

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

Report

on the Work of Main Committee I (Substantive Provisions of the Berne Convention - Articles 1 to 20) of the Intellectual Property Conference of Stockholm, 1967

by

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Introduction

1. The Plenary Assembly of the Berne Union, which met on June 12, 1967, under the chairmanship of Mr. Gordon Grant (United Kingdom), set up Main Committee I (hereinafter referred to as "the Committee") with the task of considering the proposals for revising the substantive copyright provisions of the Berne Convention (Articles 1 to 20), with the exception, however, of the proposals for the establishment of an additional Protocol Regarding Developing Countries, consideration of which, according to the Rules of Procedure of the Conference, came within the province of Main Committee II.

2. The Plenary Assembly of the Berne Union agreed without opposition to the proposals put forward by the Delegation of Sweden that a member of the Delegation of the Federal Republic of Germany be elected as Chairman of the Committee, that a member of the Delegation of Tunisia be elected as Vice-Chairman of the Committee, and that Professor Svante Bergström (Sweden) be elected as Rapporteur.

3. The Officers of the Committee were therefore the following: Professor Eugen Ulmer (Federal Republic of Germany), Chairman; Mr. Mustapha Fersi (Tunisia), Vice-Chairman; Professor Svante Bergström (Sweden), Rapporteur. In accordance with Rule 19, paragraph (1), of the Rules of Procedure of the Conference, Mr. Claude Masouyé (BIRPI) was appointed Secretary of the Committee.

4. The Committee elected a Drafting Committee, comprising, under the chairmanship of Mr. William Wallace (United Kingdom), representatives of the following countries: Australia (Mr. J. L. Curtis), Czechoslovakia (Mr. V. Strnad), France (Mr. Marcel Boutet), India (Mr. R. S. Gae), Mexico (Mr. Rojas y Benavides), Netherlands (Professor S. Gerbrandy), Rumania (Mr. T. Preda), Senegal (Mr. O. Goundiam), and Sweden (Professor S. Strömholm). The French representative pointed out that, in respect of those questions to which the Committee had adopted solutions not accepted by the French Delegation, his participation in the work of the Drafting Committee did not imply approval of the texts prepared by that Committee. The same observation applied to the French participation in the Working Group mentioned under paragraph 7 below.

5. In the course of its discussions, the Committee deemed it advisable to set up Working Groups to make a detailed

examination of certain matters of special importance. Four Working Groups were thus established.

6. The first, under the chairmanship of Mr. De Sanctis (Italy), had the task of studying the content of certain exceptions to the right of reproduction mentioned in Articles 9 (new paragraph (2)) and 10 (paragraph (2)). This Working Group consisted of representatives of the following countries: Austria, Czechoslovakia, France, Italy, Ivory Coast, Japan, Sweden, United Kingdom.

7. The second, under the chairmanship of Professor Ulmer (Federal Republic of Germany), was responsible for examining the régime of cinematographic works. This Working Group consisted of representatives of the following countries: Belgium, Brazil, Bulgaria, Congo (Kinshasa), Czechoslovakia, Denmark, France, Federal Republic of Germany, Italy, Japan, Monaco, Spain, Sweden, Switzerland, United Kingdom.

8. The third, under the chairmanship of Mr. Strnad (Czechoslovakia), was entrusted with consideration of the possibility of inserting in the Convention special provisions relating to folklore. This Working Group consisted of representatives of the following countries: Brazil, Congo (Brazzaville), Czechoslovakia, France, Greece, India, Ivory Coast, Monaco, Netherlands, Sweden, Tunisia, United Kingdom.

9. The fourth, under the chairmanship of Mr. Cavin (Switzerland), had the task of finding a formula specifying the conditions mentioned in Article 2^{bis}, paragraph (2). This Working Group consisted of representatives of the following countries: Bulgaria, France, Federal Republic of Germany, Monaco, Sweden, Switzerland.

10. The Officers of the Committee attended, *ex officio*, the meetings of the Drafting Committee and of the four Working Groups.

11. The Committee decided to consider the proposals for revision in the following order, the numbers of the Articles referred to being those of the text submitted in the *Programme* document S/1):

- (a) Articles 4, 5 and 6 (eligibility criteria, country of origin), with the exception of the provisions concerning cinematographic works;
- (b) Articles 9 (right of reproduction), 10 (quotations), 10^{bis} (current events);

- (c) Article 2, paragraph (2), Article 4, paragraphs (4) and (6), Article 6, paragraph (2), Article 7, paragraph (2), Article 14 (régime of cinematographic works);
- (d) Article 2, paragraph (1) (choreographic works); Article 2^{bis}, paragraph (2) (reproduction of speeches by the press); Article 6^{bis} (moral rights); Article 7 (term of protection); Article 7^{bis} (works of joint authorship); Article 8 (right of translation); Article 11 (right of public performance); Article 11^{bis} (right of broadcasting); Article 11^{ter} (right of recitation); Article 13 ("mechanical" rights); Additional Protocols Regarding (i) Stateless Persons and Refugees, (ii) the Works of Certain International Organizations;
- (e) proposals submitted with regard to other provisions of the Convention.

12. Having regard to the course of events during the Conference, this Report will follow a somewhat different order. Item (a) will be dealt with under I, item (b) under II, items (d) and (e), in so far as they refer to Articles in the Convention, under III, and item (c) under IV. Part V deals with joint meetings with other Committees, and Part VI with the recommendations expressed by the Committee, miscellaneous proposals, and the Additional Protocols. The Articles and paragraphs in the headings refer, where possible, to the numbering in the *Programme* of the Conference, as this was the basis for the proposals submitted by the countries and for the discussion during the Conference. If the Articles and paragraphs have been numbered differently, however, in the draft finally adopted by the Committee, the corresponding Articles or paragraphs will be indicated in brackets.

13. It should first be mentioned that the Committee took a decision on a question of general import, affecting the Convention as a whole. It had been pointed out that the expression "literary, artistic, and scientific works" appeared in some Articles, whereas only the adjectives "literary and artistic" were used in other Articles. Following a proposal by the United Kingdom, the Committee decided to delete the word "scientific" wherever it was used in the Convention to qualify works, considering that the use of different expressions in different places was liable to give rise to misunderstandings. It was thought sufficient that Article 2, paragraph (1), should give a general definition of the term "literary and artistic works" as including "every production in the literary, scientific and artistic domain."

14. Two general remarks seem justified here concerning the interpretation of the text of the Convention. The Drafting Committee was unanimous in adopting, in the drafting of new texts as well as in the revision of the wording of certain provisions, the principle *lex specialis legi generali derogat*: special texts are applicable, in their restricted domain, exclusive of texts that are universal in scope. For instance, it was considered superfluous to insert in Article 9, dealing with some general exceptions affecting authors' rights, express references to Articles 10, 10^{bis}, 11^{bis} and 13 establishing special exceptions. Similarly, Articles 11, 11^{ter}, 14 and 14^{bis} (new) do not refer to Article 11^{bis}. On the other hand, it was thought advisable to insert such references in cases where, exceptionally,

the principle *lex specialis legi generali derogat* is not applicable. Such a reference is to be found in Article 14(3), where reference is made to Article 13(1).

15. Secondly, the adoption of English as one of the official languages of the Berne Convention (cf. paragraph 17 below) makes it necessary to clarify an expression appearing several times in the text: "*législation nationale*" ("national legislation"). According to the English view, which was adopted by the Drafting Committee, these words refer not only to statute law but also to common law.

16. The Committee based its discussions on the *Programme* presented in document S/1 (with the exception of the draft Protocol Regarding Developing Countries) and the proposed amendments submitted in accordance with Rule 33 of the Rules of Procedure of the Conference.

17. Lastly, it should be pointed out that, in accordance with a decision taken by Main Committee IV, the Berne Convention will henceforward have two official languages, English and French. Consequently, Main Committee I has also had to adopt an official text in English. In establishing the latter, the text contained in document S/1 and including a revision of the wording of the Brussels text prepared by a group of experts (document S/1, page 8) was used as a basis.

I. Eligibility Criteria and Country of Origin

(Articles 4, 5 and 6, or Articles 3 to 6)
with the exception of the provisions concerning
cinematographic works

18. Articles 4, 5 and 6 of the Brussels text deal essentially with two fundamental questions.

19. The first relates to eligibility criteria, that is to say criteria for the application of the Convention. The main criterion differs according to whether the work is published or not. If it is not published, the criterion is the nationality of the author: he is protected if he is a national of a country of the Union (Article 4(1)). If the work is published, the only criterion is that of first publication: the author is protected if he first publishes his work in a country of the Union, irrespective of whether he is a national of a country of the Union (Article 4(1)) or whether he is not (Article 6(2)).

20. The second question relates to the basic principles of the protection of a work under the Convention: the principles of national treatment and protection *jure conventionis*. In some cases the author enjoys both national treatment and *jus conventionis* (Article 4(1), Article 6(1)). In other cases he benefits only from national treatment (Article 5, Article 6(1)). In what is called the country of origin of the work, he may not be protected at all under the Convention (Article 4(1)).

21. In addition to these two questions, the Brussels text includes a definition of two concepts closely related to the above questions, namely, publication (Article 4(4)) and country of origin (Article 4(3) and (5)). Furthermore, it contains a provision excluding formalities as a condition for protection (Article 4(2)) and other provisions permitting countries in certain cases to take retaliatory measures against countries outside the Union (Article 6(2) to (4)).

22. The *Programme* of the Conference submitted proposals on the eligibility criteria and on the definitions of the concepts of publication and country of origin. No amendment was proposed regarding the principles of protection or the provisions contained in Article 4(2) and Article 6(2) to (4) of the Brussels text.

23. As Chairman of the Committee, Professor Ulmer proposed a new draft of Articles 4 to 6 (document S/44). A new Article 3 would indicate the main criteria for the application of the Convention, with the definition of the concept of publication. Article 4 would contain certain special criteria for the application of the Convention (cinematographic works and works of architecture). Article 5 would state the principles of protection, with the definition of the concept of country of origin, and Article 6 would reproduce the special provisions already existing in Article 6(2) to (4).

24. The Committee approved the new presentation of Articles 4 to 6 in principle, but preferred to proceed according to the order adopted in the *Programme* of the Conference. This Report also follows that order.

Article 4(1) (Article 3(1)(a))

25. The *Programme* proposed that the nationality of the author should be the general criterion for protection under the Convention. Protection would be granted to authors who were nationals of one of the countries of the Union, according to Article 4(1), not only for their unpublished works but also for their works first published inside or even outside the Union. The proposal in the *Programme* was adopted unanimously.

Article 4(2) (Article 3(2), Article 5(1))

26. The *Programme* proposed a new provision in Article 4(2) whereby 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 the Convention, be assimilated to the nationals of that country.

27. The *Programme* also proposed that an additional protocol should be adopted, enabling countries which so desire to assimilate to national authors stateless persons or refugees not domiciled but having their habitual residence in one of the countries of the Union.

28. After discussion, the Committee decided to adopt the proposal made by several delegations that the term "domiciled" should be replaced by the wider expression "having their habitual residence." The consequence of this decision would be that the proposed Additional Protocol concerning the Protection of the Works of Stateless Persons and Refugees would become superfluous. The Committee accordingly decided not to adopt that Protocol.

29. The question was raised as to when habitual residence should become a criterion for protection, as an author might change his habitual residence from time to time. This point must be determined by the Courts in the country in which protection is claimed. It is probable, however, that the decisive date will be the date when the work, without having been published, was first made available to the public. If at that date the author of the work has his habitual residence in a country

of the Union, he is protected in respect of his work under the Convention. If the work was first made available to the public by an unauthorized person, the author can claim protection under the Convention against that unauthorized person, if he has his habitual residence in a country of the Union at that date.

30. It is obvious that the same problem may be raised — and solved in the same way — as regards the date when the author's nationality should become a criterion for protection; the nationality of the author may also change from time to time.

Article 4(3) (Article 5(2))

31. This provision corresponds to Article 4(2) of the Brussels text. No amendment was proposed in the *Programme* and none was submitted during the Conference.

Article 4(4) (Article 5(4) and Article 3(4))

32. In the *Programme*, it was proposed to combine paragraphs (3) and (5) of the Brussels text in a new paragraph (4) containing, in its first subparagraph, the definition of the country of origin both for published works and for unpublished works and, in its second subparagraph, a definition of the concept of simultaneous publication. It was merely proposed to make a few minor adjustments to the first subparagraph and to draft the text accordingly.

33. According to the *Programme*, the first criterion for country of origin should be, as in the Brussels text, the country of first publication and, in the event of simultaneous publication in several countries of the Union, the country of which the legislation grants the shortest term of protection ((a)).

34. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter, according to the *Programme*, should be considered as the country of origin ((b)).

35. As regards unpublished works or works first published in a country outside the Union, without simultaneous publication in a country of the Union, the general criterion, according to the *Programme*, should be the nationality of the author ((c)(iii)).

36. The *Programme*, however, provided for two exceptions to this principle. The first relates to cinematographic works in respect of which the country of origin was considered to be the country of which the maker was a national or in which he had his domicile or headquarters ((c)(i)). Only in the absence of such a criterion would the nationality of the author be decisive as regards the country of origin. In the same way, the country where a work of architecture and some other works of the same nature were erected or affixed to land or to a building would be the criterion for their country of origin ((c)(ii)), and only in the absence of such a criterion would it be the nationality of the author.

37. Switzerland proposed (document S/63) that the nationality of the author should be the general criterion for the country of origin, even in respect of published works. This proposal was, however, withdrawn after discussion.

38. India submitted a similar proposal (document S/41) providing that the nationality of the author should be the general criterion for the country of origin, either from the time when the work is made lawfully available to the public, or even before. The first part of the proposed alternative was based on the presumption that protection should begin from the date on which the work was made lawfully available to the public.

