WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

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

(Paris, July 5 to 24, 1971)
166. **Mr. Chaudhuri (India)** proposed that the words "in paragraph 3 of the report be replaced by "should be considered".

169. **It was decided.**

170.1 **Mr. Hruška (Czechoslovakia)** said that he regretted that the German Democratic Republic had not been invited to take part in the Conference although it was a Member country of the Benelux Union and was currently up to date in the payment of its contributions. The Delegate of Czechoslovakia asked his Government to add to the General Report; although the Report had already been approved, all that was necessary was to insert the name of Chile in paragraph 4 of the Report.

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

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

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

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

**CLOSURE OF THE CONFERENCE**

174.1 **The Chairman** said that, with the termination of the Diplomatic Conference for the Revision of the Berne Convention, he would like to pay special tribute to those who had participated in the 1967 Stockholm Conference. The creation of the World Intellectual Property Organization (WIPO), the revision of the provisions governing the Berne Union, and the measures taken in favor of the developing countries were major events which would always be associated with the name of the capital of Sweden where the text whose major guidelines had directed the work of revision at the present Conference had been established.

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

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

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

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

*The meeting rose at 4.30 p.m.*

**176. It was so decided.**

**STATEMENT ON FOLKLORE BY THE OBSERVER FOR BOLIVIA**

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

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

177.3 The Delegate of Bolivia recalled that the 1944 Inter-American Copyright Convention, which Bolivia had ratified, covered the case of compilations; anonymous melodies were only exceptionally included in that category. He agreed that the drafters of conventions should not cast doubt on the integrity of composers, but, in view of the existing situation, it was necessary to reserve the position and ensure that those who benefited from copyright were in fact real composers and not mere usurpers of the creations of other people.

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

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

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

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

**Title and Preamble**

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

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

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

179. **It was so decided.**

180. **The Chairman** invited the Main Commission to take note of the draft Preamble (document B/DC5, Draft Paris Act), while reserving its decisions on the title.

181. **It was so decided.**

**Articles 1 to 30 (Substantive Provisions)**

182. The Chairman invited the Main Commission to approve unchanged the text of the first twenty articles of the Stockholm Act, which contained the substantive provisions (document B/DC5, Draft Paris Act, Articles 1 to 20 (Sub-
**Records of the Paris Conference, 1971**

**Summary Minutes (Main Commission)**

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**Paragraph (2)(a)**

190. The Chairman invited the Main Commission to approve unchanged paragraph 2(d) of Article 29 of the Stockholm Act.

209. It was so decided.

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**Paragraph (2)(b)**

191. The Chairman pointed out that the Main Commission had to choose between the two passages in square brackets, which differed only in one word: "WALLACE (United Kingdom), he proposed that the Main Commission should approve the first variant—"in the meantime"—while requesting the Rappporteur General to state in his report that that phrase was to be interpreted in the sense of the second passage in square brackets.

210. It was so decided.

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

It was decided that the Chairman invited the Main Commission to approve unchanged paragraph 1 of Article 29 of the Stockholm Act.

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**Editor’s Note:** See document B/D/C/5, Introductory Observations; paragraph 33.
SECOND MEETING
Monday, July 12, 1971, 3.15 p.m.

EXAMINATION OF PROPOSALS FOR REVISING THE STOCHOLM ACT OF THE BERN Convention (continued)

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

Article 299bis (Reference to Article 14 of the WIPO Convention) (documents B(DC)/5 and B(DC)/13) (continued)

220. The Chairman recalled that the delegates had to choose between two proposals: the draft Article 299bis submitted by WIPO (document B(DC)/5) and the draft amendment submitted by the United Kingdom Delegation (document B(DC)/13), which suggested that the question should be settled, not in Article 299bis, but in Article 299d. From a legal standpoint, neither of the two proposals was entirely satisfactory. The United Kingdom proposal had the drawback of complicating the procedure because parliaments would have to ratify both the Stockholm Act and the Paris Act. It therefore seemed preferable to adopt the text prepared by WIPO for Article 299bis. The word "simply" which appeared in that text was acceptable and there might be some risk in changing it.

220.2. The suggestion by the Japanese Delegation concerning a declaration by the General Assembly of WIPO on the interpretation to be given to Article 14C1 of the WIPO Convention seemed a good one; in the event of disagreement in the General Assembly, the article in question could be slightly amended (document B(DC)/9). As a declaration, he proposed that the delegates should adopt the text proposed for Article 299bis as an amendment to the article in its present form.

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

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

223. Mr. BOUTTÉ (France) said that he was prepared to support the Chairman's proposal. He wondered, however, whether it would be appropriate to replace the word "simply" by the words "be equivalent to".

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

225. Article 299bis was approved on the understanding that the question of the interpretation of Article 14C1 of the WIPO Convention would be raised in the WIPO General Assembly.

Article 30 (Reservations)

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

Article 31 (Territories)

227. Mr. HAARDT (Netherlands) suggested that the word "such" in Article 31(1)(a) be replaced by the word "that".

228. Article 31 was approved subject to drafting changes.

Article 32 (Textual Edits)

229. Article 32 was approved.

Article 33 (Disputes)

230. Article 33 was approved.

Article 34 (Closing of Earlier Acts)

231. Mr. KATO (Japan) said that Article 34(3) referred only to acronyms and suggested that a reference to ratification should be added at an appropriate place in that paragraph.

