

BUREAUX INTERNATIONAUX  
RÉUNIS POUR LA PROTECTION  
DE LA PROPRIÉTÉ INTELLECTUELLE  
GENÈVE, SUISSE

# BIRPI

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BUREAUX FOR THE PROTECTION  
OF INTELLECTUAL PROPERTY  
GENEVA, SWITZERLAND

**SECOND COMMITTEE OF GOVERNMENTAL EXPERTS  
ON ADMINISTRATION AND STRUCTURE**

**DEUXIÈME COMITÉ D'EXPERTS GOUVERNEMENTAUX  
CONCERNANT DES QUESTIONS D'ORDRE STRUCTUREL  
ET ADMINISTRATIF**

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FINAL CLAUSES

of the Conventions and Agreements  
Administered by BIRPI

(Draft Texts and Commentary)

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(Note: Only those Addenda concerning Conventions and Agreements to which it is a party are being transmitted to each country. Any other Addendum is available on request.)

GENERAL INTRODUCTION

The present document, entitled, for the sake of brevity, "Final Clauses," contains proposals for amending the administrative provisions of the two Conventions and the four Agreements administered by BIRPI, and proposals for amending some of the final clauses of these instruments.

The changes in the administrative provisions are necessary in view of the proposition that all administrative matters would be regulated by administrative protocols, forming integral parts of the Conventions and Agreements. The matters whose regulation would thus be transferred to the Protocols would include, in particular, provisions on administrative organs (Assembly, Committees, Secretariat), finances, the preparation for revision conferences, and amendments to the Protocols. The proposed new regulation of these matters is discussed in document AA/III/4 which deals with the draft Administrative Protocols. The present document--as far as administrative matters are concerned--deals only with those consequential changes which would result from the adoption of the Administrative Protocols.

As at every revision conference, some of the final clauses must be changed and the present document contains proposals for such changes. It also contains proposals for a few improvements of the present final clauses but, in general, present provisions were not changed. This accounts for the lack of uniformity of language in expressing the same ideas in the two Conventions and four Agreements whose final clauses would be revised.

The two Conventions and four Agreements to which this document relates are:

- (1) the Paris Convention,
- (2) the Berne Convention,
- (3) the Madrid (Trademarks) Agreement,
- (4) the Hague Agreement,
- (5) the Nice Agreement,
- (6) the Madrid (False Indications) Agreement.

Each of these Conventions and Agreements is the subject of a separate Addendum to this document.

[ Addenda attached ]

PARIS CONVENTION FINAL CLAUSES  
(DRAFT TEXT AND COMMENTARY)

Introduction

The provisions of the Paris Convention may be classified as substantive, administrative, and final.

Articles 1 to 12 of the Lisbon Act of 1958 may be considered as substantive. No change in these Articles is being proposed for consideration by the Stockholm Conference, except one, namely, that a new section be added to Article 4 dealing with the right of priority. The essence of the new section would be that the filing of so-called inventors' certificates be recognized as a basis for claiming priority. The proposal for this addition is contained in a separate document (S/2), which will have been published by the time that the 1966 Committee meets. However, the proposal will not be discussed by the said Committee.

Articles 13 and 14(5) of the Lisbon Act may be described as administrative, as the former concerns the International Bureau (Office), including its finances, and the role of the Swiss Government as Supervisory Authority, and the latter concerns conferences of representatives and plenipotentiaries. It is proposed that these provisions be replaced by the Administrative Protocol annexed to the Convention. The draft of this Administrative Protocol is contained in document AA/III/4.

The first four paragraphs of Article 14, as well as Articles 15 to 19, of the Lisbon Act may be regarded as the final clauses. It is the changes proposed in these provisions that constitute the subject matter of the present Addendum.

One of the important features of the proposed final clauses--based on Article G(1)(a-bis) of the model Protocol adopted by the 1965 Committee-- is that ratification or accession by Union countries would not necessarily have to extend to both the revised substantive Articles and the new administrative provisions. In other words--since the only substantive change is a new section on inventors' certificates, and the new administrative provisions are essentially constituted by the Administrative Protocol--ratification or accession by Union countries would not necessarily have to extend to both the new provision on inventors' certificates and to the Administrative Protocol. It would, in fact, be possible for

any country of the Union to accept only the Administrative Protocol or only the provision on inventors' certificates (together with the rest of the--unchanged--substantive clauses).

Naturally, it would be desirable that every country accept both kinds of proposed changes, and, in any case, it is to be hoped that if, initially, a country finds it possible to become a party to only one of them, a few years later it will be in a position to accept also the other.

Since, however, it is conceivable that there will be countries which may accept only one kind of change, or accept it sooner than the other, it seems to be eminently practical to offer them the possibility to do so. Some countries may be quite prepared to become a party almost immediately to the Administrative Protocol since it does not require revising their industrial property laws. Such countries could become party to the Administrative Protocol not only if they are not ready to accept the proposed new provision on inventors' certificates but even if they are not ready to accept changes which were decided upon at earlier revision conferences. Consequently, it would be possible, for example, for a country still bound by the London Act of 1935 to accept the administrative reform embodied in the Administrative Protocol and not to accept either the Lisbon Act of 1958 or the provision on inventors' certificates, proposed to be introduced into the Convention through the Stockholm Act. On the other hand, a country ready to become a party to the new provision on inventors' certificates could do so without becoming a party to the Administrative Protocol. This possibility of choice would follow from proposed Article 16(2).

Countries of the Union would be allowed a further option. They could, if they so desired, choose not to become a party to the IPO Convention and could still become a party to the Administrative Protocol (see proposed Article 16quater (2)(ii)).

None of these options would be open to countries outside the Union. Such countries will be permitted to accede to the Stockholm Act only in its entirety, and their accession would necessarily entail accession to the IPO Convention (see Article 16quater (1)). This difference between countries of the Union and countries outside the Union is justified on the basis that, when the former became members of the Union, there was no Organization and therefore they should have the right to continue to belong to the Union even if they do not wish to become members of the Organization.

PARIS FINAL CLAUSES  
Introduction

As to the rest of the final clauses, the main changes would be the following. The Article on non-selfgoverning territories has been patterned on modern territorial clauses (Article 16septies). The thesis according to which there is a link between all countries of the Union, even those which are not parties to the same Act, would find expression in the Convention through a provision stating that relations between countries which are parties to the Stockholm Act and a country party only to earlier Acts are governed by the most recent of the earlier Acts (Article 18(2)). Finally, the task of depositary would be transferred from the Swiss Government to the Director General of the new Organization (Article 19 and other provisions).

COMMENTARY  
on  
PARIS FINAL CLAUSES  
(ARTICLES 13 to 20)

Commentary on Article 13

As already stated, this Article, in the Lisbon Act, relates to certain administrative matters.

In the proposed Stockholm Act, the Article would merely refer to the existence of the Administrative Protocol, annexed to that Act. Consequently, any country which becomes a party to the Stockholm Act would be bound also by the Administrative Protocol, except any country of the Union which makes a declaration as permitted by draft Article 16 (2)(ii).

Commentary on Article 14

In the Lisbon Act, this Article consists of five paragraphs.

Paragraph (1), in the Lisbon Act, enunciates the principle and purpose of revisions. Paragraph (2) provides that revisions are to be dealt with in conferences. No change is proposed in these paragraphs.

Paragraphs (3) and (4), in the Lisbon Act, concern the preparations for revision conferences and the role of the Director in such conferences. These two paragraphs would be omitted since the questions dealt with in them would be dealt with --and solved differently-- in the Administrative Protocol (see Articles A (2)(ii) and C (7) of the draft Administrative Protocol and the relevant commentary).

DRAFT TEXT  
of  
PARIS FINAL CLAUSES  
(ARTICLES 13 to 20)

ARTICLE 13

Certain provisions regarding the administration of the Union are included in the Administrative Protocol which is annexed to this Act and forms an integral part thereof.

ARTICLE 14

(1) /Same as in Lisbon Text/ The present Convention shall be submitted to periodical revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) /Same as in Lisbon Text/ For this purpose conferences shall be held successively in one of the countries of the Union between the delegates of the said countries.

/ (3) to (5) of Lisbon Text to be omitted. /

(Article 14, contd.)

Paragraph (5), in the Lisbon Act, concerns two kinds of meetings of the member States: the "Conferences of representatives" whose function is to draw up, once every three years, a report on the foreseeable expenditure of the International Bureau and to consider questions relating to the protection and development of the Union (sub-paragraphs (a) and (c)), and the "Conferences of Plenipotentiaries" which may modify the ceiling of contributions of member States towards the expenses of the International Bureau (sub-paragraph (b)). In the proposed structure, the role of these two kinds of Conferences would be taken over by the "Assembly" of all member States. The powers of such Assembly would comprise and surpass the functions of the said Conferences. Since all matters relating to the Assembly of the Paris Union would be regulated in the Administrative Protocol annexed to the Stockholm Text, paragraph (5) of Article 14 of the Lisbon Act would not appear in the Stockholm Act.

#### Commentary on Article 15

This Article provides for the possibility of concluding special agreements between members of the Union. No change is proposed.

#### Commentary on Article 16

Article 16 of the Lisbon Act relates to accession by countries outside the Union. Article 18 (1) and (2) of the same Act concerns ratifications and accessions by countries of the Union. These provisions also contain rules as to the entry into force of the Lisbon Act.

The proposed text attempts a clearer and more logical presentation. It would replace the cited provisions by a series of new articles, numbered from 16 to 16sexies, respectively dealing with the following matters:



ARTICLE 15

/Same as in Lisbon Text/ It is understood that the countries of the Union reserve the right to make separately between themselves special arrangements for the protection of industrial property, in so far as these arrangements do not contravene the provisions of the present Convention.

ARTICLE 16

(1) Any country of the Union which has signed this Act may ratify it, and if it has not signed it, may accede to it. Instruments of ratification and accession shall be deposited with the Director General of the International Intellectual Property Organization (hereinafter referred to as "the Director General").

(2) Any such country may declare in its instrument of ratification or accession that its ratification or accession shall not apply:

(Article 16, contd.)

Article 16, with ratification and accession by countries of the Union;

Article 16bis, with entry into force for countries of the Union;

Article 16ter, with accession by countries outside the Union and entry into force for such countries;

Article 16quater, with the possible effects of ratification of, or accession to, the Stockholm Act on the question of becoming a member of the proposed new Organization;

Article 16quinquies, with the scope of ratifications and accessions;

Article 16sexies, with the "closing" of Acts earlier in date than the Stockholm Act.

Article 16, as already stated, concerns only countries "of the Union," i.e., countries already members of the Paris Union. Pursuant to paragraph (1) such countries would have an opportunity to sign the Stockholm Act at the end of the Stockholm Conference and subsequently to ratify it. Those which do not sign could accede. The instruments of ratification or accession would be deposited with the Director General of the proposed new Organization rather than with the Government of the host country or of Switzerland. Paragraph (2) permits any country of the Union to exclude from its ratification or accession either the substantive clauses (Articles 1 to 12) (that is, in effect, the new section on inventors' certificates) or the new administrative provisions (that is, in effect, the Administrative Protocol).

Paragraph (3) expressly states that which is already implied, namely, that a country which initially does not accept the provision on inventors' certificates may later accept it, or which initially does not accept the Administrative Protocol may later accept that Protocol.

(Article 16, contd.)

(i) to Articles 1 to 12, or

(ii) to Article 13 and the Administrative Protocol.

(3) Any country which, in accordance with paragraph (2), has limited the effects of its ratification or accession to one part of the provisions of this Act may at any time later ratify or accede to the other part of the provisions.

Commentary on Article 16bis

In the Lisbon Act, this Article concerns non-selfgoverning territories. Since, logically, this provision should follow the provisions on sovereign countries, it has been placed further along in the text, under number 16septies.

In the Stockholm Act, Article 16bis would relate to the entry into force of that Act for countries of the Union.

Once again, one must differentiate between the substantive provisions and the Administrative Protocol. The former, that is, essentially, the new section on inventors' certificates, would enter into force if five countries of the Union ratify or accede to them. The entry into force of the latter would require ten such ratifications or accessions. If a country ratifies or accedes to the entirety of the Stockholm Act, its ratification or accession would be counted towards the entry into force of both sets of provisions. It is to be noted that these provisions, constituting paragraphs (1) and (2), concern only countries members of the Paris Union. Accessions by non-members would not be counted towards entry into force.

There is, of course, a third set of provisions: the final clauses (Articles 14 to 20). These would enter into force either at the same time as the revision of the substantive provisions, or at the same time as the provisions of the Administrative Protocol, depending on which of the two sets of provisions enters into force first. The corresponding rule is contained in paragraph (3).

Paragraph (4) deals with the entry into force of subsequent ratifications or accessions by countries of the Union.

ARTICLE 16bis

(1) Articles 1 to 12 shall enter into force with respect to those countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by Article 16 (2)(i), one month after the deposit of the fifth such instrument of ratification or accession.

(2) Article 13, including the Administrative Protocol, shall enter into force with respect to those countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by Article 16 (2)(ii), one month after the deposit of the tenth such instrument of ratification or accession.

(3) Articles 14 to 20 shall enter into force on the earlier of the dates referred to in paragraphs (1) and (2), with respect to each country of the Union which one month or more before such date has deposited an instrument of ratification or accession, whether or not the instrument is limited pursuant to Article 16 (2).

(4) Subject to the initial entry into force of any group of provisions pursuant to paragraphs (1), (2), or (3), and subject to the provisions of Article 16 (2), the provisions of the Convention shall, with respect to any country of the Union which has deposited an instrument of ratification or accession, enter into force one month after the date of notification by the Director General of such deposit, unless a subsequent date has been indicated in the instrument of ratification or accession.

Commentary on Article 16ter

Article 16ter concerns accession to the Paris Union by non-members of that Union ("countries outside the Union"). As already noted, such countries could accede only to the entirety of the Stockholm Act.

Paragraph (1) provides that only such countries outside the Paris Union may accede to the Act as may accede to the IPO Convention. It follows from the proposed Article 4 of the IPO Convention that the following four categories of non-member countries could accede to the Paris Convention: countries of the Berne Union, countries parties to another treaty administered by the proposed new Organization, members of the United Nations or any of its Specialized Agencies, other States if invited by a 2/3 vote to become members of the new Organization. The reasons for having chosen these categories are explained in connection with the draft IPO Convention. The effect of the provision would be that the Paris Convention would not necessarily be open to any country. Accession could not be refused to any country in any of the first three categories. However, countries not belonging to any of these three categories would have to be "voted into" the proposed new Organization, before they could accede to the Paris Convention. It is to be noted that, of course, the provisions under consideration would apply only to countries which are not already members of the Paris Union. All those which are members, would continue to be members.