39. France proposed (document S/27) that the special criterion for cinematographic works in paragraph (c)(i) should be deleted.

40. These proposals were not accepted. The *Programme* was adopted by the Committee with the following minor amendments. An amendment was made to the provision in (c)(i) and will be mentioned later in the part of the Report dealing with cinematographic works. During the discussion on Article 6(3), which parallels Article 4, (4)(c)(ii), the Committee decided to make a few changes in the English version which do not affect the French text.

41. Lastly, a purely drafting amendment to subparagraph (c) was accepted by the Committee. Instead of giving the general principle of nationality as the criterion for the country of origin in the last sentence ((c)(iii)), subparagraph (c) would begin with this general rule, followed by the two exceptions regarding cinematographic works ((c)(i)) and works of architecture ((c)(ii)).

Article 4(5) (Article 3(3))

42. The definition of "published works" contained in Article 4(4) of the Brussels text was incorporated in the *Programme* (Article 4(5)) with two small amendments.

(a) According to the Brussels text, the definition of published works was valid only "for the purposes of Articles 4, 5 and 6." These words in inverted commas were excluded from the *Programme*, which meant that the definition was to relate to the whole Convention.

(b) The *Programme* introduced into Article 4(5), as an element in the definition of the concept of publication, the condition that the work should have been "lawfully" published.

43. No proposal was submitted to the Committee regarding the first of these two amendments.

44. As regards the second, the United Kingdom proposed (document S/42) that the word "lawfully" should be replaced by the phrase "with the consent of the author."

45. Some proposals were submitted regarding other points of the definition of published works. France proposed an additional sentence (document S/27) giving a special rule for the publication of cinematographic works.

46. India proposed (document S/41) a narrower definition excluding from "publication" as defined in the Convention the publication of gramophone records, photographs, paintings or engravings of works of architecture or other three-dimensional works.

47. Proposals submitted by the Netherlands (document S/49) and by South Africa (document S/53), and a joint proposal by South Africa, the Federal Republic of Germany, Luxembourg and Monaco (document S/60), were designed to

give a wider general definition of published works than that contained in the Brussels text.

48. The Committee adopted the first amendment proposed in the *Programme*, namely, the deletion of the words "for the purposes of Articles 4, 5 and 6," thus making the definition of "published works" (and of publication) applicable to the whole Convention.

49. The Committee decided, in accordance with the United Kingdom proposal, to substitute the words "with the consent of the author" for the word "lawfully" proposed in the *Programme*.

50. Lastly, the Committee adopted a new general formula broadening the definition of published works. This formula, which was prepared by the Drafting Committee on the basis of the joint proposal referred to above, provides that 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 reasonable requirements of the public, having regard to the nature of the work. This new and wider definition implies, inter alia, new conditions for the publication of cinematographic works, including television films.

Article 4(6) (—)

51. The *Programme* proposed inserting a new paragraph (6) giving a definition of the "maker of the cinematographic work." This proposal was rejected. It should be pointed out here, however, that, in a new provision inserted in Article 15(2), the Committee adopted the principle that the person or corporate body whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of that work.

Article 5 (Article 5(3))

52. The Brussels text stipulates that an author who is a national of one of the countries of the Union and who first publishes his work in another country of the Union shall have national treatment in the latter country, the country of origin. This rule was retained in the *Programme* with a slight modification in the English version, where the word "native" was changed to "national." No amendment was proposed to this provision.

53. The actual substance of this rule was also maintained by the Committee, with the above modification. The rule was, however, redrafted and combined with the other rules regarding protection in the country of origin of the work. This is at present the subject of the new paragraph (3) of Article 5.

54. This last-mentioned new paragraph contains a rule, implicit but not expressly mentioned in the Brussels text, that protection, in the country of origin, of a work of which the author is a national of that country is governed solely by national legislation. Protection is therefore entirely outside the Convention. Other authors, of whose works that country is the country of origin, are entitled under the Convention to benefit from national treatment. This rule is applicable either in cases where the author is a national of another country of the Union (as stipulated in Article 5 of the Brussels text) or in

cases where he is not (as stipulated in Article 6(1) of the Brussels text).

Article 6(1) (Article 3(1)(b) and Article 5(1) and (3))

55. In the Brussels text, this Article deals with (a) first publication as an eligibility criterion for works published by nationals of countries outside the Union, and (b) the principles of protection in respect of such works. On this last point, the author enjoys national treatment in the country of publication, that is to say, the country of origin, and in the other countries of the Union "the rights granted by this Convention."

56. In the *Programme*, two amendments were proposed in respect of (a) above. In the first place, the text stated explicitly that it referred also to cases of simultaneous publication in a country outside the Union and in a country of the Union. In the second place, the text stated clearly that an author who is a national of a country outside the Union should be protected only in respect of those works first published or published simultaneously in a country of the Union.

57. India proposed (document S/41) deleting the whole of Article 6.

58. The amendments proposed by the *Programme* were adopted by the Committee. The substance of the provision as amended was transferred, as regards publication as a criterion of eligibility, to the new Article 3(1)(b) and, as regards the principles of protection, to the new Article 5(1) and (3), thus giving a text that makes the content of the provision in question clearer.

Article 6(2) (Article 4(a))

59. The *Programme* proposed inserting a new criterion for protection in respect of cinematographic works, namely, the nationality, domicile or headquarters of the maker. Subject to replacing the concept of domicile by that of habitual residence and deleting the reference to the nationality of the maker, and subject also to the principle that account should be taken in the first place of the headquarters of the maker, this proposal was adopted and the corresponding provision is contained in the new Article 4(a).

Article 6(3) (Article 4(b))

60. The *Programme* also proposed including a new criterion for protection in respect of works of architecture or graphic and three-dimensional works affixed to land or to a building.

61. Australia proposed (document S/52) the amendment of the text of the *Programme* by deleting the reference to graphic and three-dimensional works.

62. The Committee adopted the *Programme* except that, on the proposal of the Drafting Committee, the English version was worded slightly differently. This provision was included in the new Article 4(b).

63. It was decided that the Report should state that the criterion for the location of works of architecture and other artistic works in a country of the Union would apply only in respect of the original work. No protection under the Berne Convention could be claimed in respect solely of a copy of the work erected in a country of the Union if the original were still located in a country outside the Union.

II. Right of Reproduction

(Articles 9, 10 and 10^{bis})

64. In the Brussels text, Articles 9, 10 and 10^{bis} deal with some of the aspects of the author's right of reproduction, but a general right of reproduction is not explicitly conferred on the author under the Convention. Article 9(1) provides for a right of reproduction in respect of works published in newspapers or periodicals. Paragraph (2) provides for an exception to that right: articles on current economic, political or religious topics may be reproduced by the press unless the reproduction thereof is expressly reserved; nevertheless, the source must always be clearly indicated. Paragraph (3) provides that protection shall not apply to news of the day or to miscellaneous information having the character of mere items of news.

65. Article 10(1) states that it shall be permissible to make short quotations from newspaper articles and periodicals, as well as to include them in press summaries. Under paragraph (2), the right to include excerpts from literary or artistic works for educational or scientific purposes or in chrestomathies is to be a matter for national legislation. According to paragraph (3), quotations and excerpts are to be accompanied in principle by an acknowledgement of the source and by the name of the author.

66. Lastly, according to Article 10^{bis}, it is to be a matter for national legislation to determine the conditions under which short extracts from works may be used for the purpose of reporting current events by means of photography or cinematography or by radiodiffusion.

67. The *Programme* proposed that a general right of reproduction should be inserted in Article 9(1). In paragraph (2), the *Programme* provided for some general exceptions to that right. Article 9(1) of the existing text was omitted since it was included in the new paragraph (1) proposed. According to the *Programme*, it was no longer necessary to maintain paragraph (2) of the Brussels text, which was accordingly also omitted. Paragraph (3) was transferred unchanged to Article 2 as paragraph (7).

68. The *Programme* proposed broadening the rule on quotations contained in the existing Article 10(1) so as to make it a general rule applying to all categories of works. Paragraphs (2) and (3) were unchanged. Lastly, some minor amendments were made to Article 10^{bis}.

69. The Committee adopted in principle the order proposed in the *Programme*, which will be followed in this Report. Accordingly, Article 9(3) of the Brussels text on items of news will be discussed under Article 2(8) (a new paragraph was added to Article 2, so that paragraph (7) of the *Programme* becomes paragraph (8) in the text adopted by the Committee). Nevertheless, the Committee included: (i) a new paragraph (3) in Article 9, clarifying the meaning of "reproduction"; and (ii) a new paragraph (1) in Article 10^{bis}, corresponding to Article 9(2) of the Brussels text, which the *Programme* had proposed to omit. Consequently, the present provisions of Article 10^{bis} become the second paragraph of that Article.

Article 9(1)

70. The *Programme* proposed that a general right of reproduction should be recognized in Article 9(1): authors of protected works would have the exclusive right of authorizing “the reproduction of these works, in any manner or form.”

71. The principle thus stated was contested by India in a proposal (document S/86) containing an alternative: either retain the Brussels text, or permit the countries of the Union to introduce a compulsory general license with remuneration, which would be inserted in a new subparagraph (*d*) of paragraph (2).

72. Austria, Italy and Morocco submitted an amendment (document S/72) with a view to extending the protection provided in paragraph (1) by adding the right of circulation.

73. Several proposals were submitted which may be regarded as purely drafting points. Austria proposed (document S/38) adding a sentence defining “reproduction” as consisting of the material fixation of the work by all methods that permit of indirect communication to the public. Some examples were also indicated in that sentence. The Federal Republic of Germany proposed (document S/67) inserting after the words “these works” the following phrase “including the recording of these works by instruments capable of reproducing them mechanically.” The United Kingdom recommended (document S/42) that it should be expressly stated in the Convention that the right of reproducing a work also included the right to reproduce “substantial parts” of the work. France proposed (document S/70) inserting after the words “in any manner or form” the words “and for any purpose.”

74. The Committee rejected the proposal that a general right of circulation be included in paragraph (1). Some delegations considered that such a right would make the dissemination of a work too difficult and others thought that the preparatory work on this point was not sufficient to enable the Conference to take a decision, for example, on the exceptions to such a general rule.

75. As regards the drafting amendments, Austria withdrew its proposal on condition that the two ideas contained in it appeared in the Report: (i) reproduction does not include public performance; (ii) reproduction includes recordings of sounds or images. There seems no doubt that such clarification is consistent with the general trend of opinion in the Committee. Furthermore, the idea expressed under (ii) was finally incorporated in a new paragraph (3) in Article 9.

76. As it was emphasized that all rights granted in respect of works under the Convention are applicable, without this being explicitly stated, either to the whole work or to parts of it and that to refer to parts of a work in one Article might imply contrary conclusions in respect of other Articles, the United Kingdom withdrew its proposal.

77. The Committee decided to adopt the text of the new Article 9(1) as proposed in the *Programme*.

Article 9(2)

78. In the *Programme*, this paragraph contained the general exceptions to the right of reproduction. It provided that

it would be possible for national legislation to permit the reproduction of the works referred to in paragraph (1) in three cases: (*a*) for private use; (*b*) for judicial or administrative purposes; (*c*) in certain particular cases, provided (i) that reproduction is not contrary to the legitimate interests of the author, and (ii) that it does not conflict with a normal exploitation of the work.

79. Various tendencies appeared in the proposals submitted. One of these was to restrict the exceptions indicated in the *Programme*. For instance, France proposed (document S/70) that the expression “private use” should be replaced by “individual or family use.” The Netherlands made the same proposal (document S/81) in respect of item (*a*) and proposed, in respect of item (*b*), the expression “for strictly judicial or administrative purposes” and, in respect of (*c*), another general formula. It further proposed that exceptions should apply only if they were expressly provided for in the Convention itself and in the national legislation concerned as well. The Federal Republic of Germany proposed (document S/67) inserting in item (*c*) a third condition for exceptions to the general rule in paragraph (1), namely, that reproduction should not conflict with the author’s right to obtain equitable remuneration.

80. Another tendency was to extend the exceptions indicated in the *Programme*. Thus, India proposed (document S/86) that, if the Brussels text was not maintained, it would be expedient to add after item (*c*) a clause to appear as item (*d*), permitting a compulsory general license for reproduction, with the right for the author to obtain remuneration. Rumania submitted a similar amendment (document S/75) under which, however, the compulsory license was to apply only in the country in which it was prescribed.

81. There was also a tendency to group all the exceptions in a single formula and thus to eliminate items (*a*) and (*b*) of the *Programme* text. A proposal to that effect was submitted by the United Kingdom (document S/42). Instead of the expression used in the *Programme*, namely, “in certain particular cases where the reproduction is not contrary to the legitimate interests of the author,” the following phrase was to be used: “in certain special cases where the reproduction does not unreasonably prejudice the legitimate interests of the authors.”

82. A purely drafting point was raised by Monaco (document S/66). Paragraph (2) should include an express reference to the special exceptions contained in other provisions of the Convention, such as Articles 10, 10^{bis}, 11^{bis}(3) and 13(1) (Article 13(2) of the existing text).

83. The Committee decided in the first place that the exceptions should be included in a general clause corresponding to item (*c*) and then referred the problem to the Working Group on Articles 9(2) and 10(2), to which reference was made in the Introduction to this Report.

