophone records should not be treated as publication of the literary and artistic work. In the Rome Convention on Neighbouring Rights, it only means the issue of records. The same act should not lead to two different results under different Conventions.

The other change is that the issue of photographs or paintings or engravings of architectural or other three-dimensional works shall not constitute publication.

If Alternative B is adopted in Article 4(4), this definition will become unnecessary.

(3) Delete Article 6.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSALS OF THE UNITED KINGDOM DELEGATION

Berne Convention (doc. S/1)

Article 4(5)

Delete "lawfully published"

Insert "published with the consent of their authors".

Article 4(6)

Amend to read:
"The maker of a cinematographic work means the person or body corporate by whom the arrangements necessary for the making of the film are undertaken".

Article 6(2)

Add at end -
"Any country of the Union shall be free to treat the maker of a cinematographic work as its author".

Article 7(2)

Replace "first publication, public performance or broadcast" by -

"work has been made available to the public with the consent of the author"

Article 7(3)

for "lawfully made available to the public" substitute "made available to the public with the consent of the author".

New paragraph 7(3A)

"In respect of the collective works mentioned in Article 2(4), the term of protection shall be 50 years from the death of the author of such works".

Article 9

Amend to read:-

"1. Authors of literary and artistic works shall have the exclusive right of authorizing the reproduction of such works, or any substantial parts thereof, in any manner or form.

2. It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works or substantial parts thereof in certain special cases where the reproduction does not unreasonably prejudice the legitimate interests of the author and does not conflict with a normal exploitation of the work".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/43
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATIONS OF HUNGARY AND POLAND

Article 4(6) of the Berne Convention, as appearing in document S/1, should be omitted.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/44
Subject (Union): Berne
Original: French-English
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSAL BY THE CHAIRMAN OF MAIN COMMITTEE I ON THE DRAFTING OF THE PROVISIONS REGARDING CRITERIA FOR PROTECTION AND COUNTRY OF ORIGIN

Article 3

(1) The protection of this Convention shall apply to

(a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;

(b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but are domiciled in one of them, shall, for the purpose of this Convention, be assimilated to the nationals of that country.

(3) The expression "published works" means works lawfully published, copies of which have been issued and made available in sufficient quantities to the public, whatever may be the means of manufacture of the copies. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4

(1) The protection of this Convention shall apply, independently of the provisions of Article 3, to

(a) authors of cinematographic works, the maker of which is a national of one of the countries of the Union, or has his domicile or head-quarters in that country;

(b) authors of works of architecture, erected in a country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union.

(2) The maker of a cinematographic work means the person or body corporate who has taken the initiative in, and responsibility for, the making of the work.

Article 5

(1) The authors shall enjoy, in regard to such works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be

(a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country of which the legislation grants the shortest term of protection;

(b) in the case of works published simultaenously in a country outside the Union and in a country of the Union, the latter country;

(c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union:

(i) when these are cinematographic works the maker of which is a national of a country of the Union or has his domicile or headquarters therein, that country;

(ii) when these are works of architecture erected in a country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union, that country;

(iii) when these are works to which the provisions referred to in (i) or (ii) above do not apply, the country of the Union of which the author is a national.

Article 6

(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not effectively domiciled in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Government of the Swiss Confederation by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Government of the Swiss Confederation shall immediately communicate this declaration to all the countries of the Union.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13 1967 N° S/45
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

(Document S/1)

PROPOSAL BY THE FRENCH DELEGATION

Article 10 (proposed by BIRPI)

Paragraph 1 of the Article should be worded as follows:

"It shall be permissible to make short quotations, etc ..."

(The remainder unchanged)

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/46
Subject (Union): Paris Union
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSAL BY THE SWISS DELEGATION CONCERNING ARTICLE 13ter (PARIS)

(document S/3)

To the tasks devolving upon BIRPI the following should be added in paragraph (2): the preparation of draft periodical reports, programs and triennial and annual budgets, to be examined subsequently by the Executive Committee and submitted by the latter to the Assembly in accordance with Article 13bis (6) (Paris).

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/47
Subject (Union): Paris
Original: English
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

SWEDISH DELEGATION

Paris Union (S/3)

Proposal for amending item 2 of the amendment submitted by the Austrian Delegation and contained in document S/39.

New (xii) to read as follows:

"subject to its approval exercise such rights as are given to it in the IPO Convention."

Note: The question of the majority required for such approval will have to be considered when Articles 13(3) and 21(3) respectively will be discussed by the Committee.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/48
Subject (Union): Paris & Berne
Original: English
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSAL FOR AMENDMENT OF DOCUMENTS S/3 & S/9

Australian Delegation

Article 13 bis Paris Convention

21 bis Berne Convention

(4) Delete the remainder of the sentence after the word "distribution".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/49
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATION OF THE NETHERLANDS

Article 4(5) of the Berne Convention, as appearing in document S/1, should read as follows:

"(5) The expression 'published works' means works [lawfully] published whatever may be the means of manufacture of the copies, provided that the latter have been made available in such a manner as to make the work accessible to the public ...".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/50
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATIONS OF BULGARIA AND POLAND

Article 7(6) of the Berne Convention, as appearing in document S/1, should be amended by the addition of the following:

"The countries of the Union bound by the Rome Aot at the time of accession to or ratification of the present Aot shall be entitled to grant a term of protection shorter than those provided by the preceding paragraphs."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/51
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATIONS OF CZECHOSLOVAKIA, HUNGARY AND POLAND

1. Article 9 of the Berne Convention in document S 1, should be amended b the addition of 3 as follows:

"Articles on current political or economic affairs may be reproduced, even in translation, by the press, in press reviews or broadcast or televised, if the reproduction or broadcasting rights of the article concerned are not expressly reserved; the source should, however, always be clearly indicated. The method of enforcing this obligation shall be determined by the legislation of the country in which protection is claimed."

2. Article 10(1) of the Berne Convention as appearing in document S/1 should be amended as follows:

In the proposed text, after the words "make quotations", add the words: ", even in translation,".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/52
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

AMENDMENT PROPOSED BY AUSTRALIA

Article 6, paragraph 3

Delete the words "or graphic and three-dimensional works affixed to land or to a building" and the words "or so affixed".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/53
Subject (Union): Berne
Original: English-French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL SUBMITTED BY THE
DELEGATION OF SOUTH AFRICA

Article 4, paragraph (5)

The expression "published works" means works lawfully published, whatever may be the means of manufacture of the copies, provided that the availability of such copies is sufficient to render the work accessible to the public."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/54
Subject (Union): Berne Union
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE BERNE CONVENTION (DOCUMENT S/9) BY THE DELEGATION OF THE NETHERLANDS

1. Article 23(4) of the Berne Convention, as appearing in document S/9, should be omitted.

(Commentary: as the scope of the present article has already been defined in the first and second paragraphs, there appears to be no need to refer to it again in the final paragraph.)

in

should be omitted.

(Commentary: there seems to be no purpose in practice for the possibility offered by this provision.

After the omission of item (ii) the Drafting Committee will be able to effect some simplification of the subsequent paragraphs of the same article and of article 25bis.)

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/55
Subject (Union): Paris Union
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE PARIS CONVENTION (DOCUMENT S/3) BY THE DELEGATION OF THE NETHERLANDS

1. Article 13 quinquies 4 of the Paris Convention, as appearing in document S/3 should be omitted.

(Commentary: as the scope of the present article has already been defined in the first and second paragraphs, there appears to be no need to refer to it again in the final paragraph.)

2. Article 16 1 b ii of the Paris Convention as a in document S should be omitted.

(Commentary: there seems to be no purpose in practice for the possibility offered by this provision.

After the omission of item (ii) the Drafting Committee will be able to effect some simplification of the subsequent paragraphs of the same article and of article 25bis.)

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 13, 1967 N° S/56
Subject (Union): Berne
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

OBSERVATIONS SUBMITTED BY THE GREEK DELEGATION

on Document S/1

The proposals of the Greek delegation regarding the amendments to the Berne Convention contained in Document S/1 are as follows:

Greece accepts the proposals contained in that document, except for the following points presented in detail below:

Article 2, new paragraph (2). Greece considers that a special category referring to television works should be established in order to enable a distinction to be made between the protection of such works and that of cinematographic works.

Article 4, paragraph (2). Greece accepts this paragraph, while nevertheless considering that Article 2 of the Additional Protocol relating to the protection of the works of stateless persons and refugees should be abolished.

Article 4, paragraph (4)(c)(i). Greece considers that no purpose is to be served by giving special consideration to the maker of cinematographic works.

Article 4, paragraph (6). Greece considers that this provision should be abolished because any definition on this subject is hazardous. The formula that "the maker means the person who has taken the initiative in and responsibility for the making of the work" creates some uncertainty as to whether it is a question of economic initiative and responsibility or whether, for example, the maker is considered to be the director who conceived the idea of and took the initiative in the making of the film, or whether both parties are considered to be makers. In this last case, numerous complicated problems will arise.

Article 6, paragraph (2). Greece does not consider special provisions relating to cinematographic works to be necessary.

Article 6bis. Greece proposes that there be incorporated in this Article the Belgian proposal made at the Brussels Conference (1948), which is contained in the Documents of the Brussels Conference, page 186.

If this proposal is not accepted, Greece proposes the addition of a new paragraph (3) to this Article, reading as follows:

"In so far as the legislation of the countries of the Union permits, the rights granted to the author in accordance with paragraph (1) shall, after the expiry of the economic rights, be granted to and shall be exercisable by the persons or institutions authorized by the said legislation. The determination of the conditions under which the rights mentioned in this paragraph shall be exercised shall be governed by the legislation of the countries of the Union."

The existing paragraph (3) will be renumbered (4).

Article 7, paragraph (2). Greece considers that the term of protection of 50 years is excessive and proposes a term of 25 years. In any case it should be definitely specified that the term of protection starts from the making of the work and not from its publication.

Article 7, paragraph (3). Greece considers that the provision restricting the term of protection of anonymous or pseudonymous works to 50 years after the death of the author, instead of 50 years after their publication, is unjust. It is of course possible that the latter may lead to a longer term of protection of such works, but the new provision may reverse the principle on which the protection of anonymous or pseudonymous works was based, namely the desire of the author to conceal his identity. According to the new provision, it will be possible to raise in the Courts the question of the death of the author of an anonymous or pseudonymous work, and such author will be obliged to disclose his identity in order to protect his rights.

Article 7, paragraph (4). Greece considers that the minimum term of 25 years prescribed for the protection of works of applied arts is excessive and proposes that the said term should be ten years.

This long-term protection might perhaps involve a change in domestic laws concerning the protection of such works as designs and models, referred to in Article 2, paragraph (6).

It is proposed that paragraph (5) of Article 7 regarding the term of protection of posthumous works should remain in force and that a term of protection of 25 years starting from the date of first publication should

be granted. It is necessary to have a motive for the publication of these works, such as the establishment of the rights deriving from publication.

Article 8. Greece proposes that the system referred to in Article V of the Universal Copyright Convention be introduced, while prolonging the term of protection from seven to ten years after first publication,

This system affords possibilities of circulating intellectual works without any detriment to their maker who receives reasonable compensation and whose moral rights are safeguarded. The need for countries whose language is spoken by only a small number of persons, to participate fully in the cultural development of countries with a widely spoken language, should not be disregarded. If permission to translate a literary work is easily obtainable, such a provision will be harmful to nobody, but, on the contrary, will constitute a motive for granting permission for translation.

Article 9. Greece considers that subparagraphs (a) and (b) which are covered by subparagraph (c) should be abolished, and that subparagraph (c) should constitute the continuation of paragraph (2) without any distinction between (a), (b), and (c).

Article 10, paragraph (1). Greece considers that the quotations should be brief and proposes that the paragraph concerned should begin as follows:

"It shall be permissible to make short quotations ....."

Article 11, paragraph (1). Greece considers that cinematographic and television works should be included in the enumeration of protected works in paragraph (1).

Article 13, paragraph (1) (in force). Greece considers that this paragraph should remain in force, while adding after the words "Authors of musical works shall have" the phrase "independently of the exclusive right referred to in Article 9, paragraph (2)".

Article 14. The last sentence should be worded as follows: "The provisions of Article 11bis, paragraphs (2) and (3) and of Article 13, paragraph (2), shall not apply."

Article 14, paragraph (4) etc. Greece is opposed to any provision introducing into an International Convention any subjects governed by private agreements, and therefore proposes the abolition of paragraphs (4), (5), (6), and (7) of this Article.

The Greek Delegation reserves the right to submit its proposals concerning the Protocol Regarding Developing Countries.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date:
Subject (Union):
Original:
Distribution:

N° S/57

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

This number was not used.

BIRPI
BUREAUX INTERNATIONAUX RÉUNIS
POUR LA PROTECTION
DE LA PROPRIÉTÉ INTELLECTUELLE

Date: June 13, 1967 N° S/58
Sujet (Union): Main Committee IV Berne
Original: French
Distribution: Main Committee IV

CONFÉRENCE DE STOCKHOLM DE LA PROPRIÉTÉ INTELLECTUELLE, 1967

DELEGATIONS OF AUSTRIA AND POLAND

Proposal for the text of Article 13(3)(b) of document S/3 and for the text of Article 21(3)(b) of document S/9

"(b) One-half of the countries members of the Assembly shall constitute a quorum. If the quorum is not attained at the session, the Assembly shall make provisional decisions which shall be communicated in writing to the countries which were absent, inviting them to pronounce themselves within a period of four months from the date of the communication. If, within this period, the written replies communicated to the International Bureau attain the required quorum and majority, the decision shall be secured."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/59
Subject (Union): Main Committee IV
Original: English Berne
Distribution: General

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PARIS CONVENTION S/3

PROPOSAL OF THE UNITED STATES DELEGATION

Article 13quinquies

It is proposed that paragraph (1) be revised to read as follows (proposed additions are underlined):

"(1) Proposals for the amendment of Article 13, 13bis, 13ter, 13quater, and the present Article, may be initiated by any country of the Union, the Executive Committee, or the Director General and shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14th 1967 N° S/60
Subject (Union): Berne Union
Original: French/English
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATIONS OF SOUTH AFRICA, GERMANY, LUXEMBOURG AND MONACO

Article 4(5)

It is proposed that the first sentence be replaced by the following:

The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been sufficient to satisfy the requirements of the public.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/61
Subject (Union): Paris Union
Original: English
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSALS OF CZECHOSLOVAKIA

(1) Amendment to Article 13(3)(b) (Document S/3) and to Article 21(3)(b) (Document S/9):
Substitute the quorum of one-third by the quorum of one-half.

(2) Amendment to Article 13(3)(c) (Document S/3) and to Article 21(3)(c) (Document S/9):
Substitute "a simple majority of the votes cast" by "a majority of two-thirds of the votes cast."

(3) Amendment to Article 13bis(8)(c) (Document S/3) and to Article 21bis(8)(c) (Document S/9):
Replace the words "a simple majority of the votes cast" by "two-thirds of the votes cast."

(4) Amendment to Article 13quinquies(2) (Document S/3) and Article 23(2) (Document S/9):
Substitute the words "three-fourths of the votes cast" by "the unanimity of the votes cast."

(5) Amendment to Article 16ter (Document S/3):
Delete this article.

(6) Amendment to Article 16quinquies (Document S/3) and to Article 26 (Document S/9):
Delete this article.

(7) Article 27bis (Document S/9): It is proposed that the alternative C or D be accepted.

(8) Amendments to Documents S/4, S/5, S/7 and S/8:
Amend the articles in question in the same way as it is proposed for the Paris and Berne Unions.

(9) Amendment to Article 25bis(2) (Document S/9):
Delete the words "subject to the provisions of Article 25(1)(b)(1) and (c)..." and make the consequential changes in other articles.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date:
Subject (Union):
Original:
Distribution:

N° S/61 Corr.

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

Corrigendum to Document S/61 (proposals of Czechoslovakia)

9) Delete "25bis(2)" and insert "20bis"

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/62
Subject (Union): Main Committee IV Finance
Original: English/French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

DELEGATIONS OF FRANCE, GERMANY (FEDERAL REPUBLIC), ITALY, UNITED STATES

AMENDMENTS TO THE TEXTS PROPOSED IN DOCUMENTS S/3 AND S/9

Document S/3: ARTICLE 13quater)
Document S/9: ARTICLE 22) FINANCES

A. Replace subparagraph (b) of paragraph (1) by the following text:

"(b) The budget of the Union shall include the expenses proper to the Union itself, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization."

B. In the first sentence of subparagraph (c) of paragraph (1), substitute for the words "common expenses" the words "expenses common to the Unions"; and delete the words "or also to the Organization as such."

C. In paragraph (2), delete the final words "and with the budget of the Organization as such."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14th, 1967 N° S/63
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE SWISS DELEGATION

Article 4

(1) Authors who are nationals of one of the countries of the Union shall enjoy in the other countries of the Union, for their works, whether published or not, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

Protection in the country of which the author is a national (country of origin) shall be governed solely by the legislation of that country.

(2) Authors who are not nationals of one of the countries of the Union but habitually reside in one of them shall, for the purpose of this Convention, be assimilated to the nationals of that country.

(3) The country of origin shall be considered to be:

(a) in the case of cinematographic works the maker of which is a national of a country of the Union or has his habitual residence or headquarters therein, that country;

(b) in the case of works of architecture erected in the country of the Union or graphic and three-dimensional works affixed to land or to a building located in a country of the Union, that country.

The maker of a cinematographic work means the person or body corporate who has taken the initiative in, and responsibility for, the making of the work.

(4) In the case of plural nationality, the last nationality acquired shall prevail.

(5) The enjoyment and the exercise of the rights granted to authors shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

Article 5

[Omitted]

Article 6

(1) [as proposed].

(2) [definition of published works in accordance with the present Article 4(5) and definition of simultaneous publication in accordance with the present Article 4(4), last sentence.]

(3) to (7) [as proposed paragraphs (2) to (6)].

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/64
Subject (Union): Main Committee IV
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF HUNGARY

PROPOSALS FOR AMENDMENT OF DOCUMENTS S/3 AND S/9

Article 13(5) : (Paris Convention - S/3)

Article 23 : (Berne Convention - S/9)

1. Paragraph (1) should be amended as follows:

"Proposals for amendment, made by member countries or by the Director General, of Articles 13, 13bis, 13ter, 13quater ..."

2. The first sentence remains unchanged. The second sentence should read as follows :

"Adoption requires the unanimity of votes cast."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/65
Subject (Union): Berne Union
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL FOR AMENDMENT BY THE DELEGATION OF POLAND

DOCUMENT S/9

BERNE CONVENTION

Article 26 (Territories)

The Delegation of Poland proposes the deletion of Article 26 of the draft administrative provisions and final clauses of the Berne Convention.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/66
Subject (Union): Berne
Original: English - French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF MONACO

Article (9)(2)

(Document S/1)

Subject to the provisions of this Convention, it shall be a matter for legislation in the Countries of the Union to permit the reproduction of such works

(a)

(b)

(c)

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/67
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE GERMAN DELEGATION

Article 9

Paragraph (1)

Germany proposes that the following phrase should be inserted after the words "these works":

"including the recording of these works by instruments capable of reproducing them mechanically."