Paragraphs (2) and (3) relate to the date upon which countries outside the Union shall become bound by the Act: paragraph (2), where the instrument is deposited one month or more before the date on which the relevant portions of the Stockholm Act have entered into force as a result of ratifications and accessions by countries of the Union; paragraph (3), where the instrument is deposited after such date. It will be noted with respect to a country coming within the provisions of paragraph (2) that, if the new administrative provisions have not entered into force on the date upon which it becomes bound by the other provisions, the old administrative provisions (i.e., Articles 13 and 14 of the Lisbon Act) will be substituted for the new administrative provisions for the interim period. If this were not so, no administrative provisions would be binding on the country for such period.

ARTICLE 16ter

(1) Any country outside the Union which may accede to the Convention establishing the International Intellectual Property Organization may accede to this Act and thereby become a Member of the Union. Instruments of accession shall be deposited with the Director General.

(2) Countries outside the Union which deposit their accessions one month or more before the date of entry into force of Articles 1 to 12 shall, on such date, become bound by this Act; provided, however, that, if the provisions of Article 13 and the Administrative Protocol shall not have entered into force on that date, such countries shall, during the interim period and in substitution for the latter provisions, be bound by Articles 13 and 14 of the Lisbon Act.

(3) All other accessions by countries outside the Union shall become effective one month after the date of their notification by the Director General, unless a subsequent date has been indicated in the instrument of accession.

Commentary on Article 16quater

This Article concerns the possible effects of ratification of, or accession to, the Stockholm Act on the question of becoming a member of the proposed new Organization ("IPO").

Paragraph (1) contains the rule, paragraph (2) deals with two exceptions.

The rule is that a country acceding to the Stockholm Act automatically becomes a member of the IPO. This rule is absolute for countries outside the Union. It corresponds to the principle embodied in Article G (5) of the model Protocol drawn up by the 1965 Committee.

The two exceptions may relate only to countries of the Union. If such a country does not ratify or accede to the Administrative Protocol, it will not become a member of IPO. This is only logical since the members of the Assembly of the Paris Union are members of the General Assembly of IPO, but to become member of the Assembly of the Paris Union the country must accept the Administrative Protocol of the Paris Union (since that Assembly is instituted by the said Protocol). The situation is similar in relation to membership in the Executive Committee of the Paris Union and the Coordination Committee of IPO.

The other exception is that even though a country does ratify or accede to the Administrative Protocol it may declare that it does not want to become a member of IPO. It is difficult to imagine why any country would **wish** to exclude itself from the benefits connected with membership in IPO, particularly as membership in IPO would imply membership in the General Assembly and is necessary for membership in the Coordination Committee. The reason why this exception nevertheless appears in the **draft** is that some of the participants in the 1965 Committee strongly advocated the principle underlying it. It is hoped, however, that it will be dropped now that it is clearly proposed that ratification of or accession to the substantive revisions is separable from ratification of or accession to the Administrative Protocol, and **vice versa**.



ARTICLE 16quater

(1) If, at the time of depositing its instrument of ratification or accession, a country is not yet party to the Convention establishing the International Intellectual Property Organization, its ratification of, or accession to, this Act shall, subject to paragraph (2), constitute such country a party to the said Convention, as provided in that Convention.

(2) Paragraph (1) shall not apply to any country of the Union which:

- (i) limits the effects of its ratification or accession in accordance with Article 16 (2) (ii), or,
- (ii) declares in its instrument of ratification or accession that it does not wish to become a Member of the Convention establishing the International Intellectual Property Organization.

PARIS FINAL CLAUSES  
Commentary

Commentary on Article 16quinquies

This Article is a modified version of the first clause of Article 16(3) of the Lisbon Act which provides that accession by countries outside the Union "shall automatically entail acceptance of all the clauses and admission to all the advantages of the present Convention."

The modifications are of two kinds.

First, it is proposed that this rule apply to all ratifications and all accessions. There seems to be no reason to limit it to accessions by countries outside the Union.

Second, it seems to be necessary, for the sake of clarity, to indicate that not necessarily "all" the advantages apply. If a country uses the faculty provided for in Article 16(2), certain of the clauses and advantages of the Stockholm Act will not apply to it.

Commentary on Article 16sexies

This Article would deal with the question of whether to exclude the possibility of acceding to earlier Acts without acceding at the same time to the Stockholm Act. It would consist of a single sentence providing that "After the entry into force of this Act /that is, the Stockholm Act/ in its entirety a country may accede to earlier Acts of this Convention only in conjunction with accession to this Act."

The Lisbon Act contains no analogous provision. The Berne Convention does contain one (see Brussels Act, Article 28(3)).

Notwithstanding the fact that, as stated, the existing Acts of the Paris Convention contain no provision of this kind, it is a tradition in the Union that once a new Act enters into force, countries do not, so far as is known, attempt to accede only to earlier Acts.

In order to confirm this tradition and thus avoid future controversies, and in order to establish a parallelism with the Berne Convention, it is proposed to insert the provision in the Stockholm Act.

ARTICLE 16quinquies

Subject to the possibilities of exceptions provided for in Article 16 (2), ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Convention.

ARTICLE 16sexies

After the entry into force of this Act in its entirety, a country may accede to earlier Acts of this Convention only in conjunction with ratification of, or accession to, this Act.

PARIS FINAL CLAUSESCommentary

(Article 16 sexies, contd.)

The closing of the earlier Acts to separate accession (that is, without accession also to the Stockholm Act) would occur on the day on which the Stockholm Act enters into force.

By that Act is meant the entirety of the Act. In other words, it will be possible to accede to the Lisbon Act even after the Administrative Protocol is in force, if the substantive revision is not yet in force; and, conversely, it will be possible to accede to the Lisbon Act even after the substantive revision is in force, if the Administrative Protocol is not yet in force.

Commentary on Article 16septies

This Article concerns the application of the Convention to non-selfgoverning territories. For the reasons indicated above (see Article 16bis), this provision, which in the Lisbon Act appears as Article 16bis would, in the Stockholm Act, have the number 16septies. The proposed changes are intended to bring the provision into conformity with modern territorial clauses and to provide that the function of depositary would be exercised by the Director General of IPO rather than by the Swiss Government. Otherwise the proposed changes are merely of form. (Any notification of territorial application under paragraph (1) would not, of course, take effect prior to the date upon which the country giving the notification become bound.)

ARTICLE 16 septies

[16bis in the Lisbon Act]

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under such paragraph shall take effect one month after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

Commentary on Article 17

This Article deals with the question of implementing legislation. No change is proposed.

Commentary on Article 17bis

This Article deals with denunciation.

Paragraphs (1) to (3) constitute a redraft of paragraphs (1) and (2) of the Lisbon Act, in order to make them more logical and clear. In particular, it would be specified that denunciation of the proposed Act shall constitute denunciation of all previous Acts as well, so that any country denouncing the Act would thereby lose its membership in the Union.

Paragraph (4) of the proposed new text has no equivalent in the Lisbon Act. It would correspond to Article 29 of the Berne Convention. The proposal is made mainly to establish parallelism with this, patently reasonable and practical, provision of the Berne Convention.

Commentary on Article 18

The scope of this Article would not be quite the same as it is in the Lisbon Act.

In that Act, paragraphs (1) and (2) concern ratification and accession by countries of the Union, and the entry into force of that Act. These questions would be dealt with, as indicated above, in Articles 16 and 16bis in the proposed Stockholm Act.

Paragraphs (3) to (6), in the Lisbon Act, deal with the question of which Acts govern the relations between the various countries of the Union.

ARTICLE 17

/Same as in Lisbon Text/ Every country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

It is understood that at the time an instrument of ratification of accession is deposited on behalf of a country, such country will be in a position under its domestic law to give effect to the provisions of this Convention.

ARTICLE 17bis

(1) This Convention shall remain in force for an indefinite time.

(2) Any country may denounce this Act by a notification addressed to the Director General. Such denunciation shall constitute also denunciation of all previous Acts and shall affect only the country making it, the Convention remaining in full force and effect for the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received it.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes party to this Act.

(Article 18, contd.)

These paragraphs would not be taken over by the Stockholm Act because they necessarily --as the provision was made in Lisbon-- deal only with relations between countries none of which is party to the Stockholm Act.

Thus, Article 18, in the Stockholm Act, would be entirely new although it would deal with a problem analogous to that dealt with in paragraphs (3) to (6) of the Lisbon Act.

The proposed new Article would consist of two paragraphs.

Paragraph (1) would provide that the Stockholm Act "shall, as regards the relations between the countries to which it applies, and to the extent it applies, replace the Convention of Paris of March 20, 1883, and the subsequent Acts of revision." The provision hardly requires any explanation except as far as the words "and to the extent it applies" are concerned. These words are needed because it is possible, under proposed Article 16bis, to become a party to only a part of the new Act. Thus, for example, if country A does not become a party to the new substantive provisions but only to the Administrative Protocol, and country B becomes a party to the new Act in its entirety, then, between these two countries, Articles 1 to 12 of the Stockholm Act shall not be applicable.

The question of which Act shall govern in such a case is resolved by paragraph (2). This paragraph provides that the relations between countries which are parties to the Stockholm Act and any other country of the Union shall be governed "by the most recent of the Acts to which the latter country is a party." Supposing that, in our example, A is a party to the Lisbon Act, then, as far as substantive provisions are concerned, Articles 1 to 12 of the Lisbon Act will be applicable between the two countries, A and B.

Paragraph (2), as proposed, would clearly resolve a question which gives rise to different interpretations at the present time. The question is this: what, if any, provisions are applicable in the relationship between a country which is a party only to the most recent Act



ARTICLE 18

(1) This Act shall, as regards the relations between the countries to which it applies, and to the extent it applies, replace the Convention of Paris of March 20, 1883, and the subsequent Acts of revision.

(2) The relations between countries which are party to this Act and any country of the Union not a party to this Act shall be governed by the most recent of the Acts to which the latter country is a party.

(Article 18, contd.)

and a country which has not yet become a party to this, most recent, Act? The answer given by paragraph (2) would be that there is a relationship between such two countries and that this relationship would be governed by the most recent Act to which the country not party to the Stockholm Act has become a party.

This proposed rule could hardly be objected to by the country not yet party to the Stockholm Act as it would be required to apply an Act to which it is a party; and as far as the country party to the Stockholm Act is concerned, it, of course, could not object to a rule which is inscribed into the very Act to which it has become a party.

It is to be noted that the rule, as drafted, would apply only if one of the countries is party to the Stockholm Act, or part thereof. In the relations between countries not party to the Stockholm Act, or to the extent that they are not party to it, the question of what Act would govern would continue to be governed by the rules of the applicable earlier Act, in particular by paragraphs (3) to (6) of Article 18 of the Lisbon Act. If, under such earlier Acts, uncertainties exist, such uncertainties would continue, as between the said countries.

The proposed rule of paragraph (2) would make it unnecessary to resolve the question whether the adherence of a country to a given Act "implies" adherence to all earlier Acts. Whatever the answer to this question, there would be a link between countries parties to the Stockholm Act "only" and countries not yet parties to it; and the link would be clearly designated in paragraph (2).

#### Commentary on Article 19

This Article mainly deals with the languages of the Convention.

As in the Lisbon Act, paragraph (1) provides for signature of the Act in the French language.

ARTICLE 19

(1) This Act shall be signed in the French language and shall be deposited with the Director General.

(2) Official translations shall be established by the Director General, after consultation with the interested Governments, in the English, German, Italian, Portuguese, Russian and Spanish languages.

(Article 19, contd.)

Paragraph (1), in the Lisbon Act, also provides that the original be deposited with the Swiss Government. The proposed text would provide that the Director General of the new Organization be the depositary (sub-paragraph (b)) since the tasks of notification would also be entrusted to him.

Finally, paragraph (1), in the Lisbon Act, provides that certified copies are to be sent to certain Governments. The corresponding provision would constitute paragraph (3) in the Stockholm Act.

Paragraph (2), in the Lisbon Act, provides in effect that such Act would remain open for signature for some six months after the closing of the Lisbon Conference. No corresponding provision is proposed in the Stockholm Act; however, such a provision could be inserted if it appeared desirable to do so.

Paragraph (3), in the Lisbon Act, provides for the establishment of official translations in English, German, Italian, Portuguese and Spanish. The proposed text provides for translations in the same languages as well as Russian, in view of the recent accession of the Soviet Union. It also fills a gap in the Lisbon Act which failed to indicate the procedure by which the official translations were to be established. It would now be stated that they would be established by the Director General, after consultation with the interested Governments.

Paragraphs (4) and (5) in the proposed text would deal with the registration of the Act with the Secretary-General of the United Nations and with notifications by the Director General. Both constitute customary functions of the depositary.

#### Commentary on Article 20

This Article contains two transitory provisions.

Paragraph (1) would --for five years after the entry into force of the IPO Convention-- give the same rights to countries not bound by the Administrative Protocol as

(Article 19, contd.)

(3) The Director General shall transmit two certified copies of the text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretary-General of the United Nations as soon as possible.

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments, entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Article 16 septies.

#### ARTICLE 20

(1) Countries of the Union not bound by Article 13 and the Administrative Protocol shall, until five years after the entry into force of the Convention establishing the International Intellectual Property Organization, have the same rights under the Administrative Protocol as if they were bound by Article 13 and the Administrative Protocol.

(Article 20, contd.)

countries bound by that Protocol. The provision is based on Article G(3) of the model Protocol proposed by the 1965 Committee. As stated, the five years would run from the entry into force of the IPO Convention, that is, when ten Paris Union countries have ratified or acceded to the Paris Union Administrative Protocol and when ten Berne Union countries have done so in respect to the Berne Union Administrative Protocol. Since an Assembly of such a limited number of countries would hardly be representative, it is proposed to allow all other countries of the Union, also, to vote in the Assembly and be elected as members of, and vote in, the Executive Committee for five years. The countries which, after the expiration of this term, are still not bound by the Administrative Protocol, would lose these rights at the end of the fifth year. It is to be expected, however, that by then the number of the countries bound by the Protocol would approach the total membership of the Union.

