

**WORLD INTELLECTUAL
PROPERTY ORGANIZATION
(WIPO)**

**RECORDS
OF THE
DIPLOMATIC CONFERENCE
FOR THE REVISION
OF THE BERNE CONVENTION**

(Paris, July 5 to 24, 1971)

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168. Mr. CHAUDHURI (India) proposed that the words "could be interpreted" in paragraph 3 of the report be replaced by "should be considered".

169. *It was so decided.*

170.1 Mr. HUNEUS (Chile) said that he regretted that the German Democratic Republic had not been invited to take part in the Conference although it was a Member country of the Berne Union and completely up to date in the payment of its contributions. The Delegate of Chile asked that his statement should be included in the General Report; although the Report had already been approved, all that was necessary was to insert the name of Chile in paragraph 4 of the Report.

170.2 Furthermore, the Delegation of Chile considered that the Government of the People's Republic of China was alone competent to send a delegation representing China to the Conference.

171. Mr. CHAUDHURI (India) associated himself with the views expressed by the Delegate of Chile, and requested that a statement to that effect be included in the General Report of the Conference.

172. The SECRETARY GENERAL said that, after the second meeting of the Credentials Committee, the Secretariat, as instructed, had contacted the three Delegations which had not yet deposited their credentials. The Delegation of Bulgaria had announced that it was authorized to attend the Conference for the Revision of the Universal Convention solely in the capacity of observer; the Delegations of Turkey and Uruguay hoped to be able to hand credentials in due form to the Secretariat before the end of the Conference.

173. *The Plenary Assembly of the Conference took note of the Second Report of the Credentials Committee.*

CLOSURE OF THE CONFERENCE

174.1 The CHAIRMAN said that, with the termination of the Diplomatic Conference for the Revision of the Berne Convention, he would like to pay special tribute to those who

had participated in the 1967 Stockholm Conference. The creation of the World Intellectual Property Organization (WIPO), the revision of the provisions governing the Berne Union, and the measures taken in favor of the developing countries were major events which would always be associated with the name of the capital of Sweden where the text whose major guidelines had directed the work of revision at the present Conference had been established.

174.2 The principal objective of the work of revision had been attained: the developing countries now had the possibility either of leaving the Union without being subject to sanctions or of taking advantage of the privileged treatment adapted to their needs.

174.3 A particular tribute should be paid to those developing countries which had been members of the Berne Union for a long time and had endeavoured at the same time to place intellectual values above purely material considerations. Their efforts had enabled them to acquire an intellectual heritage of the utmost value, which gave them a high reputation throughout the world. He was convinced that their example would be followed by other States which preferred a valuable national cultural heritage to the sometimes sterilizing importation of foreign works. Thus, as their development progressed, the Berne Union should prove increasingly attractive to those countries which had initially acceded only to the Universal Copyright Convention.

174.4 The Chairman thanked all those who had helped to ensure the smooth progress of the Conference's work and, in particular, the Chairman of the Main Commission, the Chairman of the Drafting Committee, the Rapporteur General and the Secretary General of the Conference.

174.5 In conclusion, he expressed the hope that the young World Intellectual Property Organization, in close collaboration with Unesco, would strive to ensure the application of the principles of the Union for the benefit of the creation of cultural works and hence for the benefit of the peoples to whom those works were addressed.

The meeting rose at 4.30 p.m.

MAIN COMMISSION

Chairman: Mr. Eugen ULMER (Germany (Federal Republic of))

Rapporteur General: Mr. Ousmane GOUNDIAM (Senegal)

Secretary General: Mr. Claude MASOUVÉ (WIPO)

FIRST MEETING

Monday, July 12, 1971, 11.50 a.m.

ORGANIZATION OF WORK OF THE MAIN COMMISSION

175.1 The CHAIRMAN thanked his colleagues for the honor done to him in appointing him to direct the work of the Main Commission. The Commission's task had been greatly facilitated by the excellent preparatory work carried out by the International Bureau of WIPO on the basis of the proposals of the Permanent Committee. The Main Commission could also take advantage of the recent discussions in the Main Commission of the Conference for the Revision of the Universal Copyright Convention.

175.2 With regard to the work of the Drafting Committee elected during the first plenary meeting (*see* Summary Minutes, paragraphs 34 to 41), he proposed that the members of the Drafting Committee of the Conference for the Revision of the Universal Copyright Convention as well as the Delegation of India, which had requested to do so, should be permitted to attend the meetings of the Committee.

176. *It was so decided.*

STATEMENT ON FOLKLORE BY THE OBSERVER FOR BOLIVIA

177.1 Mr. COSTA DU RELS (Bolivia), speaking as an observer, said that, in the defence and protection of intellectual works, one basic element must not be forgotten: folklore. It was necessary to protect it because, being an anonymous heritage created over the centuries, it was by definition defenceless. The Universal Convention — signed, but not ratified, by Bolivia for reasons of an internal nature—contained no provisions covering folklore, which was regarded, at the international level, as being public property; the recent revival of folklore and its entry in the world market created a serious problem for a large number of countries.

177.2 Many works which rightly belonged to national folklores were attributed to individual authors. He was not referring to works by highly talented composers which were inspired by popular melodies, because those were genuine cases of personal creation, but of minor works transmitted by modern audio-visual media, which were simply transcriptions of melodies collected in different countries and attributed to a particular writer in another country.

177.3 The Delegate of Bolivia recalled that the 1946 Inter-American Copyright Convention, which Bolivia had ratified, covered the case of compilations; anonymous melodies were only exceptionally included in that category. He agreed that the drafters of conventions should not cast doubt on the integrity of composers, but, in view of the existing situation,

it was necessary to review the position and ensure that those who benefited from copyright were in fact real composers and not mere usurpers of the creations of other people.

177.4 If suitable measures were not taken, he was afraid that there would soon be no more anonymous collections of popular tradition because the melodies they contained would be attributed to people who passed themselves off as the authors. In Bolivia, appropriate measures had been taken at the national level and traditional and anonymous folk music had been made State property. Peru had followed Bolivia's example, but, at the international level, neither Peru nor Bolivia felt protected.

177.5 Since Bolivia had neither ratified the Universal Convention nor acceded to the Berne Convention, he did not feel entitled to demand that the problem of folk music should be taken into account during the revision of the Convention. He nevertheless appealed to copyright experts to consider the matter and to see that it became the subject of an annex to the Convention directly aimed at protecting the folk heritage of nations with a view to defending the legitimate property rights of the anonymous people who created, cultivated and preserved that heritage.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION

Draft Paris Act (document B/DC/5)

Title and Preamble

178.1 The CHAIRMAN invited the Main Commission to examine in detail the Draft Paris Act (document B/DC/5).

178.2 He recalled that, with regard to the title of the revised Convention, the Commission had before it a proposal by the United Kingdom Delegation contained in document B/DC/12.

178.3 At the suggestion of the Delegate of Italy, he invited the Main Commission to postpone a decision on the title until it came to consider Article 37.

179. *It was so decided.*

180. The CHAIRMAN invited the Main Commission to take note of the draft Preamble (document B/DC/5, Draft Paris Act), while reserving its decisions on the title.

181. *It was so decided.*

Articles 1 to 20 (Substantive Provisions)

182. The CHAIRMAN invited the Main Commission to approve unchanged the text of the first twenty articles of the Stockholm Act, which contained the substantive provisions (document B/DC/5, Draft Paris Act, Articles 1 to 20 (Sub-

stantive Provisions)), which the Conference had accepted in principle during its general debate.

183. *It was so decided.*

Article 21 (Reference to the Appendix)

184. The CHAIRMAN invited the Main Commission to approve the Article, which was identical with Article 21 of the Stockholm Act, except that the words "Protocol regarding developing countries" had been replaced by the word "Appendix" *.

185. *It was so decided.*

Articles 22 to 26 (Administrative Provisions)

186. The CHAIRMAN invited the Main Commission to approve unchanged Articles 22 to 26 of the Stockholm Act, which contained the administrative provisions, in accordance with the wish expressed by the Conference during its general debate.

187. *It was so decided.*

Article 27 (Revisions)

188. The CHAIRMAN invited the Main Commission to approve unchanged the text of Article 27 which was identical with Article 27 of the Stockholm Act, except that the words "Protocol regarding developing countries" in paragraph (3) were replaced by the word "Appendix".

189. *It was so decided.*

Article 28 (Ratification or Accession by Countries of the Union; Entry into Force for the Same Countries)

Paragraph (1)(a) and (b)

190. The CHAIRMAN invited the Main Commission to approve paragraph (1)(a) and (b) of Article 28, the text of which was identical with the text of the corresponding provision in the Stockholm Act.

191. *It was so decided.*

Paragraph (1)(c)

192. The CHAIRMAN pointed out that the text of paragraph (1)(c) of Article 28 was ambiguous since it might give the impression that the countries of the Union were free to accept or refuse any of the first twenty-one articles. In reality, however, those substantive provisions formed a whole; countries, therefore, had the choice only of accepting or refusing them *en bloc*. He proposed that the Main Commission should approve the substance of paragraph (1)(c), while requesting the Drafting Committee to find a less ambiguous wording.

193. *It was so decided.*

Paragraph (2)(a)

194. The CHAIRMAN invited the Main Commission to approve paragraph (2)(a)(i) of Article 28.

195. *It was so decided.*

196. The CHAIRMAN said that he would suggest that the United States of America should not be mentioned in paragraph (2)(a)(ii) because it might seem surprising to make it a condition for the entry into force of the Berne

Convention that another international instrument should be ratified by a State which was not a Member of the Berne Union.

197. Mr. STRASCHNOV (Cyprus) recalled that ratification of the Universal Copyright Convention by the four countries listed had been one of the conditions of the Washington Recommendation. The United States of America had been included on account of the important contribution it could make to raising the educational standards of the developing countries, especially in the field of technological works. It did, however, appear unusual that the entry into force of the Berne Convention should depend on the ratification of the Universal Copyright Convention by a State which was not a member of the Berne Union, and on reflection he considered it preferable to delete the reference to the United States of America from Article 28(2)(a)(ii).

198. Mr. BALAKRISHNAN (India) maintained the original view of the developing countries concerning the importance of retaining the reference to the United States of America in the text. He found nothing unsuitable or unacceptable in doing so.

199. Mr. REINIŠ (Czechoslovakia) believed it preferable to delete the reference to the United States of America.

200.1 Mr. DE SANCTIS (Italy) said that the anomaly pointed out by the Chairman showed how right Italy had been in demanding for a long time past that juridical links should be established between the two Conventions, which were particularly important for the developing countries. His country's suggestion had unfortunately not been adopted.

200.2 He said that he was willing to rally to the majority view.

201. Mrs. STEUP (Germany (Federal Republic of)) said that she wondered whether it was legitimate to include among the conditions for the entry into force of the revised Berne Convention the ratification of another Convention by a country (for example, the United States of America) which was not a Member of the Berne Union. She would not, however, oppose that provision if the developing countries considered it essential that the United States of America should ratify the Universal Copyright Convention, as they had stipulated in the Washington Recommendation.

202. Mr. CHAUDHURI (India) suggested that the Commission defer taking a decision on the matter until the developing countries had had the opportunity of agreeing on a common attitude towards it.

203. *It was so decided.*

Paragraphs (2)(b)(c) and (d)

204. The CHAIRMAN invited the Main Commission to approve the provisions of paragraphs (2)(b), (c) and (d) of Article 28.

205. *It was so decided.*

Paragraph (3)

206. The CHAIRMAN invited the Main Commission to approve paragraph (3) of Article 28.

207. *It was so decided.*

Article 29 (Accession by Countries Outside the Union; Entry Into Force for the Same Countries)

Paragraph (1)

208. The CHAIRMAN invited the Main Commission to approve unchanged paragraph (1) of Article 29 of the Stockholm Act.

209. *It was so decided.*

Paragraph (2)(a)

210. The CHAIRMAN invited the Main Commission to approve paragraph (2)(a) of Article 29 (document B/DC/5).

211. *It was so decided.*

Paragraph (2)(b)

212. The CHAIRMAN pointed out that the Main Commission had to choose between the two passages in square brackets, which were equivalent. Supported by Mr. WALLACE (United Kingdom), he proposed that the Main Commission should approve the first variant—"in the meantime"—while requesting the Rapporteur General to state in his report that that phrase was to be interpreted in the sense of the second passage in square brackets.

213. *It was so decided.*

Article 29bis (Reference to Article 14 of the WIPO Convention) (documents B/DC/5 and B/DC/13)

214. The CHAIRMAN recalled that WIPO had proposed the insertion of this new article in the hope of solving the difficulties pointed out by the Delegation of Japan at the session of the Berne Union Assembly in September 1970, which were set out in the commentary on Article 29bis in document B/DC/5 (Draft Paris Act). The United Kingdom Delegation had proposed another solution in document B/DC/13.

215.1 Mr. AUST (United Kingdom), introducing document B/DC/13 to the Commission, said that his Delegation had discussed the problem it had endeavoured to solve in its proposed amendment with the Secretariat of WIPO, and had concluded first of all that the suggested text of Article 29bis would be inapplicable in practice and, secondly, that the only legally watertight solution to the problem involved would be the amendment of Article 14(2) of the Convention Establishing the World Intellectual Property Organization.