Paragraph (2)(c)

Germany proposes that the text should be replaced by the following wording:

"in certain particular cases where permission does not conflict with a normal exploitation of the work or with the author's right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority, and where permission is not contrary to the legitimate interests of the author."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14th, 1967 N° S/68
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE SWISS DELEGATION

Article 10, paragraph (1) (document S/1)

(1) It shall be permissible to make short quotations from a work which has already been lawfully made available to the public, provided that they are compatible with fair practice, and to the extent that they serve as explanation, reference or illustration in the context in which they occur, including quotations from newspaper articles and periodicals in the form of press summaries.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14th 1967 N° S/69
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION

(DOCUMENT S/1) BY THE SWISS DELEGATION

Article 7(7) (Document S/1)

(7) In any case, the term shall be governed by the law of the country where protection is claimed; however, the legislation of that country may provide that the term of protection shall not exceed the term fixed in the country of origin of the work.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/70
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE FRENCH DELEGATION

Articles 9 and 10 (BIRPI draft)

(1) The text of paragraph (1) of Article 9 shall be amended as follows and shall constitute the sole text of that article:

"Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form and for any purpose."

(2) Paragraph (2) of Article 9 shall be incorporated in Article 10.

(3) In subparagraph (a) of the paragraph referred to above substitute the words "individual or family use" for the words "private use."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/71
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL MADE BY THE AUSTRIAN DELEGATION

(Convention Berne re Document S/1)

The following provision should be inserted in a suitable place in the Berne Convention:

"The publisher of every work of cultural importance shall be obliged to deposit in a designated national archive a microfilm copy of the manuscript sources on which the published work is based. It shall be a matter for legislation in the countries of the Union to designate national archives for this purpose and to prescribe penalties for non-compliance with this obligation, provided that such penalties shall not invalidate the rights of the author under the present Convention."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14th 1967 N° S/72
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATIONS OF AUSTRIA, ITALY AND MOROCCO

Article 9, Paragraph (1) of the Berne Convention (document S/1)

Add the following words after the word "reproduction":

"and circulation."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/73
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

MAIN COMMITTEE

Proposals by India

1. In Article 1, the term used is "literary and artistic works" which is defined in Article 2 (1). Later, the Convention refers to "literary or artistic work", for example Articles 2 (4), 10 (2), 10 (bis) 12, 14 (1) and 15 at some places, "literary and artistic works" at some other places (see Article 8, 9 (1), 11 bis (1)) and "literary, scientific or artistic works" elsewhere (for example Article 12, 14 (1) and 14 (3)). Drafting Committee might like to look into this.

2. In Article 2 (1):

(a) Insert in the enumeration of literary and artistic works "works of folk-lore".

(b) Insert the following as a subparagraph after paragraph (1) of Article 2, namely:

"It shall, however, be a matter for legislation in the countries of the Union to prescribe that any specified categories of works shall be fixed in some material form."

3. In Article 2 (bis):

For the words "reproduced by the press" occurring at the end of paragraph (2), substitute the following, namely:

"reproduced in original or in translation by the press or cinematography or broadcasting."

4. In Article 4, paragraph 6, omit the words "or body corporate".

5. In Article 6 bis:

For paragraph (2), substitute the following namely:

"The rights granted to the author in accordance with the preceding paragraph, other than the right to claim authorship of the work, shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by his successor in title or in the absence of such successor in title, by the persons or institutions authorized by the legislation of the country where protection is claimed."

6. In Article 7, paragraph (3):

(a) After the words "In the case of anonymous or pseudonymous works" insert the words "other than works of folk-lore".

(b) After the paragraph, insert the following as a subparagraph thereto, namely:

"In the case of works of folk-lore, the term of protection shall last at least until the end of a period of fifty years from the date of publication of the work. For the purpose of this subparagraph, the issue of any records recording such work shall not be deemed to be publication of the work."

7. In Article 7, paragraph (4), industrial designs and models referred to in Article 2 (6), are not specifically mentioned. Domestic legislation should provide for these matters too. Drafting Committee may like to look into this aspect of the matter.

8. In Article 7 bis:

After the words "last surviving author" occurring at the end, insert the following, namely:

"who was a national of a country of the Union."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/74
Subject (Union): Paris Union
Original: French-English
Distribution: Main Committee III

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

DRAFT TEXT OF ARTICLE 4 - I ESTABLISHED BY THE DRAFTING COMMITTEE OF MAIN COMMITTEE III

I - (1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model or an inventor's certificate.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/75
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE RUMANIAN DELEGATION

Article 9

We propose that this Article should be amplified and reworded as follows:

"(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in paragraph (1) may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) The countries of the Union may provide that the authorization referred to above shall be given by a written agreement or something having the same force; the agreement shall also specify the period within which reproduction must be effected and a stipulation that should reproduction not have been effected in the course of that period the agreement shall be void.

(4) It shall be a matter for legislation in the countries of the Union to permit the reproduction of literary and artistic works

(a) for private use;

(b) for judicial or administrative purposes;

(c) in certain particular cases where the reproduction is not contrary to the legitimate interests of the author and does not conflict with a normal exploitation of the work."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/76
Subject (Union): Berne
Original: French - English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL SUBMITTED BY THE DELEGATION OF MONACO

Article 10bis (Re. Document S/1)

It shall be a matter for legislation in countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography or cinematography, or by broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/77
Subject (Union): Berne
Original: English & French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL SUBMITTED BY THE DELEGATION OF MONACO

Article 11 bis (3) (Re. Document S/1).

Draft the second sentence as follows:

"It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by or for a broadcasting organization and used for its own broadcasts and for those of other organizations under the jurisdiction of the same country."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/78
Subject (Union): Main-Committee IV Berne
Original: French/English
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

WORKING GROUP OF MAIN COMMITTEE IV

Proposal for the text of Article 13(3)(b) of document S/3 and for the text of Article 21(3)(b) of document S/9

"(b) One-half of the countries members of the Assembly shall constitute a quorum. If that quorum is not attained at the session but one-third of the countries members of the Assembly are present, the Assembly shall make provisional decisions which shall be communicated in writing to the countries which were absent, inviting them to pronounce themselves within a period of four months from the date of the communication. If, within this period, together with the written replies communicated to the International Bureau, the required quorum and majority are attained, the decision shall be secured."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/79
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATIONS OF BULGARIA, POLAND AND CZECHOSLOVAKIA

Article 2bis(2) of the Berne Convention, as appearing in document S/1, should be amended as follows:

Insert after the words: "reproduced by the press" the words: "or broadcast".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/80
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT OF THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATION OF JAPAN

Article 9(3)

It is proposed that the following provision be added as paragraph (3) of Article 9:

"Articles on current, economic, political or religious topics may be reproduced by the press or be broadcast unless the reproduction or the broadcasting thereof is expressly reserved; nevertheless, the source must always be clearly indicated. The legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/81
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATION OF THE NETHERLANDS

Article 9(2) of the Berne Convention, as appearing in document S/1, should read as follows:

"9(2) The reproduction of these works shall, however, be permitted:

(a) (i) for individual or family use;

(ii) for strictly judicial or administrative purposes;

(iii) in certain particular cases where the reproduction does not adversely affect the interests of the author orof his successors in title and does not conflict with a normal exploitation of the work; provided that the legislation of the country in which protection is claimed expressly permits such reproduction;

(b) In other cases expressly provided for in this Convention."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/82
Subject (Union): Paris Union
Original: French
Distribution: . Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE DELEGATION OF SPAIN

PARIS CONVENTION - DOCUMENT S/3

the addition of an item i bis to
of Article 1 uater on "Finances"

An examination of the text of the draft confirms the continuation of the existing situation, i.e., the sources of revenue for the budget of the General Union are still based primarily on contributions from member States of that Union, since the other revenues provided for cannot be expected to solve the serious financial problems confronting the Union which have come to the foreground over the past few years as a result of the rise in the cost of all services, the compulsory improvements made in staff benefits, and, especially, the unanimous acknowledgement of the need of a vaster program of technical assistance to all countries and, in general, of ever-increasing activities.

We feel that, despite the present greater number of States and the important financial contribution of some of them, it is obvious to all those who follow and are familiar with the financial problems of the Paris Union that the contributions of the States are not adequate to enable the Union to undertake the programs it is now committed to carry out. This means that a large and substantial increase in the contributions from States will be inevitable.

But, before the imminent (although subsequent to the Conference) fact of having to decide on a considerable increase in the contributions of the respective States, it should be recognized that, of the 74 countries belonging to the Paris Union, only half a dozen would, at the beginning of the year, be in a position to give a clearly affirmative reply.

Nevertheless, we believe that the time has come to find out whether there is not some way of resolving the financial problem of the Union definitively--which will have to be done in any event--apart from increasing the contributions from States. We would reply that within the Organization itself there are Special Unions (international trademark registry, etc.) that offer a clear example of what the financial support of the direct beneficiaries can represent, inasmuch as in the General Union, and on the basis of each country's recognition of the priority right, there are obvious benefits for the parties concerned.

Many reasons and advantages, from various points of view, could be given in support of the introduction of a fee for the priority claimed; there is no doubt but that they will be present in everyone's mind and, consequently, we do not think it necessary to dwell on them. We do feel, however, that advantage should be taken of the opportunity now offered by the Diplomatic Conference of Stockholm to establish a new source of revenue, the surpassing importance of which can entirely change the financial picture of the Union and its possibilities of action.

It is therefore specifically proposed that an item (i)bis be added to paragraph 3 of Article 13quater indicated above; this item could be worded as follows:-

> "fees collected by the International Bureau through the national Offices for each patent application or other transaction where the right of priority established by this Convention is invoked."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/83
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATIONS OF BULGARIA, POLAND, RUMANIA AND CZECHOSLOVAKIA

Article 10(2) of the Berne Convention, as appearing in document S/1, should read as follows:

"It shall be a matter for legislation in the countries of the Union, and for special Agreements existing or to be concluded between them, to permit, to the extent justified by the purpose, borrowings from literary or artistic works for use in publications, radio and television broadcasts and phonograms intended for teaching or having a scientific character or in chrestomathies."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 14, 1967 N° S/84
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO DOCUMENT S/10 BY THE DELEGATION OF MADAGASCAR

Article 6 of document S/10: General Assembly

1. Add a new paragraph (1)(c) reading as follows:

"(c) Several countries, members of one or more Unions, which are grouped together in a single organization by virtue of an international agreement, may be represented by a single delegation or by their joint organization, which shall then dispose of as many votes as there are Member States of the aforementioned organization."

2. Insert at the beginning of paragraph (3)(a) the words: "Subject to the provisions of paragraph (1)(c) above."

3. Make the same addition to paragraph (3)(i).

Article 7 of document S/10: Conference

1. Insert at the beginning of paragraph (1)(b) the words: "Subject to the provisions of Article 6(1)(c)."

2. Make the same addition to paragraphs (3)(a) and 3(g).

Article 8 of document S/10: Coordination Committee

1. Insert at the beginning of paragraph (1)(b) the words: "Subject to the provisions of Article 6(1)(c)."

2. Make the same addition to paragraphs 5(a) and 5(c).

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 15, 1967 N° S/85
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO PROPOSALS FOR ESTABLISHING THE ORGANIZATION (DOCUMENT S/10) BY THE RUMANIAN DELEGATION

Preamble

The Contracting Parties,

Desiring to contribute to better understanding and collaboration between the peoples, on the basis of the principles of respect for sovereignty, equality before the law and mutual advantage,

Wishing, to that end, to modernize and render more efficient ...

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 15, 1967 N° S/86
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

MAIN COMMITTEE I

PROPOSALS OF INDIA

(1) In Article 9:- Retain Brussels text. Or, in the alternative, in paragraph (2), after item (c), add the following as item (d), namely:-

"(d) in cases not covered by (a), (b) or (c) above, on payment of such remuneration which, in the absence of agreement, shall be fixed by competent authority."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 15, 1967 N° S/87
Subject (Union): Paris Union (Plenary)
Original: French-English
Distribution: Paris Union Countries

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

DRAFT TEXT OF ARTICLE 4 - I ADOPTED BY MAIN COMMITTEE III AND SUBMITTED TO THE PLENARY OF THE PARIS UNION

I - (1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model or an inventor's certificate.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 15, 1967 N° S/88 351
Subject (Union): Berne
Original: English-French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSALS SUBMITTED BY THE DRAFTING COMMITTEE

Article 4, paragraph (5), and Article 6, paragraph (3) of the Berne Convention (Document S/1)

Article 4, paragraph (5), first sentence

The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work.

Article 6, paragraph (3)
(English version only)

Authors who are not nationals of one of the countries of the Union shall enjoy in a country of the Union, for their works of architecture erected in that country and other artistic works incorporated in a building or other structure erected in that country, the same rights as national authors and, in the other countries of the Union, the rights granted by this Convention.

Note. The same wording should be used in Article 4, paragraph (4), (c), (ii).

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 15, 1967 N° S/89
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

(DOCUMENT S/1) BY THE BULGARIAN DELEGATION

Article 2

Add the words "televisual works" after the words "cinematographic works" in paragraph (1) of Article 2.

Delete the proposed new paragraph (2).

Article 6bis

Delete the words "until the expiry of the economic rights" in Article 6bis.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 15, 1967 N° S/90
Subject (Union): Paris
Original: English
Distribution: Main Committee III

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

REPORT ON THE PROCEEDINGS OF MAIN COMMITTEE III BY MR. ALFRED C. KING, BARRISTER-AT-LAW, (AUSTRALIA), RAPPORTEUR

1. On Monday, June 12, the Plenary of the Union constituted under the Paris Convention for the Protection of Industrial Property of March 20, 1883 (delegates of 55 member countries* being in attendance), under the Presidency of Mr. J.E. Maksarev, head of the delegation of the Union of Soviet Socialist Republics, accepted without objection the proposals of the Government of Sweden that a member of the Rumanian delegation be Chairman of Main Committee III, that a member of the Netherlands delegation be Vice-Chairman of that Committee, and that I be rapporteur. This Committee began work on Tuesday, June 13, under the chairmanship of Mr. Lucian Marinette, the Vice-Chairman being Mr. van Benthem. Observers were present on behalf of the United Nations, the International Association for the Protection of Industrial Property (IAPIP), the International Chamber of Commerce (ICC), the International Federation of Patent Agents (FICPI), and the Union of European Patent Agents.

2. The function of this Committee was to consider the revision of the Paris Convention, as revised at Lisbon on October 31, 1958, so as to put applicants for inventors' certificates in those countries of the Union, the laws of which make provision for the grant of such certificates as an alternative to the grant of patents, in the same position in respect of priority rights under Article 4 of the Convention as if they were applicants for patents.

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* Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Central African Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Gabon, Greece, Holy See, Hungary, Iceland, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Kenya, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Poland, Portugal, Rumania, Senegal, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, USSR, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia.

3. The basic proposals for discussion before the Committee were contained in a paper prepared by the Government of Sweden with the assistance of BIRPI, marked S/2 and bearing the date of April 15, 1966. Copies of this paper had been previously distributed to Union members. In addition to an explanation of the need for the abovementioned revision of the Convention and a history of the work already done on such revision, (which require no repetition here), this paper proposed that to Article 4 there be added a new Section, the English version of which was as follows:

> "I.- (1) Applications for inventors' certificates, filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents.
>
> (2) In a country in which applicants have the above option, the right of priority provided for under this Article shall be recognized also where the applicant seeks an inventor's certificate irrespective of whether the first application (Section A, paragraph (2))was an application for a patent or a utility model, or for an inventor's certificate."

4. Unqualified approval of the principle that applications for inventors' certificates in countries where applicants could if they wished apply instead for patents should give rise to the right of priority provided for by Article 4 of the Convention, and that the same priority right should attach to such applications for inventors' certificates, was expressed by the delegations of the United States of America, the Federal Republic of Germany, France, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, Spain, Italy, Hungary, Yugoslavia, Switzerland, Bulgaria, Czechoslovakia, the Union of Soviet Socialist Republics, Austria, Poland, Sweden, Ireland, Belgium, Portugal, Rumania, Japan and Australia. The representatives of Ecuador, the United Nations and the AIPIP were also heard in its favor. No delegation objected to the incorporation of the above principle in the Convention.

5. During the course of the meeting references were made to proposals by the delegations of France and Italy for amendment of the proposed new Section referred to in paragraph 3 above. The French proposal was to add several words to the first paragraph thereof so that it would take the following form:

"Applications for inventors' certificates, filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be admitted on the same conditions, treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents."

The Italian proposal was to amend the whole of the proposed Section to the following form:

"I.- (1) The right of priority under this Article may also be based on applications for inventors' certificates filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate.

(2) In countries in which applicants have the option between applying for a patent and applying for an inventor's certificate, the right of priority provided for under this Article shall be recognized also where the applicant seeks an inventor's certificate, irrespective of whether the first application (Section A, paragraph (2)) was an application for a patent or a utility model, or for an inventor's certificate."

The Netherlands delegation referred to a draft Section which the Congress of the AIPIP held in Tokyo in 1966 wished substituted for the proposed new Section, namely:

"Applications for inventors' certificates filed in a country in which applicants have the right to apply, at their own option and on the same substantive conditions either for a patent or for an inventor's certificate, shall engender the right of priority provided for by this article, under the same conditions and with the same effects as an application for a patent.

Conversely, in the countries in which applicants have the above option between a patent and an inventor's certificate, it shall be provided that an inventor's certificate can be applied for by claiming, pursuant to the present article, a priority founded on an application for a patent, utility model, or an inventor's certificate."

The representative of the AIPIP also referred to this proposal. As all these proposals differed from that of the Swedish Government and BIRPI only in form, the Committee agreed with the Chairman's view that they should be referred to the drafting committee which was to be set up.

6. The delegation of the United Kingdom of Great Britain and Northern Ireland proposed that the Convention be further revised by inserting in Article 1(2), after the word "patents", the words "inventors' certificates". It was explained that this was not intended to be a far-reaching amendment, but that it was aimed only at making the definition of "industrial property" consistent with Article 4 as proposed to be revised. The proposers thought that its only possible effect would be on the references to "industrial property" in Article 2. No delegation disapproved of this suggestion, and a number indicated their interest in it. However, all other delegations of member countries were opposed to the consideration of it in Stockholm for the reasons that it required further study and that they had come prepared to consider only the proposed revision of Article 4. The United Kingdom delegation then withdrew its proposal.

7. A drafting committee was appointed, to consist of a member of the delegations of each of France, Italy, the Netherlands, the Union of Soviet Socialist Republics, the United States of America, Spain, the Federal Republic of Germany, Czechoslovakia, the United Kingdom of Great Britain and Northern Ireland, Sweden and Switzerland. It sat in the afternoon of Tuesday, June 13, and the morning of Wednesday, June 14, under the chairmanship of Mr. E. Brenner (United States of America). In the morning of Thursday, June 15, its proposed addition to the Convention was put before the main Committee together with the information that the representatives of France and Sweden on the drafting committee had been appointed to the General Drafting Committee.

8. The drafting committee's recommended English text of the new Article 4(I) was as follows:

> "I.- (1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.
>
> (2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model or an inventor's certificate."

The recommended French text was as follows:

"I. (1) Les demandes de certificats d'auteur d'invention, déposées dans un pays où les déposants ont le droit de demander à leur choix soit un brevet, soit un certificat d'auteur d'invention, donneront naissance au droit de priorité institué par le présent article dans les mêmes conditions et avec les mêmes effets que des demandes de brevets d'invention.