Paragraph (2) would, in essence, provide that until the first Director General of IPO assumes offices, references to him in the Stockholm Act would be deemed to be references to the Director of BIRPI. Such a provision would be needed mainly because of the depositary functions. Even before the entry into force of the IPO Convention, depositary functions such as the following would have to be performed: serving as depositary for the original of the Stockholm Act; transmitting certified copies; receiving, and informing Governments of, instruments of ratification or accession. These functions would, pending the entry into force of the IPO Convention and the appointment of the first Director General of IPO, be carried out by the Director of BIRPI.

(Article 20, contd.)

(2) Until the first Director General assumes office, references to him in the present Act shall be deemed to be references to the Director of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property (also called the United International Bureaux for the Protection of Intellectual Property (BIRPI)).

/End of Paris Addendum/

BERNE CONVENTION FINAL CLAUSES  
(DRAFT TEXT AND COMMENTARY)

Introduction

The provisions of the Berne Convention may be classified as substantive, administrative, and final.

Articles 1 to 20 of the Brussels Act of 1948 may be considered as substantive. Proposals for their revision are contained in a separate document (S/1), which, by the time the 1966 Committee meets will have been published. However, these proposals will not be discussed by the said Committee.

Articles 21 to 23 of the Brussels Act may be described as administrative, as they deal with the International Bureau (or Office), including its finances, and the role of the Swiss Government as Supervisory Authority. It is proposed that these Articles be replaced by the Administrative Protocol annexed to the Convention. The draft Administrative Protocol is contained in document AA/III/4.

Articles 24 to 31 of the Brussels Act may be called the final clauses. It is the changes proposed in these provisions that constitute the subject matter of the present document.

As a preliminary matter it should be noted that not one but two Protocols are being proposed to be annexed to the Stockholm Act of the Berne Convention. One of them, as already indicated, deals with the administrative matters ("Administrative Protocol"), the other with certain provisions--affecting the substance of copyright protection--regarding developing countries ("Protocol Regarding Developing Countries"). The two Protocols have nothing in common as to their contents. What they have in common is that both would be regarded as forming an integral part of the Stockholm Act of the Berne Convention (see proposed Articles 20bis and 20ter).

The substance of the Protocol Regarding Developing Countries is not on the agenda of the 1966 Committee. Nevertheless, a copy of the opening and final provisions of that Protocol is included in the present document merely for the purpose of background information.



BERNE FINAL CLAUSESIntroduction

Finally, it should be noted that the program of the Stockholm Conference includes also consideration of three other draft instruments which, unlike the two above-mentioned Protocols, would not constitute integral parts of the Stockholm Act. These three instruments are: a Declaration relating to the Protocol Regarding Developing Countries, a Protocol concerning the protection of works of stateless persons and refugees, and a Protocol concerning the protection of works of certain international organizations. The present document does not contain the drafts of these three instruments which have been reproduced in document S/1 and which will not be considered by the 1966 Committee.

Returning to the consideration of the draft final clauses of the Stockholm Act, it should be noted that one of the important features proposed--on the basis of Article G(1)(a-bis) of the model Protocol adopted by the 1965 Committee--is that ratification or accession by Union countries would not necessarily have to extend to both the new administrative provisions (i.e., the Administrative Protocol) and to the new provisions dealing with the substance of copyright (i.e., Articles 1 to 20bis as revised and the Protocol Regarding Developing Countries). It would be possible for any Union country to accept only the administrative reform or only the revisions of the substantive clauses. Naturally, it would be desirable that every country accept both sets of changes, and it is to be hoped that if a country finds it possible to accept one set only, a few years later it will be in a position to accept also the other set. But since it is conceivable that there will be countries which may accept only one set of the changes, or accept it sooner than the other set, it seems to be eminently practical to offer them the possibility to do so. Some countries may be quite prepared to accept almost immediately the administrative changes, since such changes would in no case entail the necessity of revising their copyright laws. Such countries could become party to the administrative changes not only if they are not ready to accept the substantive changes to be decided in Stockholm but even if they are not ready to accept the changes which were decided upon at earlier revision conferences. Consequently, it would be possible, for example, for a country still bound by the Rome Act of 1928 to accept the administrative reform embodied in the Administrative Protocol and not to accept either the Brussels Act of 1948 or the substantive changes to be introduced into the Convention through the Stockholm Act. On the other hand, a country ready to become a party to the substantive changes could do so without accepting at the same time the administrative reform. This possibility of choice follows from proposed Article 25(2).

Union countries would be allowed a further option: they could, if they so desired, not become a party to the IPO Convention and still become a party to the Administrative Protocol (see proposed Article 25quater (2)(ii)).

None of these options would be open to countries outside the Union. Such countries would be permitted to accede to the Stockholm Act only in its entirety and their accession would necessarily entail accession to the IPO Convention. This difference between countries of the Union and countries outside the Union is justified on the basis that, when the former became members of the Union, there was no Organization and therefore they should have the right to continue to belong to the Union even if they do not wish to become members of the Organization.

As to the rest of the final clauses, the main changes would be the following. The Article on non-selfgoverning territories would be patterned on modern territorial clauses (Article 26). The thesis according to which there is a link between all countries of the Union, even those which are not parties to the same Act, would find expression in the Convention through a provision stating that the relations between countries which are parties to the Stockholm Act and a country party only to earlier Acts are governed by the most recent of the earlier Acts (Article 27(2)). The equal force of the English and French texts of the Convention would be recognized for the first time (Article 31(1)(b)). Finally, the task of depositary would be transferred from the Swiss Government to the Director General of the new Organization (Article 31(1) and other provisions).

COMMENTARY

on

BERNE FINAL CLAUSES  
(ARTICLES 20BIS TO 32)

Commentary on Article 20bis

This Article has no corresponding provision in the Brussels Act. It refers to the existence of the Protocol Regarding Developing Countries, annexed to the Stockholm Act. It states that such Protocol "forms an integral part" of the Stockholm Act. Consequently, any country which becomes a party to the Stockholm Act would be bound also by the said Protocol, except any country of the Union which makes a declaration as permitted by draft Article 25(2)(i).

Commentary on Article 20ter

This Article has no corresponding provision in the Brussels Act. It refers to the existence of the Administrative Protocol annexed to the Stockholm Act. It states that such Protocol "forms an integral part" of the Stockholm Act. Consequently, any country which becomes a party to the Stockholm Act would be bound also by the Administrative Protocol, except any country of the Union which makes a declaration as permitted by draft Article 25(2)(ii).

Commentary on Articles 21 to 23

These Articles which, in the Brussels Act, deal with various administrative and financial matters would be omitted in the proposed Stockholm Act since the questions dealt with in them would be dealt with--and solved differently--in the Administrative Protocol annexed to the Stockholm Act.

DRAFT TEXT

of

BERNE FINAL CLAUSES  
(ARTICLES 20BIS TO 32)

Article 20bis

Certain provisions regarding developing countries are included in the Protocol Regarding Developing Countries which is annexed to this Act and forms an integral part thereof.

Article 20ter

Certain provisions regarding the administration of the Union are included in the Administrative Protocol which is annexed to this Act and forms an integral part thereof.

Articles 21 to 23

/These Articles of the Brussels Text to be omitted./

BERNE FINAL CLAUSES  
Commentary

Commentary on Article 24

This Article deals with the periodic revision of the Convention.

No change is proposed in paragraph (1) enunciating the principle and purpose of revisions.

The first sentence of paragraph (2) in the Brussels Act provides that revisions are to be dealt with in conferences. This sentence would not be changed. The second sentence contains provisions on the preparation for revision conferences, and the third sentence deals with the role of the Director in such conferences. These two sentences of the Brussels Act would be omitted since the questions dealt with in them would be dealt with--and solved somewhat differently--in the Administrative Protocol (see Articles A(2)(ii) and C(7) of the Administrative Protocol and the commentary accompanying them (document AA/III/4)).

Paragraph (3) of the Brussels Act provides that changes require "unanimous consent." The provision would be maintained without change but would be supplemented by a reference to the procedure of amending the Administrative Protocol, as Article E of that Protocol would provide for amendment of certain of its provisions by a three-fourth majority and would require unanimity only in the case of other amendments (Article E(2)(a)).

Commentary on Article 25

Article 25 of the Brussels Act relates to accession by countries outside the Union. The first sentence of Article 27(3) concerns accessions by countries of the Union. Article 28 deals with ratifications but reverts also to the question of accessions by countries outside the Union. The same Article also contains provisions on entry into force.

The proposed text attempts a clearer and more logical presentation. It would replace the cited provisions by a series of six new Articles, numbered from 25 to 25sexies, respectively dealing with the following matters:

Article 24

(1) Same as in Brussels Text. This Convention may be submitted to revision for the purpose of introducing improvements intended to perfect the system of the Union.

(2) Questions of this kind, as well as those which in other respects concern the development of the Union, shall be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries.

(3) No alteration in this Convention shall be binding on the Union except by the unanimous consent of the countries composing it. The provisions concerning the amendment of the Administrative Protocol Article E of that Protocol constitute an exception to this rule.

Article 25

(1) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification and accession shall be deposited with the Director General of the International Intellectual Property Organization (hereinafter referred to as "the Director General").

(2) Any such country may declare in its instrument of ratification or accession that its ratification or accession shall not apply:

- (i) to Articles 1 to 20bis and the Protocol Regarding Developing Countries, or
- (ii) to Article 20ter and the Administrative Protocol.

BERNE FINAL CLAUSES  
Commentary

(Article 25, contd.)

Article 25, with ratification and accession by countries of the Union,

Article 25bis, with entry into force for countries of the Union,

Article 25ter, with accession by countries outside the Union and the entry into force for such countries,

Article 25quater, with the possible effects of ratification of, or accession to, the Stockholm Act on the matter of becoming member of the proposéd new Organization,

Article 25quinquies, with the scope of ratifications and accessions,

Article 25sexies, with the "closing" of the Brussels Act.

Article 25, as already stated, concerns only countries "of the Union," i.e., countries already members of the Berne Union. Pursuant to paragraph (1), such countries would have an opportunity to sign the Stockholm Act at the end of the Stockholm Conference and subsequently to ratify it. Those which do not sign could accede. The instruments of ratification or accession would be deposited with the Director General of the proposed new Organization rather than with the Government of the host country or of Switzerland.

Paragraph (2) permits any country of the Union to exclude from its ratification or accession either the substantive clauses (Articles 1 to 20bis and the Protocol Regarding Developing Countries), or the new administrative provisions (that is, in effect, the Administrative Protocol).

Paragraph (3) expressly states that which is already implied, namely, that a country which at first does not accept one of the two sets of provisions may later accept it.

(Article 25, contd.)

(3) Any country which, in accordance with paragraph (2), has limited the effects of its ratification or accession to one part of the provisions of this Act may at any time later ratify or accede to the other part of the provisions.



BERNE FINAL CLAUSES  
Commentary

Commentary on Article 25bis

This Article deals with the entry into force of the Stockholm Act for countries of the Union.

Once again, one must differentiate between the substantive provisions and the Administrative Protocol. The former, as revised in Stockholm, would enter into force if five countries of the Union ratify or accede to them. The entry into force of the latter would require ten such ratifications or accessions. If a country ratifies or accedes to the entirety of the Stockholm Act, its ratification or accession would be counted towards the entry into force of both sets of provisions. It is to be noted that these provisions, constituting paragraphs (1) and (2), concern only countries members of the Berne Union. Accessions by non-members would not be counted towards entry into force.

There is, of course, a third set of provisions: the final clauses (Articles 24 to 32). These would enter into force either at the same time as the revision of the substantive provisions, or at the same time as the provisions of the Administrative Protocol, depending on which of the two sets of provisions enters into force first. The corresponding rule is contained in paragraph (3).

Paragraph (4) deals with the entry into force of subsequent ratifications or accessions.

Commentary on Article 25ter

Article 25ter concerns accession to the Berne Union by non-members of that Union ("countries outside the Union"). As already noted, such countries could accede only to the entirety of the Stockholm Act.

Article 25bis

(1) Articles 1 to 20bis, including the Protocol Regarding Developing Countries, shall enter into force with respect to those countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by Article 25(2)(1), one month after the deposit of the fifth such instrument of ratification or accession.

(2) Article 20ter, including the Administrative Protocol, shall enter into force with respect to those countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by Article 25(2)(ii), one month after the deposit of the tenth such instrument of ratification or accession.

(3) Articles 24 to 32 shall enter into force on the earlier of the dates referred to in paragraphs (1) and (2), with respect to each country of the Union which one month or more before such date has deposited an instrument of ratification or accession, whether or not the instrument is limited pursuant to Article 25(2).

(4) Subject to the initial entry into force of any group of provisions pursuant to paragraphs (1), (2), or (3), and subject to the provisions of Article 25(2), the provisions of the Convention shall, with respect to any country of the Union which has deposited an instrument of ratification or accession, enter into force one month after the date of notification by the Director General of such deposit, unless a subsequent date has been indicated in the instrument of ratification or accession.

Article 25ter

(1) Any country outside the Union which may accede to the Convention establishing the International Intellectual Property Organization may accede to this Act and thereby become a Member of the Union. Instruments of accession shall be deposited with the Director General.

BERNE FINAL CLAUSES  
Commentary

(Article 25ter, contd.)

Paragraph (1) provides that only such countries outside the Berne Union may accede to the Act as may accede to the IPO Convention. It follows from the proposed Article 4 of the IPO Convention that the following four categories of non-member countries could accede to the Berne Convention: countries of the Paris Unions, countries parties to another treaty administered by the proposed new Organization, members of the United Nations or any of its Specialized Agencies, other States if invited by a 2/3 vote to become members of the new Organization. The reasons for having chosen these categories are explained in connection with the draft IPO Convention. The effect of the provision would be that the Berne Convention would not necessarily be open to any country. Accession could not be refused to any country in any of the first three categories. However, countries not belonging to any of these three categories would have to be "voted into" the proposed new Organization, before they could accede to the Berne Convention. It is to be noted that, of course, the provisions under consideration would apply only to countries which are not already members of the Berne Union. All those which are would continue to be members.

Paragraphs (2) and (3) relate to the date upon which countries outside the Union shall become bound by the Act; paragraph (2), where the instrument was deposited one month or more before the date on which the relevant portions of the Stockholm Act have entered into force as a result of ratifications and accessions by countries of the Union; paragraph (3), where the instrument was deposited after such date. It will be noted, with respect to a country coming within the provisions of paragraph (2), that if the new administrative provisions have not entered into force on the date upon which it becomes bound by the other provisions, the old administrative provisions (i.e., Articles 21 to 23 of the Brussels Act) will be substituted for the new administrative provisions for the interim period. If this were not so, no administrative provisions would be binding on the country for such period.