215.2 The problem was a procedural one. Article 14(2) of the WIPO Convention stipulates, *inter alia*, that States party to the Berne Convention might only become party to the WIPO Convention after they had ratified or acceded to the Stockholm Act of the Berne Convention in its entirety or with the limitation set forth in Article 28(1)(b)(i). Article 34 of the Draft Paris Act (document B/DC/5), on the other hand, provided that once Articles 1 to 21 and the Appendix had entered into force, no country might accede to earlier Acts of the Convention. The adoption of that suggested Article 34 would lead to a situation in which a member State of the Berne Union which had not ratified or acceded to the Stockholm Act would be unable, according to Article 14(2) of the WIPO Convention, to become a party to the WIPO Convention, unless it became a party to the Stockholm/Paris Act. To solve that difficulty, Article 34 of the Paris Act (document B/DC/5) had been drafted in such a way as to make it subject to Article 29bis, which provided that ratification of or accession to the Act by any country not bound by Articles 22 to 38 of the Stockholm Act should, for the sole purposes of Article 14(2) of the Convention establishing the World Intellectual Property Organization, imply ratification of or accession to the Stockholm Act. His Delegation understood that provision to mean that ratification of the Paris Act by a country not bound by the administrative provisions of the Stockholm Act was deemed to amount to ratification of the administrative provision of the Stockholm Act. Article 14(2) of the WIPO Convention, however, contained no reference to such an eventuality, and his Delegation believed it impossible to construe that Article

in the way suggested by the WIPO Secretariat. The only satisfactory solution would be the amendment of Article 14(2) of the WIPO Convention. Such a step, however, could only be taken by the WIPO General Assembly, and in the meantime his Delegation wondered whether the best way out of the dilemma would be to fall back on the argument contained in the second paragraph of document B/DC/13 to the effect that Article 29bis would be effective as between States party both to the Paris Act and to the WIPO Convention.

216. Mr. BOGSCH (First Deputy Director General, WIPO) agreed with the previous speaker that any solution reached, short of modifying the WIPO Convention, was bound to be somewhat curious from the legal point of view. The main difference between the United Kingdom proposal and that of the WIPO Secretariat was that the adoption of the United Kingdom proposal would mean that a State wishing to accede to the 1971 Convention would be required to ratify two Acts, the Stockholm Act and the Stockholm/Paris Act, and in addition would be required to file an explanatory declaration, whereas adoption of the WIPO proposal would mean that such a State would be required to ratify a single Act—the Stockholm/Paris Act. Neither proposal was entirely satisfactory from the legal point of view, but the WIPO Secretariat believed the text proposed in Article 29bis to be the most suitable since it had the advantage of calling for the simplest procedure.

217. Mrs. STEUP (Germany (Federal Republic of)), supported by Mr. BOUTET (France), accepted the proposal of the WIPO which, although imperfect from the legal standpoint, had, however, the advantage of simplicity.

218.1 Mr. KATO (Japan) agreed in general with the substance of Article 29bis, which would indeed provide the simplest solution to the problem his Delegation had raised. He did, however, have some difficulty in accepting the legal fiction the WIPO Secretariat had resorted to in suggesting that ratification of or accession to the Paris Act would "imply ratification of or accession to" the Stockholm Act, for he doubted if it would be sufficient to overcome the difficulties encountered by States party to the WIPO Convention but not members of the Berne Union. He suggested that the Conference might invite the General Assembly of WIPO to adopt a resolution to the effect that it accepted the legal fiction explained in the comments on draft Article 29bis (document B/DC/5) as valid, or alternatively that it replace the word "imply" by a more suitable term.

218.2 He welcomed the United Kingdom amendment but wondered if it would be possible for a State not a member of the Berne Union or a party to the WIPO Convention and wishing to accede to them, to accede first to the Paris Act and subsequently to the administrative provisions of the Stockholm Act—that problem might be solved if such a State were to accede to the WIPO Convention first and to the Berne Convention later. In general he was inclined to support the United Kingdom proposal, but if the legal difficulties arising from the drafting of Article 29bis (document B/DC/5) were solved, his Delegation would not press for an amendment of that Article.

219. Mr. DE SANCTIS (Italy) said that the only legally correct solution would be to amend the WIPO Convention. Failing that, the wisest course was to apply the simplest formula and adopt the new Article 29bis as proposed by WIPO. He was afraid, however, that the word "imply" was ambiguous. He wondered whether the Drafting Committee could not find a more satisfactory wording.

The meeting rose at 1.10 p.m.

* Editor's Note: See document B/DC/5, Introductory Observations, paragraph-13.

SECOND MEETING

Monday, July 12, 1971, 3.15 p.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (continued)

Draft Paris Act (document B/DC/5) (continued)

Article 29bis (Reference to Article 14 of the WIPO Convention) (documents B/DC/5 and B/DC/13) (continued)

220.1 The CHAIRMAN recalled that the delegates had to choose between two proposals: the draft Article 29bis submitted by WIPO (document B/DC/5) and the draft amendment submitted by the United Kingdom Delegation (document B/DC/13), which suggested that the question should be settled, not in Article 29bis, but in Article 34. From a legal standpoint, neither of the two proposals was entirely satisfactory. The United Kingdom proposal had the drawback of complicating the procedure because parliaments would have to ratify both the Stockholm Act and the Paris Act. It therefore seemed preferable to adopt the text prepared by WIPO for Article 29bis. The word "imply" which appeared in that text was acceptable and there might be some risk in changing it.

220.2 The suggestion by the Japanese Delegation concerning a declaration by the General Assembly of WIPO on the interpretation to be given to Article 14(2) of the WIPO Convention seemed a good one; in the event of disagreement in the General Assembly, the article in question could be slightly amended. Subject to such a declaration, he proposed that the delegates should adopt the text proposed for Article 29bis (document B/DC/5).

221. Mr. WALLACE (United Kingdom) agreed entirely with the Chairman's summing up and said that, if the Japanese Delegation was satisfied, his Delegation was prepared to withdraw its proposal.

222. Mr. KATO (Japan) said that the Chairman's suggestion was acceptable to his Delegation.

223. Mr. BOUTET (France) said that he was prepared to support the Chairman's proposal. He wondered, however, whether it would not be better to replace the word "imply" by the words "be equivalent to".

224. The CHAIRMAN said that that question would be considered by the Drafting Committee.

225. Article 29bis was approved on the understanding that the question of the interpretation of Article 14(2) of the WIPO Convention would be raised in the WIPO General Assembly.

Article 30 (Reservations)

226. Article 30 was approved subject to a number of purely drafting amendments.

Article 31 (Territories)

227. Mr. HAARDT (Netherlands) suggested that the word "such" in Article 31(3)(a) be replaced by the word "that".

228. Article 31 was approved subject to drafting changes.

Article 32 (Earlier Acts)

229. Article 32 was approved.

Article 33 (Disputes)

230. Article 33 was approved.

Article 34 (Closing of Earlier Acts)

231. Mr. KATO (Japan) remarked that Article 34(1) referred only to accession, and suggested that a reference to ratification should be added at an appropriate place in that paragraph.

232. Mr. DITTRICH (Austria) said that in his country, the opinion had been expressed on certain occasions that the phrase "as from the same event" in paragraph (2) was a little ambiguous. While not pressing the point, he suggested that the Drafting Committee might consider the possibility of replacing those words by a more specific phrase.

233. The CHAIRMAN said that the question raised by the Austrian and Japanese Delegates would be considered by the Drafting Committee.

234. Article 34 was approved subject to a number of purely drafting amendments.

Article 35 (Denunciation)

235. Article 35 was approved.

Article 36 (Domestic Legislation) (documents B/DC/5 and B/DC/10)

236. Mr. DITTRICH (Austria) introduced the amendment proposed by his Delegation (document B/DC/10).

237. The amendment proposed in the document B/DC/10 was adopted.

238. Article 36, as amended, was approved.

239. Mr. DITTRICH (Austria) remarked that a certain number of countries had adopted the principle that ratified conventions should become part of the internal national legislation. There had been some discussion in his country as to whether the text of paragraph (1) of Article 36 excluded the possibility of self-executing agreements. He suggested that a statement should be included in the Report of the Conference to the effect that that paragraph did not exclude the possibility that the Convention might be self-executing.

240. Mr. BODENHAUSEN (Director General of WIPO) said that a provision analogous to that of Article 36 existed in the Universal Convention and in the Paris Convention on the Protection of Industrial Property; it had never been considered as excluding the possibility of the provisions of those two Conventions being self-executing. As the Austrian Delegate suggested, it might be stated in the Report that the same applied to the Paris Act now being prepared.

Article 37 (Signature, etc.) (documents B/DC/5 and B/DC/12)

Paragraph (1)(a) (documents B/DC/5 and B/DC/12)

241. Mr. WALLACE (United Kingdom), introducing the amendment contained in document B/DC/12, said that his Delegation's only concern was that the name of Stockholm should continue to be associated with the text, the substantive parts of which had been negotiated at Stockholm. It mattered little to his Delegation how that object was achieved; what was important was that the Act should be known in practice as the Stockholm/Paris Act.

242.1 Mr. BOUTET (France) said that there could be no question of forgetting the work done by the Stockholm Conference, but that he could not support the proposal by the United Kingdom Delegation which was contrary to established traditions.

242.2 All that was needed to highlight the particular importance of the Stockholm Act was to add the words "... and emphasizing the importance of the work of revision accomplished by the Stockholm Conference" at the end of the first paragraph of the Preamble of the Berne Convention. That would be the best way to proceed.

243. Mr. DE SANCTIS (Italy) said that most of the articles of the new Act would be identical with those of the Stockholm Act. As he had said at an earlier meeting, the Italian Delegation was prepared to accept the title "Paris Act"; and in any event it would accept the majority decision.

244. Mr. CHAUDHURI (India), Mr. DAYRELL DE LIMA (Brazil), Mr. DE SAN (Belgium), Mr. AMRI (Tunisia) and Mr. ALHONOU (People's Republic of the Congo) supported the proposal of the French Delegate.

245. Mr. HARKINS (Australia) said that his Delegation, while supporting the spirit of the United Kingdom proposal, accepted the logic of the suggestion by the French Delegation that a reference should be made in the Preamble of the Convention.

246. Mr. DITTRICH (Austria) said that although both the French and the United Kingdom proposals were acceptable, his Delegation favoured the latter.

247. Mrs. STEUP (Germany (Federal Republic of)) and Mr. HAARDT (Netherlands) said that, although the United Kingdom proposal seemed to have certain advantages, their Delegations were prepared to support the proposal of the French Delegation, which most delegates seemed to prefer.

248. Mr. GARRIGUES (Spain) said that he thought the United Kingdom and French proposals equally acceptable. He was inclined, however, to support the statement by the Delegation of Austria, which was in favour of the United Kingdom proposal.

249. Mr. LARREA RICHERAND (Mexico) said that, in his view, the revised text of the Berne Convention which the Conference was in process of adopting, should be called the "Paris Act", with a reference in the Preamble to the Stockholm Conference.

250. Mr. WALLACE (United Kingdom) said that his Delegation was prepared to withdraw its proposal, on the understanding that the Drafting Committee would be given the necessary latitude to consider how the text to be inserted in the Preamble could most appropriately be worded.

251.1 The CHAIRMAN said that he was not sure whether the passage proposed by the French Delegation should be added at the end of the first paragraph of the Preamble, because the second paragraph mentioned revision conferences which were earlier than the Stockholm Conference. Perhaps it would be best to insert the passage in the last paragraph of the Preamble, before the words: "have agreed as follows":

251.2 With the agreement of Mr. BOUTET (France), he proposed that the Drafting Committee should be asked to consider the matter and to propose a final version of the insertion.

252. It was so decided.

Paragraph (1)(b) (document B/DC/5)

253. Mr. SAÏD (Tunisia) proposed that Arabic should be added to the list of languages mentioned in the paragraph.

254. It was so decided.

255. Paragraph (1)(b) of Article 37, as amended, was approved.

Paragraphs (1)(c), (2), (3) and (4) (document B/DC/5)

256. Paragraphs (1)(c), (2), (3) and (4) of Article 37 (document B/DC/5) were approved.

Paragraph (5) (document B/DC/5)

257. Mr. HAARDT (Netherlands) said that Article 38(1) should be added to those mentioned at the end of Article 37, paragraph (5).

258. The SECRETARY GENERAL said that the reference to Article 38(1) was implicit, but the Drafting Committee might study the desirability of mentioning it explicitly. Although the corresponding reference had not been made in the Stockholm Act, the Director General of WIPO had always notified the Governments of all countries of the Union of declarations concerning the "five-year privilege" (see Article 38(2) of the Berne Convention).

259. Mr. DA COSTA (Brazil) said that the completion of paragraph (5) of Article 37 should be left to the Drafting Committee because it would be necessary to insert a reference to the other notifications specified in the Appendix.

260. The CHAIRMAN proposed that the Drafting Committee should be instructed to prepare a new text which would subsequently be submitted for consideration to the Main Commission.

261. It was so decided.

Article 38 (Transitional Provisions) (document B/DC/5)

262. Article 38 (document B/DC/5) was approved.

Appendix (Provisions Regarding Developing Countries) (documents B/DC/5, B/DC/9 and B/DC/16)

263. The CHAIRMAN invited the delegates to consider certain questions concerning the Appendix and, in particular, the proposals by the Delegation of the United Kingdom concerning paragraphs (7) and (9) of Article II of the Appendix (documents B/DC/9 and B/DC/16).

264. Mr. STRASCHNOV (Cyprus) considered that certain of the amendments proposed to the Appendix to the Draft Paris Act, in particular, those submitted by the United Kingdom (documents B/DC/9 and B/DC/16), raised extremely important questions and might even jeopardize the entire "package deal" negotiated at Geneva. Discussion of those proposals should, therefore, be postponed until the developing countries had had the opportunity to discuss the matter among themselves.

265. Mr. WALLACE (United Kingdom) pointed out that the proposals contained in documents B/DC/9 and B/DC/16 were very limited in scope, relating only to cases where a country had ceased to be regarded as a developing country. It was, he felt, a gross exaggeration to say that those proposals jeopardized the entire agreement.

The meeting rose at 4.15 p.m.