(2) Dans un pays où les déposants ont le droit de demander à leur choix soit un brevet, soit un certificat d'auteur d'invention, le demandeur d'un certificat d'auteur d'invention bénéficiera, dans les termes du présent article applicables aux demandes de brevets, du droit de priorité basé sur le dépôt d'une demande de brevet d'invention, de modèle d'utilité ou de certificat d'auteur d'invention."

9. Approval of the above texts was expressed by the delegations of Czechoslovakia, Union of Soviet Socialist Republics, Australia, Canada, Federal Republic of Germany, Austria, Yugoslavia, Sweden, Bulgaria, United Kingdom of Great Britain and Northern Ireland, Iceland, Italy, Denmark, United States of America, Switzerland, Portugal, the Netherlands, France, Spain, Norway, Brazil, Japan, Belgium, Finland, Iran and South Africa, and no objections to them were raised.

10. The Secretary of the Committee (M. Magnin) proposed that in the second paragraph of the French version the words "selon les dispositions" be substituted for the words "dans les termes", and this drafting amendment was accepted without objection.

11. The Chairman announced that the texts proposed by the drafting committee, amended in the manner referred to in paragraph 10 above, were approved unanimously. He expressed the Committee's appreciation of the work done by the drafting committee and its Chairman, thanked the members of the main Committee and announced that the main Committee would meet again on the afternoon of Friday, June 16, to consider this Report.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 15, 1967 N° S/91
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE HUNGARIAN DELEGATION

Article 7 (Document S/1)

1. Delete paragraph (2).

2. In paragraph (4) following the words: "to determine the term of protection" insert the words: "of cinematographic works".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 15, 1967 N° S/92
Subject (Union): Berne
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY

1. Article 2(2) of the Berne Convention, as appearing in document S/1, should read as follows:

"(2) For the purposes of this Convention, works expressed by a process producing visual effects analogous to cinematography shall be considered to be cinematographic works. There shall however be no obligation to protect, as a cinematographic work, a series of visual images which is not recorded on some material support."

2. In the former 2(2) of the Berne Convention, delete the second sentence and insert in Article 2 a new paragraph reading as follows:

"It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts."

3. Article 2bis(2) of the Berne Convention, as appearing in document S/1, should read as follows:

"(2) It shall also be a matter for legislation in the country of the Union to determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press and, when they refer to news, may be broadcast by radio or communicated by wire to the public."

4. Article 13(1) of the Berne Convention, as appearing in document S/1, should be amended as follows:

Add after the words "authors of musical works" the words "with or without words".

5. Article 11ter of the Berne Convention, as appearing in document S/1, should read as follows:

"Subject to the provisions of Article 11bis, the authors of literary works shall enjoy the exclusive right of authorizing:

(i) the public recitation of their works including the public recitation of these works by means of instruments capable of reproducing them mechanically;

(ii) any communication to the public of the recitation of their works.

6. Article 13(2) of the Berne Convention, as appearing in document S/1, should read as follows:

"(2) Recordings of musical works with or without words made in a country of the Union in accordance with Article 13, paragraph (3) of the Convention signed at Rome on June 2, 1928, and at Brussels on June 26, 19[illegible] may be reproduced in that country without the permission of the author of these works until December 31, 19.. ."

7. Article 14(1) of the Berne Convention, as appearing in document S/1, should read as follows:

"(1) Authors of literary or artistic works shall have the exclusive right of authorizing:

(i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;

(ii) the public performance, communication to the public by wire, broadcasting, and any other communication to the public, of the works thus adapted or reproduced.

The provisions of Article 11bis, paragraph (2), and of Article 13, paragraph (1), shall not apply; however, the application of Article 11bis, paragraph (3), shall be reserved."

8. In Article 14(4) of the Berne Convention, the second subparagraph should read as follows:

"The countries of the Union may provide, with respect to cinematographic works of which they are the country of origin, that the authorization or undertaking referred to above shall be given by a written agreement or something having the same force."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 15, 1967 N° S/93
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATIONS OF FRANCE, GERMANY (FEDERAL REPUBLIC), HUNGARY, ITALY, UNION OF SOVIET SOCIALIST REPUBLICS, UNITED KINGDOM, UNITED STATES OF AMERICA

AMENDMENTS TO THE TEXT PROPOSED IN DOCUMENT S/10

Article 6: General Assembly

Insert the following words in the list of functions of the General Assembly appearing in paragraph (2):

"... adopt the budget of expenses common to the Unions."

Article 7: Conference

A. Substitute for paragraph (2)(a)(ii) the following words:
"(ii) adopt the budget of the Conference;".

B. Substitute in paragraph (2)(a)(iii) for the words:
"of the budget of the Organization" the words "of the budget of the Conference."

C. Replace subparagraph (d) of paragraph (3) by the following text:

"The amounts of the contributions of Associate Members shall be fixed by a vote in which only the representatives of such Members shall have the right to participate."

Article 8: Coordination Committee

A. In paragraph (1)(c), substitute for the words "Whenever the Coordination Committee considers matters of direct interest to the Conference" the following words:

"Whenever the Coordination Committee considers matters of direct interest to the budget of the Conference ..."

B. At the end of item (i) of paragraph (3), substitute for the words "the common expenses to be included in the budgets of the various Unions and in the budget of the Organization" the following words:

"the budget of expenses common to the Unions."

C. In item (iii) of paragraph (3), delete the words "and the draft program and budget of the Organization."

D. Delete item (iv) of paragraph (3)

Article 10: Finances

A. Substitute the following text for the first three paragraphs:

"(1) The Organization shall have two separate budgets: the budget of expenses common to the Unions and the budget of the Conference.

(2)(a) The budget of expenses common to the Unions shall include provision for expenses of interest to several Unions.

(b) This budget shall be financed from the following sources:

(i) contributions of the Unions, provided that the amount of the contribution of each Union shall be fixed by the Assembly of that Union, having regard to the interest the Union has in the common expenses;

(ii) charges due for services performed by the International Bureau not in direct relation

with any of the Unions or not received for services rendered by the International Bureau in the field of legal-technical assistance [see paragraph (6)];

(iii) sale of, or royalties on, the publications of the International Bureau not directly concerning any of the Unions;

(iv) gifts, bequests, and subventions, given to the Organization as such;

(v) rents, interests, and other miscellaneous income of the Organization as such.

(3)(a) The budget of the Conference shall include provision for the expenses of holding sessions of the Conference and for the cost of the legal-technical assistance program.

(b) This budget shall be financed from the following sources:

(i) contributions of Associate Members;

(ii) any sums made available to this budget by the Unions, provided that the amount of the sum made available by each Union shall be fixed by the Assembly of that Union and that each Union shall be free to abstain from contributing to the said budget;

(iii) sums received for services rendered by the International Bureau in the field of legal-technical assistance [see paragraph (6)].

B. In subparagraphs (a) and (b) of paragraph (4), replace the words "the budget of the Organization" by the words "the budget of the Conference."

Article 13: Amendments

In paragraph (2), insert after the first sentence the following text:

"Whenever these amendments affect the rights and obligations of Associate Members, the latter shall take part in the voting. In all other cases, only Full Members shall vote on proposals for amendments."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/93 Add. 1
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

S/93 Addition 1

OBSERVATION OF THE UNION OF THE SOVIET SOCIALIST REPUBLICS

The Delegation of the USSR co-sponsored this document (S/93) with the understanding that it reserves its position on its possible impact on the institution of the so-called "Conference".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/94
Subject (Union): Paris
Original: French
Distribution: Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE DELEGATIONS OF ARGENTINA, BRAZIL, MADAGASCAR, SENEGAL AND URUGUAY

PARIS CONVENTION

Article 14

Subparagraph 2): To this effect, conferences will take place at the headquarters of the Union, except under special circumstances.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/95
Subject (Union): Paris & Berne Unions
Original: English
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE UNITED KINGDOM DELEGATION

Paris Convention (Doc.S/3)

Article 16(2) and (3)
Article 16bis(2) and (3)
Article 16quinquies (3)(a)

Substitute "three months" for "one month" wherever this appears.

Article 18(3)

Amend to read :

"Countries outside the Union which accede to the present Act shall apply the present Act in their relations with all other countries of the Union."

Article 19(1)

Substitute "Official" for "Authoritative."

Article 19(5)

Insert between "denunciation" and "and" :

"notifications of the class to which a country belongs for subscription purposes and of any change in such class."

Berne Convention (Doc.S/2)

Article 25(2) and (3)
Article 25bis(2) and (3)
Article 26(3)(a)

Substitute "three months" for "one month" wherever this appears.

Article 27

Amend to read:

"(1) The obligations of a country ratifying or acceding to this Act shall, as regards all other countries of the Union, be governed by those provisions of this Act by which, in accordance with Article 25, it is bound.

(2) The obligations of a country of the Union to which the present Act does not apply or, in accordance with Article 25, does not apply in its entirety shall, as regards all other countries of the Union, continue to be governed by the most recent Act to which it is a party to the extent that they are not replaced by provisions of this Act accepted by that country."

Article 31(1)

Substitute "Official" for "Authoritative."

Article 31(5)

Insert between "denunciation" and "and" :

"notifications of the class to which a country belongs for subscription purposes and of any change in such class."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/96
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSALS OF THE UNITED KINGDOM DELEGATION

Amendments to Document S/10

Article 4

In its observations on the proposal for establishing the Organization the United Kingdom said that it found the idea of full and associate membership acceptable. However, it considered that the proposal as the alternatives A, B, and C in document S/10, had the danger of converting the General Assembly from a technical forum into a political forum. Thus the United Kingdom would regard as entirely inappropriate and likely to hinder the purpose of the Organization. The United Kingdom Delegation therefore proposes that Article 4 should read as follows:

"(1) Membership of the Organization shall be open to all States Members of the United Nations or any of the specialized agencies or Parties to the Statute of the International Court of Justice.

(2) Full membership shall be accorded to any such State which is also a member of any of the Unions.

(3) Associate membership shall be accorded to any such State which is not a member of any of the Unions."

Articles 6, 7 and 8

Add to paragraph (1), a subparagraph (c) as follows:

"The expenses of each Delegation shall be borne by the Government which has appointed it."

Article 7(2)(b)

Delete.

Article 7(3)(b)

Amend to read:

"(b) one-third of those entitled to be present shall constitute a quorum."

Article 11 (3)

Delete "bilateral or"

Article 16

Add:

"(v) The subscription classes to which Associate Members belong (Article 10(4)) and any changes in such classes."

Article 18(2)

Substitute "Official" for "Authoritative."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N°S/97.
Subject (Union): Berne Union
Original: English and French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION (S/9)

PROPOSAL OF THE DELEGATIONS OF GERMANY FEDERAL REPUBLIC NETHERLANDS AND SWITZERLAND

Article 24(3) should read as follows :

"(3) Subject to the provisions of Article 23 which apply to the amendment of Articles 21 to 23, any amendment of this Convention, including the Protocol Regarding Developing Countries, shall require an affirmative vote by nine-tenths of the States attending the revision conference, provided that this majority includes two-thirds of the States which, at the time of the revision conference, are parties to the Convention."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/98
Subject (Union): Berne
Original: English
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (S/9) BY THE DELEGATION OF JAPAN

Article 25ter(2)(a):

Delete the words "making the declaration permitted by Article 25(1)(b)(i)."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/99
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL BY THE DELEGATION OF DENMARK

Berne Convention (Doc. S/1)

Article 2(6):

Delete the paragraph.

Article 7(4):

Delete the following words:

"and that of works of applied arts in so far as they are protected as artistic works;"

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/100
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE UNITED KINGDOM DELEGATION

Berne Convention (Doc. S/1)

Article 2(2)

Amend second sentence to read:

"For the purpose of this convention, works expressed by a process analogous to photography and fixed in some material form shall be considered to be photographic works".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/101
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE UNITED KINGDOM DELEGATION

Berne Convention (Doc. S/1).

Article 14(7)

Amend to read:

"The provisions of paragraph 4 of this Article shall not apply in countries whose laws grant copyright in a cinematographic work to its maker."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/102
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE PROPOSALS FOR ESTABLISHING THE ORGANIZATION (DOCUMENT S/10) BY THE DELEGATION OF AUSTRIA

Article 6(2)(vi)

Add the following:

"exercise such other functions as are allocated to it by the present Convention."

Article 6(2)

Add new point, for example, between (ii) and (iii):

"adopt the financial regulations of the Organization."

Article 7 (2)(v)

Add the following:

"exercise such other functions as are allocated to it by the present Convention."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 17th, 1967 N° S/103
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO DOCUMENT S/10 (PROPOSALS FOR ESTABLISHING THE ORGANIZATION) BY THE DELEGATION OF AUSTRIA

Article 8(1)(c)

Replace the words "matters of direct interest to the Conference" by the words "matters with regard to which the Conference is competent under the provisions of Article 7".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/104
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO DOCUMENT S/10 BY THE DELEGATION OF AUSTRIA

Article 8(3)(iv)

Amend to read as follows:

"establish the programs and adopt the annual budgets (of the Organization) prepared by the Director General within the limits of the triennial program and budget (of the Organization)."

Article 8(3)

Add new point, for example between (iv) and (v):

"establish the final accounts (of the Organization)."

Article 8(3)(vii)

Amend to read as follows:

"perform such other functions as are allocated to it by the present Convention."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/105
Subject (Union): Paris
Original: English
Distribution: Main Committee III

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

REPORT ON THE PROCEEDINGS OF MAIN COMMITTEE III BY

MR. ALFRED C.KING, BARRISTER-AT-LAW, (AUSTRALIA), RAPPORTEUR

as adopted by this Committee at its session on June 16, 1967

1. On Monday, June 12, the Plenary of the Union constituted under the Paris Convention for the Protection of Industrial Property of March 20, 1883 (delegates of 55 member countries* being in attendance), under the Presidency of Mr. J.E. Maksarev, head of the delegation of the Union of Soviet Socialist Republics, accepted without objection the proposals of the Government of Sweden that a member of the Rumanian delegation be Chairman of Main Committee III, that a member of the Netherlands delegation be Vice-Chairman of that Committee, and that I be Rapporteur. This Committee began work on Tuesday, June 13, under the chairmanship of Mr. Lucian Marinete, the Vice-Chairman being Mr. van Benthem. Observers were present on behalf of the United Nations, the International Association for the Protection of Industrial Property (IAPIP), the International Chamber of Commerce (ICC), the International Federation of Patent Agents (FICPI), and the Union of European Patent Agents.

2. The function of this Committee was to consider the revision of the Paris Convention, as revised at Lisbon on October 31, 1958, so as to put applicants for inventors' certificates in those countries of the Union, the laws of which make provision for the grant of such certificates as an alternative to the grant of patents, in the same position in respect of priority rights under Article 4 of the Convention as if they were applicants for patents.

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* Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Central African Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Gabon, Greece, Holy See, Hungary, Iceland, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Kenya, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Poland, Portugal, Rumania, Senegal, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, USSR, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia.

3. The basic proposals for discussion before the Committee were contained in a paper prepared by the Government of Sweden with the assistance of BIRPI, marked S/2 and bearing the date of April 15, 1966. Copies of this paper had been previously distributed to Union members. In addition to an explanation of the need for the abovementioned revision of the Convention and a history of the work already done on such revision, (which require no repetition here), this paper proposed that to Article 4 there be added a new Section, the English version of which was as follows:

> "I.- (1) Applications for inventors' certificates, filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents.
>
> (2) In a country in which applicants have the above option, the right of priority provided for under this Article shall be recognized also where the applicant seeks an inventor's certificate irrespective of whether the first application (Section A, paragraph (2)) was an application for a patent or a utility model, or for an inventor's certificate."

The French version of the above Section was as follows:

> (1) Les demandes de certificats d'auteur d'invention déposées dans un pays où les déposants ont le droit de demander, à leur choix, soit un brevet, soit un certificat d'auteur d'invention, seront traitées de la même façon et auront les mêmes effets que les demandes de brevets aux fins du droit de priorité prévu par le présent article.
>
> (2) Dans un pays où les déposants peuvent exercer ce choix, le droit de priorité prévu par le présent article sera reconnu également dans le cas où le déposant demande un certificat d'auteur d'invention, indépendamment du fait que le premier dépot (section A, alinéa 2) était une demande de brevet, de modèle d'utilité ou de certificat d'auteur d'invention.

4. Unqualified approval of the principle that applications for inventors' certificates in countries where applicants could if they wished apply either for patents or for inventors' certificates should give rise to the right of priority provided for by Article 4 of the Convention, and that the same priority right should attach to such applications for inventors' certificates, was expressed by the delegations of the United States of America, the Federal Republic of Germany, France, the Nether-

lands, the United Kingdom of Great Britain and Northern Ireland, Spain, Italy, Hungary, Yugoslavia, Switzerland, Bulgaria, Czechoslovakia, the Union of Soviet Socialist Republics, Austria, Poland, Sweden, Ireland, Belgium, Portugal, Rumania, Japan and Australia. The representatives of Ecuador, the United Nations and the IAPIP were also heard in its favor. No delegation objected to the incorporation of the above principle in the Convention.

5. During the course of the meeting references were made to proposals by the delegations of France and Italy for amendment of the proposed new Section referred to in paragraph 3 above. The French proposal was to add several words to the first paragraph thereof so that it would take the following form:

> "Applications for inventors' certificates, filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be admitted on the same conditions, treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents."

The Italian proposal was to amend the whole of the proposed Section to the following form:

> "I.- (1) The right of priority under this Article may also be based on applications for inventors' certificates filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate.
>
> (2) In countries in which applicants have the option between applying for a patent and applying for an inventor's certificate, the right of priority provided for under this Article shall be recognized also where the applicant seeks an inventor's certificate, irrespective of whether the first application (Section A, paragraph (2)) was an application for a patent or a utility model, or for an inventor's certificate."

The Netherlands delegation referred to a draft Section which the Congress of the IAPIP held in Tokyo in 1966 wished to be substituted for the proposed new Section, namely:

> "Applications for inventors' certificates filed in a country in which applicants have the right to apply, at their own option and on the same substantive conditions either for a patent or for an inventor's certificate, shall engender the right of priority provided for by this article, under the same conditions and with the same effects as an application for a patent.
>
> Conversely, in the countries in which applicants have the above option between a patent and an

inventor's certificate, it shall be provided that an inventor's certificate can be applied for by claiming, pursuant to the present article, a priority founded on an application for a patent, utility model, or an inventor's certificate."

The representative of the IAPIP also referred to this proposal. As all these proposals differed from that of the Swedish Government and BIRPI only in form, the Committee agreed with the Chairman's view that they should be referred to the drafting committee which was to be set up.

6. The delegation of the United Kingdom of Great Britain and Northern Ireland proposed that the Convention be further revised by inserting in Article 1(2), after the word "patents", the words "inventors' certificates". It was explained that this was not intended to be a far-reaching amendment, but that it was aimed at making the definition of "industrial property" consistent with Article 4 as proposed to be revised. The proposers thought that its only practical effect would be on the references to "industrial property" in Article 2. No delegation disapproved of this suggestion, and a number indicated their interest in it. However, all other delegations of member countries were opposed to the consideration of it in Stockholm for the reasons that it required further study and that they had come prepared to consider only the proposed revision of Article 4. Several delegations recommended that this problem be dealt with by the next revision conference after preparatory studies under the guidance of BIRPI, which BIRPI promised to undertake. The United Kingdom delegation then withdrew its proposal.