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

233. The Chairman said that the question raised by the delegations of Japan and Austria would be considered by the Drafting Committee.

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

Article 35 (Denomination)

235. Article 35 was approved.

Article 36 (Domestic Legislation) (documents B(DC)/5 and B(DC)/13)

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

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

238. Article 36, as amended, was approved.

239. Mr. DETRICH (Austria) remarked that a certain number of countries had adopted the principle that ratified conventions should become effective on ratification and not on notification. There had been some discussion in his country as to whether the text of the proposal was consistent with this approach. He excluded the possibility of self-executing agreements. He suggested that a statement should be included to clarify the effect of the paragraph. He did not exclude the possibility that the Convention might be self-executing.

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

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

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

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

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

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

245. Mr. DE SANCTIS (Italy) said that most of the articles of the draft Act should be identical with those of the Drafting Committee. As he had said at an earlier meeting, the Italian Delegation would be ready to vote "Yes" to the "Paris Act"; and in any event it would accept the majority decision.

246. Mr. CHAUDHURI (India), Mr. DAVREDE LA MA (Belgium), Mr. DE SAEN (Belgium), Mr. AMBI (India) and Mr. ALONSO (People's Republic of the Congo) supported the proposal of the French Delegation.

247. Mr. HAARDT (Netherlands) said that he supported the motion, while respecting the spirit of the United Kingdom proposal, although he did not agree with the suggestion of the French Delegation that a reference should be made in the Preamble of the Berne Convention.

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

249. Mr. STREIF (Germany) (Federal Republic of) and Mr. HAARDT (Netherlands) said that, although the United Kingdom proposal sought to have certain advantages, their Delegation was prepared to support the proposal of the French Delegation, which most delegations seemed to prefer.

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

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

252. Mr. WALLACE (United Kingdom) said that his Delegation, rather than the text of the proposed amendment, was concerned with the possibility that the Drafting Committee would be given the opportunity to consider the insertion of the passage in the Preamble to be most appropriately worded.

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

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

255. It was so decided.

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

256. Mr. SISO (Tunisia) proposed that Arabic should be added to the languages mentioned in the paragraph.

257. It was so decided.

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

258. Paragraphs 1(c), (2), (3) and (4) (document B(DC)/24).

Paragraphs 1(c), (2), (3) and (4) of Article 37 (document B(DC)/12) were approved.

Paragraph 5 (document B(DC)/12)

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

260. The SECRETARY GENERAL said that the reference to Article 38(1) was important, but the basis of the made in the Stockholm Act, the Director General of WIPO had always notified the Governments of all countries concerned of the five-year privilege (see Articles 38(2) of the Berne Convention).

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

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

It was so decided.

Article 38 (Transitional Provisions) (document B(DC)/25)

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

Appendix (Provisions Regarding Developing Countries) (documents B(DC)/5, B(DC)/6 and B(DC)/116)

264. Mr. STRACHNOV (Czechoslovakia) considered that certain of the amendments proposed to the Annex to the Draft Paris Act, in particular, those submitted by the United Kingdom, were extreme important questions and might even jeopardize the entire project. He suggested that the Chairman consider whether the text of those proposals should, therefore, be postponed until the development of the Drafting Committee and the opportunity to discuss the matter among themselves.

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

The meeting rose at 4.15 p.m.

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

EXAMINATION OF PROPOSALS FOR REVISING THE STOCKHOLM ACT OF THE BERN Convention (continued)

Amendments to the text of the draft Paris Act contained in documents B(DC)/9 and B(DC)/12

266. The Chairman drew the Main Committee's attention to document B(DC)/24 in which, on the basis of previous discussions and of the proposals to the Diplomatic Conference for Revising the Berne Convention, the WIPO Secretariat had presented text amendments or replacing some of those in document B(DC)/5. The amendments relating to parts of the text other than the Annex would not be discussed for the present because they would be submitted (5)
277. Mr. Barakshekh (India) thought that it would be preferable to delete the text in square brackets in order to avoid creating a difference between the Berne and the Universal Copyright Conventions.

278. Mr. Chirchir (Uganda) said that, although it was a question of minor importance, he was in favor of maintaining the passage in square brackets because it was in line with a principle which the Ugandan Delegation had supported on a number of occasions, that creative works must be taken as cultural works as well as of economic factors.

279. Mr. Alvaraz de Toledo (Argentina) supported the text in square brackets.

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

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

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

283. Mr. Step (Germany) (Federal Republic of) disputed the point that Ceylon had mentioned in its resolution. The WIPO Secretariat had ruled that the material for an international convention should be included in the revision of the Universal Copyright Convention.

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

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

286. Mr. Wallace (United Kingdom) asked whether it was his feeling that the text should not be included in the revision of the Universal Copyright Convention.

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

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

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

290. Article II (document B/D/C/24) was approved without opposition.

291. Subject to drafting amendments, Article I, paragraph 2 (document B/D/C/24) was approved without opposition.
320. Mr. KREKEL (Finland) said the proposal was designed in the nature of a "package deal," pointing out the disadvantages of the differences of national treatment which exist between the terms under the Two Conventions.