84. The Working Group decided to adopt the amendment proposed by the United Kingdom, with some slight alterations in the English version (document S/109). It proved very difficult to find an adequate French translation for the expression “does not unreasonably prejudice.” In the Committee,

it was finally decided to use the expression "*ne cause pas un préjudice injustifié.*"

85. The Committee also adopted a proposal by the Drafting Committee that the second condition should be placed before the first, as this would afford a more logical order for the interpretation of the rule. If it is considered that reproduction conflicts with the normal exploitation of the work, reproduction is not permitted at all. If it is considered that reproduction does not conflict with the normal exploitation of the work, the next step would be to consider whether it does not unreasonably prejudice the legitimate interests of the author. Only if such is not the case would it be possible in certain special cases to introduce a compulsory license, or to provide for use without payment. A practical example might be photocopying for various purposes. If it consists of producing a very large number of copies, it may not be permitted, as it conflicts with a normal exploitation of the work. If it implies a rather large number of copies for use in industrial undertakings, it may not unreasonably prejudice the legitimate interests of the author, provided that, according to national legislation, an equitable remuneration is paid. If a small number of copies is made, photocopying may be permitted without payment, particularly for individual or scientific use.

86. The Committee finally adopted the following wording for paragraph (2) of Article 9: "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 conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."

Article 9(3)

87. Article 13(1) of the Brussels text provides that authors of musical works shall have the exclusive right of authorizing: (i) the recording of such works by instruments capable of reproducing them mechanically; (ii) the public performance by means of such instruments of works thus recorded. Since the Committee decided to delete this paragraph (1) of Article 13, it was considered appropriate to include in Article 11(1) and in Article 11^{ter}(1) a reminder that the right of performance and the right of recitation include, among other things, the right at present referred to in Article 13(1). In order to coordinate the provisions of the Convention, the Drafting Committee proposed the insertion of a reminder of the present Article 13(1) also in Article 9(3), stating that for the purposes of the Convention any sound or visual recording shall be considered as a reproduction; even the making of copies of the recording is, of course, regarded as reproduction. The Committee accepted the Drafting Committee's proposal.

Article 10(1)

88. The *Programme* proposed an extension of the existing rule in Article 10(1) which deals with the right of quotation and refers only to newspaper articles and periodicals: its application would be extended to all categories of works. The *Programme* also proposed the deletion of the condition according to which only "short" quotations are permitted. On

the other hand, the *Programme* introduced certain conditions restricting the freedom of quotation: (i) the works quoted were to have already been "lawfully made available to the public," (ii) the quotations were to be "compatible with fair practice," and (iii) they were to be made only "to the extent justified by the purpose."

89. France proposed (document S/45) reintroducing the condition that only "short" quotations should be permitted. Switzerland made the same proposal (document S/68) and suggested in addition that the phrase "justified by the purpose" relating to condition (iii) should be replaced by the phrase "that they serve as explanation, reference or illustration in the context in which they occur." Czechoslovakia, Hungary and Poland submitted a proposal (document S/51) providing that the work could also be quoted in translation.

90. After discussion, the Committee decided to leave the French text as proposed in the *Programme*, but to make a slight change in the English version. It was felt that the reasons for replacing the word "lawfully" in connection with condition (i) by the words "with the consent of the author" were not valid here, and the word "lawfully" was therefore retained. It was also pointed out that the last phrase, referring to press summaries, gave rise to some ambiguity. It was felt, however, that it would be difficult to get rid of that ambiguity, which the Courts would be able to decide upon, and that it was not absolutely essential to do so.

91. The question of the right to translate quotations will be considered in connection with Article 8.

Article 10(2)

92. The *Programme* proposed no substantial change in Article 10(2) of the Brussels text. According to that provision, it is a matter for national legislation or for special agreements concluded between the countries of the Union to permit the inclusion of excerpts from protected works in "educational or scientific publications" or in "chrestomathies" in so far as this inclusion is justified by the purpose. The only change proposed in the *Programme* concerned the wording of the English text, the French text remaining unchanged; the word "excerpts" was replaced by the word "borrowings," which was felt to correspond better to the French word "*emprunts.*"

93. The Netherlands proposed (document S/108) that this paragraph be deleted. In a joint proposal submitted by Bulgaria, Czechoslovakia, Poland and Rumania (document S/83), it was suggested that the scope of this paragraph be broadened to include radio and television broadcasts and phonograms.

94. After some discussion, in the course of which suggestions were made that this provision should be restricted slightly, the question was referred to the Working Group set up to study Article 9(2) and Article 10(2).

95. The Working Group submitted a proposal (document S/185) which considerably restricted the utilization referred to in paragraph (2). The word "borrowings" was no longer mentioned. The provision referred to the "utilization" of works "to the extent justified by the purpose," but only "by way of illustration for teaching," provided that such utilization

was “compatible with fair practice.” The Working Group also suggested — as an alternative in square brackets — that the authorization might extend to “broadcasts” and to “phonograms.”

96. After an amendment submitted jointly by Brazil, Mexico and Portugal (document S/216) substituting the word “recordings” for “phonograms,” the Committee adopted the Working Group’s basic proposal and the extension to broadcasts and recordings. It subsequently decided to add the words “sound or visual” before “recordings,” thus eliminating any doubt as to the possibility that this provision might not apply to visual recordings as well as sound recordings.

97. The wish was expressed that it should be made clear in this Report that the word “teaching” was to include teaching at all levels — in educational institutions and universities, municipal and State schools, and private schools. Education outside these institutions, for instance general teaching available to the public but not included in the above categories, should be excluded.

Article 10(3)

98. The *Programme* made no change, apart from slight amendments to the English text, in Article 10(3) of the Brussels text dealing with the obligation to mention the source and the name of the author in the case of utilization under paragraphs (1) and (2). The Committee decided to adopt the new text submitted by its Drafting Committee, which made no changes of substance but merely some drafting amendments in the English and French versions.

Article 10^{bis} (Article 10^{bis}(1) and (2))

99. In a joint proposal submitted by Czechoslovakia, Hungary and Poland (document S/51), and in a proposal by Japan (document S/80), the reintroduction was suggested, in a new paragraph (3) of Article 9, of the provision at present contained in Article 9(2) dealing with borrowings from newspaper articles. According to the *Programme*, that provision was to have been deleted.

100. The above proposals also provided that the right to borrow articles should apply not only to reproduction by the press but also to broadcasting. In addition, the first of the two proposals stated that, in the cases referred to in the provision in question, articles could be used not only in the original but also in translation.

101. The Committee adopted three of the concepts contained in the two amendments referred to above — namely, the reintroduction of the existing provision of Article 9(2) concerning borrowings from newspaper articles, its extension to broadcasting, and — at first — the insertion of such provisions in a new paragraph (3) of Article 9.

102. It was decided, however, on the proposal of the Drafting Committee, to change the opening words in order to bring them into line with the corresponding words in paragraph (2) of the new version, so as to avoid the impression that it is compulsory for countries to insert in their legislation such a restriction on the author’s right of reproduction.

103. The Drafting Committee later made three other proposals: (i) to insert in the new paragraph (3) the words “which

are published in the newspapers or periodicals,” which are taken from Article 9(1) of the Brussels text and which obviously impose upon the meaning of the word “articles” a restriction judged necessary, after the deletion of Article 9(1), so as to retain the meaning of the new paragraph; (ii) to give the press the possibility of borrowing material of the same nature from broadcasting programs, thus restoring the balance between the rights of the two media concerned; (iii) to insert the new paragraph, not in Article 9 as paragraph (3) of that Article, as previously proposed, but in a new paragraph (1) of Article 10^{bis}, since it was felt that in dealing also with broadcasting this provision had more in common with the present provision of Article 10^{bis} than the provisions of Article 9 dealing only with reproduction. The Committee agreed to these three proposals of the Drafting Committee and inserted the new provision, thus amended, in Article 10^{bis}(1).

104. The question of the right to translate articles used in this way will be considered in connection with Article 8 dealing with the general right of translation.

105. With regard to the provision of Article 10^{bis} in the Brussels text concerning the reporting of current events, the *Programme* suggested four minor changes: (i) the restriction concerning “short extracts” from works was to be deleted; (ii) this provision was to be extended to cover “communication to the public by wire” in addition to photography, cinematography and broadcasting; (iii) utilization was to be permitted only “to the extent justified by the informatory purpose”; (iv) it was clearly stated that the facility referred to in this paragraph applied only to works “which are seen or heard in the course of the event.”

106. Monaco proposed some drafting amendments (document S/76). The word “record” should disappear and the words “communicate to the public” should be replaced by the words “made available to the public.”

107. These two suggestions were approved by the Committee, which adopted the text of the *Programme*, thus amended, but in the form of paragraph (2) of Article 10^{bis}.

III. Other Provisions in the Text of the Convention

Title and Preamble

108. The *Programme* made no change in the Title and Preamble of the Convention, merely adding the Stockholm revision to the list of revisions in the Title and the Brussels revision in the Preamble.

109. Brazil proposed (document S/210) that a formula should be included in the Preamble laying down the basis for protection. This formula reads as follows: “The subject of the protection granted by the present Convention, in regard to authorship and the moral rights of the author, is any production of the mind possessing features of originality, apart from inventions and discoveries, which are protected by legislation on patents and marks.” A reference to that provision of the Preamble would then have had to be included in Articles 1, 4 and 6^{bis}.

110. This proposal was rejected and the text of the *Programme* was adopted.

Article 1

111. Article 1 lays down that the countries to which the Convention applies constitute a Union for the protection of the rights of authors over their literary and artistic works. The *Programme* suggested only a slight modification of the English version, the words "the rights of authors over" being replaced by "authors' copyright in," as it was considered that the term "copyright" was much more widely known in English-speaking countries.

112. The Drafting Committee considered, however, that there might be some doubt as to whether the word "copyright" included moral rights. It was therefore decided to revert to the original wording with a minor amendment to the English version.

Article 2

113. In the Brussels text, the works protected are enumerated in paragraph (1) of Article 2. Paragraph (2) states that adaptations of a work shall be protected as original works, without prejudice to the rights of the author of the original work. It also contains a special provision concerning translations of official texts. Paragraph (3) confers a specific copyright on the authors of collections. Paragraph (4) provides that the works mentioned in this Article shall enjoy protection in all countries of the Union and that such protection shall operate for the benefit of the author and his legal representatives and assignees. Finally, paragraph (5) contains special provisions for the protection of works of applied art and industrial designs and models.

114. In the *Programme*, the order of the paragraphs was changed slightly. A new paragraph (2) was inserted to deal with the assimilation of certain works to cinematographic works and photographic works. For that reason, the numbering of the subsequent paragraphs was changed, so that paragraph (2) became paragraph (3), and so on down to paragraph (6). The provision concerning items of press information, which appears in paragraph (3) of Article 9 of the Brussels text, was inserted in a new paragraph (7).

115. In the draft adopted by the Committee, further changes were made to the order of the paragraphs. The content of paragraph (2) was inserted in paragraph (1). A new provision dealing with fixation as a condition for protection was inserted as paragraph (2). Paragraph (3) was divided into two paragraphs, (3) and (4). Paragraph (4) of the *Programme* became paragraph (5), and so on down to paragraph (7), which became paragraph (8). This Report will follow the order of the *Programme* (except in regard to paragraph (2)).

Article 2(1) (paragraph 1))

116. The *Programme* suggested only two essential changes in the list of works in paragraph (1): (i) a change in the text concerning choreographic works and entertainments in dumb show; (ii) an amendment to the provision concerning cinematographic works and its inclusion in a new paragraph (2). Consequently, the provision on photographic works, which was drafted in a similar manner, was incorporated in this new paragraph (2), without any change of substance. These two questions will be dealt with under different headings.

117. Some countries suggested that new categories of works should be included in the list of protected works. These proposals will be examined under a separate heading.

Choreographic works and entertainments in dumb show

118. The Brussels text expressly listed among the protected works choreographic works and entertainments in dumb show "the acting form of which is fixed in writing or otherwise." The *Programme* suggested that this condition of fixation should be deleted. Choreographic works and entertainments in dumb show are the only works included in the Convention for which a condition of this kind is laid down.

119. France proposed (document S/136) that the Brussels text should be maintained.

120. After a preliminary discussion in the Committee, the United Kingdom submitted a compromise proposal (document S/191). It contained two suggestions: (i) that fixation should not be required for choreographic works, but only for entertainments in dumb show, and (ii) that a new sentence should be added at the end of paragraph (1), stating that national legislations should be entitled to make fixation a general condition for protection. As this second suggestion was adopted by the Committee and inserted in a paragraph (2) (see paragraph 130 below), it was considered that the first suggestion was superfluous.

121. Finally, in view of the new provision in paragraph (2), the Committee adopted the proposal put forward in the *Programme* to delete the words "the acting form of which is fixed in writing or otherwise."

Cinematographic and photographic works

122. The *Programme* suggested a new provision for cinematographic works in the form of a new paragraph (2). The Committee decided to alter the proposed text slightly and to restore it to paragraph (1) (see paragraph 277 below).

123. The Brussels text mentioned among protected works "photographic works and works produced by a process analogous to photography." In the *Programme*, this phrase was transferred to the new paragraph (2), with a slight drafting amendment.

124. The United Kingdom proposed (document S/100) that this phrase should also include a condition concerning fixation.

125. The Committee, considering that a photographic work must by definition be fixed, adopted a wording similar to that proposed in the *Programme*, and moved it back — like the phrase dealing with cinematographic works — to paragraph (1).

New categories of works

126. India proposed (document S/73) that works of folklore should be included in the list of protected works. Furthermore, some countries proposed that televisual works should be included in this list (see paragraph 274 below).

127. The Committee did not consider it necessary to add any new categories of works to those already mentioned in the list, since the suggested categories appeared to be protected in principle under the terms of the Convention. Never-

theless, as will be indicated later, the Committee deemed it advisable to undertake a thorough study of the régime for works of folklore.

Article 2(2) (new)

128. India proposed (document S/73) inserting as a subparagraph after paragraph (1) a phrase permitting domestic laws to decide that certain specified categories of works should be fixed in some material form.

129. After a preliminary discussion on choreographic works and entertainments in dumb show, the United Kingdom submitted a similar proposal (document S/191 mentioned above in paragraph 120).