7. A drafting committee was appointed, to consist of a member of each of the delegations: France, Italy, the Netherlands, the Union of Soviet Socialist Republics, the United States of America, Spain, the Federal Republic of Germany, Czechoslovakia, the United Kingdom of Great Britain and Northern Ireland, Sweden and Switzerland. It sat in the afternoon of Tuesday, June 13, and the morning of Wednesday, June 14, under the chairmanship of Mr. E. Brenner (United States of America). In the morning of Thursday, June 15, its proposed addition to the Convention was put before the main Committee together with the information that the representatives of France and Sweden on the drafting committee had been appointed to the General Drafting Committee.

8. The drafting committee's recommended English text of the new Article 4(I) was as follows:

"I.- (1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent

or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model or an inventor's certificate."

The recommended French text was as follows:

"I. (1) Les demandes de certificats d'auteur d'invention, déposées dans un pays où les déposants ont le droit de demander à leur choix soit un brevet, soit un certificat d'auteur d'invention, donneront naissance au droit de priorité institué par le présent article dans les mêmes conditions et avec les mêmes effets que des demandes de brevets d'invention.

(2) Dans un pays où les déposants ont le droit de demander à leur choix soit un brevet, soit un certificat d'auteur d'invention, le demandeur d'un certificat d'auteur d'invention bénéficiera, dans les termes du présent article applicables aux demandes de brevets, du droit de priorité basé sur le dépot d'une demande de brevet d'invention, de modèle d'utilité ou de certificat d'auteur d'invention."

9. Approval of the above texts was expressed by the delegations of Czechoslovakia, Union of Soviet Socialist Republics, Australia, Canada, Federal Republic of Germany, Austria, Yugoslavia, Sweden, Bulgaria, United Kingdom of Great Britain and Northern Ireland, Ireland, Italy, Denmark, United States of America, Switzerland, Portugal, the Netherlands, France, Spain, Norway, Brazil, Japan, Belgium, Finland, Iran, South Africa and Rumania, and no objections to them were raised.

10. The Secretary of the Committee (M. Magnin) proposed that in the second paragraph of the French version the words "selon les dispositions" be substituted for the words "dans les termes", and this drafting amendment was accepted without objection.

11. The Chairman announced that the texts proposed by the drafting committee, amended in the manner referred to in paragraph 10 above, were approved unanimously. He expressed the Committee's appreciation of the work done by the drafting committee and its Chairman, thanked the members of the Main Committee and announced that the Main Committee would meet again on the afternoon of Friday, June 16, to consider this Report.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° 106
Subject (Union): Paris Union
Original: English and French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PARIS CONVENTION (S/3)

PROPOSAL OF THE DELEGATIONS OF GERMANY FEDERAL REPUBLIC), NETHERLANDS AND SWITZERLAND

Article 14(3) should read as follows:

"(3) Subject to the provisions of Article 13quinquies which apply to the amendment of Articles 13 to 13quinquies, any amendment of this Convention shall require an affirmative vote by nine-tenths of the States attending the revision conference, provided that this majority includes two-thirds of the States which, at the time of the revision conference, are parties to the Convention."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/107
Subject (Union): Berne
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATION OF YUGOSLAVIA

Article 2(1) (Brussels text)

After the words: "... and works produced by a process analogous to cinematography;" add the words: "televisual works;".

Article 2(2) (BIRPI draft)

To be deleted.

Article 14(4) to (7) (BIRPI draft)

To be deleted.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/108
Subject (Union): Berne
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATION OF THE NETHERLANDS

Article 10(2)

To be deleted

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 16, 1967 N° S/109
Subject (Union): Berne
Original: English and French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL SUBMITTED BY THE WORKING GROUP OF THE MAIN COMMITTEE I

Article 9, paragraph (2) (Document S/1) to be drafted as follows:

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not unreasonably prejudice the legitimate interests of the author and does not conflict with a normal exploitation of the work.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 17, 1967 N° S/110
Subject (Union): Berne
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATION OF PORTUGAL

Article 2(2) (BIRPI draft)

Add the following at the end of the first subparagraph:

"countries of the Union shall, however, have the right to protect, as cinematographic works, works thus expressed which are not fixed in some material form."

The second subparagraph of paragraph (2) in the BIRPI draft to become paragraph (3).

Paragraphs (3) to (7) to be renumbered (4) to (8).

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 17, 1967 N° S.111
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE BERNE CONVENTION (S/1) BY THE DELEGATION OF JAPAN

Article 14

Paragraph 4; Amend as follows:

"(4) Authors who have undertaken to bring literary or artistic contributions to the making of the cinematographic work fixed in some material form, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting, any other communication to the public, subtitling and dubbing of the texts, of the cinematographic work.

By "contrary or special stipulation" is meant any restrictive condition agreed between the maker and the persons mentioned above."

Paragraph 7: delete

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 17, 1967 N° 112
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION
(S/1) BY THE DELEGATION OF JAPAN

Article 11bis.

Paragraph 3

Replace "by means of its own facilities and used for its own broadcasts"

"as a mere technical means for the use of
the broadcasts made with permission"

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 17, 1967 N° S/113
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE PROPOSALS FOR ESTABLISHING THE ORGANIZATION (DOCUMENT S/10) BY THE DELEGATION OF AUSTRIA

Preamble

Amend to read as follows:

"Desiring to establish a common administration of the Unions in the field of protection of intellectual property and to provide the necessary coordination by the establishment of common organs, while respecting the autonomy of each Union, and to promote the protection ...".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/114
Subject (Union): Paris and Berne
Original: English and French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

MEMORANDUM

1. The attached 12 pages, relating to Articles 21 to 24 of the Berne Convention (S/9), unnumbered, dated June 15, 1967, were already distributed in, and considered by, Main Committee IV on June 16, 1967.

2. The present new distribution is made only in order to include these pages into the numbered series of documents.

3. They will not be the subject of a new discussion.

4. The next discussion of these Articles in Main Committee IV will be based on the texts prepared by the Drafting Committee of Main Committee IV. The Drafting Committee starts its meetings on June 19, 1967.

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ANNEX TO S/114
JUNE 15, 1948
page 1.

Proposed Text: Berne Convention

BERNE

ARTICLE 21: ASSEMBLY

(1) *(a)* The Union shall have an Assembly consisting of the countries of the Union which are bound by Articles 21 to 23.

(b) The Government of each country shall be represented by one or more delegates who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each Delegation shall be borne by the Government which has appointed it.

< PROPOSAL OF MADAGASCAR (S/37) RESERVED

[*Follows Article 21 (2)*]

JUNE 15, 1967

page 2

[*Article 21, continued*]

(2) *(a)* The Assembly shall:

(i)[1] deal with all matters concerning the maintenance and development of the Union and the implementation of its Convention;

(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as the "International Bureau") referred to in the Convention establishing the International Intellectual Property Organization (hereinafter designated as the "Organization");

(iii) determine the program and adopt the triennial budget of the Union and approve its final accounts;

(iii-bis) ADOPT THE FINANCIAL REGULATION OF THE UNION

(iv) elect the members of the Executive Committee of the Assembly;

(v) review and approve reports and activities of its Executive Committee, and give instructions to such Committee;

[*Follows Article 21 (2) (a) (vi)*]

? DUE ACCOUNT BEING TAKEN OF ANY COMMENTS MADE BY MEMBER STATES OF THE UNION WHICH ARE NOT BOUND BY ARTICLES 21 TO 23

[1] In speech, these numerals should be referred to as "small Roman one, small Roman two, small Roman three, etc." They are used whenever there are several items in an enumeration. They are called "items," and not subparagraphs. Subparagraphs always consist of one or more complete sentences and are designated by small letters (*(a), (b), (c)*, etc.). Paragraphs are designated by Arabic numerals in parentheses. Articles are designated by Arabic numerals without parentheses.

JUNE 15, 1967

[*Article 21, continued*]

(vi) review and approve reports and activities of the Director General concerning the Union and give instructions to him on such matters;

(vii) establish such committees as may be considered necessary for the work of the Union;

(viii) determine which countries not members of the Assembly and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 21 to 23;

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

(xi) exercise such other functions as are allocated to it BY THIS CONVENTION;

(xii) SUBJECT TO ITS APPROVAL, EXERCISE SUCH RIGHTS AS ARE GIVEN TO IT IN THE IPO CONVENTION

(b) In exercising its functions with respect to matters which are of interest also to other Unions whose administrative tasks or administration are entrusted to the Organization, the Assembly shall [take into consideration] the advice of the Coordination Committee of the Organization.

→ "DECIDE AFTER HAVING HEARD" [To be considered by the Drafting Committee]

(3) *(a)* Each country member of the Assembly shall have one vote in the Assembly.

~~*(b)* One-third of the countries members of the Assembly shall constitute a quorum.~~ → SEE S/78

~~*(c)* Subject to the provisions of subparagraphs (a) and (b) and Article 23 (2), the Assembly shall make its decisions by a simple majority of the votes cast.~~ → DECISIONS OF THE ASSEMBLY SHALL REQUIRE AT LEAST TWO THIRDS OF THE VOTES CAST.

~~*(d)* Decisions to admit to meetings as observers countries outside the Union, as well as intergovernmental and international non-governmental organizations, shall require at least two-thirds of the votes cast.~~

~~*(e)* The adoption of the budget to the extent that it increases the financial obligations of the countries of the Union shall require at least two-thirds of the votes cast.~~

[*Follows Article 21 (3) (f)*]

JUNE 15, 1967

[*Article 21, continued*]

(f) Abstentions shall not be considered as votes.

(g) Each delegate may represent, and vote in the name of, one country only.

RESERVED (SEE DOC. S/37 OF MADAGASCAR)

(4) (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.

→ BARRING EXCEPTIONAL CASES

(b) The Assembly shall meet in extraordinary session, upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the States constituting the Assembly.

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

[*Follows Article 21* bis]

JUNE 15, 1967

page 5

ARTICLE 21*bis*: EXECUTIVE COMMITTEE

(1) The Assembly shall have an Executive Committee.

(2) *(a)* The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its Headquarters shall, subject to the provisions of Article 22 (7), have an ex officio seat.

(b) The Government of each country member of the Executive Committee shall be represented by one delegate who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each Delegation shall be borne by the Government which has appointed it.

(3) The number of the countries members of the Executive Committee shall correspond to one-fourth of the number of the countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to a [balanced] geographical distribution and to the need for countries members of any Special Unions which might be established in relation with the Union to be among the countries constituting the Executive Committee.

[-] "EQUITABLE" [SENT TO DRAFTING COMMITTEE]

(5) *(a)* Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly. However, members may be re-elected, but not more than two-thirds of them.

(b) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

[*Follows Article 21* bis *(6)*]

JUNE 15, 1967

[*Article 21* bis, *continued*]

(3) The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly respecting the draft program and triennial budget of the Union, prepared by the Director General;

(iii) establish, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General;

[S/31 OF AUSTRIA SENT TO THE DRAFTING COMMITTEE]

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of that Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General;

(vi) perform such other functions as are allocated to it. . . . →

[NEED FOR ADAPTED VERSION OF A PROVISION SIMILAR TO NEW ARTICLE 21D(2)(a)(xii) SENT TO THE DRAFTING COMMITTEE]

(b) In exercising its functions with respect to matters which are of interest also to other Unions whose administrative tasks or administration are entrusted to the Organization, the Executive Committee shall take into consideration the advice of the Coordination Committee of the Organization. - - - - →

[—] "DECIDE AFTER HAVING HEARD" SENT TO THE DRAFTING COMMITTEE

(4) *(a)* The Executive Committee shall meet once a year in ordinary session, upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(b) The Executive Committee shall meet in extraordinary session upon convocation of the Director General ~~or at the~~ request of one-fourth of the countries members of the Executive Committee.

AT HIS OWN INITIATIVE, AT THE REQUEST OF THE CHAIRMAN OF THE EXECUTIVE COMMITTEE, OR AT THE

(5) *(a)* Each country member of the Executive Committee shall have one vote in the Executive Committee.

(b) One-half of the countries members of the Executive Committee shall constitute a quorum.

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

(e) Each delegate may represent, and vote in the name of, one country only.

[S/35 SENT TO THE DRAFTING COMMITTEE]

(6) Countries of the Union not members of the Executive Committee shall be admitted to the meetings of the Executive Committee as observers.

(7) The Executive Committee shall adopt its own rules of procedure.

[*Follows Article 21 ter*]

JUNE 15, 1967

 page 7

ARTICLE 21*ter*: INTERNATIONAL BUREAU

(1) *(a)* The administrative tasks with respect to the Union shall be performed by the International Bureau which is a continuation of the Bureau of the Union, united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property.

[DRAFTING TO BE LOOKED INTO BY DRAFTING COMMITTEE ON REQUEST OF ITALY]

(b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.

(c) The Director General of the Organization shall be the chief administrative officer of the Union and shall represent the Union.

(2) The International Bureau shall assemble and publish information concerning the protection of copyright. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright.

[S/46 TO BE CONSIDERED BY THE DRAFTING COMMITTEE]

(3) The International Bureau shall publish a monthly periodical.

(4) The number of free copies of the monthly periodical and other publications of the International Bureau that each country of the Union shall be entitled to receive shall be proportionate to the number of units in the class to which the country belongs according to Article 22 (4) and shall be fixed by the Assembly.

(5) The International Bureau shall, on request, furnish information to the individual countries of the Union on matters concerning the protection of copyright.

(6) The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright.

[*Follows Article 21*ter *(7)*]

JUNE 15, 1971

PAGE 8

[*Article 21 ter, continued*]

(7) [The International Bureau] shall participate in the meetings of the various organs of the Union, but without the right to vote.

(8) *(a)* The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 21 to 23.

(b) The Director General or persons designated by him shall take part in the discussions at these conferences, but without the right to vote.

(9) The International Bureau shall carry out any other tasks assigned to it.

[—] "THE DIRECTOR GENERAL" OR "THE REPRESENTATIVE OF THE INTERNATIONAL BUREAU" TO BE LOOKED INTO BY THE DRAFTING COMMITTEE

(b) [INSERT S/32]

C

ARTICLE 22: FINANCES

(1) *(a)* The Union shall have a budget.

(b) The budget of the Union shall include the proper ~~expenses of~~ EXPENSES TO the Union itself, its contribution to the [budget of] ~~the Organization as such, and its share in the common expenses, as defined in the following subparagraph.~~

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization ~~or also to the Organization as such~~ shall be considered as ~~common~~ expenses. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

EXPENSES COMMON TO THE UNIONS AND, WHERE APPLICABLE, THE SUMS MADE AVAILABLE TO THE BUDGET OF THE CONFERENCE OF THE ORGANIZATION

COMMON TO THE UNIONS.

[*Follows Article 22 (2)*]

(2) [WHETHER "BUDGET OF" SHOULD BE OMITTED, SENT TO THE DRAFTING COMMITTEE]

JUNE 15, 1967

 page 9

[*Article 22, continued*]

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the various Unions administered by the Organization, ~~and with the budget of the Organization as such.~~

(3) The budget of the Union shall be financed from the following sources:

(i) contributions of the countries of the Union;

(ii) charges due for services performed by the International Bureau in relation to the Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

(4) *(a)* For the purpose of establishing its contribution towards the budget referred to in the preceding paragraph, each country of the Union shall belong to a class, and shall pay its annual contribution on the basis of a fixed number of units as follows:

Class I: 25
Class II: 20
Class III: 15
Class IV: 10
Class V: 5
Class VI: 3
Class VII: 1

(b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If the change is to a lower class, the country must announce it to an ordinary session of the Assembly. Any such change shall take effect at the beginning of the calendar year following the session.

(c) The contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

(d) Contributions shall become due on the first of January of each year.

(e) A country which is in arrears in the payment of its financial contributions shall have no vote in any organ of the Union if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its vote if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances. [At the middle of the second of the two full years, the Director General shall remind the Government of the country that its contributions are overdue. Omission of such a reminder shall not affect the application of the provisions of the present subparagraph.]

[POSSIBLE DELETION AND TRANSFER INTO FINANCIAL REGULATIONS TO BE CONSIDERED BY THE DRAFTING COMMITTEE]

(4) SEE S/31

[*Follows Article 22 (5)*]

JUNE 1967
page 10

[*Article 22, continued*]

(5) The amount of the charges due for services performed by the International Bureau in relation to the Union shall be established by the Director General, who shall report on them to the Assembly and the Executive Committee.

(6) *(a)* The Union shall have a working capital fund which shall be constituted by payments made by the countries of the Union.

(b) The amount of the payment of each country shall be proportionate to its annual contribution.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee.

(7) *(a)* In the Headquarters Agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an ex officio seat on the Executive Committee.

[PROPER PLACE TO BE EXAMINED BY THE DRAFTING COMM.

(b) The country referred to in the preceding subparagraph and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

[*Follows Article 23*]

JUNE 15, 1967

Page 11

ARTICLE 23: AMENDMENTS TO ARTICLES 21 TO 23

(1) Proposals for the amendment of Articles 21, 21 *bis*, 21 *ter*, 22 and the present Article, shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

[*Follows Article 23 (2)*]

? MAY BE INITIATED BY ANY COUNTRY OF THE UNION, THE EXECUTIVE COMMITTEE, OR THE DIRECTOR GENERAL, AND

[*Article 23, continued*]

(2) Amendments to the Articles referred to in the preceding paragraph shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided, however, that any amendment of Article 21, and of the present paragraph, shall require ~~the unanimity~~ of the votes cast. → AT LEAST FOUR-FIFTHS

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force when written notifications of acceptance have been received by the Director General from three-fourths of the countries members of the Assembly at the time it has adopted the amendment. Amendments to the said Articles thus accepted shall bind all countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, except that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

~~(4) The revision of Articles 1 to 20, and 24 to 32, is governed by Article 24.~~

ARTICLE 24: REVISION OF THE PROVISIONS OF THE CONVENTION OTHER THAN ARTICLES 21 TO 23

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

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

[—] [AMENDMENT OF ARGENTINA AND BRAZIL EXPECTED]

(3) Subject to the provisions of Article 23 which apply to the amendment of Articles 21 to 23, any amendment of this Convention, including the Protocol Regarding Developing Countries, shall require the unanimity of the votes cast.

[*Follows Article 25*]

[END OF TEXT OF JUNE 15, 1967]

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 17, 1967 N° S/115
Subject (Union): Berne
Original: English - French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL SUBMITTED BY THE DELEGATION OF MONACO

(Document S/1)

Article 14

Article 14

(1) As in the Programme (S/1).

(2) As in the Programme (S/1).

(3) As in the Programme (S/1).

(4) Authors who have authorized, by a valid written agreement or document having the same force, the cinematographic adaptation and reproduction of their preexisting works or undertaken to bring literary or artistic contributions to the making of the cinematographic work, may not, in the absence of any contrary or special stipulation, object to the exploitation of such work. This provision shall apply notwithstanding any previous assignment.

(5) The provisions of paragraph (4) above shall not apply in the countries of the Union the national legislation of which provides for regulations different from those contained in the said paragraph (4), to the extent to which these regulations have effects analogous to those of paragraph (4).