321. Mr. GAY (Jordan) deferred the proposal that reference should be made in the text to the language or languages in general use.

322. Mr. BODROGLY (Director General, WIPO) made two points. Firstly, if the proposal by the Delegation of Tunisia was accepted it would be different from that used in the Universal Copyright Convention, whereas the purposes of the two conventions were to create parallel systems. Secondly, with regard to the comment by the Delegate of Tunisia, there had been a very large number of languages, of which only a few were in general use. The best solution might be to use the terms "international" or "official" languages. He had read in the General Report of the Conference that the terms covered both languages in general use and those used territorially in a country applying the provision.

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

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

325. That proposal was adopted.

Paragraph (3)

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

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

327. The Chairman deferred the last sentence of Article II, paragraph (4) in document B/DC(24) as Article II, paragraph (5) in document B/DC(24), and that the proposal of the Delegation of the Swedish delegation in document B/DC(21).

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

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

330. Mr. CHACON (India) asked that it be included in the Report that India's interpretation was that the period should be consecutively.

331. Mr. KEHR (Finland) said that from the discussions in the Main Commission of the Conference for the Revision of the Universal Copyright Convention, the proposal for broadcasting licenses—whose had been dealt with in the revised draft—required further consideration by governments.

343. Mr. KEHR (Finland) referred to the phrase "key text incorporated in an audiovisual fixation", which occurred in Article II, paragraph (5)(b) (document B/DC(24)), said that, during the discussions on the definition of an "audiovisual work" in the Main Commission of the Conference for the Revision of the Universal Copyright Convention, it had been suggested that it should be defined as being "any text incorporated in an audiovisual fixation of a work protected by [the said] Convention". He suggested that wording should be adopted here too because the existing wording suggested that it was not so much the work which was protected as the audiovisual fixation which served as its support.

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

345. Mr. KEHR (Finland) said that he understood the anxiety of the Italian Delegation and he would not insist on the amendment of Article II, paragraph (5)(a), but he hoped very much that the wording he had just suggested would be included in the text because the Second United Nations Conference on Copyright and Article III of the Berne Convention.

346. Mr. WALLACE (United Kingdom) noted that a fundamental change was being proposed. Recalling that the Convention was, in its essence, a "package deal," giving only one purpose of teaching, scholarship, research or promotion of culture.

347. Mr. KEHR (Finland) said that he agreed with the United Kingdom Delegate that any change in the field of application of reservations was unacceptable.

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

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

Paragraph (6)

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

Paragraph (7)

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

Paragraph (8)

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

353. Article II, paragraph (9) (document B/DC(24)) was approved subject to drafting amendments.

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

354. Mr. WALLACE (United Kingdom) agreed that the text proposed in Article II of the Appendix in document B/DC(24) covered the first point raised by the United Kingdom for discussing Articles II(7)/(8) of the Appendix in document B/DC(5) (documents B/DC(9) and B/DC(16), although he would still like to propose minor changes. This text was to be referred to the Drafting Committee. As regards the second proposal of the United Kingdom (Article II(9) of the Appendix in document B/DC(5) (the substance of which has been reflected in Article II(11) of the Convention), it had been agreed in the Permanent Committee that such a proposal should be withdrawn. He suggested not mentioning the fact that it had had a compulsory licensing system in the past, to choose the temporary provisions of the Berne Convention. All that the United Kingdom was doing was to make two suggestions relating to compulsory licensing.

The discussion was that a translation had been published under a compulsory license, it should count as if it had been published by the author, for the purpose of preserving the author's rights in translation in the country in which the translation was made.

355. Mrs. ZUHR (Germany) (Federal Republic of) said that it was not her opinion that the time during which a developing country had a right to itself, the facility should be prolonged. She considered that all that was necessary for was the development of a country to make a declaration. Article 30 of the treaty, which had been under the treaty, and at least two years after that for the period referred to in Article 10 may, two years before the expiry of the period provided for in Article 13 (the nullification of the facility provided for in Article 10 of the treaty), if the question came to be determined.

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

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

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

Article III (document B/DC(24))

Paragraph (1)

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

Paragraph (2)

360. Article III, paragraph (2) (document B/DC(24)) was approved without opposition.
Fourth Meeting
Thursday, July 14, 1971, 3:35 p.m.

Examination of Proposals for Revising the Stockholm Act of the Berne Convention (continued)
Amendments to the text of the draft Paris Act contained in document (B/DC/5) (continued) (documents B/DC15, B/DC/24 and B/DC/25)

Appendix (continued)

Article IV (documents B/DC/24 and B/DC/25)

Paragraph (1)

381. Mr. Kerferd (France) said that the General Report of the Committee had been largely based on the lines referred to in Article IV, paragraph (1), of the Appendix (licences to translate or to reproduce), the period of delay could only begin to run from the entry into force of the Convention. In fact, once the Convention came into force, the large number of works would be within the purview of exclusive rights would become "licensable"; it was therefore important to provide for a grace period between the date on which the Convention came into force and the date on which licences were granted, in order to enable the author to negotiate his rights satisfactorily.