THIRD MEETING

Thursday, July 15, 1971, 10.15 a.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (continued)

Amendments to the text of the draft Paris Act contained in document B/DC/5 (document B/DC/24)

266. The CHAIRMAN drew the Main Commission's attention to document B/DC/24 in which, on the basis of previous discussions and of the proposals to the Diplomatic Conference for Revising the Berne Convention, the WIPO Secretariat presented texts amending or replacing some of those in document B/DC/5. The amendments relating to parts of the text other than the Appendix would not be discussed for the present because they would be submitted

direct to the Drafting Committee (except, however, for Article 28, which would be considered in the Main Commission at a later meeting). He, therefore, invited the Main Commission to consider the new text proposed for the Appendix in document B/DC/24 paragraph by paragraph.

Appendix

Article I (document B/DC/24)

Paragraph (1)

267. The CHAIRMAN said that the lines in square brackets did not appear in the corresponding article of the Universal Convention; it was not a question of defining a "developing country", but of specifying that it was for individual developing countries to decide whether or not they wished to make use of the reservations provided in the Convention.

268. Mr. STRASCHNOV (Cyprus) pointed out that the text in square brackets appeared in the Protocol, and did not form part of a definition of a developing country. While he had no strong feelings about the matter, he felt that since the text added nothing new it could be deleted as unnecessary.

269. Mrs. STEUP (Germany (Federal Republic of)) supported the proposal of the Delegate of Cyprus.

270. Mr. BODENHAUSEN (Director General of WIPO) thought that on the contrary the text did add a new element. Each country considered to be a developing country in accordance with United Nations criteria remained free to decide whether or not to make use of the provisions under discussion. The text in square brackets suggested an additional criterion and was thus not superfluous; the Secretariat had, therefore, a slight preference in favor of its retention.

271. Mr. FERNANDO (Ceylon) asked whether, on the assumption that the text in square brackets was deleted, there existed any established practice of the General Assembly of the United Nations regarding the definition of a developing country. If there were no such established practice, it would be preferable to retain the text.

272. The CHAIRMAN said that the question had been raised on numerous occasions and that a document * prepared by the WIPO Secretariat to clarify the situation had been distributed for the information of delegates.

273. Mr. GABAY (Israel) asked whether the information document referred to by the Chairman was based on United Nations criteria.

274. Mr. BODENHAUSEN (Director General, WIPO) said that the information document had been produced on the basis of a considerable volume of correspondence with the United Nations Secretariat requesting advice on the criteria used by the United Nations. While the document was by no means perfect, it set out a simple criterion for the use of developing countries.

275. Mr. GABAY (Israel) emphasized that the point at issue was whether the definition provided of a developing country was that used by the United Nations. There was nothing in the report of the Committee on Contributions to the twenty-fifth session of the General Assembly which indicated that the category of countries with a *per capita* income under \$300 a year comprised all the developing countries. Israel considered the figure of \$300 a year to be too rigid a criterion, which excluded certain categories of countries from benefits they should be entitled to enjoy under the Berne Convention.

276. Mr. DITTRICH (Austria) said that the Delegation of Austria had a slight preference for retaining the text in square brackets.

277. Mr. BALAKRISHNAN (India) thought that it would be preferable to delete the text in square brackets in order to avoid creating a difference between the Berne and the Universal Copyright Conventions.

278. Mr. GROMPONE (Uruguay) said that, although it was a question of minor importance, he was in favor of maintaining the passage in square brackets because it was in line with a principle which the Uruguayan Delegation had supported on a number of occasions, to the effect that account must be taken of cultural as well as of economic factors.

279. Mr. ALVAREZ DE TOLEDO (Argentina) supported the Delegate of Uruguay.

280. Mr. BODENHAUSEN (Director General, WIPO) noted that two questions were involved, firstly whether the text in square brackets should be deleted and secondly, the point raised by the Delegate of Ceylon as to whether the criterion indicated was based on United Nations practice. He suggested that the WIPO Secretariat should study the latter point further, in cooperation with Unesco with a view to obtaining a better definition of the established practice in the General Assembly.

281. Mr. BALAKRISHNAN (India) thought that the point raised by Ceylon concerned a much wider forum than the Conference for the revision of the Berne Convention. The United Nations definition of a developing country was applicable for a wide variety of purposes, not only in connection with copyright, and it was inappropriate for discussion by the Conference.

282. Mr. FERNANDO (Ceylon), agreeing with the Delegate of India, said that he merely wished to make the point that, should the text in square brackets be deleted, it would be necessary to make clear what criteria would be applied.

283. Mrs. STEUP (Germany (Federal Republic of)) thought that if an additional criterion was to be adopted it should be included in both Conventions in identical terms.

284. The CHAIRMAN put to the vote the retention or deletion of the lines in square brackets.

285. *By 11 votes in favor to 9 against, with 14 abstentions, it was decided to retain the lines in square brackets in Article I(1) of the Appendix as given in document B/DC/24.*

286. Mr. WALLACE (United Kingdom) asked whether it was the feeling of the meeting that the text should also be included in the revision of the Universal Copyright Convention.

287. The CHAIRMAN said that that point should be left for consideration to the Conference for the Revision of the Universal Convention.

288. *Article I, paragraph (1) (document B/DC/24) with the passage in square brackets was approved without opposition.*

Paragraph (2)

289. Mr. BOGSCH (First Deputy Director General, WIPO) said that it might be argued that the text in square brackets (document B/DC/24, Article I(2)) was superfluous, in that it was stated in paragraph (1) that the declaration might be made by a country "at the time of depositing its instrument of ratification... or... at any time thereafter." He nevertheless considered that it added a desirable clarification as to the periods of ten years, and suggested that the Drafting Committee be requested to express it in a more appropriate way.

290. The CHAIRMAN said that he thought it would be useful to retain the sentence in square brackets, the definitive formulation of which could be left to the Drafting Committee.

291. *Subject to drafting amendments, Article I, paragraph (2) (document B/DC/24) was approved without opposition.*

Paragraph (3)

292. The CHAIRMAN proposed that the words in square brackets at the beginning of the paragraph should be deleted.

293. *Article I, paragraph (3) (document B/DC/24), as amended, was approved without opposition.*

Paragraph (4)

294. The CHAIRMAN proposed that it should be left to the Drafting Committee to decide whether or not the words in square brackets (document B/DC/24) should be retained.

295. *With that reservation, Article I, paragraph (4) (document B/DC/24) was approved without opposition.*

Paragraph (5)

296. *Article I, paragraph (5) (document B/DC/24) was approved without opposition.*

Paragraph (6)(a)

297. The CHAIRMAN said that it had been considered necessary to mention explicitly in this paragraph that all material reciprocity was excluded; that had not been done in the Universal Convention, but the context of the two Conventions was not identical. Furthermore, while the point was not mentioned in the Berne Convention itself, it did appear in the Appendix.

298. Mr. KEREVER (France) said that the legal framework of the Berne Convention was different from that of the Universal Convention. Nevertheless, he thought it desirable to specify, for example in the General Report, that the words "less protection... than is provided for in Articles 1 to 20" was without prejudice to the provisions of Article 7 of the Convention.

299. Mr. WALLACE (United Kingdom) fully supported the comment by the Chairman.

300. The CHAIRMAN proposed that the proposed clarification should be included in the General Report of the Conference.

301. *It was so decided.*

302. *Article I, paragraph (6)(a) (document B/DC/24) was approved without opposition.*

Paragraph (6)(b)

303. Mr. LARREA RICHERAND (Mexico) said that, in the Spanish text, the word *por* should be replaced by the words *en el caso de*.

304. Mr. BOGSCH (First Deputy Director General, WIPO) pointed out that at the end of paragraph (6)(b), reference should be made, not to paragraph (1) of Article I, but to Article II, because the question here referred only to translation rights. The Drafting Committee would no doubt deal with this matter.

305. *Subject to the above-mentioned reference, Article I, paragraph (6)(b) (document B/DC/24) was approved without opposition.*

Article II (document B/DC/24)

Paragraph (1)

306. Mrs. STEUP (Germany (Federal Republic of)) doubted whether the words "and availing itself" were necessary, and suggested that the matter be referred to the Drafting Committee.

307. The CHAIRMAN proposed that the beginning of the paragraph should be amended to read: "Any country entitled to avail itself of the faculty provided... ", the rest remaining unchanged.

308. *Article II, paragraph (1) (document B/DC/24), as amended, was approved without opposition.*

Paragraph (2)

309. Mr. KULKARNI (India), commenting on the phrase "any national of such country may obtain a license," assumed that each country was free to define the term "any national." In India's view, the term should be interpreted to include both physical and legal persons, and that interpretation should be included in the General Report of the Conference.

310. The CHAIRMAN recalled that it had been decided to insert a similar remark in the Report of the Conference on the Revision of the Universal Copyright Convention. Since one could not have recourse to domestic legislation in interpreting an international convention, it might be best in the present case, to explain that a "national" might mean either an individual or a legal entity.

311. Mr. SAÏB (Tunisia) proposed that, to bring the texts of the two Conventions into line, paragraph (2) should specify that it referred to a translation which had not been published in "a language in general use in the country issuing the license".

312. Mr. LUTÉTE (People's Republic of the Congo) supported the Delegate of Tunisia.

313. The CHAIRMAN pointed out that the expression "the language or languages of the country" already occurred in Article 30(2)(b) of the Berne Convention, which was a wording of very long standing. It was true that the words used in Article V, paragraph (2), of the Universal Convention were: "the national language or, where applicable... one of the national languages of a Contracting State", but that formula had proved unsatisfactory. The proposal of the Tunisian Delegate had certain advantages, but could one speak of a language being "in general use" when the use of the language was confined to part of the country in question?

314. Mr. KEREVER (France) supported the Tunisian Delegate's proposal which would make the text more precise. There was nothing to prevent the amendment of a terminology which no longer corresponded to the current situation.

315. Mr. WALLACE (United Kingdom) thought that the phraseology used was the best which could be obtained, and the nearest possible assimilation to that used in Article V of the Universal Copyright Convention. Any change would entail a considerable amount of redrafting, perhaps even of Article V itself. It would therefore be preferable to leave the text unchanged, while explaining in the Report that there was no difference in conception between the two Conventions.

316. Mr. DE SANCTIS (Italy) said that he wished to reaffirm the position of the Italian Administration which thought it would be undesirable to provide for different treatment for different languages, whether or not such languages were in general use.

317. Mr. KULKARNI (India) supported the proposal of the Delegate of Tunisia.

318. Mrs. STEUP (Germany (Federal Republic of)) said that she would prefer to see the phraseology of Article 30 used in paragraph (2) of Article II of document B/DC/24, with a clarification in the Report.

319. Mr. HAARDT (Netherlands) supported the views expressed by the Chairman and the Delegates of the United Kingdom and the Federal Republic of Germany.

* Editor's Note: Document DA/29/2 of December 28, 1968.

320. Mr. KEREVER (France) again declared himself in favor of the proposal of the Delegate of Tunisia, pointing out the differences of a drafting nature which existed between the terms used in the two Conventions.

321. Mr. GABAY (Israel) supported the proposal that reference should be made in the text to the language or languages "in general use".

322. Mr. BODENHAUSEN (Director General, WIPO) made two points. Firstly, if the proposal by the Delegation of Tunisia were adopted, the text would be different from that used in the Universal Copyright Convention, whereas the purpose of the two Conferences was to create parallel systems. Secondly, with regard to the comment by the Delegate of India, India had a very large number of languages, of which only a few were in general use. The best solution might be to use the term "languages" or "national languages" and explain in the General Report of the Conference that the term covered both languages in general use and those used territorially in a country applying the provision.

323. Mr. CHAUDHURI (India) proposed that further discussion be postponed pending an informal study of the question.

324. The CHAIRMAN proposed that the Main Commission should revert to the question later.

325. *That proposal was adopted.*

Paragraph (3)

326. *Article II, paragraph (3) (document B/DC/24), was approved without opposition.*

Paragraph (4) (documents B/DC/19 and B/DC/24)

327. The CHAIRMAN pointed out that the first sentence of Article II, paragraph (4) in document B/DC/24 appeared as Article II, paragraph (5) in document B/DC/5, and that the second sentence was based on the proposal by the Swedish Delegation in document B/DC/19.

328. Mr. GABAY (Israel) recalled that when the Swedish proposal had been discussed, the word "further" when used for the first time had been deleted; in other words, it had been made clear that the period of six months was consecutive on the period of three years. He suggested the word "further" in the beginning of Article II(4), should be similarly deleted.

329. The CHAIRMAN said that the word "further" had been maintained in this Article, which dealt with translation rights, but that it did not appear in the provisions concerning reproduction rights.

330. Mr. CHAUDHURI (India) asked that it be included in the Report that India's interpretation was that the period should be concurrent, and not consecutive.

331. Mr. KEREVER (France) said that from the discussions in the Main Commission of the Conference for the Revision of the Universal Copyright Convention it had emerged that the further period stipulated in regard to an applicant for permission to translate started to run after the expiry of the normal period starting from the first publication of the work.

332. The CHAIRMAN said that that was the correct interpretation of the wording of the paragraph. He recalled, however, that the Delegate of India had already requested that this interpretation should be included in the Report of the Conference for the Revision of the Universal Copyright Convention.

333. *Article II, paragraph (4) (document B/DC/24) was approved without opposition.*

Paragraph (5) (documents B/DC/17 and B/DC/5)

334. The CHAIRMAN recalled that the Delegation of Ceylon had proposed in document B/DC/17 that paragraph (5) of

Article II should be amended to read: "Any license under the preceding paragraphs shall be granted only for the purpose of teaching, scholarship, research or promotion of culture."

335. Mr. WALLACE (United Kingdom) noted that a fundamental change was being proposed. Recalling that the "package deal" had concentrated on requirements for educational purposes, he said that the United Kingdom could not agree to the proposed addition.

336. Mr. KEREVER (France) said that he agreed with the United Kingdom Delegate that any change in the field of application of reservations was unacceptable.

337. Mr. FERNANDO (Ceylon) said that in view of the arguments put forward he had no alternative but to withdraw the amendment.

