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**RECORDS
OF THE INTELLECTUAL
PROPERTY CONFERENCE
OF STOCKHOLM**

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OMPI

EDITOR'S NOTE

These *Records* of the Intellectual Property Conference of Stockholm, 1967, contain all the official documents in relation to the Conference which were issued before and during the Conference. By "official documents" is meant documents which were published by the United International Bureaux for the Protection of Intellectual Property (BIRPI), either in their capacity of organizer of the Conference—in some cases jointly with the Swedish Government—or in their capacity of secretariat of the Conference.

In addition to the official documents issued for the Conference, the present *Records* contain, under the heading "Situation at the Time of the Opening of the Conference (June 11, 1967)," some background material facilitating the understanding of the preparatory documents distributed before the opening of the Conference (also included under the same heading). Such background material consists of the texts of the two Conventions (Paris and Berne) and the five Agreements (Madrid (Trade-marks), Madrid (False Indications), The Hague, Nice and Lisbon) whose revision was one of the tasks of the Conference, as well as the lists of those States which were party to the said Conventions and Agreements at the time the Conference started, that is, on June 11, 1967. Three points should be noted in connection with the texts reprinted under the said heading. The first is that they are reproduced in English only although the authentic version is the French version, the latter being reproduced in the French edition of the present *Records*. The second is that on June 11, 1967, some States were bound, as they still are early in 1970 at the time of writing these lines, by older versions ("Acts") of the Paris or Berne Conventions, or of the two Madrid Agreements or the Hague-Agreement, than the version reproduced here. These older versions are not reproduced here because (subject to what is said below about the Hague Agreement) the basis of the Stockholm revision was only the most recent Acts. Consequently, it is the Acts which were most recent at the time the Conference opened that are reproduced here. The third point to be noted is that one of the Acts reproduced here was not then in force, and still is not in force at the time of publication of the present *Records*. That Act is the 1960 (Hague) Act of the Hague Agreement. The reason for which it is included is that the Complementary Act of Stockholm to the Hague Agreement refers not only to those Acts of that Agreement which are in force (namely, the 1934 Act and the 1961 Additional Act) but also to the 1960 Act.

Among the papers which were issued before the Conference, the present *Records* distinguish between "Preparatory Documents" and "Invitations."

The number of Preparatory Documents is twelve. They contain proposals submitted to the Conference concerning the action it might wish to take. Two of the documents deal with the Berne Convention, two with the Paris Convention, five with each of the five Agreements, one with what has become the Convention Establishing the World Intellectual Property Organization, one with proposals for resolutions on transitional matters, and one with proposals concerning the ceilings of contributions in the Paris and Berne Unions. In connection with these documents—numbered S/1 to S/12 ("S" standing for *Stockholm*)—the following three points deserve special mention. *First*, two of the documents (those dealing with the substantive provisions of the Berne and Paris Conventions, S/1 and S/2) were prepared by the Government of Sweden with the assistance of BIRPI, whereas the other ten were prepared by BIRPI. *Second*, the reason for which there are two documents for the revision of the Berne Convention and two for the revision of the Paris Convention is that one of each pair deals with the provisions relating to substantive law (copyright and indus-

trial property, respectively), whereas the other deals with the administrative provisions and the final clauses. *Third*, the World Intellectual Property Organization is referred to in most of the documents issued during the Conference, as well as in these Preparatory Documents, as "the Intellectual Property Organization (IPO)" since the adjective "World" was adopted by the Conference only in the course of its proceedings.

The items published under "Invitations to the Conference" consist of sample circulars and lists of invited States and organizations to which the circulars were sent. The documents other than the Preparatory Documents are grouped in these *Records* under the title "Conference Documents" since most of them were issued during the Conference. They fall into three subgroups: the "Main Series" (over 300 documents), the "Information Series" and the "Miscellaneous Series" (over 30 and 20 documents, respectively).

These *Records* reproduce the Conference Documents in their numerical order. Each document, as reproduced, is identified first by its number (in bold type), then by its author or originator (in small capitals), and finally by its subject matter (in Roman letters). For example, "S/59 UNITED STATES. Paris Convention" means that the document's number is S/59, that it contains a proposal or comment made by the Government (if filed before the Conference) or the Delegation to the Conference (if filed during the Conference) of the United States of America, and that the proposal or comment relates to the Paris Convention. The date and the original language of each document is not indicated in the place where the document is reprinted but in a separate table appearing on pages 779 to 783. Most documents are reproduced without any omission. However, in cases where the original document repeated long passages of another document, such passages are merely referred to in the version reproduced in these *Records* in the interests of a more economical presentation. Finally, the various lists of participants distributed during the Conference are not reproduced but are all consolidated in a correct and final version appearing under the heading "Participants in the Conference."

The foregoing constitutes Volume I of the *Records*.

Volume II contains the summary minutes, the edited texts of the reports of the five Main Committees of the Conference, and the texts signed or otherwise adopted at the end of the Conference.