(6) The Countries of the Union the national legislation of which, at the date of the signature of this Convention, provides for regulations having effects analogous to those of paragraph (4) but explicitly excluding works from which the cinematographic work is derived, may declare that they will not apply the provisions of paragraph (4) above, so far as they concern preexisting works.

(7) The countries of the Union the national legislation of which grants copyright in a cinematographic work to its maker, may declare that they will not apply the provisions of paragraph (4) above, so far as they concern contributions to the making of the cinematographic work.

The countries of the Union which have such legislation at the date of the signature of this Convention may extend their declaration to all provisions of paragraph (4) above.

(8) The declarations referred to in paragraphs (6) and (7) above shall at any time be deposited with the ... Their withdrawal may at any time be notified by a declaration deposited with the ...

(9) Authors referred to in paragraph (4) above may not, subject to the application of Article 6bis and in the absence of any contrary or special stipulation, oppose alterations that might become indispensable for the exploitation of the cinematographic work.

(10) By "contrary or special stipulation" is meant any restrictive condition contained in the agreement or document referred to in paragraph (4) above.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 17, 1967 N° S/116
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

I.P.O.

AMENDMENT PROPOSED BY THE DELEGATION OF FRANCE

- Document S/10 -

Article 3 (Objective and Functions)

Paragraph (1)

It is proposed to divide paragraph (1) into two paragraphs.

In order to express more clearly the two tasks of the Organization it is suggested to reproduce in paragraph (1) most of the text of the Preamble which achieves this purpose.

The following text is proposed :

"(1) The objective of the Organization is :

(i) to modernize and render more efficient the administration of the Intellectual Property Unions through the establishment of common administrative organs which fully respect the autonomy of each of the various Unions;

(ii) to promote the protection of intellectual property throughout the world by encouraging, for this purpose, cooperation among States members of the Unions and third party States."

Should the enumeration contained in the present paragraph (1) be maintained, it should be preceded by the words "in particular".

Paragraph (2)

Item (i) appearing in the Draft should be replaced by the following words : "makes available to the Paris Union the Unions attached thereto and to the Berne Union, the administrative services which each of them requires."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 17, 1967 N° S/117
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

I.P.O.

- Document S/10 -

AMENDMENT PRESENTED BY THE FRENCH DELEGATION

Article 2 (Definitions)

In item (vii), replace the words : "any other convention, agreement or treaty" by the following words : "and any other international undertaking designed to promote the protection of intellectual property."

The same change should be made in items (ii) and (iii) of Article 3, paragraph (2).

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 17, 1967 N° S/118
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

I.P.O.

- Document S/10 -

AMENDMENT PROPOSED BY THE DELEGATION OF FRANCE

Article 6 (General Assembly)

Paragraph (2)

Add the following three items :

- "makes proposals for the development of the protection of intellectual property,

- "approves the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters,

- "approves the financial regulations of the Organization provided for in Article 10."

Paragraph (3)

Replace the present text of sub-paragraph (g) by the following text :

"(g) For the transfer of headquarters (Article 5), the appointment of the Director General (paragraph (2)(ii)), the approval of arrangements proposed by the Director General concerning the administration of international undertakings (paragraph (2)(iii)), adoption of amendments of this Convention (article 13), and the approval of the headquarters agreement (article 11), the required majority must be obtained not only in the General Assembly but also within each of the Unions."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 18, 1967 N° S/119
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE UNITED STATES OF AMERICA

Amendment concerning the Preamble of the IPO Convention (S/10)

Amend the preamble to read as follows:

"The Contracting Parties,

Desiring to modernize and render more efficient the administration of the Intellectual Property Unions and to promote the protection of intellectual property throughout the world, while fully respecting the autonomy of each of the various Unions,

Agree as follows:"

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 18, 1967 N°. S/120
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE UNITED STATES OF AMERICA

Amendment concerning Article 1 of the IPO Convention (S/10)

Amend Article 1 to read as follows:

"The International Intellectual Property Organization, comprising a General Assembly, a Coordination Committee, a Conference, and an International Bureau of Intellectual Property, is hereby established."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 18, 1967 N° S/121
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE UNITED STATES OF AMERICA

Amendments concerning Articles 2 and 9 of the IPO Convention (S/10)

Article 2

Amend item (ii) to read as follows, the bracketed words indicating proposed deletions:

"(ii) International Bureau shall mean the International Bureau of Intellectual Property [, that is, the Secretariat of the Organization];"

Article 9(1)

Add the following sentence at the end of paragraph (1):

"The International Bureau shall serve as the Secretariat of the Organization."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 18, 1967 N° S/122
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERT CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE UNITED STATES OF AMERICA

Amend items (iii) and (iv) of Article 2 to read as follows the changes being indicated by underlining:

"(iii) 'Paris Convention' shall mean the Convention for the Protection of Industrial Property signed on March 20, 1883, <u>including</u> any of its revisions;

" (iv) 'Berne Convention' shall mean the Convention for the Protection of Literary and Artistic Works signed on September 9, 1886, <u>including</u> any of its revisions;"

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 18, 1967 N° S/123
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE UNITED STATES OF AMERICA

Amendment concerning Article 3 of the IPO Convention (S/10)

Paragraph (1) purports to define the aims of the Organization. However, paragraph (1) speaks of persons rather than in terms of the work protected. Therefore, it is proposed that this paragraph be changed as follows:

"(1) The objective of the Organization is to promote cooperation among States for the protection of intellectual property in all its forms and particularly in the following:

(i) the protection of literary, artistic and scientific property and works of applied art;

(ii) the protection of inventions in all fields of human endeavors and particularly in industry and agriculture;

(iii) the protection of discoveries of scientists;

(iv) the protection of industrial designs and models, trademarks, service marks and commercial names;

(v) the protection of performing artists, producers of phonograms and broadcasting organizations;

(vi) the protection against acts of unfair competition;

by any or all means which may be developed by the Organization."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 18, 1967 N° S/124
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE UNITED STATES OF AMERICA

Amendment concerning Article 6 of the IPO Convention (S/10)

Amend item (vi) of Article 6(2) to read:

"(vi) exercise such other functions as are appropriate pursuant to this Convention, or any revision thereof."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 18, 1967 N° S/125
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE UNITED STATES OF AMERICA

Amendment concerning Article 7 of the IPO Convention (S/10)

Amend Article 7(2)(a)(i) to read:

"(i) discuss matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters;"

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 18, 1967 N° S/126
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE UNITED STATES OF AMERICA

Amendment concerning Article 8(1)(a) of the IPO Convention (S/10)

Amend the first part of subparagraph (1)(a) of Article 8 to read as follows:

"(1)(a) There shall be a Coordination Committee consisting of the States, party to this Convention, which are Members of the Executive Committee of the Paris Union, or the Executive Committee of the Berne Union, or both....."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/127
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSAL AMENDMENT TO THE BERNE CONVENTION (S/1) BY THE DELEGATION OF JAPAN

Protocol Regarding Developing Countries, Article I

Subparagraph (a): Amend as follows:

substitute for Article 8 of this Convention the provisions of Article 5 of the Convention as revised in Paris in 1896, in respect of translations into the language or languages of that country, and apply the same provisions to the translations referred to in paragraph (2) of Article 11;

Subparagraph (e): Add the following words at the end:

"to the extent justified by the purposes."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: 19 June, 1967 N° S/128
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE ITALIAN DELEGATION

IPO CONVENTION

Preamble

"The Contracting Parties,

Desiring to modernize and render more efficient the administration of the Intellecutal Property Unions and those dealing with the protection of literary and artistic works through the establishment of administrative organs which although in part common, fully respect the autonomy of each of the various Unions and to promote the protection of intellectual property throughout the world, in particular through the creation of a conference and the offer of legal-technical assistance to developing countries,

Agree as follows:"

BIRPI
BUREAUX INTERNATIONAUX RÉUNIS
POUR LA PROTECTION
DE LA PROPRIÉTÉ INTELLECTUELLE

Date: 19 June, 1967 N° S/129
Sujet Subject (Union): IPO
Original: French
Distribution: Main Committee V

CONFÉRENCE DE STOCKHOLM DE LA PROPRIÉTÉ INTELLECTUELLE, 1967

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE ITALIAN DELEGATION

IPO CONVENTION

Article 3, paragraph 1

" The objective of the organization is:
a) to promote administrative cooperation between the various unions administered by the Organization;
b) to take steps to promote the protection of intellectual property throughout the world through cooperation between States and where necessary in collaboration with any other international Organization".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 12th, 1967 N° S/130
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE FRENCH DELEGATION

Article 14, paragraph (4) (proposed by BIRPI)

Text proposed by France

"However, and on condition that a written agreement exists between the maker and the authors authorizing the adaptation and reproduction of the pre-existing work or undertaking to bring literary or artistic contributions to the making of the cinematographic work in accordance with the legislation of the country of origin, such authors may not, in the absence of any contrary or special stipulation, object to its cinematographic and televisual exploitation by wire or by broadcasting, provided that the conditions specified in such agreements are complied with in full."

"By 'contrary or special stipulation' is meant any restrictive condition agreed between the maker and the persons mentioned above."

Delete the second subparagraph of the paragraph proposed by BIRPI.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/231
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

AMENDMENT PROPOSED BY THE DELEGATION OF CZECHOSLOVAKIA TO DOCUMENT S/10-IPO

Article 3(2)

Replace Items (VI) and (VII) of Article 3(2) for (II) and (III) of the same Article and arrange the numbering of remaining items accordingly.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/232
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

AMENDMENT PROPOSED BY THE DELEGATION OF CZECHOSLOVAKIA TO DOCUMENT S/10-IPO

Article 4

It is suggested that the fourth alternative "C" be accepted, because the Convention involves matters that are of interest to all States. It would be contradictory to the principle of sovereign quality of States if some of them were to be prevented from acceding to a convention of this sort.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/133
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

AMENDMENT PROPOSED BY THE DELEGATION OF CZECHOSLOVAKIA TO DOCUMENT S/10-IPO

Article 6(3)b

Substitute the quorum of one-third by the quorum of one-half.

Article 6(3)c

Substitute "a simple majority of the votes cast" by "a majority of two-thirds of the votes cast" and make subsequent drafting changes in the text of this Article.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/134
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

AMENDMENT PROPOSED BY THE DELEGATION OF CZECHOLSOVAKIA TO DOCUMENT S/10-IPO

Article 8(6)(a)

Substitute "a simple majority of the votes cast" by "a two-thirds majority of the votes cast".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/135
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

AMENDMENT PROPOSED BY THE DELEGATION OF CZECHOSLOVAKIA TO DOCUMENT S/10-IPO

Article 11

The Article should be worded as follows:

Legal Capacity; Privileges and Immunities.

(1) The Organization shall enjoy on the territory of each Member State, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the Organization's purposes and for the exercise of its functions.

(2) The Organization shall conclude a Headquarters Agreement with the Swiss Confederation and with any other State in which the headquarters may subsequently be located.

(3) (a) The Organization shall enjoy in the territory of each Member State such privileges and immunities as may be necessary for the fulfilment of its objective and for the exercise of its functions.

(b) Representatives of Member States and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

(4) Such legal capacity, privileges and immunities shall be defined in a separate agreement to be prepared by the Organization and concluded between the Member States.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 12, 1967 N° S/136
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE FRENCH DELEGATION

Article 2(1)

Maintain the existing text concerning choreographic works and entertainments in dumb show, the wording of which would thus remain: ... "choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/137
Subject (Union): IPO
Original: English
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

WORKING GROUP OF MAIN COMMITTEE IV ON THE PROPOSAL OF THE DELEGATION OF MADAGASCAR (S/37)

1. The Malagasy Delegation in Main Committee IV proposed during the discussion of document S/3 amendments to Article 13 (Assembly) of the Paris Convention (document S/37 of June 13). These amendments aimed at giving a plurality of member countries grouped together under the terms of an international agreement in a single industrial property office the possibility of entrusting their representation and right to vote to that office.

2. After preliminary discussion in the Main Committee showing divergent views, a working group was constituted which met on June 15 and 16 to explore possible solutions.

3. Some members of the Working Group, especially the Delegates of Madagascar and Senegal and the Observer from OAMPI, pointed out that the shortage of qualified experts in the field of industrial property which was the main reason to create OAMPI necessitated a concentration of effort with respect to representation and right to vote in the organs of the Paris Union.

4. Other members of the Working Group expressed concern that such an arrangement might set a precedent introducing block proxy voting.

5. As precedent for proxy voting, Rules 640-642 of the General Regulations annexed to the International Telecommunication Convention were cited. These rules provide that each member State of the Union must make an effort to send its own Delegation to meetings but that

if, for exceptional circumstances, a member State cannot send its own Delegation, it may delegate the right to vote to another member State of the Union. Such delegation of power must be signed by the competent authorities of the delegating State. Any Delegation to a meeting may hold a proxy for one other member State only.

6. The discussion led to the following conclusions:

(a) Representation for the discussions and representation for the vote have to be distinguished.

(b) As to representation for the discussions, the Working Group agreed in general that the Delegation of one of the member States of OAMPI should have the possibility to represent other member States of OAMPI during the discussion in the Assembly of the Paris Union. As to the question of whether such a possibility should be given to an official of an international organization, some members of the Working Group expressed doubt and reserved their position.

(c) As to representation for the vote, most members of the Working Group favored the above-mentioned solution of the General Regulations annexed to the International Telecommunication Convention, i.e., the right of a member State of the Union--not an official of an international organization--to vote for one other member State of the Union, in exceptional circumstances. However, several Delegations reserved their opinion on this compromise proposal and favored the solution for voting provided for in the official proposals (Article 13(3)(g) in document S/3) according to which proxy voting is excluded.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/138
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF SWITZERLAND

IPO DRAFT (S/10)

Article 3(2)(ii)

This item should be worded as follows:

"(ii) may accept to undertake the administration, or participate in the administration, of other conventions, agreements and treaties in the field of intellectual property."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/139
Subject (Union): Berne
Original: English
Distribution: Main Committee II

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSAL MADE BY THE HUNGARIAN DELEGATION

Berne Convention (Document S/1)

Article 14, paragraph (5) /S/1. Draft 7

Substitute the word "shall" for "may" in the first line.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19th, 1967 N° S/140
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATION OF THE NETHERLANDS

The Netherlands Delegation proposes that the last sentence of Article 2, paragraph (5) (paragraph (6) in the proposals put forward in document S/1) be deleted.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/141
Subject (Union): IPO
Original: English/French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY

PROPOSALS OF AMENDMENTS ON THE

IPO CONVENTION

(Document S/10)

Article 6 (2)(i)

Amend to read:
"review and approve the reports and activities of the Coordination Committee and give instructions to such Committee;"

Article 6 (2)(v) and (vi)

Insert between present subparagraphs (v) and (vi) a new subparagraph reading as follows:
"review and approve reports and activities of the Director General concerning the Organisation and give instructions to him on such matters;"

The present subparagraph (vi) shall become subparagraph (vii).

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/142
Subject (Union): IPO
Original: English/French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY

PROPOSALS OF AMENDMENTS ON THE

IPO CONVENTION

(Document S/10)

Article 8 (3)(i)

Amend to read:

"give advice to the organs of the various Unions, the General Assembly, the Conference and the Director General, on all administrative, financial and other matters of common interest to two or more of the Unions, or to one or more of the Unions and the Conference, or the Organization, and in particular on the common expenses to be included in the budgets of the various Unions and in the budget of the Organization;"

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/143
Subject (Union): IPO
Original: English/French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY

PROPOSALS OF AMENDMENTS ON THE

IPO CONVENTION

(Document S/10)

Article 9 (3)

Add new second sentence:

" In the exercise of his functions, the Director General is responsible to the General Assembly."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19th, 1967 N° S/144
Subject (Union): Berne Union
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION
(DOCUMENT S/1) BY THE BELGIAN DELEGATION)

Article 14, paragraph (7) in the Programme of the Conference

The provisions of paragraph (4) shall not apply to the literary, scientific or artistic works from which the cinematographic work is derived, except for dialogues and scenarios.

However, the countries of the Union whose national legislation, at the date of the signature of the present Convention, provides for a system whose effects are similar to those of paragraph (4) but which explicitly excludes from its application dialogues or scenarios, may declare that they will not apply the provisions of provisions of paragraph (4) above in so far as they relate to such works.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/145
Subject (Union) IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

(Document S/10)

AMENDMENT PROPOSED BY THE

DELEGATION OF SOUTH AFRICA

Article 7 (2) (a)(1)

Replace this article with the following article:

(1) Discuss matters of general legal-technical interest in the field of intellectual property and adopt recommendations by way of resolutions relating to such matters.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: 19 June 1967 N° S/146
Subject (Union): Berne
Original: English
Distribution: Main Committee II

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL SUBMITTED BY THE DELEGATION OF DENMARK

Protocol regarding developing countries
(Document S/1)

Article 1 (a)

Insert in the fourth subparagraph after the words "The original title" the words "the year of the first publication of the work".

(As a consequence the words "of the work" following the word "author" in the same line should perhaps be deleted.)

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/147
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION S/I BY THE DELEGATION OF AUSTRIA

(Revised version of Document S/71)

Article 6bis

The following provision should be inserted as paragraph (4) of Article 6bis:

(4) In the case of a literary, musical or dramatico-musical work published in a country of the Union, it shall be the duty of the publisher to deposit in the national library or archive of that country a facsimile copy of the earliest and most authentic available text or score of the work in the form and version finished and approved by the author. It shall be a matter of national legislation to determine the time and conditions of the deposit, to establish the requirements for making the facsimile copy accessible to the public, and to provide the consequences of failure to make such deposit. These consequences shall not include the loss of any exclusive right under the convention.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/148
Subject (Union): Berne
Original: French
Distribution: Main Committee II

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967.

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE NETHERLANDS DELEGATION

Protocol regarding developing countries (Annex II)

Replace the text under (e) of the protocol by the following wording:

"(e) reserve the right, for exclusively educational or scholastic purposes, to restrict the protection of literary and artistic works; nevertheless, those restrictions shall be allowed only if those purposes are expressly mentioned either in the commentary accompanying the public performance of those works, or, in the case of the reproduction of a work, in all copies of that reproduction."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/149
Subject (Union): Berne
Original: English
Distribution: Main Committee II

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE UNITED KINGDOM DELEGATION

Berne Convention (Doc. S/1)

Protocol regarding developing countries

1. Article 1 preamble. Substitute "Any developing country which, having regard to the state of its cultural and economic needs does not consider it is in a position to make provision for the protection of all rights provided for in this Act, may, with the prior agreement of the Executive Committee of the Berne Union, notify (etc.)".

2. Article 1(d). Add at end:- "This paragraph shall not apply so as to permit the performance in public for profit-making purposes, otherwise than on payment of equitable remuneration, fixed, in the absence of agreement, by competent authority, of broadcasts of literary and artistic works".

3. Article 1(e). Delete or, alternatively,

(i) amend to read:-

"(e) reserve the right, exclusively for teaching purposes, to provide for the grant of licenses to reproduce literary and artistic works on payment of equitable remuneration, fixed, in the absence of agreement, by competent authority." and

(ii) add new paragraph, as follows:-

"1A. Copies of works made in a developing country in accordance with a reservation made by that country under Article 1(e) shall not be exported to any other country and shall, if imported into another country of the Union, whether developing or not, be treated as infringing copies."

