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DE LA PROPRIÉTÉ INTELLECTUELLE
GENÈVE, SUISSE

BIRPI

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

# SECOND COMMITTEE OF GOVERNMENTAL EXPERTS ON ADMINISTRATION AND STRUCTURE

# DEUXIEME COMITE D'EXPERTS GOUVERNEMENTAUX CONCERNANT DES QUESTIONS D'ORDRE STRUCTUREL ET ADMINISTRATIF

**Geneva, May 16 to 27, 1966 — Genève, 16 - 27 mai 1966**

DRAFT
REPORT

## COMPOSITION AND OPENING OF THE MEETING

(1) The Second Committee of Governmental Experts on Administration and Structure met at Geneva, in the Palais Wilson, at the invitation of the Director of BIRPI, from May 16 to ..., 1966.

(2) The following 39 States were represented: Algeria, Australia, Austria, Belgium, Brazil, Bulgaria, Congo (Brazzaville), Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic), Greece, Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Monaco, Morocco, Netherlands, Norway, Poland, Portugal, Rumania, Spain, Sweden, Switzerland, Syrian Arab Republic, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

(3) The United Nations, the International Labour Organisation, and the International Patent Institute, were represented by observers.

(4) The following non-governmental organizations were represented by observers: International Association for the Protection of Industrial Property, International Chamber of Commerce; International Confederation of Societies of Authors and Composers; International Federation of Patent Agents; International Literary and Artistic Association; International Writers Guild; Economic Commission for Europe.

(5) The list of participants is attached to the present Report.

(6) The Director of BIRPI, Professor G.H.C. Bodenhausen, welcomed the Delegates and opened the meeting.

(7)(a) In his opening speech, he summarized the solutions proposed in the various working documents, and underlined the main differences between these documents and the conclusions of the First Committee of Experts held the previous year. These differences resulted from a desire to accentuate even more the sovereignty of the Paris, Berne, and other Unions, and to eliminate possible differences of opinion on the tasks of the "Conference" of the proposed Organization, on its membership, and on the settlement of disputes.

(b) The proposed system would allow countries to accept the revisions of substantive law to be effected in Stockholm without accepting the Administrative Protocols, and vice versa. It would also allow countries to accept the Administrative Protocols without adhering to the proposed new Organization.

(c) The Director of BIRPI also emphasized that the proposed structural reform would in no way affect the existing relations with the United Nations, UNESCO, and other international organizations.

(8) On a proposal made by the Delegation of France, Mr. Hans Morf (Switzerland) was elected Chairman.

(9)(a) Mr. Morf (Chairman of the Conference) said that the task of the Committee consisted in examining the draft texts prepared by BIRPI in consultation with Experts of the Swedish Government, as prospective host country of the Stockholm Conference.

(b) These texts were designed to accomplish two objectives: (1) adaptation of the Unions to the needs of the world of today so that they should not lose their present jurisdiction in the specialized field of intellectual property protection, (2) provide for an appropriate framework for serving the interests and needs of developing countries.

(10) On a proposal made by the Delegation of the United States of America, Messrs. Henry Puget (France), Yevgueny Artemiev (USSR), Gholam-Reza Salahshoor (Iran), Godfrey S. Lule (Uganda), were elected Vice-Chairmen.

(11) The Committee examined the draft texts presented to it in three Working Groups, meeting consecutively (two days each), and with the participation of all Delegates and Observers.

(12) Working Group I, dealing with the Administrative Protocols, met under the chairmanship of Mr. Ion Anghel (Rumania); Working Group II, dealing with the Convention on the International Organization for the Protection of Intellectual Property, met under the chairmanship of Mr. Eugene M. Braderman (United States of America); Working Group III, dealing with the Final Clauses and the Resolution concerning Provisional Application, met under the chairmanship of Mr. Torwald Hesser (Sweden).

GENERAL DISCUSSION

(13)(a) The full text of the declaration by the Delegation of France is reproduced in document No. 9.*

(b) In essence, the Delegation of France said that it favored the efforts for strengthening the Unions through an administrative reform. It generally approved the draft Administrative Protocols. It also agreed with the establishment of the proposed inter-union organs (General Assembly and Coordination Committee).

(c) The French Delegation agreed with the desirability of strengthening contacts with developing countries. Conferences of member and non-member States, meeting from time to time, and dealing with problems of technical-legal assistance, seemed to be useful. Such conferences, however, should be separate and different for copyright and industrial property. The proposals which the Delegation of France would submit in this respect would show that it would be unnecessary to place the Unions under a complex overall Organization whose usefulness and desirability were not at present apparent. Furthermore, the Delegation of France was not in a position to accept the principle itself of an international organization such as was contemplated in document No. 5.

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* Unless otherwise indicated, all document numbers referred to in the present Report are of the AA/III series.

(14)(a) The full text of the declaration of the Delegation of Morocco is reproduced in document No. 13.

(b) In essence the Delegation of Morocco said that it was in favor of modernizing the administration of the Unions, but not of establishing a new international organization open to all countries of the world.

(15)(a) The full text of the declaration of the Delegation of the United States of America is reproduced in document No. 10.

(b) In essence, the Delegation of the United States of America, after having complimented the Secretariat on the quality of the documents presented to the Committee, expressed the belief that the proposed reorganization was long overdue. For more than 80 years no substantial administrative reform had been effected.

(c) The drafts fully safeguarded the independence of the Unions. The creation of a new Organization was essential and it should be open also to non-members of the Unions. Its Conference would be a much needed world forum for the promotion of the protection of intellectual property.

(d) The United States Government had supported an earlier draft which gave more powers to the Organization and its Conference. The present drafts represented a compromise to meet the desires of certain other countries, and the U.S. Government was ready to accept this compromise in the hope that it would meet with general approval.

(16)(a) The full text of the declaration of the Delegation of the Federal Republic of Germany is reproduced in document No. 11.

(b) In essence, the Delegation of the Federal Republic of Germany said that it was in full agreement with the principles of the proposed new Organization. Such an Organization was necessary in the present world structure of international relations. The drafts represented a minimum for creating a viable Organization. The aims of developing world-wide protection of intellectual property could not be achieved if the proposed structure were further weakened.

(17) The Delegation of the United Kingdom declared that it supported the drafts presented to the Committee. They constituted a reasonable and practical solution for achieving the necessary aims of modernizing the structure of the Unions and creating a true international organization for the protection of intellectual property.

(18) The Delegation of Italy said that it maintained its declaration of April 2, 1965, presented at the closing of the first Committee of Experts and reproduced in document AA/II/32.

(19) The Delegate of Japan said that the proposed texts sufficiently safeguarded the independence of the Unions. He supported the solutions proposed in the drafts submitted to the Committee.

(20) The Delegation of the Netherlands said that the documents faithfully reflected the compromises reached last year. The Delegation fully supported the drafts.

(21) The Delegation of the Union of Soviet Socialist Republics said that, the administrative structure of BIRPI being some 80 years old, it would seem to be necessary to find means for making the international administration of intellectual property more efficient. The efforts for finding satisfactory solutions should continue.

(22) The Delegation of Iran said that the proposed drafts had been elaborated in an atmosphere of mutual understanding and wisdom. They provided for much needed means for technical assistance to developing countries. They took into account the needs of modern times. They had the full approval of the Delegation of Iran.

(23) The Delegate of Ireland said that he generally supported the draft texts presented to the Committee.

(24) The Delegate of Israel said that he found the drafts an acceptable basis for further consideration.

(25) The Delegation of Rumania said that it favored the proposed reorganization, including the creation of a new Organization which, however, should not exceed the reasons for which it was going to be created. The drafts submitted to the Committee were an acceptable basis for discussion. The principle of the independence of the Unions and the principles of universality and unanimity were to be preserved by all means.

(26) The Delegate of Luxembourg said that he was ready to accept the drafts presented to the Committee as a basis for discussion.

(27) The Delegation of Poland said that the drafts seemed to be generally satisfactory although the wisdom of the proposal for opening the new Organization to Third States was debatable. In any case, the Delegation had no power to commit its Government, which would officially pronounce its opinion only at the Stockholm Conference.

(28) The Chairman declared the general discussion closed.

## EXAMINATION OF THE DRAFT INSTRUMENTS

(29) The Committee then proceeded to examine the different draft instruments.

(30) The results of this examination are indicated in the following paragraphs. All amendments and other decisions of the Committee should be understood as an expression of views or recommendations which should be taken into account in the preparation of the official proposals for the Stockholm Conference.