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

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

Paragraph (2)

384. The Chairman said that, in accordance with the proposal by the United Kingdom Delegation, contained in document B/DC/25, the publisher was characterized in the paragraph by his principal place of business and not by his nationality.

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

Paragraph (3)

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

Paragraph (4)(a)

387. Mr. Strachnov (Cypria) expressed the hope that the same comments as those made in the Report on the discussion on the same issue held by the Main Commission for the revision of the Universal Copyright Convention concerning the printing of copies in a country other than the country which had issued the license would be included in the Report of the Main Commission. Two questions had been raised in this connection—the fact that printing was often difficult for technical or financial reasons, and the fact that all copies not printed outside it would be returned to the country which had issued the license.

388. Mr. Wallace (United Kingdom) recalled that his Delegation had accepted, within the framework of the University Copyright Convention, a proposal concerning printing abroad in relation to reproduction rights but that it had not been extended to reproduction rights.

389. There did not seem to be any pressing need to do so for the latter—reproduction of texts by photocopy process was a simple process.

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

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

Paragraph (4)(b)

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

396. Mr. Galay (Israel) found the idea behind the proposal described in document B/DC/25 very attractive as it would be in the interest of many developing countries, and that the proposal would constitute a framework for the conservation of the protection of exports. He suggested the replacement of the words "granting or supplying” by "granting or supplying copies of the text on request of the Delegates present.

The British Delegation had in fact fulfilled that expectation in its proposal was contained in document B/DC/25.

397. Mr. Chaudhuri (India) proposed the deletion of the reference to notification of agreements to the Director General contained in Article IV (documents B/DC/24)

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

399. Mr. Wallace (United Kingdom) recalled that the reference had been made in document B/DC/25, but that the question of national copyright owners in one country whose works might be the subject of agreements entered into by other countries. A copyright owner who was a national of the Federal Republic of Germany, for example, would wish to be informed of agreements entered into by nationals of two or more English-speaking countries and not translated his work or works into English. The inclusion of the reference to notification of agreements to the Director General would allow copyright owners to be informed of such agreements.

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

Paragraph (4)(c)

398. Mr. Kerferd (France) asked his sponsors if they had revised the proposal (document B/DC/25) so that it would adopt the same compulsory provision for the protection of the works of all African countries contained in document (B/DC/25).
come together for that sole purpose. The developing countries could have intelligently advanced the case for a form of shorter periods for the granting of translation rights in works of other countries, which had provisions for an extension of the copyright period. How could the proposed amendment not be regarded as being in violation of the principle of non-exportation? A joint license authorize- ing, for example, the translation of a work into Arabic or Spanish would also be a violation of this principle, which they themselves have accepted in the case of a considerable number of copies of the work translated.

40.2 The Delegation of Brazil was of course right to disti-inguish between the two principles, but the French Delegation could not but oppose the African amendment, since it was convinced that it referred in fact to publication and not to printing.

40.3 Mr. Salo (Tunisia) agreed with the Brazilian Delegation that the two principles were different, but the French Delegation could not but oppose the African amendment, since it was convinced that it referred in fact to publication and not to printing.

40.4 Mr. Salo (Tunisia) agreed with the Brazilian Delegation that the two principles were different, but the French Delegation could not but oppose the African amendment, since it was convinced that it referred in fact to publication and not to printing.

40.5 Miss Roca (Observer for the United States of America, recalling that her country was a party to the package deal, said that she would undoubtedly be quite unable to accept the proposal concerning the new para- graph (4(b)). The issue had been raised in a more elaborate form during the preliminary negotiations, and, bearing in mind the need to keep a proper balance between the needs of the developing countries on the one hand and the legitimate rights of the developed countries on the other, it had finally been agreed that the revised text of the Convention should draw a distinction between the two types of works, and that there should be an absolute ban on exports. The developing countries had accepted the principle of the export ban. It now appeared, however, that they were unwilling to accept the principle of a ban, which would amount to a breach of the previous agreement on the export ban. The principle of non-exportation was commonly accepted by the States which had put forward their views on the question. The provisions of international copyright law, and, if it would be able to accept the Universal Copyright Convention if the provisions of that Convention were not included in the basis of the Convention. The United States Government considered the export ban as too far-reaching, and was unwilling to go along with it.

40.6 Mr. Stoff (Germany) (Federal Republic of) said that the countries with which Germany had no direct relations to which the African amendment was not applicable. She wished to make a number of clarifications and asked that the developed countries would be willing, in the light of those explanations, to reconsider their position. The sponsors of the amendment had, of course, had in mind that the license would be requested by a publisher. But only two countries, out of the fourteen which have already published books, had not far had publishing houses. That meant that, if the African countries' amendments had been accepted, the conditions stated in paragraph (4) would be a dead letter for them.

40.7 The amendment to the General Director of WIPO stated that the text of the amendment, as amended, was intended to be consistent with the amendment which had been adopted by the Committee. The new text would be a further step in the direction of the proposal for the development of the Copyright Convention. The rights of the developed countries to use the copyright in their own languages and the rights of the developing countries to obtain the use of the original works in their own languages, which had been previously agreed upon, were not affected by the proposal. The proposal was submitted by the Observer, and, if adopted, it would be a further step in the direction of the proposal for the development of the Copyright Convention. The proposal was consistent with the proposal for the development of the Copyright Convention.

