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(WIPO)**

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

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Proposals for revising the Stockholm Act (prepared by the International Bureau on the basis of the draft adopted by the Permanent Committee of the Berne Union (document B/DC/4)). Corrigendum to the French version of document B/DC/5.

Editor's note: *This document contained the text of paragraph 3 (Introductory Observations) of document B/DC/5, omitted by mistake in the French version only.*

B/DC/6

May 10, 1971 (Original language indicated in each case)

WIPO

Information document submitted by the Director General of WIPO. Observations of governments on proposals for a revision of the Berne Convention as adopted by the Permanent Committee of the Berne Union (document B/DC/4)

*Information document submitted
By the Director General of WIPO*

At its extraordinary session held in Geneva from September 14 to 18, 1970, the Permanent Committee of the Berne Union requested the Director General of WIPO, in particular, to invite all the countries of the Union to present comments with respect to the draft text for the revision of the Berne Convention no later than March 15, 1971 (see paragraph 8 of Resolution No. 1, reproduced in document B/DC/4).

The Director General of WIPO sent such an invitation by Circular C.269 dated October 12, 1970.

At the time of preparing this document, replies have been received from the Governments of the following countries: Austria, Cameroon, Cyprus, Denmark, Germany (Federal Republic), Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom. The replies are reproduced in this document, with an indication of the authority which sent them. [...]

It should be noted that the comments refer to the draft texts for the revision of the Berne Convention as adopted by the Permanent Committee of the Berne Union, which are contained in document B/DC/4. They do not, therefore, concern the texts contained in document B/DC/5, which was distributed later.

(Original: English, French)

OBSERVATIONS OF GOVERNMENTS ON PROPOSALS FOR A REVISION OF THE BERNE CONVENTION

AUSTRIA

The competent Austrian authorities very warmly welcome the proposals concerning a renewed revision of the Berne Convention for the Protection of Literary and Artistic Works.

A short comment is made by the competent Austrian authorities concerning the *Acte additionnel*. In this instrument the Berne Convention is referred to as *cet Acte* ("this Act") which in the opinion of the Austrian authorities does not seem to be the right expression, because the title of this Convention, as adopted at Stockholm, is as follows:

"Convention de Berne pour la protection des œuvres littéraires et artistiques ... révisée à Stockholm le 14 juillet 1967."

In the text of the Convention—for example in Articles 1, 3, 4 and 7 (1)—the Convention is mostly referred to as "la présente Convention".

(Original: English)

CAMEROON

On the whole, close study of the draft texts for the revision of the Convention, and in particular those of the Additional Act, does not given rise to any fundamental objection on our part, as those draft texts correspond in principle to the objectives of the Federal Republic of Cameroon in respect of international copyright.

However, the examination of the following articles gives rise to some remarks as to detail:

Article 1 (3) of the Draft Additional Act, which deals with the case where a member of the Berne Union ceases to be a developing country, in conformity with the established practice of the General Assembly of the United Nations, thereby losing the eligibility for the advantages introduced by the Additional Act, makes no mention of a procedure for the notification to member States of the change in status of the country concerned, in order to remove all possibility of doubt in that respect; such procedure was provided for in Article 4 of the Stockholm Protocol.

Under Article 2 (6) of the Additional Act (compulsory licenses for translation), the grant of a license, in respect of works composed mainly of illustrations, to translate the text and to reproduce the illustration is subject also to fulfillment of the conditions of Article 3 of the Additional Act (compulsory licenses for reproduction). In our opinion, this is tantamount to providing that the grant of any license under the above-mentioned Article 2 (6) is possible only if the license is to be used in connection with systematic instructional activities (as provided in Article 3), and not for the purpose of teaching, scholarship or research (as provided in Article 2). It is advisable, therefore, to determine more precisely this restriction of application in the case of Article 3.

(Original: French)

CYPRUS

I. The revision proposals drawn up by the Permanent Committee of the Berne Union reflect a realistic awareness of the important role played by culture in the emergence of developing countries, and are manifestly designed to stimulate the cultural development of those countries' populations by facilitating the use of copyright works for teaching or research.

No one to-day will deny that broadcasting is a predominant factor in this process of cultural development. It makes up for the shortage of books and teachers, dispenses culture beyond normal school and university teaching hours, and contributes to post-school training and adult education. The instruction it offers ranges from the most elementary levels (literacy) to the most advanced type of course, and it thus supplements all educational curricula from primary school to university. Hence it is unthinkable that the advantages it has been agreed to confer on developing countries should not be applicable to broadcasting in these countries.

II. Scrutiny of the revision proposals makes it clear, however, that broadcasting is not covered and is indeed implicitly, if not explicitly, excluded.

Article 2 (2) of the Additional Act states unambiguously that a translation licence will be granted only with a view to publishing the work "in printed or analogous forms of reproduction", and this excludes translation either for broadcasting or for purposes of recording for broadcasting, since broadcasting does not constitute publication under the Berne Convention as revised in Stockholm (Article 3 (3)) and recording for broadcasting purposes, though deemed a reproduction within the meaning of the Convention (Article 9 (3)), is certainly not a form of reproduction "analogous" to the printed form.

The unavoidable conclusion is that Article 2 of the Additional Act does not apply to broadcasting and it is considered that this omission, which was perhaps not intended by the Permanent Committee and merely results from the present wording of Article V of the Universal Convention, should be remedied.

III. To be precise, what is needed is that the system of licenses allowed by Article 2 (1) of the Additional Act should be extended to broadcasting organizations which, though they have a vital need for foreign works for their schools broadcasts, do not "publish" those works within the meaning of Article 2. However, before pursuing this line of argument and making proposals, it is worth enquiring whether broadcasting organizations can, in performing their teaching function in the developing countries, avail themselves of other provisions of the Berne Convention dealing with the right of translation, assuming that national legislation has taken advantage of the possibilities opened up by the Berne Convention.

1. The first provision which comes to mind in this connection is Article 11*bis*(2), which allows compulsory licenses in the broadcasting field. It must be admitted, however, that a national legislation which had instituted compulsory licensing under this provision of the Convention would still not have settled the problem of translation. The broadcasting organization can of course make its broadcast unhampered by the obstacles which might exist in the absence of a compulsory license, but the work broadcast must undoubtedly be such as it was created, i.e., in particular, in its original language. The question was raised at the Stockholm Diplomatic Conference and the discussion is summarized in paragraph 205 of the Report on the Work of Main Committee I. This states that "different opinions were expressed regarding the lawful uses provided for in Articles 11*bis* and 13" for, although "some delegations considered that those Articles also applied to translated works ... other delegations ... considered that the wording of those Articles in the Stockholm text did not permit of the interpretation that the possibility of using a work without the consent of the author also included, in those cases, the possibility of translating it." These same delegations "pointed out, on the level of general principles, that a commentary on the discussion could not result in an amendment or extension of the provisions of the Convention".

It would definitely be unwise to stretch the meaning which some delegations may have attached to the scope of Article 11*bis* in regard to the broadcasting under compulsory license of a work translated without the consent of the owner of the translation right, and caution is necessary in interpreting Article 11*bis* (2). It means that if national legislation provides for a compulsory license in favour of broadcasting, the broadcasting organization will be able, subject to the provisions of Article 11*bis*, to make use of the work either in its original language or in translation if the translation already exists and the compulsory broadcasting license thus covers both the original and the already available translation. On the other hand, if no translation yet exists, the compulsory license instituted nationally by virtue of Article 11*bis* of the Convention will not enable the licensee broadcasting organization to translate the work it wishes to broadcast, or cause it to be translated, without the consent of the owner of the translation right. It follows that a broadcasting organization in a developing country, whose role is often far more important than that of a publisher, will be less favourably placed than the publisher as far as the right of translation is concerned, unless the Additional Act undergoes certain changes to remove this imbalance.

2. With regard to teaching it may also be enquired whether Article 10(2) of the Stockholm version of the Convention is not sufficient to provide the broadcasting organization with the translation license it needs. Two observations are in order here:

(a) Article 10(2) gives national legislation a free hand only with regard to the utilization of works in broadcasts and for sound or visual recordings "by way of illustration for teaching". Although the words quoted are not easy to construe and the Report on the Work of Main Committee I affords scope for various interpretations, it must surely be admitted that "by way of illustration for teaching" means something and is not to be equated with other forms of works which the Stockholm Conference might have chosen,

e.g. "for teaching purposes". If this had been the final wording it would have been arguable that Article 10(2) allows the utilization of works where the purpose of a broadcast is teaching. The much more restrictive wording eventually chosen suggests that the work may be used only to illustrate teaching by radio or television, and that it would in any case be impossible under this provision merely to utilize a school or university text book and read it out as it stands, perhaps with comments, since in this event it would no longer be used "by way of illustration for teaching" but as the principal subject-matter of the teaching itself. This interpretation of Article 10(2) leads to the conclusion that broadcast courses and lessons to schools and universities cannot simply utilize written works for these purposes, and to render such complete use lawful without the author's consent, as the case may be, it would be necessary to institute a compulsory license (subject to remuneration) within the meaning of Article 11*bis*.

At the same time this raises the problem of the translation right, in the terms outlined in 1 above. If Article 10(2) were sufficient in itself for the needs of broadcast instruction the problem would not arise, as the Stockholm Conference was unanimous in considering that this provision, as well as others, "virtually imply the possibility of using the work not only in the original form but also in translation". As has just been demonstrated, however, Article 10(2) does not meet the real needs of broadcast teaching, especially in developing countries, and thus, however liberally it is interpreted with regard to translation of the work, it does not grant the broadcasting organization the same facilities as those contemplated by the Additional Act proposals for the benefit of graphic publishers. Once again, to maintain balance, and having regard to the specific role of broadcasting in the educational life of developing countries, the Additional Act requires supplementary provisions.