(Article 25ter, contd.)

(2) Countries outside the Union which deposit their accessions one month or more before the date of entry into force of Articles 1 to 20bis, including the Protocol Relating to Developing Countries, shall, on such date, become bound by this Act; provided, however, that, if the provisions of Article 20ter and the Administrative Protocol shall not have entered into force on that date, such countries shall, during the interim period and in substitution for the latter provisions, be bound by Articles 21 to 23 of the Brussels Act.

(3) All other accessions by countries outside the Union shall become effective one month after the date of their notification by the Director General, unless a subsequent date has been indicated in the instrument of accession.

BERNE FINAL CLAUSES  
Commentary

Commentary on Article 25quater

This Article concerns the possible effects of ratification of, or accession to, the Stockholm Act on the matter of becoming a member of the proposed new Organization ("IPO").

Paragraph (1) contains the rule, paragraph (2) deals with two exceptions.

The rule is that a country acceding to the Stockholm Act automatically becomes a member of the IPO. This rule is absolute for countries outside the Union. It corresponds to the principle embodied in Article G(5) of the model Protocol drawn up by the 1965 Committee.

The two exceptions may relate only to countries of the Union. If such a country does not ratify or accede to the Administrative Protocol, it will not become a member of IPO. This is only logical since the members of the Assembly of the Berne Union are members of the General Assembly of IPO, but to become a member of the Assembly of the Berne Union the country must accept the Administrative Protocol of the Berne Union (since that Assembly is instituted by the said Protocol). The situation is similar in relation to membership in the Executive Committee of the Berne Union and the Coordination Committee of IPO.

The other exception is that even though a country does ratify or accede to the Administrative Protocol it may declare that it does not want to become a member of IPO. It is difficult to imagine why any country would wish to exclude itself from the benefits connected with membership in IPO, particularly as membership in IPO would imply membership in the General Assembly and is necessary for membership in the Coordination Committee. The reason why this exception nevertheless appears in the draft is that some of the participants in the 1965 Committee strongly advocated the principle underlying it. It is hoped, however, that it will be dropped now that it is clearly proposed that ratification or accession to the substantive revisions is separable from ratification or accession to the Administrative Protocol, and vice versa.

Article 25quater

(1) If, at the time of depositing its instrument of ratification or accession, a country is not yet party to the Convention establishing the International Intellectual Property Organization, its ratification of, or accession to, this Act shall, subject to paragraph (2), constitute such country a party to the said Convention, as provided in that Convention.

(2) Paragraph (1) shall not apply to any country of the Union which:

- (i) limits the effects of its ratification or accession in accordance with Article 25(2)(ii), or,
- (ii) declares in its instrument of ratification or accession that it does not wish to become a Member of the Convention establishing the International Intellectual Property Organization.

BERNE FINAL CLAUSESCommentaryCommentary on Article 25quinquies

This Article is a modified version of Article 25(3) of the Brussels Act which provides that accession by countries outside the Union "shall imply full acceptance of all the clauses and admission to all the advantages of this Convention."

The modifications are of two kinds.

First, it is proposed that this rule apply to all ratifications and all accessions. There seems to be no reason to limit it to accessions by countries outside the Union.

Second, it seems to be necessary, for the sake of clarity, to indicate that not necessarily "all" the advantages apply. If a country uses the faculty provided for in Article 25(2) or the reservations provided in the Protocol Relating to Developing Countries, certain of the clauses and advantages of the Stockholm Act will not apply to it.

Commentary on Article 25sexies

This Article deals with the question of whether to exclude the possibility of acceding to the Brussels Act without acceding at the same time to the Stockholm Act. It shows a certain analogy with Article 28(3) of the Brussels Act.

Under the provisions of the Brussels Act of 1948 countries outside the Union may not accede to the Rome Act of 1928 after July 1, 1951, and may not accede at all to Acts earlier than the Rome Act. The Rome Act was not expressly closed to countries of the Union, presumably on the assumption that by the time the Brussels Act came into force they would all have adhered to the Rome Act. In any case, the Brussels Act was closed to ratification as of July 1, 1951. Consequently, the proposed new Article under discussion does not need to close any Act earlier than the Brussels Act, and does not need to close that Act so far as concerns ratification.

Article 25quinquies

Subject to the possibilities of exceptions expressly provided by this Act, ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Convention.

Article 25sexies

After the entry into force of this Act, in its entirety, a country may accede to the Convention signed at Brussels on June 26, 1948, only in conjunction with ratification of, or accession to, the present Act.



BERNE FINAL CLAUSES  
Commentary

(Article 25sexies, contd.)

It is now proposed to close the Brussels Act to accessions once the Stockholm Act enters into force in its entirety, unless accession is in conjunction with ratification of, or accession to, the Stockholm Act. In other words, it will be possible to accede to the Brussels Act even after some provisions of the Stockholm Act (the Administrative Protocol or Articles 1 to 20bis as revised) are in force.

The reason for closing the earlier Act is the same as it was in former revisions, for the promotion of uniformity.

Commentary on Article 26

This Article concerns the application of the Convention to non-selfgoverning territories. The proposed changes are intended to bring the provision into conformity with modern territorial clauses and to provide that the function of depositary would be exercised by the Director General of IPO rather than by the Swiss Government. Otherwise the proposed changes are merely of form. (Any notification of territorial application under paragraph (1) would not, of course, take effect prior to the date upon which the country giving the notification becomes bound by provisions of the Convention.)

Commentary on Article 27

The organization and scope of this Article are somewhat different in the Brussels Act and in the proposed text.

Article 26

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included and any notification given under such paragraph shall take effect one month after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

Article 27

(1) This Act shall, as regards the relations between the countries to which it applies, and to the extent it applies, replace the Convention of Berne of September 9, 1886, and the subsequent Acts of revision.

BERNE FINAL CLAUSES  
Commentary

(Article 27, contd.)

In the Brussels Act, paragraph (1) deals with the question of what texts govern the relationships between countries of the Union. In the proposed text, this question is dealt with in both paragraph (1) and paragraph (2).

In the Brussels Act, paragraph (2) and the second sentence of paragraph (3) deal with the question of maintaining reservations formulated by countries of the Union in connection with earlier Acts. In the proposed text, this question is dealt with in one place only, namely, in paragraph (3).

Finally, in the Brussels Act, the first sentence of paragraph (1) relates to accessions by countries of the Union which have not signed the Act. In the proposed text, the corresponding provision, as has been seen, is included in Article 25(1).

With reference to paragraphs (1) and (2) of the proposed text, it is to be noted that the provision, according to which the new Act will replace the relations between the countries to which it applies, is qualified: the replacement will take place "to the extent" to which the new Act is applicable (see paragraph (1)). This qualification is needed because it is possible, under proposed Article 25bis, to become a party to only a part of the new Act. Thus, for example, if country A does not become a party to the new substantive provisions but only to the Administrative Protocol, and country B becomes a party to the new Act in its entirety, then, between these two countries, Articles 1 to 20 of the Stockholm Act shall not be applicable.

The question of which Act shall govern in such a case is resolved by paragraph (2). This paragraph provides that the relations between countries which are parties to the Stockholm Act and any other country of the Union shall be governed "by the most recent of the Acts to which the latter country is a party." Supposing that, in our example, A is a party to the Brussels Act, then, as far as substantive provisions are concerned, Articles 1 to 20 of the Brussels Act will be applicable between the two countries, A and B.

(Article 27, contd.)

(2) The relations between countries which are party to this Act and any country of the Union not a party to this Act shall be governed by the most recent of the Acts to which the latter country is a party.

(3) Any country of the Union which ratifies or accedes to this Act may retain the benefit of the reservations which it has previously formulated, by making a declaration to that effect in its instrument of ratification or accession. Any country may withdraw such reservations any time by a notification addressed to the Director General.

BERNE FINAL CLAUSES  
Commentary

(Article 27, contd.)

Paragraph (2), as proposed, would clearly resolve a question which gives rise to different interpretations at the present time. The question is this: what, if any, provisions are applicable in the relationship between a country which is a party only to the most recent Act and a country which has not yet become a party to this, most recent, Act? The answer given by paragraph (2) would be that there is a relationship between two such countries and that this relationship is governed by the most recent Act to which the country not party to the Stockholm Act has become a party.

This proposed rule could hardly be objected to by the country not yet party to the Stockholm Act as it would be required to apply a text to which it is a party; and as far as the country party to the Stockholm Act is concerned it, of course, could not object to a rule which is included in the very Act to which it has become a party.

It is to be noted that the rule, as drafted, would apply only if one of the countries is party to the Stockholm Act, or part thereof. In the relations between countries not party to the Stockholm Act, or to the extent that they are not party to it, the question of what Act would govern would, of course, continue to be governed by the applicable rules of the earlier Act, in particular by Article 27(1) of the Brussels Act. If, under such earlier Act, uncertainties exist, such uncertainties would continue, as between the said countries.

The proposed rule of paragraph (2) would make it unnecessary to resolve the question whether the adherence of a country to a given Act "implies" adherence to all earlier Acts. Whatever the answer to this question, there would be a link between countries parties to the Stockholm Act "only" and countries not yet parties to it, and the link would be clearly designated in paragraph (2).

Paragraph (3) allows the retention of the benefit of previously formulated reservations. There are still a few such reservations, mainly with respect to the right of translation. The proposed provision differs only in form from the corresponding provisions in the Brussels Act.



BERNE FINAL CLAUSES  
Commentary

Commentary on Article 27bis

This Article deals with the question of settlement of disputes. No change is proposed.

Commentary on Article 28

In the Brussels Act, this Article deals with ratifications, entry into force, accession by countries outside the Union, accession by signatory countries which have failed to ratify by a certain date, and "closing" of earlier Acts.

These questions are dealt with in other provisions of the proposed Stockholm Act.

Consequently, Article 28 of the Brussels Act would be omitted.

Commentary on Article 29

This Article deals with denunciation.

The only proposed substantive change follows from the change in the depositary: denunciations would be communicated to the Director General of IPO rather than to the Swiss Government.

Other changes are simply for the purposes of producing a more logical and clear text. In particular, it would be specified that denunciation of the proposed Act shall constitute denunciation of all previous Acts as well, so that any country denouncing the Act would thereby lose its membership in the Union.

Article 27bis

/Same as in Brussels Text./ A dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, shall be brought before the International Court of Justice for determination by it, unless the countries concerned agree on some other method of settlement. The country requesting that the dispute should be brought before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

Article 28

/This Article of the Brussels Text to be omitted./

Article 29

(1) This Convention shall remain in force for an indefinite time.

(2) Any country may denounce this Act by a notification addressed to the Director General. Such denunciation shall constitute also denunciation of all previous Acts and shall affect only the country making it, the Convention remaining in full force and effect for the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received it.



BERNE FINAL CLAUSESCommentaryCommentary on Article 30

This Article of the Brussels Act provides for the communication of certain matters to the Swiss Government and by the Swiss Government to the other Member States. The communications in question are: adoption of the 50-year term of protection (paragraph (1)), and abandonment of reservations (paragraph (2)).

It is proposed not to carry over either of the two paragraphs of this Article into the Stockholm Act. The 50-year term of protection has become obligatory, and therefore requires no specific notice. All matters of reservations are proposed to be dealt with in Article 27(3), Article 31(5), and in the Protocol Regarding Developing Countries.

Consequently, Article 30 of the Brussels Act would be omitted.

Commentary on Article 31

In the Brussels Act, this Article consists of a single paragraph and deals only with the question of the languages of that Act.

In the proposed Stockholm Act, the Article would consist of five paragraphs. The first two would deal with languages, the other three with certified copies, registration with the United Nations, and notifications.

Paragraphs (1) and (2) differ from the existing provisions mainly on the point that they would give equal force to the English and French texts. Today, in case of dispute, the French prevails. The modification would be in accord with modern practice in establishing the languages of treaties.

Paragraphs (3) to (5) are standard formal clauses and are self-explanatory.

(Article 29, contd.)

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes party to this Act.

Article 30

/This Article of the Brussels Text to be omitted.7

Article 31

(1)(a) This Act shall be signed in the English and French languages and shall be deposited with the Director General.

(b) Both texts shall have equal force.

(2) Official translations shall be established by the Director General, after consultation with the interested Governments, in the German, Italian, Portuguese and Spanish languages.

(3) The Director General shall transmit two certified copies of the text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

BERNE FINAL CLAUSES  
Commentary

Commentary on Article 32

This Article contains two transitory provisions.

Paragraph (1) would--for five years after the entry into force of the IPO Convention---give the same rights to countries not bound by the Administrative Protocol as countries bound by that Protocol. The provision is based on Article G(3) of the model Protocol proposed by the 1965 Committee. As stated, the five years would run from the entry into force of the IPO Convention, that is, when ten Paris Union countries have ratified or acceded to the Paris Union Administrative Protocol and when ten Berne Union countries have ratified or acceded to the Berne Union Administrative Protocol. Since an Assembly of such a limited number of countries would hardly be representative, it is proposed to allow all other countries of the Union, also, to vote in the Assembly and be elected as members of, and vote in, the Executive Committee for five years. The countries which, after the expiration of this term, are still not bound by the Administrative Protocol, would lose these rights at the end of the fifth year. It is to be expected, however, that by then the number of the countries bound by the Protocol would approach the total membership of the Union.

(Article 31, contd.)

(4) The Director General shall register this Act with the Secretary-General of the United Nations as soon as possible.

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments, entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 26 and 27, and pursuant to the Protocol Regarding Developing Countries.

Article 32

(1) Countries of the Union not bound by Article 20ter and the Administrative Protocol shall, until five years after the entry into force of the Convention establishing the International Intellectual Property Organization, have the same rights under the Administrative Protocol as if they were bound by Article 20ter and the Administrative Protocol.

(2) Until the first Director General assumes office, references to him in the present Act shall be deemed to be references to the Director of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property (also called the United International Bureaux for the Protection of Intellectual Property (BIRPI)).

BERNE FINAL CLAUSES  
Commentary

(Article 32, contd.)