The summary minutes were prepared during the Conference, so that the interventions made in English were summarized in English and those made in French were summarized in French. Interventions made in Russian or Spanish were summarized, at the minute writer's convenience, in English or in French. During the Conference—generally two days after each meeting—the minutes were distributed to the participants, who were able to file corrections with the Secretariat. Thus, the minutes reproduced here differ in two respects from the minutes distributed during the Conference: they incorporate any corrections suggested by any participant in his or her own intervention; all passages which, in the original minutes, appeared in French appear here in English translation. These translations were prepared after the Conference under the responsibility of BIRPI.

A report on the work of the five Main Committees was prepared during the Conference by a member of one of the Delegations. Each of the five reports was discussed in and by the competent Main Committee, which then decided on the changes it wished to make. Those changes, as well as some minor purely editorial changes which each Rapporteur was authorized to make by the Main Committee for which he worked, are reflected in the final texts of the Reports as reproduced in these *Records*.

Under the heading "Signed Texts," these *Records* reproduce the instruments that were signed at Stockholm on July 14, 1967, that is, on the last day of the Conference,

which started on June 11, 1967. These texts are: the Convention Establishing the World Intellectual Property Organization, the Stockholm Acts of the Paris and Berne Conventions, the Stockholm Acts (either entire or additional or complementary) of the five Special Agreements under the Paris Convention, and the "Final Act" of the Conference.

The Convention Establishing the World Intellectual Property Organization was signed in four languages: the English and the Russian texts are reproduced here; the French and the Spanish texts are reproduced in the French edition of the present *Records*.

The Stockholm Act of the Berne Convention was signed in English and in French. The English text is reproduced in the present *Records*, whereas the French text is reproduced in the French edition of the present *Records*.

The Acts relating to the Paris Convention and the five Agreements thereunder were signed in French only. These *Records* contain both the French texts and the English translations. The latter were prepared by BIRPI after the Conference in consultation with the Governments of those Member States (if any) whose official language is, or whose official languages include, the English language. It is to be noted that there are some differences between the English translations of the present Stockholm versions published in Volume I of these *Records* and the English translations of the Stockholm texts published in Volume II, even in connection with passages the French version of which was not changed by the Stockholm Conference. The differences are due to an effort to render the French original more faithfully than did the English translations in use before the Stockholm Conference.

Thus, it is to be noted that the texts published under the heading "Signed Texts" contain, as far as the Paris Convention and the Agreements thereunder are concerned, not only the signed (French) texts but also their English translations, which were not signed.

As far as all signed texts are concerned, it is to be noted that in the present *Records* obvious mistakes of transcription were corrected. These mistakes are specified or appear in the certified copies which were sent to the Governments of all States invited to the Stockholm Conference and which may be ordered from the World Intellectual Property Organization.

Finally, the *Records* contain the two Decisions and the four Recommendations which the competent organs of the Stockholm Conference adopted in addition to the texts signed.

It is to be noted that the present *Records* are published also in French.

Geneva, 1971.

Furthermore, the hesitation which characterized the attitude of the 1965 Committee of Governmental Experts towards the solutions presented or suggested has provided sufficient reason for believing that none of them would be likely to solve the problem completely or to win general support.

In drawing up the Programme of the Conference, it was felt that none of these proposals could be considered as acceptable, for the above-stated reasons. After further study of the questions relating to moral rights in cinematographic works, it appeared that the settlement of this problem should not be undertaken within the framework of the Convention. It has therefore not been considered necessary to include any proposals on this point in the Programme of the Conference.

ARTICLES 21 TO 31¹

Programme of the Conference. As indicated above (see p. 12), the Stockholm Conference might also have to consider the question of a structural and administrative reform of the Union. The adoption of any such reform would involve amendments to Articles 21 to 31 of the Convention, i.e., the administrative provisions and the final clauses.

The proposals in this connection would be the subject of a separate Programme, and reference should be made on this point to the documentation which will be submitted later. This documentation cannot be prepared, however, before consulting the Second Committee of Governmental Experts on Administration and Structure, which will meet in May 1966 to examine, in connection with the proposals for a structural and administrative reorganization of the Berne Union (and the Paris Union), proposals concerning the administrative provisions (Articles 21 to 24) and the final clauses (Articles 25 to 31) of the Convention.

IV. DRAFT PROTOCOL REGARDING DEVELOPING COUNTRIES

During the preparatory work, one of the most important tasks of the Revision Conference was considered to be the establishment of rules for the benefit of developing countries. In 1964, the Study Group proposed provisions to that effect in a new Article 25 bis, giving these countries the right to make reservations with respect to the provisions of the Convention on certain points. The 1965 Committee of Governmental Experts approved the substance of the provisions presented. It was suggested, however, within the Committee, that these provisions should not be inserted in the Convention itself but should be the subject of a Protocol annexed to it. Accordingly, when the Programme of the Conference was drawn up, it was considered advisable to adopt this procedure. The texts proposed for the benefit of developing countries have therefore been incorporated in this Protocol. Reference would be made in the final clauses of the Convention to the fact that this instrument forms an integral part of the Convention.