130. The Committee decided to introduce a new principle into the Convention. The terms adopted by the Drafting Committee to express this come very close to the text proposed by the United Kingdom. They read as follows: "It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form." This wording allows countries to prescribe fixation as a general condition for protection or to demand fixation only for one or more categories of works, such as choreographic works and entertainments in dumb show.

Article 2(3) (paragraphs (3) and (4))

131. The Brussels text (paragraph (2)) and the *Programme* (paragraph (3)) — which made no change to the existing text — contain an opening sentence which provides that translations and all other types of adaptation of a work are protected as original works, without prejudice to the rights of the author of the original work. No change was proposed to this sentence, but it was decided that the sentence by itself should constitute paragraph (3).

132. The second sentence of the Brussels text and of the *Programme* provides that it shall be a matter for national legislation to determine the protection to be granted to translations of official texts of a legislative, administrative and legal nature.

133. The Federal Republic of Germany proposed (document S/92) that the option given to national legislation should apply not only to translations of official texts but also to those texts in their original form. It also proposed a restriction, namely, that only *official* translations should be taken into consideration for that purpose. Finally, it suggested that the new wording should be incorporated in a new paragraph.

134. Italy submitted a similar amendment (document S/161) which did not, however, contain the limitation in regard to *official* translations.

135. The Committee decided to adopt a wording in conformity with the proposal of the Federal Republic of Germany.

136. In accordance with the desire expressed by the United Kingdom, it must be clearly stipulated in this Report that the reference made in the Convention to texts of an administrative nature does not permit countries to refuse protection to all Government publications, for instance, textbooks.

Article 2(4) (paragraph (5))

137. Paragraph (3) of the Brussels text confers a specific copyright on the authors of collections. The *Programme* placed that provision in paragraph (4), but without change. As no proposal was submitted to the Committee, the paragraph was left as it was.

Article 2(5) (paragraph (6))

138. It is laid down in paragraph (4) of the Brussels text and, without change, in paragraph (5) of the *Programme* that the works mentioned in Article 2 shall enjoy protection in all countries of the Union and that this protection shall operate for the benefit of the author and his legal representatives and assignees (successors in title). As no proposal was submitted to the Committee this paragraph was left unaltered.

Article 2(6) (paragraph (7))

139. According to the first sentence of paragraph (5) of the Brussels text, domestic legislation is free to determine the protection of works of applied art and industrial designs and models. The second sentence implies an exception to the principle of national treatment: if the country of origin protects works of applied art solely as designs and models, those works shall be entitled in other countries only to such protection as is there accorded to designs and models.

140. Only one alteration was suggested by the *Programme*. Countries should not be completely free to determine protection: they should observe the minimum term of protection — twenty-five years from the making of the work — which had been inserted in Article 7(4) for works of applied art protected as artistic works.

141. Denmark proposed (document S/99) that paragraph (5) of the Brussels text should be entirely deleted and that works of applied art should thus be treated in all respects like other artistic works.

142. The Netherlands proposed (document S/140) that the second sentence of the paragraph in question should be deleted and that works of applied art should thus be submitted without restriction to national treatment.

143. Italy proposed (document S/161) that a provision in the following sense should be added at the end of the second sentence of the paragraph under consideration: the principle enunciated in this second sentence shall apply only if the legislation of countries other than the country of origin where protection is claimed accord special protection to designs and models. If that were not the case, works of applied art should be protected within the framework of the copyright law in force in the country concerned.

144. The Committee adopted the change proposed in the *Programme*: in determining the protection of works of applied art, national legislation should have regard to the provisions of Article 7(4). The Committee also adopted the principle suggested by Italy, namely, that a country which did not have special protection for designs and models should always protect works of applied art in accordance with the law of copyright.

Article 2(7) (paragraph (8))

145. The Brussels text stipulates in Article 9(3) that the protection of the Convention shall not apply to news of the day nor to miscellaneous information having the character of mere items of news. By introducing a general right of reproduction in Article 9 and by deleting the first two paragraphs of Article 9 of the Brussels text, the *Programme* transferred that provision, which is more concerned with the works protected, from Article 9 to Article 2(7), without effecting a change of substance, but with a slight alteration in the English version.

146. According to the commentary given in the *Programme*, the meaning of this paragraph was as follows: the Convention does not protect mere items of information on news of the day or miscellaneous facts, because such material does not possess the attributes needed to constitute a work. That implies *a fortiori* that news items or the facts themselves are not protected. The articles of journalists or other "journalistic" works reporting news items are, on the other hand, protected to the extent that they are literary or artistic works. It did not seem essential to clarify the text of the Convention on this point.

147. The United Kingdom proposed (document S/171) that this paragraph should read as follows: "The protection of this Convention shall not apply to the facts constituting news of the day or having the character of mere news items."

148. The Committee decided to adopt the text of the *Programme* with a slight alteration of the English version: the word "press" was inserted before the word "information."

Article 2^{bis}(1)

149. The Brussels text stipulates in this paragraph that domestic legislation may exclude wholly or in part from protection political speeches and speeches delivered in the course of legal proceedings. The *Programme* suggested some purely formal alterations of the English version.

150. No proposal was submitted to the Committee on this paragraph. The Drafting Committee modified the proposed English version so as to bring it back to the Brussels version.

151. It was noted that this paragraph did not, like some other provisions (see paragraph 205 below), raise any special difficulty with regard to translation. As domestic legislation can refuse all protection to the works in question, it can obviously also exclude the author's exclusive right of translation.

Article 2^{bis}(2)

152. According to this paragraph as it appears in the Brussels text, domestic legislation can determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press. The *Programme* did not propose any modification.

153. India proposed (document S/73) that the works could be reproduced in the original form or in translation, not only by the press but also by cinematography or broadcasting.

154. It was suggested in a joint proposal by Bulgaria, Poland and Czechoslovakia (document S/79) that the right of utilizing the works should be extended to broadcasting.

155. The Federal Republic of Germany proposed (document S/92) that this right should be extended to broadcasting and to communication by wire to the public but that, in those two cases, utilization of the works should be permitted only when they refer to news.

156. Having considered the result of the discussions of the Working Group referred to in the Introduction to this Report, the Committee decided to amend this paragraph in four respects: (1) sermons were excluded from the application of the provision; (2) lectures, addresses, etc., may be used only if they have been "delivered in public"; (3) not only may the works be reproduced by the press, but they may also be broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11^{bis}(1); (4) this use must be justified by the informative purpose, that is to say, the character of news must apply not to the subject dealt with in the lecture, address, etc., but to the actual utilization with the object of informing the public.

Article 2^{bis}(3)

157. Paragraph (3) of the Brussels text provides that the author alone shall have the right of making a collection of his works mentioned in paragraphs (1) and (2). No change was proposed in the *Programme* and no proposal was submitted to the Committee.

158. It was decided to maintain this text with a few alterations in the French and English versions to make the sense clearer.

Article 6^{bis} (Moral rights)

159. According to the Brussels text, it is compulsory for the countries of the Union to protect the author's moral rights during his lifetime. That principle is stated in paragraph (1) of Article 6^{bis}. Paragraph (2) provides that moral rights shall be maintained after the author's death *at least* until the expiry of the economic rights "in so far as the legislation of the countries of the Union permits." Paragraph (3) contains a provision concerning the means of redress for safeguarding moral rights.

160. It was proposed in the *Programme* that the countries of the Union should be obliged to maintain the moral rights until the expiry of the economic rights.

Article 6^{bis}(1)

161. The provision of the Brussels text on the protection of moral rights during the author's life was transformed in the *Programme* to a general provision on moral rights that does not stipulate any express limitation on the term of those rights. The modification was effected by deleting the words "during his lifetime."

162. No proposal was submitted at the Conference on paragraph (1). It should be noted, however, that proposed amendments submitted during the discussion on paragraph (2) (see below) also had some bearing on paragraph (1).

163. The Committee adopted paragraph (1) as it appeared in the *Programme*.

Article 6^{bis}(2)

164. The main change, as regards paragraph (2) of the Brussels text, which was proposed in the *Programme* was to delete the first words of the first sentence: "In so far as the legislation of the countries of the Union permits." As a result of that amendment to the text the moral rights were to be maintained after the death of the author "at least until the expiry of the economic rights." The *Programme* also provided for the amendment and simplification of the provisions contained in the last part of the paragraph regarding the persons and institutions competent to exercise the moral rights after the death of the author. Among other things, the last sentence of the paragraph was deleted.

165. Some countries proposed the elimination of the limitations on the term of moral rights. Proposals to that effect were submitted by Bulgaria (document S/197), and jointly by Greece and Portugal (document S/151).

166. Furthermore, Greece proposed (document S/183) that "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." That proposal was to appear in a new paragraph of Article 6^{bis}. An Austrian proposal (document S/147) providing for the insertion in Article 6^{bis} of a new paragraph concerning the deposit of a facsimile copy of the earliest and most authentic available text or score of literary, musical, or dramatico-musical works will be analyzed later.

167. India proposed (document S/73) that the extension of protection provided for in the *Programme* should be so restricted that after the death of the author protection should not comprise the right to claim authorship of the work.

168. In order to facilitate the adoption of provisions extending the protection of moral rights *post mortem auctoris* in countries of the Union whose legal system does not, in principle, protect moral rights within the framework of copyright and which, for that reason, have considerable difficulties in providing complete protection of such rights after the death of the author, a joint proposal (document S/232) was presented by Australia, Denmark, Finland, Ireland, Norway, Sweden and the United Kingdom. That proposal provided for the insertion of a new sentence at the end of paragraph (2), according to which the legislation of a country of the Union may provide that some of the rights granted to the author under paragraph (1) shall not be maintained after his death.

169. After further discussions, a new proposal (document S/247) was submitted jointly by Australia, Austria, Denmark, Finland, the Federal Republic of Germany, Norway, Sweden and the United Kingdom. That proposal, based in principle on the same idea as document S/232, restricted the scope of the exception made in favor of the countries of the Union which did not protect all the moral rights of the author after his death. That exception was to be allowed only in the case of countries whose legislation in force at the time of their ratification of or accession to the Stockholm Act does not contain provisions ensuring the protection *post mortem auctoris* of all the rights recognized under paragraph (1).

170. The Committee adopted, for the first sentence of paragraph (2), the text proposed in the *Programme*; the provision proposed in document S/247 was adopted as the second sentence of the paragraph. It was understood that the rights maintained in accordance with the second sentence of paragraph (2) should not necessarily be protected by rules within the domain of copyright.

Article 6^{bis}(3)

171. In the Brussels text, paragraph (3) of Article 6^{bis} provides that the means of redress for safeguarding the moral rights shall be governed by the legislation of the country where protection is claimed.

172. No amendment was proposed either in the *Programme* or at the Conference. Paragraph (3) is therefore maintained as it appears in the Brussels text.

Article 7 (Term of protection)

173. Article 7 deals with the term of protection of authors' rights. According to paragraph (1) of the Brussels text, the general term of protection is established as being the life of the author and fifty years after his death. Paragraph (2) deals with regulations governing cases where a country of the Union grants a term of protection in excess of that prescribed in paragraph (1). Paragraph (3) contains exceptions to the general rule prescribed in paragraph (1) for certain categories of works: cinematographic works, photographic works, and works of applied art. The term of protection granted for anonymous or pseudonymous works is specified in paragraph (4). Paragraph (5) deals with the term of protection of posthumous works in general. Finally, paragraph (6) defines the method of determining the terms of protection prescribed in Article 7.

174. The *Programme* provides for amendments in all the paragraphs of the Brussels text except paragraph (1). Paragraph (2) of the *Programme* introduces a special term of protection in the case of cinematographic works. Paragraph (3) corresponds to paragraph (4) of the Brussels text. Paragraph (4) corresponds in part to paragraph (3) of the earlier text. Similarly, paragraph (5) deals with the same questions as paragraph (6) of the Brussels text. Finally, paragraphs (6) and (7) contain in principle provisions governing the same questions as paragraph (2) of the Brussels text.

175. In this Report, the paragraphs appear in the same order as that adopted in the *Programme* (see paragraph 12).

Article 7(1)

176. The general term of protection, the life of the author and fifty years after his death, as prescribed in this paragraph of the Brussels text, had not been changed in the *Programme*.

177. No amendment directly relating to this paragraph was submitted to the Committee. A proposal by the Federal Republic of Germany (document S/205) to the effect that negotiations should be continued between the countries concerned for the conclusion of a special agreement on the extension of the term of protection will be dealt with under the

heading of "Recommendations expressed by the Committee" (see paragraph 329 below).

Article 7(2)

178. Here the *Programme* prescribes a new provision concerning the term of special protection for cinematographic works. The proposal referred to above concerning cinematographic works was adopted by the Committee with a slight change in the wording only.

Article 7(3)

179. Paragraph (4) of the Brussels text deals with the régime for anonymous and pseudonymous works in three sentences: (i) the term of protection is fixed at fifty years from the date of the publication of the work; (ii) the term of protection provided in paragraph (1) applies when the pseudonym adopted by the author leaves no doubt as to his identity; (iii) the general term of protection provided in paragraph (1) also applies if the author of an anonymous or pseudonymous work discloses his identity during the period ending fifty years after the date of publication. Paragraph (5) provides that in principle posthumous works are subject to the various provisions of Article 7.

180. The *Programme* proposed that the first sentence should be amended by fixing the end of the term of protection at fifty years "after the work has been lawfully made available to the public." The second and third sentences were left unchanged. A fourth sentence was added, however, making a new exception to the general term of protection of anonymous and pseudonymous works provided in the first sentence. The countries of the Union would not be required to protect anonymous or pseudonymous works of which it was reasonable to suppose that their author had been dead for fifty years. Lastly, the *Programme* proposed omitting paragraph (5) on posthumous works, which was regarded as superfluous.