(b) The same line of argument applies to the reference to sound or visual recordings in Article 10(2). National legislation may license such recordings for broadcasting purposes, provided that the works concerned are designed to illustrate teaching. Arguments designed to show that this limitation is incompatible with the place of broadcasting in the educational structure of developing countries were developed in (a) above and apply equally to recordings intended for broadcasting since, after all, recording in this case is a mere technical medium of broadcasting. Hence Article 10(2) will not allow national legislation to license the prerecording of schools broadcasts in the wider sense, in which works are used not simply as illustrations but form the actual substance of the teaching. Still less can this provision be invoked to legalize the use of works in translation, notwithstanding paragraph 205 of the Report on the Work of Main Committee I of the Stockholm Conference, since so liberal an interpretation could hardly be placed on a text which itself demands restrictive construction. Other provisions will therefore be required to enable broadcasting organizations to record works of the mind for the purpose of schools broadcasts and not merely to illustrate such broadcasts.

It may be objected that this difficulty can be overcome by the institution of ephemeral recording in national legislation. This seems unlikely, however, for ephemeral recording within the meaning of Article 11*bis*(3) certainly means recording of the work in its existing form and in no way authorizes, in addition, the making of a translation for the purpose of the recording. This is confirmed by paragraph 205 of the above-mentioned Report and the quotations reproduced from it. In other words, Article 11*bis*(3) allows national legislation to make an exception to the right of reproduction under Article 9 and not to the right of translation under Article 8 of the Berne Convention as revised in Stockholm. It scarcely needs adding that Article 13 is unlikely to prove of assistance here, since it refers exclusively to musical works, which are of secondary importance in the educational field.

Once again, specific provisions are necessary to enable broadcasting organizations in developing countries to operate within a legal framework comparable to that available to graphic publishers.

IV. It is now possible to establish a clear outline of the régime which should be applicable to broadcasting organizations in developing countries if they are to assume their proper role in the general educational field and not be at a disadvantage compared with book publishers.

Steps should be taken to ensure that broadcasting organizations in developing countries are able

1. to obtain a translation license for the purpose of broadcasting intended for teaching, scholarship or research without the need for publication within the meaning of Article 3 of the Convention,
2. to obtain a translation license for the purpose of sound or visual recording for broadcasts intended for teaching, scholarship or research,

on the understanding that the conditions of Articles 2 and 4 of the Additional Act will apply where they do not expressly refer to the existence of copies. In other words, a broadcasting organization in a developing country will be able to obtain either of the licenses in question only after the periods specified in Article 2 of the Additional Act and subject to the procedure and remuneration laid down in Article 4 of the Act, the only provisions which they are not required to observe being those, such as paragraphs 3, 4 and 5 of Article 4, which are applicable only where physical copies of the work are distributed.

V. Article 2(1) of the Additional Act specifies that the régime which it institutes for the right of translation concerns only works published in printed or analogous forms of reproduction. Accordingly, the rules regarding the right of translation instituted for the benefit of developing countries do not concern the text accompanying an audio-visual work. However, under Article 3(7) the translation of such a text may be licensed on the same terms (and no doubt at the same time) as reproduction of the audio-visual work itself.

Audio-visual works prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities play a predominant role in the schools television broadcasting of developing countries. Very often these works are of foreign origin and the text requires translation, whereas reproduction of the audio-visual work is not necessary and the operation may merely consist, before or during the broadcast, in subtitling or the injection of a commentary in the national language, or one of the national languages, of the developing country.

It is arguable that neither Article 2, nor Article 3(7) permits a television organization to perform the very simple operation just described, which involves the screening of an audio-visual work intended for teaching in a programme having the same object, but with a text translated into the language or one of the languages of the country. Article 2 refers only to works reproduced in printed or analogous form, and Article 3(7) appears to combine translation with reproduction and moreover involves very long periods (much longer than Article 2) which are understandable where it is a question of reproducing audio-visual works, but unjustified where it is merely a matter of translating an accompanying text.

An additional provision is therefore necessary to cater for this need, particularly as television is, and will remain, the biggest consumer of audio-visual works for teaching purposes, until schools in developing countries begin to acquire equipment for viewing non-televized audio-visual works, e.g. films specially made for schools or video cassettes containing schools programmes. It is surely logical that the translation of a text accompanying an audio-visual work should, where it is intended solely to accompany the televising of this work and no reproduction occurs, obey the rules of Article 2 rather than of Article 3. Should reproduction be necessary, however, it is natural that the rules governing translation should be the same as for reproduction since, if reproduction is indispensable, a different régime for translation of the text would be of no practical use.

VI. Having regard to the foregoing, it is proposed that a new article should be inserted in the Additional Act between the present Articles 4 and 5 which could, by way of example, be worded as follows:

1. A license to translate a literary or artistic work may be granted, on the conditions laid down in Articles 2 and 4 of this Additional Act, as far as those conditions are applicable, to a broadcasting organization having its headquarters in a country of the Union to which Article 1 of this Additional Act applies, for its broadcasts intended for teaching, scholarship or research and for sound or visual recording for such broadcasts.
2. A license under this Article may also be granted to a broadcasting organization, on the same conditions and for the same purpose, in respect of the text accompanying an audio-visual work prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities."

VII. As regulated in the Additional Act, the right of translation calls for the following further observations.

Under Article 2(2) and (3), the period which must elapse from the date of first publication until a translation can be published under license is three years in the case of "world" languages and one year for any other language. A "world" language is understood as being a language in general use in one or more developed countries (Article 2(3)).

This definition is felt to be too wide, in the sense that it embraces not only countries of the Union but also countries outside the Union. Now it is scarcely logical to show concern for countries outside the Union, which are under no obligation to protect Union works and can thus make use of them as they please both for translation and other purposes, yet whose interests there seems to be a desire to safeguard. Supposing that for teaching purposes a developing country desires a translation of an English or French work into Chinese, this being a language in use in many developing countries, why should a period of three years be required to elapse before such a translation can be made (the People's Republic of China is not a developing country in conformity with the established practice of the General Assembly of the United Nations) when the same work could be translated in China itself, where it is not protected, without any lapse of time whatsoever after the first publication? It is felt that in this respect Article 2(3) is too broadly conceived, and it is proposed that, in deciding whether a given language is a world language or not, only Union countries should be considered and the words "of the Union" added after "which is not in general use in one or more developed countries".

VIII. Even if circumscribed in this way, however, the difference of régime between world languages and other languages still has serious implications for certain developing countries, including Cyprus. The problem has already been raised at the various meetings leading up to the drafting of the Berne Convention revision proposals, particularly by Brazil, which in this context is in a similar position to Cyprus. The Cyprus Government does not dispute the justice of discriminating between world and other languages, but it feels that a means should be found of mitigating the consequences to some extent. It believes that such a means would be to provide in the Additional Act that, even for world languages, a shorter period may be substituted for the three-year period if the developing country which uses a world language concludes an agreement for this purpose with all the developed countries of the Union in which the same language is in general use. What the Cyprus Government has in mind is an arrangement whereby a developing country whose national language is in general use in one or more developed countries of the Union would sign a treaty with all these countries under which they allow the developing country to substitute a shorter period for the three-year period at present required for the purpose of a licence for translation into the language in question. The Cyprus Government considers that if all the developed countries of the

Union concerned agree to such a substitution, having regard to the interests of their publishers and authors, there is no further need to maintain the present rigid differentiation between the two categories of language.

IX. To sum up the considerations set forth in VII and VIII above, it is proposed that the above-mentioned addition be made to Article 2(3) of the Additional Act, and that a new paragraph 3bis be inserted which could, by way of example, be worded as follows:

"(3bis) By agreement between a country of the Union to which Article 1 of this Additional Act applies and all the developed countries of the Union where the same language is in general use, the former country may substitute for the period of three years provided for in paragraph (2) above another period as determined by such agreement but not shorter than one year.

Notification of any such agreement shall be deposited with the Director General."

(Original: English)

DENMARK

1. The main purpose of the proposed new Additional Act to the Berne Convention is to provide for special relaxations in the field of copyright for the benefit of developing countries. The provisions of the draft text being as a whole less far-reaching than those of the Stockholm Protocol regarding Developing Countries, the Danish Government will have no difficulty in accepting the general contents of the draft.

2. Article 3, paragraph (5), of the draft Additional Act provides that a reproduction license may be issued, not only in connection with original works but with certain restrictions also in the case of translations of such works. In the latter case two rights seem to be involved: the copyright in the original work and the copyright in the translation. Article 3 of the draft Additional Act is an exception from Article 9, paragraph (1), of the Stockholm Act of the Berne Convention. This paragraph seems to provide that both the author of the original work and the translator of such work have an exclusive right of authorizing the reproduction of such a translation. It is, however, not quite clear to what extent Article 3 and Article 4 of the draft Additional Act, concerning, *inter alia*, the compensation to be paid, are applicable to both of the two owners of rights that may be involved. In the opinion of the Danish Government, this matter ought to be reconsidered at the diplomatic conference with a view to suitable clarification.

3. At the Stockholm Conference, a resolution was adopted according to which the International Bureau of the Berne Union was asked to undertake, in association with other governmental and non-governmental organizations, a study of the ways and means for creating financial machinery to ensure a fair and just return to authors for the use of their works in developing countries. The Danish Government finds it desirable that this study should be pursued even after the Stockholm Protocol has been replaced by the new Additional Act.