(31) It was also generally understood that the view expressed by any Expert did not necessarily represent the final views of his Government.

(32) Although this Report generally follows the order in which matters were discussed by the Committee, a few exceptions have been made to this rule where it appeared that it would result in a more logical presentation.

## ADMINISTRATIVE PROTOCOLS

(33) The Committee examined document No. 4, sitting as Working Group No. I, under the Chairmanship of Mr. Anghel (Rumania).

## PRELIMINARY OBSERVATIONS

(34) Several provisions of this draft document contain references to the proposed new Organization or its organs. It was understood throughout the discussion that those Delegations which were opposed to the creation of a new Organization, or reserved their position on that question, maintained their positions, whenever the said references occurred in the document.

(35)(a) The Delegation of France proposed the adoption of a preamble stating the purpose of the Protocol.

(b) The Secretariat pointed out that the proposed final clauses provided for making each Protocol an integral part of the Convention or Agreement to which it related. Under that proposal, the Protocol would not be a separate instrument and thus there would be no possibility for a preamble.

(c) When the final clauses were examined, the Delegation of France proposed that each Protocol be provided with final clauses of its own (dealing with such questions as ratification, entry into force, denunciation, deposit) and thus become a separate instrument.

(d) The Committee did not adopt this proposal.

ARTICLE A

(36) This Article deals with the Assembly of each Union.

(37)(a) On a proposal by the Delegation of France, it was decided that delegates may be assisted not only by alternate delegates but also by advisors and experts (paragraph (1)(b)).

(b) It was decided that this amendment should apply also in the case of the Executive Committees.

(38)(a) On a proposal by the Delegation of the United Kingdom, and subject to the exception stated in subparagraph (c) below, it was decided that the instruments should expressly state that the travel and other expenses connected with the participation of delegations in the meetings of the Assemblies should be borne by their respective Governments.

(b) It was decided that a similar provision should be inserted also in respect of the meetings of the Executive Committees.

(c) It was understood that the Protocol of the Madrid Union should be so worded that the practice prevailing in that Union at the present time be maintained.

(39) On a proposal by the Delegate of Israel, it was decided that the words "established under the IPO Convention," or other words to the same effect, should be inserted after the words in parentheses in paragraph (2)(ii) in order to establish a parallelism between the provisions of the various instruments.

(40) On a proposal by the Delegation of Italy, it was decided that, in all provisions of all instruments dealing with international organizations as observers, the provisions should explicitly state that both intergovernmental and non-governmental organizations were meant (for example, paragraph (2)(viii)).

(41) On a proposal by the Delegate of Luxembourg, it was decided that paragraph (2) should contain a new item expressly stating, among the functions of the Assembly, the function referred to in Article E(2)(a), that is, the power of adopting amendments to the Protocol.

(42) Paragraph (2)(x) provides that the Assembly shall "exercise such other functions as are allocated to it." The Delegation of Italy proposed that the provision be completed by the words "by the present Protocol." The discussion indicated that such a formula might be too narrow, and it was left to the drafters of the Stockholm proposals to examine the question, as well as the question whether the enumeration of the functions of any organ of any instrument should not be preceded by words to the effect that the enumeration was not necessarily limitative.

(43)(a) On a proposal by the Delegate of Uganda, it was decided that the Protocols should provide for a quorum. At the proposal of the same Delegate, it was decided that the quorum should be one-third of the Member States of the Union as far as the Assembly of the Union was concerned, and, at the proposal of the Delegate of Greece, that the quorum should be one half of the members of the Executive Committee as far as the Executive Committee was concerned. It was understood that in the case of odd numbers, the required half would be rounded upwards.

(b) The Director of BIRPI said that the one-third quorum for the Assemblies was clearly the maximum which might still be practical.

(44)(a) The Delegation of Italy said that all decisions should be made by a unanimous vote as this was the only method consistent with the existing Conventions and Agreements. The Director of BIRPI pointed out that, where the present texts provided for unanimity, it was for the purpose of amending them and not for administrative decisions.

(b) The Delegation of Rumania supported the Italian proposal and, in a subsidiary way, proposed that unanimity should be required for any increase in the contributions, and a qualified majority for all other decisions.

(c) The Italian proposal was not accepted (Vote: 2-19-10).*

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* Whenever a vote is reported in this document, the first number refers to approvals; the second, to oppositions; the third, to abstentions.

(d) The Delegation of Rumania did not ask for a vote on its subsidiary proposal.

(45) The Delegation of Hungary first proposed that the adoption of the triennial budget should require a three-quarters majority in every case (that is, even when an increase in the financial obligations of the Member States was not involved), and that the same qualified majority should apply for the election of members of the Executive Committee. During the discussion, in which the proposal was supported by the Delegations of Czechoslovakia, Italy, France, Poland, Rumania, and the USSR, the three-quarters was changed to two-thirds. The latter was voted upon but not accepted (Vote: 11-15-5).

ARTICLE B

(46) This Article deals with the Executive Committees, of which there would be two, one for the Paris Union and one for the Berne Union.

(47) On the basis of a proposal by the Delegation of Czechoslovakia, it was decided that this Article should provide that States members of the Union but not members of the Executive Committee would be invited to the sessions of the Executive Committee as observers.

(48) A proposal by the Delegation of Rumania tending to provide that, in electing the members of the Executive Committee, the Assembly should have due regard not only to a balanced geographical distribution, but also to the diversity of cultures, was not accepted (Vote: 5-19-6).

(49) On a proposal by the Delegation of France, it was decided to substitute for the last two sentences of paragraph (5) a phrase which would provide that the procedure for electing members of the Executive Committee would be regulated by the Assembly.

(50) On proposals by the Delegations of France, Switzerland, and the United Kingdom, it was decided to make the following modifications in paragraph (7), which provides that "the Executive Committee shall meet at least once every year upon convocation by the Director General": (i) to delete the words "at least," (ii) to provide that the Executive Committee may meet in extraordinary sessions and that such sessions will be called by the Director General on his own initiative or if one-fourth of its members so desire, (iii) to provide that the Executive Committees will meet preferably at the time and place of the meetings of the Coordination Committee.

(51) A proposal by the Delegation of Hungary, supported by the Delegations of Czechoslovakia and Poland, tending to provide that the adoption of the yearly budget and program would require a two-thirds vote in the Executive Committee was not accepted (Vote: 8-18-6).

(52) On a proposal by the Delegation of the Netherlands, the third sentence of paragraph (8) was deleted as superfluous.

ARTICLE C

(53) This Article deals with the International Bureau.

(54) On a proposal by the Delegation of France, it was decided to add to paragraph (1) of each Protocol the words here underlined: "The administrative tasks with respect to the Union shall be performed by the International Bureau qui assure le secrétariat des différents organes de l'Union (which provides the secretariat of the various organs of the Union)

(55) As far as the Paris Union is concerned, paragraph (2) provides that Member States shall, among other things, furnish to the International Bureau all the publications of their industrial property services which the International Bureau may find useful in its work. On a proposal by the Delegation of the USSR, it was decided that the provision should expressly state that only publications "of direct concern to the protection of industrial property" were meant.

(56) Paragraph (7) provides that preparations for revision conferences should be made by "the International Bureau in accordance with the directions of the Assembly." On a proposal by the Delegation of France, it was decided to add the following words: "and in cooperation with the Executive Committee."

(57) On a proposal by the Delegation of Italy, it was decided that whenever the proposed texts used the expression "periodical revision conferences," the word "periodical" should be omitted (for example, in paragraph (7)).

(58) On a proposal by the Delegations of France and Israel, it was decided to insert a new paragraph (possibly between paragraphs (7) and (8)) providing that "The International Bureau shall participate in the discussions of the various organs of the Union, but without the right to vote."

(59) On a proposal by the Delegations of the USSR and India, it was decided to omit from paragraph (8) the words "by this Convention."

(60) On a proposal by the Delegation of France, it was decided to substitute, throughout, in the French text, the word délibérations for the word discussions (for example, in paragraph (7)).

(61) As far as paragraph (1) of the Protocol of the Madrid Union is concerned, and at the proposal of the Delegation of the Netherlands, it was decided to make it clear (possibly by adding the words "qui lui incombent" after the words "fonctions y relatives") that only those functions were meant which the International Bureau (as distinguished from the National Industrial Property Offices) had to perform.

## ARTICLE D

(62) This Article deals with finances.