181. The United Kingdom proposed (document S/42) that the word "lawfully" in the first sentence should be replaced by the phrase "with the consent of the author." India proposed (document S/73) that works of folklore should form a separate category from anonymous works and should be dealt with in a separate subparagraph of paragraph (3). The protection of works of folklore would last for a period of fifty years at least from the date of publication of the work, but for this purpose the issue of any record reproducing a work of folklore would not be deemed to be publication. According to a joint proposal by Greece and Portugal (document S/151), paragraph (5) of the Brussels text relating to posthumous works should be maintained.

182. The Committee decided to adopt the text proposed in the *Programme*, but replaced the word "lawfully" in the first sentence by "with the consent of the author"; this means that the first sentence of the Brussels text was amended as indicated in the *Programme* (with the above minor alteration), that a fourth sentence was added and that paragraph (5) of the Brussels text was deleted. (As regards the decision on works of folklore, see below, under Article 15(4), paragraphs 249 to 253.)

183. When considering this paragraph, the Drafting Committee thought that there might be cases where the term of protection should begin from the moment when the work was lawfully made available to the public, but not necessarily with the consent of its author. The Committee had in mind in particular works of folklore which have been made available to the public by the authority designated under the provision proposed in Article 15(4). The action of this authority is obviously lawful, but has not been taken with the consent of the author in the strict sense. The Drafting Committee therefore proposed to revert to the word "lawfully" used in the first sentence of the *Programme*. This proposal was accepted by the Committee.

Article 7(4)

184. Paragraph (3) of the Brussels text provides that the term of protection of cinematographic and photographic works and of works of applied art shall be governed by the law of the country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work.

185. The *Programme* proposed that a minimum term of protection should be introduced in principle for those three categories of works. The provision regarding cinematographic works was transferred to paragraph (2). The minimum term of protection of photographic works was fixed at twenty-five years from the making of the work. The same term was provided for works of applied art, but only for those protected as artistic works.

186. India proposed (document S/73) that paragraph (4) should state specifically that national legislation also provided for a term of protection for industrial designs and models. Hungary proposed (document S/91) that cinematographic works should be restored to the paragraph in question and thus made subject to the term of protection proposed therein. Denmark further proposed (document S/99) that works of applied art, in so far as they are protected as artistic works, should be excluded from this paragraph and thus made subject to the general term of protection in paragraph (1). Portugal proposed (document S/152) that a period of ten years should be substituted for the period of twenty-five years proposed. The United Kingdom proposed (document S/192) that the term of protection should last, in respect of photographs, for at least fifty years from the making of the photograph and, in respect of works of applied art, for at least fifteen years from the making of the work.

187. The Committee decided to adopt the text proposed in the *Programme*.

Article 7(5)

188. Paragraph (6) of the Brussels text providing for the method of calculating the term of protection was included in the *Programme* as paragraph (5), with some drafting amendments to bring it into line with the other paragraphs of Article 7.

189. As no proposal had been submitted to the Committee, it adopted the text proposed in the *Programme*.

Article 7(6) (paragraphs (6) and (7))

190. The *Programme* transferred to paragraph (6) a provision which appears in paragraph (2) of the Brussels text, namely, that the countries of the Union may grant a term of protection in excess of those provided in the various paragraphs of the Article in question.

191. As already stated in connection with paragraph (1) of Article 7, the Federal Republic of Germany invited the Conference (document S/205) to express the wish that negotiations should be continued between the countries concerned for the conclusion of a special agreement on the extension of the term of protection in such countries. This point will be discussed below (see paragraph 329).

192. Bulgaria and Poland proposed jointly (document S/50) that a new sentence should be added to paragraph (6), whereby the countries of the Union bound by the Rome Act at the time of accession to or ratification of the Stockholm Act would be entitled to grant a term of protection shorter than those provided in Article 7.

193. The Committee adopted paragraph (6) as proposed in the *Programme*.

194. After discussion, the Committee decided to adopt, with some drafting amendments, a proposal prepared by the Secretariat (document S/225) on the basis of document S/50 and to insert the proposed new provision in the form of a new paragraph (7). The condition imposed on the option to grant a shorter term of protection would not merely be that the country should, at the time of ratification or accession, be bound by the Rome Act, but also that the national legislation in force at the time of signature of the Stockholm Act should contain provisions affording shorter terms of protection than those provided in Article 7. It is obvious that the rule of comparison of terms of protection (Article 7(7) of the *Programme* and now Article 7(8) of the new text) is applicable in the latter case.

Article 7(7) (paragraph (8))

195. Paragraph (2) of the Brussels text also contains a provision on the principle of comparison of terms. The term is governed by the law of the country where protection is claimed, but cannot exceed the term fixed in the country of origin of the work. The *Programme* transferred this provision to paragraph (7). At the same time it was stipulated that the comparison of terms does not apply if the legislation of the country where protection is claimed should so decide.

196. Switzerland proposed (document S/69) that the formula used in the last part of the paragraph should be reversed, so that national treatment would become the principal rule and the comparison of terms an exception.

197. The Committee adopted the text as proposed in the *Programme*.

Article 7^{bis} (Works of joint authorship)

198. Article 7^{bis} of the Brussels text relates to the term of protection in the case of works of joint authorship. The term is calculated from the date of the death of the last surviving author. The *Programme* worded this Article dif-

ferently in order to specify that the term of protection provided in Article 7 also applies to works of joint authorship, provided that the terms measured from the death of the author are calculated from the death of the last surviving author.

199. India proposed (document S/73) inserting after the words "last surviving author" the words "who was a national of a country of the Union." It was considered that this proposal had lost its point since India's proposal (document S/41) to make the nationality of the author the general criterion of eligibility and the general criterion of country of origin had not been accepted by the Committee. It should be added, however, that the term of protection of a work of joint authorship published in a country of the Union is calculated from the death of the last surviving author whether he is a national of a country of the Union or not.

200. The Committee adopted the text proposed in the *Programme* without amendment.

201. The United Kingdom proposed (document S/42) inserting a new paragraph providing that the term of protection of the collective works mentioned in Article 2(4) should be fifty years from the death of the author of such works. Since it was pointed out that this rule seemed to be intended to apply without a special provision, the proposal was withdrawn.

Article 8 (Right of translation)

202. Under Article 8 of the Brussels text, authors enjoy the exclusive right of making or of authorizing the translation of their works throughout the term of protection of their rights in the original works. No explicit provision in this Article or in other Articles provides for any exception to this exclusive right.

203. The *Programme* did not propose any change in the text of this Article. It seems, however, to have started from the idea that it was fairly obvious that exceptions to the other exclusive rights, such as the right of reproduction, implied corresponding exceptions in respect of the right of translation and that the Convention had generally been applied in this way. It was expressly stated (document S/1, page 74) that the right to reproduce press articles also includes the right to reproduce them in the form of translations.

204. No amendment to the text of Article 8 was submitted to the Committee, but proposals affecting the right of translation were made in connection with other Articles. For instance, there was a proposal to insert a phrase adding to the limitation of the right of reproduction a corresponding limitation of the right of translation in Article 2^{bis}(2) by India (document S/73), and in Article 10(1) and 10^{bis}(1) (new) jointly by Czechoslovakia, Hungary and Poland (document S/51). During the discussion of these proposals, the Committee considered that a general rule regarding exceptions to the right of translation was necessary and should be inserted in Article 8. It was left to the Drafting Committee to try to find a satisfactory formula and to suggest whether such a formula should be included in the text of Article 8 or merely in the part of the Report concerning that Article. The Drafting Committee opted for the latter solution and the Committee

decided that the following indications should be inserted in this Report.

205. As regards the right of translation in cases where a work may, under the provisions of the Convention, be lawfully used without the consent of the author, a lively discussion took place in the Committee and gave rise to certain statements on the general principles of interpretation. While it was generally agreed that Articles 2^{bis}(2), 9(2), 10(1) and (2), and 10^{bis}(1) and (2), virtually imply the possibility of using the work not only in the original form but also in translation, subject to the same conditions, in particular that the use is in conformity with fair practice and that here too, as in the case of all uses of the work, the rights granted to the author under Article 6^{bis} (moral rights) are reserved, different opinions were expressed regarding the lawful uses provided for in Articles 11^{bis} and 13. Some delegations considered that those Articles also applied to translated works, provided the above conditions were fulfilled. Other delegations, including those of Belgium, France and Italy, considered that the wording of those Articles in the Stockholm text did not permit of the interpretation that the possibility of using a work without the consent of the author also included, in those cases, the possibility of translating it. In this connection, the said delegations pointed out, on the level of general principles, that a commentary on the discussion could not result in an amendment or extension of the provisions of the Convention (see also paragraph 210 below concerning the so-called "minor reservations" to Articles 11, 11^{bis}, 11^{ter}, 13 and 14).

Article 11 (Right of performance)

Article 11(1)

206. Under Article 11(1) of the Brussels text, the authors of dramatic, dramatico-musical and musical works enjoy the exclusive right of authorizing: (i) the public presentation and public performance of their works; (ii) the public distribution by any means of the presentation and performance of their works. The application of the provisions of Articles 11^{bis} and 13 is, however, reserved. The *Programme* did not propose any substantial change in the Brussels text, but merely a few minor amendments to the English version.

207. The Committee adopted the text proposed in the *Programme*, but excluded the reference to Article 13, which was no longer regarded as necessary in view of the amendments made to that Article.

208. When considering the deletion of paragraph (1) of Article 13, the Drafting Committee thought it advisable to recall that the general right of public performance provided in Article 11 also covered what Article 13(1)(ii) of the Brussels text called the public performance of works by means of instruments capable of reproducing them mechanically. It therefore proposed to insert in Article 11(1)(i), after the words "the public performance of their works," the words "including such public performance by any means or process." This proposal was adopted by the Committee.

209. In the General Report of the Brussels Conference, the Rapporteur was instructed to refer explicitly, in connection with Article 11, to the possibility of what it had been agreed to call "the minor reservations" of national legislation. Some

delegates had referred to the exceptions permitted in respect of religious ceremonies, performances by military bands and the requirements of education and popularization. The exceptions also apply to Articles 11^{bis}, 11^{ter}, 13 and 14. The Rapporteur ended by saying that these allusions were given lightly without invalidating the principle of the right (cf. *Documents de la Conférence de Bruxelles*, page 100).

210. It seems that it was not the intention of the Committee to prevent States from maintaining in their national legislation provisions based on the declaration contained in the General Report of the Brussels Conference. It accordingly seems necessary to apply to these "minor reservations" the principle retained for exceptions to the right of translation, as indicated in connection with Article 8 (see paragraph 205).

Article 11(2)

211. Under Article 11(2) of the Brussels text, authors of dramatic or dramatico-musical works, during the full term of their rights over the original works, enjoy the same rights as those provided in paragraph (1) with respect to translations of their works.

212. No change was proposed in the *Programme* and no amendment was submitted to the Committee. Paragraph (2) remains, therefore, as it is in the Brussels text.

Article 11(3)

213. Article 11(3) of the Brussels text states that authors are not bound, when publishing their works, to forbid the public presentation or performance thereof in order to enjoy the protection of this Article. The *Programme* considered this prohibition of formalities superfluous and proposed that the paragraph be deleted.

214. As no amendment was submitted to the Committee, it decided to delete the paragraph, as proposed in the *Programme*.

Article 11^{bis} (Right of broadcasting)

215. Article 11^{bis}(1) of the Brussels text deals with the exclusive right of the author to authorize the radiodiffusion and communication to the public of his work. Paragraph (2) refers to the compulsory license which national legislations may impose, subject to just remuneration, in respect of the rights referred to in paragraph (1). Paragraph (3) provides that permission for the radiodiffusion of a work does not imply permission to record the radiodiffused work, except where otherwise provided. National legislation may, however, determine the regulations for ephemeral recordings "made by a broadcasting body by means of its own facilities and used for its own emissions." Recordings may also, on certain conditions, be preserved in official archives.

216. The *Programme* considered that these rules provided an acceptable compromise between opposing interests and did not feel it necessary to propose any amendment other than some drafting amendments to the English version.

217. Brazil proposed (document S/217) a provision whereby each of the special rights included in the general broadcasting rights referred to in paragraph (1) could be exercised by the author and the right to make ephemeral recordings

under paragraph (3) should not apply to profit-making organizations.

218. The United Kingdom proposed (document S/171): (i) deleting the condition in paragraph (3) that ephemeral recordings should be made by the broadcasting organization "by means of its own facilities"; (ii) restricting the right of recording to cases where "for technical or other reasons, the broadcast cannot be made at the time of the performance of the work."

219. Japan submitted a proposal (document S/112) similar to that made by the United Kingdom in respect of (i), suggesting 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." It further expressed the opinion that broadcasting organizations should be permitted to entrust the making of ephemeral recordings to one other broadcasting organization only, which would also be entitled to broadcast the work. It considered that this view was not contrary to the provisions of paragraph (3) of Article 11^{bis} and it asked for this interpretation of the said paragraph to be mentioned in the Report.

220. Monaco proposed (document S/77) that ephemeral recordings might be: (i) made by or for a broadcasting organization; (ii) used for its own broadcasts and for those of other organizations under the jurisdiction of the same country.

221. All these proposals were withdrawn at the session of the Committee which discussed Article 11^{bis}.

222. The Working Group on the régime of cinematographic works proposed (document S/195) the insertion of a new paragraph (4) in Article 11^{bis} limiting the compulsory license provided for in paragraph (2). The provisions of paragraph (2) would apply in respect of the cinematographic work and works adapted or reproduced in the cinematographic work itself only in so far as they relate to the rights provided in subparagraphs (ii) and (iii) of paragraph (1). But the Committee decided to make no amendment to the text of Article 11^{bis} and the proposal of the Working Group was accordingly rejected.