Paragraph (2) would, in essence, provide that until the first Director General of IPO assumes office, references to him in the Stockholm Act would be deemed to be references to the Director of BIRPI. Such a provision would be needed mainly because of the depositary functions. Even before the entry into force of the IPO Convention, depositary functions such as the following would have to be performed: serving as depositary for the original of the Stockholm Act; transmitting certified copies; receiving, and informing Governments of, instruments of ratification or accession. These functions would, pending the entry into force of the IPO Convention and the appointment of the first Director General of IPO, be carried out by the Director of BIRPI.

Commentary on Portions  
of the  
Protocol Regarding Developing Countries

See the comments made in the Introduction to the present Addendum (page 1).

Protocol Regarding Developing Countries

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

- (a) substitute ...
- (b) substitute ...
- (c) substitute ...
- (d) reserve ...
- (e) reserve ...

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

(3) A country which no longer needs to maintain any or all of the reservations made in accordance with paragraphs (1) or (2) shall withdraw such reservation or reservations by notification deposited with the Director General of the International Intellectual Property Organization.

MADRID AGREEMENT (TRADEMARKS) FINAL CLAUSES  
(DRAFT TEXT AND COMMENTARY)

Introduction

There are two Agreements which were signed in Madrid in 1891. One deals with the international registration of trademarks; the other, with the prevention of false or misleading indications of source on goods. This Addendum deals with the former Agreement which, incidentally, differs from the latter also in that only the former constituted a Union ("Madrid Union").

The changes proposed for the Madrid Agreement on the international registration of trademarks are of two kinds: changes in some of the administrative provisions, and changes in some of the final clauses.

In respect to the former, as has been stated above, in the General Introduction (document AA/III/2), it is proposed that the Madrid Union, like all other Unions presently administered by BIRPI, be provided with an Assembly and that the financial provisions be modernized. These and other administrative questions would be regulated in the proposed Administrative Protocol to be annexed to the Agreement. Whereas the contents of the proposed Administrative Protocol are set out and commented upon in another paper (document AA/III/4), the proposed consequential changes in the text of the Nice Act (1957) are set out and commented upon in the present Addendum.

The present Addendum also deals with the proposed changes in the final clauses of the Nice Act. Some changes in the final clauses are, of course, needed at every revision conference, at least in order to regulate the entry into force of the new Act and the new Act's relation to the earlier Acts. For the Stockholm Conference, however, some other changes would also be recommended, mainly as a result of the proposal to transfer the functions of depositary, as in the case of the Paris Convention, from the Swiss Government to the Director General of IPO.

COMMENTARY

on

MADRID (TRADEMARKS) FINAL CLAUSES

Commentary on Article 1

The only change proposed in this Article would be that, in paragraph (2), the words "International Bureau for the Protection of Industrial Property" be replaced by the words "International Bureau of Intellectual Property (hereinafter referred to as the 'International Bureau')." "

The new name would be the name of the Secretariat of the proposed new Organization (IPO) which, as stated in the IPO Convention, would be responsible for the administration of all Unions presently administered by BIRPI. The change is mainly a change in name.

Commentary on Article 2

No change is proposed in this Article.

Commentary on Article 3

The only change proposed in this Article relates to the question of how many free copies, and how many copies at reduced price of Les Marques internationales -- the monthly bulletin of the International Trademarks Registration Service--the member States have a right to receive. The number of copies is indicated by reference to the number of units in the class to which each member State belongs for the purpose of paying its contributions in the Paris Union. The reference, in the Nice Act, is to "Article 13, paragraph (8)" of the Paris Convention. Since it is proposed, in connection with the revision of the Paris Convention, that Article 13 of that Convention be replaced by the Administrative Protocol annexed to the same Convention, it would be necessary to replace the words "Article 13, paragraph (8)" by the words "the Administrative Protocol."



DRAFT TEXT  
of  
MADRID (TRADEMARKS) FINAL CLAUSES

ARTICLE 1

NOTE: In paragraph (2), replace the words "International Bureau for the Protection of Industrial Property" by the words "International Bureau of Intellectual Property (hereinafter referred to as the 'International Bureau')."

ARTICLE 2

NOTE: No change.

ARTICLE 3

NOTE: In paragraph (5), replace the words "Article 13, paragraph (8)" by the words "the Administrative Protocol."

MADRID (TM)  
FINAL CLAUSES  
Commentary

Commentary on Article 3bis

It is proposed, in the draft IPO Convention as well as in connection with the revision of the Paris Convention and other Conventions and Agreements, that the functions of depositary be transferred from the Swiss Government to the Director General of IPO. It is, in consequence, proposed that in paragraph (1)--where the first reference to the Swiss Government occurs-- the words "Government of the Swiss Confederation" be replaced by the words "Director General of the International Intellectual Property Organization" (hereinafter referred to as the "Director General"), and that, in paragraph (2), the same words be replaced by the words "Director General."

Commentary on Articles 3ter,  
4, 4bis, 5, 5bis, 5ter, 6, 7

No change is proposed in these Articles.

Commentary on Article 8

This Article deals with the fees payable for international registration.

The draft of the Administrative Protocol, to be annexed to the Madrid Agreement, provides that the Assembly of all the member States of the Madrid Union would have the right to fix the fees (Administrative Protocol, Art. A(2)(ii)). It is therefore proposed to omit those portions of Article 8 which set the amount of the fees (Par. (2)(a)(b) and (c)). It is to be noted that the system of fees would be left untouched, that is, no change is proposed as to the various kinds of fees and their distribution among the International Bureau and the Member States of the Madrid Union.

As to the distribution of certain receipts of the International Bureau coming from registration fees, this Article provides, in the second subparagraph of paragraph (4), for a different treatment for countries which are party to the Nice

ARTICLE 3bis

NOTES: In paragraph (1), replace the words "Government of the Swiss Confederation" by the words "Director General of the International Intellectual Property Organization (hereinafter referred to as the 'Director General')"."

In paragraph (2), replace the words "Government of the Swiss Confederation" by the words "Director General."

ARTICLES 3ter,  
4, 4bis, 5, 5bis, 5ter, 6, 7

NOTE: No change.

ARTICLE 8

NOTES: In paragraph (2)(a), omit the words "of 200 Swiss francs for the first mark, and of 150 Swiss francs for each additional mark deposited at the same time as the first."

In paragraph (2)(b), omit the words "of 25 Swiss francs."

In paragraph (2)(c), omit the words "of 25 Swiss francs."

In paragraph (4), omit the second sentence ("If ... texts.>").

Paragraphs (7), (8), and (9) to be omitted.

MADRID (TM)  
FINAL CLAUSES  
Commentary

(Article 8, ctd.)

Act than for those which are not party to that Act. Since it is to be expected that by the time of the Stockholm Conference all member States will have become party to the Nice Act, it is proposed to omit this subparagraph as superfluous. Should this expectation not materialize, the subparagraph would have to be maintained in the Stockholm Act.

Paragraphs (7) to (9), in the Nice Act, permit applicants to pay the registration fee in two instalments, this concession resulting in a somewhat increased fee. The matter seems to be one of detail, the regulation of which should be left to the Assembly of the Member States, to be constituted under the Administrative Protocol. It is therefore proposed that these three paragraphs be omitted in the Stockholm Act.

Commentary on Articles 8bis,  
9, 9bis, 9ter

No change is proposed in these Articles.

Commentary on Article 9quater

This Article refers twice to the Swiss Government as depositary. It is proposed, as in connection with Article 3bis, that the words "Government of the Swiss Confederation" be replaced by the words "Director General" in both paragraph (1) and paragraph (2).

Commentary on Article 10

This Article, in the Nice Act, deals with administrative matters. Since these would be regulated in the proposed Administrative Protocol, it is proposed that, as far as the Stockholm Act is concerned, Article 10 be omitted.

Details as to the proposed administrative provisions appear in the document dealing with the Administrative Protocol. It seems to be sufficient here merely to give a brief indication as to the correspondence between the existing and

ARTICLES 8bis,  
9, 9bis, 9ter

NOTE: No change.

ARTICLE 9quater

NOTES: In paragraph (1), replace the words "Government of the Swiss Confederation" by the words "Director General."

In paragraph (2), replace the words "Government of the Swiss Confederation" by the words "Director General."

ARTICLE 10

NOTE: Omit in its entirety.

MADRID (TM)  
FINAL CLAUSES  
Commentary

(Article 10, ctd.)

proposed provisions.

Paragraph (1) in the Nice Act refers to the Regulations. Such reference would be included in Article A(2) of the Administrative Protocol, dealing with the powers of the Assembly of the Madrid Union.

Paragraphs (2) to (4) deal with the establishment and the powers of the Committee of Directors of the National Industrial Property Offices. According to the proposed Administrative Protocol, this Committee would be replaced by the Assembly. Like the said Committee, the Assembly too would have the power to change the amount of the registration fees and amend the Regulations (see Administrative Protocol, Article A(2)(iii)).

Commentary on Article 11

In the Nice Act, this Article consists of seven paragraphs: paragraph (1) deals with accessions by countries outside the Union and the "closing" of earlier Acts; paragraphs (2) to (6) deal with the rights and obligations of such acceding States in relation to trademarks internationally registered before their accession; paragraph (7) makes Article 16bis of the Paris Convention, concerning non-self-governing territories, applicable in the Madrid Union.

Putting aside paragraph (1) for a moment, it is to be noted that no change is proposed in paragraphs (2) to (7) except for a numerical reference in paragraph (7). Since the new number of the Article dealing with non-selfgoverning territories in the Paris Convention would be 16septies, it is proposed that the reference to "16bis" be changed to "16septies."

Turning now to paragraph (1), it is to be noted that its first sentence, concerning accessions by States outside the Madrid Union, would not constitute a self-contained rule since it merely refers to the rules on accession as contained in Article 16 of the Paris Convention. Such reference could no longer be maintained since, if the proposals made for the revision of Article 16 of the Paris Convention are accepted,

ARTICLE 11

NOTES: Replace paragraph (1) by the following four paragraphs:

- "(1)(a) Any country of the Union which has signed this Act may ratify it.
- (b) Any country of the Union which has not signed this Act, and any country outside the Union which is a Member of the International (Paris) Union for the Protection of Industrial Property, may accede to this Act.
- (c) The Administrative Protocol annexed to this Act is an integral part thereof.
- "(1-bis)(a) Instruments of ratification and accession shall be deposited with the Director General.
- (b) This Act shall enter into force one month after the deposit of the fifth instrument of

MADRID (TM)  
FINAL CLAUSES  
Commentary

(Article 11, ctd.)

they would make that Article inapplicable to the Madrid Union. (Article 16 would deal with a matter different from the one it deals with now: it would deal with ratifications and accessions by countries of the Union rather than with accessions by countries outside the Union.) It is, therefore, suggested that the rules on accession to the Madrid Union be spelled out in full in the Madrid Agreement itself. It is further proposed that the same Article deal with ratification and accession by countries of the Madrid Union, the reference to the Administrative Protocol, entry into force, and the closing of earlier Acts. All these provisions would be similar, as far as the nature of the Agreement permits, to the comparable provisions of the Paris Convention. They would cover not only the questions dealt with in Article 11(1), but also in Article 12(1) to (3) (ratifications, entry into force), of the Nice Act.

Paragraphs (1) to (lquater) of the proposed text would, as already indicated, parallel the proposed revisions of the Paris Union; they would, at the same time, change the existing provisions as little as possible.

Subparagraphs (a) and (b) of paragraph (1) would deal with ratifications and accessions. Accession by countries outside the Madrid Union would be possible only for countries members of the Paris Union. The same restriction exists at the present time (see the opening words of Article 11(1) of the Nice Act). Subparagraph (c) would make the Administrative Protocol an integral part of the Agreement. This Protocol, as already indicated, would be one concerning the Madrid Union only.

Paragraph lbis deals with the communication of ratifications and accessions to and by the Director General of IPO-- who, as depositary, would replace, in this respect, the Swiss Government--and with entry into force. Five ratifications or accessions by members of the Madrid Union would be required for the initial entry into force of the Stockholm Act, i.e., essentially of the Administrative Protocol of the Madrid Union. This number is lower than the number proposed--ten--for the entry into force of the Administrative Protocols of the Paris and Berne Unions. The reason for the difference is that, whereas these Unions have more than 70 and 50 members, respectively, the Madrid Union only has 21 members.

Paragraph (lter), providing that ratification or accession



(Article 11, ctd.)

ratification or accession by a country of the Union has been notified by the Director General according to Article 13(5).

(c) Instruments of accession by countries outside the Union deposited with the Director General one month or more prior to the date of entry into force according to the preceding subparagraph shall be notified according to Article 13(5) and shall take effect on the date of entry into force of this Act pursuant to the preceding subparagraph.

(d) Unless a subsequent date is indicated in the instrument, all other ratifications and accessions shall take effect one month after their notification according to Article 13(5).

"(1-ter) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of the Agreement.

"(1-quater) After the entry into force of this Act, no earlier Acts of this Agreement may be ratified or acceded to."

Paragraphs (2) to (6), no change.

In paragraph (7), replace "16bis" by "16-septies."

MADRID (TM)  
FINAL CLAUSES  
Commentary

(Article 11. ctd.)

automatically entails acceptance of all the clauses and admission to all advantages of the Agreement is similar to Article 16quinquies of the proposed Stockholm Act of the Paris Convention. The provision has the merit of making it clear that ratifications or accessions may not include reservations.

Paragraph (1quater) provides that after the entry into force of the Stockholm Act, no earlier Act of the Madrid Agreement may be ratified or acceded to. The provision parallels the second sentence of Article 11(1) of the Nice Act.

MADRID (TM)  
FINAL CLAUSES  
Draft Text

MADRID (TM)  
FINAL CLAUSES  
Commentary

Commentary on Article 11bis

This Article deals with denunciation. No change is proposed. It is to be noted that since the first sentence of this Article refers to Article 17bis of the Paris Convention, and since certain changes are proposed in that Article, such changes would also apply in the Madrid Union. The main changes are that denunciation would be possible only after five years from the effective date of ratification or accession, and that denunciations would be communicated to and by the Director General of IPO rather than the Swiss Government.

Commentary on Article 12

As indicated above, paragraphs (1) to (3) of this Article, in the Nice Act, deal with ratifications and entry into force. The corresponding provisions would be transferred to Article 11 (see there).

Paragraph (4), in the Nice Act, deals with three questions.

The first sentence deals with the relations between countries parties to the Nice Act. The corresponding provision, for countries parties to the Stockholm Act, would constitute the new paragraph (1).