(63) On a proposal by the Delegation of France, it was decided that when both registration fees and other charges were meant (for example, for the purposes of the Madrid and the Hague Unions) the expression "fees and charges" (taxes et sommes) should be used, and when no registration was involved (for example, for the Paris and Berne Unions), the word "charges" (sommes) should be used in paragraph (3)(ii).

(64) On a proposal by the Delegation of France, it was decided that where revenues coming from fees or charges and from publications (paragraph (3)(ii) and (iii))were mentioned, it should be expressly stated that fees, charges, or publications, concerning the Union ("intéressant l'Union") were meant.

(65) On a proposal by the Delegation of the United Kingdom, it was decided to strike out the word "similar" in paragraph (3)(v) ("rents, interests, and other similar miscellaneous income") and in other provisions of the same kind.

(ARTICLE D)

(66) The Delegation of Hungary proposed some flexibility with regard to the rule on sanctions for non-payment of contributions. Its proposal was supported by the Delegations of Czechoslovakia, Poland, Rumania, and the USSR. The Delegate of India made a different proposal with the same aim in view. Later in the discussion, the Delegations of Hungary and India made a joint proposal (document No.14). On the basis of this proposal, slightly modified in its wording at the proposal of the Delegation of the United Kingdom, it was decided to add the following sentence to paragraph (4)(e) of the Paris and Berne Protocols: "However, any organ of the Union may allow such a Member State to continue to exercise its vote if it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances." (Vote: 30-1-1).

(67) On a proposal by the Delegate of Luxembourg, and as far as the Protocols of the Madrid and the Hague Agreements are concerned, it was decided that paragraph (4) should provide that proposals for modifying registration fees were meant (since the fees applicable at the present time are fixed in the Agreements themselves).

(68) As far as the Protocols of the Paris and Berne Unions are concerned, and at the proposal of the Delegate of India, it was decided that the Director General should report on the amount of charges established by him, not only to the Assembly but also to the Executive Committee (paragraph (5)).

(69)(a) In connection with the working capital fund (paragraph (6)), the Delegation of the United Kingdom proposed that the Assembly should fix its amount, the Delegate of Israel suggested that the text should explicitly provide from what sources it was constituted, and the Delegation of Finland proposed that when it was constituted of contributions from Member States, these contributions should be proportionate to the annual contributions of such States. On the basis of these proposals and other interventions, it was decided to substitute for paragraph (6), as far as the Protocols of the Paris, Berne and Nice Unions are concerned, the following text (cf. document No. 15): "The Union shall have a working capital fund which shall be constituted by payments made by the Member States in proportion to their annual contributions and according to the terms fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee." The drafters of the Stockholm proposals will examine the same questions in connection with the Madrid and the Hague Protocols.

(b) In reply to a question from the Delegation of Denmark, the Secretariat stated that it expected the amount of the one-time contribution of each State to the working capital fund to be less than the amount of one annual contribution.

(c) The Delegation of Poland proposed that the contributions towards the working capital fund be included in the normal annual contributions. The proposal was not accepted (Vote: 1-16-13) but the Delegation of Switzerland said that its Government might examine the possibilities of advancing part of the working capital fund to the International Bureau and thereby allow States to pay their share in instalments spread over a few years.

(d) In reply to a question from the Delegation of the United States of America, the Secretariat stated that, when a country ceased to be a Member of the Union, its contribution to the working capital fund would be reimbursed to it.

(70)(a) Paragraph (7)(a) provides that if the working capital fund is insufficient, the Member State on the territory of which the Organization has its Headquarters shall grant advances.

(b) The Delegation of Italy found it inappropriate thus to establish an obligation for a State which might not be party to the Protocol. It suggested changing the proposed text so as to allow the Organization to enter into agreements concerning advances or find some other formula avoiding this legal difficulty. The Delegate of the Congo (Brazzaville) shared the view of the Delegation of Italy. The Delegate of Rumania expressed the view that the Protocol should provide that the host Government of the host country may make advances to complete the working capital.

(c) The Secretariat pointed out that, if a transfer of the Headquarters was contemplated, the prospective host country, before accepting the transfer, might always require that the Protocols be modified, if it did not wish to accept the obligation in question.

(d) The Delegation of Switzerland said that it was satisfied with paragraph (7) as proposed in the document. The Italian proposal was not accepted (Vote: 1-25-6).

(71) On a proposal by the Delegation of France, it was decided to substitute, in the French text of paragraph 7(a), for the words "de cas en cas" the words "dans chaque cas"; and, at the proposal of the Delegation of Luxembourg, it was decided to substitute, in paragraph 7(b), for the words "l'engagement d'accorder des avances," the words "l'accord concernant les avances."

ARTICLE E

(72) This Article deals with amendments to the Administrative Protocols (as distinguished from amendments to the rest of the Conventions and Agreements).

(73) On a proposal by the Delegations of Israel and Australia, it was decided that paragraph (2)(a) should provide that any amendment of that paragraph would require the unanimity of the votes cast.

(74)(a) On a proposal by the Delegation of Austria, it was decided to invite the drafters of the Stockholm proposals to rephrase paragraph (c) ("Each State shall cast only its own vote") in order to express more clearly its intent which was to prohibit multiple accreditation or voting by proxy. In other words, no Delegation may vote in the name of a country other than its own.

(b) It was understood that the new formula to be sought should be used in every provision dealing with voting.

(75) On a proposal by the Delegation of Rumania, it was decided to substitute, in the French text of paragraph (3) the word "acceptation" for the word "adhésion."

(76) On a proposal by the Delegate of Israel, it was decided that the words "party to the present Protocol" should be added at the end of paragraph (3).

(77) On a proposal by the Delegation of the United Kingdom, as modified by a proposal from the Delegate of Luxembourg, it was decided that the words in brackets at the end of paragraph (3) should read as follows: "except that any amendment increasing the financial obligations of Member States shall bind only those Member States which have notified their acceptance."

## CONVENTION ESTABLISHING THE INTERNATIONAL INTELLECTUAL PROPERTY ORGANIZATION (IPO CONVENTION)

(78) The Committee examined document No. 5, sitting as Working Group No. II, under the chairmanship of Mr. Braderman (United States of America).

### PRELIMINARY OBSERVATIONS

(79)(a) The Delegation of France said that the Committee had two objectives: to improve the structure and to promote discussions with "Third" States. In order to attain these objectives, the drafts provided not only for a reorganization of the Unions but also for the creation of a new Organization. Such a new Organization would needlessly increase the number of international organizations; it would be complex and difficult to put into operation; it would be expensive; it would be subject to political influences. Consequently, the French Government opposed the creation of such an Organization.

(b) BIRPI was a satisfactory Organization. Some improvements in the structure of the Unions were desirable. Common organs--Coordination Committee, General Assembly, Secretariat--were acceptable. Inside each Union, separate Conferences could be established which would be open also to Third States. What was important was that the Conference should not be placed above the Unions. Otherwise the participation of Third States could lead to the gradual erosion of the Unions.

(80) The Delegation of the United Kingdom said that one should not create a situation to which Talleyrand's words concerning the Bourbons--they have forgotten everything, they have learned nothing--could apply. The antiquated administrative structure of the international protection of intellectual property, as it existed in the Unions today, had done harm in the past to the cause of protection. This should not be allowed to be repeated. France was in the forefront of assistance to developing countries and one of the main aims of the new Organization would be to afford such assistance. The present draft was the result of a compromise to meet the French view and any further weakening of the Organization would emasculate it. The British Delegation would prefer the draft which had been presented to last year's Committee but was ready to work on the basis of the present, much weaker draft, in a spirit of compromise.

(81) The Delegation of Italy said that it maintained its declaration of April 2, 1965. It did not refuse to envisage any useful solution to meet the interests and aspirations of developing countries through contacts with the organs of BIRPI, or even through conferences, for example, such as those proposed by the Delegation of France (document No. 16). It opposed any reform which would modify the nature of the Unions and the level of protection.

(82) The Delegate of Yugoslavia said that he agreed with the Delegation of France.

(83) The Delegation of the United States of America said that the creation of IPO was a necessity in the modern world and for the purposes of the future. An Organization with a recognizable identity of its own, devoted to the protection of intellectual property, was indispensable if one did not wish to relinquish the task of developing intellectual property, particularly in the countries which would become part of the developed world in the more or less distant future. The United States supported the creation of a world-wide organization. It would serve as a framework for universal cooperation in the intellectual property field. The independence of the Unions was fully guaranteed. Last year's compromise was the very limit of acceptable concessions.