Article 11^{ter} (Right of recitation)

223. Article 11^{ter} of the Brussels text states that the author shall have the exclusive right of authorizing the public recitation of his works. No change was proposed in the *Programme*.

224. The Federal Republic of Germany suggested (document S/92) including explicitly in this Article the right of authorizing: (i) the public recitation of works by means of instruments capable of reproducing them mechanically, and (ii) any communication to the public of such recitation. This proposal was accepted by the Committee.

225. The Drafting Committee suggested (document S/269) that under paragraph (1) of this Article authors should enjoy the right of authorizing: (i) the public recitation of their works, including such public recitation by any means or process; (ii) any communication to the public of the recitation of their works. This suggestion was made in order to bring the text of the paragraph into line with the new text of Article 11(1).

The Drafting Committee also suggested adding a paragraph (2) corresponding to paragraph (2) of Article 11, whereby authors shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof. The Committee adopted the text suggested by the Drafting Committee.

Article 12 (Right of adaptation)

226. Article 12 of the Brussels text deals with the exclusive right of authors to authorize adaptations, arrangements and other alterations of their works. No change was proposed in the *Programme* or by the countries in the Committee and the Brussels text remains unaltered.

Article 13 ("Mechanical rights")

227. Article 13 of the Brussels text deals with what are called the "mechanical rights" of composers. Under paragraph (1), authors of musical works have the exclusive right of authorizing: (i) the recording of such works by instruments capable of reproducing them mechanically; (ii) the public performance by means of such instruments of works thus recorded. Paragraph (2) enables countries to introduce a compulsory license in respect of these "mechanical rights," the author being however entitled to obtain just remuneration. Paragraph (3) contains a transitional provision stipulating that the provisions of paragraph (1) do not apply retroactively to recordings lawfully made before the coming into force of the Berlin Act of 1908 or, in the case of countries acceding to the Convention at a later date, before the date of accession. Lastly, under paragraph (4), recordings are liable to seizure if they are made in accordance with paragraphs (2) and (3) and imported without permission from the parties concerned into a country which does not recognize the exceptions provided in paragraphs (1), (2) or (3).

228. The *Programme* proposed the deletion of paragraph (1), the limitation of the compulsory license in paragraph (2) and the termination of the transitional system provided in paragraph (3). No amendment was made to paragraph (4), other than in references to the previous paragraphs. Owing to the deletion of paragraph (1), the other paragraphs were renumbered.

Article 13(1) (of the Brussels text)

229. The *Programme* proposed the deletion of this paragraph. The right of recording was included in the right of reproduction provided in the new Article 9(1) and the right of public performance in that provided in Article 11(1).

230. The Netherlands suggested (document S/230) that the first paragraph of the existing text be maintained.

231. The Committee adopted the proposal in the *Programme* that it should be deleted.

Article 13(1)

232. According to the *Programme*, the compulsory license under paragraph (1), which corresponds to paragraph (2) of the Brussels text, was maintained only in respect of recordings and abolished in respect of public performance by means of the recordings made.

233. Brazil proposed (document S/217) adding a sentence providing that the provisions of Article 9(2) should not be applicable to musical works.

234. The Federal Republic of Germany (document S/92) and the United Kingdom (document S/171) proposed inserting in the text a reference to the words of musical works. The Federal Republic of Germany preferred to add after the words "authors of musical works" the words "with or without words." The United Kingdom chose a slightly longer wording: "works including any words intended by their author to be performed with them."

235. The Committee adopted the proposal of the *Programme*, adding however a special reference to the words of musical works, in accordance with the formula used in the United Kingdom proposal. The Drafting Committee proposed a text expressing this formula in more detail.

236. When considering the Drafting Committee's text, the Committee thought it preferable to adopt a simpler formula. The starting-point should be the fact that compulsory licenses — for example, in the United Kingdom and Germany — are based on the conception that the author of the music and the author of the words have given their consent once to the recording. On the basis of such consent, the compulsory license could operate even in respect of the words. The Drafting Committee therefore prepared a new formula, which was finally adopted by the Committee.

Article 13(2)

237. The *Programme* proposed putting an end to the transitional system under paragraph (2), which corresponds to paragraph (3) of the Brussels text. Only during a period not determined in the *Programme*, but which it was suggested should be very short, should it be permissible to reproduce, without the author's consent, recordings made in accordance with this paragraph.

238. The Federal Republic of Germany proposed (document S/92) that a reference to the words of musical works should be inserted in this paragraph too.

239. The Committee adopted the proposal in the *Programme*. With regard to the date on which the transitional period should end, it accepted the proposal of the Drafting Committee that this period should expire two years after the date when the country where the recordings were made became bound by the Stockholm Act.

Article 13(3)

240. This paragraph (3), which corresponds to paragraph (4) of the Brussels text, was not changed in the *Programme*, except for the references to the preceding paragraphs.

241. Brazil suggested (document S/217) that the reference to paragraph (1) should be deleted, that is to say, recordings made under a compulsory license should not be seized. The Committee adopted the wording proposed by the *Programme*.

Article 14^{bis} (Article 14^{ter})

242. Article 14^{bis} in the Brussels Act deals with the *droit de suite*. No proposal in that regard was made in the *Programme* and none was submitted to the Committee.

243. The Committee decided to leave the Article as it was but to change the numbering because of the decision mentioned below to insert a new Article 14^{bis} dealing with cinematographic works.

Article 15

244. Article 15 of the Brussels text contains in paragraph (1) a definition of the person who should be regarded as the author of a work. Paragraph (2) stipulates that the publisher shall, in certain cases, be deemed to represent the author. No alteration was proposed in the *Programme*.

245. In the course of the Committee's work, two new provisions were inserted in Article 15: one in paragraph (2) stipulating who should be presumed to be the maker of a cinematographic work, and the other in paragraph (4) containing rules applicable to unpublished works when the identity of the author is unknown. In the new draft, paragraph (2) of the Brussels text becomes paragraph (3).

Article 15(1)

246. Paragraph (1) of the Brussels text establishes the rule that the person whose name appears on the work in the usual manner shall be regarded as the author of the work, in the absence of proof to the contrary. As no proposal was submitted concerning this paragraph, it remains as it is.

Article 15(2) (new)

247. In a new paragraph (2) (see below under paragraph 325) the Committee adopted a rule stipulating who should be regarded as the maker of a cinematographic work.

Article 15(2) (paragraph (3))

248. Paragraph (2) of the Brussels text provides that in certain cases, as regards anonymous or pseudonymous works, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author. This provision ceases to apply if the author reveals his identity and establishes his claim to authorship of the work. No proposal was submitted with regard to this paragraph. The Committee changed the number of the paragraph, which becomes number (3); otherwise it remains unchanged.

Article 15(4) (new)

249. In a proposal (document S/73), the Delegation of India made several references to works of folklore. The Committee decided to consider the question of folklore, and a Working Group was set up for this purpose.

250. The Chairmanship of this Working Group was entrusted to Czechoslovakia, which then proposed (document S/212) that a provision on works of folklore should be inserted in the Convention. It would be a matter for legislation in the countries of the Union to appoint the authority competent to represent the authors of works of folklore and entitled to protect and enforce the author's rights, subject to the application of the second sentence of Article 15(2).

251. Taking as a basis the proposal of Czechoslovakia and some suggestions made by the Chairman of the Committee,

the Working Group proposed (document S/240) the insertion in Article 15 of a new paragraph based on the following principles:

- (i) the work is unpublished;
- (ii) the author is unknown;
- (iii) there is every ground to presume that the author is a national of a country of the Union;
- (iv) if these three conditions are fulfilled, the legislation of that country may designate a competent authority to represent the author;
- (v) the competent authority is entitled to protect and enforce the rights of the author in all the countries of the Union;
- (vi) if such an authority is designated by a country, that country shall notify the Organization (WIPO) by means of a declaration in writing giving full information concerning the authority thus designated; WIPO shall communicate this declaration to all other countries of the Union.

252. The proposal of the Working Group did not mention the word "folklore," which was considered to be extremely difficult to define. Hence, the provision applies to all works fulfilling the conditions indicated above. It is clear, however, that the main field of application of this regulation will coincide with those productions which are generally described as folklore. The Working Group's proposal was adopted by the Committee.

253. The works of unknown authors seem to constitute a special category within the concept of anonymous works mentioned in the new text of the Convention in Article 7(3) and Article 15(3). The term of protection of anonymous works (as prescribed in Article 7) is thus also valid in respect of the works of an unknown author. If the author reveals his identity, he may establish his claim to authorship of the work in accordance with Article 15(3), last sentence. It appears that the work ceases to be subject to the special régime under paragraph (4) if it is published. If there is a publisher whose name appears on the work of an unknown author, such publisher may represent the author in accordance with Article 15(3), first sentence.

Article 16

254. Article 16 of the Brussels text deals in its three paragraphs with the seizure of infringing copies of a work. The *Programme* did not propose any amendment of this Article.

255. The United Kingdom proposed (document S/211) that the words "may" (be seized) in paragraph (1), and "may" (also apply) in paragraph (2), be replaced by "shall" (be seized) and "shall" (also apply).

256. That proposal was adopted by the Committee in principle, and the Drafting Committee proposed some purely formal amendments to the text, which were accepted by the Committee.

Article 17

257. Article 17 of the Brussels text leaves countries free "to permit, to control, or to prohibit by legislation or regulation, the circulation, presentation, or exhibition of any work

or production in regard to which the competent authority may find it necessary to exercise that right." No proposal was made in the *Programme* concerning that Article.

258. Italy proposed (document S/226) the deletion of the words "or regulation." The United Kingdom proposed (document S/171): (i) the deletion of the words "to permit"; (ii) the insertion of a new paragraph leaving countries 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."

259. Australia presented a proposal (document S/215) similar to that under (ii) above but of a more general character. Each country would have the right to take such legislative measures as it deemed necessary to prevent abuses which might result from the exercise of the rights conferred by the Convention. Such measures should not, however, be prejudicial to the moral rights of the author or his right to obtain equitable remuneration.

260. Israel proposed (document S/223) the insertion of a new paragraph guaranteeing that the scores of musical works should be accessible to the public. This proposal, which was expressed in a resolution, will be examined later.

261. The Committee decided that the wording of the Article should be modified along the line of the ideas underlying the above-mentioned Italian proposal.

262. The Committee also decided to adopt the proposal submitted in the document of the United Kingdom mentioned in paragraph 258 under item (i), that is to say, to delete the words "to permit." South Africa declared that, with respect to its national legislation based on Article 17 of the Brussels text, it was forced to vote against any amendment of Article 17 in the Plenary Assembly. As a result, Article 17 would have to remain as it was. The opinion of South Africa was that, according to Article 17, the countries, as sovereign States, were free to "permit" the dissemination of the work, even against the will of the author, if that were necessary as a matter of public policy in the country. The overwhelming majority of the Committee, however, interpreted Article 17 in another sense, even in its present form including the words "to permit." This Article referred mainly to censorship: the censor had the power to control a work which it was intended to make available to the public with the consent of the author and, on the basis of that control, either to "permit" or to "prohibit" dissemination of the work. According to the fundamental principles of the Berne Union, countries of the Union should not be permitted to introduce any kind of compulsory license on the basis of Article 17. In no case where the consent of the author was necessary for the dissemination of the work, according to the rules of the Convention, should it be possible for countries to permit dissemination without the consent of the author.

263. The Committee accepted, without opposition, the proposal of its Chairman that mention should be made in this Report of the fact that questions of public policy should always be a matter for domestic legislation and that the countries of the Union would therefore be able to take all necessary

measures to restrict possible abuse of monopolies. Whereupon, the proposals of Australia and the United Kingdom relating to abuse of monopoly were withdrawn.

Article 18

264. Article 18(1) of the Brussels text stipulates that the Convention applies to all works that have not yet fallen into the public domain in the country of origin through the expiry of the term of protection. Article 18 also includes, in paragraphs (2) to (4), some other provisions concerning matters arising in that respect. As no proposals were made either in the *Programme* or in the Committee for alteration of this Article, it has been retained in its original form.

Article 19

265. Article 19 of the Brussels text stipulates that the Convention shall not preclude the making of a claim to the benefit of any wider provisions which may be afforded by domestic legislation. No proposal was submitted in this connection either in the *Programme* or in the Committee, and Article 19 therefore remains in its original form.

Article 20

266. Article 20 of the Brussels text contains provisions concerning the right of the countries of the Union to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to the Convention. No proposal was submitted in this connection either in the *Programme* or in the Committee, and Article 20 therefore remains in its original form.

IV. Régime of Cinematographic Works

267. Cinematographic works are expressly mentioned in the Brussels text in Article 2(1), Article 4(5), Article 7(3), Article 10^{bis} and Article 14; of these the last named is the most important and it deals only with cinematographic works. Article 4(5), which defines the concept of publication, and Article 10^{bis}, which concerns the reporting of current events, may be left out of account in this section since they do not refer to the special problems relating to cinematographic works. Article 2(1) mentions "cinematographic works and works produced by a process analogous to cinematography" as a category of protected works. Article 7(3) refers to the term of protection of cinematographic works according to the law of the country where protection is claimed. That term is not, however, to exceed the term fixed in the country of origin of the work.

268. Article 14(1) deals with the exclusive right of authors of pre-existing works to authorize: (i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced; (ii) the public presentation and performance of the works thus adapted or reproduced. Paragraph (2) stipulates that a cinematographic work is to be protected as an original work, without prejudice to the rights of the author of the pre-existing work. Paragraph (3) gives the author of a cinematographic work the right to authorize its adaptation. Paragraph (4) excludes

cinematographic adaptations from the rules concerning the compulsory license in Article 13(2). Paragraph (5) stipulates that the provisions of Article 14 apply equally to works effected by any other process analogous to cinematography.