338. *Article II, paragraph (5) of the Appendix was approved in the form in which it appears in document B/DC/24.*

Paragraph (6)

339. *Article II, paragraph (6) (document B/DC/24) was approved without opposition.*

Paragraph (7)

340. *Article II, paragraph (7) (document B/DC/24) was approved without opposition.*

Paragraph (8)

341. *Replying to a question by the Chairman, Mr. STRASCHNOV (Cyprus) said that while he was not the author of subparagraph (8)(a)(iv), he understood that the intention behind it was that it referred to a license to translate exclusively for broadcasting purposes. It should if possible cover all the schools in a particular country, and might, therefore, be granted to more than one broadcasting organization in a particular country. He suggested that the Drafting Committee should redraft paragraph (8)(a)(iv) to indicate that, with the permission of the organization which had received the license to translate, other broadcasting organizations in the same country might use the translation in a recorded form, always provided, of course, that they had the right to broadcast.*

342. Mr. ALVAREZ DE TOLEDO (Argentina) said that, as he had already stated during the discussions at the Conference for the Revision of the Universal Copyright Convention, the problem of broadcasting licenses—which had not been dealt with in the revised draft—required further consideration by governments.

343. Mr. KEREVER (France), referring to the phrase "any text incorporated in an audio-visual fixation", which occurred in Article II, paragraph (8)(b) (document B/DC/24), said that, during the discussion on the definition of an "audio-visual work" in the Main Commission of the Conference for the Revision of the Universal Copyright Convention, it had been suggested that it should be defined as being "any text incorporated in an audio-visual fixation of a work protected by [the said] Convention". He suggested that that wording should be adopted here too because the existing wording suggested that it was not so much the work which was protected as the audio-visual fixation which served as its support.

344. Mr. DE SANCTIS (Italy) said that he was afraid that there would be certain drawbacks, in the present case, about putting the words "text" and "work" side by side; he would prefer the formulation proposed in document B/DC/24.

345. Mr. KEREVER (France) said that he understood the anxiety of the Italian Delegate and he would not insist on the amendment of Article II, paragraph (8)(b). But he hoped

very much that the wording he had just suggested would be introduced into Article *Vquater* of the Universal Copyright Convention and into Article 3 of the Berne Convention.

316. Mr. WALLACE (United Kingdom) suggested that the question be deferred for discussion at a later date.

347. *It was so decided.*

348. *Article II, paragraph (8) (document B/DC/24) was approved subject to drafting amendments.*

Paragraphs (9), (10) and (11) (documents B/DC/5, B/DC/9, B/DC/16 and B/DC/24)

349. The CHAIRMAN drew the Main Commission's attention to the proposed amendments submitted by the United Kingdom Delegation in documents B/DC/9 and B/DC/16. Those proposals had been made previous to the publication of document B/DC/24 and they, therefore, referred to document B/DC/5.

350. Mr. BOGSCHE (First Deputy Director General, WIPO) invited the Delegate of the United Kingdom to comment on his proposals in documents B/DC/9 and B/DC/16, some of which, it seemed to him, had already been taken care of in the new texts proposed in document B/DC/24 to replace some of those which appeared in document B/DC/5.

351. Mr. ARMITAGE (United Kingdom) agreed that the new text proposed in Article II(9) of the Appendix in document B/DC/24 covered the first point raised by the United Kingdom Delegation concerning Articles II(7)(a)(i) of the Appendix in document B/DC/5 (documents B/DC/9 and B/DC/16), although he would still like to propose minor drafting changes, which could perhaps be referred to the Drafting Committee. As regards the second proposal of the United Kingdom Delegation, referring to Article II(9) of the Appendix in document B/DC/5 (the substance of which had now been incorporated in Article II(11) of document B/DC/24) the situation under consideration was that of a country which ceased to be a developing country. It had been agreed in the Permanent Committee that such a country should then have the right, notwithstanding the fact that it had had a compulsory licensing system in the past, to choose the ten-year translation provisions of the Berne Convention. All that the United Kingdom was doing was to make two suggestions relating to consequential matters. The first suggestion was that if a translation had been published under a compulsory license, it should count as if it had been published by the author, for the purpose of preserving the author's rights of translation in the country concerned, after it became a developed country. Since he understood that this suggestion might raise some difficulties, and since it was in fact a minor point, he was prepared to withdraw it. The second suggestion was that there should be a period during which authors had notice of the fact that the country in question wished to avail itself of the ten-year translation rule, during which they would have the opportunity to bring out their own translation in that country in order to protect their right of translation. The United Kingdom had suggested a period of three years, though any other period might be adopted, provided that it was reasonably long enough to give the copyright owner time to bring out his own translation.

352. Mrs. STEUP (Germany (Federal Republic of)) considered the second United Kingdom suggestion to be justified. There was, however, the danger that the wording might be so interpreted that there might be an interruption in the supply of school books under compulsory license. She suggested an amendment on the lines that any country in the category under consideration should still be allowed a certain period, perhaps two years, during which it might make use of the possibility of a compulsory license.

353. Mr. TORNARITIS (Cyprus) thanked the Delegate of the United Kingdom for withdrawing his first suggestion which in the view of the developing countries was a serious infringe-

ment in the "package deal." He fully supported the amendment proposed by the Delegate of the Federal Republic of Germany.

354. Mr. WALLACE (United Kingdom) said that he had an open mind as to the method by which the desirable object should be achieved. He would like to be given the opportunity of considering a text, possibly in the Drafting Committee.

355. Mr. BALAKRISHNAN (India) supported the amendment proposed by the Delegation of the Federal Republic of Germany, with the suggested modification that the period might be one year instead of two.

356. Mr. DE SANCTIS (Italy) said that he would support the proposal by the United Kingdom Delegate, provided it was amended in accordance with the suggestions of the Delegate of the Federal Republic of Germany.

357. Mr. KEREVER (France) said that he thought that the United Kingdom Delegate's proposal was very reasonable; it would have the happy effect of preventing the sudden expiry of licenses after ten years; and it also had the advantage of not endangering the general balance of the provisions. It was true, however, that it might deprive the developing countries of all university and school supplies and it was doubtless for that reason that the Delegate of the Federal Republic of Germany had made a complementary suggestion. Unfortunately he had not very well understood the legal machinery which the Delegate of the Federal Republic of Germany proposed to introduce.

358. Mrs. STEUP (Germany (Federal Republic of)) said that it was not her opinion that the time during which a developing country had a right to avail itself of the faculty should be prolonged. She considered that all that was necessary was for the developing country itself to make the declaration under Article 30 during that time, and at least two years before its expiration. As the declaration would become valid only at the end of the period, there would be a two-year period from the date of the declaration until it came into force, during which the author could make his own translation.

359. The CHAIRMAN asked the Delegate of India whether he would be prepared to agree that the period referred to should be two years.

360. Mr. BALAKRISHNAN (India) said that he could agree that the period should be two years.

361. The CHAIRMAN proposed that Article II, paragraph (11) of the Appendix (document B/DC/24) should be amended to read: "Any country which has ceased to be regarded as a developing country in conformity with the practice referred to in Article I(1) may, two years before the expiry of the period provided for in Article I(3), avail itself of the faculty provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union."

362. *Article II, paragraph (11) (document B/DC/24), as amended, was approved.*

363. *Subject to the amendments decided on and to possible purely drafting amendments, paragraphs (9), (10) and (11) of Article II (document B/DC/24) were approved.*

364. *Article II of the Appendix, as amended, was approved as a whole.*

Article III (document B/DC/24)

Paragraph (1)

365. *Article III, paragraph (1) (document B/DC/24) was approved without opposition.*

Paragraph (2)

366. *Article III, paragraph (2) (document B/DC/24) was approved without opposition.*

Paragraph (3)

367. Mr. WEINCKE (Denmark), referring to the English text of Article III, assumed that in paragraph (3)(ii) the reference to "works of fiction" included all works generally classified as "belles lettres". If that was the case, it should be made clear in the Report that the period of seven years was also applicable to works based on documents but presented in an artistic manner.

368. The CHAIRMAN said that the French version was clearer and that it was impossible to find an exact English translation of the expression *les œuvres appartenant au domaine de l'imagination*. The correct interpretation, which the Danish Delegate had just given, might be included in the General Report of the Conference.

369. *Article III, paragraph (3) (document B/DC/24) was approved without opposition.*

Paragraph (4) (documents B/DC/5, B/DC/19 and B/DC/24)

370. The CHAIRMAN pointed out that paragraph (4)(a) was the same as paragraph (4) of Article III in document B/DC/5 and that paragraph (4)(b) was based on the third proposal by the Swedish Delegation in document B/DC/19.

371. *Article III, paragraph (4) (document B/DC/24) was approved without opposition.*

Paragraph (5)

372. The CHAIRMAN said that the question of languages referred to in paragraph (5)(ii) would be decided by the Drafting Committee.

373. *Subject to that reservation, Article III, paragraph (5) (document B/DC/5) was approved without opposition.*

Paragraph (6)

374. *Article III, paragraph (6) (document B/DC/24) was approved without opposition.*

Paragraph (7) (documents B/DC/11 and B/DC/24)

375. The CHAIRMAN asked whether the formulation of paragraph (7)(b) of Article III, which referred to "works incorporated in audio-visual fixations" met the wishes of the French Delegate.

376. Mr. KEREVER (France) said that it did.

377. Mr. TORNARITIS (Cyprus) asked for a clarification of the phrase in Article (7)(b) (document B/DC/24) "This Article shall also apply to the reproduction of works incorporated in audio-visual fixations..." In countries governed or influenced by English law, the audio-visual fixation might itself be a work. Since Article (7)(b) referred only to works "incorporated" in such a fixation, he feared that the provision might be interpreted as referring only to pre-existing works, in other words as meaning that the audio-visual fixation itself could not be reproduced. In order to avoid such a misinterpretation he suggested that a clarification should be made not only in the Report but also in the text of the paragraph, possibly on the lines of the United Kingdom Delegation's proposal in document B/DC/11.

378. Mr. WALLACE (United Kingdom) said that the following new text for Article V *quater* (3)(b) of the Universal Copyright Convention had recently been discussed in the Drafting Committee: "The provisions of this Article shall also apply to reproduction in audio-visual form of lawfully made audio-visual fixations, including any protected work incorporated therein, and to the translation of any incorporated text into the language..." He thought the text had been acceptable to all the members of the Drafting Committee, and suggested that the same formulation should be adopted for Article III(7)(b) of the Berne Convention.

379. Mr. KEREVER (France) said that he was glad to be able to support the United Kingdom Delegate's proposal; the wording he had proposed combined the two systems of protection and should be acceptable to everybody.

380. *With the amendment proposed by the United Kingdom Delegate, Article III, paragraph (7) (document B/DC/24) was approved without opposition.*

The meeting rose at 12.55 p.m.

FOURTH MEETING

Thursday, July 14, 1971, 3.15 p.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (continued)

Amendments to the text of the draft Paris Act contained in document B/DC/5 (continued) (documents B/DC/15, B/DC/24 and B/DC/25)

*Appendix (continued)**Article IV (documents B/DC/24 and B/DC/25)**Paragraph (1)*

381. Mr. KEREVER (France) said that the General Report of the Conference must state that, in the case of the licenses referred to in Article IV, paragraph (1), of the Appendix (licenses to translate or to reproduce), the periods of delay could only begin to run from the entry into force of the Convention. In fact, once the Convention came into force, a large number of works published after periods of exclusive rights would become "licensable"; it was therefore important to provide for a grace period between the date on which the Convention came into force and the date on which licenses were granted, in order to enable the author to negotiate his rights satisfactorily.

382. *It was decided to include the French Delegate's remarks in the General Report of the Conference.*

383. *Article IV, paragraph (1) (document B/DC/24) was approved without opposition.*

Paragraph (2) (documents B/DC/15 and B/DC/24)

384. The CHAIRMAN said that, in accordance with the proposal by the United Kingdom Delegation, contained in document B/DC/15, the publisher was characterized in the paragraph by his principal place of business and not by his nationality.

385. *Article IV, paragraph (2) (document B/DC/24) was approved without opposition.*

Paragraph (3)

386. *Article IV, paragraph (3) (document B/DC/24) was approved without opposition.*

Paragraph (4)(a)

387. Mr. STRASCHNOV (Cyprus) expressed the hope that the same comments as those to be made in the Report of discussions on the same issue held by the Main Commission for the revision of the Universal Copyright Convention concerning the printing of copies in a country other than the country

which had issued the license would be included in the Report of the present discussion. Two points had been raised in that connection—the fact that printing was often difficult for technical or financial reasons, and the fact that all copies printed outside it would be returned to the country which had issued the license.

388. Mr. WALLACE (United Kingdom) recalled that his Delegation had accepted, within the framework of the Universal Copyright Convention's revision, a proposal concerning printing abroad in relation to translation rights but that it had not accepted it in relation to reproduction rights. There did not seem to be any pressing need to do so for the latter—reproduction of texts by photocopy processes was a simple matter.

389. Mr. STRASCHNOV (Cyprus) said he had understood that both translation and reproduction had been involved in the decision taken in respect of the Universal Copyright Convention. The use of photocopy processes for the reproduction of text books would not provide a very satisfactory solution—photocopies faded rapidly and were not always legible. He did not believe the rights of authors or copyright owners would be endangered in any way by the inclusion of a reference on the lines he had suggested in the Report. So long as it was agreed that all copies should be returned to the country of origin, the question of export should not arise.

390. The CHAIRMAN said that the Main Commission would have the opportunity to revert to the question when it came to examine the amendment submitted by the Delegations of several African countries proposing the introduction of a new paragraph (4bis) into Article IV (document B/DC/25).

Paragraph (4)(b)

391. *Article IV, paragraph (4)(b) (document B/DC/24) was approved without opposition.*

Paragraph (4)(c)

392. The SECRETARY GENERAL said that paragraph (4)(c) had been inserted in Article IV (document B/DC/24) because it had been thought highly probable that a proposal in that sense would be submitted by some of the delegations present. The Brazilian Delegation had in fact fulfilled that expectation: its proposal was contained in document B/DC/26.