(Original: English)

GERMANY, FEDERAL REPUBLIC OF

The Government of the Federal Republic of Germany approves, in principle, that the Berne Convention should be revised in order to replace the Protocol Regarding Developing Countries adopted at Stockholm, which has not obtained the approval of all developing countries, by new provisions. These provisions must, on the one hand, like the Stockholm Protocol, take into account the special needs of developing countries in the field of education and research and, on the other hand, guarantee the protection of authors in all member States, whether developing or developed, by means of a more detailed and more differentiated system than that provided by the Stockholm Protocol.

The Government of the Federal Republic of Germany considers it absolutely essential, as it has continually emphasized in the past, that the special needs of developing countries in the field of education and research be taken into account in the organization of copyright on an international scale. It is pleased, therefore, that it has been possible to overcome the differences of opinion among member States of the Berne Union concerning the relaxations provided for in the Stockholm Protocol in favor of developing countries, and to prepare new revision proposals elaborated jointly, in various committees of the Union, by representatives of both developing and developed countries.

The new proposals, resulting from exhaustive discussions during which problems and divergent interests were openly and carefully discussed, represent, in the opinion of the Government of the Federal Republic of Germany, an appropriate and well-balanced reconciliation of the interests involved. The Government of the Federal Republic of Germany is prepared to accept the proposed solution. It hopes that other member States of the Berne Union—both developing and developed countries—will also be able to approve the proposals, and that the new revision will form a basis on which it will be possible to carry on fruitful international cooperation within the Berne Union.

The Government of the Federal Republic of Germany does not wish to adopt a definite position on the details of the revision proposals presented. It reserves the opportunity to take up certain points at the Conference which concern, *inter alia*, the concordance between the proposed revision of the Berne Convention and the proposed revision of the Universal Copyright Convention. The Government of the Federal Republic of Germany wishes to point out, however, that it is not expressly provided in the new provisions that the owner of the right has the possibility, when a compulsory license is issued, of expressing his opinion to the issuing authority, or of obtaining information on the issue of the license and the procedure according to which it is effected (in particular, the number of copies and the fixing and mode of payment of remuneration), or of forwarding to it the customary complimentary copies. In view of the fact that Article V of the Universal Copyright Convention, which also provides for the issue of compulsory licenses in the field of copyright, does not contain express rules to this effect either, since such measures are self-evident, the Government of the Federal Republic of Germany considers that express mention is not necessary in the new provisions of the Berne Convention. However, since the wish expressed by copyright owners to have the question clarified is not unjustified in the opinion of the Government of the Federal Republic of Germany, it would like to see a reference in the General Report of the Conference to the fact that, in the unanimous opinion of the member States, such measures are self-evident and require no special ruling.

(Original: French)

ITALY

The Italian Administration expresses its approval, in principle, of the proposals for the revision of the Universal Copyright Convention and the Berne Convention, adopted respectively by the Intergovernmental Copyright Committee (Paris, September 2 to 11, 1970) and by the Permanent Committee of the Berne Union (Geneva, September 14 to 18, 1970). Nevertheless, the Italian Administration considers it necessary to draw attention to the following points:

I. Concerning the Universal Copyright Convention:

(1) Article Vier, paragraph (1):

As has already been pointed out during the meetings of the Intergovernmental Committee (document IGC/XR/2/21, paragraph 36), the Italian Administration expresses dismay, with respect to the translation license, at the adoption of a period of one year from the first publication of the original work, as provided in the paragraph mentioned above, for application for a license for translation into a language which is not in general use in a developed country.

The Italian Administration furthermore points out that such a period is shorter than the one which is indicated in a similar provision contained in the Stockholm Protocol Regarding Developing Countries.

In any event it does not appear desirable, still with respect to translation, to provide for difference of treatment depending on the language—whether in general use or not—into which the work is translated.

It is considered, therefore, that a period of three years should be adopted, whatever may be the language of the country in which the license is applied for.

(2) *Article Vquater, paragraph (3):*

It is considered appropriate to confirm that the reservations contained in this paragraph should be regarded as concerning only works in printed form. Consequently, their extension to audio-visual works should be interpreted in the sense that such works are those whose mode of expression is the image, whether or not accompanied by sounds, to the exclusion, in any event, of phonograms or any other exclusively aural fixation of sounds.

(3) As for the special provisions on translation and reproduction licenses, it is wondered whether it would not be appropriate to combine these in an Additional Act forming an integral part of the Universal Convention, which would correspond to the proposals for the revision of the Berne Convention in respect of the provisions in favor of developing countries: the provisions are indeed almost identical in both drafts and have the same objective and the same transitional and exceptional character.

II. *Concerning the Berne Convention:*

(1) *Article 2(3) of the draft Additional Act:*

See paragraph (1) of the comments on the proposals for the revision of the Universal Copyright Convention.

(2) *Article 3(7) of the draft Additional Act:*

See paragraph (2) of the comments on the proposals for the revision of the Universal Copyright Convention.

III. Finally, concerning both Conventions, the Italian Administration wishes to emphasize strongly the desirability of studying a form of link between the Conventions themselves.

(Original: French)

JAPAN

I. The Japanese Government favours in general the draft text for the revision of the Berne Convention (document DA/33/17) adopted by the Permanent Committee which met in Extraordinary Session in Geneva from September 14 to 18, 1970.

II. With respect to the proposed provisions of Articles 28, 34 and Articles 1, 2 and 3 of the Additional Act, the Japanese Government wishes to make the following comments:

1. *Article 28(2)(a)*

The proposed modification, which is assumed to be based upon the Washington Recommendation II(2) and (3), would seem to be unnecessary in view of the fact that both the Berne and the Universal Copyright Conventions will be revised respectively to contain almost the same provisions for the benefit of developing countries as the proposed modification.

2. *Article 34, first sentence*

It would be appropriate to redraft the proposed provisions to contain the following exception; because, by the proposed modification, after the entry into force of the 1971 revised text, countries members of the Berne Union which had not

acceded to the Stockholm Act in the meantime would be deprived of any possibility to accede to WIPO (Article 14 of its Convention):

"After the entry into force of Articles 1 to 21 of this Act including the Additional Act, no ratification of earlier Acts of this Convention or accession thereto, except ratification of, or accession to, the Stockholm Act in accordance with Article 28(1)(b)(i), will be permissible."

3. *Draft Text of an Additional Act... of ... 1971*

(1) *Article 1*

(i) *Paragraph (3)*

By the proposed provision of paragraph (3), the period during which a developing country can avail itself of the reservations referred to in paragraph (1) of this Article would vary between three to ten years according to the date on which it has ceased to be a developing country; therefore it would be appropriate to reconsider the provision.

(ii) *Paragraph (6)(b)*

Considering the purport of paragraph (3) of this Article and in view of a balance with the provisions of Article 2(9) of the Additional Act, the proposed provisions of this sub-paragraph should be modified as follows:

"The right of reciprocity provided for in Article 30(2)(b) of this Act cannot be exercised in relation to works the country of origin of which is or has been a country to which paragraph (1) of this Article applies, within a period during which such country remains a developing country, and for a period of three months after the expiration of the period provided for in paragraph (3) of this Article."

(2) *Article 2, paragraph (3)*

The clause "a language which is not in general use in one or more developed countries" is quite ambiguous and is likely to cause difficulties in the application of the Convention; it would be appropriate to mention definitely, for example, "a language other than the English, French, Spanish... languages."

(3) *Article 3, paragraph (7)*

For the sake of clear interpretation, it would be appropriate to add the following clause at the end of the paragraph:

"it being understood that for the purposes of the application of paragraph (3) of this Article, the period referred to in paragraph (2)(a) of this Article shall be five years for such works."

(Original: English)

NETHERLANDS

Objections have been raised in various quarters concerning Article 1(4) of the draft text of the Additional Act. In terms of this provision, copies of a work which are made under the reservations provided for in the Additional Act may continue to be distributed after expiration of the period for which the reservation was made. Certain interested organizations have drawn attention to the fact that it would be extremely difficult, as a result, for the author to ensure that his right of reproduction is respected after expiration of the period in question. The same remark could be made with regard to Article 3(6), last sentence, of the same draft text.

The Government of the Netherlands considers that this objection should be met by inserting, in Articles 1(4) and 3(6), a time limit within which the distribution of copies made under license must be effected.

(Original: French)

SWEDEN

1. In its comments of 7th July, 1970, the Swedish Government stated its views on the draft text for the revision of the Berne Convention which was adopted in May, 1970 by the Ad hoc Preparatory Committee for the Revision of the Berne Convention. On some points, the text was subsequently amended by the Permanent Committee in a manner which seemed satisfactory to the Swedish Government. On other points, however, the views of the Swedish Government were not shared by the Permanent Committee. The Swedish Government finds it desirable, in the following parts of these comments, to revert to some of the issues which were already raised in the comments of 7th July, 1970 and at the same time to deal with certain new points.

2. The main purpose of the new Additional Act to the Berne Convention is to specify the relaxations which, in regard to copyright protection, are to be given to developing countries. Generally speaking these relaxations are less far-reaching than those of the Stockholm Protocol regarding Developing Countries. Since Sweden has already admitted the application of that Protocol to works of which Sweden is the country of origin, it follows that Sweden has no difficulty in accepting the provisions of the new Additional Act.

It could be argued that in some respects certain further relaxations ought to be given to the developing countries. On the other hand, it might in some respects seem desirable to safeguard the interests of authors by restricting the exceptions from normal copyright protection which are laid down in the draft Additional Act. The Swedish Government, however, refrains from making any specific suggestions of this kind since it is clear that the present text is in substance, the result of a compromise between diverging interests and that difficulties might easily arise, if the balance of this compromise was disturbed.