269. The *Programme* proposed substantial changes in the present system as a result, amongst other things, of the development of television since the Brussels Conference. In Article 2(1) and (2), it offered a new definition of cinematographic works. New provisions in Article 4(4) and Article 6(2) made the headquarters or habitual residence of the maker of a film the decisive factor, in certain cases, as regards the country of origin or the eligibility criterion of the work. In Article 4(6), the *Programme* proposed a definition of the maker of a cinematographic work. The *Programme* also proposed new rules for the term of protection of cinematographic works in place of the provision in Article 7(3) of the Brussels text. In addition to the general rule in Article 7(1), it introduced as a variation for national legislations some rules which are included in a new Article 7(2).

270. In Article 14(1) to (3), the *Programme* submitted provisions for pre-existing works which corresponded to the provisions of Article 14(1) to (5) of the Brussels text. In paragraphs (4) to (7), the *Programme* introduced interpretative rules concerning contracts between authors and makers of cinematographic works.

271. The Committee decided in principle to adopt amendments or new provisions in the same paragraphs as those of the *Programme*. Some rules on the same lines as those suggested by the *Programme* in Article 14(4) to (7) were, however, placed in a new Article 14^{bis}, with the result that Article 14^{bis} of the Brussels text was renumbered 14^{ter}.

272. No definition of the maker was introduced in Article 4(6). Further, a new provision, which will be mentioned below (see paragraph 325), was inserted in Article 15(2), in order to determine who is to be regarded as the maker of the film.

Article 2(1) and (2) (paragraph (1))

273. The *Programme* proposed that works assimilated to cinematographic works should be given a somewhat different definition from that contained in Article 2(1) of the Brussels text. The *Programme* replaced the phrase "works produced by a process analogous to cinematography" by the term "works expressed by a process producing visual effects analogous to those of cinematography." This definition was limited, however, to works "fixed in some material form." The assimilated work was thus defined in a new paragraph (2).

274. Bulgaria (document S/89) and Yugoslavia (document S/107) proposed that a new category of protected works should be introduced: "televsual works." For this reason, the definition of a cinematographic work contained in paragraph (1) of the Brussels text was to be retained, but the words "televsual works" were to be inserted after the definition and the new paragraph (2) was to be deleted.

275. Italy (document S/161) also favored the deletion of paragraph (2). It preferred to retain the assimilated works in paragraph (1), but defining them in a way different from

that of the Brussels text and the *Programme*: “works expressed by a process analogous to cinematography.”

276. Portugal (document S/110) and the Federal Republic of Germany (document S/92) submitted proposals concerning the requirement of fixation. Portugal wished to insert a new subparagraph in paragraph (2) enabling countries to protect specifically as cinematographic works works which are not fixed. The Federal Republic of Germany proposed that the words “fixed in some material form” should be deleted from paragraph (2) of the text of the *Programme*. In their place, a new phrase was to be inserted stating that there would be no obligation to protect as a cinematographic work a series of visual images not recorded in some material form.

277. The question was referred to the Working Group on the régime relating to cinematographic works, which presented a proposal (document S/190) based on the Italian amendment (document S/161). The definition of a cinematographic work was to be transferred in its entirety to paragraph (1) and drafted as follows: “cinematographic works to which are assimilated those expressed by a process analogous to cinematography.” Paragraph (2) of the *Programme* was to be deleted. The condition of fixation was no longer required as a general rule, but a provision giving countries the right to introduce fixation as a condition for protection of a work was inserted in a new paragraph (2) (see paragraph 130 above). The Committee adopted the proposal of the Working Group.

Article 4(4)(c)(i) (Article 5(4)(c)(i))

278. As regards the country of origin of cinematographic works, the *Programme* presented the following solution in Article 4(4). The first criterion for the country of origin would be publication ((a) and (b)) in the new and wider sense adopted in Article 4(5), making the country where the film is made (to a greater extent than at present) the country of origin of the film. If the cinematographic work is unpublished, the second criterion would be the country of the Union of which the maker is a national or in which he has his domicile or headquarters ((c)(i)). If neither the first nor the second of these criteria applies, the country of the Union of which the author is a national would constitute the third criterion ((c)(iii)).

279. Switzerland proposed (document S/63) that the words “habitual residence” be substituted for the word “domicile.”

280. The Working Group suggested (document S/190) that item (c)(i) of the *Programme* should be adopted, except for two points: (i) the provision should not contain any reference to the nationality of the maker; (ii) the words “habitual residence” should be introduced instead of the word “domicile,” in accordance with the above-mentioned Swiss proposal. The Committee adopted the proposal of the Working Group and inserted the provision in Article 5(4)(c)(i) of the new draft.

Article 4(6) (—)

281. The *Programme* proposed inserting in Article 4(6) a definition of the maker of a cinematographic work: “the person or body corporate who has taken the initiative in, and responsibility for, the making of the work.”

282. Several proposals were submitted to amend that definition or to delete it. New definitions were proposed by the United Kingdom (document S/42) and India (document S/73), while France (document S/27) and Hungary jointly with Poland (document S/43) proposed the deletion of the paragraph in question.

283. Italy proposed an amendment (document S/168) according to which paragraph (6) should not contain a definition of the maker but only a presumption. The maker of the cinematographic work would be presumed to be the person indicated as such in the credit titles of the film.

284. The Working Group proposed (document S/190), like France, Hungary and Poland, the deletion of paragraph (6) from the text of the *Programme*. At the same time, however, it proposed the insertion in a suitable place of a provision reproducing in a slightly amended form the presumption suggested by Italy.

285. The Committee adopted the Working Group’s proposal and the Drafting Committee then suggested inserting the new rule in Article 15(2). Thus, the draft would no longer contain a new paragraph (6) in Article 4.

Article 6(2) (Article 4(a))

286. The *Programme* proposed for paragraph (2) of Article 6 a new criterion of eligibility in respect of cinematographic works which were unpublished or which were first published outside the Union. The criterion would be the country of the Union of which the maker is a national or in which he has his domicile or headquarters (see Article 4(4)(c)(i) regarding country of origin).

287. France proposed (document S/28) deleting this paragraph. The United Kingdom proposed (document S/42) adding at the end of the paragraph a sentence to the effect that the countries of the Union should be free to treat the maker of a cinematographic work as its author.

288. The Working Group proposed (document S/190) the adoption of paragraph (2) of the *Programme* with amendments corresponding to those made to Article 4(4)(c)(i), namely, the deletion of the criterion of the nationality of the maker and the substitution of the words “habitual residence” for “domicile.” As regards the United Kingdom proposal, it was agreed that it was not necessary to insert the proposed sentence, as it was generally admitted that the Convention had always been interpreted in the manner suggested in that proposal, and as the situation would be clarified in the proposed new Article 14^{bis}.

289. The Committee adopted the Working Group’s proposal and included this provision in Article 4(a) of the new draft. The wish was expressed that the Report should state that a cinematographic work which is the result of joint making is protected in the Union if one of the joint makers has his headquarters or his habitual residence in a country of the Union.

Article 7(2)

290. The *Programme* proposed new rules for the term of protection of cinematographic works. In general, cinematographic works should be subject to the general term of pro-

tection provided in Article 7(1), that is to say, the author's life and fifty years after his death. According to paragraph (2), national legislation may however provide for a special term of protection in respect of this category of works, namely, that protection shall expire fifty years after the first publication, public performance or broadcast. Failing such an event within fifty years from the making of such a work, the term would expire fifty years after such making.

291. Hungary proposed (document S/91) that this paragraph should be deleted and that the term of protection of cinematographic works should be regulated in Article 7(4) in the same way as that proposed in the *Programme* in respect of works of applied art and photographic works.

292. Portugal proposed (document S/152) that the term of protection should be fixed by national legislation in such a way as to allow a fair return on the investment made, and suggested certain rules regarding the date from which the term should begin to run.

293. The United Kingdom proposed (document S/42) that the words "after the first publication, public performance or broadcast" should be replaced by the words "after the work has been made available to the public with the consent of the author."

294. The Working Group proposed the adoption of the text of the *Programme* as amended in accordance with the suggestion made in the draft proposal by the United Kingdom. The Committee adopted the Working Group's proposal.

Article 14 (Articles 14 and 14^{bis})

295. Article 14 of the Brussels text consists of five paragraphs. Paragraph (1) deals with the exclusive right of authors of so-called pre-existing works. Paragraph (2) deals with the protection of cinematographic works in the strict sense. The authors of such works as can be said to constitute contributions to the cinematographic work as a whole may be called "authors of contributions." Paragraph (3) deals with the right to adapt cinematographic works. Paragraph (4) excludes cinematographic adaptations of works from the compulsory license referred to in Article 13(2). Paragraph (5) provides that Article 14 shall also apply to works effected by any other process analogous to cinematography.

296. The *Programme* deleted paragraph (5), which was considered superfluous in view of what had been proposed in Article 2(2), and transferred paragraph (4) to a final sentence in paragraph (1). Some amendments were made to paragraphs (1) and (2), while paragraph (3) remained as it was. The *Programme* added to this Article paragraphs (4) to (7) concerning the "rules of interpretation for agreements," which refer to authors of both pre-existing works and contributions.

297. The Committee decided to deal only with the protection of authors of pre-existing works in Article 14 and to reserve for the authors of contributions Article 14^{bis} containing the rules of interpretation or the "presumption of legitimation," to use the term generally employed in the Committee, as opposed to the term "presumption of assignment." At the same time, the scope of this presumption was reduced, to refer to authors of contributions only.

Article 14(1) (paragraphs (1) to (3))

298. Paragraph (1) of the Brussels text gives authors of pre-existing works the exclusive right of authorizing: (i) the cinematographic adaptation and reproduction of their works, and the distribution of the works thus adapted or reproduced; (ii) the public presentation and performance of the works thus adapted or reproduced.

299. The *Programme* proposed only two amendments. To the rights mentioned under (ii) it added the right of communication to the public by wire. In addition, it took over paragraph (4) of the Brussels text and incorporated it in a shorter form as the final sentence of paragraph (1), thus rendering the compulsory license inapplicable to the rights referred to in that paragraph.

300. The Federal Republic of Germany proposed (document S/92) that: (i) the right to broadcast the work should be mentioned among the rights provided in paragraph (1); (ii) the application of Article 11^{bis}(2) should be excluded while maintaining the application of Article 11^{bis}(3).

301. The Working Group on the régime of cinematographic works proposed (document S/195) the adoption of the text of the *Programme* with two amendments: (i) the last sentence, referring to the non-application of the compulsory license under Article 13(1), was to be the subject of a special paragraph (3); (ii) a limitation of the compulsory license under Article 11^{bis}(2), on the lines proposed by the Federal Republic of Germany in the above-mentioned proposal, should be inserted in a new paragraph (4) of Article 11^{bis} (see paragraph 222 above regarding Article 11^{bis}).

302. The Committee adopted the text of the *Programme* amended in accordance with the first part of the Working Group's proposal and finally decided not to accept the second part of the proposal.

Article 14(2) (Article 14^{bis}(1))

303. Paragraph (2) of the Brussels text provides in a single sentence that a cinematographic work, that is to say, the work of authors of contributions, shall be protected as an original work. The *Programme* retained the sentence but added a second one stating that authors of contributions were to enjoy the same rights as the author of an original work, including the right referred to in the previous paragraph. No proposal on this point was submitted to the Committee.

304. The Committee adopted the Working Group's proposal (document S/195) to accept the text of the *Programme*, but to place it in paragraph (1) of the new Article 14^{bis} dealing with authors of contributions. On a suggestion by the Drafting Committee, some minor amendments were made to the text.

Article 14 (3) (paragraph (2))

305. The Brussels text of paragraph (3) provides that adaptations of cinematographic productions derived from pre-existing works shall, without prejudice to the authorization of the authors of contributions, remain subject to the authorization of the authors of pre-existing works. No changes were proposed in the *Programme* or in the Committee. On the

suggestion of the Working Group, the Committee merely changed the number of this paragraph, which becomes paragraph (2) of Article 14.

Article 14(4) to (7) (Article 14 bis(2) and (3))

306. The *Programme* proposed the insertion, in paragraphs (4) to (7) of Article 14, of a rule concerning the interpretation of agreements between authors and makers on the exploitation of cinematographic works. This proposal was based on the following ideas:

- (i) this rule would apply to both kinds of authors, but, according to paragraph (7), a country could exclude authors of pre-existing works from its application. This should be notified to the Director General of the new Organization intended to replace BIRPI;
- (ii) this rule presupposed the author's agreement to assign certain rights to the maker. Authors of pre-existing works should have authorized the cinematographic adaptation and reproduction of their works, whereas authors of contributions should have undertaken to bring literary or artistic contributions to the making of the cinematographic work;
- (iii) the authorization of the authors should concern the fixation of their works in some material form;
- (iv) the authorization should have been given in the manner prescribed by the legislation of the country of origin;
- (v) the countries of the Union could provide that the authorization should be given by a written agreement or something having the same force;
- (vi) if the above conditions were fulfilled, the author might not, in the absence of any contrary or special stipulation, object to the exploitation of the cinematographic work, that is to say, 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;
- (vii) by "contrary or special stipulation" was meant any restrictive condition agreed between the maker and the authors;
- (viii) unless national legislation provided otherwise, the interpretation rule should not, according to paragraph (6), apply to the rights in musical works, with or without words, used in the cinematographic work;
- (ix) countries might, according to paragraph (5), provide, for the benefit of authors, a participation in the receipts resulting from the exploitation of the cinematographic work.