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

40.9 The sponsors of the amendment did not intend the application of the provisions they proposed to be confined to regional languages. They had only intended to apply the provisions of the agreement in the case of a national language or to the case of individual languages. If one language had been imposed on a number of countries, it would be only just to allow them to use it in one of their communities.

40.10 On the other hand, the developing countries needed to con-ceive of a system of joint licenses, perhaps the solution would be for the countries wishing to obtain a joint license to confine their co-operation to the translation of a work in the same language. It would be possible to limit the number of countries which might benefit from a joint license, if such a limitation were necessary to protect copyright. The developing countries would not want to see copyright enjoyed in effective international protection.

40.11 She urged the developed countries to reconsider their position in the light of the proposal for the development of the Copyright Convention. The proposal was consistent with the proposal for the development of the Copyright Convention. The proposal was in the same spirit as the proposal for the development of the Copyright Convention.

40.12 Mr. Kandjou (Sudan) said that, if the Berne Convention rightly granted the developing countries comparatively shorter periods for obtaining translation and reproduction licenses, that was to assist them in their teaching, scholarship and research activities. When the Africans were as well as the developed countries to protect copyright. They had no doubt that the package agreement which was reflected in the draft submitted by WIPO, nor had they any desire to go back on the co-operative principle. But the African countries, their cultural activities encountered difficulties of a linguistic nature; in some cases, the same language was divided among several States; in others, a new language had been created. They had therefore required the package agreement to be adapted to their own institutions and needs, according to the geographical and linguistic facts prevailing in their countries. The package agreement should also be adapted to the geographical and linguistic facts prevailing in their countries.

40.13 Mr. Kandjou (Sudan) said that he was surprised that the principle of non-exportation should have been inserted into a principle of exportation because— as the United Kingdom delegate had stated—the principle of non-exportation to the principle of non-exportation to the principle of non-exportation had already been granted and a third excep- tion was proposed in the amendment in document BDC/1. He appreciated the arguments put forward by the Delegate of Covay for the dropping of the provision for the protection of the rights of authors under the Berne Convention. He also appreciated that the French delegation had suggested, in countries which had no publishing houses, ministries should assume the role of the publishers. If the amendment was approved, the question was whether African countries would not push Africans towards a centrally-planned economy? It was clear that the African countries were not yet producing anything. They might be able to produce books of a quality and price which would make it possible for the books to be exported. They might be able to produce books of a quality and price which would make it possible for the books to be exported. They might also be able to produce books which would be of interest to the European market. It was clear that the African countries would not be able to produce books which would be of interest to the European market. It was clear that the African countries would not be able to produce books which would be of interest to the European market.
general public. He hoped, on the contrary, that it would be clearly stated in the report that the works in question would be on sale to the general public.

427. The CHAIRMAN said that he was doubtful of the usefulness of the addendum proposed by the Delegation of Italy.

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

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

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

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

Paragraph (6)

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

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

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

433. The CHAIRMAN assured the Delegates of Argentina that his Government, as a member of the Bologna group, would support their proposal.

434. Mrs. NEDE (Germany (Federal Republic of)), supported by Mr. CHAKMA (India), proposed the deletion of the words "by national legislation" from the first sentence of Article IVC(6) (document B(DC)24).

435. Mr. BOOGSCH (First Deputy Director General, WIPO), said that understanding the previous speaker's aim of bringing the text into line with the corresponding text in the Universal Copyright Convention, his Delegation would be in favor of including such a provision as would be included in the Berne Convention. He believed that reference to "a legal system maintaining and protecting copyright legislation" would in fact be required in respect of item (iii) of paragraph (6).

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

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

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

439. It was so decided.

Paragraph (7)

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

Paragraph (8)

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

Paragraph (9)

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

Paragraph (10)

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

The meeting rose at 6.20 p.m.

FIFTH MEETING

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

EXAMINATION OF PROPOSALS FOR REVISIONING THE STOCKHOLM CONVENTION

(continued)

Proposals of the Joint (Berne-UCU) Working Group (documents B(DC)S, B(DC)25, B(DC)27)

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

444.2 The Joint (Berne-UCU) Working Group had first of all studied the question of joint licenses on the basis of the proposal submitted by the Delegations of Tunisia and India. It had come to the conclusion that part of the General Report of the Conference should be devoted to individual remarks on the subject. A sub-committee of the Joint (Berne-UCU) Working Group, composed of the Delegates of Cyprus (Kenya for the UCC), Ivory Coast, the United Kingdom and the United States of America would draft that part of the report, which would be submitted for approval to the Main Commission. It would state that it was not possible to grant joint licenses, but that when licenses to translate were granted in several developing countries where the translation was not in use, while the translation was in use, in cases where the translation had not already been published in the same country, the translation legislation would in fact be required in respect of item (iii) of paragraph (6).

444.3 The Joint (Berne-UCU) Working Group had also considered the question of printing in a foreign country. In its view, it might be stated in the General Report of the Conference that "the holder of a license to translate or to reproduce a work in respect to printing services in a foreign State which had also acceded to the Berne Convention or to the Universal Copyright Convention in respect to the work in question, could, for economic or technical reasons, be unable to do the printing in that country. . . . It was clear that it was absolutely essential that all the copies printed abroad would be sent to the country in which the license-holder had been granted a license and could only be used in the country of the license-holder."