(84) The Delegation of Morocco expressed its agreement with the declarations of the Delegation of France. It said that contacts with countries not having laws protecting literary and artistic works would be unjustified and dangerous, and yet the new Organization would admit such countries as its members.

(85) The Delegation of the Netherlands said that it would much prefer the draft which had been presented to last year's Committee as it provided for a more centralized, simpler and stronger Organization. However, since the Committee last year had arrived at a compromise, the Netherlands was ready to abide by it, provided the other Delegations did the same. If some of them did not even wish to go as far as the compromise reached last year, the Netherlands would revive its former position.

(86) The Delegation of Poland said that, although it shared some of the fears of the Delegation of France, it reserved its position for the Stockholm Conference.

(87) The Delegation of the USSR said that it fully supported the aim of making the Organization universal. By this it meant that the Unions should have the maximum number of members. Nothing should be done that would worsen the present situation in this respect; on the contrary, the present situation should be improved. By universalization it also meant that the Organization should deal with all aspects of intellectual property. A centralized administration was likely to attain this objective, and at less cost than it would otherwise. The reform should improve and not worsen cooperation among the various Unions. The Committee should look for the best solutions on the basis of the texts submitted to it by the Secretariat. If no agreement was reached there, efforts should be continued to bring about agreement.

(88) The Delegation of Hungary said that the need for modernizing the existing Unions was self-evident. Modernization of the Unions, however, in itself, was insufficient, and the creation of an Organization was indispensable. The Unions, in themselves, were not able to safeguard the international position of intellectual property. Such safeguarding and development required a form, a framework, and the organs which were customary and recognized as indispensable in other fields of international cooperation. The

proposed Organization provided just that. The independence of the Unions was not menaced; on the contrary, it was reinforced and institutionalized by the draft presented to the Committee. The Delegation of Hungary believed, as it did last year, in the creation of a world-wide forum of intellectual property in the form of the new Organization. Whereas it had suggestions on certain provisions on the whole, it accepted the draft contained in document No. 5 as a basis for discussion.

(89) The Delegation of the Federal Republic of Germany said that the creation of a new Organization was a necessity. It was the only means for adequately representing industrial property in the world. In its view, the French preoccupations had been taken into account in draft document No. 5. That document went even further towards satisfying the French wishes than the compromise arrived at in last year's Committee. The present draft was a minimum because, if it were even further weakened, the Organization would no longer be viable.

(90) The Delegation of Japan supported the views expressed by the Delegations of the United Kingdom, the United States of America, and the Federal Republic of Germany.

(91) The Delegation of Denmark said that it favored the creation of a new Organization. It considered the present draft as a minimum.

(92) The Delegation of Czechoslovakia said that it favored modernization and considered the draft as an acceptable basis for

discussion. It had, however, doubts concerning specific provisions, which it would indicate in due course during the discussion.

(93) The Delegate of Ireland said that, in general, it agreed with the draft as presented.

(94) The Delegate of Luxembourg said that he had no preference for any particular solution. He considered the draft, as presented, a good basis for discussion.

(95) The Delegation of Finland favored the creation of an Organization and agreed with the declarations of the United States, British, German and Dutch Delegations.

(96) The Delegate of India said that, while reserving his Government's position for the Stockholm Conference, he accepted the draft as a basis for discussion.

(97) The Delegate of Israel expressed the view that the draft was a good basis for discussion.

(98) The Delegation of Rumania said that, subject to certain specific remarks to be made later, it accepted the idea of the creation of a new Organization and the draft as a basis for discussion.

(99) The Delegation of Iran said that it favored the creation of a new Organization and accepted the draft as a good basis for discussion.

PREAMBLE

(100) The Delegation of the Netherlands suggested that the Preamble contain a reference to Resolution No. 2091(XX) of December 20, 1965, of the General Assembly of the United Nations, which expressly invites the Bureau of the Paris Union to assist developing countries in the field of industrial property. The suggestion was discussed but the Delegation did not insist on a decision by the Committee.

(101) On a suggestion by Rumania, it was decided to omit the word "modernize."

(102) The Delegations of Italy and Morocco reserved their position as to the need for creating a Conference as an organ of the Organization.

(103) The Delegate of Israel emphasized the need for further study of the succession between the old and new organs.

ARTICLE 1: ESTABLISHMENT AND ORGANS

(104) The draft was adopted without discussion.

ARTICLE 2: DEFINITIONS

(105) Pursuant to a suggestion made by the Delegate of Israel, it was decided to omit, as superfluous, the words "past and future" in items (c) and (d).

(106) Pursuant to a suggestion made by the Delegation of Rumania, the words "Special Unions (Agreements)" in item (g) were changed into "Special Unions and Agreements."

ARTICLE 3: OBJECTIVE AND FUNCTIONS

(107)(a) The Delegation of Italy said that it agreed with the creation of a new Organization provided that its sole objective was administrative cooperation. It proposed that the Article provide that: "The objective of the Organization is to promote administrative cooperation among the various Intellectual Property Unions whose administration is assured by the Organization."

(b) The Delegation of France said that the proposal should be amended and refer to the promotion of administrative cooperation "between the Unions and the States."

(c) The proponents did not press for a vote.

(108)(a) The Delegate of the USSR asked that paragraph (1) be so drafted that it also cover inventions made in the field of health protection.

(b) It was agreed that the drafters of the Stockholm proposals try to find a formula which was not limitative and thus satisfied also the wish of the USSR Delegation. "Inventors, particularly in the field of industry and agriculture, and creators in the field of applied arts" was mentioned as a possibility.

(109) Pursuant to an intervention by the Representative of the International Literary and Artistic Association, it was

agreed to insert the word "industrial" before "designs" in item (iv) of paragraph (1).

(110) Pursuant to an intervention by the Delegate of Australia, it was agreed that the drafters of the Stockholm proposals would examine the question whether, in item (v), one should speak not only of enterprises but also of "persons." In any case, the words "unfair competition" used in the same item were used in the sense in which they were defined in the Paris Convention.

(111) On a suggestion by the Delegation of France, it was decided to add the words "and particularly through its Secretariat" after the words "appropriate organs" in the introductory phrase of paragraph (2).

(112) Pursuant to the interventions of the Delegations of Rumania, France and the United States of America, it was decided to introduce paragraph (2)(vi) by the words "s'emploie à promouvoir" in the French text, and by the words "shall assist in the development" in the English text.

(113) On a suggestion by the Delegation of Czechoslovakia, it was decided that the drafters of the Stockholm proposals would bring paragraph (2)(vii) into harmony with the Preamble (offering cooperation to countries requesting technical-legal assistance), and would employ throughout either the term "technical-legal" or "legal-technical."

(114) The Delegation of the USSR asked whether scientific discoveries were covered by the text. It was agreed that the drafters of the Stockholm proposals would examine the question.

(115) The Delegation of the USSR asked whether the publication of distorted photographs of the Moon were covered by provisions on the protection of scientific discoveries. The Director of BIRPI replied that the matter was covered by copyright, and in particular the moral rights provisions of the Berne Convention.

ARTICLE 4: MEMBERSHIP

(116) On a suggestion from the Chair, expressly supported by the Delegations of Rumania, the Federal Republic of Germany, Belgium, the USSR, Japan, Luxembourg, Hungary, and France, it was decided that the Stockholm documents should reproduce the same three alternatives as were reported out of last year's Committee of Experts (Alternatives A, B, C, in document AA/II/30, pages 15 and 16).

(117) The Delegation of Italy urged that its proposals appearing in the same document (page 16) should also be put before the Stockholm Conference.

(118) The Delegation of France, supported by the Delegation of Morocco, asked that two categories of members be provided for: full members (membres titulaires), and associate members (membres associés).

ARTICLE 5: HEADQUARTERS

(119) On a suggestion by the Delegate of Luxembourg, it was agreed that the drafters of the Stockholm documents would examine the desirability of substituting for the words "of the General Assembly" the words "as provided in Article 6."

ARTICLE 6: GENERAL ASSEMBLY

(120) As to paragraph (1)(a), it was noted that, in the French text, the word "et" should be replaced by the words "qui sont."

(121) As to paragraph (1)(b), it was noted that the designation of the persons who may accompany Delegates should be the same as in the Protocols.

(122) On a suggestion by the Delegation of Switzerland, it was noted that paragraph (2)(i) would have to be coordinated with the Article on the Conference, perhaps by adding the words "to the extent these matters do not come under the jurisdiction of the Conference."