Preparatory Work. In its 1964 Report, the Study Group pointed out that special provisions for the benefit of developing countries had been called for on several occasions, notably in the following circumstances:

(1) The African Study Meeting on Copyright, held at Brazzaville in August, 1963, recommended, among other things, that in the course of the preparations for the Stockholm Conference the following should be considered: (i) a review of Article 7 concerning the term of protection, with a view to the reduction of this term; (ii) the amendment of Article 20, with a view to making possible bilateral agreements promoting exchanges, in derogation of the present text of that provision; and (iii) the inclusion of special provisions safeguarding, on the one hand, the interests of African countries in respect of their own folklore, and permitting, on the other hand, the free use of protected works for educational and scholastic purposes.

(2) The 1963 Committee of Experts hoped that these questions would be examined by the Study Group or by a special expert committee to be convened for that purpose.

(3) At their joint session in New Delhi in December 1963, the Permanent Committee and the International Copyright Committee, having heard the proposals of the Indian delegation that there should be a study of the possibility (a) of introducing into the Conventions the right of member countries to grant compulsory licences for the reproduction of copyright works for educational purposes, and (b) of introducing into the Berne Convention provisions relating to translation, similar to those in the Universal Copyright Convention, invited the Secretariats to make a study of these questions and report on them to the next joint session of the Committees.

(4) Some non-governmental international organizations also expressed the hope that the developing countries would be able to organize protection on a lower level than that provided by the Brussels text of the Berne Convention.

The Study Group was of the opinion that rules satisfying the wishes thus expressed should be inserted in the Convention and, to that end, proposed to include them in a new Article 25bis, worded as follows:

"(1) Any country which desires to accede to this Convention but which, with regard to its economic situation and its social needs, does not consider itself immediately in a position to make provision for the protection of all the rights forming the object of this Convention, may, by a notification deposited with the at the time of accession, declare that it will, for a period of ten years from the accession,

(a) substitute for Article 8 of this Convention the provisions of Article 5 of the Convention as revised in Paris in 1896, on the understanding that those provisions shall apply only to translations into the language or languages of that country;

(b) substitute for Article 7 of this Convention the provisions of Article 7 of the Convention as revised in Rome in 1928;

¹ No amendments are proposed for Articles 14bis to 20.

- (c) substitute for Article 11*bis*, paragraphs (1) and (2), of this Convention the provisions of Article 11*bis* of the Convention as revised in Rome in 1928;
- (d) reserve to itself to determine the regulations for the protection of works covered by this Convention when such works are used for exclusively educational or scholastic purposes;
- (e) reserve the right to make arrangements in derogation of Article 20 of this Convention.

A country may avail itself of one, several or all of the reservations provided above.

(2) If a country, which has made reservations in accordance with paragraph (1), at the end of the period of ten years prescribed therein, with regard to its economic situation and social needs, still does not consider itself in a position to make provision for the protection of all the rights forming the object of this Convention, such country may, by a notification deposited with the before the end of the above-mentioned period, declare that it will maintain for a new period of ten years, one, several or all of the reservations made by the country.

(3) If a country, which has made reservations in accordance with paragraphs (1) or (2), in the course of a current period, would come in such a position that it does no longer need the reservations made, or one or several of them, the country shall, by a notification deposited with the withdraw the reservation of which it has no need.

(4) All notifications given to the in accordance with the provisions of paragraphs (1), (2) and (3) of this Article shall be communicated by the to all the countries of the Union."

The Study Group emphasized that the majority of those concerned had admitted that exceptional measures for the benefit of developing countries were in principle justified. The objection had of course been made that if those countries found themselves unable to organize protection as effective as accession to the Berne Convention would imply, they ought to become parties to the Universal Copyright Convention, instead of the Berne Convention. There was no doubt, however, that the adoption by the developing countries of copyright legislation within the framework of the Berne Convention would be of considerable advantage to the authors. Conditions in several of these countries would certainly eventually improve and one of the consequences of this development would be the increasing exploitation of literary and artistic works. In these circumstances, it would naturally be to the authors' advantage if the protection granted to them had been organized from the start on the pattern of the Berne Convention.

As for the placing and general structure of the proposed provisions, the Study Group chose to adopt a system entitling those countries to make reservations, within limits, with respect to some of the rules of the Convention. This solution owed its inspiration to the fact that the Convention already contains a provision allowing for national reservations, which was of course designed especially for the benefit of the less developed countries. The provision in question is contained in Article 25, paragraph (3), which offers the possibility of making reservations with respect to the right of translation.

The Study Group thought it desirable that the new provisions should operate only for the benefit of developing countries. It found it difficult however to establish criteria suitable for defining objectively the countries coming within this category. It consequently proposed that each country should be left free to decide whether its stage of development allowed it to take advantage of the right of reservation. It seemed possible, up to a point, to invoke, by way of a precedent, the provision in Article 23 concerning the right granted to each country of the Union to choose the contribution class in which it wishes to be placed.

The reservations would be valid for ten years and could be extended for a further period of ten years. The question whether the reservations might be extended beyond that date would have to be settled by the Revision Conference after the one held at Stockholm. Furthermore, a reservation might be withdrawn when the country availing itself of such reservation considered that it no longer had any need of it.