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

444.5 Lastly, the Joint (Berne-UCU) Working Group had studied the question of the designation of so-called "national" languages. In that connection, it had thought it would be useful to use the same terms in the revised texts of the Berne Convention and the Universal Copyright Convention, in which it had proposed to employ the expression "language in general use" in a country, which seemed preferable to "national language" or "a language of the country". If that proposal was accepted, it would of course be necessary to amend the formulations of Article 1(2) of the Appendix to the revised Berne Convention (document B(DC)24) and that of Articles 30(2)(i) of the same Convention (document B(DC)25) so that in a language regarded as being in general use in a country, it was sufficient for it to be in general use in part of the country. The Joint (Berne-UCU) Working Group had proposed that the same expression should be used in the Universal Copyright Convention.

444.6 He asked delegates if they would accept that amendment.

445. It was so decided.

Paragraph (11)

446. Article 28(2)(d)(ii) (document B(DC)25)

447. The CHAIRMAN invited participants to state their views on paragraphs (2)(d)(ii) of Article 28, which perhaps contained possibly ambiguous language. It was hoped that the entry into force of Articles 1 to 21 of the Paris Act and of the Appendix would depend on the agreement of a country (the United States of America) which was not a member of the Berne Union.

448. Mr. de SANTIS (Italy) said that it was still more absurd to provide that the entry into force of Articles 1 to 21 of the Paris Act and of the Appendix would, under the same paragraph, depend on the accession of a number of countries to the Universal Copyright Convention which, from the legal point of view, did not link to the Berne Convention. It was for that reason that the Italian Delegation had proposed to establish a link between the Berne and the Universal Copyright Conventions. The question of the ratification of the Universal Copyright Convention by the United States of America was stipulated in the Washington Recommendation; in any event, the system of dependence was envisaged to establish only the functional status of the United States of America were ratified the Appendices of the Universal Copyright Convention.

449. Mr. DAVÌELLI DE LIMA (Brazil), referring to the first statement by the Delegate of Italy, said that the Universal Copyright Convention and the Berne Convention were in fact linked by many cross-references. The ratification of the Appendices to the Berne Convention by the United States of America was one of the essential principles of the Washington Recommendation. In his view, it was indispensable to mention the United States directly in Article 28, now under consideration; the Brazilian Delegation was, therefore, prepared to accept the text proposed by WIPO for that paragraph (document B(DC)25).

450. Mr. BALAKRISHNAN (India) said it was the unanimous opinion of the Delegation of India that paragraph (3)(e)/(ii) of Article 28 should be retained.

451. Mr. LEIREZ RICHI-RUBIDOS (Mexico) supported the statement by the Delegation of Brazil, saying that the countries of the United States of America were parties to the Berne Convention, and that the same concessions should be made to both.

452. The International Publishers Association also hoped that the article would only be possible, since it believed that it should be possible to conclude fair contracts between publishers of developing countries, which would render such compulsory licenses unnecessary. Moreover, the interests of the developing countries were defended by the national copyright information centres, which also acted in a conciliatory role, and be mandatory that those principles be applied to display sufficient good will for it to be sacrilegiously necessary to resort to compulsory licenses.

The meeting rose at 4.10 p.m.

SIXTH MEETING

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

EXAMINATION OF PROPOSALS FOR REVISIONING AND AMENDMENTS TO THE BERNE CONVENTION (continued)

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

448. The CHAIRMAN invited the Main Commission to consider the提案 submitted by the Secretariat and submitted in document B(DC)27.

Title and preamble

455. The title and preamble were approved.
467. Mr. Kato (Japan) said that he did not object to deferment of discussion of his proposal until such time as Article V was examined.

468. It was so decided.

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

Paragraphs (4) and (5)

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

Paragraph 6

471. Mr. Boosch (First Deputy Director General, WIPO) referred to the two texts proposed for paragraph (6)/(b) and said that the Secretariat, in preparing its text (document B/DC(7)/27) had been guided by the belief that it would be highly illogical to differentiate between the developed countries themselves. Adoption of the first of the two texts, that did not appear between square brackets, was the only means of ensuring that there would be no discrimination between those countries.

472. Mr. Wallace (United Kingdom) and Mr. Kato (Japan) expressed preference for the first of the two tests proposed for paragraph (6)/(b).

473. Mr. Boutet (France) said that his Delegation preferred the first of the two versions proposed for paragraph (6)/(b). It thought, however, that the words "the period referred to in Article I(4)/ should be replaced by the words "the period applicable under Article I(4)/; that would make it quite clear that, of the two periods referred to in the article, the period applicable was the one which expired later.

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

475. The Secretary General, replying to the Delegate of the Netherlands, said that the end of paragraph (6)/(b) should read: "In accordance with Article V(6)/(b)."

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

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

Summary Minutes (Main Commission)

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

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

483.3 Second, even when the owner of the right to translate was known, his address might not be known. That being so, the Delegation would be of the opinion that the text should be addressed not only to the owner of the right to translate, but also to the publisher.