3. In the new Additional Act, certain criteria have a particular importance. According to Article 2, paragraph (3), a special time-limit is applicable in regard to "a translation into a language which is not in general use in one or more developed countries". Article 2, paragraph (4), provides that a translation license can be granted only "for the purpose of teaching, scholarship or research". According to Article 3, paragraphs (2), (6) and (7), it is decisive whether or not copies of a work have been distributed "in connection with systematic instructional activities".

It is obviously difficult to define the exact scope of these different expressions. On the other hand, it is essential that those who are to benefit from the Additional Act should know to what concrete cases its provisions apply. It is therefore desirable that further attention should be given to the new concepts introduced in the Additional Act, so that in the future their interpretation can be facilitated by an elucidating discussion recorded in the *travaux préparatoires*.

4. According to Article 2, paragraphs (2) and (3), of the Additional Act, a translation license can only be issued if the owner of the right of translation has not within a period of three years or in some cases one year published a translation in the language of the developing country concerned. It is added in paragraph (5) of the same Article that such licenses shall not be granted until a further period of six or nine months has elapsed from the date of the application for a license or of the dispatch of certain documents. It is not clear, however, whether or not a translation license can still be granted if during the said period of six or nine months the owner of the translation right publishes a translation in the language concerned. It would seem logical to refuse a translation license in such cases, but the wording of paragraphs (2) and (3), according to which the right to obtain a license is only related to the three or one year period, may be invoked in favour of a different conclusion.

The same ambiguity exists in regard to reproduction licenses according to Article 3, paragraphs (2), (3) and (4). The question which arises in regard to these paragraphs is whether distribution of copies by the owner of the right of reproduction after the expiry of the three, five or seven

year period but within the six month period dealt with in paragraph (4) precludes the right to obtain a reproduction license in the same way as distribution during the three, five or seven year period.

5. Article 2, paragraph (6), of the Additional Act provides that for works which are composed mainly of illustrations, a license to translate the text and to reproduce the illustrations may be granted only if the conditions of Article 3 are also fulfilled. This seems to imply, *a contrario*, that if a literary work is illustrated but the illustrations are not the main part of the work, it is not necessary to observe the provisions of Article 3 (regarding reproduction licenses) but merely those of Article 2 (regarding translation licenses). The Swedish Government has some doubts as to this solution, in particular since it may be difficult to determine whether or not a work consists mainly of illustrations.

6. The Swedish Government has observed that Article 2 contains no provision regarding the case where the copyright owner, after a translation license has been granted, publishes his own translation of the work in the country concerned. A provision regarding this situation is to be found in Article 1 (b)(vii) of the Stockholm Protocol. As regards reproduction, this case is dealt with in Article 3, paragraph (6), and it should be considered further whether there are sufficient reasons to treat the two cases differently.

7. According to Article 3, paragraph (2), of the Additional Act, the right to obtain a reproduction license in a developing country relates to a particular edition of a work and depends on whether copies of that edition have been distributed in that country to the general public or in connection with systematic instructional activities. This seems to imply that, even if one edition of a book has been published in a developing country, a license can be obtained for a different edition of the same work which has not been distributed in that country to the general public or in connection with systematic instructional activities. It is not, however, clear how the term "edition" should be interpreted in this context.

It is interesting to make a comparison with Article 3, paragraph (6), which provides that a reproduction license shall terminate if the owner of the reproduction right distributes copies of an edition of the same work and such edition is in the same language and is substantially the same in content as the edition published under the license. A logical consequence of this provision must be that two editions in the same language and of substantially the same contents should be considered to be one single edition for the purposes of paragraph (2) of Article 3. In so far as paragraph (6) of that Article is concerned, they are, however, two different editions. It follows that the term "edition" does not have the same meaning throughout the Additional Act, and this may no doubt create confusion.

8. Article 3, paragraph (7), of the Additional Act introduces the term "audio-visual works". The introduction of this term is an important novelty in international copyright agreements. It is therefore important that some attention should be devoted to the definition of this term. It should be clarified, for instance, whether the term includes not only works whose original form is a film, a tape etc., but also any other work which has been transferred from its original form to a film, a tape etc., for instance a filmed chorographic work.

It further seems that the drafting of Article 3, paragraph (7), could be improved. Indeed, it does not seem satisfactory to state in the first sentence that the works concerned are "limited to works in printed or analogous forms of reproduction" and then to add a second sentence which makes it clear that certain other works are also included.

9. According to Article 4, paragraph (1) of the Additional Act, a person who wishes to obtain a translation or reproduction license must, as a general rule, establish that he has requested, and has been denied, authorization by the proprietor of the right to make and publish the translation or to reproduce the edition. It is not required that,

when requesting an authorisation, he should have indicated for what purpose he desired to translate or to reproduce the work, and it is conceivable, in some cases, that a voluntary agreement would have been reached, if the copyright owner had known that the translation was intended to serve the purpose of teaching, scholarship or research or that a new edition of the work would be used in connection with systematic instructional activities.

It may therefore be reasonable to add a further requirement in Article 4, paragraph (1), namely, that the copyright owner has been asked to agree to translation or reproduction for the specific purpose for which a license can be granted according to Article 2 or 3.

It should be recalled, in this regard, that Article 1, paragraph (2) (i), of the Stockholm Protocol provides for the right to obtain a reproduction license for educational or cultural purposes. The person who wishes to obtain such license should, however, first have requested and been denied authorisation by the proprietor of the right to produce and publish the work "for educational or cultural purposes".

10. In the same way as in regard to the Stockholm Protocol, the question arises if it is possible to elaborate a suitable system of compensation to authors for the use of their works in developing countries. At the Stockholm Conference, a resolution was adopted by which the International Bureau of the Berne Union was asked to undertake in association with other governmental and non-governmental organizations a study of ways and means for creating financial machinery to ensure a fair and just return to authors. It is the opinion of the Swedish Government that this study should be pursued even after the Stockholm Protocol has been replaced by the Additional Act.

(Original: English)

SWITZERLAND

It is becoming ever more apparent that the Protocol adopted at Stockholm for developing countries should be detached from the Convention, in order to enable the greatest possible number of States to ratify in its entirety the Convention as revised at Stockholm, or to accede to it.

The Federal authorities wholeheartedly approve of the efforts made by the organs of WIPO to assist developing countries in the field of education, culture and research. There is reason to wonder, however, whether the Additional Act intended to replace the Protocol as an integral part of the Convention is adequate to meet the social and cultural needs peculiar to each of those countries.

We feel, therefore, that it would be preferable to maintain the Berne Convention in its present form and to give States which consider themselves developing countries the possibility of leaving the Berne Union if they find that they are currently unable to protect works from other countries of the Union in accordance with the rules of the Convention. In view of the fact that the effect of subparagraph (a) of the Appendix Declaration relating to Article XVII of the Universal Copyright Convention is to be suspended for developing countries, the Universal Convention would be the legal bond between those countries and the others, and each State would be obliged to assimilate the authors of other contracting countries to its own nationals.

In our opinion, and as was proposed by the Washington Joint Study Group, an international information center should be established as soon as possible under the auspices of either Unesco or WIPO; that center would serve as the intermediary between the authors and publishers of educational, cultural and scientific works in industrialized countries on one hand, and the competent public or private bodies of developing countries on the other. The establishment of the international center seems to us a practical means of giving the latter countries easier access to works which are necessary for their advancement in the fields of education, culture and science.

However, if the revision of the Berne Convention in the form proposed to the countries of the Union met with the

approval of developing countries members of that Union, the Swiss authorities would accept the principle of the replacement of the Stockholm Protocol by an Additional Act.

The substance of the draft Additional Act gives rise to no comment on our part.

(Original: French)

UNITED KINGDOM

As regards the draft proposals for the revision of the Convention, ..., the United Kingdom has participated in all stages of the preparation of those proposals and considers that they represent an equitable solution to the problem of reconciling the needs of developing countries with legitimate protection of the rights of copyright proprietors. The United Kingdom stresses moreover that these proposals and the corresponding proposals prepared by the Inter-governmental Copyright Committee are closely inter-linked and have been arrived at after protracted and difficult discussion. It follows that any attempt to vary the substance of either draft will affect the other and could jeopardise the whole structure of the proposals.

(Original: English)

B/DC/7 May 10, 1971 (Original: English, French)

WIPO

Information document submitted by the Director General of WIPO. Comments of international non-governmental Organizations on proposals for a revision of the Berne Convention as adopted by the Permanent Committee of the Berne Union (document BD/C/4)

Information document submitted by the Director General of WIPO

At its extraordinary session held in Geneva from September 14 to 18, 1970, the Permanent Committee of the Berne Union requested the Director General of WIPO, in particular, to invite all interested international non-governmental organizations to present comments with respect to the draft text for the revision of the Berne Convention no later than March 15, 1971 (see: paragraph 8 of Resolution No. 1. reproduced in document B/DC/4).

The Director General of WIPO sent such an invitation by Circular C. 270 dated October 12, 1970.

At the time of preparing this document, replies have been received from the following organizations:

- European Broadcasting Union (EBU)
- International Confederation of Societies of Authors and Composers (CISAC)
- International Federations of Actors, Variety Artists and Musicians (FIA-IFVA-FIM)
- International Federation of Film Producer's Associations (FIAPF)
- International Copyright Society (Internationale Gesellschaft für Urheberrecht (INTERGU))
- International Literary and Artistic Association (ALAI)
- International Publishers Association (IPA)
- International Writers Guild (IWG)
- Union of National Radio and Television Organizations of Africa (URTNA)

The replies are reproduced in this document. The customary introductions and compliments have been omitted, however.