The Study Group made the following comments on the proposed reservations:

(a) The first of these reservations would correspond to the provision in Article 25, paragraph (3), on the right of translation. No alteration has been made to the wording of the Brussels text. The fact that the provision has changed its place, however, means that the right of reservation would be more restricted than hitherto, because the new Article would only operate in favour of developing countries. In this respect, the proposal submitted represents a strengthening of copyright.

(b) The second possible reservation would concern the term of protection. On this point, the Brussels text fixes a compulsory minimum of fifty years from the date of the author's death. This stipulation was considered to be too rigid for developing countries, and the proposal submitted would offer them the possibility of substituting for it the Rome text, which contains no compulsory provisions on the term of protection.

(c) The third reservation would concern the right of radiodiffusion. This prerogative was extended at the Brussels Conference, so that its scope is now very considerable. It applies, for instance, to the use of receiving sets in cafes, etc. It was considered reasonable to grant to developing countries the possibility of applying the rules of the Rome text here, instead of those of the Brussels text, that is to say, to give them the possibility of protecting this right within the limits which were considered adequate for industrialized countries between 1930 and 1940.

(d) The fourth reservation would concern the right to limit copyright in cases where a work is used for educational or scholastic purposes. Developing countries seem to attach great importance to the possibility of reserving to themselves the right to determine their own national regulations in such cases.

(e) The fifth reservation would relate to the right of developing countries to make between each other regional arrangements in the field of copyright. According to Article 20, regional arrangements can only be made on condition that they confer upon authors more extended rights than those granted by the Convention. However, the developing countries expressed the wish to be given the right to make arrangements between each other, even if the above condition were not fulfilled. The proposed text is intended to offer them this possibility.

Finally, with regard to *folklore*, the Study Group did not propose any special rules. Indeed, as pointed out by the Brazzaville Meeting, the best means of protecting the integrity of this heritage known as *folklore* would be the adoption by African States of appropriate legislation to prevent its exploitation to the detriment of the African communities. The Study Group shared this opinion and ventured to point out that, even although there are no special provisions on folklore in the Berne Convention, it is clear that the latter puts no obstacles in the way of national legislation on the subject. It recalled that some countries of the Union had introduced protection of classical works, without taking their stand on the Convention.

At the 1965 Committee of Governmental Experts, the subject was opened by a general discussion during which several delegations representing developed and developing countries expressed their warm sympathy with any measures taken for the benefit of the developing countries and with the general idea which had formed the basis of the Study Group's proposals. One delegation expressed its preference for the drafting of a Protocol to be annexed to the Convention; but this suggestion was not adopted by the Committee. Two delegations pointed out that it was important, whatever the circumstances, to avoid establishing a system of protection in the Convention that was inferior to that provided at present by the Universal Copyright Convention. It was observed, in particular, with regard to the Universal Copyright Convention, that the relations governed by that international instrument, and indeed its whole future, must not be jeopardized, even indirectly. Some delegations from developing countries stressed how important it was for the future of the Berne Union that special measures should be adopted to meet the wishes and aspirations of these countries.

The Committee was then presented with a proposal from six developing countries (hereinafter called the "joint proposal"), submitting a new wording for Article 25*bis*. Although based on the text presented by the Study Group, the new wording differed from it on a number of points. It seemed to the Committee that the various questions posed by Article 25*bis* should be clearly distinguished: (1) the criterion of beneficiaries; (2) the data on which a country might base its claim to make reservations; (3) the time when countries would be able to make reservations; (4) the period during which such reservations would be valid; and (5) the nature of the reservations themselves.

(1) With regard to the criterion of beneficiaries, the joint proposal stipulated that "Any country of the Union may, having regard to its economic, scientific, social and cultural needs, declare at any time" that a given reservation will apply. It was emphasized that it was important not to limit the possibility of making reservations to countries which would accede in the future to the Convention. The Study Group pointed out, however, that adherence "to the present Convention," in the form of ratification or accession, meant accession to the Stockholm text.

Some delegations suggested that the opinion of the Permanent Committee should be sought, in order to determine which countries might avail themselves of the right to make reservations instituted under Article 25*bis*. Other delegations felt that this solution could not be accepted, in view of the legal and practical difficulties involved. The Committee then agreed that the text of Article 25*bis* should start with the words: "Any developing country..."

(2) In order to determine the characteristics of the *data* on which a country might base its claim to make reservations, the Committee accepted a proposal to add to the text of the Study Group the notion of cultural needs. The expression "having regard to its economic situation and its social or cultural needs" was then adopted.

(3) As for the *time* when the country concerned should avail itself of the right to make reservations, the aim of the joint proposal was to make this possible "at any time," in order to avoid the need for the countries concerned to avail themselves of all the reservations *en bloc*, at the moment of ratification or accession, without having time to make a selection. One delegation, recalling the confusion that had resulted in practice from the use of the expression "at any time" in the Rome Convention on neighbouring rights, stressed the need, especially for authors or their legal representatives and assignees, to have legal assurance as to the scope of their rights in the countries in question.