The first half of the second sentence deals with relations between, on the one hand, parties to the Nice Act, and, on the other, countries parties to Acts earlier than the Nice Act. The corresponding provision in the Stockholm Act would constitute the new paragraph (2). The provision presupposes that, by the time of the Stockholm Conference, all countries will be parties to the Nice Act. Should this not be the case, the provision would have to read as follows: "The relations between countries which are parties to this Act and any other country of the Union shall be governed by the most recent of the Acts to which the latter country is a party."

The second half of the second sentence and the third and

ARTICLE 11bis

NOTE: No change.

ARTICLE 12

NOTE: Replace the present five paragraphs of this Article by the following two paragraphs:

- "(1) This Act shall, as regards the relations between countries to which it applies, replace the Madrid Agreement of 1891 and subsequent Acts of revision.
- "(2) The relations between countries which are party to this Act and any country not party to this Act but bound by the Nice Act shall be governed by the Nice Act."

MADRID (TM)  
FINAL CLAUSES  
Commentary

(Article 12, ctd.)

fourth sentences deal with what amounts to a possibility of denouncing the Hague and London Acts by any country becoming a party to the Nice Act. Once the Stockholm Act is in force, the Nice Act will cease to be open for ratification or accession (cf., proposed Article 11(lquater)). Consequently, this possibility--exercisable only in conjunction with accession to the Nice Act--needs no parallel provision in the Stockholm Act.

Paragraph (5), in the Nice Act, deals with the adaptation of administrative measures. It is proposed, in the draft Administrative Protocol, that all administrative functions be exercised by the Assembly of the Madrid Union and the Director General of IPO. Consequently, it is proposed not to carry over the paragraph under consideration into the Stockholm Act.

MADRID (TM)  
FINAL CLAUSES  
Draft Text

MADRID (TM)  
FINAL CLAUSES  
Commentary

Commentary on Article 13

The Nice Act consists of twelve articles. Consequently, there is no Article in it corresponding in number to Article 13.

This Article deals with the language of the instrument, the depository, notification and registration of the new text, as well as notification of signatures, ratifications, accessions and denunciations.

The Article generally parallels Article 19 of the proposed Stockholm Act of the Paris Convention (see the commentary to that Article).

Commentary on Article 14

This Article contains two transitional provisions.

Paragraph (1) would--for five years from entry into force of the Stockholm Act--give the same rights under the Administrative Protocol to countries of the Union not party to the Stockholm Act as parties to the Act have. The provision is based on Article G(3) of the model Protocol proposed by the Committee of 1965. As noted, the five years would run from the entry into force of the Stockholm Act, that is, once 5 countries have become party to it. Since an Assembly of 5 countries would hardly be representative, it is proposed to allow also all other countries of the Union to vote in the Assembly of the Union. The countries which, after the expiration of this term, are still not party to the Stockholm Act would lose this right at the end of the fifth year. It is to be expected, however, that by then the number of the countries bound by the Stockholm Act will approach the total membership of the Union and thus the Assembly would be reasonably representative.

Paragraph (2) is similar to Article 20 of the proposed Stockholm revision of the Paris Convention. It would provide



ARTICLE 13 /new/

- (1) This Act shall be signed in the French language and shall be deposited with the Director General.
- (2) Official translations in other languages may be established by the Director General, after consultation with the interested Governments.
- (3) The Director General shall transmit two certified copies of the text of the Act to the Governments of all countries members of the Union, and, on request, to the Government of any other country.
- (4) The Director General shall register this Act with the Secretary-General of the United Nations as soon as possible.
- (5) The Director General shall notify Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession, entry into force of this Act, and notifications of denunciation.

ARTICLE 14 /new/

- (1) Countries of the Union not party to this Act shall, for five years from the date of the entry into force of this Act pursuant to Article 11(lbis)(b), have the same rights under the Administrative Protocol as parties to this Act.
- (2) Until the first Director General assumes office, references to him in the present Act shall be deemed to be references to the Director of the United International Bureaux for the Protection of Industrial,

MADRID (TM)  
FINAL CLAUSES  
Commentary

(Article 14. ctd.)

that until the first Director General of IPO assumes office, references to him in the Stockholm Act would be deemed to be references to the Director of BIRPI. Such a provision would be needed mainly because of the depositary functions. Even before the entry into force of the IPO Convention depositary functions such as the following would have to be performed: serving as depositary for the original of the Stockholm Act; transmitting certified copies; receiving, and informing Governments of, instruments of ratification or accession. These functions would, pending entry into force of the IPO Convention and the appointment of the first Director General of IPO, be carried out by the Director of BIRPI.

MADRID (TM)  
FINAL CLAUSES  
Draft Text

(Article 14 /new/,  
ctd.)

Literary and Artistic Property (also called the  
United International Bureaux for the Protection  
of Intellectual Property (BIRPI)).

/End of Madrid (TM) Addendum/

THE HAGUE AGREEMENT FINAL CLAUSES  
(DRAFT TEXT AND COMMENTARY)

Introduction

The changes proposed to be made in the Hague Agreement concerning the International Deposit of Industrial Designs are of two kinds: changes in some of the administrative provisions, and changes in some of the final clauses.

In respect of the former, as has been stated in the General Introduction (document AA/III/2), it is proposed that the Hague Union, like all other Unions presently administered by BIRPI, be provided with an Assembly, and that the financial provisions be modernized. These and other administrative questions would be regulated in the proposed Administrative Protocol to be annexed to the Agreement. Whereas the contents of the proposed Administrative Protocol are set out and commented upon in another document (AA/III/4), the proposed consequential changes in the text of the London Act (1934) are set out and commented upon in the present document.

The following are the main consequential changes. The Additional Act of Monaco (1961) would be closed for accession as being superseded by the Administrative Protocol. That Act provided for an increase in the fees payable in connection with international deposits, for a procedure for modifying such fees, for a reserve fund, for the distribution of possible excess receipts, and for certain accounting principles. Under the proposals for the Stockholm revision, the Administrative Protocol would regulate these matters or would authorize the General Assembly of all member States to regulate them in the Regulations or otherwise. These questions are dealt with in detail in the text and commentary of the proposed Administrative Protocol.

The other set of changes dealt with in the present chapter relates to the final clauses of the London Act. Some changes in the final clauses are, of course, needed at every revision conference, at least in order to regulate the entry into force of the new Act and its relation to the earlier Acts. For the Stockholm Conference, however, some other changes would also be recommended, mainly as a result of the proposal to transfer the functions of depositary, as in the case of the Paris Convention, from the Swiss Government to the Director General of IPO.

COMMENTARY  
on  
THE HAGUE FINAL CLAUSES

Commentary on Article 1

The only change proposed in this Article would be that the words "International Bureau for the Protection of Industrial Property, at Berne" be replaced by the words "International Bureau of Intellectual Property (hereinafter referred to as 'the International Bureau').".

The new name would be the name of the Secretariat of the new proposed Organization (IPO) which, as stated in the IPO Convention, would be responsible for the administration of all Unions presently administered by BIRPI. In actual fact, the change is mainly a change in name.

Commentary on Articles 2, 3, 4, 5,  
6, 7, 8, 9, 10, 11, 12, 13, 14

No change is proposed in these Articles.

Commentary on Article 15

This Article fixes the fees payable for the international deposit and its possible renewal.

The draft of the Administrative Protocol to be annexed to the Hague Agreement provides that the Assembly of all member States of the Hague Union would have the power "to modify the Regulations, including the fixation of fees" (Administrative Protocol, Art. A(2)(iii)). It is therefore proposed to omit those portions of Article 15 which state the amount of the fees (items 1 to 4) (portions anyway already inapplicable for all countries which have ratified or acceded to the Additional Act of Monaco) and modify the remaining portion of the Article in a manner providing that the fees shall be fixed by the Regulations.

DRAFT TEXT  
of  
THE HAGUE FINAL CLAUSES

ARTICLE 1

NOTE: Replace the words "International Bureau for the Protection of Industrial Property, at Berne" by the words "International Bureau of Intellectual Property (hereinafter referred to as 'the International Bureau')"."

ARTICLES 2, 3, 4, 5, 6, 7,  
8, 9, 10, 11, 12, 13, 14

NOTE: No change.

ARTICLE 15

NOTES: Replace the words "are as follows" by the words "shall be fixed by the Regulations"."

Omit points 1, 2, 3, and 4, in their entirety.

HAGUE FINAL CLAUSES

(Article 15, contd.)

Commentary

Of course, until the Stockholm revision goes into effect, the amount of the fees will continue to be governed by Article 15 of the London Act (where the deposit comes from a country not party to the Additional Act of Monaco), or by the London Act and the Additional Act of Monaco (where the deposit comes from a country party to the Additional Act) unless, in the meantime, the fees are changed in accordance with Article 3 of the Additional Act or by the provisional Assembly of the Hague Union on the basis of the proposal contained in the draft Resolution concerning the provisional and limited application of certain provisions adopted by the Stockholm Conference (see document AA/III/6).

Commentary on Article 16

Since, as previously stated, the draft of the Administrative Protocol to be annexed to the Hague Agreement provides that the member States of the Hague Union would have the power to modify the Regulations (Administrative Protocol, Art. A(2)(iii)) the specific reference to Article 8 of the Regulations should be deleted from Article 16, as proposed.

Commentary on Articles 17, 18, 19

No change is proposed in these Articles.

Commentary on Article 20

This Article, in the London Act, provides that the details of the application of the Agreement shall be determined by Regulations, the provisions of which may, at any time, be modified "with the common consent of the Administrations of the contracting countries." As already indicated, the proposed Administrative Protocol provides that the modification of the Regulations is one of the tasks of the Assembly of all Member States of the Hague Union, which Assembly would be established under the said Protocol. Consequently, it is proposed to replace the words

ARTICLE 16

NOTE: Omit the words "Article 8 of."

ARTICLES 17, 18, 19

NOTE: No change.

ARTICLE 20

NOTE: Replace the words "with the common consent of the Administrations of the contracting countries" by the words "by the Assembly of the Union."



HAGUE FINAL CLAUSES  
Commentary

(Article 20, contd.)

quoted above by the following words "by the Assembly of the Union." Since the Article thus modified would, in reality, merely duplicate Article A(2)(iii) of the Administrative Protocol, one could also adopt another solution, namely, to omit Article 20, rather than to amend it.

Commentary on Article 21

This Article, in the London Act, refers to the Berne Convention "revised in 1928." When the London Act was adopted in 1934, the 1928 revision of the Berne Convention was the most recent revision. Since then, the Berne Convention has been revised, in 1948, and is expected to be revised in 1967. When the Stockholm Act of the Hague Convention enters into force, some countries might still be bound by the Rome (1928) Act of the Berne Convention, others by the Brussels (1948) Act, or by the Stockholm (1967) Act. It is therefore proposed to refer, in the Article under consideration, to the "applicable Act" of the Berne Convention rather than to any one specific Act thereof.

Commentary on Article 22

In the London Act, this Article consists of four paragraphs. The changes proposed in each of them are discussed paragraph by paragraph.

Paragraph (1), in the London Act, deals with accessions by countries outside the Hague Union (at least this seems to be the intent although the language is not precise) and with non-selfgoverning territories of such countries. It might be that the provisions are intended to deal also with the non-selfgoverning territories of countries members of the Hague Union.

As far as accessions are concerned, it is to be noted that the provision does not constitute a self-contained rule since it merely refers to the rules of accession as contained in Article 16 of the Paris Convention. Such

ARTICLE 21

NOTE: Replace the words "Berne Convention, revised in 1928," by the words "applicable Act of the Berne Convention."

ARTICLE 22

NOTES: Replace paragraph (1) with the following four paragraphs:

- "(1)(a) Any country of the Union which has signed this Act may ratify it.
- (b) Any country of the Union which has not signed this Act, and any country outside the Union which is a Member of the International (Paris) Union for the Protection of Industrial Property, may accede to this Act.
- (c) The Administrative Protocol annexed to this Act is an integral part thereof.

HAGUE FINAL CLAUSES  
Commentary

(Article 22, contd.)

reference could no longer be maintained since, if the proposals made for the revision of Article 16 of the Paris Convention are accepted, they would make that Article inapplicable to the Hague Union. (Article 16 would deal with a matter different from the one it deals with now: it would deal with ratifications and accessions by countries of the Union rather than with accessions by countries outside the Union.) It is, therefore, suggested that the rules on accession to the Hague Union be spelled out in full in the Hague Agreement itself. It is further proposed that the same Article deal with ratification and accession by countries of the Hague Union, the reference to the Administrative Protocol, entry into force, and the closing of earlier Acts. All these provisions would be similar, as far as the nature of the Agreement permits, to the comparable provisions of the Paris Convention. They would cover not only the questions dealt with in Article 22(1) of the London Act but also those covered in Article 23(1) (ratifications) and (2) (entry into force) of the same Act.

The new provisions would be numbered as paragraph (1), (1-bis), (1-ter), and (1-quater).

Subparagraphs (a) and (b) of proposed paragraph (1) would deal with ratifications and accessions. Accession by countries outside the Hague Union would be possible only for countries members of the Paris Union. This is in conformity with the present situation. Subparagraph (c) would make the Administrative Protocol an integral part of the Agreement. This Protocol, as already indicated, would be one for the Hague Union, and the Hague Union alone.

Paragraph (1-bis) deals with the communication of ratifications and accessions to and by the Director General of IPO--who, as depositary, would replace in this respect the Swiss Government-- and with entry into force. Five ratifications or accessions by members of the Hague Union would be required for the initial entry into force of the Stockholm Act, i.e., essentially the Administrative Protocol of the Hague Union. This number is lower than the number proposed--ten--for the entry into force of the Administrative Protocol of the Paris and Berne Unions. The reason for the difference is that whereas these Unions have more than 70 and 50 members, respectively, the Hague Union only has 14 members.

(Article 22, contd.)

HAGUE FINAL CLAUSES  
Draft Text

- "(1-bis)(a) Instruments of ratification and accession shall be deposited with the Director General.
- (b) This Act shall enter into force one month after the deposit of the fifth instrument of ratification or accession by a country of the Union has been notified by the Director General according to Article 24(5).
- (c) Instruments of accession by countries outside the Union deposited with the Director General one month or more prior to the date of entry into force according to the preceding subparagraph shall be notified according to Article 24(5) and shall take effect on the date of entry into force of this Act pursuant to the preceding subparagraph.
- (d) Unless a subsequent date is indicated in the instrument, all other ratifications or accessions shall take effect one month after their notification according to Article 24(5).
- "(1-ter) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of the Agreement.
- "(1-quater) After the entry into force of this Act, no earlier Acts of this Agreement may be ratified or acceded to."