It should be noted that the comments refer to the draft texts for the revision of the Berne Convention as adopted by the Permanent Committee of the Berne Union, which are contained in document B/DC/4. They do not, therefore, concern the texts contained in document B/DC/5, which was distributed later.

COMMENTS OF INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS ON PROPOSALS FOR A REVISION OF THE BERNE CONVENTION

EUROPEAN BROADCASTING UNION (EBU)

I. The revision proposals drawn up by the Permanent Committee of the Berne Union reflect a realistic awareness of the important role played by culture in the emergence of developing countries, and are manifestly designed to stimulate the cultural development of those countries' populations by facilitating the use of copyright works for teaching or research.

No one today will deny that broadcasting is a predominant factor in this process of cultural development. It makes up for the shortage of books and teachers, dispenses culture beyond normal school and university teaching hours, and contributes to post-school training and adult education. The instruction it offers ranges from the most elementary levels (literacy) to the most advanced type of course, and it thus supplements all educational curricula from primary school to university. Hence it is unthinkable that the advantages it has been agreed to confer on developing countries should not be applicable to broadcasting in these countries.

II. Scrutiny of the revision proposals makes it clear, however, that broadcasting is not covered and is indeed implicitly, if not explicitly, excluded.

Article 2 (2) of the Additional Act states unambiguously that a translation license will be granted only with a view to publishing the work "in printed or analogous forms of reproduction", and this excludes translation either for broadcasting or for purposes of recording for broadcasting, since broadcasting does not constitute publication under the Berne Convention as revised in Stockholm (Article 3 (3)) and recording for broadcasting purposes, though deemed a reproduction within the meaning of the Convention (Article 9 (3)), is certainly not a form of reproduction "analogous" to the printed form.

The unavoidable conclusion is that Article 2 of the Additional Act does not apply to broadcasting and the EBU considers that this omission, which was perhaps not intended by the Permanent Committee and merely results from the present wording of Article V of the Universal Convention, should be remedied.

III. To be precise, what is needed is that the system of licenses allowed by Article 2(1) of the Additional Act should be extended to broadcasting organizations which, though they have a vital need for foreign works for their schools broadcasts, do not "publish" those works within the meaning of Article 2. However, before pursuing this line of argument and making proposals, it is worth enquiring whether broadcasting organizations can, in performing their teaching function in the developing countries, avail themselves of other provisions of the Berne Convention dealing with the right of translation, assuming that national legislation has taken advantage of the possibilities opened up by the Berne Convention.

1. The first provision which comes to mind in this connection is Article 11bis(2), which allows compulsory licenses in the broadcasting field. It must be admitted, however, that a national legislation which had instituted compulsory licensing under this provision of the Convention would still not have settled the problem of translation. The broadcasting organization can of course make its broadcast unhampered by the obstacles which might exist in the absence of a compulsory license, but the work broadcast must, undoubtedly be such as it was created, i.e., in particular, in its original language. The question was raised at the Stockholm Diplomatic Conference and the discussion is summarized in paragraph 205 of the Report on the Work of Main Committee I. This states that "different opinions were expressed regarding the lawful uses provided for in Articles 11bis and 13" for, although "some delegations considered that those Articles also applied to translated

works ... other delegations ... considered that the wording of those Articles in the Stockholm text did not permit of the interpretation that the possibility of using a work without the consent of the author also included, in those cases, the possibility of translating it." These same delegations "pointed out, on the level of general principles, that a commentary on the discussion could not result in an amendment or extension of the provisions of the Convention."

It would definitely be unwise to stretch the meaning which some delegations may have attached to the scope of Article 11bis in regard to the broadcasting under compulsory license of a work translated without the consent of the owner of the translation right, and caution is necessary in interpreting Article 11bis(2). It means that, if national legislation provides for a compulsory license in favor of broadcasting, the broadcasting organization will be able, subject to the provisions of Article 11bis, to make use of the work either in its original language or in translation if the translation already exists and the compulsory broadcasting license thus covers both the original and the already available translation. On the other hand, if no translation yet exists, the compulsory license instituted nationally by virtue of Article 11bis of the Convention will not enable the licensee broadcasting organization to translate the work it wishes to broadcast, or cause it to be translated, without the consent of the owner of the translation right. It follows that a broadcasting organization in a developing country, whose role is often far more important than that of a publisher, will be less favorably placed than the publisher as far as the right of translation is concerned, unless the Additional Act undergoes certain changes to remove this imbalance.

2. With regard to teaching it may also be enquired whether Article 10(2) of the Stockholm version of the Convention is not sufficient to provide the broadcasting organization with the translation license it needs. Two observations are in order here:

(a) Article 10(2) gives national legislation a free hand only with regard to the utilization of works in broadcasts and for sound or visual recordings "by way of illustration for teaching". Although the words quoted are not easy to construe and the Report on the Work of Main Committee I affords scope for various interpretations, it must surely be admitted that "by way of illustration for teaching" means something and is not to be equated with other forms of words which the Stockholm Conference might have chosen, e.g. "for teaching purposes." If this had been the final wording it would have been arguable that Article 10(2) allows the utilization of works where the purpose of a broadcast is teaching. The much more restrictive wording eventually chosen suggests that the work may be used only to illustrate teaching by radio or television, and that it would in any case be impossible under this provision merely to utilize a school or university textbook and read it out as it stands, perhaps with comments, since in this event it would no longer be used "by way of illustration for teaching" but as the principal subject-matter of the teaching itself. This interpretation of Article 10(2) leads to the conclusion that broadcast courses and lessons to schools and universities cannot simply utilize written works for these purposes, and to render such complete use lawful without the author's consent, as the case may be, it would be necessary to institute a compulsory license (subject to remuneration) within the meaning of Article 11bis.

At the same time this raises the problem of the translation right, in the terms outlined in 1. above. If Article 10(2) were sufficient in itself for the needs of broadcast instruction the problem would not arise, as the Stockholm Conference was unanimous in considering that this provision, as well as others, "virtually imply the possibility of using the work not only in the original form but also in translation." As has just been demonstrated, however, Article 10(2) does not meet the real needs of broadcast teaching, especially in developing countries, and thus, however liberally it is interpreted with regard to translation of the work, it does not grant the broadcasting organization the same facilities as those contemplated by the Additional Act proposals for the benefit of graphic publishers. Once again, to maintain balance, and

having regard to the specific role of broadcasting in the educational life of developing countries, the Additional Act requires supplementary provisions.

(b) The same line of argument applies to the reference to sound or visual recordings in Article 10(2). National legislation may license such recordings for broadcasting purposes, provided that the works concerned are designed to illustrate teaching. Arguments designed to show that this limitation is incompatible with the place of broadcasting in the educational structure of developing countries were developed in (a) above and apply equally to recordings intended for broadcasting since, after all, recording in this case is a mere technical medium of broadcasting. Hence Article 10(2) will not allow national legislation to license the prerecording of schools broadcasts in the wider sense, in which works are used not simply as illustrations but form the actual substance of the teaching. Still less can this provision be invoked to legalize the use of works in translation, notwithstanding paragraph 205 of the Report on the Work of Main Committee I of the Stockholm Conference, since so liberal an interpretation could hardly be placed on a text which itself demands restrictive construction. Other provisions will therefore be required to enable broadcasting organizations to record works of the mind for the purpose of schools broadcasts and not merely to illustrate such broadcasts.

It may be objected that this difficulty can be overcome by the institution of ephemeral recording in national legislation. This seems unlikely, however, for ephemeral recording within the meaning of Article 11bis(3) certainly means recording of the work in its existing form and in no way authorizes, in addition, the making of a translation for the purpose of the recording. This is confirmed by paragraph 205 of the above-mentioned Report and the quotations reproduced from it. In other words, Article 11bis(3) allows national legislation to make an exception to the right of reproduction under Article 9 and not to the right of translation under Article 8 of the Berne Convention as revised in Stockholm. It scarcely needs adding that Article 13 is unlikely to prove of assistance here, since it refers exclusively to musical works, which are of secondary importance in the educational field.

Once again, specific provisions are necessary to enable broadcasting organizations in developing countries to operate within a legal framework comparable to that available to graphic publishers.

IV. It is now possible to establish a clear outline of the regime which should be applicable to broadcasting organizations in developing countries if they are to assume their proper role in the general educational field and not be at a disadvantage compared with book publishers.

Steps should be taken to ensure that broadcasting organizations in developing countries are able:

1. to obtain a translation license for the purpose of broadcasting intended for teaching, scholarship or research without the need for publication within the meaning of Article 3 of the Convention,
2. to obtain a translation license for the purpose of sound or visual recording for broadcasts intended for teaching, scholarship or research,

on the understanding that the conditions of Articles 2 and 4 of the Additional Act will apply where they do not expressly refer to the existence of copies. In other words, a broadcasting organization in a developing country will be able to obtain either of the licenses in question only after the periods specified in Article 2 of the Additional Act and subject to the procedure and remuneration laid down in Article 4 of the Act, the only provisions which they are not required to observe being those, such as paragraphs 3, 4 and 5 of Article 4, which are applicable only where physical copies of the work are distributed.

V. Article 2(1) of the Additional Act specifies that the regime which it institutes for the right of translation concerns only works published in printed or analogous forms of reproduction. Accordingly, the rules regarding the right of

translation instituted for the benefit of developing countries do not concern the text accompanying an audio-visual work. However, under Article 3(7) the translation of such a text may be licensed on the same terms (and no doubt at the same time) as reproduction of the audio-visual work itself.