307. A number of proposals were submitted to the Committee.

308. (1) As to paragraphs (4) to (7) as a whole: Yugoslavia proposed (document S/107) deleting paragraphs (4) to (7) and therefore, in principle, maintaining the Brussels text. The United Kingdom proposed (document S/101) excluding from the application of the interpretation rule countries whose legislation grants copyright in a cinematographic work to its maker. Monaco proposed (document S/115), inter alia, reserving expressly the right of countries whose systems dif-

fer from that on which Article 14(4) was based, although their effects are similar to the interpretation rule, to maintain their systems: for example, the "film copyright" system in force in the United Kingdom and several other countries, and the "c^{essio legis}" system in force in Italy and Austria.

309. (2) As to point (i) above: Japan proposed (document S/111) that only authors of contributions should be mentioned in Article 14(4) and that paragraph (7) should be deleted, which would mean that authors of pre-existing works were excluded from the interpretation rule. Belgium proposed (document S/144) the exclusion of all pre-existing works from the interpretation rule, except for dialogues and scenarios, which could, however, also be excluded under certain conditions.

310. (3) As to points (iv) and (v) above: the Federal Republic of Germany proposed (document S/92) that countries of the Union should have the right to provide, with respect to cinematographic works of which they are the country of origin, that the authorization or undertaking shall be given by a written agreement or something having the same force.

311. (4) With regard to item (v) above: France proposed (document S/130) that a written contract should be an obligatory condition for the application of the interpretation rule. On the other hand, Japan proposed (document S/111) that the phrase dealing with the right to demand that the authorization or undertaking should be in writing be deleted.

312. (5) With regard to item (vi) above: Monaco proposed (document S/115) that the text should refer only to exploitation, instead of listing all the actions to which authors might not object. Moreover, the interpretation rule should apply notwithstanding any previous assignment of the author's right.

313. (6) With regard to item (viii) above: Monaco proposed (document S/115) that paragraph (6) should be deleted, so that musical works should also be subject to the interpretation rule.

314. (7) With regard to item (ix) above: Hungary proposed (document S/139) that the optional provision in paragraph (5) should be made obligatory in regard to participation in receipts, while Monaco proposed (document S/115) that this provision should be deleted.

315. (8) With regard to the insertion of new provisions: Monaco proposed (document S/115) that a new paragraph should be inserted, stating that authors could not, subject to the application of Article 6^{bis} and in the absence of any contrary or special stipulation, oppose alterations that might become indispensable for the exploitation of the cinematographic work.

316. The Working Group proposed (document S/195) a more modest regulation than that of the *Programme*. It suggested that Article 14 should be kept exclusively for pre-existing works, and that these should be completely excluded from the "presumption of legitimation." Article 14^{bis} would group all the provisions concerning the cinematographic work itself and the authors of contributions. Paragraph (1) would take over paragraph (2) of the *Programme* without modification. Paragraph (2) would include, in a subparagraph (a), a

rule for determining the ownership of copyright, while a subparagraph (b) would deal with the presumption of legitimation, a subparagraph (c) would contain a provision dealing with written agreements, and a subparagraph (d) would contain a definition of the contrary or special stipulation. Paragraph (3) would contain provisions concerning authors constituting borderline cases between Articles 14 and 14^{bis}.

317. The system proposed by the Working Group was based on the following ideas:

- (i) the presumption should be limited to authors of contributions;
- (ii) the presumption should not apply to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, unless the national legislation provides to the contrary (paragraph (3)). It may be noted that musical works which are not specially created for a cinematographic work will come entirely under the régime of pre-existing works in Article 14;
- (iii) the question who is the owner of copyright in a cinematographic work should (according to paragraph (2)(a)) be a matter for legislation in the country where protection is claimed. This means, for instance, that if protection is claimed in the United Kingdom it is British law which decides who is the owner of the copyright in a cinematographic work, and if protection is claimed in France it is French law which decides the question. It should be added that the provision in paragraph (2)(a) applies not only in cases where copyright as a whole belongs to one particular person but also in cases where only some of the elements of copyright are assigned. Consequently, "*cessio legis*" (legal assignment) is in harmony with the rules in Article 14^{bis};
- (iv) the presumption would apply only in countries which regard authors of contributions as the owners of copyright in the cinematographic work. Hence those countries which use the system of "film copyright" or that of "legal assignment" would fall outside the scope of this application. Nevertheless, the effects of these systems are the same in their application, taken as a whole, as the presumption of legitimation provided for in paragraph (2)(b). It may be added that cinematographic works from the latter countries can be affected by the presumption. If, for example, the cinematographic work of a British maker is exported to France, the maker will benefit in France from the presumption of legitimation, provided the necessary conditions are fulfilled;
- (v) the authors should have undertaken to bring contributions to the making of the cinematographic work;
- (vi) the legislation of the country where the maker has his headquarters or habitual residence should, according to paragraph (2)(c), govern the form of the undertaking. That country may require a written agreement or a written act of the same effect.
- (vii) if the conditions specified above are fulfilled, the authors of contributions may not, in the absence of any con-

trary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of the texts, of the cinematographic work. The formula is the same as that used in the *Programme*;

- (viii) by "contrary or special stipulation" should be understood, according to paragraph (2)(d), any restrictive condition which may be relevant to the undertaking referred to in paragraph (2)(b). This formula is the same, except for some amendments to the wording, as that used in the *Programme*.

318. The Committee began by adopting the proposal of the Working Group. After further discussions, however, it considered that the adopted text would not adequately meet the urgent demands of certain countries. The text of the Working Group was finally adopted but with amendments on two points.

319. The first amendment refers to point (ii) above. The principal director will be placed in the same situation as the authors of scenarios, dialogues and musical works, and will thus not be affected by the presumption, unless the national legislation provides otherwise. It is prescribed, however, that if the legislation of a country does not include the principal director among the authors to whom the presumption applies such country shall be obliged to notify the Director General of the Organization intended to take the place of BIRPI.

320. The second amendment refers to point (vi) above. The Committee started with the idea that the form of the undertaking should be governed by the legislation of the country where protection is claimed, instead of the legislation of the country where the maker has his headquarters or habitual residence. The final decision, reached at the last moment, consisted however in a compromise between the two principles mentioned above: the form of the undertaking should be decided by the law of the country (i) where the maker of the cinematographic work has his headquarters or habitual residence, or (ii) where protection is claimed. The general rule is that the form of the undertaking is governed by the legislation of country (i). There is, however, an exception to that rule, which permits the legislation of country (ii) to make the application of the presumption conditional upon the existence of a written agreement or a written act of the same effect. Countries which avail themselves of such a possibility must notify the Director General of the Organization referred to above. The purpose of the notification is to enable all who are interested to know the countries in which the presumption is subject to a written agreement or a written act of the same effect. It should finally be pointed out that the question which arises concerns only the form of the agreement constituting the basis of the presumption and not the form as a condition of the validity of the agreement in general (authenticated by a notary or in any other form). In other words, the text adopted by the Committee concerns only the question whether or not the form of the undertaking should, for the application of the presumption of legitimation, be in a written agreement or a written act of the same effect.

321. It was further requested that the following clarifications be inserted in the Report. First, the presumption of legitimation prescribed in paragraph (2) is to be mandatory for the countries. It is not possible for those countries of the Union which regard authors of contributions as owners of copyright in the cinematographic work to maintain or introduce legislation that does not include a presumption of legitimation in accordance with Article 14^{bis}(2).

322. Secondly, by "written act of the same effect" is meant a legal instrument in writing defining sufficiently adequately the conditions of the engagement of persons bringing contributions to the making of the cinematographic work. This notion applies, for example, to a collective employment contract or to a general settlement to which those persons have agreed.

323. Thirdly, the presumption of legitimation does not affect the right of the author to obtain remuneration for the exploitation of the cinematographic work. The countries of the Union are therefore free to introduce any system of remuneration they wish: for example, to provide for the benefit of the authors a participation in the receipts resulting from the exploitation of the cinematographic work.

324. And, fourthly, the right of the maker to make, even without the authorization of the authors, changes in the cinematographic work is a matter for national legislation and subject to the interpretation of the agreement between the authors and the maker. The moral rights referred to in Article 6^{bis} of the Convention must, however, be respected.

Article 15(2) (new)

325. As has already been stated above, the Committee decided to insert, on the basis of a proposal submitted by Italy (document S/168) and slightly amended by the Drafting Committee, a provision according to which the person or body corporate whose name appears on a cinematographic work in the customary manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

V. Joint Meetings with Other Committees

Article 25^{ter} (Right of translation) (document S/9)

326. According to Article 8 of the Brussels text, the right of translation enjoyed by the author lasts throughout the term of protection of the original work. However, in accordance with Article 27(2), the countries of the Union could still retain the benefit of reservations formulated previously. One of these reservations maintained in favor of some countries was to apply Article 5 of the Paris text (1896) instead of Article 8 of the Brussels text; this made it possible in certain conditions to respect the right of translation only during a period of ten years from the publication of a work. Article 25(3) of the Brussels text permits countries outside the Union to benefit from this reservation on adhering to the Union.

327. The *Programme* (document S/9, Article 25^{ter}) proposed the deletion of the reservation regarding the right of translation. Questions relating to reservations came within the province of Main Committee IV. A proposal was made by Japan (document S/98) to maintain this reservation. After

asking the opinion of Main Committee I, the majority of whom voted, in conformity with the Japanese proposal, to maintain the reservation in favor not only of Union countries but also of countries acceding to the Stockholm Act, Main Committee IV took its decision on those lines.

328. A proposal having been submitted by Italy in respect of Article 25^{ter}(2)(b) and (c) (documents S/245 and 259), Main Committees I and IV decided at a joint meeting to adopt, in accordance with that proposal, the principle that countries of the Union not availing themselves of the right of reservation in respect of the right of translation shall be entitled to apply the principle of equivalent protection in regard to works having as their country of origin a country which avails itself of that reservation. Nevertheless, this system applies only to cases where the reservation is made by a country outside the Union at the time it adheres to the Union; the principle of reciprocity cannot be applied with regard to countries of the Union already availing themselves of the reservations in question.

VI. Recommendations Expressed by the Committee - Miscellaneous Proposals - Additional Protocols

Extension of the term of protection

329. The Federal Republic of Germany proposed that the Committee adopt the recommendation, for expression by the Conference, that negotiations should be continued between the countries concerned for the conclusion of a special agreement on the extension of the term of protection in countries parties to that agreement (document S/205). This proposal was at first rejected by the Committee, but was then reconsidered and adopted with some amendments proposed by the Drafting Committee (document S/269).

Article 6^{bis} (Deposit of a facsimile of certain works)

330. Austria proposed (document S/147) the insertion in Article 6^{bis} of a new paragraph (4) containing a provision whereby it would be incumbent on the publisher of literary, musical or dramatico-musical works published in a country of the Union to "deposit in the national library or archives of that country a facsimile copy of the earliest and most authentic text or score of the work in the form and version finished and approved by the author." The conditions of the deposit would be a matter for national legislation.

331. After lengthy discussion, the Committee decided to recommend that the International Bureau of the Union should undertake a study of the question in order that consideration may be given to the possibility of including provisions relating thereto in a future revision of the Convention.

Article 17 (Provisions regarding the accessibility of musical works to the public)

332. Israel proposed (document S/223) the insertion of a new paragraph (3) in Article 17 under which it would be a matter for legislation in the countries of the Union to take measures whereby, "when a musical or dramatico-musical work has been made available with the consent of the author

thereof, the graphic copies of the work shall be made accessible to the public without restrictions contrary to fair practice.”

333. On this matter the Committee made the same recommendation as it had done in the case of the Austrian proposal mentioned above.

Copyright in works created on commission or in fulfilment of the author's task as an employee

334. Hungary proposed (document S/196) the insertion in the Convention of a new provision whereby works created on commission or in fulfilment of the author's task as an employee can be used only “for purposes relevant to the employer's own functions and in a manner not prejudicial to the moral rights of the author.”

335. After discussion, the Hungarian Delegation withdrew its proposal, provided that it was recorded in this Report.

Additional Protocol concerning the Protection of the Works of Stateless Persons and Refugees

336. The Programme proposed an Additional Protocol providing that any country of the Union may declare that stateless persons or refugees or both are assimilated to the nationals of that country. This proposal also referred to the provisions regarding ratification or accession.

337. After the Committee had adopted the proposal to provide in Article 4(2) that persons having their habitual residence in a country of the Union should be assimilated to nationals of that country, the proposal to establish an Additional Protocol in respect of stateless persons and refugees became superfluous. The Committee accordingly decided not to adopt the said Protocol.

Additional Protocol concerning the Application of the Convention to the Works of Certain International Organizations

338. Taking its inspiration from the idea underlying Protocol No. 2 annexed to the Universal Copyright Convention, the Programme proposed an Additional Protocol which would make Articles 4, 5 and 6 of the Convention applicable to works first published by the United Nations and by its Specialized Agencies.

339. A proposal submitted by Belgium, Luxembourg and the Netherlands (document S/237) was designed to extend the protection to the works of international intergovernmental organizations that have their headquarters in a country of the Union or whose members are for the greater part countries of the Union.

340. During the discussions in the Committee, it was pointed out that the introduction of such an Additional Protocol was not necessary, since the works of the organizations in question were in any case protected if they were first published in a country of the Union or if their authors were nationals of a country of the Union. The Committee finally rejected the proposal to annex to the Convention an Additional Protocol concerning the works of certain international organizations.

341. The Rapporteur would here like to express his profound gratitude to the Committee's Secretary, Mr. Claude Masouyé (BIRPI), for the untiring assistance and collaboration afforded by him in the drafting of this Report. He would also like to draw attention to the notable spirit of international cooperation with which the deliberations of the Committee have been imbued and which has enabled it to accomplish work of importance for the future of the Convention.

[This Report was unanimously adopted by Main Committee I in its meeting on July 11, 1967.]