(123) It was noted that a rule on the quorum should be introduced (one-third).

(124) It was noted that "organizations" should be referred to as "governmental and non-governmental."

(125)(a) A proposal by the Delegation of the USSR that the words "in addition to English and French" in paragraph (2)(iv) be deleted was not accepted (vote: 6-22-4).

(b) The Delegation of Morocco wanted its wish to be recorded that Arabic should also become a working language of the Secretariat.

(c) The Director of BIRPI said that the number of working languages was not a question of principle but of practical possibilities depending mainly on the budget.

(126) A proposal by the Delegations of Hungary and France that the election of the Director General should require two-thirds of the votes cast was not accepted (vote: 14-17-4).

(127)(a) The Delegation of the USSR proposed that a possible agreement with the United Nations (paragraph (3)(e)) should require only a qualified majority and not unanimity. The proposal was expressly supported by the Delegation of the United States of America and expressly objected to by the Delegations of Italy, France, and the United Kingdom.

(b) The Delegation of the USSR then specified that a nine-tenths majority should be inscribed in paragraph (3)(e). This proposal was accepted (vote: 15-12-8).

(128) On a proposal by the Delegation of Italy, it was agreed that the system of triple voting, referred to in paragraph (3)(f), should be extended to decisions concerning the assuming of the administration of new conventions (paragraph (2)(iii)).

(129) In connection with paragraph (3)(h), it was noted that the same redrafting as has been agreed in respect to the Protocols would be required.

ARTICLE 7: CONFERENCE

(130) As a preliminary, it was noted that some of the provisions of this Article depended on what the Article on membership would contain. Since discussion of that Article was reserved for the Stockholm Conference, it was understood that positions on the provisions of the said nature were also necessarily reserved.

(131) The Delegation of France proposed that paragraph (1)(a) be completed by the following sentence: "The Conference shall be divided into two sections, one corresponding to the Paris Union, the other to the Berne Union." The Delegation of Italy said that it could not adopt a position on the proposal but it approved the spirit underlying it. The Delegations of Israel, the United States of America, the Netherlands, Australia, the Federal Republic of Germany, and the Congo (Brazzaville), said that it was not clear what the functions of each section would be, but that the concept of division was, in itself, a dangerous one. The Director of BIRPI said that the Secretariat would study a formula along the following lines: "Where questions relating exclusively to copyright are discussed, the Conference shall meet as Copyright Conference; and when questions relating exclusively to industrial property are discussed, the Conference shall meet as Industrial Property Conference." The Delegation of France noted this declaration.

(132) It was understood that a general reference to other functions, or at least a specific reference to the functions of amendments (Article 13), would have to be made in paragraph (2) dealing with the functions of the Conference.

(133) The Delegation of Italy said that, if the Conference were to have members who were not members of the Unions, then such Third States should not be required to pay any contributions. The Delegations of France and Morocco agreed with this view. The Delegation of the United States of America said that membership without contributions would be most unusual. The text of the document was maintained (vote: 24-1-6).

(134) The Delegation of Italy said that, if Third States were admitted as members not only of the Conference but also of the Organization, then they should pay contributions. However, the Delegation of Italy maintained its view that the Organization should have as members only members of the Unions.

(135) It was noted that paragraphs (3)(d) and (f), and (6), would have to be brought into conformity with previous decisions.

## ARTICLE 8: COORDINATION COMMITTEE

(136) On a proposal by the Delegation of Israel, it was agreed that, in paragraph (1)(a), the words "each of these Committees being composed of one-fourth of the Members of the Unions" should be replaced by a phrase expressing the thought

that, if that proportion were exceeded in the composition of any of the Executive Committees, not more than the number corresponding to that proportion would be admitted to the Co-ordination Committee.

(137) On a proposal by the Delegation of Austria, supported by the Delegations of Rumania and Spain, it was agreed that in the Administrative Protocol of the Paris Union a provision should be inserted which would provide that, in electing the members of the Executive Committee, the Assembly of the Paris Union would take into consideration the need for members of the Madrid, the Hague, and other restricted Unions to be among the members of the said Executive Committee. Such a provision was designed to ensure that the interests of the restricted Unions would be represented in the Coordination Committee as well.

(138)(a) On a proposal by the Delegation of Japan, it was decided to insert, before the first semi-colon in paragraph (3)(i), the following words: "with a view particularly to securing uniform administrative practices as much as possible among the various Unions" (vote: 19-4-6).

(b) As to the same paragraph, the Delegations of France and Rumania, supported by the Delegation of Italy, proposed to strike out the word "other." The proposal was not accepted (vote: 9-14-6). A proposal by the Delegation of Italy and the Chair to replace "other" by "related" received 5 affirmative and 3 negative votes, and 16 Delegations abstained.

(139) On a proposal by the Delegate of Israel, it was agreed that, in order to establish a parallelism between the various instruments, the Administrative Protocols should state that the appropriate organs of the Unions would take into account the advice of the Coordination Committee. It was noted that, since advice had no binding character, the Unions could always decide not to follow such advice.

(140) The Delegation of France proposed that only nationals of countries members of both the Paris and Berne Unions should be eligible for the post of Director General. The Delegations of the United States and the United Kingdom opposed the proposal, stating that competence, and not nationality, should guide the choice. The French proposal was not accepted (vote: 2-24-6).

(141) It was agreed that the text should make it clear that the Coordination Committee would nominate ("présenter" in the French) one candidate at a time; if he were not appointed ("nommé" in the French) by the General Assembly, the Coordination Committee would have to nominate another candidate; the procedure would continue until the General Assembly appointed a nominee.

(142) The Delegation of the Federal Republic of Germany expressed regret that the draft did not contain the rule agreed upon by the majority of last year's Committee, providing for an advisory role for the Conference in the election of the Director

General. It was noted that this departure from last year's text was made by BIRPI in order to alleviate the fears of those who wished to limit to the utmost the role of the Conference. It was noted that the Swedish experts had reserved the opinion of their Government when BIRPI made the change.

(143) It was noted that the second sentence of paragraph (6)(a) was probably superfluous and, if so, should be omitted.

(144) It was agreed that the words "Subject to the provisions of this Convention," in paragraph (7), were superfluous, and should be omitted.

## ARTICLE 9: INTERNATIONAL BUREAU

(145) On the basis of a suggestion made by the Delegation of France, it was agreed that the drafters of the Stockholm proposals would examine the best language to express, at the beginning of this Article, the fact that BIRPI, or the United International Bureaux for the Protection of Industrial Property and Literary and Artistic Works, would continue as the International Bureau, consisting of a Director General, two or more Deputy Directors General, and other staff members as required.

(146) The Delegate of Israel suggested that it may be useful to study the possibility of following the practice of the two Conventions and to provide that the Bureaux established by them are hereby constituted as the International Bureau.

(147) The Delegation of Italy pointed out the need for the continued existence of BIRPI as long as there were countries which had not accepted the IPO Convention or the Administrative Protocols.

(148) On the basis of a suggestion by the Delegations of Israel and France, it was agreed that the Administrative Protocols would have to contain provisions paralleling paragraph (3) and the last sentence of paragraph (5).

(149) A proposal by the Delegation of Rumania that the following words be added to paragraph (6): "and to the differences of culture and of the systems of intellectual property protection existing in the various countries" was not accepted (vote: 6-23-4).

## ARTICLE 10: FINANCES

(150) In reply to a question from the Delegation of Israel, the Director of BIRPI said that, for the financial years after the Stockholm Conference, considerably higher contributions would be requested than at the present time. Estimates would be given in the documents for the Stockholm Conference. Raises were expected to remain below double the present level. They would be necessary independently of any reorganization. The constant rise in prices and salaries themselves made a raise necessary and to these one would have to add the costs of the constant growth of BIRPI activities: more publications in more languages, more international meetings, more technical assistance

to developing countries, and several new projects designed to reinforce and spread intellectual property protection.

(151) On a suggestion by the Delegate of Luxembourg, it was agreed that the drafters of the Stockholm proposals would examine the question whether it would not be more correct to speak about the budget of the Organization than the budget of the Conference (cf. paragraph (1)(a)).

(152) The Delegation of Switzerland suggested that a provision be inserted at an appropriate place stating that, in case of doubt, the amounts referred to in paragraph (3)(iii), (iv) and (v) should be credited to the Conference and the various Unions in the same proportion as were divided their contributions to the common expenses. The drafters of the Stockholm proposals would examine the suggestion.