Audio-visual works prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities play a predominant role in the schools television broadcasting of developing countries. Very often these works are of foreign origin and the text requires translation, whereas reproduction of the audio-visual work is not necessary and the operation may merely consist, before or during the broadcast, in subtitled or the injection of a commentary in the national language, or one of the national languages, of the developing country.

It is arguable that neither Article 2 nor Article 3(7) permits a television organization to perform the very simple operation just described, which involves the screening of an audio-visual work intended for teaching in a program having the same object, but with a text translated into the language or one of the languages of the country. Article 2 refers only to works reproduced in printed or analogous form, and Article 3(7) appears to combine translation with reproduction and moreover involves very long periods (much longer than Article 2) which are understandable where it is a question of reproducing audio-visual works, but unjustified where it is merely a matter of translating an accompanying text.

An additional provision is therefore necessary to cater for this need, particularly as television is, and will remain, the biggest consumer of audio-visual works for teaching purposes, until schools in developing countries begin to acquire equipment for viewing non-televised audio-visual works, e.g. films specially made for schools or video cassettes containing schools programmes. It is surely logical that the translation of a text accompanying an audio-visual work should, where it is intended solely to accompany the televising of this work and no reproduction occurs, obey the rules of Article 2 rather than of Article 3. Should reproduction be necessary, however, it is natural that the rules governing translation should be the same as for reproduction since, if reproduction is indispensable, a different regime for translation of the text would be of no practical use.

VI. Having regard to the foregoing, it is proposed that a new article should be inserted in the Additional Act between the present Articles 4 and 5 which could, by way of example, be worded as follows:

"1. A license to translate a literary or artistic work may be granted on the conditions laid down in Articles 2 and 4 of this Additional Act, as far as those conditions are applicable, to a broadcasting organization having its headquarters in a country of the Union to which Article 1 of this Additional Act applies, for its broadcasts intended for teaching, scholarship or research and for sound or visual recording for such broadcasts.

"2. A license under this Article may also be granted to a broadcasting organization, on the same conditions and for the same purpose, in respect of the text accompanying an audio-visual work prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities."

This proposal calls for few comments, since it arises from the preceding remarks. However, in case the suggested text should have failed to express correctly the considerations which dictated it, the following observations may be added:

1. The sole object of paragraph 1 is to enable a broadcasting organization in a developing country to secure, either for its broadcasts or for its broadcasts and the recording which their production may require, a license to translate a work originally published in printed or analogous forms of reproduction on the same financial and other terms as a publisher in the same country. Accordingly, the licensee organization would be bound by the same restrictions and obligations as the publisher, which means *inter alia* that it is forbidden to supply its recording to a third party and above

all to export it, it must make the same payments to the owner of the translation right and respect the author's moral rights by including his name and the title of the work among the program credits.

2. Under paragraph 2 of the above proposal, it would be possible, also on the terms laid down in Articles 2 and 4, to grant a license to a broadcasting organization in a developing country for translation of a text accompanying an audio-visual work for schools if the broadcasting organization can use the work as it stands and merely add the translation of the text. However, if reproduction of the work is necessary for technical or other reasons, the right of translation will be as under Article 3(7) of the Additional Act.

3. Neither of the two paragraphs of the proposed text should be construed as encroaching on the broadcasting right or the reproduction right, which remain completely unaffected thereby. The text is intended solely to permit translation under license, and the right to broadcast the translated text or to record it for broadcasting is governed by other provisions of the Convention, particularly Articles 9 and 11bis. The suggested new article of course concerns a situation where two or even three rights may be involved—the right of translation, the broadcasting right and the right of reproduction—but its purpose is to regulate only the first.

The EBU considers that without a further provision of the kind suggested above the Additional Act would fail to have the expected effects and would do less than justice to the dominant role played by schools broadcasting in developing countries. It also feels that this proposal would not be detrimental to the interests of authors and publishers, since the advantages sought thereby will apply to ephemeral broadcasts and in no way reduce the market for sales of tangible copies of works.

(Original: English)

INTERNATIONAL CONFEDERATION OF SOCIETIES OF AUTHORS AND COMPOSERS (CISAC)

CISAC, recalling its doctrine and fundamental principles respecting the revision of the International Copyright Conventions, can only recognize and draw attention once again to the fact that the specific relaxations envisaged in favor of the developing countries by the draft revision text have for consequence that the assistance rendered to these countries will be furnished solely by the authors and their legal successors.

The important concessions which the authors are thus going to find themselves led to grant must not in any way be put to purposes of profit, either directly or indirectly, in the service of commercial interests entirely foreign to the satisfaction of the specific needs advanced by the developing countries in relation to teaching and scholarship.

The present solution contained in the draft revision text being the outcome of a strong conciliatory effort, any further prejudice to authors' rights would endanger a compromise reached only with so much difficulty.*

Article 1 of the draft Additional Act

The just compensation provided in paragraph 6(a) of Article 4 should be specifically "consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned."

International professional practice in this matter would thus be required to serve as a measure of the payment, particularly as regards reprints. In this context it could eventually facilitate an evaluation of the available stock of copies which, in accordance with paragraph 4) of Article 1, may continue to be distributed after the expiration of the period for which the notifications deposited under the conditions of that Article are effective.

* Editor's Note: Reference is made to the Additional Act as adopted by the Permanent Committee of the Berne Union document B/DC/4.

Article 2

In the context of the option, which, be it noted, is irrevocable, provided in paragraphs (7) and (8) of this Article, particular attention should be given to the date of commencement of the period of 10 years referred to in Article 5 of the Union Convention of 1886, revised at Paris in 1896, and to the serious consequences which it may entail for authors as a result of the way in which the application of that Article is interpreted.

Article 3

The expression "audio-visual works" used in paragraph (7) of this Article is apt to arouse certain doubts about the content of Article 2 of the Convention.

It would, therefore, be desirable that, in accordance with the terms thought to be the most appropriate, the precise significance of this expression be clarified, more especially since, as such, it figures for the first time in a Convention text as part of the draft Additional Act. Perhaps it would even be better to replace this expression by "audio-visual recordings," so as to emphasize in particular that the concept "audio-visual," which is moreover a generic one, covers exclusively certain technical processes of communication and not a new or special category of works in the scope of the aforesaid Article 2.

Article 4

Having regard to the precise conditions attaching to the licenses provided for under Articles 2 and 3, the notice specified in paragraph (5) of this Article might also lay down that the distribution in question may only be made for purposes of teaching and scholarship and, if such is the case, research within that scope.

In practice, that might be expressed simply by including the symbol E (Education) in the aforesaid notice.

(Original: English)

INTERNATIONAL FEDERATIONS OF ACTORS, VARIETY ARTISTES AND COMPOSERS (FIA-IFVA-FIM)

The three international Federations of Actors (FIA), of Musicians (FIM) and of Variety Artistes (FIAY) forming a loose association of interests (known as the FFF) attach great importance to the protection that is granted to authors of literary and artistic works, not only because in addition to performers the FFF also organize many authors and arrangers of musical, literary and dramatic works, but considering furthermore that any protection of authors inevitably reflects itself on the protection of performers. In this connection, it may be recalled that the FFF in their comments concerning the revision proposals submitted to the member States of the Berne Union for the Revision Conference held in Stockholm (in 1967), had expressed serious concern in respect of the Protocol Regarding Developing Countries.

The proposals for the revision of the Berne Convention and an Additional Act to the Act of Paris drafted by the Preparatory Committee and reviewed by the Permanent Committee of the Berne Union in principle meet with the approval of the FFF, because they afford developing countries the alleviations required without imposing one-sided sacrifices on the authors whose works are translated into the languages of the developing countries and disseminated in them.

However, the draft text of the Additional Act as revised by the Permanent Committee of the Berne Union (Document DA/33/17)* comprises two formulations that are of special interest to the FFF and would require clarification:

* Editor's Note: See document B/DC/4, Extraordinary Session of the Permanent Committee of the Berne Union (Geneva, September 14 to 18, 1970), Draft Texts for the Revision of the Berne Convention adopted by the Permanent Committee, reproduced in these *Records*, pages 50 to 52.

1. In Article 2, reference is made to special arrangements that may be made in respect of "works published in printed or analogous forms of reproduction."
2. In Article 3, paragraph (7), the same form of words is used in the first sentence, and the following sentence reads: "However, the reservations permitted by this Article shall also apply to the reproduction of audio-visual works..."

When the extraordinary session of the Permanent Committee of the Berne Union was held in Geneva (September, 1970), the statement was made to the representative of the FFF that the above-mentioned formulations did not apply to commercial records, a point which is not covered by the draft texts of the Additional Act as proposed at present. The FFF would therefore welcome clarification in this respect at an appropriate place in this draft.

The FFF regret, moreover, that it has been impossible to devise a simpler system for the assistance to be granted to developing countries under the Additional Act, and that it has been necessary to draft the relevant provisions in a language that is not easy to understand.

(Original: English)

INTERNATIONAL FEDERATION OF FILM PRODUCERS ASSOCIATIONS (FIAPF)

It should be pointed out that this revision was originally intended to concern only literary, scientific and artistic works published in printed form.

The text submitted to the Diplomatic Conference, however, applies also "to the reproduction of audio-visual works and to the translation into the language or one of the languages of the country concerned of any accompanying text," where such audio-visual works are "prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities."