393. Mr. CHAUDHURI (India) proposed the deletion of the reference to notification of agreements to the Director General from Article (4)(c)(iv) (document B/DC/24).

394. The CHAIRMAN said that the reference to the notification of the agreement to the Director General was designed to safeguard the interests of the country in which the work originated when a third country was involved.

395. Mr. WALLACE (United Kingdom) recalled that the reference had been inserted to take into account the position of copyright owners in one country whose works might be the subject of agreements entered into by other countries. A copyright owner who was a national of the Federal Republic of Germany, for example, would wish to be informed of agreements entered into by nationals of two or more English-speaking countries to translate his work or works into English. The inclusion of the reference to notification of agreements to the Director General would allow copyright owners to be informed of such agreements.

396. Mr. CHAUDHURI (India) thanked the previous speaker for his explanation and withdrew his proposal.

397. *Article IV, paragraph (4)(c) (document B/DC/24) was approved without opposition.*

398. Mrs. LIGUER-LAUBHOUET (Ivory Coast) said that the proposed amendment submitted by the five African countries (Congo (Democratic Republic of the), Ivory Coast,

Niger, People's Republic of the Congo, Senegal) did not call into question any of the points of the compromise reached during the preparatory work. Its purpose was to enable developing countries to join together to obtain joint licenses to translate or to reproduce. Such a provision would in no way harm copyright, in whose protection the African countries were the first to be interested; but it was indispensable to enable the developing countries to benefit effectively from the facilities offered by the Berne Convention. Many of the developing countries were still without publishing houses of their own and it would be years before such publishing houses could be established. It would be advantageous for them to be able to benefit from joint licenses for the common use of existing facilities. Developing countries were often compelled to resort to regional co-operation for economic or technical reasons. Unesco systematically encouraged that policy, especially when applied in the cultural field, as in the case of the proposed provision.

399. Mr. WALLACE (United Kingdom) said he believed it had been generally understood during the negotiations leading to the general agreement on it that the prohibition of exports was a most important element of the package deal. Prohibition of exports implied that printing and publication would be carried out in the country issuing the license. Two exceptions to the principle involved had already been accepted during the present discussions but, in view of the importance of that principle for copyright circles in his country, it would be impossible for his Delegation to accept any further exceptions, and consequently impossible for it to accept the proposal contained in document B/DC/25.

400. Mr. STRASCHNOV (Cyprus) asked its sponsors if the proposal (document B/DC/25) related to any language or to languages not in general use in the developing countries. He also asked to which bodies the joint requests for licenses for translation should be submitted.

401. Mr. GABAY (Israel) found the idea behind the proposal in document B/DC/25 very sound. While understanding the position of the United Kingdom, he believed the Commission could not close its eyes to the difficulties encountered by many developing countries, and that the proposal would not constitute a breach of the agreement concerning the prohibition of exports. He suggested the replacement of the words "request and obtain" by the word "grant", in the first sentence of Article IV(4bis) of the proposed text of the Appendix.

402.1 Mr. N'DIAYE (Senegal) said that the Delegate of Israel had correctly understood the intentions of the sponsors of the amendment and he had no difficulty in accepting the amendment he had proposed.

402.2 Replying to the United Kingdom Delegate, he said that the African amendment did not call into question the prohibition of exports. The sole purpose of the new paragraph was to permit the granting of joint licenses to States which, under the provision proposed by the International Bureau, could in any case obtain them separately. It went without saying that the copies produced under a joint license would be circulated only in the countries holders of the license in question.

403. Mr. DAYRELL DE LIMA (Brazil) supported the amendment submitted by the five African countries (document B/DC/25); in his view, the proposed clause in no way constituted an infringement of the principle of non-exportation. He further pointed out that a work might be printed in one country and published in another.

404. Mr. LUTÉYÉ (Peoples Republic of the Congo) said that he very much hoped that the Main Commission would adopt the African countries' amendment contained in document B/DC/25.

405.1 Mr. KEREVER (France) said that the amendment called into question the package agreement by postulating the principle that there was no "exportation" in the case of licenses obtained, jointly by several countries which had

come together for that sole purpose. The developing countries had already obtained considerable advantages in the form of much shorter periods for the granting of translation rights. It seemed difficult to make further concessions. How could the proposed amendment not be regarded as violating the prohibition of exports? A joint license authorizing, for example, the translation of a work into Arabic or Swahili would inevitably involve the distribution of a considerable number of copies of the work translated.

405.2 The Delegate of Brazil was of course right to distinguish between printing and publication; but the French Delegation could not but oppose the African amendment, since it was convinced that it referred in fact to publication and not to printing.

406. Mr. SAÏD (Tunisia) agreed with the Brazilian Delegate that the African amendment did not violate the principle of non-exportation; its only purpose was to enable certain African countries to benefit effectively from the facilities they were offered.

407. Miss RINGER (Observer for the United States of America), recalling that her country was a party to the package deal, said that it would unfortunately be quite unable to accept the proposal concerning the new paragraph (4bis). The issue had been raised in a more elaborate form during the preliminary negotiations, and, bearing in mind the need to keep a proper balance between the needs of the developing countries on the one hand and the legitimate right of the developed countries on the other, it had finally been agreed that the revised text of the Convention should draw a distinction between the two types of works and that there should be an absolute ban on exports. The developing countries had accepted the principle of the export ban. It now appeared, however, that they were unwittingly calling for an amendment which would amount to a breach of the previous agreement on the export ban. The United States could not accept it in any circumstances if the question of its ratification of the revised Berne Convention were to arise. It was indeed doubtful if it would be able to accept the Universal Copyright Convention if the new proposed paragraph (4bis) were included in the Berne Convention. The United States Government considered the ban on exports to be of paramount importance. The Delegate of the United States of America, appealed to the sponsors of the proposal to consider whether they would not run the risk of losing considerable advantages by insisting on a condition which was of comparatively minor importance. It would be highly regrettable if the present Conference were to result in a deadlock.

408. Mrs. STREP (Germany (Federal Republic of)) said that she had followed with interest the discussions to which the African amendment had given rise, but in view of the positions adopted by the Delegates of the United States of America, France and the United Kingdom, to accept the amendment would jeopardize the success of the Conference. On the other hand, the developing countries needed to combine their efforts. Perhaps the solution would be for the countries wishing to obtain a joint license to confine their co-operation to the printing of the work.

409.1 Mr. KANDJI (Senegal) said that, if the Berne Convention rightly granted the developing countries comparatively short periods for obtaining translation and reproduction licenses, that was to assist them in their teaching, scholarship and research activities. The developing countries were as keen as the developed countries to protect copyright. They had no intention of calling into question the package agreement which was reflected in the draft submitted by WIPO; nor had they any desire to go back on the no-export principle. But the fact was that, for historical reasons, their cultural activities encountered difficulties of a linguistic nature; in some cases, populations which spoke the same language were divided among several States; in others, a new language had been imposed on them. The developing countries, therefore, needed to combine their efforts to overcome their handicap and to be able to take advantage of the facilities offered by the Berne Convention.

409.2 If several countries interested in the translation or reproduction of a work could obtain a collective license instead of a number of individual licenses, the advantage was obvious: they would be able to reduce printing and publishing costs. Moreover, it was difficult to see how such a provision could alter the number of copies distributed; it was, therefore, impossible to speak of a violation of the principle of non-exportation.

410.1 Mr. BODENHAUSEN (Director General, WIPO) said that the proposed provision contained no restrictions; its scope was, therefore, wide. A joint license granted to translate a work into a widely-spoken language like Arabic, or even Spanish, would lead to the circulation of an extremely large number of copies.

410.2 In addition, there would be difficulties in applying the provision. Firstly, it was the interested party (usually a publishing house) which asked for a license to translate or to reproduce; it was not a country. Again, who would be competent to grant compulsory licenses? A national body or a body common to several countries? In either case, an international treaty would be necessary.

410.3 The simplest solution would doubtless be to distinguish between printing and publication: the various countries concerned would each apply for a license, but would co-operate in the printing of the works.

411.1 Mrs. LIGUER-LAUBHOUET (Ivory Coast) said that she recognized that the African amendment was not sufficiently explicit. She wished to make a number of clarifications and hoped that the developed countries would be willing, in the light of those explanations, to reconsider their position. The sponsors of the amendment had, of course, had in mind that the license would be requested by a publisher. But only two out of the fourteen French-speaking countries in Africa so far had publishing houses. That meant that, if the African countries' amendment was not adopted, the concessions granted under paragraph (4) would be a dead letter for them.

411.2 Contrary to what the Director General of WIPO seemed to imagine, it was not impossible to establish bodies recognized by several States for the granting of licenses; such bodies already existed in the French-speaking countries in Africa.

411.3 The sponsors of the amendment had understood that the copies produced under the license in question should bear the names of the countries in which they might be circulated.

411.4 The sponsors of the amendment did not intend the application of the provisions they proposed to be confined to regional languages. If populations speaking the same language had been artificially separated or if the same language had been imposed on a number of countries, it was only just to allow them to combine to take advantage of their community of language.

411.5 On the other hand, it would be possible to limit the number of countries which might benefit from a joint license, if such a limitation was necessary to protect copyright. The developing countries were, in fact, the first to desire that copyright should enjoy effective international protection.

411.6 She urged the developed countries to reconsider their position in the light of these explanations. If they did not adopt the African amendment, many developing countries would have no concrete possibility of benefiting from the advantages theoretically offered to them.

412. Mr. GARRIGUES (Spain) said that he wondered whether the principle of non-exportation was not being converted into a principle of exportation because—as the United Kingdom Delegate had already pointed out—two exceptions to the principle had already been granted and a third exception was proposed in the amendment in document B/DC/25. He appreciated the arguments put forward by the Delegate of the Ivory Coast, but the statements of other delegates had shown how serious and important the consequences of the

proposal under discussion were. In his view, unless a compromise solution which preserved the integrity of the no-export principle was found, the countries sponsoring the amendment proposed in document B/DC/25 should review their position and withdraw the amendment.

413.1 Mr. KEREVER (France) said that, in its present form, the African countries' amendment was extremely far-reaching and might call into question the principle of the prohibition of exports. That would not be so if its application was limited to the French-speaking countries in Africa.

413.2 He recalled that the French Delegation did not regard the package agreement as sacrosanct. It had, for example, accepted the extension of translation licenses to broadcasting organizations. But it did not see the advantage of the African amendment. It was not in fact necessary to apply for a joint license: the interested countries only had to co-ordinate their applications so that the periods during which the works became subject to license coincided.

413.3 Moreover, it was unnecessary to stipulate that the circulation of copies among the countries benefiting from a joint license should not be regarded as export. It was sufficient if the countries in question agreed to share the printing costs. It was wholly desirable that publication should remain a national matter, in order to facilitate control. If certain countries did not yet possess publishing houses, there was nothing to prevent their ministries to apply for licenses in the capacity of publishers.

413.4 Thus the objective aimed at by the African countries could be attained without adopting the amendment they proposed, which would have the serious disadvantage of violating the no-export principle. It was clear that to authorize the free circulation of a work translated, for example, into Swahili or Arabic would involve the circulation of a considerable number of copies.

414. Mr. KINDO (Niger) said that he hoped that a formula would be found which would take care of the interests both of the developed and of the developing countries. He recalled that the licenses referred to in Articles II and III were granted only for the purpose of teaching, scholarship or research. It was the development of the beneficiary countries which was at stake.

415. Mr. ZERROUKI (Observer for Algeria) supported the amendment submitted by the African countries (document B/DC/25) which, without jeopardizing copyright, had substantial advantages for the developing countries.

416.1 Mr. AHEANYO-AKAKPO (Observer for Togo) said that he did not understand how anyone could be afraid that the provisions proposed in document B/DC/25 would impair the no-export principle. If three countries held individual licenses or if they obtained a joint license, the practical result, i.e., the number of copies put into circulation, would be exactly the same. On the other hand, it was obvious that the greater the number of countries they were divided among, the smaller the printing costs would be. For example, if all the Latin American countries were Contracting Parties, it would be to their advantage to apply for joint licenses.

416.2 He was still less able to understand the opposition of the French Delegation, since the latter had no objection to several countries co-operating in the printing of a work. If, as the French Delegate claimed, the facilities requested by the sponsors of the African amendment were implicitly contained in the text of Article IV, what was the objection to saying so?

417. Mrs. LIGUER-LAUBHOUET (Ivory Coast) supported the arguments put forward by the Observer for Togo. As the French Delegate had rightly understood, the sponsors of the African countries' amendment, far from wishing to derogate from the no-export principle, had nothing else in view but to obtain explicit recognition of the advantages implicitly contained in the draft submitted by WIPO. The French Delegate had suggested that, in countries which had no

publishing houses, ministries should assume the role of publishers, but was he not afraid that measures of that kind would push Africans towards a centrally-planned economy? However that might be, the developing countries which did not yet have publishing houses were obviously free to study the possibilities offered by that formula.

418.1 Mr. SAÏD (Tunisia) said that he had noted with interest that, in the eyes of the developing countries, the no-export principle was called into question neither in the African amendment, nor—more especially—in the minds of the sponsors of the amendment or of those who had given it their support. He understood that certain countries might not wish to adopt the said amendment; he could even understand that they might not wish to state the reasons for their opposition; but he would thank them, if they had no really valid arguments, not to invoke an alleged violation of the no-export principle which nobody dreamt of calling into question.

418.2 He nevertheless appealed to the sponsors of the amendment to withdraw it in a spirit of conciliation. In exchange, it could be stated in the Report that, where several countries enjoyed a license to translate or to reproduce a work in a common language, they might be authorized to print the work jointly in a single country, on condition: (1) that the other countries concerned were unable, for economic or technical reasons, to print it in their own countries; and (2) that all the copies produced under such conditions would be divided among the States holding such a license.