(153) It was agreed that paragraph (5) should be completed in the same manner as the Protocols (consequences of arrears in contributions).

(154) It was agreed that in paragraph (6) the word "fees" should be replaced by "charges."

(155) It was agreed that paragraph (8) would be changed on the same lines as the parallel provisions on the working capital funds had been changed in the Protocols (that is, in this case, proposal by the Director General, advice by the Coordination Committee, adoption by the Conference).

## ARTICLE 11: LEGAL STATUS, PRIVILEGES AND IMMUNITIES

(156) The text of this Article was discussed on the basis of a proposal by the Delegation of Switzerland (document No. 12) and was adopted in that form.

## ARTICLE 12: RELATIONS WITH OTHER ORGANIZATIONS

(157) It was agreed to change, in the French text of paragraph (2), the expression "sous réserve de consentement" into "avec le consentement."

## ARTICLE 13: AMENDMENTS

(158) It was noted that paragraph 2(c) would have to be adjusted as in the case of the Protocols (no multiple accreditations).

(159) It was noted that the final phrase of paragraph (3) would have to be modified in the same way as the parallel provisions in the Protocols had been modified.

## ARTICLE 14: ENTRY INTO FORCE

(160) The Delegation of Switzerland introduced a written proposal for recasting this Article (document 12).

(161) The Delegate of Israel said that the intent of paragraph (2)(a) would be clearer if it would merely state that "This Convention shall enter into force when both Protocols have entered into force."

(162) It was agreed that the drafters of the Stockholm proposals would consider these suggestions.

ARTICLE 15: DENUNCIATION

(163) After having heard the oppositions of the Delegations of Italy, Poland, France, Rumania and Greece to the draft provision which provided that a country which had become a member of the Organization could leave the Organization only if it also left the Union, the Director of BIRPI said that he would favor a provision which would allow leaving the Organization without leaving the Unions.

ARTICLE 16: NOTIFICATIONS

(164) The question of who should be the depositary--the Swedish Government or the Organization--has been reserved for further examination by the drafters of the Stockholm proposals.

ARTICLE 17: RESERVATIONS

(165) This Article provides that "no reservations to this Convention are permitted." The Delegation of the Netherlands pointed out that it would be preferable to indicate that both "substantive and formal" reservations were meant. This was noted.

ARTICLE 18: FINAL PROVISIONS

(166) On a proposal by the Delegate of Israel, supported by the Delegations of the Netherlands and France, and with the agreement of the Delegation of Sweden, it was decided that the Government of Sweden, rather than the Director General of IPO,

should be designated as depositary of the signed texts of the Convention.

(167) The Delegation of Italy asked that "authoritative texts" or some other similar expression (rather than "official translations") should be used in connection with the Italian and German languages (paragraph (2)). It was agreed that the drafters of the Stockholm proposals would try to find an appropriate expression.

(168) The Delegation of Poland suggested that paragraph (2) be omitted in its entirety. It did not press for a vote but expressly reserved its position on the question.

## ARTICLE 19: TRANSITIONAL PROVISIONS

(169) It was noted that paragraph (2) might have to be adjusted to harmonize with the new text of Article 9(1).

(170) It was noted that certain additions in the Administrative Protocols might be desirable to establish a parallelism with paragraph (2).

(171) The Delegate of Israel suggested that a formula be found to express that the rights and obligations of BIRPI were transferred to the new International Bureau. It was agreed that the drafters of the Stockholm proposals would examine the need for, and wording of, such a provision.

OBSERVATIONS ON THE STOCKHOLM CONFERENCE

(172)(a) In a plenary meeting of the Committee, chaired by Mr. Morf (Switzerland), the Swedish Delegation gave a résumé of the background of the administrative and structural reform. It then pointed out that the Swedish Government, having the responsibility of being the host Government, when planning for the Conference, had to take into account the possible outcome of it. In view of the divergencies of opinion which still existed it could, for the outcome of the Conference, see the following three main alternatives: (i) an IPO Organization would be successfully launched at Stockholm; (ii) a limited reform would be achieved; (iii) a first general discussion on a diplomatic level would take place but a final agreement would be reached only at a later Conference.

(b) Of course, there was another possibility and that was that the matter would best be served by a total postponement of the item to a later Conference when it had become less controversial and therefore more ripe for a solution that could meet with unanimous approval. In this context it might be well to remember that many Member States had as yet not been taking part in the meetings and that their attitudes were, therefore, still unknown.

(c) The Delegation further emphasized that the Stockholm Conference had been scheduled for five weeks, a period which for various reasons could not be prolonged. The Conference would

in the first place have to deal with the Berne revision and inventors' certificates. In view of this the time that could be allotted to the administrative and structural reform had necessarily to be limited.

(d) The Swedish Delegation had wished already at this stage to confront the Delegates with the problems. This had been done not only to give the other Delegations a picture of what was facing the Swedish Government which would soon have to decide how this item should be handled. It had also been done to enable the other Delegations to make known before the end of this meeting of experts their views on how this matter should best be dealt with. This would make it easier for the Swedish Government to take a decision that would be in conformity with the best interest of the Member States.

(173) In their replies, all the Delegations which took the floor indicated that they had come to the present meeting as experts, to discuss the texts presented in advance. The final position of their Governments was reserved for the Stockholm Conference.

(174) The Delegation of France said that this was a Committee of Experts which had no mandate to register the final and official views of Governments. Governments alone had full sovereignty. Exchanges of views on the diplomatic level were more appropriate to elicit official positions. As far as the present meeting was concerned, the Delegation had already

stated that it was opposed to the principle of creating a new Organization. The final decision would have to be made by the French Government.

(175) The Delegation of Italy said that it was in a similar position to that of the Delegation of France: no Committee of Experts could prejudge the decision of Governments, which was a matter to be dealt with through diplomatic channels.

(176) The Delegation of Morocco agreed with the declarations of the French Delegation.

(177) The Delegation of the United Kingdom said that Her Majesty's Government desired the establishment of IPO. The tendency of the meeting was to go ahead with the plan and do what other organizations of the present century did; open their doors to the developing countries.

(178) The Delegation of the USSR said that it gave its full support to the proposed reorganization, provided the legitimate interests of the USSR were safeguarded. It considered it necessary to conclude the work begun.

(179) The Delegation of the United States of America, after having paid homage to the statesmanlike attitude reflected by the declarations of the Delegations of France and Italy, said that it continued to support the idea of the creation of a new Organization. Such a step was indispensable in the modern world for safeguarding intellectual property. The true spirit of co-operation prevailing in the present meeting augured well for the success of the Stockholm Conference.

(180) The Delegation of Poland said that it had no instructions to state any official Government position.

(181) The Delegation of the Netherlands said that it would greatly regret it if the Stockholm Conference did not allow for the drafts on structure to be dealt with.

(182) The Delegation of Austria said that it would be regrettable not to allow the work of the 1965 and 1966 Committees to come to fruition at the Stockholm Conference.

(183) The Delegation of the Federal Republic of Germany expressed the view that the structural reform should be included in the agenda of the Stockholm Conference. Great progress had been made towards mutually acceptable solutions, and the Stockholm Conference stood a real chance of arriving at satisfactory solutions.

(184) The Delegation of Rumania said that it hoped the Stockholm Conference would be a success.

(185) The Delegation of Italy said that it agreed with the desire, expressed by the United States Delegation, for international cooperation. The Delegation was of the opinion that, eventually, it would not be impossible to arrive at an understanding at the Stockholm Conference.

(186) The Delegate of Norway said that he had no doubts as to the possibility of arriving at acceptable solutions at the Stockholm Conference.

(187) The Delegation of France said that its Government was most sensible to the aspirations of developing countries. The Delegation, there, could not prejudge the ultimate attitude of its Government towards the specific measures under discussion.

(188) The Delegate of Yugoslavia shared the views expressed by the Delegation of France.

(189) The Delegate of Ireland said that he would recommend his Government to sustain at the Stockholm Conference the texts now under discussion.

(190) The Delegation of Morocco said that all the final decisions of its country rested with the Government.

(191) The Delegate of Japan said that the new Organization was needed.

(192) The Delegation of Denmark said that the new Organization should be established.

(193) The Delegation of Finland shared the views expressed by the Delegation of Denmark.

(194) The Delegation of Belgium said that, as Experts, they accepted the compromise solution as outlined in the documents under discussion.