4. Add new Article 1B as follows:-

"1B. (1) Any country which has made a declaration or notification under Article 26(1) in respect of territories for whose external relations that country is responsible may [with the prior agreement of the Executive Committee of the Berne Union], notify the Director General that the provisions of this Protocol shall apply to all or part of those territories and such notification shall specify which of the reservations permitted by this Protocol shall apply in respect of all or part of those territories.

(2) A notification made under this Article shall take effect [three months] after its receipt by the Director General."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/150
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE DELEGATIONS OF CZECHOSLOVAKIA, HUNGARY, THE NETHERLANDS, POLAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS

IPO Convention (S/10)

Articles 4 /BIRPI proposal/ and 7

1. In order to avoid any impression of possible discrimination among countries, and in order to simplify the structure of the proposed new Organization, it is proposed;

(a) to designate by the simple word "member" any member, whether it is a member of a Union or not, and--where in the Convention there are differences as to the rights and obligations of members or non-members--to speak about "members of Unions" and "not members of Unions."

(b) not to institute a separate Conference, but to provide that countries not members of the Unions are also members of the General Assembly, except that they will not participate in any decision--that is, will not have a right to vote--in any of the matters enumerated in Article 6, paragraph (2). The General Assembly would also deal with the matters provided for in Article 7, paragraph (2), and in these matters--but only in these matters--countries not members of the Unions will also vote.

2. To the extent the above principles are accepted by Main Committee V, detailed proposals will be made as to the necessary amendments, unless the matter could be sent to the Drafting Committee of Main Committee V.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/151
Subject (Union): Berne
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE BERNE CONVENTION (DOCUMENT S/1) SUBMITTED JOINTLY BY THE DELEGATIONS OF GREECE AND PORTUGAL

Article 6bis

Variant A

Paragraph (2)

"After the death of the author, those rights shall be maintained by the persons or institutions authorized by the national legislation of the country in which the protection is claimed."

Variant B

Maintain paragraph (2) and add a paragraph (3) with the following wording:

"To the extent that the national legislation of the countries of the Union shall permit, those rights shall, after the expiry of the economic rights, be recognized and exercised by the persons or institutions authorized by that legislation. It shall be a matter for the national legislations of the countries of the Union to establish the conditions under which the rights provided for in the present paragraph shall be exercised."

Paragraph (3) would then become paragraph (4).

Article 7

Maintain paragraph (5) of the Brussels text.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/152
Subject (Union): Berne
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE BERNE CONVENTION (DOCUMENT S/1) SUBMITTED BY THE PORTUGUESE DELEGATION

Article 4, paragraph (6)

"The maker of a cinematographic work means the person or body corporate who has been entrusted with the organization of the means essential to the making of the work, whether from the technical or the financial aspect."

Article 7, paragraph (2)

"The term of protection for cinematographic works shall be fixed by national legislation in such a way as to allow a fair return on the investment made. This term shall begin from the first publication, public performance or visual broadcast, or, if these take place more than five years after the making of the work, from the making."

Article 7, paragraph (4)

Substitute a period of ten years for the period stipulated.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 No. S/153
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

AMENDMENT PROPOSED BY THE DELEGATION OF AUSTRIA

- S/10 (IPO) -

Article 19

"(3)(a) Once all the States members of the Paris Union have become Members of the Organization, the rights, obligations, and property of the Bureau of that Union shall devolve on the Organization.

(b) Once all the States members of the Berne Union have become Members of the Organization, the rights, obligations and propertu of the Bureau of that Union shall devolve on the Organization."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/154
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF AUSTRIA

Proposal for Amendment to Document S/10

Article 9

1. Paragraph (1) shall read as follows:

"The administrative tasks concerning the Organization (especially the Secretariat of various organs of the Organization) are accomplished by the International Bureau".

2. Insert a new paragraph between paragraph (1) and (2) as follows:

"The International Bureau is the continuation of the International Bureaux, established by the Conventions of Paris and Berne and later united. It is directed by a Director General, assisted by one or more Deputy Directors General (or: It consists of a Director General, two or more Deputy Directors General, and other staff members as required)."

3. Modify paragraph (5) as follows:

"The Director General, or a staff member designated by him, shall normally participate, without the right to vote, in all meetings of the General Assembly, the Conference, the Coordination /

Committee, and any other committee or working group of the Organization."

BIRPI
ITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/155
Subject (Union): IPO
Original: Spanish
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

AMENDMENT PROPOSED BY THE DELEGATIONS OF ARGENTINA, BRAZIL, COLOMBIA, CHILE, ECUADOR, MEXICO, PERU, SPAIN, URUGUAY AND VENEZUELA.

- Document S/10 (IPO)-

Article 6

"The General Assembly shall :

.....

(iv) determine the languages which shall be the working languages of the Secretariat, taking into consideration the practice of the United Nations in this respect;"

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/156
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

I.P.O.

AMENDMENT PROPOSED BY THE DELEGATION OF ISRAEL

- Document S/10 -

Article 11

Paragraph (3) should read as follows :

"(3) The Organization may conclude bilateral or multilateral agreements with the other Member States with a view to the enjoyment by the Organization, its officials, and representatives of all Member States, of such privileges and immunities as may be necessary for the fulfilment of its purposes and for the exercise of its functions."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N°. S/157
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

AMENDMENT PROPOSED BY THE DELEGATION OF ISRAEL

- S/10 (IPO Draft) -

Article 6

Article 6 should read as follows :

Article 6 : General Assembly

(1) The General Assembly shall consist of the States party to this Convention whether or not members of any of the Unions.

(2) The General Assembly shall :

(i) discuss matters of general interest in the field of intellectual property and may adopt resolutions and recommendations relating to such matters;

(ii) act on the reports and activities of the Coordination Committee;

(iii) appoint the Director General upon nomination by the Coordination Committee;

(iv) pronounce upon the arrangements proposed by the Director General concerning the administration

of the conventions, agreements and treaties referred to in Article 3(2) (ii) and (iii);

(v) adopt the triennial budget of the Organization as such and within the limits thereof establish triennial programs of legal-technical assistance;

(vi) decide upon the adoption of amendments to this Convention as provided in Article 13;

(vii) determine the languages which, in addition to English and French, shall be the working languages of the Secretariat;

(viii) determine which States not Members of the Organizati and which intergovernmental and international non-governmental organizations shall be admitted to the meetings as observers;

(ix) exercise such other functions as are allocated to it in accordance with this Convention.

(3) (a) The Government of each State shall be represented b one or more delegates who may be assisted by alternate delegates, advisors and experts.

(b) One third of the States shall constitute a quorum.

(c) Each State shall have one vote in the General Assem

(d) Abstentions shall not be considered as votes.

(e) Each delegate may represent, and vote in the name o one State only.

(4) (a) Subject to the provisions of the following sub-paragrap and Article 13(12) , the General Assembly shall make the decision by a simple majority of the votes cast.

(b) The following shall require at least two-thirds of the votes cast.

(i) invitations addressed to a State to become a Member of the Organization (Article 4(3));

(ii) decisions concerning the transfer of the headquarters of the Organization (Article 5);

(iii) invitations addressed to States not Members of the Organization and to intergovernmental and international non-governmental organizations to attend meetings as observers (paragraph (2)(ix));

(iv) decisions on the budget which would increase the financial obligation of the Members of the Organization.

(c) The confirmation of arrangements concerning the administration of conventions, agreements and treaties, referred to in Article 3(2) (ii) and (iii), shall require at least three-fourths of the votes cast.

(d) The approval of an agreement with the United Nations under Articles 57 and 63 of the Charter of the United Nations shall require at least nine-tenths of the votes cast.

(5) All decisions of the Organization, other than those which are of a procedural nature or are not within the competence of any of the Unions, shall require the due concurrent agreement of the Unions.

(6) (a) The General 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 Assemblies of the Paris and Berne Unions.

(b) The General Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Coordination Committee, or at the request of one-fourth of the States constituting the General Assembly.

(c) Meetings shall be held at the headquarters of the Organization.

(7) The General Assembly shall, subject to this Convention, adopt its own rules of procedure.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/158
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

AMENDMENT PROPOSED BY THE DELEGATION OF ISRAEL

- S/10 (IPO Draft) -

Article 8

Sub-paragraph (1)(c) should read :

"(c) Whenever the Coordination Committee considers matters of direct interest to the Organization as such, it shall further include one-fourth of those States party to this Convention, which are not members of the Unions, with the right, subject to sub-paragraph (6)(b), to vote and otherwise participate equally with other members of the Coordination Committee in the work thereof. Such one fourth shall be elected at each ordinary session of the General Assembly by all States party to this Convention, which are not members of the Unions."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 19, 1967 N° S/159
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

LIST OF AMENDMENTS FILED PRIOR TO JUNE 20 IN MAIN COMMITTEE V ("IPO")

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BIRPI
NITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/160
Subject (Union): Berne
Original: English
Distribution: Main Committee II

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

MAIN COMMITTEE II

JOINT PROPOSALS OF
CONGO (BRAZZAVILLE), CONGO (KINSHASA), IVORY COAST, GABON, INDIA, MADAGASCAR, MOROCCO, NIGER, SENEGAL AND TUNISIA

For the existing "Protocol regarding Developing Countries" at Annex II of S/1, substitute the following, namely:-

Article 1

Any developing country which ratifies or accedes to the Act to which this Protocol is annexed and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided in the Act, may, by a notification deposited with the ....., at the time of ratification or accession, comprising Article 20 bis of the Act, declare that it will, for a period of the first ten years during which it is a party thereto, avail itself of any or all of the following reservations:-

(a) Substitute for Article 8 of this Convention the following provisions:

(i) Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works during the entire term of their right over the original work;

(ii) Nevertheless it shall be a matter for legislation in countries of the Union to provide that the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of 10 years from the date of the first publication of the original work, by publishing or causing to be published in the country of the Union, a translation in the language for which protection is to be claimed in that country of the Union;

(iii) If, after the expiration of a period, fixed by domestic legislation, from the date of the first publication of a literary, scientific or artistic work, a translation of such work has not been published into the national or official or regional language or languages of that country in that country, by the owner of the right of

translation or with his authorization, any national of such country may obtain a non-exclusive license from the competent authority to translate the work and publish the work so translated in any of the national or official or regional languages in which it has not been published; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and failed to receive, within a reasonable time authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of a translation in such language in that country are out of print.

(iv) If the owner of the right of translation cannot be found, then the applicant for a license shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been disignated by the government of that country. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

(v) Due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms to the standards of the country enacting the legislation.

(vi) The original title and the name of the author of the work shall be printed on all copies of the published translation. The license shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union if one of the national or official or regional languages of such other country is the same language as that into which the work has been so translated, and if the domestic law in such other country makes provision for such licenses and does not prohibit such importation and sale. Where the fore-going conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements. The license shall not be transferred by the licensee except in accordance with the provisions of the domestic law.

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

(viii) Should, however, the author avail himself of the right under paragraph (ii) above during the term of ten years from the date of first publication, the license shall be withdrawn from the date on which the author publishes or causes to be published his

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translation in the country which has granted the license, provided, however, that any copies of the translation already made before the license is withdrawn may continue to be sold until the edition is exhausted.

(ix) Should, however, the author not avail himself of the right under paragraph (ii) above during the said term of ten years, compensation shall cease to be payable on the expiry of that term.

(b) substitute for the term of fifty years referred to in paragraphs (1), (2) and (3) of Article 7 of this Convention a shorter term, being not less than twenty-five years and substitute for the term of twenty-five years referred to in paragraph (4) of the said Article a shorter term being not less than ten years;

(Alternative: Adopt Article 7 of the Rome Text for above.)

(c) reserve the right to apply the provisions of paragraph (2) of Article 9 of the Convention as revised at Brussels in 1948;

(d) substitute for paragraphs (1) and (2) of Article 11bis of this Convention the provisions of Article 11bis of the Convention as revised at Rome in 1928;

(e) reserve the right to restrict the protection of literary and artistic works and, unless it is primarily for educational, scientific or scholastic purposes, on the condition that the authors shall be entitled to receive equitable remuneration. Such remuneration shall, in the absence of any agreement between the parties, be fixed by the authority designated by domestic legislation;

(f) reserve the right to authorize the press, to publish as part of the journal or magazine but not otherwise in serial form or abridgement or translation, literary and artistic works, subject to the authors thereof receiving such equitable remuneration as shall be fixed by the authority designated by domestic legislation.

Article 2

A country which no longer needs to maintain any or all the reservations made in accordance with Article 1 shall withdraw such reservation or reservations by notification deposited with the .....

Article 3

A country, which has made reservations in accordance with Article 1, and which at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to withdraw the reservations under Article 1 above, may continue to maintain any or all the reservations until it accedes to the Act adopted by the next Revision Conference.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: 20 June, 1967 N° S/161
Subject (Union): Berne
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATION OF ITALY

Article 2(1)

It is proposed that the present text of the Convention (Brussels Act) should be retained, the only changes being the replacement of the words "works produced by a process analogous to cinematography" by the words "works expressed by means of a process analogous to cinematography", and the replacement of the words "works produced by a process analogous to photography" by the words "works expressed by means of a process analogous to photography".

Article 2(2) (proposed new text)

This paragraph to be deleted.

Article 2(2) (Brussels text)

It is proposed that the second sentence of this paragraph should be replaced by the following:

"It shall, however, be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature and to translations thereof".

Article 2(5) (Brussels text)

It is proposed that the following phrase should be added at the end of the paragraph, after a comma: "if the laws of the country in question admit of such special protection, or otherwise under the copyright law."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/162
Subject (Union): Berne
Original: French
Distribution: Main Committee II

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT BY THE DELEGATION OF ITALY TO THE PROTOCOL REGARDING DEVELOPING COUNTRIES

(Annex II to Document S/1)

Article 1(a)

Replace the words "period of seven years" by the words "period of ten years".

The third sentence of the fourth paragraph should be amended to read as follows:

"Copies so published may be imported and sold in another country of the Union only if that country is a developing country and one of its national languages is the same language ..." (continuing as in the draft).

Article 1(b)

The term of twenty-five years should be increased to thirty years and that of ten years to fifteen years.

Article 1(e)

Amend to read as follows: "reserve the right to restrict the protection of literary and artistic works when such works are to be used exclusively by educational or scholastic institutions within the framework of their teaching activities; such measures shall in no case adversely affect the author's copyright under Article 6bis or the author's right to secure a fair remuneration established by the competent authority instead of the exclusive right which might be claimed on the basis of the provisions of the Convention."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20th, 1967 N° S/163
Subject (Union): ~~IPO~~ Paris
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE PARIS CONVENTION (DOCUMENT S/3) BY THE DELEGATION OF SPAIN

Article 13quater (Finances)

It is proposed that the following item should be inserted between Items (i) and (ii) of paragraph (3) of Article 13quater:

"(i)bis. Any fees collected for claiming the right of priority provided by the present Convention";

Explanation: The Spanish Delegation considers that, when the financial provisions of the Paris Convention are being revised, it is permissible to mention priority fees as one of the possible sources of revenue for the International Bureau. Questions concerning the amount of the fee, the procedure for collecting it and the date of its introduction would remain open for the moment. It should be pointed out, however, that in the opinion of the Spanish Delegation the amount should be approximately four Swiss francs per priority application, that the fees should be collected by means of the sale of BIRPI stamps by national industrial property offices or by patent agents to the applicants, and that the date of application should be as soon as possible. In any case, the fee would be paid by the foreign applicants

and not by the national offices. It will not conflict with the principle of assimilation, as the fee would benefit the International Bureau and not a national authority.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/164
Subject (Union): IPO
Original: English
Distribution: Main Commettee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY

PROPOSALS OF AMENDMENTS ON THE

IPO CONVENTION

(Document S/10)

Article 6,(3)(i),
Article 7,(3)(ε) and
Article 8,(5)(c)

Replace by the following text:

"A delegation may represent and vote in the name of its own country only."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/165
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY

Proposals of amendments on the IPO Convention
(Document S/10)

Article 12

Insert new subparagraph (3) :

"(3) The approval of the Coordination Committee as foreseen in paragraph (1) and (2) above shall require a two-thirds majority."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/166
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENTS TO DOCUMENT S/10 (IPO) BY THE DELEGATION OF SWITZERLAND

Article 8 (4)

(1) Delete the words "at least".

(2) Add a subparagraph as follows:

"The Coordination Committee shall meet in extraordinary session upon convocation by the Director General or at the request of one quarter of its members."

Reasons:

There seems to be no reason why the Coordination Committee should meet more frequently than the Executive Committees of Paris or Berne (see Article 13bis (7), Paris, Document S/3).

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20th, 1967 N° S/167
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO DOCUMENT S/10 (IPO) BY THE DELEGATION OF SWITZERLAND

Article 10

(1) At the end of paragraph (3)(b), after the words "in proportion to", read: "the share of each of them in the common expenses."

Reasons: The phrase "in proportion to the interest of each of them" is too vague.

(2) Paragraph (5)(a), last sentence, after the words "exercise its vote", insert the words: "in this organ."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/168
Subject (Union): Berne
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATION OF ITALY

Article 4(6)

Amend to read as follows:

"(6) The maker of a cinematographic work is presumed to be the person indicated as such in the credit titles of the film."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/169
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE UNITED STATES OF AMERICA

AMENDMENTS CONCERNING ARTICLE 7 OF THE IPO CONVENTION (S/10)

In accordance with decisions taken in Main Committee IV concerning the Paris Convention and with proposals made in Main Committee V concerning voting in the Assembly, it is proposed that the principle of "a majority of two-thirds of the votes cast" be applied to voting in the Conference in paragraphs (2)(a), (3)(a), (3)(d), (3)(e), etc.

It is also proposed that the words "resolutions and" be deleted from paragraph (2)(a).

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/170
Subject (Union): Paris & IPO
Original: French
Distribution: Main Committees IV & V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

DELEGATIONS OF MADAGASCAR AND SENEGAL MEMORANDUM S/137 - PARIS AND IPO

1. The Malagasy Delegation in Main Committee IV proposed during the discussion of document S/3 amendments to Article 13 (Assembly) of the Paris Convention (document S/37 of June 13). These amendments aimed at giving a plurality of member countries grouped together under the terms of an international agreement in a single industrial property office the possibility of entrusting their representation and right to vote to a single delegation (of a State or of OAMPI as such).

2. After preliminary discussion in the Main Committee showing divergent views, a working group was constituted which met on June 15 and 16 to explore possible solutions.

3. Some members of the Working Group, especially the Delegates of Madagascar and Senegal and the Observer from OAMPI, pointed out that the very reasons which had led to the establishment of OAMPI necessitated a concentration of effort with respect to representation and right to vote in the organs of the Paris Union.

4. Other members of the Working Group expressed concern that such an arrangement might set a precedent introducing block proxy voting.

5. However, it appears that there is at least one precedent on this matter, namely Rules 640-642 of the General Regulations annexed to the International Telecommunication Convention.

(a) Rule 640 *

In general, the Members of the Union must endeavor to send their own delegation to the conferences of the Union. If, however, for exceptional reasons a Member cannot send its own delegation, it may give to the delegation of another Member the power to vote and sign in its name. This delegation of powers must be set out in a document signed by one of the authorities mentioned in Rules 629 or 630, as the case may be.

(b) Rule 641 *

A delegation having the right to vote may empower another delegation, which also has the right to vote, to exercise this right at one or more meetings in which the first delegation is unable to participate. In that case, the first delegation must inform the President of the Conference in due time and in writing.