In paragraph (2), replace the words "The notification of accession shall" by the words "The notification of accession by a country outside the Union shall."

HAGUE FINAL CLAUSES

(Article 22, contd.)

Commentary

Paragraph (1-ter), providing that ratification or accession automatically entails acceptance of all the clauses and admission to all advantages of the Agreement is similar to Article 16-quinquies of the proposed Stockholm Act of the Paris Convention. The provision has the merit of making it clear that ratifications or accessions may not include reservations.

Paragraph (1-quater) provides that after the entry into force of the Stockholm Act no earlier Act of the Hague Agreement may be ratified or acceded to. The provision parallels Article 16-sexies of the proposed Stockholm Act of the Paris Convention.

Paragraphs (2) and (3), in the London Act, provide, in effect, that countries acceding to the Union are free to recognize or not to recognize international deposits which were effected before their accession. It is proposed to maintain these provisions but, at the same time, to insert into them words which would make it clear that they concern countries which were not before members of the Hague Union.

It has been indicated above that paragraph (1), in the London Act, deals also with non-selfgoverning territories. It is proposed that this matter be made the subject of a separate paragraph (i.e., proposed paragraph (3-bis)) as it clearly should concern both countries which are, and which will only in the future become, members of the Hague Union. Since it is proposed that, in the Stockholm Act of the Paris Convention, Article 16-bis become Article 16-septies, it would be necessary to make the corresponding change in the reference to that Article in the paragraph under consideration.

Paragraph (4), in the London Act, deals with denunciations. No change is proposed in this paragraph.

Commentary on Article 23

As indicated above, paragraphs (1) and (2), in the London Act, deal with ratifications and entry into force. The corresponding provisions would be transferred into Article 22 (see there).

(Article 22, contd.)

HAGUE FINAL CLAUSES  
Draft Text

In paragraph (3), replace the words "every country" by the words "every such country."

Insert the following as paragraph (3-bis):

"The provisions of Article 16-septies of the Convention of Paris for the Protection of Industrial Property shall apply to this Agreement."

ARTICLE 23

NOTE: Replace the present three paragraphs of this Article by the following two paragraphs:

"(1) This Act shall, as regards the relations between countries to which it applies, replace the Hague Agreement of 1925 and subsequent Acts of revision and the Additional Act of Monaco of 1961.

HAGUE FINAL CLAUSES  
Commentary

(Article 23, contd.)

Paragraph (3), first sentence, of the London Act, provides that it--that is, the London Act-- shall replace the (original) Act of The Hague of 1925, "as between countries which have ratified it." Paragraph (1), in the proposed Stockholm revision, would be the corresponding provision. It would include also acceding countries as it is believed that it is merely an oversight that the London Act only speaks about ratifying countries. It would provide that the Stockholm Act replaces not only the Hague Agreement of 1925 but also "the subsequent Acts of revision" (of which there are two: London, 1935, and The Hague, 1960, but the latter never entered into force) and the Additional Act of Monaco of 1961.

Paragraph (3), second sentence, in the London Act, provides that the Hague Act of 1925 shall remain in force as regards the relations between countries which are party to the London Act and those which are not party to the London Act. The provision is no longer needed as all member States of the Hague Union are bound by the London Act, and some are also bound by the Additional Act of Monaco. The corresponding provision--relating now to the London Act and the Additional Act of Monaco--would constitute paragraph (2) in the proposed Stockholm revision of this Article 23.

Commentary on Article 24

The London Act consists of twenty-three Articles. Consequently, there is no Article in it corresponding in number to Article 24.

This Article deals with the language of the instrument, the depositary, notification and registration of the new text, as well as notification of signatures, ratifications, accessions, and denunciations.

The Article generally parallels Article 19 of the proposed Stockholm Act of the Paris Convention (see the commentary to that Article).

(Article 23, contd.)

HAGUE FINAL CLAUSES  
Draft Text

"(2) The relations between countries which are party to this Act and any country of the Union not party to this Act shall be governed by the most recent of the Acts to which the latter country is a party."

ARTICLE 24 /new/

- (1) This Act shall be signed in the French language and shall be deposited with the Director General.
- (2) Official translations in other languages may be established by the Director General, after consultation with the interested Governments.
- (3) The Director General shall transmit two certified copies of the text of the Act to the Governments of all countries Members of the Union, and, on request, to the Government of any other country.



HAGUE FINAL CLAUSES  
Commentary

Commentary on Article 25

This Article contains two transitional provisions.

Paragraph (1) would--for five years from entry into force of the Stockholm Act--give the same rights under the Administrative Protocol to countries of the Union not party to the Stockholm Act as parties to the Act have. The provision is based on Article G(3) of the model Protocol proposed by the 1965 Committee. As noted, the five years would run from the entry into force of the Stockholm Act, that is, once 5 countries have become parties to it. Since an Assembly of 5 countries would hardly be representative, it is proposed to allow also all other countries of the Union to vote in the Assembly of the Union. The countries which, after the expiration of this term, are still not party to the Stockholm Act, would lose this right at the end of the fifth year. It is to be expected, however, that by then the number of the countries bound by the Stockholm Act will approach the total membership of the Union and thus the Assembly would be reasonably representative.

Paragraph (2) is similar to Article 20 of the proposed Stockholm revision of the Paris Convention. It would provide that until the first Director General of IPO assumes office, references to him in the Stockholm Act would be deemed to be references to the Director of BIRPI. Such a provision would be needed mainly because of the depositary functions. Even before the entry into force of the IPO Convention, depositary functions such as the following would have to be performed: serving as depositary for the original of the Stockholm Act; transmitting certified copies; receiving, and informing Governments of, instruments of ratification or accession. These functions would, pending the entry into force of the IPO Convention and the appointment of the first Director General of IPO, be carried out by the Director of BIRPI.

Article 24, contd.)

HAGUE FINAL CLAUSES  
Draft Text

- (4) The Director General shall register this Act with the Secretary-General of the United Nations as soon as possible.
- (5) The Director General shall notify Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession, entry into force of this Act, and notifications of denunciation.

ARTICLE 25 /new/

- (1) Countries of the Union not party to this Act shall, for five years from the date of the entry into force of this Act pursuant to Article 22 (1-bis)(b), have the same rights under the Administrative Protocol as parties to this Act.
- (2) Until the first Director General assumes office, references to him in the present Act shall be deemed to be references to the Director of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property (also called United International Bureaux for the Protection of Intellectual Property (BIRPI)).

/End of Hague Addendum/

NICE AGREEMENT FINAL CLAUSES  
(DRAFT TEXT AND COMMENTARY)

Introduction

The provisions of the Nice Agreement concerning the International Classification of Goods and Services to which Trademarks Are Applied may be classified as substantive, administrative, and final.

Articles 1 to 4 may be considered as substantive. No change in these articles is being proposed except one formal one concerning the name of the International Bureau as it appears in Article 1 (6).

Article 5 may be described as administrative as it deals with the finances of the Nice Union. It is proposed that this Article be replaced by an Administrative Protocol annexed to the Agreement. The corresponding proposals are contained in document AA/III/4.

Articles 6 to 11 may be regarded as the final clauses as they deal with ratifications, accessions, entry into force, and other such questions usual in international treaties. The changes proposed in these clauses constitute the main subject matter of the present document. The principal changes would be that the functions of depositary would be transferred, as in the case of the Paris Convention, from the Swiss Government to the Director General of IPO, and that official translations in languages other than French could be established by the Director General of IPO after consultation with the interested Governments.

COMMENTARY  
on  
NICE FINAL CLAUSES

Commentary on Article 1

As already indicated, one change would seem to be necessary in this Article, and that is in paragraph (6) where the International Bureau is referred to for the first time in the Nice Agreement. Consequently, it is proposed that the words "International Bureau" be replaced by the following words: "International Bureau of Intellectual Property (hereinafter referred to as 'the International Bureau')." The change would simply mean that the proposed new official name of the International Bureau would be spelled out in full when it occurs for the first time in the text of the Agreement.

Commentary on Articles 2, 3, 4

No changes are proposed in any of these three Articles. While no change is proposed, or necessary, in the authentic French text of Article 4, it is noted that in the English language translation of paragraph (1) the word "after" should be replaced by the word "within."

Commentary on Article 5

As already indicated, this Article, in the Nice Act, deals with financial matters. Since it is proposed that all financial matters be henceforth governed by the Administrative Protocol (see document AA/III/4), Article 5 would not be included in the proposed Stockholm Act of the Nice Agreement. A reference to the Administrative Protocol would appear in Article 6(1)(c) of the proposed Stockholm Act.

DRAFT TEXT  
of  
NICE FINAL CLAUSES

ARTICLE 1

NOTE: In paragraph (6), replace the words "the International Bureau" by the words "the International Bureau of Intellectual Property (hereinafter referred to as 'the International Bureau').

ARTICLES 2, 3, 4

NOTE: No change .

ARTICLE 5

NOTE: Omit the entire Article.

NICE FINAL CLAUSES  
Commentary

Commentary on Article 6

This Article, in the Nice Act, deals with ratifications and accessions and incorporates by reference Article 16 of the Paris Convention concerning accessions by countries outside the Union. Such reference could no longer be maintained since if the proposals made for the revision of Article 16 of the Paris Convention are accepted by the Stockholm Conference, they would make that Article inapplicable to the Nice Union. (Article 16 would deal with a matter different from the one it deals with now: it would deal with ratifications and accessions by countries of the Union rather than with accessions by countries outside the Union.) It is therefore proposed that Article 6 of the Nice Convention become a self-contained provision, and, in addition to the conditions of ratifications and accessions, it also deal with entry into force, contain a reference to the Administrative Protocol, exclude reservations, and close the Nice Act. The proposed new provisions would thus cover also the subject of the first sentence of Article 7 of the Nice Act and would replace that sentence as well as Article 6 of the same Act in its entirety.

The proposed new Article 6 would consist of four paragraphs.

Subparagraphs (a) and (b) of paragraph (1) would deal with ratifications and accessions. Accessions by countries outside the Nice Union would be possible only for countries members of the Paris Union. The same restriction exists at the present time (see the opening words of par. (2) of Article 6 of the Nice Act). Subparagraph (c) would make the Administrative Protocol an integral part of the Agreement. This Protocol, as already indicated, would be one concerning the Nice Union only.

Paragraph (2) would deal with the communication of ratifications and accessions to and by the Director General of IPO--to whom the depositary functions would be transferred --and with entry into force. Five ratifications or accessions by members of the Nice Union would be required for the initial entry into force of the Stockholm Act, i.e., essentially the Administrative Protocol of the Nice Union.

ARTICLE 6

NOTE: Replace the present three paragraphs of this Article by the following four paragraphs:

- "(1)(a) Any country of the Union which has signed this Act may ratify it.
- (b) Any country of the Union which has not signed this Act, and any country outside the Union which is a Member of the International (Paris) Union for the Protection of Industrial Property, may accede to this Act.
- (c) The Administrative Protocol annexed to this Act is an integral part thereof.
- "(2)(a) Instruments of ratification and accession shall be deposited with the Director General of the International Intellectual Property Organization (hereinafter referred to as 'the Director General').
- (b) This Act shall enter into force one month after the deposit of the fifth instrument of ratification or accession by a country of the Union has been notified by the Director General according to Article 11(5).

This number is lower than the number proposed--ten-- for the entry into force of the Administrative Protocols of the Paris and Berne Unions. The reason for the difference is that, whereas these Unions have more than 70 and 50 members, respectively, the Nice Union has only 18 members.

Paragraph (3), providing that ratification or accession automatically entails acceptance of all the clauses and admission to all the advantages of the Agreement, is similar to Article 16quinquies of the proposed Stockholm Act of the Paris Convention. The provision has the merit of making it clear that ratifications or accessions may not include reservations.

Paragraph (4) provides that after the entry into force of the Stockholm Act the Nice Act may no longer be ratified or acceded to. The provision, designed to promote the goal that, as far as possible, the same Act should govern among member countries, is similar in scope to proposed Article 16sexies of the Paris Convention, Article 11 (lquater) of the Madrid Agreement, and Article 22 (lquater) of the Hague Agreement.



(Article 6, contd.)

NICE FINAL CLAUSES  
Draft Text

- (c) Instruments of accession by countries outside the Union deposited with the Director General one month or more prior to the date of entry into force according to the preceding subparagraph shall be notified according to Article 11(5) and shall take effect on the date of entry into force of this Act pursuant to the preceding subparagraph.
- (d) Unless a subsequent date is indicated in the instrument, all other ratifications or accessions shall take effect one month after their notification according to Article 11(5).
- "(3) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of the Agreement.
- "(4) The Nice Act of this Agreement may not be ratified or acceded to after the entry into force of this Act."

NICE FINAL CLAUSES  
Commentary

Commentary on Article 7

The first sentence of this Article, in the Nice Act, deals with entry into force. As indicated in connection with the preceding Article, it is proposed to omit this sentence as its subject would be covered by proposed Article 6(2)(b), (c) and (d).

No change is proposed in the second sentence of this Article ("The Agreement shall have the same force and duration as the Convention of Paris for the Protection of Industrial Property"), which, consequently, would be maintained and would constitute the only provision of Article 7 in the proposed Stockholm Act.

Commentary on Article 8

This Article deals with the periodic revision of the Agreement.

Paragraph (1) enunciates the principle and purpose of revisions, whereas paragraph (2) provides that revisions are to be effected in conferences of the member countries. No change is proposed in these two paragraphs.

On the other hand, it is proposed that paragraphs (3) and (4) not be carried over into Article 8 of the Nice Act. These two paragraphs contain provisions on the preparation for revision conferences and the role of the Director in such conferences. These matters would be dealt with, and solved somewhat differently, in the Administrative Protocol (see Article A(2)(ii) and C(2) of the Administrative Protocol and the commentary accompanying them).

Commentary on Article 8-bis

This Article would consist of two paragraphs, the first providing that the Stockholm Act would replace the Nice Act in the relations between countries party to the Stockholm Act, the second providing that the Nice Act would govern the relations between any country party to the Nice Act alone and any country party to the Stockholm Act.

ARTICLE 7

NOTE: Omit the first sentence.