The Committee rejected the joint proposal on this point and expressed its preference for the Study Group's text which stipulated that the right to make reservations should be exercised at the time of ratification or accession.

(4) As regards the *period* during which the reservations would be valid, the joint proposal had nothing to say, whereas the Study Group's text provided for a period of ten years. The Committee expressed its preference for this text.

The Study Group had proposed that this ten-year period should be renewable once; that is to say, the maximum duration would be twenty years. The Committee adopted the proposal that the second period should extend until the entry into force of the text of the Convention to be adopted by the next Revision Conference after Stockholm.

(5) As for the *nature of the reservations* which the countries concerned could avail themselves of, the text of the Study Group provided for five categories concerning, respectively, the right of translation, the right of protection, the right of radiodiffusion, the use of works for educational or scholastic purposes, and special arrangements. The aim of the joint proposal was to add to the fourth category a provision on the right of reproduction.

(a) The reservation concerning the *right of translation*, which would also cover dramatic and dramatico-musical works, according to the joint proposal, was received favourably by the Committee. However, the Study Group was asked to examine the relationship with the Universal Copyright Convention as regards the right of translation (Article V), so that the reservation introduced into the Convention would not result in a level of protection inferior to that of the Universal Convention.

(b) Two delegations made the same remark regarding the reservation relating to the *term of protection*, in order to avoid a system that would be inferior to that of the Universal Convention (Article IV). The Committee agreed with these remarks and asked the Study Group to examine the possibility of submitting alternatives for the right of translation and the term of protection.

(c) The Committee made no comments on the reservation concerning the *right of radiodiffusion*, which also includes television.

(d) As to the reservation concerning the *use of literary and artistic works for educational or scholastic purposes*, the joint proposal suggested that the expression "for educational, scientific and cultural purposes" should be used. Some delegations observed that the adjective "cultural" was much too wide and indefinite in scope. The Committee therefore rejected the word "cultural" and accepted "scholastic."

The joint proposal suggested the introduction of an additional reservation: "the right to permit reproduction of literary and artistic works for exclusive use in its territory on payment of just remuneration to be fixed, failing agreement with the author, by its competent authority." Two delegations were categorically opposed to the introduction of such a reservation. Another delegation

emphasized the difficulty of verifying whether the uses were made exclusively on the territory concerned. Yet another drew attention to the reproduction of works, not only in the local languages of the country (dialects and others), but also in the language generally spoken.

Recalling the work of the Permanent Committee in New Delhi (1963), it was pointed out during the discussion that such a right with respect to reproduction ought not to be general in scope but should refer to certain works used for specific purposes. It was proposed that this reservation, as presented in the joint proposal, should be removed from Article 25*bis* and the following words should be added to the preceding reservation on the restriction of protection: "including the right to permit their reproduction on payment of just remuneration to be fixed, failing agreement with the author, by its competent authority."

However, the Committee finally expressed its preference for a general formula, couched in the following terms: "the right, for exclusively educational, scientific or scholastic purposes, to restrict the protection of literary and artistic works."

(e) With regard to *special arrangements*, the joint proposal had suggested that countries fulfilling the conditions of the proposed Article 25*bis* should have the right to make such arrangements with any other country of the Union, in derogation of Article 20 of the Convention. Some delegations observed, on the one hand, that the right to make arrangements could only operate between countries making reservations and, on the other hand, that it would be difficult, at the risk of throwing the Convention out of balance, to permit arrangements with any country whatsoever. One delegation proposed to grant to countries making reservations the right to make regional arrangements, in derogation of Article 20 of the Convention, with other countries applying the provisions of the Article in question and without prejudicing the obligations of other countries of the Union.

The delegation of one developing country proposed drafting the text as follows: "reserve the right to make arrangements with any other country of the Union in derogation of Article 20 of this Convention, on condition that the arrangement concerns solely works the country of origin of which is a country party to that arrangement and relates only to the reservations mentioned above, such condition being operative only if a developed country is party to the said arrangement." Other delegations emphasized that it was only necessary for developing countries to have the right to make bilateral agreements if these countries felt they needed such agreements to enable them to descend even further below the levels fixed by the various reservations. After a lengthy discussion, the last-mentioned text was adopted by the Committee.

The other provisions of Article 25*bis*, as presented by the Study Group, gave rise to no comments and the Committee adopted this Article in the following terms:

"(1) Any developing country which ratifies this Convention or accedes to it and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights forming the object of this Convention, may, by a notification deposited with the at the time of ratification or accession, declare that it will, for a period of ten years from the ratification or accession,

(a) substitute for Article 8 of this Convention the provisions of Article 5 of the Convention as revised in Paris in 1896, in respect of translations into the language or languages of that country, and apply the same provisions to the translations referred to in paragraph (2) of Article 11;

(Alternative: text based on Article V of the Universal Copyright Convention.)

(b) substitute for Article 7 of this Convention the provisions of Article 7 of the Convention as revised in Rome in 1928;

(Alternative: text based on Article IV of the Universal Copyright Convention.)