(195) The Delegation of Czechoslovakia said that, as Experts, they favored the proposed reforms and the continuation of the work.

(196) The Delegation of Sweden expressed its thanks for the declarations made. They would be of great assistance to the Swedish Government in reaching decisions in relation to the Stockholm Conference.

## FINAL CLAUSES AND RESOLUTION

(197)(a) The final clauses were discussed on the basis of document No. 3 and its six Annexes relating, respectively, to the Paris and Berne Conventions and the four special Agreements concluded under the Paris Convention.

(b) The Resolution concerning the provisional and limited application of certain provisions adopted by the Stockholm Conference was discussed on the basis of document No. 6.

(c) When discussing these matters, the Committee sat as Working Group No. III under the chairmanship of Mr. Torwald Hesser (Sweden).

(198) Several of the final clauses are similar in the various drafts concerning the various instruments. It was understood that all observations, suggestions, decisions, or reservations, relating to one of the instruments, were to be considered as also applying to all the other instruments, unless such analogous application was incompatible with the context in which the provisions appeared.

## FUNCTIONS OF DEPOSITARY

(199) Some Delegations proposed that the Swedish Government, rather than BIRPI and the new Organization, be the depositary.

(200) It was understood that the Swedish Government and BIRPI would re-examine the question to see what changes, if any, should be made in the present drafts.

PLACE OF THE ADMINISTRATIVE PROVISIONS

(201) The proposed drafts provide that certain provisions regarding the administration of each Union are included in an Administrative Protocol (concerning that Union, and that Union only), and that the Protocol is annexed to the Stockholm Act of the Convention or Agreement to which it relates, and forms an integral part thereof.

(202) The Delegations of Rumania and the United States of America said that they saw no important reasons for not having all provisions--substantive and administrative--in a consolidated text. The Delegate of Israel said that if the form of Administrative Protocols was maintained, then the provision (e.g., Article 13 in the Paris Annex) should provide that "The Administration of the Union is according to the Protocol annexed to this Act and forming an integral part thereof."

(203) After a further exchange of views, it was decided to ask the drafters of the Stockholm proposals to choose between the two forms (integrated texts or annexed Protocols). The matter was understood to be one of form and both solutions would have the same legal effect.

(204) On a proposal by the Delegation of the Netherlands, it was agreed that the drafters of the Stockholm proposals would prepare drafts for the Stockholm revision, not only of the London and Monaco Acts of the Hague Agreement but also of the 1960 Hague Act (not yet in force) of the same Agreement.

(205) It was noted that revision proposals would also have to be prepared for the Lisbon Agreement.

## BERNE UNION PROTOCOL REGARDING DEVELOPING COUNTRIES

(206) Article 20bis of the Berne Annex provides that "certain provisions regarding developing countries are included in the Protocol Regarding Developing Countries which is annexed to this /Stockholm/ Act and forms an integral part thereof."

(207) The Delegation of Czechoslovakia said that this Protocol should be open for accession also to countries which did not wish to ratify any other text to be adopted in Stockholm.

(208) The Delegate of India agreed with the Delegation of Czechoslovakia and reminded the meeting of the recommendations of the BIRPI Copyright Experts Committee (1965) asking for a system in which it would be possible for States to recognize in a binding fashion, at the Stockholm Conference itself, the concessions made in the Protocol.

(209) The Delegation of Italy said that the proposed provision was superfluous as it was merely descriptive. It reserved its position as to the solution to be reached, in the framework of the revision of the Brussels Act, in Stockholm on the merits of the question.

(210) The Delegations of Czechoslovakia and Hungary also suggested that any reference to the Protocol should be omitted in Article 25(2)(i) of the Berne Annex.

(211) The Delegate of Israel said that, in his view, the Protocol should merely say that the developed countries acknowledge the possibility of certain reservations on behalf of developing countries.

(212) The Chairman, as representative of the Government which is preparing the official proposals for the Stockholm Conference, said that the matter was being studied.

## REVISION OF THE CONVENTION

(213) The Delegate of Israel expressed the view that the Articles on revision should, logically, be nearer to the end of the texts of the Conventions.

(214) The suggestion will be examined by the drafters of the Stockholm proposals.

(215) The Delegation of Poland expressed its opposition to the second sentence of Article 24(3) of the Berne Annex.

(216) On a suggestion by the Delegation of Rumania, it was understood that the drafters of the Stockholm proposals would examine the question of whether reference to the development of the Union in Article 24(3)(Berne) had not become superfluous in view of the functions of the Berne Union Assembly established by the Administrative Protocol.

## EXCLUSION OF SUBSTANTIVE REVISIONS OR OF ADMINISTRATIVE PROTOCOL

(217)(a) The majority of the Committee agreed with the solution proposed in Article 16 of the Paris Annex and Article 25 of the Berne Annex, according to which any country may declare in its instrument of ratification or accession that its ratification or accession did not include the Stockholm revision of the substantive clauses (but only the Administrative Protocol), or that it did not include the Administrative Protocol (but only the Stockholm revision of the substantive clauses).

(b) The Delegation of Rumania did not agree with this system (possibility of "splitting") and the Delegation of the USSR expressly reserved its position.

(218) On suggestions made by the Delegations of the Netherlands and of Israel, it was agreed that the drafters of the Stockholm proposals would examine whether paragraph (3) of these Articles should not use the expression "may declare that it is bound" or "may declare to extend."

ENTRY INTO FORCE

(219) The Delegation of Rumania repeated its objections to the possibility of "splitting" when the Articles on entry into force for countries of the Union (Article 16bis in the Paris Annex, and 25bis in the Berne Annex) were discussed.

(220) The Delegate of Israel thought that paragraph (3) of these Articles, dealing with the entry into force of the final clauses, was superfluous.

(221)(a) The Delegation of Hungary proposed that, in Article 25bis(3)(Berne), the words "whether or not the instrument is limited pursuant to Article 25(2)" be replaced by the words "not limited pursuant to Article 25(2)(i)."

(b) The ensuing discussion revealed that the question of the entry into force of the final clauses required re-examination, particularly since the Articles treated by the drafts as final clauses included not only provisions on ratification, denunciation, and similar formal matters, but also a clause on disputes (in the Berne Convention), and possibly other provisions with important implications.

## ACCESSIBILITY TO THE UNIONS

(222) The drafts provide (Paris, Article 16ter; Berne, Article 25ter) that any country outside the Union which may accede to the IPO Convention may become a member of the Paris (Berne) Union.

(223) Since, at the time of the discussion of the draft of the IPO Convention, the question of which countries may accede to that Convention was reserved for the Stockholm Conference, it was agreed that the discussion of the provision on accession to the Unions should also be reserved for the Stockholm Conference.

(224) Nevertheless, several Delegations declared that they were firmly opposed to any amendment which would limit the present possibilities of accession to the Unions. The Delegations of Czechoslovakia, Hungary, India, Italy, Poland, and Rumania, were among these Delegations.

## ACCESSION TO ADMINISTRATIVE PROTOCOLS WITHOUT ACCESSION TO THE NEW ORGANIZATION

(225)(a) When Article 16quater (Paris) and Article 25quater (Berne) were discussed, the majority approved or did not object to paragraph (2)(ii) which allows countries of the Unions to accede to the Administrative Protocols without accession to the IPO Convention.

(b) The Delegate of Israel wondered whether such a possibility should be provided for and even whether it was legally meaningful until the IPO Convention enters into force.

(c) The Delegations of Ireland, the United Kingdom and the United States of America questioned the wisdom of the possibility under discussion, and the Delegation of Japan expressly reserved its position.

(226) It was noted that paragraph (2)(i) was a consequence of the "splitting" principle provided in other provisions of the text.

(227)(a) Paragraph (1) of the Article was reserved for discussion at the Stockholm Conference since its effects depend on the membership clause--already reserved for discussion at Stockholm--of the IPO Convention.

(b) Nevertheless, the Delegation of Rumania said that it objected to the fact that the draft provided for a different treatment for countries of the Unions and countries outside the Unions, as accession to the Unions would imply, for the latter, the necessity of accession to the IPO Convention.

(c) The Delegation of Italy expressed objections along similar lines.

## RESERVATIONS

(228) When Article 16*quinquies* (Paris) was discussed, the Director of BIRPI said that the Secretariat would study a suggestion by the Italian Delegation to replace the introductory words ("subject to the possibilities of exceptions provided for in Article 16(2)") by a more general formula, for example the one contained in Article 25*quinquies* (Berne) although, in his view, the texts should be as precise as possible in defining the possibilities of reservation.