ARTICLE 8

NOTE: Omit paragraphs (3) and (4).

ARTICLE 8-bis /new/

- (1) This Act shall, as regards the relations between countries to which it applies, replace the Nice Act of 1957.
- (2) The relations between countries which are party to this Act and any country not party to this Act but which is a party to the Nice Act of 1957 shall be governed by the Nice Act of 1957.

NICE FINAL CLAUSES  
Commentary

(Article 8-bis, contd.)

Since the Nice Agreement would be revised for the first time in Stockholm, it is for the first time that the need arises for regulating the various relations which may result from the existence of more than one Act.

The proposed solution is identical in its principle to the solution existing in and proposed for the other treaties (see the proposed Article 18 of the Paris Convention, Article 12 of the Madrid Agreement, and Article 23 of the Hague Agreement).

Commentary on Article 9

This Article deals with denunciation. The only changes proposed result from the change in the depository: denunciations would be communicated to the Director General of the IPO (rather than the Swiss Government) who would communicate them to the Member States.

Commentary on Article 10

This Article, in the Nice Act, incorporates by reference the Article of the Paris Convention dealing with non-selfgoverning territories. That Article has the number 16bis in the Lisbon Act but would have the number 16septies in the Stockholm Act. Except for this necessary change in numerical reference, no amendment to this Article is proposed.

Commentary on Article 11

This Article, in the Nice Act, provides for the deposit of that Act with the French Government and for the transmittal of certified copies to the contracting countries. It also provides a time limit for signature.

ARTICLE 9

NOTES: In paragraph (1) replace the words "Government of the Swiss Confederation" by the words "Director General."

In paragraph (2) replace the words "Government of the Swiss Confederation" in both places where they occur by the words "Director General."

ARTICLE 10

NOTE: Replace "16 bis" by "16-septies."

ARTICLE 11

NOTE: Replace the present two paragraphs of this Article by the following five paragraphs:

- "(1)           This Act shall be signed in the French language and shall be deposited with the Director General.
- "(2)           Official translations in other languages may be established by the Director General, after consultation with the interested Governments.

NICE FINAL CLAUSES  
Commentary

(Article 11, contd.)

As far as the proposed Stockholm Act is concerned, the provisions proposed to constitute Article 11 would make the Director General of IPO the depositary of the Stockholm Act (par.(1), in fine). The text contains provisions on language of the instrument, notification and registration of the new text, and notification of signatures, ratifications, accessions and denunciations.

The Article generally parallels Article 19 of the proposed Stockholm Act of the Paris Convention (see the commentary to that Article).

Commentary on Article 12

This Article contains two transitional provisions.

Paragraph (1) would--for five years from entry into force of the Stockholm Act--give the same rights under the Administrative Protocol to countries of the Union not party to the Stockholm Act as parties to the Stockholm Act have. The provision is based on Article G(3) of the model Protocol proposed by the 1965 Committee. As noted, the five years would run from the entry into force of the Stockholm Act, that is, once 5 countries have become parties to it. Since an Assembly of 5 countries would hardly be representative, it is proposed to allow also all other countries of the Union to vote in the Assembly of the Union. The countries which, after the expiration of this term are still not party to the Stockholm Act, would lose this right at the end of the fifth year. It is to be expected, however, that by then the number of the countries bound by the Stockholm Act will approach the total membership of the Union and thus the Assembly would be reasonably representative.

Paragraph (2) is similar to Article 20 of the proposed Stockholm revision of the Paris Convention. It would provide that until the first Director General of IPO assumes office, references to him in the Stockholm Act would be deemed to be references to the Director of BIRPI. Such a provision would be needed mainly because of the depositary functions. Even before the entry into force of the IPO Convention, depositary

(Article 11, contd.)

- "(3) The Director General shall transmit two certified copies of the text of the Act to the Governments of all countries Members of the Union, and, on request, to the Government of any other country.
- "(4) The Director General shall register this Act with the Secretary-General of the United Nations as soon as possible.
- "(5) The Director General shall notify Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession, entry into force of this Act, and notifications of denunciation."

ARTICLE 12 /new/

(1) Countries of the Union not party to this Act shall, for five years from the date of the entry into force of this Act pursuant to Article 6(2)(b), have the same rights under the Administrative Protocol as parties to this Act.

(2) Until the first Director General of the IPO assumes office, references to him in the present Act shall be deemed to be references to the Director of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property (also called United International Bureaux for the Protection of Intellectual Property (BIRPI)).

/End of the Draft Text/

NICE FINAL CLAUSES  
Commentary

(Article 12, contd.)

functions, such as the following, would have to be performed: serving as depository for the original of the Stockholm Act; transmitting certified copies; receiving, and informing Governments of, instruments of ratification and accession. These functions would, pending the entry into force of the IPO Convention and the appointment of the first Director General of IPO, be carried out by the Director of BIRPI.

/End of the Commentary and  
of the Nice Addendum/



MADRID AGREEMENT (FALSE INDICATIONS) FINAL CLAUSES  
(DRAFT TEXT AND COMMENTARY)

Introduction

There are two Agreements which were signed in Madrid in 1891. One deals with the international registration of trademarks and constituted a Union for that purpose. The other deals with the prevention of false and misleading indications of source on goods. This one did not constitute a Union.

The present document deals with the latter Agreement.

No changes are proposed in the substantive provisions, constituted by Articles 1 to 4, of the Agreement.

Since the Agreement, as already indicated, did not constitute a Union, it contains no administrative or financial provisions. None are proposed. This means that no Administrative Protocol would be annexed to this Agreement and the countries party to it would have no Assembly. They do not need one, as there are no financial problems and there is no administration.

The only changes proposed in connection with this Agreement would be changes in its final clauses (Articles 5 and 6). The principal changes would be that the functions of the depositary would be transferred, as in the case of the Paris Convention, from the Swiss Government to the Director General of IPO, and that official translations in languages other than French could be established by the Director General of IPO after consultation with the interested Governments.

COMMENTARY

on

MADRID (FALSE INDICATIONS) FINAL CLAUSES

Commentary on Articles 1, 2, 3, 3-bis, 4

No changes are proposed in these five Articles.

Commentary on Article 5

This Article, in the Lisbon Act, consists of two paragraphs.

Paragraph (1) in the Lisbon Act allows countries not party to the Agreement to accede to it "in the manner prescribed by Article 16 of the Paris Convention provided they are parties to that Convention."

The reference to Article 16 of the Paris Convention could no longer be maintained since, if the proposals made for the revision of that Article are accepted by the Stockholm Conference, they would make the Article inapplicable to the Madrid Agreement. (Article 16 would deal with a matter different from the one it deals with now: it would deal with ratifications and accessions by countries of the Union rather than with accession by countries outside the Union.) It is, therefore, proposed that Article 5(1) of the Madrid Agreement become a self-contained provision, and that, in addition to the conditions of ratification and accession, it also deals with their communication and their entry into force, exclude reservations, and close the earlier Acts to ratifications or accessions. The proposed new provisions which would constitute paragraphs (1), (1-bis), (1-ter) and (1-quater) of Article 5 would thus cover not only the subject of paragraph (1) of Article 5 of the Lisbon Act but also paragraphs (1) and (2) of Article 6 of the Lisbon Act, which deal with ratifications, entry into force, and accessions by countries parties to the Agreement.

Paragraph (1) would deal with ratifications and accessions. Accession by countries not party to the Madrid Agreement would be possible only for countries members of the Paris Union. The same restriction exists at the present time (see the opening words of paragraph (1) of Article 5 of the Lisbon Act).

DRAFT TEXT  
of  
MADRID (FALSE INDICATIONS) FINAL CLAUSES

ARTICLES 1, 2, 3, 3-bis, 4

NOTE: No change.

ARTICLE 5

NOTES: Replace paragraph (1) with the following four paragraphs:

- "(1)(a) Any country party to any earlier Act of this Agreement which has signed this Act may ratify it.
- (b) Any country party to any earlier Act of this Agreement which has not signed this Act, and any country not a party to any earlier Act of this Agreement which is a Member of the International (Paris) Union for the Protection of Industrial Property, may accede to this Act.
- "(1-bis)(a) Instruments of ratification and accession shall be deposited with the Director General of the International Intellectual Property Organization (IPO) (hereinafter referred to as "the Director General").
- (b) This Act shall enter into force one month after the deposit of the fifth instrument of ratification or accession by a country party to any earlier Act of this Agreement has been notified by the Director General according to Article 7(5).
- (c) Instruments of accession, by countries not party to any earlier Act of this Agreement, deposited with the Director General one month or more prior to the date of entry into force according to the preceding sub-paragraph shall be notified according to Article 7(5) and shall take effect on the date of entry into force of this Act pursuant to the preceding sub-paragraph.

MADRID (FI)  
FINAL CLAUSES  
Commentary

(Article 5, contd.)

Paragraph (1-bis) would deal with the communication of ratifications and accessions to and by the Director General of IPO--who, as depositary, would replace in this respect the Swiss Government--and with entry into force. Five ratifications or accessions by countries party to the Agreement would be required for the initial entry into force of the Stockholm Act. This number is lower than the number proposed --ten--for the entry into force of the Administrative Protocols of the Paris and Berne Unions. The reason for the difference is that whereas these Unions have more than 70 and 50 members, respectively, the Madrid Agreement has only 29 parties.

Paragraph (1-ter), providing that ratification or accession automatically entails acceptance of all the clauses and admission to all the advantages of the Agreement is similar to Article 16-quinquies of the proposed Stockholm Act of the Paris Convention. The provision has the merit of making it clear that ratifications or accessions may not include reservations.

Paragraph (1-quater) provides that, after the entry into force of the Stockholm Act, earlier Acts may no longer be ratified or acceded to. The provision, designed to promote the goal that, as far as possible, the same Act should govern among member countries, is similar in scope to proposed Article 16-sexies of the Paris Convention, Article 11(1-quater) of the Madrid Agreement (Trademarks), Article 22(1-quater) of the Hague Agreement, and Article 6(4) of the Nice Agreement.

Paragraph (2), in the Lisbon Act, incorporates by reference Articles 16 bis and 17 bis of the Paris Convention which, in the Lisbon Act, deal with non-selfgoverning territories and denunciations, respectively. In view of the fact that it is proposed that, in the Stockholm Act of the Paris Convention, Article 16 bis become Article 16-septies, it would be necessary to make the corresponding change in the reference to that Article in the paragraph under consideration. This, by the way, would be the only change proposed in that paragraph.

MADRID (FI)  
FINAL CLAUSES  
Draft Text

(Article 5, contd.)

(d) Unless a subsequent date is indicated in the instrument, all other ratifications or accessions shall take effect one month after their notification according to Article 7(5).

"(1-ter) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of the Agreement.

"(1-quater) After the entry into force of this Act, no earlier Acts of this Agreement may be ratified or acceded to."

In paragraph (2), replace "16 bis" by "16-septies".

MADRID (FI)  
FINAL CLAUSES  
Commentary

Commentary on Article 6

Paragraphs (1) and (2), in the Lisbon Act, deal with ratifications, entry into force, and accessions by countries party to the Agreement. As indicated in connection with the preceding Article, it is proposed to omit these two paragraphs as their subject would be covered by proposed Article 5(1) and (1-bis).

Paragraph (3), in the Lisbon Act, provides that it--that is, the Lisbon Act--shall, as regards the relations between countries to which it applies, replace the original Agreement of 1891 and the subsequent Acts of revision. Paragraph (1), as proposed, would contain the same provision, except, of course, that it would relate to the Stockholm Act rather than the Lisbon Act.

Paragraph (2), as proposed for the Stockholm Act, would contain a provision on the relations between any country party to the Stockholm Act and any country not party to it. In these relations, the most recent of the Acts to which the latter country is a party would govern (cf., the commentary to Article 18 of the Paris Convention). As to relations between countries none of which is a party to the Stockholm Act, it is, of course, not possible to insert a rule in the Stockholm Act. These relations would continue to be governed by the applicable earlier provisions, in particular by paragraphs (4) to (6) of the Lisbon Act. If, under such Acts, uncertainties exist, such uncertainties would continue, as between the said countries.

Commentary on Article 7

The Lisbon Act consists of six Articles. Consequently, there is no Article in it corresponding in number to Article 7.

This Article deals with the language of the instrument, the depository, notification and registration of the new text, as well as notification of signatures, ratifications, accessions and denunciations.

The Article generally parallels Article 19 of the proposed Stockholm Act of the Paris Convention (see the commentary to that Article).

ARTICLE 6

NOTE: Replace the present six paragraphs of the Article by the following paragraphs:

- "(1) This Act shall, as regards the relations between countries to which it applies, replace the Agreement of 1891 and subsequent Acts of revision.
- "(2) The relations between countries which are party to this Act and any country party to any earlier Act of this Agreement but not party to this Act shall be governed by the most recent of the Acts to which the latter country is a party."

ARTICLE 7 /new/

- (1) This Act shall be signed in the French language and shall be deposited with the Director General.
- (2) Official translations in other languages may be established by the Director General, after consultation with the interested Governments.

MADRID (FI)  
FINAL CLAUSES  
Commentary

Commentary on Article 8

This Article consists of a transitory provision.

It would, in essence, provide that until the first Director General of IPO assumes office, references to him in the Stockholm Act would be deemed to be references to the Director of BIRPI. Such a provision would be needed mainly because of the depositary functions: even before the entry into force of the IPO Convention, depositary functions such as the following would have to be performed: serving as depositary for the original of the Stockholm Act; transmitting certified copies; receiving, and informing Governments of, instruments of ratification or accession. These functions would, pending the entry into force of the IPO Convention and the appointment of the first Director General of IPO, be carried out by the Director of BIRPI.



MADRID (FI)  
FINAL CLAUSES  
Draft Text

(Article 7 /new/, contd.)

- (3) The Director General shall transmit two certified copies of the text of the Act to the Governments of all countries party to the Agreement, and, on request, to the Government of any other country.
- (4) The Director General shall register this Act with the Secretary-General of the United Nations as soon as possible.
- (5) The Director General shall notify Governments of all countries party to any earlier Act of this Agreement of signatures, deposits of instrument of ratification or accession, entry into force of this Act, and notifications of denunciation.

ARTICLE 8 /new/

Until the first Director General assumes office, references to him in the present Act shall be deemed to be references to the Director of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, also called United International Bureaux for the Protection of Intellectual Property (BIRPI).

/End of Madrid (FI) Addendum/