We feel that the maintenance of these restrictions is essential in order to avoid upsetting the balance inherent in cinematographic production between its unquestionably cultural character and the need to take account also of industrial exigencies.

(Original: French)

INTERNATIONAL COPYRIGHT SOCIETY

(Internationale Gesellschaft für Urheberrecht (INTERGU))

While maintaining our essentially different point of view on effective aid to developing countries, we would make the following comments on the draft texts for the revision of the Berne Convention [...]

The solution now proposed, that of an Additional Act in favor of developing countries, is a sound basis for discussion. It contains the following provisions:

- (a) In future, any country of the Union which ceases to be a developing country must automatically cease to be entitled to renew the ten-year period and avail itself of the reservations, either on expiration of the current ten-year period or three years from the date on which it ceases to be a developing country, whichever period is the longer.

The new solution does not seem fair, however: a country for which the conditions for exclusion from the reservations are present at the beginning of the ten-year period has an advantage over another country for which the same conditions are present only at the end of that period. For this reason a uniform period of three years should be established.

- (b) If, in the country to which the license granted applies, copies of an edition of a work are distributed by the owner of copyright himself, that edition being in the same language, substantially identical in content and comparably priced, the compulsory license is terminated. The comparable price is the price normally charged in the country for comparable works.

Such a solution is not free of drawbacks, as it could give rise to abuse.

(Original: French)

INTERNATIONAL LITERARY AND ARTISTIC ASSOCIATION (ALAI)

The General Assembly of ALAI, held in Paris on January 15, 1971, noted with satisfaction that the draft text for the revision of the Berne Convention, in the form which resulted from the deliberations of the Permanent Committee in September 1970, represents a considerable advance towards reconciling the interests of developing countries with the safeguarding of authors' rights. On the whole it is in favor of the adoption of these provisions.

With regard to the exceptions reserved for developing countries, it insists on the following:

- (1) no export should be allowed of copies of a translation or reproduction (Article 4(4));
- (2) just remuneration should be calculated according to the "standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned," at the same time ensuring "transmittal in internationally convertible currency or its equivalent" (Article 4(5)(a) and (b));
- (3) the irrevocability of the choice between the reservations in respect of translation rights and the declaration pursuant to Article 30(2)(a) and (b) of the Stockholm Act should be maintained (Article 2(7), (8) and (9)).

(Original: French)

INTERNATIONAL PUBLISHERS ASSOCIATION (IPA)

The International Publishers Association, representing publishers' organizations in some 30 countries, including both developing and developed countries, wishes to record its members' willingness to accept the revisions of the Berne (Stockholm) and Universal Copyright Conventions proposed by the Permanent Committee of the Berne Union and the Intergovernmental Committee of UCC at their meetings in Paris and Geneva, respectively, in September 1970.

IPA regrets the need for the introduction of systems of compulsory licensing for the publishing in developing countries of reprints or translations of works emanating from developed countries, since it is bound to consider such systems as contrary to the intentions of copyright legislation. It nevertheless accepts that the possibility of such compulsory licensing systems will provide an assurance to developing countries that, should their publishers be unable to obtain licenses to publish reprints or translations of works emanating from developed countries, they will have recourse to compulsory licensing, and thus will not be denied rapid and economic access to such works for educational purposes.

IPA believes that the proposed amendments to the two international copyright conventions will provide an adequate framework within which free negotiation will successfully take place. It affirms the willingness of the publishers in membership of the IPA national associations to continue to cooperate together to this end.

On one point alone, IPA believes that, in equity, further consideration should be given to the proposed Article 2(9) of the Additional Act of the proposed Berne Union Act of 1971, as set out in BIRPI paper DA/33/17 dated September 18, 1970. Under this proposed paragraph, a developing

country which ceases to be such may, within three months from the expiry of the period defined in Article 1(3) of the said Additional Act, make a declaration according to Article 30(2)(b) of the Act. The effect of this would be to enable such a country, now developed and no longer developing, to operate the ten-year limitation of the exclusivity of translation rights dating back to the Paris Convention of 1896.

It was argued on behalf of book publishers at the meeting in Geneva last September that there might be sound commercial and cultural reasons why a copyright proprietor in a developed country might not wish to grant a license for a translation of his work to a particular publisher applicant in a developing country. He might in no way be averse to having such a translation published in that country, but he might prefer to find another publisher to entrust with the task. It was on the basis of this argument that the developing countries at the meetings in both Paris and Geneva last September agreed to an additional period of six months before compulsory licensing of translations could be operated after three years from first publication of the work. In IPA's view it is imperative that copyright proprietors in developed countries should be given a similar 'period of grace' in the event that a no-longer-developing country should take advantage of the provisions of the proposed Article 2(9) of the proposed Additional Act. Because if advantage were taken of this proposed provision, copyright proprietors would face the problem of dealing with the grant of licenses for translation rights in an enormous number of works, the translation rights of which would fall into the public domain in such developing countries where 'voluntary' licenses were not granted, it seems to IPA that it would be no less than equitable to give such copyright proprietors a reasonable opportunity to make satisfactory arrangements for the publication of such translations.

(Original: English)

The Music Publishers of the International Publishers Association consider that the provisions proposed by the Permanent Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention at their various meetings in 1969 and 1970 are not sufficient either to relieve the burden which the compulsory license system imposes on composers, authors and music publishers in developing countries, or to ensure the honest fixing of the just remuneration to be paid to them, or to guarantee, provide for and settle without difficulty the transfer of such remuneration to them.

Ask most insistently that the International Copyright Information Center referred to in Annex A of the Report of the First Session of the International Copyright Joint Study Group be actually created and put into operation by Unesco, that its purpose be not only to inform national information centers and interested parties in developed and developing countries, in particular by publishing and distributing monthly an up-to-date list of developing countries, but also to investigate methods and means of financing the authors' fees relating to the operation of compulsory licenses and to ensure the regular payment of just remuneration.

Consider that the Additional Act, whether or not it is included in the future Paris Act, should not be brought into force until the International Information Center is in a position to operate efficiently.

Finally, if, as has been assured, developed countries have the bounden duty to assist developing countries in overcoming the difficulties and problems which beset them in the fields of education and culture, the most elementary principles of fairness demand that the heavy burden resulting from the accomplishment of this duty should not be borne, in developed countries, solely by authors and composers and their publishers.

Therefore the Music Publishers urge the Governments of States preparing to introduce the system of compulsory licenses in developed countries for the benefit of developing countries not to refuse to compensate, at least in part, for the burden imposed on authors, composers and publishers owning copyright in published works which are reproduced in developing countries by virtue of compulsory licenses, by

exempting from all taxes, fees and bank charges, in developed and developing countries, any payments for licenses granted for translation or reproduction, and also the transfer of such payments to their recipients.

(Original: French)

INTERNATIONAL WRITERS GUILD (IWG)

1. The International Writers Guild is naturally very pleased to observe that the texts proposed to the Conference concerning both the Universal Copyright Convention and the Berne Convention seem to have provided the possibility of overcoming the present deadlock and of solving, in a manner acceptable to all, a problem which it was essential to solve as soon as possible.

2. It notes with satisfaction that the excessive and unjustifiable measures which made the Stockholm Protocol unacceptable to authors have been removed in the new texts, and that the faculty of making exceptions and reservations, as now envisaged, applies only to the uses legitimately mentioned to motivate such exceptions and reservations, that is, teaching, scholarship and research, and then exclusively within specific territories.

3. It sincerely hopes that the Diplomatic Conference will not question the agreement reached during the preparatory work, and that the reasonable compromise which was achieved will not be subjected to attempts at "underbidding" which would unavailingly result in deadlock once again.

4. The International Writers Guild nevertheless feels obliged to express regret that the texts proposed to the Conference—regardless of the unquestionable improvements they represent in relation to the Stockholm texts—should leave assistance to developing countries in educational and cultural matters to be borne by authors alone.

5. Accordingly, while refraining from pointing out yet again that this illogical and irrational situation has no precedent in any form of assistance, the International Writers Guild expresses the wish that all Governments which take the commendable decision to facilitate access, on the part of other States, to intellectual works created by their nationals, may at the same time be intent on ensuring that those who create such works are justly compensated for the sacrifice imposed on them.

(Original: French)

UNION OF NATIONAL RADIO AND TELEVISION ORGANIZATIONS OF AFRICA (URTNA)

The Union of National Radio and Television Organizations of Africa (URTNA) has taken note of the draft texts prepared by the Drafting Committee and adopted by the Permanent Committee (Geneva, September 14 to 18, 1970) for the revision of the Berne Convention in the early summer of 1971.

In its capacity as a continental organization operating primarily in developing countries, in which radio and television serve as the medium for education and culture as well as information, URTNA expresses satisfaction at the efforts which have been made towards assisting those countries in their promotional work in social, educational and cultural fields, but at the same time wishes to point out that broadcasting does not seem to have been given the importance it deserves in the draft texts.

In many countries of Africa, broadcasting serves to make up for the insufficiency or even the non-existence of books and manuals in African languages, and for the shortage of qualified teaching staff; it imparts attention on hygiene to the populations, provides elementary instruction and helps in the promotion of literacy, supplements primary and secondary education and occasionally backs up university courses. Broadcasting in Africa has the task of completing the education of adults and all those who have not had the opportunity of regular school attendance.

It is essential, therefore, that broadcasting be given the place due to it in the work on the revision of the Berne Convention.