(c) Rule 642 *

A delegation may not exercise more than one proxy vote in either of the cases provided for in Rules 640 and 641.

6. It appears that the conditions for the implementation of the amendments proposed by Madagascar (i.e. members of the Paris Union, grouped together in a single office under an international agreement) may be assimilated to the "exceptional reasons" referred to but not defined in Rules 640 to 642 of the above-mentioned General Regulations.

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* Unofficial translation - original text not available.

7. The discussion led to the following conclusions:

(a) Representation for the discussions and representation for the vote have to be distinguished.

(b) As to representation for the discussions, the Working Group agreed in general that the delegation of one of the member States of OAMPI or of OAMPI as such should have the possibility to represent member States of OAMPI during the discussion in the Assembly of the Paris Union.

(c) As to representation for the vote, most members of the Working Group favored the above-mentioned solution of the General Regulations annexed to the International Telecommunication Convention, i.e. the right of a member State of the Union - not an official of an international organization - to vote for one other member State of the Union, in the conditions defined by the amendments proposed by Madagascar. However, two delegations reserved their opinion on this compromise proposal.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/171
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE UNITED KINGDOM DELEGATION

Berne Convention (Document S/1)

Article 2(7)

Amend to read:

"The protection of this convention shall not apply to the facts constituting news of the day or having the character of mere news items".

Article 11bis(3)

For the first two sentences substitute:

"In the absence of any contrary stipulation, permission granted in accordance with paragraph 1, of this Article shall not imply permission to reproduce by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the conditions under which ephemeral recordings may be made by or at the request of a broadcasting organization for use in its own broadcasts, when, for technical or other reasons, the broadcast cannot be made at the time of the performance of the work".

Article 13(1)

For "authorizing the recording of such works by instruments capable of reproducing them mechanically" substitute:

"of authorizing the reproduction of such works including any words intended by their author to be performed with them, on instruments by means of which they can be performed".

Article 17

Delete "to permit", insert new paragraph as follows:

"(2) Each country of the Union is free to enact such legislation as is necessary to prevent or deal with any abuse, by persons or organizations exercising one or more of the rights in a substantial number of different copyright works, of the monopoly position they enjoy".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/172
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY
PROPOSAL OF AMENDMENT ON THE
I.P.O. DOCUMENT S/10

Article 15(1)

Replace by the following text:

"Any party to the present Convention which is not a party to any of the conventions, agreements or treaties, the administrative tasks or the administration of which is entrusted to the Organization, may denounce this Convention by notification addressed to the Director General."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967
Subject (Union): OPI
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

INTERNATIONAL INTELLECTUAL PROPERTY ORGANIZATION (IPO)

(Document S/10)

Proposals by the Delegation of France

Article 7 (Conference)

(2)(a) Amend to read:

"The Conference shall:

(i) discuss matters of general interest relating to the promotion of the protection of intellectual property throughout the world and may adopt resolutions and recommendations relating to such matters;

(v) express its opinion on the proposals for amending Article 7 of the present Convention;

(vi) appoint, from among the Associate Members of the Organization, its representatives in the Coordination Committee when the latter considers matters relating to the agenda and the budget of the Conference and to the program of legal-technical assistance of the Organization."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N°S/174
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

INTERNATIONAL INTELLECTUAL PROPERTY ORGANIZATION (IPO)

(DOCUMENT S/10)

PROPOSAL SUBMITTED BY THE DELEGATION OF FRANCE

Article 13: Amendments

The following wording is proposed:

"(1) Proposals for the amendment of this Convention shall be communicated by the Director General to the Member States of the Organization at least six months in advance of their consideration by the General Assembly, and by the Conference when the proposals for amendment concern Article 7.

(2) Amendments shall be adopted by the General Assembly. Adoption shall require a simple majority of the votes cast, provided that the General Assembly shall vote only on such proposals for amendments as have previously been adopted by the Paris Union and the Berne Union according to the rules applicable in each of them regarding the adoption of amendments to the administrative provisions of the Paris

and Berne Conventions, and by the Conference regarding proposals for the amendment of Article 7.

(3) Amendments shall enter into force one month after written notification of acceptance ..."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/175
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

INTERNATIONAL INTELLECTUAL PROPERTY ORGANIZATION (IPO) (DOCUMENT S/10)

Proposal submitted by the Delegation of France.

Article 11: (Legal capacity, Privileges and Immunities)

It would be advisable to distinguish between the agreements referred to in paragraph (3) and the Headquarters Agreement which, in the view of the French Government, ought, by reason of its importance, to be approved by the General Assembly, as suggested in the amendments relating to Article 6(2).

The following wording is therefore proposed for paragraph (4), which would consist of two subparagraphs:

"(4)(a) The Director General shall be authorized to negotiate, in cooperation with the Coordination Committee, and to conclude, with the approval of the General Assembly, as provided in Article 6 2 the Headquarters Agreement referred to in 2 of this Article.

(b) The Director General shall be authorized to negotiate and conclude with the approval of the Coordination Committee, the agreements referred to in paragraph (3)."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 15, 1967 N° S/176
Subject (Union): Berne
Original: French
Distribution: Main Committee II

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

PROTOCOL REGARDING DEVELOPING COUNTRIES

(Document S/1)

PROPOSAL SUBMITTED BY THE DELEGATION OF FRANCE

Criterion for defining countries able to avail themselves of the provisions of the Protocol

Replace the first lines of Article 1 of the proposed Protocol by the following:

"Any developing country which, as an independent and sovereign State, has acceded to the Union or has confirmed its accession thereto since June 26, 1948, may ... etc."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 15, 1967 N° S/177
Subject (Union): Berne
Original: French
Distribution: Main Committee II

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

PROTOCOL REGARDING DEVELOPING COUNTRIES

(DOCUMENT S/1)

PROPOSAL SUBMITTED BY THE DELEGATION OF FRANCE

Article 1(a). Translation of works

It would be preferable to increase the period proposed by BIRPI (7 years) to 10 years.

Article 1(b). Term of protection post-mortem

It would be preferable to increase the period post-mortem proposed by BIRPI (25 years) to 30 years.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20,
Subject (Union): Berne
Original: French
Distribution: Main Committee II

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

PROTOCOL REGARDING DEVELOPING COUNTRIES

(DOCUMENT S/1)

PROPOSAL SUBMITTED BY THE DELEGATION OF FRANCE

Article 1(e). Utilization of works for educational, scientific or scholastic purposes

Replace this item by the following text:

(e) reserve the right to restrict, to the extent justified by the purpose, the protection of literary and artistic works when their utilization is intended for the exclusive use of scholastic or educational institutions and vocational training centres in connexion with their pedagogical activities".

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/179
Subject (Union): Paris and IPO
Original: French
Distribution: Main Committees IV and V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT BY THE DELEGATIONS OF MADAGASCAR AND SENEGAL

(see documents S/3 and S/37, S/137, S/170 - International Convention for the Protection of Industrial Property, Article 13)

1. The Delegation of Madagascar withdraws its proposed amendments contained in document S/37.

2. The Delegations of Madagascar and Senegal propose that an additional subparagraph (h) should be inserted in Article 13 (Assembly), paragraph (3) (document S/3, page 23), to read as follows:

(i) the member States of one or more Unions grouped together under the terms of an international agreement in a common Office possessing for each of them the character of a national service, may, notwithstanding Article 13(3)(g), be jointly represented during discussions either by one of their number of by the common Office itself;

(ii) in general, the members of the Union referred to in item (i) must endeavor to send their own delegation to the conferences of the Union. If, however, for exceptional reasons a Member cannot send its own delegation, it may give to the delegation of another Member the power to vote and sign in its name. This delegation of powers must be set out in a document signed by the Head of State or Head of Government or the Minister of Foreign Affairs in the case

of conferences of plenipotentiaries, and by the same authorities or the competent Minister in the case of administrative conferences;

(iii) a delegation having the right to vote may empower another delegation, which also has the right to vote, to exercise this right at one or more meetings in which the first delegation is unable to participate. In that case, the first delegation must inform the President of the Conference in due time and in writing;

(iv) a delegation may not exercise more than one proxy in either of the cases provided for in items (ii) and (iii) above."

3. The Delegations of Madagascar and Senegal draw the attention of the Conference to the previous wording proposed for items (ii), (iii) and (iv), which follows the wording of Rules 629, 630, 640, 641 and 642 of the International Telecommunication Convention (General Regulations).

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 21, 1967 N° S/180
Subject (Union): Paris and Berne Unions
Original: English-French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

FIRST MEMORANDUM OF THE DRAFTING COMMITTEE OF MAIN COMMITTEE IV

(Chairman: Mr. Labry (France))

The Drafting Committee of Main Committee IV, in its meetings on June 19 and 20, agreed on the following draft of the administrative and final clauses of the Paris and Berne Conventions (S/3, S/9). The Articles in documents S/3 and S/9 which have not yet been finally dealt with by the Main Committee were not considered by the Drafting Committee.

PARIS CONVENTION Document S/3	BERNE CONVENTION Document S/9
Article 13: Assembly	Article 21: Assembly
(1)(a): Replace "the countries of the Union" by "those countries of the Union."	(1)(a): same as opposite
(1)(b): no change	(1)(b): no change
(1)(c): no change	(1)(c): no change
(2)(a)(i): no change	(2)(a)(i): no change
(2)(a)(ii): add "due account being taken of any comments made by those countries of the Union which are not bound by Articles 13 to 13quinquies"	(2)(a)(ii): same as opposite except last words read "Articles 21 to 23"
(2)(a)(iii): no change	(2)(a)(iii): no change
(2)(a)(iii-bis): "adopt the financial regulations of the Union";	(2)(a)(iii-bis): same as opposite

(Article on Assembly, continued)

(2)(a)(iv): no change	(2)(a)(iv): no change
(2)(a)(v): no change	(2)(a)(v): no change
(2)(a)(vi): "review and approve reports and activities of the Director General concerning the Union and give him any necessary instructions concerning matters within the competence of the Union";	(2)(a)(vi): same as opposite
(2)(a)(vii): no change	(2)(a)(vii): no change
(2)(a)(viii): no change	(2)(a)(viii): no change
(2)(a)(ix): no change	(2)(a)(ix): no change
(2)(a)(x): no change	(2)(a)(x): no change
(2)(a)(xi): "exercise such other functions as are allocated to it by this Convention"	(2)(a)(xi): same as opposite
(2)(a)(xii): "subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization."	(2)(a)(xii): same as opposite
(2)(b): "In exercising its functions with respect to matters which are of interest also to other Unions within the meanin of Article 2 vii of the Convention establishing the Organization, the Assembly shall make a decision after having heard the advice of the Coordination Committee of the Organization."	(2)(b): same as opposite
(3)(a):	(3)(a): no change
(3)(b): "One-half of the countries members of the Assembly shall constitute a quorum."	(3)(b): same as opposite
(3)(c): "If less than one-third but at least one-third of the countries members of the Assembly are represented in any session, the decision of the Assembly shall be provisional. Any provisional decision shall be communicated in writing to each country member of the Assembly which was not represented in the session. The communication shall be accompanied by an invitation that such country pronounce itself within a period of four months from the date of the communication. If, within this period, together with the written pronouncements received by the International	(3)(c): same as opposite

(Article on Assembly, continued)

Bureau, the required quorum and majority are attained, the decision shall be final."	
(3)(d): "Decisions of the Assembly shall require at least two-thirds of the votes cast."	(3)(d): same as opposite
(3)(e): "Abstentions shall not be considered as votes." ~~(former paragraph (3)(f))~~	(3)(e): same as opposite
(3)(f): RESERVED. See documents S/35 and S/37	(3)(f): same as opposite but without the reservation for S/37
(4)(a): Replace "preferably" by "in the absence of exceptional circumstances."	(4)(a): same as opposite
(4)(b): Replace "countries constituting the Assembly" by "countries members of the Assembly."	(4)(b): same as opposite
(5): no change	(5): same as opposite

Article 13bis: Executive Committee	Article 21bis: Executive Committee
(1): no change	(1): no change
(2)(a): no change	(2)(a): no change
(2)(b): no change	(2)(b): no change
(2)(c): no change	(2)(c): no change
(3): no change	(3): no change
(4): 1. Replace "a balanced" by "an equitable" 2. Replace "Special Unions" by "Special Agreements"	(4): same as opposite
(5)(a): no change	(5)(a): no change
(5)(b): no change	(5)(b): no change
(6)(a)(i): no change	(6)(a)(i): no change
(6)(a)(ii): no change	(6)(a)(ii): no change
(6)(a)(iii): no change	(6)(a)(iii): no change
(6)(a)(iv): no change	(6)(a)(iv): no change
(6)(a)(v): no change	(6)(a)(v): no change
(6)(a)(vi): "perform such other functions as are allocated to it by this Convention."	(6)(a)(vi): same as opposite

(Article on Executive Committee, continued)

(6)(b): "In exercising its functions with respect to matters which are of interest also to other Unions within the meaning of Art. 2(vii) of the Convention establishing the Organization, the Executive Committee shall make a decision after having heard the advice of the Coordination Committee of the Organization."	(6)(b): same as opposite
(7)(a): no change	(7)(a): no change
(7)(b): "The Executive Committee shall meet in extraordinary session, upon convocation of the Director General, at his own initiative, or at the request of its Chairman or one-fourth of its members."	(7)(b): same as opposite
(8)(a): no change	(8)(a): no change
(8)(b): no change	(8)(b): no change
(8)(c): no change	(8)(c): no change
(8)(d): no change	(8)(d): no change
(8)(e): no change	(8)(e): no change
(9): no change	(9): no change
(10): no change	(10): no change

Article 13ter: International Bureau	Article 21ter: International Bureau
(1)(a): no change	(1)(a): no change
(1)(b): no change	(1)(b): no change
(1)(c): no change	(1)(c): no change
(2): no change	(2): no change

(Article on International Bureau, continued)	
(3): no change	(3): no change
(4): no change	(4): no change
(5): no change	(5): no change
(6): no change	(6): no change
(7): "The Director General or persons designated by him shall participate in the meetings of the various organs of the Union, but without the right to vote."	(7): same as opposite
(8)(a): no change	(8)(a): no change
(8)(a-bis): "The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision."	(8)(a-bis): same as opposite
(8)(b): no change	(8)(b): no change
(9): no change	(9): no change
Article 13quater: Finances	Article 22: Finances
(1)(a): no change	(1)(a): no change
(1)(b): "The budget of the Union shall include the income and expenses proper to the Union itself, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization."	(1)(b): same as opposite
(1)(c): "Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them."	(1)(c): same as opposite
(2): "The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization."	(2): same as opposite

(Article on Finances, continued)

(3): no change	(3): no change
(4)(a): no change	(4)(a): no change
(4)(b): no change	(4)(b): no change
(4)(c): Replace: "The contribution" by "the annual contribution."	(4)(c): same as opposite
(4)(d): no change	(4)(d): no change
(4)(e): Omit the last two sentences	(4)(e): same as opposite
(4)(f): "If the budget is not adopted before the beginning of a new financial period, it shall be carried over as provided in the Financial Regulations."	(4)(f): same as opposite
(5): no change	(5): no change
(6)(a): "The Union shall have a Working Capital Fund which shall be constituted by a single payment made by each of the countries of the Union. If the fund is reduced to a reasonable level, an increase shall be decided by the Assembly."	(6)(a): same as opposite
(6)(b): "The amount of the payment of each country to the fund or to an increase shall be a proportion of the contribution of that country for the year in which the fund is established or the increase made."	(6)(b): same as opposite
(6)(c): no change	(6)(c): no change
(7)(a): no change	(7)(a): no change
(7)(b): no change	(7)(b): no change
(8): no change	(8): no change

Article 13quinquies: Amendments to Articles 13 to 13quinquies	Article 23: Amendments to Articles 21 to 23
(1): "Proposals for amendment of Articles 13, 13bis, 13ter, 13quater, and the present Article, may be initiated by any country member of the Assembly, the Executive Committee, or the Director General, and shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly."	(1): same as opposite

(Article 13quinquies, continued)

(2): Replace "the unanimity" by "at least four-fifths."	(2): same as opposite
(3): no change	(3): no change
(4): Omit	(4): Omit

Article 14: Revision of the provisions of the Convention other than Articles 13 to 13quinquies

(1): no change	(1): no change
(2): RESERVED (S/94)	(2): same as opposite
(3): RESERVED (S/106)	(3): RESERVED (S/97)

Article 15: Special agreements

No change

Article 24: Revision of the provisions of the Convention other than Articles 21 to 23

Article 16: RATIFICATION AND ACCESSION BY COUNTRIES OF THE UNION; ENTRY INTO FORCE

(Discussion not completed by the Main Committee. But already now the Drafting Committee proposes the following changes in the text, pursuant to decisions taken in the Main Committee)

(2)(a) Replace "one month" by "three months," and replace "fifth such instrument" by "tenth such instrument."

(2)(b) Replace "one month" by "three months."

(3) Replace "one month" by "three months."

Article 16bis: ACCESSION BY COUNTRIES OUTSIDE THE UNION; ENTRY INTO FORCE

(Discussion not completed by the Main Committee. [But already now the Drafting Committee proposes the following changes in the text, pursuant to decisions taken in the Main Committee)

(2)(a): 1. Introduce "unless a subsequent date has been indicated in the instrument of accession," after "enter into force" in line 4.

2. Add the following sentence at the end: "If a country indicates a subsequent date in its instrument of accession, the present Act shall enter into force with respect to that country on the date thus indicated."

(2)(b): Replace "one month" by "three months" in line 6, and add "unless a subsequent date has been indicated in the instrument of accession. In the latter case, the present Article shall enter into force with respect to that country on the date thus indicated."

(3) Replace "one month" by "three months" in line 4.

Articles 25 to 32 were not considered by the Drafting Committee as they had not yet been discussed by the Main Committee.

Article 16ter: NO RESERVATIONS

Change Title: ~~to~~ "Effect of Ratification or Accession."

Text ~~of Article~~: no change

Article 16quater: ACCESSION TO EARLIER ACTS

RESERVED

Article 16quinquies: TERRITORIES

(1): no change

(2): no change

(3)(a): no change except replace "one month" by "three months"

(3)(b): no change

Article 17: IMPLEMENTATION BY DOMESTIC LAW

Change Title: ~~to~~ "Implementation of the Convention."

Text:

(1): no change

(2): no change

Article 17bis: DENUNCIATION

(1): no change

(2): no change

(3): no change

(4): no change

Article 18: APPLICATION OF EARLIER ACTS

RESERVED

Article 19: SIGNATURE, etc.

(1)(a): no change

(1)(b): no change, except replace "authoritative" by "official".

(1)(c): no change

(2): no change

(3): no change

(4): no change, except omit "as soon as possible."

(5): no change, except insert "or made pursuant to Article 16(1)(c)" after the words "any declarations included in such instruments."