419. Mr. WALLACE (United Kingdom) asked if the proposal of the Delegate of Tunisia could be made available to the Commission in writing.

420. Mrs. STREP (Germany (Federal Republic of)) suggested that the Commission appoint a working group comprising representatives of the developing and the developed countries to consider the Tunisian proposal.

421. The CHAIRMAN, having consulted the Chairman of the Main Commission of the Conference for the Revision of the Universal Copyright Convention, proposed that the question should be referred to a Working Group composed of the following countries: Argentina, Cyprus (for the UCC), France, India, Ivory Coast, United Kingdom and the United States of America. The Chairmen of the two Main Commissions would be *ex officio* members of the working group referred to below as the "Joint (Berne-UCC) Working Group". *

422. *It was so decided.*

Paragraph (5)

423. Mr. DE SANCTIS (Italy), supported by Mr. KEREVER (France), proposed that the words "and only for the purpose of teaching, scholarship or research" should be added at the end of paragraph (5).

424. The CHAIRMAN said that a distinction should be made between a license to translate and a license to reproduce; the latter was granted only for teaching and scholarship purposes.

425. Mr. STRASCHNOV (Cyprus) said his Delegation would be unable to accept the Italian proposal if it were to prevent the sale to the general public of copies of the translations involved.

426. Mr. DE SANCTIS (Italy) said that it was in no way his intention to prevent the sale of the copies produced to the

* *Editor's Note:* This is a Joint Working Group composed of persons taking part in the work of the two Diplomatic Conferences for the revision of the Berne Convention and of the Universal Copyright Convention.

general public. He hoped, on the contrary, that it would be clearly stated in the Report that the works in question would be on sale to the general public.

427. The CHAIRMAN said that he was doubtful of the usefulness of the addition proposed by the Delegate of Italy.

428. Mr. GROMPONE (Uruguay) said that he supported the Italian delegate's statement because he considered that copyright should be protected from any form of infringement.

429. Mr. SAÏD (Tunisia) said that the amendment proposed by the Italian Delegate was in contradiction with Article III, paragraph (6) of the Appendix, which so far from confining the application of its provisions to teaching and scholarship gave priority to the needs of the general public.

430. Mr. DE SANCTIS (Italy) said that he would not insist on his amendment.

431. Article IV, paragraph (5) (document B/DC/24) was approved without opposition.

Paragraph (6)

432.1 Mr. ALVAREZ DE TOLEDO (Argentina) said that—as had been mentioned before—the developing countries also were, to a greater or lesser extent, exporters of intellectual and imaginative works. His Delegation was concerned lest the protection of authors in the developing countries should be reduced in the same proportion as the protection of authors in the developed countries. It seemed unjust that the burden of the assistance given to the developing countries should fall on authors in those countries; that burden should be borne by the more affluent countries. He also shared the view expressed by the observer from the International Literary and Artistic Association (ALAI) at the second meeting of the Plenary Assembly, to the effect that assistance to the developing countries should not be provided exclusively at the cost of copyright. He, therefore, took the view that governments which were prepared to make concessions to the developing countries should take steps to ensure that indemnities and compensation should be offered rapidly and effectively, in convertible currency, to the authors whose works were used in accordance with the system of licenses set up under the revised Berne Convention.

432.2 He understood that it was impossible to introduce provisions into the Berne Convention involving financial commitments for the States concerned. He was also aware that, in its Recommendation No. III, the Stockholm Conference had asked the International Bureau to undertake "in association with other governmental and non-governmental organizations a study of ways and means of creating financial machinery to ensure a fair and just return to authors". But the Working Group which met in Geneva pursuant to Recommendation No. III had reached no really conclusive result.

432.3 He reminded the Main Commission that Article 24, paragraph (5) of the Berne Convention, as revised at Stockholm stipulated that "The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright". His Delegation accordingly considered that there was nothing to prevent the present Conference from formulating a recommendation to the effect that the International Bureau should study the question at the earliest possible moment and propose appropriate measures to solve the problem by establishing a proper balance between the practical protection of copyright and meeting the needs and aspirations of the developing countries.

433. The CHAIRMAN assured the Delegate of Argentina that his statement would appear in the minutes.

434. Mrs. STEUP (Germany (Federal Republic of)), supported by Mr. CHAUDHURI (India), proposed the deletion of the words "by national legislation" from the first sentence of Article IV(6) (document B/DC/24):

435. Mr. BOGSCH (First Deputy Director General, WIPO), while understanding the previous speaker's aim of bringing the text into line with the corresponding text in the Universal Copyright Convention, believed that reference to national legislation would in fact be required in respect of item (iii) of paragraph (6).

436. Mr. WALLACE (United Kingdom) believed that the reference to national legislation might be deleted.

437. Mr. BODENHAUSEN (Director General, WIPO) observed that the inclusion of the same provision in the Universal Copyright Convention had never raised any problem.

438. The CHAIRMAN proposed that the question should be referred to the Drafting Committee.

439. It was so decided.

Paragraph (7)

440. Article IV, paragraph (7) (document B/DC/24) was approved without opposition.

Paragraph (8)

441. Article IV, paragraph (8) (document B/DC/24) was approved without opposition.

Article V (document B/DC/24)

Paragraph (1)

442. Article V, paragraph (1) (document B/DC/24) was approved without opposition.

Paragraph (2)

443. Article V, paragraph (2) (document B/DC/24) was approved without opposition.

The meeting rose at 6.20 p.m.

FIFTH MEETING

Friday, July 16, 1971, 3.15 p.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (continued)

Proposals of the Joint (Berne-UCC) Working Group (documents B/DC/5, B/DC/24, B/DC/25)

444.1 The CHAIRMAN reported to the delegates the conclusions reached by the Joint (Berne-UCC) Working Group, which it had been decided to set up at the previous meeting, and which had met that morning.

444.2 The Joint (Berne-UCC) Working Group had first of all studied the question of joint licenses on the basis of the proposal submitted by the Delegation of Tunisia and India. It had come to the conclusion that part of the General Report of the Conference should be devoted to individual remarks on the subject. A sub-committee of the Joint (Berne-UCC) Working Group, composed of the Delegates of Cyprus (Kenya for the UCC), Ivory Coast, the United Kingdom and the United States of America would draft that part of the report, which would be submitted for approval to the Main Commission. It would state that it was not possible to grant joint licenses, but that when licenses to

translate were granted in several developing countries where the same language was in use, the same translation could be used, in cases where the translation had not already been published, by the various license-holders.

444.3 The Joint (Berne-UCC) Working Group had also considered the question of printing in a foreign country. In its view, it might be stated in the General Report of the Conference that the holder of a license to translate or to reproduce could have recourse to printing services in a foreign State which had also acceded to the Berne Convention or to the Universal Convention, on condition: (a) that, for economic or technical reasons, it was unable to do the printing on its own territory, and (b) that it was clearly understood that all the copies printed abroad would be sent to it and could only be used in the country of the license-holder.

444.4 If he heard no objection, he would consider that the delegates accepted the conclusions of the Joint (Berne-UCC) Working Group on those two points, on the understanding that it would be open to them to examine the relevant passage in the General Report of the Conference.

444.5 Lastly, the Joint (Berne-UCC) Working Group had studied the question of the designation of so-called "national" languages. In that connection, it had thought it would be useful to use the same terms in the revised texts of the Berne Convention and the Universal Copyright Convention, and it had proposed to employ the expression "language in general use" in a country, which seemed preferable to "national language" or "a language of the country". If that proposal was accepted, it would of course be necessary to amend the formulation of Article II(2) of the Appendix to the revised Berne Convention (document B/DC/24) and that of Article 30(2)(b) of the same Convention (document B/DC/5), on the understanding that, for a language to be regarded as being in general use in a country, it was sufficient for it to be in general use in part of the country. The Joint (Berne-UCC) Working Group had suggested that the same expression should be used in the Universal Copyright Convention.

444.6 He asked delegates if they would accept that amendment.

445. It was so decided.

Article 28(2)(a)(ii) (document B/DC/5)

446. The CHAIRMAN invited participants to state their views on paragraph (2)(a)(ii) of Article 28, which perhaps contained an anomaly because it implied that the entry into force of Articles 1 to 21 of the Act, and of the Appendix, would depend on the agreement of a country (the United States of America) which was not a member of the Berne Union.

447. Mr. DE SANCTIS (Italy) said that it was still more abnormal to provide that the entry into force of Articles 1 to 21 of the Paris Act and of the Appendix would, under the same paragraph, depend on the accession of a number of countries to the Universal Copyright Convention which, from the legal standpoint, was not linked to the Berne Convention. It was for that reason that the Italian Delegation had urged the need to establish a link between the two Conventions. The question of the ratification of the Universal Convention by the United States of America was stipulated in the Washington Recommendation; in any event, the system the Conference was endeavouring to establish would only function if the United States of America acceded to the Convention.

448. Mr. DAYRELL DE LIMA (Brazil), replying to the first statement by the Delegate of Italy, said that the Universal Copyright Convention and the Berne Convention were in fact linked by many cross-references. The ratification of the Universal Convention by the United States of America was one of the essential principles of the Washington Recom-

mendation. In his view, it was indispensable to mention the United States of America in paragraph (2)(a)(ii) of Article 28, now under consideration; the Brazilian Delegation was, therefore, prepared to accept the text proposed by WIPO for that paragraph (document B/DC/5).

449. Mr. BALAKRISHNAN (India) said it was the unanimous opinion of the developing countries that paragraph (2)(a)(ii) of Article 28 should be retained.

450. Mr. LARREA RICHERAND (Mexico) supported the statements by the Delegations of Brazil and India in favor of retaining the reference to the United States of America in Article 28, paragraph (2)(a)(ii).

451. Article 28, paragraph (2)(a)(ii), as appearing in document B/DC/5, was approved.

452. Mr. LEUZINGER (Observer for the International Federation of Musicians) said that his Organization was gratified to note that the present Conference had been organized with a view to restricting compulsory licenses to a given sector, thus enabling the developing countries to translate and publish works on more favorable terms than had been the case up to the present. Unlike the Stockholm Protocol, the Appendix to the Paris Act contained provisions which did not have unfavorable implications for artists and musicians. If those provisions were approved, authors from the developing countries would have no cause to fear that they might receive less favorable treatment than their colleagues from the developed countries.

453.1 Mr. GERANTON (Observer for the International Publishers Association), said that ever since the Stockholm Conference, the International Publishers Association had been advocating that no distinction should be made between those developing countries which were members of the Berne Union and those which were parties to the Universal Convention, and that the same concessions should be made to both.

453.2 The International Publishers Association also hoped that there would be as few compulsory licenses as possible, since it believed that it should be possible to conclude fair contracts between publishers in developed and in developing countries, which would render such compulsory licenses unnecessary. Moreover, the interests of the developing countries were defended by the national copyright information centres, which also acted in a conciliatory role, and he thought that those primarily concerned could be expected to display sufficient good will for it to be scarcely necessary to resort to compulsory licenses.

The meeting rose at 3.40 p.m.

SIXTH MEETING

Wednesday, July 21, 1971, 10.10 p.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (continued)

Draft Paris Act prepared by the Secretariat according to the instructions of the Drafting Committee (document B/DC/27)

454. The CHAIRMAN invited the Main Commission to examine the draft text prepared by the Secretariat and submitted in document B/DC/27.

Title and preamble

455. The title and preamble were approved.

Article 21

456. Article 21 was approved.

Article 27

457. Article 27 was approved.

Article 28

458. Mr. KATO (Japan) drew attention to an error in Article 28(1)(b), where reference should be made, not to Article V(1) of the Appendix, but to Article VI(1).

459. The CHAIRMAN said that the necessary correction would be made in the final text.

460. Article 28, thus amended, was approved.

Article 29

461. Article 29 was approved.

Article 29bis

462. Article 29bis was approved on the understanding that the text would be submitted to the General Assembly of WIPO.

Articles 30 to 38

463. Articles 30 to 38 were approved.

Appendix

Article I

Paragraphs (1) and (2)

464. Article I, paragraphs (1) and (2) were approved.

Paragraph (3)

465. Mr. KATO (Japan) said that there were two entitlement systems under which a developing country could translate works, namely, the compulsory license system provided for under Article II of the Appendix, and the ten-year reservation system now provided for under Article V. While the time when a country would cease to be entitled to avail itself of the compulsory license system was clearly stipulated in paragraph (3) of Article I, the corresponding situation in respect of the ten-year reservation system seemed rather ambiguous. If his interpretation of the texts was correct, there was a slight difference between the duration of the two systems. According to the original text appearing in document B/DC/5, the ten-year reservation system was included in the category of faculties, and the duration of both systems was the same. In the text under discussion, however, the ten-year reservation system had been excluded from the category of faculties. He, therefore, suggested the addition, either at the end of paragraph (3) of Article I of the Appendix (or in another appropriate place), of a sentence along the following lines: "In the case where the three-year period mentioned above expires later, a declaration made under the second sentence of paragraph (1) shall remain effective until the date on which the said period expires".

466. Mr. BOGSCH (First Deputy Director General, WIPO) said that the point raised by the Delegate of Japan could most suitably be discussed when paragraph (3) of Article V was examined. At the present stage, he wished only to draw attention to Article V, from which it appeared that the declaration must be made when the instrument of ratification or accession was deposited. Furthermore, in the case of a country which had ceased to be regarded as a developing country, the effect of the declaration would cease on the date stipulated in paragraph (3) of Article I.

467. Mr. KATO (Japan) said that he did not object to deferring discussion of his proposal until such time as Article V was examined.

468. It was so decided.

469. On that understanding, Article I, paragraph (3) was provisionally approved.

Paragraphs (4) and (5)

470. Article I, paragraphs (4) and (5) were approved.

Paragraph (6)

471. Mr. BOGSCH (First Deputy Director General, WIPO) referred to the two texts proposed for paragraph (6)(b) and said that the Secretariat, in preparing its text (document B/DC/27) had been guided by the belief that it would be highly illogical to differentiate between the developed countries themselves. Adoption of the first of the two texts, that which did not appear between square brackets, was the only means of ensuring that there would be no discrimination between those countries.