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

484.2 After expressing support for the amendment proposed by the Delegation of the Federal Republic of Germany, he suggested that the words "the identity or address of" be inserted after the word "where" in the beginning of paragraph (6)/(a)/(6) of the amendment (document B/DC(3)), it might also be useful to insert a phrase such as "or he cannot, after due diligence, be contacted" after "unknown."

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

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

486. Mr. Boutet (France) suggested that the draft amendment submitted by the Delegation of the Federal Republic of Germany should be amended by the additions, at the end of paragraph (4)/(a)/(b), of the words: "... to take effect, such request for authorization should also be sent to the publisher.

487. Mr. Buusch (First Deputy Director General, WIPO) said that the French Delegation's proposal seemed to raise a question of substance. In any event, that proposal, similar to the one referred to cases in which the owner of the right to translate was paral, the publisher, might best be considered during the discussion of Article IV of the Appendix.

488. Mr. Skratchov (Cyprus) expressed the view that the problem raised by the Chairman was not so serious as it might seem at first sight, because only in a very few cases would an author claim the copyright owner. Consequently, it would perhaps be sufficient to include in the Report a statement to the effect that in cases where the applicant did not know who the copyright owner was, the application should be sent to both the publisher and the author. But that clarification was made in the General Regulations, there would be no need to alter the amendment proposed by the Federal Republic of Germany (document B/DC(3)).

489. Mr. De Sautour (Italy) said that it was essential for the applicant to get in touch with the publisher; it was of little consequence, however, if he sent them a request for authorization or simply a copy of his application for a license.

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

491. The Chairman suggested that the Main Commission should proceed in discussion on Article II, paragraphs (5), (6) and (7), and on the amendment in document B/DC(3) until it came to consider Article IV paragraphs (1) and (2) of the Appendix.

492. It was so decided.

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

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

Paragraph (9)/(a)

494. Mr. Boust (France) said that, in the French version, the beginning of item (9)/(a) should read: 'La traduction est utilisable seulement dans les éditions destinées...'

495. Mr. Sleut (Germany) proposed the insertion of the word "any" before "commercially" in paragraph (9)/(a)/(v).

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

Paragraph (9)/(b)

497. Mr. Pielgrews (Switzerland), supported by Mr. D. Costa (Brazil), proposed that the words, "and with the agreement of that organization should be deleted.

498. Mr. Sleut (Germany) proposed by the Federal Republic of Germany (document B/DC(3)), supported by Mr. Boust (France) and Mr. Skratchov (Cyprus), expressed the view that the phrase in question should be retained.

499. Mr. Pielgrews (Switzerland) withdrew his proposal.

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

Paragraph (9)/(c)

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

502. It was so decided.

503. The Chairman suggested that the French version could be tidied up by replacing the words dans une fixation audio-vidéo longue durée... enregistrement a été préparé et publié... by dans une fixation audio-vidéo fait et publié...

504. Mr. Boutet (France) proposed that the words dans la... seu... should be replaced by the words à seule fin.

505. The Secretariat General suggested, that, in bringing the wording of the French version of the paragraph into line with the corresponding paragraph of the Universal Copyright Convention, the words postérieures et universellement should be replaced by the words postérieures et universellement.

506. Mr. Lebed (Cyprus) said, that, under Article II, paragraph (9)/(c), a license could be granted only if the conditions set out in paragraph (9)/(a)/(c) of the same article were met; one of those conditions was that the...
51.2. He further pointed out that, as had been previously decided in connection with Article III(7)(c), the end of Article III(7)(b) in the French version should be amended to read: "et ont été inscrites et publiées aux seules fins de l'usage scolaire et universitaire.

52. The Chairman said that the wording proposed at the previous meeting by the French Delegation was somewhat different from the English version. He, therefore, suggested that the beginning of Article III, paragraph (7)(b) in the French version should be amended to read: le présent article est également applicable à la reproduction audiovisuelle de partitions écrites utilisées dans l'enseignement supérieur ou incorporant des œuvres protégées, ainsi qu'à la traduction du texte ...

53. Mr. STARKOM (Czechoslovakia) fully supported the suggestion by the Chairman.

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

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

Article IV

56. Mr. WALLACE (United Kingdom) proposed that the phrase "including connecting the publisher, if known," be inserted after "pair.

57. The Secretary General read out the French version of the amendment proposed by the United Kingdom Delegation to Article IV, paragraph (1). He stated that the end of the paragraph would read in French: ...après avoir délivré, de sa part, et après que l'auteur ou le titulaire de celui-ci est connu, n'a pu atteindre ce titulaire ou ne n'a pu obtenir son autorisation.

58. Mr. BOULT (France) said that there were two drawbacks to that wording.

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

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

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

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

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

59.4. It was so decided.
SEVENTH MEETING

Wednesday, July 21, 1971, 3:30 p.m.

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

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


Paragraph 1

564. Mr. Salo (Tunisia) said that the word “should” be inserted after the word “necessary” in the first paragraph of the French version.

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

566. Mr. KAREM (France) suggested that the passage should be amended, to the effect that the text is not applicable unless the circumstances arise as required.