Article 20: TRANSITIONAL PROVISIONS

(1): no change

(2): no change

(3): no change

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

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 21, 1967 N° S/180/Corr.1
Subject (Union): Paris and Berne Unions
Original: English
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

CORRIGENDUM TO FIRST MEMORANDUM OF THE DRAFTING COMMITTEE OF MAIN COMMITTEE IV

Page 2 of document S/180 (English text) :

Replace in Article 13(3)(c), line 1, "one-third" by "one-half"

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 21, 1967 N° S/180/Corr.2
Subject (Union): Paris and Berne
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

CORRIGENDUM TO FIRST MEMORANDUM OF THE DRAFTING COMMITTEE OF MAIN COMMITTEE IV

Correction to page 7 of document S/180 which affects only the French version.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/181
Subject (Union): Berne
Original: French
Distribution: Main Committee II

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

PROTOCOL REGARDING DEVELOPING COUNTRIES

OBSERVATIONS AND PROPOSALS BY THE DELEGATION OF GREECE (DOCUMENT S/1)

1. The Greek Delegation considers that the provisions recommended in favour of developing countries are granted only to the detriment of the creators of intellectual works when cultural advancement is in the first instance an obligation incumbent upon States.

It is probable that the facilities for making use of foreign works are liable to have harmful effects on the development of indigenous cultural life in the developing countries. Moreover, the benefit deriving from the non-payment of royalties would accrue in the first instance to persons instrumental in the distribution of intellectual works.

Nevertheless, because Greece does not wish to put difficulties in the way of the States that are in favour of the Protocol, it will re-examine the proposed provisions.

2. Greece considers that recognition of the existence of the right to invoke the Protocol should be accorded at the request of an interested country after the decision of an organ of the future IPO or, should that Organization not be established, of a specially established

organ of the Berne Convention. To ensure the independence of that organ, the latter might possibly consist of experts coming in part from the judiciaries of the Member States and enjoying a certain permanence. In consequence of this proposal Greece considers that it might be possible to agree that the Protocol could be invoked at any time.

3. In regard to paragraph (a) of Article 1, Greece proposes that the period should be increased from two months to six months.

4. Greece also proposes that works covered by the Protocol should bear an indication that they have been published in conformity with the Protocol and should state the country and year of publication and the name of the publisher. This would make it possible to control those publications in a country where the Protocol was not applied. When a work did not bear the above indication, the Protocol would not be applied even in a country enjoying its privileges.

5. In regard to paragraph (d) of Article 1, Greece considers that the facilities afforded for the exploitation of cultural works are superfluous and that the facilities provided by paragraph (e) are sufficient.

Greece therefore proposes the deletion of paragraph (d).

6. In regard to paragraph (e), Greece considers: firstly that paragraph (2) of Article 10 of the Convention should be repeated, and secondly that a restrictive definition should be given of the facilities accorded to States that would have the right to avail themselves of the Protocol.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/182
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL BY THE JAPANESE DELEGATION

(A new Article concerning settlement of disputes)

The following new Article should be added as Article 18, and the present Articles 18 (Final Provisions) and 19 (Transitional Provisions) should be renumbered as Articles 19 and 20 respectively.

> "Any dispute between two or more member States of the Organization concerning the interpretation and application of this Convention not settled by negotiation, or by the General Assembly shall be brought before the International Court of Justice for determination by it, unless the member States concerned agree on some other method of settlement. The member State requesting that the dispute should be brought before the Court shall inform the International Bureau; the Bureau shall bring the matter to the attention of the other member States."

Explanation:

As in many constitutional instruments of UN specialized agencies it is desirable that there be in the Convention an article concerning the settlement of disputes.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/183
Subject (Union): Berne
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE BERNE CONVENTION (DOCUMENT S/1) BY THE DELEGATION OF GREECE

Article 6bis

Add a paragraph with the following wording:

"Literary and artistic works over which economic rights do not exist shall be protected against all use in a manner prejudicial to the cultural heritage of mankind. It shall be a matter for national legislation in the countries of the Union to establish the organizations qualified to exercise these rights and the conditions under which they shall be exercised."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/184
Subject (Union): Paris and Berne
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO THE PARIS CONVENTION (DOCUMENT S/3) BY THE SWEDISH DELEGATION

Article 13

(2)(a)(viii)

Substitute "the Union" for "the Assembly".

Insert (3)(g) (new)

"Member States of the Union that are not members of the Assembly shall be admitted to its meetings as observers."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/185
Subject (Union): Berne
Original: English-French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE WORKING GROUP

MAIN COMMITTEE ONE

Berne Convention--Article 10, paragraph (2)

Article 10, paragraph (2) (Document S/1) to be drafted as follows:

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications /broadcasts or recordings/ for teaching, provided such utilization is compatible with fair practice.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/185
Subject (Union): Berne
Original: English-French
Distribution: Main Committee I

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE WORKING GROUP

MAIN COMMITTEE ONE

Berne Convention--Article 10, paragraph (2)

Article 10, paragraph (2) (Document S/1) to be drafted as follows:

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications /broadcasts or recordings/ for teaching, provided such utilization is compatible with fair practice.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 20, 1967 N° S/186
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

LIST OF AMENDMENTS SUBMITTED TO MAIN COMMITTEE V, JUNE 21, 1967, 8 A.M.

Article 9	:	121, 143, 154
Article 10	:	93, 93 Add., 167
Article 11	:	96, 135, 156, 175
Article 12	:	165
Article 13	:	93, 93 Add., 174, 179
Article 14	:	---
Article 15	:	172
Article 16	:	96
Article 17	:	---
Article 18	:	96
Article 19	:	153

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 21, 1967 N° S/187
Subject (Union): Berne
Original: English & French
Distribution: Restricted - Drafting Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION (DOCUMENT S/1)

Texts prepared by the Secretariat for the Drafting Committee

Article 3

(1) The protection of this Convention shall apply to

(a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;

(b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but having their habitual residence in one of them, shall, for the purpose of this Convention, be assimilated to the nationals of that country.

(3) The expression "published works" means works published with the consent of their authors whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4

The protection of this Convention shall apply, independently of the provisions of Article 3, to

(a) authors of cinematographic works, the maker of which has his headquarters or habitual residence in one of the countries of the Union;

(b) authors of works of architecture, erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5

(1) The authors shall enjoy, in regard to such works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be

(a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country of which the legislation grants the shortest term of protection;

(b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;

(c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union:

(i) when these are cinematographic works the maker of which has his headquarters therein or habitual residence in a country of the Union, that country;

(ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, that country;

(iii) when these are works to which the provisions referred to in (i) and (ii) above do not apply, the country of the Union of which the author is a national.

Article 6

(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not effectively domiciled in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Government by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Government shall immediately communicate this declaration to all the countries of the Union.

Article 9

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not unreasonably prejudice the legitimate interests of the author and does not conflict with a normal exploitation of the work.

(3) Articles on current economic, political or religious topics may be reproduced, in original or in translation, by the press or by broadcasting unless the reproduction or the broadcasting thereof is expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.

Article 10

(1) It shall be permissible to make, in original or in translation, quotations from a work which has already been lawfully made available to the public, provided that they are compatible with fair practice, and to the extent justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

Article 10bis

It shall be a matter for legislation in countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography or cinematography, or by broadcasting or communication to the public by wire, it shall be permissible, to the extent justified by the informatory purpose, to reproduce and communicate to the public literary or artistic works being seen or heard in the course of the event.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 21, 1967 N° S/188
Subject (Union): IPO
Original: English
Distribution: Main Committee V
First version, not distributed

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

REPORT

on the June 21, 1967, meeting of the Working Group on the Membership Provision (Article 4 in document S/10) of Main Committee V.

1. All six members of the Working Group, i.e., Czechoslovakia, France, Kenya, Mexico, Soviet Union, and the United Kingdom, were present.

The Chairman and Rapporteur of Main Committee V were present but did not participate in the substantive discussion.

3. On a proposal of Czechoslovakia, the undersigned, as Representative of the Director of BIRPI, was unanimously elected to direct the discussions.

4. It was agreed that, subject to the reservations set out in points 5 and 6 below, the following text should be reported to Main Committee V:

"ARTICLE 4: MEMBERSHIP

"(1) Membership in the Organization shall be open to any State which is a member of any of the Unions as defined in Article 2(vii).

"(2) Membership shall be equally open to any State not a member of any of the Unions provided that:

"(i) it is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, the International Atomic Energy Agency, or the International Court of Justice, or

"(ii) it is invited by the General Assembly to become a party to the present Convention."

5. One of the members of the Working Group said that he wished to reflect further, and ask for new instructions of his Government, on paragraph (2), item (i), since his present instructions are that that item should be completed by the words "or is a party to any agreement concluded under the aegis of the United Nations."

6. Some of the members of the Working Group said that they wished to reflect further, and ask for new instructions of their Governments, on paragraph (1), since their present instructions did not allow them to accept the principle embodied in that paragraph.

7. Since Delegations which were not represented in the Working Group may be in a similar situation, it was decided to circulate this report immediately so that these Delegations are promptly informed about the text quoted above.

8. The question whether the Working Group should meet again and if so, when, was left open. It will be decided in informal consultations among the members of the Working Group and the undersigned after sufficient time has been left for consideration. The Chairman of Main Committee V will be informed accordingly.

June 21, 1967

Arpad Bogsch
(BIRPI)

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 28, 1967 N° S/188
Subject (Union): IPO
Original: English
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

REPORT

on the meetings of the Working Group on the Membership Provision (Article 4 in document S/10) of Main Committee V

1. The Working Group met on June 21, 23, and 27, 1967.

2. All six members of the Working Group, i.e., Czechoslovakia, France, Kenya, Mexico, Soviet Union, and the United Kingdom, were present at all three meetings.

3. The Chairman and Rapporteur of Main Committee V were present but did not participate in the discussion.

4. On a proposal of Czechoslovakia, the undersigned, as Representative of the Director of BIRPI, was unanimously elected to direct the discussions.

5. After several members asked for new instructions from their Governments, and subject to the Delegate of Mexico reserving his position for the moment, it was unanimously agreed in the last meeting to recommend to Main Committee V the following provision:

"ARTICLE 4: MEMBERSHIP

"(1) Membership in the Organization shall be open to any State which is a member of any of the Unions as defined in Article 2(vii).

"(2) Membership shall be equally open to any State not a member of any of the Unions provided that:

over

"(i) it is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, the International Atomic Energy Agency, or the International Court of Justice, or

"(ii) it is invited by the General Assembly to become a party to the present Convention."

June 27, 1967

Arpad Bogsch
(BIRPI)

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 21, 1967 N° S/189
Subject (Union): Paris
Original: French
Distribution: Main Committee IV

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

AMENDMENT PROPOSED BY THE DELEGATIONS OF ARGENTINA, BRAZIL, AND URUGUAY

Paris Convention (S/3)

Article 13(3)(h)

Amend subparagraph (ii), as appearing in document S/179, by deleting the words :

"referred to in item (i)"

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 21, 1967 N° S/190
Subject (Union): Berne
Original: French
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSALS OF THE WORKING GROUP CONCERNING THE REGIME OF CINEMATOGRAPHIC WORKS

MAIN COMMITTEE I

Berne Convention (Document S/1)

Article 2, paragraph (1)

The present Brussels text modified as follows:

" ... cinematographic works to which are assimilated those expressed by a process analagous to cinematography; ..."

Article 4, paragraph (4)(c)(i)

Redraft as follows:

"(i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, that country;"

Article 6, paragraph (2)

Redraft as follows:

"(2) Authors who are not nationals of one of the countries of the Union shall enjoy for their cinematographic works which are unpublished or which are not first or simultaneously published in a country of the Union, but the maker of which has his headquarters or his habitual residence in that country, the

same rights in that country as national authors and, in the other countries of the Union, the rights granted by this Convention."

Article 4 (in an appropriate place)

"The person or corporate body whose name appears on a cinematographic work in the manner in current use shall be presumed to be the maker of the said work, until the contrary be proved."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 21, 1967 N° S/191
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE UNITED KINGDOM DELEGATION

Berne Convention (Document S/1)

Article 2(1)

(i) For the words "choreographic works and entertainments in dumb show", substitute "entertainments in dumb show, the acting form of which is fixed in writing or otherwise, and choreographic works" and

(ii) Add at the end, "It shall, however, be a matter for legislation in countries of the Union to prescribe that works in general or any specified categories of works shall not be considered as having been made until they have been fixed in some material form."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 21, 1967 N° S/192
Subject (Union): Berne
Original: English
Distribution: Main Committee I

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE UNITED KINGDOM DELEGATION

Berne Convention (document S/1)

Article 7(4)

For the words "however, this term ... ... such a work", substitute the following:-

"However this term shall last at least--

(a) in respect of photographs, for 50 years from the making of the photograph,

(b) in respect of works of applied art, for 15 years from the making of the work."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 22, 1967 N° S/193
Subject (Union): IPO
Original: English
Distribution: IPO

INTELLECTUAL PROPERTY
CONFERENCE OF STOCKHOLM, 1967

DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY
PROPOSAL OF AMENDMENT OF THE IPO DOCUMENT S/10

Article 6(3)(i)

Article 7(3)(g)

Article 8(5)(c)

replace by the following text:

"A delegation may represent, and vote in the name of, its own country only."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 22, 1967 N° S/194
Subject (Union): IPO
Original: French
Distribution: Main Committee V

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSED AMENDMENT TO DOCUMENT S/10 (IPO) BY THE DELEGATIONS OF FRANCE AND SWITZERLAND

Article 11(4)

"The Director General shall be authorized to negotiate and conclude, subject to the approval of the Coordination Committee, the agreements referred to in paragraphs (2) and (3) above. These agreements shall have no legal effect before such approval."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 22, 1967 N° S/195
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INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSALS OF THE WORKING GROUP CONCERNING THE REGIME OF CINEMATOGRAPHIC WORKS

Article 14

(1) Authors of literary or artistic works shall have the exclusive right of authorizing:

(i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;

(ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.

(2) The adaptation into any other artistic form of cinematographic productions derived from literary or artistic works shall, without prejudice to the authorization of their authors, remain subject to the authorization of the author of the original work.

(3) The provisions of Article 13, paragraph (1), shall not apply.

Article 14bis (new)

(1) Without prejudice to the copyright in any work which might have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

(2)(a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

(b) However in the countries of the Union which by legislation include among such owners of copyright authors who have brought contributions to the making of a cinematographic work, if they have undertaken to bring such contributions to the making of the cinematographic work, they may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting, any other communication to the public, subtitling and dubbing of the texts, of the cinematographic work.

(c) The form of the undertaking referred to above which may be required by a country of the Union to be in a written agreement or something having the same force shall be governed by the legislation of the country of the Union where the maker of the cinematographic work has his headquarters or habitual residence.

(d) By "contrary or special stipulation" is meant any restrictive condition appropriate to the aforesaid undertaking.

(3) Unless the national legislation provides to the contrary, the provision of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works, specially created in the making of the cinematographic work.

Article 11bis, new paragraph (4)

(4) As regards to cinematographic work and works adapted or reproduced in the cinematographic work itself, the provisions of paragraph (2) above shall apply only in so far as they relate to the rights given in subparagraphs (ii) and (iii) of paragraph (1) of this Article.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 22, 1967 N° S/196
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INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL OF THE HUNGARIAN DELEGATION

Berne Convention (Document S/1)

The Hungarian Delegation proposes to include in the Berne Convention the following new provision:

"With respect to works created on commission or in fulfilment of the author's task as an employee, the employer may, in the absence of any contrary and written stipulation, exploit the work only for purposes belonging to the employer's own functions and in a manner not prejudicial to the moral rights of the author."

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 22, 1967 N° S/197
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INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

PROPOSAL SUBMITTED BY THE DELEGATION

OF BULGARIA

(Corrigendum to document S/89)

Article 6bis of the Berne Convention

(Document S/1)

Read:

"In Article 6bis (2), delete the words 'at least' until the expiry of the economic rights.'"

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 22, 1967 N° S/198
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INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

MEMORANDUM OF THE SECRETARIAT
OPI - S/10

Article 9 (International Bureau)

In its session of June 21, 1967, Main Committee V asked the Secretariat to draft a new text for Article 9(3) of the IPO Convention (S/9) in the light of the discussion that took place in that Committee on the said day.

Paragraph (3) of Article 9 could read as follows:

"(9)(a) The Director General shall be the chief administrative officer of the Organization.

(b) He shall represent the Organization.

(c) Both as to the internal and external affairs of the Organization, he shall be responsible to the General Assembly."

It is to be noted that the Articles of the Paris Convention (13ter(1)(c)) and of the Berne Convention (21ter(1)(c)) on the International Bureau--as adopted by Main Committee IV--already provide that "The Director General of the Organization shall be the chief administrative officer of the (Paris)(Berne) Union and shall represent the Union."

Consequently, it appeared to be superfluous to refer in the IPO Convention to the Director General as chief administrative officer of the Union.

Omission, in the IPO Convention, of any such reference to the Unions seems to be logical also from a legal point of view since it seems preferable to speak about the chief administrative officer of the Paris Union in the Paris Convention, and of the chief administrative officer of the Berne Union in the Berne Convention.

The entrusting of the administrative tasks of each of these Unions to the International Bureau of the Organization implies that the administrative head of the Organization will be also the administrative head of the Unions.

It is to be also noted that the above draft provision takes into account the amendment proposed in document S/143 of the Delegation of the Federal Republic of Germany, which read as follows: "In the exercise of his functions the Director General is responsible to the General Assembly." The principle of this amendment was supported by several Delegations, and opposed by none, in the June 21, 1967, meeting of Main Committee V.

BIRPI
UNITED INTERNATIONAL BUREAUX
FOR THE PROTECTION
OF INTELLECTUAL PROPERTY

Date: June 23, 1967 N° S/199
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Original: English
Distribution: Main Committee II

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

BERNE CONVENTION

PROPOSALS BY THE DELEGATION OF ISRAEL

Protocol regarding developing countries

(Document S/1)

1. Delete in the first paragraph of Article 1 the words "for a period ... thereto."

2. Add the following immediately at the end of the first paragraph of Article 1:

"Such right may be exercised for a period of 15 years from the date of its ratification of or accession to this Act and for such further period as may be determined by the General Assembly prior to the expiration of the said period of 15 years or any extension thereof."

3. At the end of Article 1 add the following:

"Whenever a right of reproduction arises under the foregoing, the same shall include the right of translation. The obligation to assure authors just compensation under this Article shall not prevail over any exchange restriction provisions of the country upon which such obligation rests."

4. Delete Article 2.

5. Insert a new Article 2 as follows:

"Article 2

(a) The right under Article 1 shall not include the right to import in any country availing itself of this Protocol or any part thereof copies of any work which, had such country not so availed itself, would have been in that country infringing copies.

(b) The right under Article 1 shall not include the right to export copies of any work reproduced or translated or otherwise utilized in the country availing itself of this Protocol to any country not a member of the Union or the UCC, or although such a member has not availed itself of this Protocol or any part thereof."

6. Add a further Article as follows:

"Article 4

(a) Whenever a country avails itself of any of the rights under this Protocol it shall at least once a year submit to the secretariat of the Union full information of the extent of its utilization of the said right.

(b) The secretariat shall pass on such information to the relevant authority of the country in which the authors concerned have their habitual residence and shall after consultation with interested parties make recommendations as to the amount of compensation payable to such authors.

(c) Authors whose works are utilized in accordance with Article 1 and not entitled to full compensation thereunder shall be entitled to receive payment up to a fair compensation out of a fund to be created by or under the authority of the country in which they have their habitual residence. Such fund shall preferably be created by a levy in that country on the use of copyright.

(d) The non-establishment of such a fund as aforesaid shall not in any way prejudice any rights arising under Article 1."