## ACCESSION TO EARLIER TEXTS

(229)(a) When Article 16*sexies* (Paris) and Article 25*sexies* (Berne) were discussed, the Delegate of Australia said that a definite cut-off date, written into the Conventions, would be preferable.

(b) The Secretariat replied that the suggestion would be examined.

(230) The Delegate of Israel asked that it should be studied whether the Article was really needed, the more so as it raised difficult questions as to the application of the various Acts among the members of the Union.

NON SELF-GOVERNING TERRITORIES

(231)(a) Article 16septies (Paris) and Article 26 (Berne), dealing with non self-governing territories, were considered as necessary by the majority of the Delegations.

(b) Several Delegations, however, expressed the view that, in an era when colonialism is in the process of disappearing, it would be an anachronism to maintain the provision. Among the Delegations opposing the provision were those of Hungary, Rumania, and Poland.

(c) In reply to a question from the Delegation of Algeria, the Director of BIRPI said that if a country, upon becoming independent, wished to denounce any of the Conventions, it was free to do so.

(d) The Delegation of the USSR suggested that the territories referred to in the Article should, themselves, be entitled to notify the cessation of applicability of the Conventions on their territories, and cited the example of Sikkim and Bhutan. The Secretariat will study the suggestion.

(232) The Delegate of Israel suggested that the drafters of the Stockholm proposals should study the need for a provision which would allow countries, upon becoming independent, to declare that they are bound by the latest Act of the Convention applied on their territory and which would require that they choose a class for the purposes of contributions.

DENUNCIATION

(233)(a) Paragraph (2) of Article 17bis (Paris) and of Article 29 (Berne) provides that any denunciation of the Stockholm Act constitutes denunciation of the previous Acts.

(b) The Delegation of Italy said that the provision was an innovation, unjustified in international law--since, legally, each Act is a separate treaty with its own contracting parties--and possibly harmful to the private rights protected under the various Acts.

(c) Moved by similar considerations, the Delegation of Czechoslovakia proposed that a new paragraph, to be inserted after paragraph (3) should provide that denunciations of earlier Acts shall be notified by the competent authorities provided for in such Acts.

(234)(a) Paragraph (4) of the same Articles provides that the right of denunciation may be exercised only five years after becoming party to the Stockholm Act.

(b) The Delegation of Rumania opposed the provision on the ground that it unduly restricted the freedom of the member States to leave the Unions whenever they so desired.

(c) The Delegate of India proposed that the five years should be counted from the date on which the country joined the Union.

(235) The Director of BIRPI said that the provision had already proved its worth in practice as a safeguard against hasty decisions. In any case, the remarks and suggestions would be carefully studied.

## ACTS GOVERNING TREATY RELATIONS

(236)(a) Paragraph (2) of Article 18 (Paris) and of Article 27 (Berne) provides that the relations between countries which are party to the Stockholm Act and any country of the Union not party to the Stockholm Act shall be governed by the most recent of the Acts to which the latter country is a party.

(b) An intervention by the Delegations of Hungary, supported by observations made by the Delegations of Czechoslovakia and Italy, indicated that the provision implied that a country could be required to apply an Act which it had never accepted. Thus, the provision might prevent countries from acceding to the Stockholm Act only because they did not want to, or, under their domestic law, could not apply an earlier Act. The Delegation of Hungary observed that, for example, a country of the Berne Union which was a party to the Rome Act but not to the Brussels Act could not accede to the administrative reforms of Stockholm only because, by acceding to such reforms, it would have to apply the (unacceptable, as far as it was concerned) Brussels Act in its relations with countries party to the Brussels Act.

(c) The Italian Delegation expressed the view that it was a general rule of treaty law that treaty links existed only between countries which had accepted the same treaty.

(d) The Delegation of Czechoslovakia said that, if there was a desire to resolve existing doubts as to what Acts, if any, were applicable between members of the same Union which had not acceded at least to one identical Act, then perhaps a separate, interpretative Protocol could be drafted, but in any case no attempt should be made to resolve this difficult question by a rule written into the Stockholm Act itself, which, in any case, would not bind countries not parties to it.

(237) It was agreed that the drafters of the Stockholm proposals would thoroughly re-examine the question in the light of the discussions of the Committee.

(238) The Delegation of Hungary also proposed that the words "in their entirety" be, in any case, inserted after the words "the relations between countries which are party to this Act," and that the paragraph be completed by the following sentence: "The provisions of the present paragraph are not to be applied in the relations among countries parties to the same Act of the Union."

BERNE CONVENTION CLAUSE ON DISPUTES

(239) Article 27bis of the Berne Convention, introduced into it in 1948, provides for the compulsory jurisdiction of the International Court of Justice. No recourse to the Court has so far been made under this provision.

(240) Several speakers pointed out that the existence of this clause may be one of the reasons for which a relatively high number of countries have not ratified the 1948 revision; that the clause did not correspond to any real need; and that it had no parallel in the Paris Convention and the proposed IPO Convention. Proposals were made either to delete the Article at Stockholm, or to make the jurisdiction of the Court optional, or to transfer the Article to a separate Protocol whose acceptance would be optional.

(241) Views along these lines were mainly expressed by the Delegations of Hungary, India, Rumania, Poland, and Israel.

(242) It was understood that the drafters of the Stockholm proposals would take into account these views which would be reflected in the documents prepared for the Stockholm Conference.

(243) The Delegations of France and Spain said that the Article should be maintained, and the Delegation of Italy, that a clause providing for compulsory arbitration might be a better formula.

## SIGNATURE AND RATIFICATION

(244) It was agreed that there should be a provision leaving the texts open for signature for a certain number of months after the Stockholm Conference.

(245) The texts should provide that countries which signed a text "shall" (rather than "may") ratify it (e.g., Paris Annex, Article 16(1)).

## TRANSITIONAL PROVISIONS

(246) The Delegate of India suggested that in Article 32(1) of the Berne Annex, the word "shall" should be replaced by "may, if they so desire." (The corresponding provision in the Paris Annex is in Article 20(1)).

(247) The Delegation of the Netherlands suggested that a Resolution of the Stockholm Conference should repeat the provisions of Article 20(1) (Paris) and Article 32(1) (Berne) because otherwise the provisions would not cover countries until they had ratified the Stockholm revisions.

(248) The Delegate of Israel suggested that the paragraph was applicable to any country of the Union, irrespective of the Act by which it was bound.

(249) The Delegate of Israel also suggested that paragraph (2) deal at the same time with the Secretariat, and that the parallel existence and the succession of certain organs should be made the subject of careful study.

LANGUAGES

(250)(a) Article 31 of the Berne Annex provides that the Stockholm Act would be signed in the English and French languages and that both texts would have equal force.

(b) The Delegation of France opposed this innovation, since, according to the Brussels Act, in case of dispute, the French text prevails.

(c) The Delegation of the United Kingdom said that the matter was, par excellence, for a diplomatic conference to decide.

(d) It was agreed to reserve fuller discussion for the Stockholm Conference.

(251)(a) The Delegation of Morocco suggested a provision for translation into Arabic, and the Delegation of India into any language requested by a Member State.

(b) It was understood that the drafters of the Stockholm proposals would examine the possibilities.

(252) On a proposal by the Delegate of Israel, it was agreed that the originals would be signed in one copy and this fact would be expressly stated in the instruments.

## CERTAIN REFERENCES TO RATIFICATIONS OF EARLIER ACTS

(253)(a) The Delegation of France observed that the references to ratifications in the Nice Annex, Article 6(3), and the Hague Annex, Article 22 (1quater), were incorrect since the Acts referred to in those provisions were closed to ratification.

(b) It was agreed that the drafters of the Stockholm proposals would examine the question.

## RESOLUTION (DOCUMENT NO. 6)

(254) Several Delegations declared that the draft Resolution concerning provisional and limited application proposed in document No. 6 was unacceptable to them. Among these were the Delegations of Italy, France, Rumania, Greece, Austria, Morocco, and Yugoslavia. The Delegation of Italy, in particular, indicated the main reason for its opposition to the provisional application of the new Organization whose possible creation would require the solution of important problems of acultural, economic financial, and--principally--political nature.

(255) Others reserved their position or declared that it should be understood that, if adopted, the Resolution could be applied by them but on a purely voluntary basis.

(256) The Secretariat said that it would re-study the question in the light of the observations made.