(c) substitute for Article 11*bis* paragraphs (1) and (2), of this Convention the provisions of Article 11*bis* of the Convention as revised in Rome in 1928;

(d) reserve the right, for exclusively educational, scientific or scholastic purposes, to restrict the protection of literary and artistic works;

(e) reserve the right to make arrangements with any other country of the Union in derogation of Article 20 of this Convention, on condition that the arrangement concerns solely works the country of origin of which is a country party to that arrangement and relates only to the reservations mentioned above, such condition being operative only if a developed country is party to the said arrangement.

Any country fulfilling the conditions referred to above may avail itself of one, several or all of the reservations provided above.

(2) If a country, which has made reservations in accordance with paragraph (1), at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to make provision for the protection of all the rights forming the object of this Convention, such country may, by a notification deposited with the before the end of the above-mentioned period, declare that it will maintain, until the entry into force of the text of this Convention adopted by the next Revision Conference, one, several or all of the reservations made by the country.

(3) If a country, which has made reservations in accordance with paragraphs (1) or (2), finds itself, in the course of a current period, in such a position that it has no longer need of the reservations made, or of one or several of them, the country shall, by a notification deposited with the, withdraw the reservation of which it has no need.

(4) All notifications given to the in accordance with the provisions of paragraphs (1), (2) and (3) of this Article shall be communicated by the to all the countries of the Union.¹⁹

After this decision, one delegation representing a developing country presented a declaration regretting that the text adopted for Article 25bis by the Committee limited the scope of arrangements to the reservations expressly mentioned. It suggested deleting this limitation and reserved the right to take up the question again at the Revision Conference. The delegation also expressed the wish that the Study Group would examine the possibility of restoring, in the form of a reservation in Article 25bis, the existing text of Article 9, paragraph (2), and extending it to the right of translation, in view of the interest which developing countries had in being able to have articles on current economic, political or religious topics translated and reproduced by the press.

Programme of the Conference. The desire for special rules for the benefit of developing countries, which has been expressed on many sides in recent years, is founded on the need to allow exceptions to copyright protection — at least for an interim period — to facilitate cultural, social and educational expansion in these countries. On the basis of the proposal presented by the Study Group, the 1965 Committee of Governmental Experts devoted lengthy discussions to the problem as a whole.

No great objection was made to the incorporation of rules of exception in the system of protection under the Convention. The debate was concerned rather with the manner in which these rules ought to be drafted. The questions discussed were of considerable complexity and subject to controversy. It was obvious, however, that there was a strong desire on the part of the Committee to reach compromise solutions acceptable to all. In these circumstances, it was felt that the Committee's recommendations should form the basis of the regulations now proposed in the Programme of the Conference. Amendments have been made to some points only.

First, as regards the *place* where these rules should be inserted, the Committee had proposed that they form the subject of a new Article in the Convention. When drawing up the Programme of the Conference, however, it was decided, in response to a wish expressed within the Committee, that it would be more appropriate to place these rules in a Protocol annexed to the Convention, especially as they were to be in force for an interim period only and were not intended to be incorporated permanently in the system of protection provided by the Convention. Besides, the rules are fairly extensive and, for purely stylistic reasons, it seemed advisable not to make the text of the Convention unnecessarily unwieldy. In order to provide a link with the Convention itself, however, the final clauses of the Convention would refer to the Protocol, stating that it formed an integral part of the Convention. This would be stated in an Article numbered 20bis in the present proposals relating to the final clauses (see, *supra*, p. 66).

With regard to the *drafting* of the special provisions, the said Committee approved the proposal for exceptions under (a) (translation) and (b) (term of protection), but recommended that developing countries

should be offered the alternative of adopting rules which corresponded to those in force for similar cases in the Universal Copyright Convention. The Committee also approved the proposal that these special provisions should not result in a level of protection inferior to that of the Universal Convention.

In the case of the exception under (a) (*translation*), it was felt that the provisions proposed by the Study Group and approved by the Committee (provisions which corresponded to those of Article 25, paragraph (3), of the Berne Convention) would in fact offer less protection than the system provided by the Universal Copyright Convention. It was therefore considered advisable to propose the adoption of that system in the Programme of the Conference rather than the above-mentioned provisions of the Berne Convention. The Programme therefore provides the developing countries concerned with the possibility of substituting for Article 8 of the Convention (Stockholm text) provisions identical to those relating to the right of translation in the Universal Copyright Convention (Article V).

In the case of the exception under (b) (*term of protection*), it was also felt that the provisions proposed by the Study Group and approved by the Committee (which would offer to developing countries the possibility of substituting for Article 7 of the Convention in the Stockholm text the provisions of Article 7 in the Rome text) might offer less protection than that provided by the Universal Copyright Convention. The Programme proposes therefore to allow the developing countries concerned to adopt, in principle, the term of protection provided under that Convention. According to the provision presented, a developing country may stipulate a shorter term than that of fifty years or, in some cases, twenty-five years, referred to in Article 7 of the Convention, but these terms must not be less, respectively, than the terms of twenty-five and ten years fixed by the Universal Convention (Article IV). As for the dates from which these terms and other conditions are to be calculated, the rules provided under Article 7 of the Convention shall apply.