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

Paragraph 2

568. Paragraph 2 was approved without opposition.

Paragraph 3

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

570. Mrs. REGNER (Observer for the United States of America) spoke on behalf of the Sub-Committee of the Joint Working Party, which had discussed the question of commercial gain. There had been unanimous agreement in the Sub-Committee that Article V and Article Vc should be the basis throughout the granting of the license should not predetermine the use of profit-making facilities for the purpose of the enterprise. The Sub-Committee had considered that such an interpretation should be included as part of the basic understanding.

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

572. Mr. BALAKIRISHN (India), supporting that understanding, thought that to avoid ambiguity it would be preferable to do otherwise.

573. Mr. MUSEA AKIS (Brazil) said that he agreed with the Delegate of India.

574. Mr. M. SANCTU (Italy) said that in case of public institutions one could say that their profits were non-commercial or that they were non-profit-making; but publishers, at least in the main part, would not be interested in business-men whose activities were defined by law as being profit-making. It might be better, therefore, if the paragraph referred to “cultural purposes”.

575. The CHAIRMAN said that if the ideas which lay behind paragraph 3 of document B/DC/33 were to be included in the Report, they should appear in a more general form than that proposed. He, therefore, proposed that the sentence in paragraph 3 should not be included in the Report as it stood.

576. Mr. RENÉ (Czechoslovakia) supported the Chairman’s proposal; he also drew attention to the fact that several articles referred to in document B/DC/32 were numbered as document B/DC/33. He, therefore, suggested that the correct reference should be to the draft of the Berne Convention.

577. Mr. Salo (Tunisia) supported the Chairman’s proposal.

578. It was decided not to include paragraph 3 of document B/DC/33 in the General Report of the Conference.

579. Subject to the amendments made to paragraph 1, it was decided to include paragraphs 1 and 2 of document B/DC/33 with reference to the corresponding articles of the Berne Convention, at appropriate points in the General Report of the Conference.

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

580. The CHAIRMAN drew the Main Commission’s attention to document B/DC/33 containing the proposals made by the Working Group set out at paragraph 4 of the Main Commission with a view to drafting Articles II, III and IV of the Appendix, as proposed in document B/DC/27.

581. Mrs. SYROP (Germany (Federal Republic of)) said that in discussion in the Working Group different opinions had been expressed as to who or what body should be notified of the application for a license. For example, India would have found it difficult to agree that the publisher should be notified at the same time as the owner of the translation or reproduction right. The acceptable solution finally devised was for a provision to the effect that the applicant should send a request to the owner of the relevant right, and at the same time to a national or international body designated by the country of origin of the work. Such a provision took care of both the Indian difficulty and the insistence by France that the publisher should be informed that an application had been made. As regards paragraphs 2 and 4 of Article IV (document B/DC/33), the number of bodies who had to be notified had been reduced. It was not the unanimous view that only two copies of the application should be sent, one to the publisher of the work and the other to the national or international information center already mentioned. Such a solution was acceptable since it did not impose a heavy burden on the publishers, while taking care of the interests of both the owner of the right and the publisher.

Article IV

Paragraphs (1) and (2)

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

583. After an exchange of views in which Mrs. SYROP (Germany (Federal Republic of)) and Mr. BOSCH (First Deputy Director General, WIPO) took part, the Chairman suggested that paragraph (4) of document B/DC/33 be amended to read: “If the owner of the right cannot be found, the application, unless a license shall be issued, by registered airmail, copies of his application submitted to the competent authority with a statement of obtaining a license to the publisher whose name appears on the work and to any national or international body or information center which may be designated in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.”

584. Mr. LARRA RICHRADT (Mexico) said that the Spanish text of the document under discussion had been distributed and requested that it be incorporated in accordance with rules 19 and 20 of the Rules of Procedure, discussion should be postponed until such time as the Spanish text of the document was available.

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

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

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

Article II

Paragraph (4)(b)

588. Mr. KOREN (France) said that, in the French version of Article II(4)(b), the word “demande” should be replaced by the word “requête”.

589. Mr. SALO (Tunisia) said that, to bring the French version into line with the English, the beginning of Article II(4)(b) should read: “On réception de l’adresse de...”

Paragraph 4(a), as amended, was approved without opposition.

Article III

Paragraph (4)(b)

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

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

EIGHTH MEETING

Thursday, July 22, 1971, 12 noon

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

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

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

593. Mr. LARRA RICHRADT (Mexico) said that he approved the substance of the proposals concerning Articles II, III and IV (document B/DC/33), but thought that a few purely drafting changes should be made in the Spanish version.
606.3 The beginning of Article II, paragraph (4)(a) should read: La licencia a que se refiere el presente artículo no podrá concebirse antes de la expiración ...

606.4 The beginning of Article IV, paragraph (1), should be amended to read: Toda licencia referida al artículo II o III no podrá ser concedida ...

607. The Chairman said that the Mexican Delegate's remarks referred to the Spanish text only and, therefore, gave rise to no objection.

608. The Spanish version of Articles II, III and IV (document B(IV/31)), having regard of the amendments made in the English and French versions at the seventh meeting of the Main Commission, was adopted.

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

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

The meeting rose at 12.30 p.m.

GENERAL REPORT