472. Mr. WALLACE (United Kingdom) and Mr. KATO (Japan) expressed preference for the first of the two texts proposed for paragraph (6)(b).

473. Mr. BOUTET (France) said that his Delegation preferred the first of the two versions proposed for paragraph (6)(b). It thought, however, that the words "the period referred to in Article I(3)" should be replaced by the words "the period applicable under Article I(3)"; that would make it quite clear that, of the two periods referred to in the article, the period applicable was the one which expired later.

474. Mr. HAARDT (Netherlands) drew the Main Commission's attention to the fact that the reference to Article V(1) at the end of Article I(6)(b) was not sufficiently precise.

475. The SECRETARY GENERAL, replying to the Delegate of the Netherlands, said that the end of paragraph (6)(b) should read: "in accordance with Article V(1)(a)".

476. Article I, paragraph (6), with the amendments suggested by the Delegate of France and the Secretary General, was approved.

477. Subject to subsequent reconsideration of paragraph (3), Article I of the Appendix, as amended, was approved.

Article II

Paragraph (1)

478. Article II, paragraph (1) was approved.

Paragraph (2)

479. Mrs. STEUP (Germany (Federal Republic of)) proposed that the word "translations" in paragraph (2)(b) be replaced by "translation."

480. Article II, paragraph (2), thus amended, was approved.

Paragraph (3)

481. Article II, paragraph (3), was approved.

Paragraph (4) (documents B/DC/27 and B/DC/31)

482. Mrs. STEUP (Germany (Federal Republic of)), introducing the amendment contained in paragraph I of document B/DC/31, said that her Delegation had submitted that amendment with a view to making it quite clear that each of the two periods in question was applicable to a different case.

483.1 Mr. BOUTET (France) said that the draft amendment submitted by the Delegation of the Federal Republic of Germany raised two problems.

483.2 First, where the owner of the right to translate was unknown, it would perhaps be better if the period began to run, not from the date on which the copies of the application for a license were sent to the publisher, but from the date on which the application itself was sent. That was the solution adopted in the Universal Copyright Convention; but that was not a point of major importance.

483.3 Second, even when the owner of the right to translate was known, his address might not be known. That being so, it might be useful to provide that, in every case, the request for authorization mentioned in the version of Article II(4)(a)(i) proposed in document B/DC/31 should be addressed not only to the owner of the right to translate, but also to the publisher.

484.1 Mr. WALLACE (United Kingdom) considered that the essential object was to ensure that the copyright owner or his publisher were made aware of the fact that an application had been made for a compulsory license. A statement to that effect should, in his view, be included in the report.

484.2 After expressing support for the amendment proposed by the Delegation of the Federal Republic of Germany, he suggested that the words "the identity or address of" be inserted after the word "where" in the beginning of paragraph (4)(a)(ii) of the amendment (document B/DC/31). It might also be useful to insert a phrase such as "or he cannot, after due diligence, be contacted" after "unknown".

484.3 Finally, certain minor drafting changes in the wording of that paragraph would be desirable if the amendment was adopted.

485. The CHAIRMAN, speaking as the Delegate of the Federal Republic of Germany, supported the United Kingdom Delegate's proposal.

486. Mr. BOUTET (France) suggested that the draft amendment proposed by the Delegation of the Federal Republic of Germany should be amended by the addition, at the end of paragraph (4)(a)(i), of the words: "...; to take effect, such request for authorization should also be sent to the publisher."

487. Mr. BOGSCH (First Deputy Director General, WIPO) said that the French Delegation's proposal seemed to raise a question of substance. In any event, that proposal, which referred to cases in which the owner of the right to translate was not the publisher, might best be considered during the discussion of Article IV(1) of the Appendix.

488. Mr. STRASCHNOV (Cyprus) expressed the view that the problem raised by the French Delegation was not so serious as it might seem at first sight, because only in a very few cases would the author himself be the copyright owner. Consequently, it would perhaps be sufficient to include in the Report a statement to the effect that in cases where the applicant did not know who the copyright owner was, the application should be sent to both the publisher and the author. If that clarification was made in the General Report, there would be no need to alter the amendment proposed by the Federal Republic of Germany (document B/DC/31).

489. Mr. DE SANCTIS (Italy) said that it was essential for the applicant to get into touch with the publisher; it was of little importance, however, if he sent him a request for authorization or simply a copy of his application for a license.

490. Mr. WALLACE (United Kingdom) agreed with the view that the normal way to contact the copyright owner was to contact the publisher. In order to ensure that that was done, it would be sufficient to make a small amendment to Article IV(1), and he would make a specific suggestion in that respect when Article IV was examined.

491. The CHAIRMAN suggested that the Main Commission should suspend its discussion on Article II, paragraph (4), and on the amendment in document B/DC/31 until it came to consider Article IV paragraphs (1) and (2) of the Appendix.

492. It was so decided.

Paragraphs (5), (6), (7) and (8)

493. Article II: paragraphs (5), (6), (7) and (8) were approved.

Paragraph (9)(a)

494. Mr. BOUTET (France) said that, in the French version, the beginning of item (ii) should read: *la traduction est utilisable seulement dans les émissions destinées...*

495.1 The CHAIRMAN said that the wording proposed by the French Delegate for item (ii) was preferable to the present wording.

495.2 With regard to item (iii), he suggested that the French version should be amended to read: *la traduction est utilisée exclusivement aux fins énumérées au point ii) dans des émissions faites licitement et destinées aux bénéficiaires sur le territoire dudit pays, y compris les émissions par le moyen d'enregistrements sonores...*

496. Mrs. STEUP (Germany (Federal Republic of)) proposed the insertion of the word "any" before "commercial" in paragraph (9)(a)(iv).

497. Article II, paragraph (9)(a), as amended at the suggestion of the Chairman and on the proposals of the Delegates of France and the Federal Republic of Germany, was approved.

Paragraph (9)(b)

498. Mr. PEDRAZZINI (Switzerland), supported by Mr. DA COSTA (Brazil), proposed that the words "and with the agreement of that organization" should be deleted.

499. Mrs. STEUP (Germany (Federal Republic of)), supported by Mr. BOUTET (France) and Mr. STRASCHNOV (Cyprus), expressed the view that the phrase in question should be retained.

500. Mr. PEDRAZZINI (Switzerland) withdrew his proposal.

501. Article II, paragraph (9)(b) (document B/DC/27) was approved.

Paragraph 9(c)

502. The CHAIRMAN proposed that the word "itself" should be inserted before the word "prepared" in the English version.

503. It was so decided.

504. The CHAIRMAN said that the French version could be tidied up by replacing the words *dans une fixation audio-visuelle lorsqu'une telle fixation a été préparée et publiée...* by *dans une fixation audio-visuelle faite et publiée...*

505. Mr. BOUTET (France) proposed that the words *dans le seul but* in the French version should be replaced by the words *à seule fin*.

506. The SECRETARY GENERAL suggested that, to bring the wording of the French version of the paragraph into line with the corresponding paragraph of the Universal Copyright Convention, the words *pour les besoins de l'enseignement scolaire et universitaire* should be replaced by the words *pour l'usage scolaire et universitaire*.

507. Mr. LARREA RICHERAND (Mexico) said that, under Article II, paragraph (9)(c), a license could only be granted if the conditions set out in paragraph (9)(a)(i) of the same article were met; one of those conditions was that the

translation should be made "from a copy made and acquired in accordance with the laws of the said country". He understood that the paragraph referred to an audio-visual fixation incorporating a text in the language of the country granting the license. If that was so, he could not understand why the conditions laid down should include the requirement that the translation should be made from a copy "made" in accordance with the laws of the country granting the license, because the copy would in fact have been made in that country.

508. Mr. WALLACE (United Kingdom), referring to the remarks made by the previous speaker, said that there had been some discussion by the Drafting Committee on the phrase "made and acquired in accordance with the laws of the said country." It had been agreed that the interpretation to be given to that phrase was that the film in question should not constitute an infringement of the laws of the country granting the license. He, therefore, suggested that the present text be retained and that the necessary clarification be included in the Report of the Conference.

509. *It was so agreed.*

510. *Article II, paragraph (9)(c), with the amendments proposed by the Chairman, the Delegate of France and the Secretary General of the Conference, was approved.*

Paragraph (9)(d)

511. *Article II, paragraph (9)(d) was approved.*

512. *With the exception of paragraph (4) (to be re-examined later), Article II, as amended, was approved.*

Article III

Paragraph (1)

513. *Article III, paragraph (1) was approved.*

Paragraph (2)

514. Mr. BOUTET (France) said that, having regard to the wording adopted for the Universal Convention, it would be better, in the French version, to replace the word *public* in paragraphs (2)(a) and (b) and in the other paragraphs of Article III by the words *grand public*.

515. *It was so decided.*

516. *Article III, paragraph (2), with the amendments proposed by the Delegate of France, was approved.*

Paragraph (3)

517. *Article III, paragraph (3) was approved.*

Paragraph (4)

518. *It was decided to postpone consideration of Article III, paragraph (4) until the Commission had examined Article IV, paragraphs (1) and (2) of the Appendix.*

Paragraphs (5) and (6)

519. *Article III: paragraphs (5) and (6), were approved.*

Paragraph (7)(a)

520. *Article III, paragraph (7)(a) was approved.*

Paragraph (7)(b)

521.1 The SECRETARY GENERAL read out the text proposed at a previous meeting by the Delegate of France for the corresponding paragraph of the Universal Convention (which had been approved by the Main Commission of the Conference for the Revision of the Universal Convention).

521.2 He further pointed out that, as had been previously decided in connection with Article II(9)(c), the end of Article III(7)(b) in the French version should be amended to read: *... ont été conçues et publiées aux seules fins de l'usage scolaire et universitaire.*

522. The CHAIRMAN said that the wording proposed at the previous meeting by the French Delegation was somewhat different from the English version. He, therefore, suggested that the beginning of Article III, paragraph (7)(b) in the French version should be amended to read: *le présent article est également applicable à la reproduction audio-visuelle de fixations licites audio-visuelles constituant ou incorporant des œuvres protégées, ainsi qu'à la traduction du texte ...*

523. Mr. STRASCHNOV (Cyprus) fully supported the suggestion by the Chairman.

524. *Article III, paragraph (7)(b), as amended according to the Chairman's and the Secretary General's suggestions, was approved.*

525. *With the exception of paragraph (4) (to be re-examined later), Article III, as amended, was approved.*

Article IV

Paragraph (1)

526. Mr. WALLACE (United Kingdom) proposed that the phrase "including contacting the publisher, if known," be inserted after "part".

527. The SECRETARY GENERAL read out the French version of the amendment proposed by the United Kingdom Delegate to Article IV, paragraph (1); if it was adopted, the end of the paragraph would read in French: *... après dues diligences de sa part, et après avoir pris contact avec l'éditeur si celui-ci est connu, n'a pu atteindre ce titulaire ou n'a pu obtenir son autorisation.*

528.1 Mr. BOUTET (France) said that there were two drawbacks to that wording.

528.2 First, it suggested that the owner of the right to translate was always the author, whereas in fact it was sometimes the author and sometimes the publisher.

528.3 Secondly, the text proposed by the United Kingdom Delegate did not state that, when he was not the owner of the right to translate, the publisher must be informed of the submission of an application so that the period referred to in Article II(4) should begin to run. It might happen, therefore, that a license was granted, completely legally, whereas the publisher had only been informed of the application too late to be able to take the necessary steps. It was necessary, therefore, to state clearly that, to be effective, an application must be addressed to the publisher also, even when the author was the owner of the translation right.

529.1 Mr. BOGSCH (First Deputy Director General, WIPO) replying to the French Delegate, said that the question whether the author or the publisher was the owner of the right to translate was one for national law.

529.2 With regard to the second point raised by the French Delegate, he thought that a provision to the effect that an applicant should get into touch with the publisher when making his application might be added at the end of paragraph (1) of Article IV.

530. The CHAIRMAN said that in view of the problem involved in formulating paragraph (1) of Article IV, the preparation of a final draft might be entrusted to a working group; the text it prepared would then be submitted to the Main Commission. The working group might be composed of Delegates from the following countries: Cyprus, Federal Republic of Germany, France, India, Tunisia, and the United Kingdom.

531. *It was so decided.*

Paragraph (2)

532. The CHAIRMAN said that any amendments that were made to paragraph (1) of Article IV were likely to affect paragraph (2); the Working Group should therefore be invited to propose a new text of that paragraph.

533. *It was so decided.*

Paragraph (3)

534. *Article IV, paragraph (3), was approved.*

Paragraphs (4)(a) and (b)

535. *Article IV: paragraphs (4)(a) and (b) were approved.*

Paragraph (4)(c)

536. Mrs. LIGUER-LAUBHOUET (Ivory Coast) said that the word *individus* should be deleted from the French version of paragraph (4)(c)(i).

537. *After an exchange of views, it was decided to replace the word "individus" by the word "particuliers" in the French version of Article IV(4)(c)(i).*

538. Mr. FERNANDO (Ceylon) said that he assumed that the word "individuals" in the English text of paragraph (4)(c)(i) referred only to persons in the recipient country who, by virtue of the agreement concluded between the two countries concerned, were entitled to receive copies.

539. Mrs. STEUP (Germany (Federal Republic of)) proposed that the word "any" be inserted before "commercial" in paragraph (4)(c)(iii).

540. *It was so agreed.*

541. Mrs. STEUP (Germany (Federal Republic of)), referring to paragraph (4)(c)(iv), pointed out that the corresponding provision in the Universal Copyright Convention required only one of the governments concerned to make notification of the agreement.

542. Mr. BOGSCH (Deputy Director General, WIPO) said that if the phrase "one of the Governments" was used, each of the Governments concerned might wait indefinitely for the other to carry out the notification.