In the case of the exceptions under (c) (*radio-diffusion*, etc.) and (d) (*for exclusively educational, scientific or scholastic purposes*), the Committee's proposal has been adopted without change in the Programme of the Conference.

The exception mentioned under (e) of the Committee's proposal, concerning the right of developing countries to make *special arrangements* in derogation of Article 20 of the Convention, was greeted with some reticence when the Programme of the Conference was being drawn up. The arrangements in question would be made between countries of the Union which limit the protection of copyright in various respects. From the technical angle, these arrangements may be classified in two categories: those providing for limitations on copyright protection permissible under the Convention or the proposed Protocol, and those intended to provide for wider restrictions. Arrangements such as those in the first category, which will probably be most frequent, must of course be allowed, but they need no special support other than that given by Article 20 of the Convention. Arrangements respecting the provisions of the Convention cannot, indeed, be regarded as "contrary to the Convention" within the meaning of that Article, in view of the fact that the Protocol will form an integral part of the Convention. As regards the second category — arrangements restricting protection beyond the limits of the Convention and the Protocol — it should be observed that such arrangements could lower copyright protection to any level whatsoever and might even abolish it completely in the case of those works to which they referred. In drawing up the Programme of the Conference, it was regarded as impossible to permit such arrangements.

It follows therefore that, on the one hand, exceptions concerning special arrangements are not necessary in the case of arrangements including only such restrictions as are permitted by the Convention and the Protocol and that, on the other hand, they are unacceptable in the case of arrangements including wider restrictions. For these reasons, the exception proposed under (e) does not figure in the Programme of the Conference.

The exceptions suggested under (a), (b), (c) and (d) of the Committee's proposal have therefore been adopted and it is further proposed — subject to approval by the Conference of the proposal to delete the provisions of Article 9, paragraph (2), concerning the right freely to reproduce press articles (see p. 44) — to grant to developing countries which will accede to the Stockholm text, or will ratify it, the right to continue to apply these provisions although they have been removed from the Convention. Recommendations to that effect were put forward to the 1965 Committee. In support of these recommendations, it should be pointed out that a country which is already a member of the Union (by accession to the Brussels text or an older text) is entitled to apply the provisions concerned and will continue to possess this right until it

accedes to the future Stockholm text, a state of affairs which of course might sometimes last for a long time. After the entry into force of the Stockholm text, a non-member country of the Union may not, on the other hand, adhere to the Union by any other means than by accession to that text. It seems to be an anomaly that the older countries of the Union, including several which are highly developed countries, should be able to apply the provisions concerning excerpts from press articles, long after the Stockholm Conference, while new members of the Union would be deprived of this possibility. For that reason, it was felt that it would be only fair to respond to the wishes expressed and provide, in the Programme of the Conference, for the possibility of a reservation in this respect. The right to reproduce press articles also includes the right to reproduce them in the form of translations.

In the Protocol proposed in the Programme of the Conference, the reservations have been inserted in the following order: (a) translation, (b) term of protection, (c) press articles, (d) radiodiffusion, etc., (e) for exclusively educational, scientific or scholastic purposes.

As regards the *time* when developing countries, so desiring, may avail themselves of the said reservations, the Programme of the Conference has adopted the Study Group's text, which had won the preference of the Committee and which stipulates that reservations should be made at the time of ratification or accession.

Lastly, as regards the *period* during which the reservations would be valid, the Programme of the Conference has also adopted the Committee's proposal, whereby, at the expiration of a first ten-year period during which the country concerned is party to the new text of the Convention (Stockholm Act), that country has the right to maintain any or all of the reservations it has made, until the entry into force of the Act adopted by the Revision Conference following that of Stockholm. If, of course, during these periods, any such country considers that it no longer requires to maintain any or all of the reservations it has made, that country may withdraw the said reservation or reservations. This is the proposal presented by the Programme of the Conference in the Protocol Regarding Developing Countries.

During the preparatory work, it was emphasized on several occasions that the developing countries were very anxious to be able to apply the special régime instituted in their favour as soon as possible after the adoption of the new revised text, irrespective of the ratification of or accession to the other provisions of the Convention. Various proposals were made in this connection but it became obvious during the deliberations of the 1965 Committee of Governmental Experts that the problem was not an easy one and the Committee asked the Study Group to examine ways and means of accelerating the implementation of the measures proposed for the benefit of the developing countries.

In drawing up the Programme of the Conference, it was felt that the solution to the problem was linked up essentially with the final clauses of the Convention and that the provisions proposed in this respect should be included in these final clauses. In view of the fact that these clauses are still to be the subject of very careful study (see, *supra*, p. 66), the Programme does not for the moment contain any proposals concerning the immediate or advance application of the Protocol Regarding Developing Countries. This question will be studied at a later date.

Protocol Regarding Developing Countries

BRUSSELS TEXT

PROPOSED TEXT

(See Annex II, pages 95 and 96.)