Without commenting on the provisions of Articles 9 and 11bis, which determine the right of reproduction (including recording) and the right of broadcasting respectively, and which are not due to undergo revision, these provisions naturally governing broadcasts and programs in general (in connection with compulsory licenses), URTNA regrets the non-application of the Protocol Regarding Developing Countries, unanimously adopted at Stockholm on July 14, 1967, and expresses the wish that the Additional Act may be as beneficial to radio and television, in connection with educational and instructional broadcasts and programs, as it is for publication in terms of the draft text for the revision.

The advantages thus offered to developing countries, the application of which is also desirable for broadcasting in those countries, concern especially: *the license for the translation and the use of translated texts to accompany audio-visual broadcasts.*

Article 2 of the Additional Act does in fact provide, in its paragraph (2), that "... any national of such country may obtain a license to translate the work and publish the work so translated in the said language in printed or analogous forms of reproduction."

This provision concerns publication and offers advantages in the teaching and popularization of works by means of their publication for educational and cultural purposes.

The advantage does not extend to the broadcasting of those works, however, since broadcasting does not constitute "publication" in terms of Article 3 of the Convention, which provides, in its paragraph (3), that:

"The performance of a dramatic ... work, ... the communication by wire or the broadcasting of literary or artistic works ... shall not constitute publication."

This shortcoming must therefore be remedied.

Moreover, Article 3 of the Additional Act provides, in its paragraph (7):

"However, the reservations permitted by this Article shall also apply to the reproduction of audio-visual works and to the translation into the language or one of the languages of the country concerned of any accompanying text, in which case the reservations shall be limited to audio-visual works prepared and published for the sole intrinsic purpose of being used in connection with systematic instructional activities."

It follows that the authorization or license referred to here could only really be applied in countries having at their disposal educational establishments sufficiently well provided with projection and recording equipment (films, editing laboratories, video apparatus, magnetoscopic tapes, etc.). The present situation is different in the majority of African countries where only radio and television are capable of meeting these requirements. In those countries, radio and television often use texts of foreign origin for their educational broadcasts; they have the texts translated into the language or languages of their listeners for use as commentary or explanation of audio-visual television broadcasts made for the purposes of teaching, education and popularization in the fields of culture and science. It is essential to fill this gap, for African television services make regular and abundant use of texts of this kind, and they should be given a legal basis and encouragement in their constructive and promotional activity.

Consequently, URTNA proposes that a new article be incorporated in the Additional Act to deal with these considerations; it could be worded as follows:

"Broadcasting organizations operating in the countries of the Union defined in Article 1 above may obtain licenses for the translation of literary and artistic works for their own broadcasts intended for school, university or other educational purposes under the conditions listed in Articles 2 and 4 of this Act.

They may, under the same conditions and for the same purposes, obtain a license to translate a text in order to explain or accompany a televised audio-visual broadcast."

The substance of this proposal could be included in the provisions of the existing articles of the Additional Act.

URTNA makes reservations, however, as to the periods of protection in respect of translation and reproduction provided for in Articles 2 (translation) and 3 (reproduction). In addition, URTNA expresses the wish that the language discrimination embodied in the Additional Act be removed.

(Original: French)

B/DC/8 July 6, 1971 (Original: French)

WIPO

Rules of Procedure adopted by the Conference on July 5, 1971

I. Membership of the Conference

Rule 1 — Delegations

Delegations of States members of the International Union for the Protection of Literary and Artistic Works (Berne Union) may participate in the work of the Conference, with the right to vote.

Each delegation may consist of delegates, advisers and experts.

Rule 2 — Observers and representatives

The following may take part in the Conference as observers, without the right to vote:

(a) observers from Member States of the United Nations or of one or more organizations within the United Nations system which are not members of the Berne Union;

(b) representatives of the United Nations Organization and other agencies within the United Nations system;

(c) observers from the intergovernmental organizations listed in the annex to this document;

(d) observers from the international non-governmental organizations listed in the annex to this document.

II. Credentials

Rule 3 — Presentation of credentials

(1) The credentials empowering the delegates to participate in the Conference shall be issued by the Head of State, the Head of Government or the Minister of Foreign Affairs. These credentials shall be communicated to the Secretariat of the Conference. The names of advisers and experts attached to delegations, as well as the names of observers and representatives referred to in Rule 2, shall also be communicated to the Secretariat.

(2) Full powers shall be required for signing the Convention to be adopted by the Conference. Such full powers may be included in the credentials referred to in paragraph (1) above.

Rule 4 — Provisional admission

(1) Any delegation to whose admission an objection has been made shall be seated provisionally with the same rights as other delegations until the Conference has given its decision concerning this objection after hearing the report of the Credentials Committee.

(2) Any delegation which submits credentials not fulfilling the conditions laid down in Rule 3, paragraph (1), may be authorized by the Conference to be seated provisionally with the same rights as other delegations, subject to presenting credentials in proper form before the last plenary meeting.

III. Organization of the Conference

Rule 5 — Elections

The Conference shall elect its President, nine Vice-Presidents and a General Rapporteur.

Rule 6 — Subsidiary bodies

(1) The Conference shall institute a Credentials Committee, a Main Commission, a Bureau and a Drafting Committee.

(2) The Conference and the Main Commission may also establish such working parties as are necessary for the conduct of their work. Each of these bodies shall elect its Chairman and Rapporteur.

Rule 7 — Credentials Committee

The Credentials Committee shall consist of seven members elected by the Conference, on the proposal of the President, from among the States mentioned in Rule 1. The Committee shall elect its own Chairman; it shall examine and report to the Conference without delay on the credentials of delegations; it shall also examine and report on the credentials of observers.

Rule 8 — Main Commission

The Main Commission, in the work of which all delegations are invited to participate, shall make a detailed study of the proposals for revision of those provisions of the Stockholm Act (1967) of the Berne Convention for the Protection of Literary and Artistic Works which concern developing countries, and shall prepare draft texts for submission to the Conference at a plenary meeting.

Rule 9 — Bureau

The Bureau shall consist of the President, Vice-Presidents and General Rapporteur of the Conference, the Chairman and Vice-Chairman of the Main Commission, the Chairman of the Credentials Committee and the Chairman of the Drafting Committee. Its function is to coordinate the work of the Conference and of its subsidiary bodies and to fix the date, hour and order of business of the meetings.

Rule 10 — Drafting Committee

The Drafting Committee shall consist of eight members elected by the Conference on the proposal of the President. The General Rapporteur of the Conference and the Chairman of the Main Commission are *ex officio* members. The Committee shall elect its Chairman and Vice-Chairman; it is responsible for drawing up the final revised text of the Berne Convention and of the instruments annexed thereto in the two languages of the Convention.

Rule 11 — Duties of the President

The President shall open and close each plenary meeting of the Conference. He shall direct the discussions, ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions. He shall rule on points of order and, subject to the present Rules, shall control the proceedings and the maintenance of order.

The Chairmen and Vice-Chairmen of the subsidiary bodies of the Conference shall have the same rights and duties with regard to the bodies over which they are called to preside.

Rule 12 — Acting President

If the President finds it necessary to be absent during a meeting or any part thereof, the Vice-President designated by him shall replace him as Acting President. A Vice-President sitting as President shall have the same powers and responsibilities as the President.

Rule 13 — The President shall not vote

The President, or a Vice-President acting temporarily as President, shall not vote, but may designate a member of his delegation to vote in his place.

IV. Conduct of business

Rule 14 — Public meetings

All plenary meetings and the meetings of the Main Commission shall, unless the body concerned decides otherwise, be held in public.

Rule 15 — Quorum

(1) At plenary meetings of the Conference, a majority of the States members of the Berne Union shall constitute a quorum.

(2) A quorum is not required for the subsidiary bodies of the Conference.

(3) The Conference cannot deliberate in plenary session without the quorum defined in sub-paragraph (1) above.

Rule 16 — Order and time-limit of speeches

(1) Subject to the provisions of sub-paragraph (2) below, the President shall call upon speakers in the order in which they signify their wish to speak. The Secretariat is responsible for drawing up the list of speakers.

(2) The Chairman or the Rapporteur of a subsidiary body of the Conference may be accorded precedence for the purpose of explaining the conclusions reached by the body of which he is the Chairman or the Rapporteur.

(3) To facilitate the conduct of business the President may limit the time to be allowed to each speaker.

(4) The consent of the President must be obtained whenever an observer of an international non-governmental organization wishes to make a verbal communication.

Rule 17 — Points of order

During a discussion, any delegation may rise to a point of order and such point of order shall be immediately decided by the President. An appeal may be made against the ruling of the President. Such appeal shall be put to the vote immediately, and the President's ruling shall stand unless it is overruled by a majority of the delegations present and voting.

Rule 18 — Suspension, adjournment and closure

(1) In the course of a discussion, any of the delegations referred to in Rule 1 may move the suspension or adjournment of the meeting, or the adjournment or closure of the debate.

(2) Such motions shall be immediately put to the vote. Subject to the provisions of Rule 17, the following motions shall have precedence in the following order over all other proposals or motions:

- To suspend the meeting;
- To adjourn the meeting;
- To adjourn the debate on the item under discussion;
- To close the debate on the item under discussion.

Rule 19 — Resolutions and amendments

Draft resolutions and amendments shall be transmitted in writing to the Secretariat of the Conference, which shall circulate copies to delegations. As a general rule, no resolution or amendment shall be discussed or put to the vote unless it has been circulated sufficiently in advance to all delegations in the working languages.

Rule 20 — Reconsideration of proposals adopted or rejected

When a proposal has been adopted or rejected, it may not be reconsidered unless so decided by a two-thirds majority of the delegations present and voting. Permission to speak on a motion to reconsider shall be accorded only to one speaker supporting the motion and to two speakers opposing it, after which it shall be immediately put to the vote.