543. Mr. DE OLIVEIRA ASCENSÃO (Portugal) said that it would be desirable to specify that the Government of the country to which the license had been granted was responsible for notification.

544. *It was so decided.*

545. *Article IV, paragraph (4)(c), as amended, was approved.*

Paragraphs (5) and (6)

546. *Article IV: paragraphs (5) and (6) were approved.*

547. *Article IV, with the amendments accepted during the discussion, was approved, except for paragraphs (1) and (2), to be reconsidered.*

Article V

Paragraph (1)

548. Mr. KATO (Japan) proposed the addition of a new subparagraph (*abis*) along the following lines: "If a country having made a declaration according to this paragraph ceases to be regarded as a developing country as referred to in Article I(2), such declaration shall remain effective until the date on which the period referred to in Article I(3) expires."

549. *Article V, paragraph (1), thus amended, was approved subject to drafting changes.*

Paragraph (2)

550. *Article V, paragraph (2), was approved.*

Paragraph (3)

551. Mrs. STEUP (Germany (Federal Republic of)) proposed that the phrases "provided for in" and "referred to in" in Article V (3) be replaced by "applicable under."

552. *Article V, paragraph (3), thus amended, was approved.*

553. *Article V, as amended, was approved.*

Article VI

Paragraph (1)(i)

554. *Article VI, paragraph (1)(i) was approved.*

Paragraph (1)(ii)

555. Mrs. STEUP (Germany (Federal Republic of)), supported by Mr. GABAY (Israel) and Mr. STRASCHNOV (Cyprus), considered that it was neither necessary nor desirable to differentiate between the various types of rights. The alternative text for paragraph (1)(ii) appearing between square brackets was therefore the more satisfactory of the two.

556. Mr. BOUTET (France) said that, for paragraph (1)(ii), the first text was preferable to the variant between square brackets because it gave States greater freedom of action: it enabled them to adopt different attitudes in the case of the right to translate and of the right to reproduce.

557. Mr. GABAY (Israel), referring to the remarks made by the French Delegate, said that systems which offered the possibility of admitting application of only certain parts of an agreement had not proved successful in the past. A situation where one country could decide to apply one system to one part of the agreement and another system to another part should be avoided. In the interest of preserving a single cohesive system, therefore, he hoped that the French Delegate would be able to accept the alternative text proposed between square brackets for Article VI(1)(ii) (document B/DC/27).

558. Mr. BOUTET (France) said that he had been convinced by the explanations given by the Delegate of Israel.

559. *Article VI, paragraph (1)(ii), was approved, with the variant between square brackets.*

Paragraph (2)

560. *Article VI, paragraph (2) was approved.*

561. *Article VI, with the variant in square brackets for paragraph (1)(ii), was approved as a whole.*

DECLARATION BY THE OBSERVER FOR IRAN

562. Mr. RAJABNIA (Iran) conveyed to the Conference his Government's full support for the cause of the developing nations and its hope that the results of the Conference would be such as to assist those nations in achieving their goals.

The meeting rose at 1.20 p.m.

SEVENTH MEETING

Wednesday, July 21, 1971, 3.30 p.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (continued)

Draft text prepared by the Sub-Committee (Cyprus [Kenya for the UCC], Ivory Coast, United Kingdom, United States of America) of the Joint (Berne-UCC) Working Party (document B/DC/32)

563. The CHAIRMAN drew the Main Commission's attention to the draft text for insertion in the General Report of the Conference, which had been drafted on the proposal of the Delegations of Congo (Democratic Republic of the), Ivory Coast, Niger, People's Republic of the Congo and Senegal by the Sub-Committee of the Joint (Berne-UCC) Working Party (document B/DC/32).

Paragraph 1

564. Mr. SAÏD (Tunisia) said that the word *à* should be inserted after the word *interdisant* in the first paragraph of the French version.

565. The RAPPORTEUR GENERAL said that the end of paragraph 1 in the French version was badly drafted. It was hardly correct to say that a prohibition *n'a pas lieu d'être*.

566. Mr. KEREVER (France) suggested that the passage should be amended to read *on estime que cette interdiction n'est pas applicable quand les circonstances ci-après sont réunies ...*

567. Paragraph 1, as amended, was approved without opposition.

Paragraph 2

568. Paragraph 2 was approved without opposition.

Paragraph 3

569. Mrs. STEUP (Germany (Federal Republic of)) asked for a clarification of the meaning of paragraph 3, which had not been discussed in the Working Party.

570. Miss RINGER (Observer for the United States of America) spoke as a member of the Sub-Committee of the Joint Working Party, which had discussed the question of commercial gain. There had been unanimous agreement in the Sub-Committee that in Article *Vier* and Article *Vquater* the basic purpose behind the granting of the license should not preclude the use of profit-making facilities for the purpose of the enterprise. The Sub-Committee had considered that such an interpretation should be included as part of the basic understanding.

571. Mrs. STEUP (Germany (Federal Republic of)) pointed out that the phrase "for commercial purposes" had been used in the text several times as signifying "profit-making", and that paragraph 3 as it stood was, therefore, ambiguous. Her understanding was that paragraph 3 did not exclude the possibility of a publisher obtaining a license and then selling for profit. She suggested that the text should be modified to make that understanding clear.

572. Mr. BALAKRISHNAN (India), supporting that understanding, thought that to avoid ambiguity it would be preferable to delete paragraph 3.

573. Mr. MOREIRA ALVES (Brazil) said that he agreed with the Delegate of India.

574. Mr. DE SANCTIS (Italy) said that in the case of public institutions one could say that their purposes were non-commercial or that they were non-profit-making; but publishers, at least in market-economy countries, were business-men whose activities were defined by law as being profit-making. It might be best, therefore, if the paragraph referred to "cultural purposes".

575. The CHAIRMAN said that if the ideas which lay behind paragraph 3 of document B/DC/32 were to be included in the Report, they should appear in a more general form than in the document as drafted. He, therefore, proposed that the sentence in paragraph 3 should not be included in the Report as it stood.

576. Mr. REINŠ (Czechoslovakia) supported the Chairman's proposal; he also drew attention to the fact that several articles referred to in document B/DC/32 were numbered as in the Universal Copyright Convention, whereas the correct reference should be to the draft of the Berne Convention.

577. Mr. SAÏD (Tunisia) supported the Chairman's proposal.

578. It was decided not to include paragraph 3 of document B/DC/32 in the General Report of the Conference.

579. Subject to the amendments made to paragraph 1, it was decided to include paragraphs 1 and 2 of document B/DC/32, with reference to the corresponding articles of the Berne Convention, at appropriate points in the General Report of the Conference.

Proposals by the Working Group concerning amendments to be made to Articles II, III and IV in document B/DC/27 (document B/DC/33)

580. The CHAIRMAN drew the Main Commission's attention to document B/DC/33 containing the proposals made by the Working Group set up at the sixth meeting of the Main Commission with a view to redrafting Articles II, III and IV of the Appendix, as proposed in document B/DC/27.

581. Mrs. STEUP (Germany (Federal Republic of)) said that in discussion in the Working Group different opinions had been expressed as to who or what body should be notified of the application for a license. For example, India would have found it difficult to agree that the publisher should be notified at the same time as the owner of the translation or reproduction right. The acceptable solution finally devised was for a provision to the effect that the applicant should send a request to the owner of the relevant right, and at the same time to a national or international information center designated by the country of origin of the work. Such a provision took care both of the Indian difficulty and the insistence by France that the publisher should be informed that an application had been made. As regards paragraph (2) of Article IV (document B/DC/33), the number of bodies who had to be notified had been reduced. It had been the unanimous view that only two copies of the application should be sent, one to the publisher of the work and the other to the national or international information center already mentioned. Such a solution was acceptable since it did not impose a heavy burden on the developing countries, while taking care of the interests of both the owner of the right and the publisher.

Article IV

Paragraphs (1) and (2)

582. After an exchange of views in which Mr. SAÏD (Tunisia), Mr. BOGSCH (First Deputy Director General, WIPO) and the SECRETARY GENERAL took part, the CHAIRMAN suggested that Article IV, paragraph (1) should be amended to read: "No license under Article II or Article III may be granted unless the applicant, in accordance with the procedure of the country concerned, establishes ..." (the rest unchanged).

583. After an exchange of views in which Mrs. STEUP (Germany (Federal Republic of)) and Mr. BOGSCH (First Deputy Director General, WIPO) took part, the CHAIRMAN suggested that Article IV, paragraph (2) should be amended to read: "If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application submitted to the competent authority with a view to obtaining a license to the publisher whose name appears on the work and to any national or international information centre which may have been designated in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business."

584. Mr. LARREA RICHERAND (Mexico) said that the Spanish text of the document under discussion had not been distributed and requested that, in accordance with rules 19 and 20 of the Rules of Procedure, discussion should be postponed until such time as the Spanish text of the document was available.

585. Mr. BOGSCH (First Deputy Director General, WIPO) suggested that the discussion should be continued, but that no final decision should be taken until the Spanish text of document B/DC/33 was available.

586. The CHAIRMAN proposed that the English and French versions of Article IV, paragraphs (1) and (2) which he had read out should be approved at once by the Main Commission on the understanding that Spanish-speaking Delegations would be able to comment on the Spanish version in due course.

587. The English and French versions of the new paragraphs (1) and (2) proposed by the Chairman for Article IV of the Appendix were approved without opposition.

Article II

Paragraph (4)(a)

588. Mr. KEREVER (France) said that, in the French version of Article II(4)(a)(ii), the word *demande* should be replaced by the word *requête*.

589. Mr. DE SAN (Belgium) said that, to bring the French version into line with the English, the beginning of Article II(4)(a)(ii) should read: "*ou bien, si l'identité ou l'adresse de ce titulaire ne sont pas connues*". The same wording was found in Article III(4)(a)(ii) (document B/DC/33).

590. Article II, paragraph (4)(a), as amended, was approved without opposition.

Paragraph (4)(b)

591. The CHAIRMAN recalled that the Working Group's proposal had been that paragraph (4)(b) should be the same as the second sentence of Article II, paragraph (4), in document B/DC/27.

592. The Working Group's proposal for Article II(4)(b) (document B/DC/33) was approved without opposition.

Article III

Paragraph (4)(a)

593. Article III, paragraph (4)(a) (document B/DC/33) was approved without opposition.

Paragraph (4)(b)

594. The CHAIRMAN recalled that the Working Group's proposal had been that paragraph (4)(b) should be the same as the second sentence of Article III, paragraph (4)(a), in document B/DC/27.

595. The Working Group's proposal for Article III (4)(b) (document B/DC/33) was approved without opposition.

Paragraph (4)(c)

596. The CHAIRMAN recalled that the Working Group's proposal had been that paragraph (4)(c) should be the same as Article III, paragraph (4)(b) in document B/DC/27, except that the words "sub-paragraph (a)" would be replaced by the words "sub-paragraphs (a) and (b)".

597. Mrs. STEUP (Germany (Federal Republic of)) noted that the phrase in Article III(4)(c) (i.e. in Article III(4)(b) of document B/DC/27) "a distribution as described in paragraph (2)" should be amended to read "a distribution as described in paragraph (2)(a)".

598. Article III, paragraph (4)(c), as amended, was approved without opposition.

Paragraph (4)(d)

599. The CHAIRMAN recalled that the Working Group's proposal was that paragraph (4)(d) should be the same as Article III, paragraph (4)(c) in document B/DC/27.

600. The Working Group's proposal for Article III(4)(d) (document B/DC/33) was approved without opposition.

601. Article III(4) (document B/DC/33), as amended, was approved as a whole.

602. Mr. ARMITAGE (United Kingdom) said that it had been agreed in the Working Group that it would be appropriate for the report to indicate that, in any case in which a compulsory license was applied for, it was expected that the owner of the relevant right should be notified. Steps should be taken by the competent authorities to ensure such notification, and the owner should be given the opportunity to make representations with regard to the compulsory license.

603. The CHAIRMAN proposed that that clarification should be inserted in the General Report of the Conference.

604. It was so decided.

The meeting rose at 5.45 p.m.

EIGHTH MEETING

Thursday, July 22, 1971, 12 noon

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERNE CONVENTION (continued)

Proposals by the Working Group concerning amendments to Articles II, III and IV of document B/DC/27 (document B/DC/33)

605. The CHAIRMAN recalled that at the previous meeting of the Main Commission it had been agreed that Spanish-speaking Delegations might revert to document B/DC/33 the Spanish version of which had not at the time been distributed. He invited those Delegations to take the floor if they so desired.

606.1 Mr. LARREA RICHERAND (Mexico) said that he approved the substance of the proposals concerning Articles II, III and IV (document B/DC/33), but thought that a few purely drafting changes should be made in the Spanish version.

- 606.2 The beginning of Article II, paragraph (4)(a) should read: *La licencia a que se refiere el presente artículo no podrá concederse antes de la expiración ...*
- 606.3 The beginning of Article IV, paragraph (1), should be amended to read: *Toda licencia referida al artículo II o III no podrá ser concedida ...*
- 606.4 The beginning of Article IV, paragraph (2), should be amended to read: *Si el titular del derecho no ha podido ser localizado ...*
607. The CHAIRMAN said that the Mexican Delegate's remarks referred to the Spanish text only and, therefore, gave rise to no objection.
608. *The Spanish version of Articles II, III and IV (document B(DC)33), having regard of the amendments made to*

the English and French versions at the seventh meeting of the Main Commission, was adopted.

609. The Main Commission, as well as Mr. CHARPENTIER, Chairman of the Conference, thanked and congratulated Mr. Ulmer, Chairman of the Main Commission, for the excellent way in which he had performed his duties.

610. The CHAIRMAN thanked Mr. Charpentier and all the members of the Main Commission for their kind words. His task had been rendered particularly easy and agreeable by the help he had received from all those who had taken part in the work he had the honour to preside over.

The meeting rose at 12.30 p.m.

GENERAL REPORT