V. DRAFT ADDITIONAL PROTOCOL CONCERNING THE PROTECTION OF THE WORKS OF STATELESS PERSONS AND REFUGEES

Programme of the Conference. As indicated in connection with Article 4, paragraph (2), the Study Group had proposed in its 1963 and 1964 reports that stateless persons and refugees having their habitual residence in one of the countries of the Union should be assimilated to nationals of that country, for the purposes of the Convention. The 1965 Committee of Governmental Experts recommended that the provisions on this subject should be transferred to an Additional Protocol so that their application would be optional. When the Programme of the Conference was drawn up, this was considered to be the most appropriate solution.

The proposed Additional Protocol contains, therefore, a rule in Article 1 with respect to assimilation. Article 2 stipulates, in accordance with a suggestion made to the 1965 Committee of Governmental Experts, that countries of the Union may, at the time of deposit of their instrument of ratification or accession, declare that they intend to apply the provisions of the Protocol only to stateless persons, or only to refugees. Article 3 of the Protocol will contain the provisions concerning its ratification, or accession to it, by countries of the Union, as well as other final clauses. The proposals concerning these clauses will be presented later in a separate document (see, *supra*, p. 12).

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

BRUSSELS TEXT

PROPOSED TEXT

(See Annex III, page 97.)

ANNEX II

PROTOCOL REGARDING DEVELOPING COUNTRIES

Article 1

Any developing country which ratifies or accedes to the Act to which this Protocol is annexed and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided in the Act, may, by a notification deposited with the¹, at the time of ratification or accession, comprising Article 20bis,² of the Act declare that it will, for a period of the first ten years during which it is a party thereto, avail itself of any or all of the following reservations:

(a) substitute for Article 8 of this Convention the following provisions: if, after the expiration of a period of seven years from the date of the first publication of a literary, scientific or artistic work, a translation of such work has not been published into the national language or languages of that country by the owner of the right of translation or with his authorization, any national of such country may obtain a non-exclusive licence from the competent authority to translate the work and publish the work so translated in any of the national languages in which it has not been published; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A licence may also be granted on the same conditions if all previous editions of a translation in such language are out of print.

If the owner of the right of translation cannot be found, then the applicant for a licence shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the government of that country. The licence shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

Due provision shall be made by domestic legislation to assure to the owner of the right of translation a compensation which is just and conforms to international standards, to assure payment and transmittal of such compensation, and to assure a correct translation of the work.

The original title and the name of the author of the work shall be printed on all copies of the published translation. The licence shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union if one of the national languages of such other country is the same language as that into which the work has been so translated, and if the domestic law in such other country makes provision for such licences and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements. The licence shall not be transferred by the licensee.

The licence shall not be granted when the author has withdrawn from circulation all copies of the work;

(b) substitute for the term of fifty years referred to in paragraphs (1), (2) and (3) of Article 7 of this Convention a different term, provided that it shall not be less than twenty-five years; and substitute for the term of twenty-five years referred to in paragraph (4) of the said Article a different term, provided that it shall not be less than ten years;

¹ See footnote on p. 83.

² See footnote on p. 72.

- (c) reserve the right to apply the provisions of paragraph (2) of Article 9 of the Convention as revised at Brussels in 1948;
- (d) substitute for paragraphs (1) and (2) of Article 11*bis* of this Convention the provisions of Article 11*bis* of the Convention as revised at Rome in 1928;
- (e) reserve the right, for exclusively educational, scientific or scholastic purposes, to restrict the protection of literary and artistic works.
- Any country fulfilling the conditions referred to above may avail itself of one, several or all of the reservations provided above.

Article 2

A country, which has made reservations in accordance with Article 1, and which at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to make provision for the protection of all the rights forming the object of the Act, may, by a notification deposited with the¹, before the end of the above-mentioned period, declare that it will maintain, until the entry into force of the Act adopted by the next Revision Conference, any or all of the reservations made by the country.

Article 3

A country which no longer needs to maintain any or all of the reservations made in accordance with Article 1 or 2 shall withdraw such reservation or reservations by notification deposited with the¹.

ANNEX III

ADDITIONAL PROTOCOL TO THE BERNE CONVENTION as revised at Stockholm on July . . ., 1967, concerning the protection of the works of stateless persons and refugees

The countries of the Union becoming parties to this Protocol have agreed to the following provisions:

Article 1

Stateless persons and refugees having their habitual residence in one of the countries of the Union shall, for the purposes of the Convention as revised at Stockholm on July . . ., 1967, be assimilated to the nationals of that country.

Article 2

Any country may, at the time of deposit of its instrument of ratification or accession, declare that it shall apply the provisions of this Protocol only to stateless persons, or only to refugees.

Article 3¹

¹ This Article would contain final clauses, stipulating in particular that any country having signed this Protocol may ratify it and that any country member of the Union not having signed this Protocol, as well as any country not member of the Union but acceding to the Convention as revised at Stockholm, may accede to this Protocol. The proposals relating to these final clauses will be presented at a later date.

¹ See footnote on p. 83.